

THE WORK AND SELECTION OF A GOVERNOR: BY ELECTION, PARLIAMENT OR PREMIER*

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I. DEMOCRACY

Our democracy is a priceless possession. Successful democracy needs a suitable system and suitable community attitudes. We have a system which includes elections, Parliament, Government and the Courts. It is just as important that we have the essential democratic attitudes: that the great majority of citizens have confidence in their community and its democracy; that they respect and are concerned for others and their rights and interests; and that they have a readiness to accept and comply with their responsibilities and the decisions made within the democratic system.

The Governor's first responsibility today is to serve and support our democracy. This is done by following the advice of Ministers, facilitating the working of the system and encouraging the attitudes that make for a good community and democracy.

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** Governor of Victoria, 1992-23 April 1997.

II. DEVELOPMENTS SINCE 1788

A. The Governor in 1788

There have been Governors in Australia since European settlement in 1788, when Governor Phillip became the first Governor of New South Wales. His powers were delegated powers of the King which he exercised in New South Wales as the King's representative. They included most of the powers of today's Governor, Government and Parliament. He had to comply with instructions which the King, on the advice of the British Government, gave him, but otherwise he exercised his powers as he himself decided.

B. The Governor Now

Most of that has changed.

Our system of parliamentary democracy has since developed. Under democracy as it has developed in Australia, the Governor still has numerous powers but by convention or law they are exercised as decided by the Ministers of the elected Government. Constitutional conventions or customs are not set out in the Victorian Constitution or other Acts of Parliament. They are so universally followed and expected to be followed that they are binding in practice even though the courts will usually not directly enforce them. It is an established constitutional convention that, apart from exceptional circumstances in which there is a reserve power, as mentioned below at Part IVA(iii), the Governor's powers are exercised as Ministers advise. It is best to think of advice from Ministers as a mandatory request because the Governor must follow it. In this way, convention and law ensure that our system works as a representative democracy which responds to the will of the community expressed in elections.

The Governor now is under no control, supervision or veto whatsoever of the Queen or the British Government. Since the Australia Acts were passed in 1986 by the Commonwealth Parliament and the Parliament of the United Kingdom at the request of all State Parliaments, the Governor acts on the advice only of the Premier and Ministers of the Victorian Government.

While all Governor Phillip's powers were derived from the monarch (King or Queen) and exercised as the Monarch's representative, that has also changed. The powers of the Crown in respect of Victoria are now made up partly of the powers of the Queen and partly the powers of the Governor.

The Victorian Constitution of 1855, which introduced parliamentary democracy, and later the Victorian Parliament by amendments to it and by other Acts, have conferred directly on the Governor powers which previously belonged to the Monarch, which the Governor exercised as the monarch's representative. They are now exercised in the Governor's own right. This patriation of the powers of the Crown to the Governor has been extensive.

With two exceptions, it is only the Governor as the Queen's representative, not the Queen, who can exercise the Queen's powers in respect of Victoria. The first exception is that it is the Queen who appoints or dismisses a Governor or Lieutenant-Governor on the advice of the Victorian Premier. The second is that

the Queen, if present in Victoria, could exercise her powers on the advice of the Premier.

Powers of the Queen which the Governor exercises as her representative include assenting to a Bill passed by both Houses of Parliament and pardoning or ordering the release of a criminal offender.

Most powers of the Crown, such as summoning Parliament, dissolving it and calling an election, appointing or dismissing Governments or Ministers, and the numerous powers of the Governor in Council, are given directly to the Governor and exercised in the Governor's own right. The Queen could never exercise those powers even if she were present in Victoria. (The term 'Governor in Council' is explained below at Part IVA(ii)).

It is established by convention and law in Australia that the Governor, whether exercising a power of the Queen as her representative, or a power in the Governor's own right, acts on the advice of Ministers, except in an exceptional reserve power situation.

The Victorian Constitution provides that where an Act or other instrument authorises the Governor in Council to exercise a power, the Governor is advised by the Executive Council which consists of Ministers, usually four. All other advice to the Governor is given by the Premier.

The Governor is under no control, supervision or direction of the Governor-General or the Federal Government.

