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Submission to the Senate Legal and Constitutional References Committee Inquiry into an Australian Republic

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This submission is concerned initially with the issue of process but secondly and more importantly, with the rationale for an Australian republic.

PROCESS

Of all the committee's terms of reference, process is now the most crucial. The decisions relating to the election, removal and powers of a republican Head of State will ultimately be made by the body (convention, parliamentary committee of experts or otherwise) charged with such a responsibility. While the committee's report can certainly help to inform the debate over the constitutional changes necessary to become a republic, its most significant contribution at the present moment is to provide guidance to the parliament and the Australian people on the issue of process. Popular support for a republic will not be garnered until there is a sense of popular ownership of the republic. What democratic process will best ensure that the Australian people feel fully consulted in the change towards a republic?

Without legitimacy, which can only come through a fully open and democratic process, any republic model will struggle to gain the approval of a majority of voters and states in a national referendum. Opponents of any model are more likely to accept the final outcome if they feel they have been given a chance to put their view. A fully democratic process is the only means of fostering the spirit of compromise that may well be necessary if the republic is to be realised in our lifetime. The process outlined below mirrors the one supported by the ARM and the Corowa proposal but differs in several significant respects.

Three question plebiscite (compulsory vote)

Question One – Should Australia become a republic with a republican Head of State or should it remain a constitutional monarchy?

I think it advisable not to include reference to the words ‘Australian Head of State’ in this question largely for political reasons. Monarchists will try to muddy the waters by running the predictable lie that the Governor General is already an Australian Head of State.

However, they will not be able to argue that the Governor General is a republican Head of State. Wording the question as above (or in similar words) has the advantage of focusing the issue on the constitutional arrangements and avoiding the minefield of which office (GG or President) and which system (republic or constitutional monarchy) is *more Australian*. As the experience of the 1999 referendum demonstrated, constitutional monarchists appealed just as successfully to patriotic arguments as did republicans. That said, I think this question could still be won if the wording included the words ‘Australian Head of State’. It would just be harder.

Question Two - Should selection of the Head of State be: by the Prime Minister; a 2/3 majority of Parliament; chosen by an Electoral College; or elected by popular vote with codified powers?

This question must be asked together with the above. Why? Because if it is not monarchists will argue republicans are seeking a blank cheque. They will also argue that republicans are seeking to deny (yet again) the right of the people to ‘have their say’ on the issue of the republic model. Despite the fears of the political class concerning popular election, the electorate cannot be denied the opportunity to indicate their preference. Asking this question will also help to inform the body ultimately charged with drafting the necessary constitutional changes.

Question Three - In the spirit of reconciliation, should the preamble in a new republican Constitution acknowledge Aboriginal and Torres Strait Islander peoples, Australia’s indigenous peoples, as the original occupants and custodians of our land?

Nb on reasons for the inclusion of this question see below. Suffice to say the wording of this question remains faithful to the 1998 constitutional convention’s recommendations. Also note the use of the phrase ‘in a new republican Constitution’, which indicates that (unlike the existing preamble) the new preamble is to be part of the Constitution proper.

The indicative plebiscite should not include a question on the title of the Head of State. This will only distract the electorate, taking valuable time and public space away from the far more important questions above. The title of the Head of State can be decided by a convention. It is a peripheral issue. However, for what its worth, my suggestion would be ‘Head of State’ (1) President (2). On no account should it be Governor-General. This

would allow monarchists to argue that republicans were asking the electorate to introduce an office that Australians already possessed.

The plebiscite should be followed by a *fully elected constitutional convention*, elected by compulsory vote. The Convention should have sufficient time to draft proposals, deliberate, consult the public, and reconvene, before (assisted by a committee of constitutional experts) it drafts the necessary changes to the Constitution and suggests the appropriate wording of the referendum question(s) to the Parliament. A Convention is crucial to the implementation of a successful process. It is a democratic process with a rich and profound historical legacy in Australia. It is the best means by which the people can be fully consulted. The democratic theatre of the convention will only enhance the participatory nature of Australia's political culture. It will have a positive effect on our political life. For all those who claim to support a directly elected President, an elected Convention is the only mechanism which is consistent with this method of selection of the Head of State. It will also deny anyone the opportunity of saying that the people have been kept at arms length from the decision making process. This is precisely the claim that would be made by those who are keen to scuttle the republic should an appointed committee seek to take the issue further after a plebiscite. Remember the slogan of the monarchists and direct electionists in 1999 – 'Let the People have their Say'. Republicans must never allow their opponents to make this claim again.

RATIONALE AND JUSTICE – A RECONCILED REPUBLIC – THE ONLY WAY FORWARD

I now wish to briefly explain my reasons for the inclusion of question three in the indicative plebiscite. The republic and reconciliation were the two great symbolic movements of the 1990s. The tragedy is that they were conducted largely in separate domains. For reasons of perceived political expedience, they did not speak to one another. The tragedy ended in farce in 1999 when the issue of the Preamble, itself a by-product of the republic debate, was championed by a monarchist Prime Minister who opposed the republic.

For a decade, republicans have pretended that it is possible for Australia to become a republic without addressing the constitutional position of Aboriginal Australians. As the committee's own terms of reference reflect, an Australian republic is imagined primarily as a legalistic exercise in formulating politically palatable arrangements concerning the constitutional position of an 'Australian Head of State'. But this position is flawed. And it is flawed for rational reasons as much as it is on moral grounds.

Reconciliation and the republic are not separate issues, they are connected intimately to one another. The first platform of an Australian republic, regardless of how our head of state is elected, should be reconciliation with Aboriginal people. And by 'reconciliation' I mean first and foremost constitutional recognition of Aboriginal people. Why?

If we are to become a republic, then we must remove the sovereignty of the crown. This sovereignty speaks directly to the historical experience of Aboriginal people since colonisation began in Australia in 1788. The gradual dispossession of Aboriginal Australia occurred under the imprimatur of the crown. Aboriginal land became crown land. Aboriginal sovereignty was usurped by the sovereignty of the crown, at least in the eyes of the invaders. To this day, 'crown land' continues to describe all land in Australia that is not held in freehold title, a constant reminder of the way in which the land was won and claimed, without due recompense to the original owners. It is neither rational nor just, therefore, to replace the sovereignty of the crown without addressing the constitutional position of Aboriginal Australians.

The principle is simple but it is fundamental to Australia's future republic. If we are to remove the sovereignty of the Crown, we cannot do so without recognising the very people who were here for thousands of years before the Crown appeared on our shores. Any declaration of republican sovereignty requires that the republic make visible in the constitution what the constitutional monarchy has been unable to make visible – Aboriginal people, their prior occupation of the continent and their custodianship of the land for millennia. This is not to say that the republic can solve all the issues associated with reconciliation in one stroke of the pen. No. It is merely to say that the republic is obliged to make the first concrete step towards reconciliation. A powerful legal, political and symbolic gesture that can and will, with bipartisan support, (which a question framed as I have done above should be able to achieve), be approved by the Australian people in the spirit of 1967.

I could go on but I think the point has been made. I, for one, cannot imagine how, in light of Australia's past and present, republicans of all persuasions can proceed to turn their back on this most fundamental of issues. It is the very least that republicans can do. The opportunity is still with us. Fortunately, it is not too late. To fail is to admit that our vision of a republic is blind to our own history.