

# Lessons From the Hollingworth Affair

George Winterton

There are several lessons to be learned from the Hollingworth Affair, though it is doubtful that the office of Governor-General will be substantially reformed until the advent of a republic. Strategic thinkers among republicans should welcome this.<sup>1</sup>

The principal lesson is that a Governor-General cannot survive in office without the confidence of the Australian people. Australians regard the Governor-General as their effective Head of State, partly due to the populist activism of Hollingworth's predecessor, Sir William Deane, and monarchist arguments that the Governor-General is Australia's actual Head of State (the Queen is supposedly merely the 'Sovereign'). The office is regarded as socially important and receives increasing media scrutiny, which helps to make it accountable to the people. Hollingworth's defenders claimed that he was the victim of a media 'witch-hunt', but on this occasion the media reflected widespread community sentiment. The timetable of Hollingworth's final chapter is instructive. The Anglican Church report was released on 1 May 2003. Five days later a Herald-AC Nielsen public opinion poll showed 76% to 18% support for Hollingworth's resignation.<sup>2</sup> Three weeks later, Hollingworth's support had fallen to 10%, with 53% believing he should have resigned already.<sup>3</sup> On 25 May, the Governor-General finally resigned, which would probably have occurred a fortnight earlier had he not temporarily stood aside on 11 May pending the dismissal of rape allegations.

There are two reasons why a Governor-General cannot survive in office against overwhelming public opposition. Probably the lesser reason is that a Governor-General cannot fulfil the office's role of national unifier and conscience without public support. The principal reason is that since the Governor-General's tenure lies in the Prime Minister's hands, public opposition to the Governor-General's continuation in office will eventually rebound on the Prime Minister, who will ultimately be forced to urge the Governor-General to resign.

The second lesson of the Hollingworth Affair is that it is unsatisfactory that the Constitution is largely silent on the method of appointment and removal and the qualifications of the Governor-General. It merely provides that the Queen appoints the Governor-General who holds office 'during [her] pleasure'.<sup>4</sup> It does not require Governors-General to be Australian, and until 1965 they were not, with the exception of two Labor appointments (Isaacs, 1931-36, and McKell, 1947-53).

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<sup>1</sup> See, likewise, M. McKenna, 'No more fig leaves, please, for the naked emperor', *Australian*, 3 June 2003, 13.

<sup>2</sup> M. Secombe and K. Burke, 'The people's will: G-G must resign', *Sydney Morning Herald*, 6 May 2003, 1; P. Hudson, 'Verdict on G-G: it's time to quit', *Age*, 6 May 2003, 1.

<sup>3</sup> S. Lewis, 'Public support for G-G collapses', *Australian*, 21 May 2003, 2.

<sup>4</sup> Section 2.

While Governors-General fulfilled the dual role of effective local Head of State and British Ambassador (1901-1926), it was appropriate that they should be British and be appointed by the British Government (by the Colonial, later Dominions, Secretary through the monarch). Dominion Prime Ministers inherited the British Government's role in 1930.<sup>5</sup> Hence the 'genius' of our Constitution, much-vaunted by monarchists, whereby the Prime Minister and the Governor-General can each sack the other — a 'High Noon' scenario where the outcome depends upon who draws first — is an accident of history, not a carefully constructed 'check and balance'. While Governors-General retained office at the pleasure of the British Government they could act as fearless, independent constitutional umpires of Australian crises — a luxury Sir John Kerr was overly conscious of lacking when he contemplated the fate of the Whitlam Government in 1975. Some provision should be made for according the Governor-General security of tenure and specifying grounds for removal.<sup>6</sup> Since constitutional amendment is difficult, a resolution passed by both Houses of the Commonwealth Parliament by two-thirds majorities (and thus enjoying bipartisan support) would effectively govern advice by a future Prime Minister to the monarch to dismiss a Governor-General. Such a resolution might also usefully include a 'job description' of the office, specify desirable qualities in its occupant, specify when a Governor-General ought to stand down temporarily, and even outline in general terms the type of conduct which might warrant resignation, but may not be serious enough for dismissal. Judicial codes of conduct provide a useful model, and Hollingworth's resignation is, of course, a highly illustrative precedent demonstrating that conduct warranting resignation can occur before entry into the office of Governor-General and may be constituted by acts of omission rather than commission. Such a resolution would also be a valuable guide regarding State Governors and State Parliaments might adopt it or some variation of it.

The Hollingworth Affair also focussed public attention on the appointment process. Its lack of transparency — it emerged that Hollingworth's appointment was the decision of the Prime Minister alone (after consulting four colleagues) — was rightly criticized, with many demanding greater public input. It is clearly inappropriate that the appointment and removal of our effective Head of State should rest solely in the hands of one person — the Prime Minister. Short of direct election, public input could be achieved by a Nominations Committee, as envisaged in the 1999 republican proposal, which would solicit public nominations and prepare a short-list. Prime Ministers may feel unduly constrained by such a process, especially if the short-list is published, but it is difficult to see any objection to the Prime Minister inviting the non-government parties represented in the Commonwealth Parliament and the State and Territory governments to suggest, say, two or three names each, with the final appointment remaining in the hands of the

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<sup>5</sup> The Imperial Conference of 1930 resolved that Dominion Governments could directly advise the King on the appointment of their Governors-General, an implied consequence of the Imperial Conference of 1926. See G. Winterton, 'The Evolution of a Separate Australian Crown' (1993) 19 *Monash University Law Review* 1, 8 -12.

<sup>6</sup> A similar view has been expressed by Professor Geoffrey Sawer, and Governors-General Sir John Kerr and Sir Zelman Cowen: see G. Winterton, *Monarchy to Republic* (rev. ed., 1994), 115, 181 n. 16.

Prime Minister (through the Queen).<sup>7</sup> However, John Howard has refused to introduce any change to the procedure for selecting the next Governor-General.

Whether a more transparent appointment process would have avoided the Hollingworth Affair is debatable. Had a Nominations Committee undertaken enquiries regarding nominees, stories regarding paedophilia in the Anglican Church in Brisbane might have emerged. But, more likely, the Committee would not have recommended the appointment of a serving cleric in the first place.

The Affair will fade from public memory, but will inevitably feature in the republic debate. First, the monarchist argument that ‘If it ain’t broke, don’t fix it’ will be difficult to maintain with a straight face. Secondly, the method of appointment, and the criteria and mechanism for removing a republican Head of State will reflect the lessons of the Hollingworth experience. It is practically inconceivable that the public will accept anything less than direct election or that the misguided 1999 republic proposal — under which the President would have held office at the Prime Minister’s pleasure — has the slightest prospect of being adopted.

The Affair crystallized what had for some time been immanent, but perhaps not obvious: the public’s sense of ownership and demand for accountability of this once obscure and remote, but now prominent, public office. Ironically, by aggrandizing the office of Governor-General, the monarchists may have served the republican cause, for the Australian people are likely to conclude that the present office is too weak and lacking in popular legitimacy to sustain the sort of Head of State they now demand.

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<sup>7</sup> For such a proposal, see G. Winterton, ‘Lessons for the learning from an unhappy affair’, *Sydney Morning Herald*, 26 May 2003, 3.