III. APPROACH

This paper will discuss the way in which a Governor should be selected, whether the system remains a constitutional monarchy or becomes a republic. As Governor, I do not take sides or enter the debate whether Australia and its States should have monarchic or republican systems of government.

I encourage others to consider and debate that issue and other issues of constitutional change being raised as we approach a century of federation.

I encourage the widespread provision of information about our system of democracy. A strong democracy depends on the confidence which citizens have in their system. How can people have confidence in their system if they do not understand it? Wise decisions on suggested constitutional changes will only be made by a community with knowledge of the system and the way it works.

I will discuss the position of the Governor in Victoria. While the title of the head of a State could become 'President' or some other name, I will for convenience use the existing title when referring to the future. The position of the Governor of Victoria is similar to the position, within their separate systems of government, of the Governor-General, the Governors of other States and the Administrator of the Northern Territory. In general principle, although not always in precise detail, the comments in this paper are applicable to each of those other positions.

IV. THE WORK OF THE GOVERNOR

There are three broad areas of a Governor's work: guardian of Victoria's Constitution; representing the community in acting as head of the State; and community interaction.

A. Guardian of Victoria's Constitution

A constitution sets out the basic rules of a system of government. *The Constitution Act 1975 (Vic)* is an Act of the Victorian Parliament which can be amended, although on some subjects a majority equal to more than half the members of each House must vote for the amendment even if all members are not present. The Constitution is to be read together with the Australia Acts and provisions of the Commonwealth Constitution which apply to the States; and with an understanding of the established constitutional conventions. Victoria's Constitution contains basic rules of the five key elements of Victoria's system of government: the Crown (the Queen and the Governor); Parliament; the Government (Cabinet and the Public Service); the Supreme Court; and local government.

As guardian of the Constitution, the Governor takes steps which enable the system of parliamentary democracy to function and which facilitate its working; acts as a check in our system of checks and balances; and has a reserve power capable of being used as a protective mechanism in exceptional circumstances when necessary to prevent the system from stalling or being abused.

(i) Parliament

Appointment of Government

The Governor appoints as Premier the Member of the Lower House (the Legislative Assembly) who has the support of the majority of that House, and the Ministers that person nominates. Usually it is clear who has that support but sometimes, as occurred in Tasmania in 1989, the presence of independents makes it necessary for the Governor to investigate the position and make a decision.

Assent to Bills

When a Bill has been passed by both Houses of Parliament it requires the Governor's signed assent before it becomes law as an Act of Parliament.

Message for Money Bill

A Bill to impose a tax or for the spending of public money can not be passed unless the Governor sends a message to the Legislative Assembly recommending it. Because the Governor sends a message only if advised to do so by the Premier who speaks for the Government or Cabinet, this ensures that no such Bill can be passed unless it has Government support.

*(ii) Checks***Counselling Ministers**

The Governor's main influence as guardian of the Constitution comes from the constitutional right to counsel Ministers upon the exercise of any of their powers and functions.

Although possessing a wider right, Governors today usually confine themselves to counselling to preserve integrity of operation of the constitutional and governmental system. Their counselling seeks to ensure that Ministers exercise their powers and functions consistently with the Constitution and basic constitutional principles, with the law and with the basic principles and conventions of good government practice.

Except on the above grounds it is not my normal practice to counsel on issues of policy or discretion. Broadly, by electing the Government majority, the electorate authorises the Government to decide those issues. The Ministers appointed by the Governor and having the support of the parliamentary majority are responsible through Parliament to the community for decisions of policy or discretion. Ordinarily, it is for public opinion, citizens generally, Parliament and the electorate to have an influence in those areas, but not for the Governor.

Governor in Council

While the Governor's right to counsel extends to all the powers and functions of Ministers, including legislation before Parliament for which a Minister is responsible, it is most commonly used in connection with the exercise of the powers of the Governor in Council. That means the Governor acting as advised by the Ministers of the Executive Council who, in effect, represent the Cabinet.

When Parliament intends to leave to Cabinet or individual Ministers important decisions on action to be taken under Acts of Parliament, it usually gives the Governor in Council power to take the action. Acts give the Governor in Council numerous powers of different kinds, including making regulations, appointing judges and amalgamating municipalities.

