



Australians for Constitutional Monarchy

Submission

To the Senate Standing Committee on Foreign Affairs, Defence and Trade

Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2]

October, 2009

1. Introduction

- 1.1 This is a submission by Australians for Constitutional Monarchy (“ACM”) to the Senate Standing Committee on Foreign Affairs, Defence and Trade inquiry on the *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2]* (Information on ACM is set out in Appendix A)
- 1.2 On 20 August 2009 the Senate referred the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2] to the Committee for inquiry and report.
- 1.3. According to the explanatory memorandum, the purpose of the bill is to ensure that, as far as is constitutionally and practically possible, Australian Defence Force personnel do not serve overseas in warlike actions without the approval of both Houses of the Parliament. Submissions are to be received by 16 October 2009. The reporting date is 19 November 2009.

2. ACM’s Submissions:

1. The Bill is beyond the power of the Federal Parliament in that it seeks to transfer the command in chief of the armed forces of

the Commonwealth vested by the Constitution in the Governor-General as The Queen's representative to the House of Representatives, the Senate and the Governor-General acting unanimously.

2. The Bill is beyond the power of the Federal Parliament in that it is in breach of the constitutional implication that the system of responsible government includes the power of the executive to act in matters of war and peace.
3. The Bill is beyond the power of the Federal Parliament because there is an implication in the Constitution that the Royal Prerogative to wage war and make peace is vested in the Governor –General.
4. The inclusion of the House of Representatives serves no real purpose in approving actions of the Executive for the elementary reason that the government is responsible to that House and must have its confidence. The crucial feature of the Bill, and presumably its purpose, is to grant to the Senate a power never intended in the Constitution, a power to determine all questions of law and peace involving the sending of armed forces beyond the territory of Australian.
5. The Senate is essentially a State's house, concerned with making laws, exercising surveillance but not of acting as a military leader. As such the Senate was not to have any role in the command in chief of the armed forces. That the States were to have a minimal role in relation to the armed forces is supported by the proscription against a State raising any armed force without Commonwealth approval, and the obligation of the Commonwealth to protect every State against invasion.
6. The international obligations entered into by Australia are based on the proposition that the waging of war of making of peace, including the disposition of the armed forces is a matter for the executive government, and not an often hostile Senate.

7. Whether or not the Bill is beyond power, the constitutional system approved by the people incorporated the understanding that governments were elected for several purposes, and that first among these would be the defence of the Realm. This means that the government is invested with the heavy responsibility of determining matters of war and peace. As a matter of democratic principle, any significant change to the constitutional system approved by the Australian people should be submitted to them for approval by way of a referendum under section 128.

*This submission has been approved for and on behalf of
Australians for Constitutional Monarchy by Emeritus Professor
David Flint, National Convener.*

Appendix A: Australians for Constitutional Monarchy

A1. ACM, whose national office is at Level 6 , 104 Bathurst Street Sydney, Box 9841 Sydney 2001, telephone (02) 92512500, fax (02) 92615033, and whose principal website is <http://www.norepublic.com.au>, and email acmhq@norepublic.com.au, is established with the following mission:

To preserve, to protect and to defend our heritage: the Australian constitutional system, the role of the Australian Crown in it, and our Australian National Flag.

A2. Launched in June, 1992, ACM is the nation's oldest and largest constitutional monarchist organization. Its Charter signatories included Justice Michael Kirby, the Rt.Hon. Sir Harry Gibbs, former Chief Justice of Australia , Justice Lloyd Waddy, Neville Bonner AO, Dame Leonie Kramer, The Hon Barry O'Keefe, Sir John Atwill, Dr Margaret Olley, The Hon Helen Sham-Ho MLC and others. The first National Convener was Justice Waddy, who was succeeded by

Professor David Flint. The national Executive Directors have been successively Mr. Tony Abbott, Mrs. Kerry Jones and Mr Thomas Flynn. Since its inception, Divisional Councils and Branches have been formed across the nation. ACM, a major grassroots community organisation, is non-aligned politically. ACM campaigns for the retention of the existing Constitution, the essence of which is declared in the Preamble to the Commonwealth of Australia Constitution Act, 1900 (Imp.) as approved by the Australian people. The Preamble recites the people's agreement, "humbly relying on the blessings of Almighty God," to unite in "one indissoluble Federal Commonwealth under the Crown."

A3. In the lead-up to the referendum in 1999, ACM organized a campaign for the election of delegates to the Constitutional Convention winning 19 seats with 72.82% of the constitutional monarchist vote. (Other groups winning seats included the Australian Republican Movement (ARM) with 27 seats, the Ted Mack group with 2 seats, the Australian Monarchist League with 3, Safeguard the People with 2, Real Republic with 2, Clem Jones Queensland Constitutional Republic Team with 3 and Queenslanders for Constitutional Monarchy with 2.)

A4. At the Constitutional Convention elections, ACM was able to forge there a powerful coalition with four smaller constitutional monarchist groups there, earning the praise of Cardinal Pell for our unity and our dedication to principle.

A5. A Parliamentary Library Research Paper concluded: "The main monarchist organisation is ACM....By 1999 ACM, like its opposite number ARM in the case of republicans, appears to have become the spokesperson for monarchists."

A6. Based on the vote received in the 1998 Convention election, ACM delegates were appointed to all eight seats allocated to constitutional monarchists on the ten person official Vote No Committee established to manage the Vote No advertising campaign in the 1999 referendum.

A7. In a parallel but distinct campaign with supporter funded advertising, ACM appointed directors and opened offices in every state, with coordinators in every electorate.

A8. Marshalling over 50,000 supporters across the Commonwealth, ACM ran a tight and ultimately successful campaign which resulted in a landslide rejection of the politicians' republic in every State and 73% of electorates.

A9. When, after the referendum, the republicans announced their plans for a series of plebiscites, ACM adopted and has consistently denounced this as an irresponsible attempt to gain a vote of no confidence in the world's most successful constitution.

A10. Today, the organisation continues to advocate the retention of the constitutional monarchy or crowned republic as the preferred model of governance for our Commonwealth, as well as support for the retention of our Australian Flag. ACM's activities are wide and diverse. They include publishing journals and books, maintaining websites, producing educational materials, providing speakers for public forums and organising gatherings where fellow Australians can have an opportunity to learn more about the unique system of government that has helped to safeguard our cherished democratic traditions and freedom. Each year since 1999, ACM has held a National Conference which brings together delegates from its divisions and branches.