The process starts by an individual Minister making a written recommendation that the Governor in Council take a particular action. Only about one in ten recommendations goes to Cabinet for its endorsement before going to the Governor.

The Governor examines all the recommendations before the weekly meeting with the Executive Council. If a recommended action appears inconsistent with the standards mentioned above, the Governor can have the Clerk of the Executive Council query with the Department whether the action is appropriate, or suggest changes. Occasionally the Governor speaks to the recommending Minister and tenders counsel. Counsel is tendered in confidence and on the basis that the Governor will follow the advice finally given by the Executive Council.

Almost all of the small number of occasions where the Governor intervenes in this way, arise from errors or oversights due to the pressures of modern government. Ministers and Departments counselled are, in practice, careful to

ensure that finally the Governor is only advised to take action which they are satisfied is correct and proper.

The right to counsel gives the Governor an opportunity to cause them to have second thoughts.

As counselling is confidential, there is no loss of face if a recommendation is changed as a result of the Governor's counselling, because the Governor is the only other person who knows the counselling took place.

At the meeting of the Executive Council the Ministers are alert to ensure that the recommendations which have not been before Cabinet are consistent with its policies. The Governor could tender counsel to the Ministers at Executive Council but this seldom occurs. Usually the Executive Council advises the Governor to do what the recommending Minister recommends and the Governor accepts that advice.

Warrant to Spend Funds

Before the Government can spend a sum of money from the public fund from which its moneys come, the Governor must sign a warrant that the sum may properly be spent. Although the Governor usually relies on the certificate of the Auditor-General, if there was reason to doubt whether the money was properly available, the Governor could investigate and raise the question with the Treasurer or even the Premier.

(iii) Protective Mechanism

In exceptional circumstances the Governor has a reserve power which may be used as a protective mechanism solely to prevent the democratic system from stalling or being abused. The reserve power may be exercised without, or contrary to, ministerial advice.

If the Opposition clearly won an election but the defeated Premier refused to advise the Governor to appoint the Leader of the Opposition as Premier, and refused to resign, the reserve power could be used to prevent the system from stalling and abuse. The Governor could warn the Premier that unless that advice and resignation were given, the Premier would have to be dismissed. If the Premier's position did not change, the Governor could, without his or her advice, dismiss the Premier and appoint the Leader of the Opposition.

The authority for a Government's regular expenditure is called 'supply' and is given each year by Acts of Parliament called 'Appropriation Acts'. If a Government was unable to obtain supply because the Upper House refused or failed to pass an Appropriation Bill, and would run out of money and be unable to continue governing without breaking the law, it would be open to the Governor to warn the Premier of action that might have to be taken. The warning would be, that, unless supply was obtained by a named date, the Governor would have to give consideration to dissolving Parliament and calling an election and, if necessary to accomplish that, dismissing the Premier. The Governor in the meantime should use influence to avoid that situation occurring. If supply was not obtained by the date, the Governor could, at the appropriate

time, exercise the reserve power to dissolve Parliament and, if necessary to accomplish that, dismiss the Premier.

I do not enter the controversy whether it would be appropriate to exercise the power before supply was exhausted, when it was exhausted or when clear and substantial illegality was imminent or had arisen. Nor do I consider whether an Upper House should have or should use power to block supply.

There are essential requirements which should be present before a Governor exercises the reserve power. The circumstances should be exceptional. The Governor should never ambush the Premier. The Premier should receive adequate warning that unless the situation is resolved the reserve power will have to be exercised. Premiers, politicians and parliaments have a great capacity for finding a way out of difficult political situations. The reserve power should only be used as an absolute last resort when all other practical options of protecting the democratic system from stalling or abuse have been tried.

Governors are conscious that if the reserve power is used and the community is not convinced that it was an entirely proper use of it, both Governor and Governor's reputation will be damned by the contemporary community and by history.

B. Representing the Community in Acting as Head of the State

The Governor exercises the powers and functions of head of the State of Victoria and on occasions when an apolitical head should represent or speak for the whole community, the Governor does so. The Governor gives the Anzac Day address from the forecourt of the Shrine and the Australia Day address from the steps of Parliament House. In 1993, I flew to the main population centres affected by disastrous floodings and expressed the sympathy of the community to those who had suffered.

At the request of the Premier, Governors have represented Victoria in official visits overseas. In an official visit to China in 1994, at the Premier's suggestion, three top business leaders were included in the delegation which I led. The purpose was to improve Victoria's relationship in friendship, culture and trade with the Chinese Provinces visited.

My wife and I live and work in Government House. The Governor is custodian of that outstanding treasure of the Victorian community.

Since 1984, the Office of the Governor, an administrative office like a small department, related to the Premier's Department, has supported the Governor's activities and managed Government House and grounds. It is headed by the Official Secretary who owes a statutory responsibility to the Premier but who acts and is treated by all as having a predominant responsibility to the Governor. With the seniority and experience necessary for the unique position, the Official Secretary is the principal source of guidance and opinion for the Governor. There is an administrative staff of 12 and a service staff of 10 full time and five part time. The Governor has a good deal of administrative work to do.

Overseas and interstate leaders to whom Victoria wishes to extend hospitality and recognition are invited to stay at Government House or are entertained there.

C. Community Interaction

(i) Cohesion

Interaction with the community involves both Governor and spouse. They are seen as a symbol of unity and emphasise that the things that bind the community are deeper and stronger than the things that divide. As leaders not involved in politics they act so that they can represent and have a good relationship with the whole community.

(ii) Attitudes and Conduct

The Governor and spouse encourage attitudes of community cohesion, mutual respect and confidence, and conduct which supports the community and its democracy. This underlies what they say in their speeches, the places and organisations they visit, the patronages they give, the awards and honours they present, and the invitations to Government House which they issue. Gratitude and recognition are expressed on behalf of the community to those with high achievement at all levels in voluntary service, education, industry, the arts, sport, bravery, caring for others and many other activities which serve the community.

(iii) Information on Systems of Government

I regard it as important to encourage the spreading of information and knowledge about our systems of government.

Involvement in the Schools Constitutional Convention is one way of encouraging the spread of information and knowledge.

I often speak to school and community groups on the role of a Governor.

Governor's Forums are held at Government House where speakers with a great knowledge and experience of some aspect of government speak to a selected audience. People, particularly younger people, with an interest and likely influence in the area are invited. The topic can come from anywhere on the scale from local government to international government. Forums have been arranged so far for a Judge of the International Court of Justice speaking on that Court, a General speaking on whether the United Nations should have standing armed forces, and the Head of the Department of Foreign Affairs speaking on the future of the United Nations.

In co-operation with the Department of School Education I have conducted two experimental Governor's Forums for students of Years 11 and 12 from a group of regional schools during official visits to the areas. I have spoken and answered questions on the role of the Governor.

In 1994 an article of mine, "Governorship in Australia Today: the Role and Function of the Governor in a Parliamentary Democracy", was published in London and Melbourne.¹ Later that year the Office of the Governor published *The Role of the Governor of Victoria*.² In early 1995 I chaired a Committee

1 RE McGarvie, "Governorship in Australia Today: The Role and Function of the Governor in a Parliamentary Democracy" (1994) 75 *The Parliamentarian: Journal of the Parliaments of the Commonwealth* 149; (1994) 90 *Victorian Bar News* 45.

2 Office of the Governor, *The Role of the Governor of Victoria*, 1994.

which published *Victoria's Constitution: The Constitution of Victoria With Notes on How it Works*.³ The book of 100 pages sets out the Constitution and the notes are written in ordinary language to be understood by anyone with a secondary education.

V. THE SELECTION OF A GOVERNOR

Having outlined the work of a Governor, I will indicate my view of the effects within our system of government, under either a monarchic or republican system, of the Governor being selected by election, the Parliament or the Premier.

As you will appreciate, asking the simple question whether the system of government should be monarchic or republican does not provide an answer that is of much practical assistance. The realistic question is whether the system of government should be monarchic, as at present, or a republican system of a particular identified type. That is so because there are great and basic differences between the various types of republic. For example, the republic of the United States with its elected President who exercises most of the powers exercised here by the Governor and Premier (or Governor-General and Prime Minister) and who is not a member of Congress, has a vastly different system from those in Australia.

Again, in asking whether there should be a change to an identified type of republican system, it would be responsible to consider whether that system would be as good or better than the present one.

I proceed on the assumption that it is desired that the Governor should continue to exercise much the same powers and functions as now, act in all but exceptional circumstances on the advice of Ministers of the elected Government and not be involved with any political party or issues.

I compare the various methods of selection only on the basis of what would provide good government for a democracy such as ours. I appreciate that in the contest between the monarchic and republican sides, there are other considerations given weight by one or other or both sides.

A. Present Position

At present, a Governor is chosen by the Premier and appointed by the Queen on the Premier's advice. The Premier may or may not consult others in making the choice. The Premier is able to choose whoever he or she considers will be best. There is an absence of the factional and political influences likely to intrude if the choice were by Cabinet.

The Queen appoints a Governor 'at pleasure'. This means the Governor may be dismissed at any time the Premier so advises. In fact when chosen a Governor makes an arrangement with the Premier to serve for a period, usually five years. The arrangement is not binding in law. As no Governor in Australia has for 75

³ *Victoria's Constitution: The Constitution of Victoria With Notes on How it Works*, Law Press (2nd ed, 1995).

years been dismissed during the arranged period, Governors have a practical security that they will not be dismissed during the period.

The period of five years exceeds the life of a Parliament which can not exist for more than four years. That increases the likelihood that there will be an experienced Governor continuing in office during and after an election. It is important that the Governor, who has important duties from the calling of the election until the appointment of a new Government afterwards, should continue in office during that time.

Because the Governor may have to decide who is entitled to be appointed Premier; because the Governor can counsel Ministers more effectively if obviously objective and apolitical; and because the Governor should have a good relationship with the whole community; it is desirable that a Governor while holding office should not be a member of, be involved with, or give, or appear to give, support to any political party. Because it is so important that the Governor be obviously neutral, the Governor does not vote in elections as that would require a choice to be made between contesting political parties and policies.

Victoria's system of democratic government could not continue to operate if there was no-one who could exercise the Governor's powers. To ensure that never occurs, the Constitution provides that if no Governor is available, the Lieutenant-Governor exercises the powers and, if the Lieutenant-Governor is unavailable, the most senior Judge of the Supreme Court who is available exercises them as Administrator.

The Governor, if expecting to be unavailable for a short time, with the Premier's agreement, usually appoints the Lieutenant-Governor as Governor's Deputy to exercise some or all of the Governor's powers.

B. Selected by Election

If the Governor had to contest an election by the voting public, the campaign would require expensive and complex organisation. Only the most wealthy could stand without the support of a political party.

A Governor who had been elected through that input from a political party would not be regarded as being able, as Governor, to be independent of that party or impartial as between the parties. The political party which had invested the money and organisation in the successful election would be expected to bring pressure on the Governor to engage in political activism to promote and achieve the party's political objectives.

A candidate in a contested election would need to advance policies to appeal to the electorate. If elected, the candidate would regard the election as giving a mandate for those policies and would be expected by the electorate to implement them. Often the Governor's mandate would be more recent than the Premier's.

The basis of the Governor's power would be direct election by the whole community. The Premier would not be elected directly by the community but would have the lesser power base of support by the majority of the Lower House.

The result would be that the Governor, instead of having a dominating concern to act as guardian of the Constitution, encourage cohesion and

democratic attitudes and act on the advice of the Premier and Ministers, would be likely to become their rival, seeking political objectives.

A consideration of successful past Governors and Governors-General indicates the advantage of appointment towards the end of a career when there has been time to build the reputation, display the qualities and acquire the desirable knowledge and experience. Such people would be reluctant at their stage of life to court the attacks on their character likely to be made during an election, or to crown a successful career with electoral rejection.

Of course, if, contrary to the assumption I have made, it was desired to move to a system similar to that of the United States, there would be every advantage in having the Governor elected.

C. Selected by Parliament

A process which required a candidate for Governor to be proposed by the Premier and endorsed by a simple or higher majority of both Houses or of a joint sitting of Parliament would be better than an election but also has real difficulties.

There would be likely to be great pressure to introduce a parliamentary hearing in which the candidate would be interrogated in the way that proposed appointees to the Supreme Court of the United States are. The Opposition would endeavour to show the Premier's nominee unworthy. Unproved allegations of unworthy conduct would appear in the media.

In the hard playing of parliamentary politics, the Opposition could withhold votes necessary for endorsement, to show the Premier incapable of proposing a suitable Governor.

The process would tend to identify the Premier's candidate in the public eye with the Premier and Premier's party.

The candidate could be subjected to great pressure to give public or private undertakings to particular groups to obtain their support for endorsement.

A person with a good career and reputation, asked to agree to being proposed by the Premier, would be reluctant to become involved in the process.

Theoretically, Parliament could reach consensus on a candidate to be proposed by the Premier. The reality is that Parliaments in Australia have not been able to reach consensus on a Speaker.

Consensus might be reached by the major political parties agreeing to take turns in choosing the person to be proposed by the Premier and endorsed unopposed.

At present a Governor, conscious of having been chosen by one person, the Premier or a former Premier, has no ground for thinking he or she has any public or parliamentary mandate for acting in ordinary circumstances other than on the advice of the Premier and Ministers. That method of selection is a constant reminder that the Governor, although exercising the powers of head of State, has no mandate to act as a rival of the Government. A Governor endorsed by both Houses or a joint sitting of Parliament would be in a much different position. Both the Premier's and the Governor's office would flow from the support of Parliament. The Governor would have obtained office through the support of the

whole Parliament while a Premier would often have majority support only from the Lower House.

The present method of selection and absence of legal right to serve for a particular term places the Governor in a setting which gives strong encouragement to act on the Government's advice and not as its rival. That is crucial to the effective operation of our system. A Governor selected by Parliament for a specific term would be in a very different setting with different encouragements.

In deciding to have the Governor selected by vote of the electorate or by the endorsement of Parliament, the community would have to bear in mind that those systems would be likely to produce a type of person different from those who have been Governors in the past.

D. Selected by the Premier

I suggest that the best method of selection in either a monarchic or a republican system is one in which a Governor is appointed without having to go before either the electorate or Parliament. One of the methods mentioned below could be used or some other method to have the best prospect of producing a Governor who: has had time to build the reputation, display the qualities and acquire the knowledge and experience appropriate for a Governor; who will be regarded as independent of any political party; and who has been selected in a way which gives every incentive to act on the advice of the Government and not as its rival.

Because it is the essence of democracy that everyone is entitled to vote for the Parliament which produces the Government, it is easy to assume that persons in the highest positions in other parts of the system of government should be elected by the whole community, or at least selected by the elected Parliament. That view led to judges being elected in many American States on the assumption it would produce the best judges. Most observers regard that as introducing influences upon judges which detract from judicial independence. Those influences are avoided in other democracies where judges are appointed. There is wisdom in the words of George Cabot that:

There will be neither justice nor stability in any system, if some material parts of it are not independent of popular control.⁴

It is vital not to be guided by theory but to draw on past experience and look at how a particular method of selection would actually operate and how it would affect a Governor.

Within a monarchic system the Governor could continue to be chosen by the Premier and appointed on the Premier's advice by the Queen.

As the Queen would be no part of a republican system, another method of appointment would be necessary. It has been suggested that the Governor could be chosen by the Premier and appointed on the Premier's advice by a body of

⁴ Cabot to Wolcott, 3 August 1801, Lodge, *Life and Letters of George Cabot* p 322, quoted in AJ Beveridge, *The Life of John Marshall*, Houghton Mifflin Co (1919) vol III, p 11.

highly respected persons bound by the same convention to act on the Premier's advice as the Queen now is.

The suggestion is that the Victorian Constitution be amended to create a Constitutional Council to make the appointment. It could, for example, be headed by a former Governor, with a former Governor-General and a former Chief Justice as the other members. A further suggestion is that the Constitutional Council could place before the Premier the names of several suitable persons and then appoint the one chosen by the Premier.

A Premier who chooses a Governor is conscious that his or her own standing with the public will be affected by whether there is general approval of the suitability of the person chosen. The advantage under either a monarchic or republican system of the person being chosen by the Premier and appointed by the Queen or Constitutional Council, instead of the Premier both choosing and appointing, is mentioned below.

VI. DISMISSAL OF A GOVERNOR

Experience indicates that in assessing the suitability of a method of selection of a Governor, the means of dismissal should be considered also. It would be usual for the person or body with authority to make the selection to have authority also to dismiss.

At present the Queen, on the advice of the Premier, can dismiss a Governor at any time. This seldom occurs because a Governor avoids inappropriate conduct that the public would regard as justifying dismissal: and the Premier knows that a Premier who advised a dismissal that the public did not regard as entirely deserved would be damned by the contemporary community and by history.

The advantage of the existing two-stage process - of the Premier deciding to appoint or dismiss and the Queen acting on the Premier's advice - is present in both appointment and dismissal.

If the appointment of an entirely unsuitable person were advised by the Premier, the Queen could exercise the constitutional right to counsel the Premier against it.

The existence of the right to counsel the Premier against inappropriate advice to dismiss a Governor is of great practical importance. The Queen (or a Governor) when advised to take action is entitled to a reasonable time to investigate and decide whether to counsel the Premier or Ministers against advising that action. The notion of instant dismissal upon a telephone call to the Queen is wrong. In the practicalities of politics the Premier could not advise dismissal of a Governor without informing Cabinet colleagues. If they considered that the community would not regard the dismissal as justified, conscious of the adverse political fallout, they would be likely to exert pressure which would have the Premier withdraw the advice to dismiss before it had been acted on. That is a satisfactory check against arbitrary dismissal.

The system would work similarly under a republican system if the Constitutional Council, instead of the Queen, had the power of appointment or

dismissal on the Premier's advice and the inherent constitutional right to counsel the Premier.

If the Governor were to be elected by the electorate, or proposed by the Premier and endorsed by Parliament, practicalities would seem to point to a fixed period of office with power for the electorate or Parliament to dismiss the Governor during that period on grounds of misconduct or incapacity. The long and cumbersome proceedings to remove Justice Murphy from the High Court, which were not completed at his death, point to the difficulty and time which would be involved in removing a Governor.

In actual practice, the system involving appointment and dismissal by the Queen or Constitutional Council on the advice of the Premier would have a number of valuable advantages in actual practice. Governor and Premier each has power to dismiss or bring about dismissal of the other, but each knows of the condemnation of the community and of history which would be encountered unless the community regarded the dismissal as entirely justified. It gives Governor and Premier sufficient security, while providing incentive for acceptable conduct through the possibility of dismissal, which is only a realistic possibility where the community would regard it as entirely warranted. It provides appropriate security to the Governor while retaining a prompt and flexible way of dismissing a Governor where that is justified.

VII. POLLS

Published polls⁵ indicate that those who favour patriation to Australia of head of state and the remaining Commonwealth and State powers of the Queen, display distinct preferences for the selection of Governor-General and Governors, or their equivalents. The great majority favour selection by the electorate, next comes Parliament, with selection by the Prime Minister or Premier a poor third. I have put it that the option lagging last in the polls is by far the preferable method now, and would remain clearly the best choice if that further patriation occurs.

VII. CONCLUSION

This discussion demonstrates that wise decisions on the best method of selection of a Governor depend on a knowledge of history, of politics and of the actual workings of our democratic system. Our responsibility to pass on to future generations the advantages of one of the oldest, most stable and successful democracies in the world, requires us not to overlook the ways in which Australian achievement has produced that system. Constitutional institutions

5 For example Morgan Poll, Finding No 2915, based on interviews 1-2 June 1996: elected by a majority of Australians, 74%; elected by both Houses of Parliament, 20%; appointed by the Federal Government of the day, 3%.

which have worked well within the unique political culture, constitutional history and community of experience of this country are likely to continue doing so. There could not be the same assurance if we seek to adapt to our system models devised for very different systems and cultures overseas.