

Oqurum

Law – Strategy – Policy

Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600

5 December 2017

Dear Committee Secretary

INQUIRY INTO MATTERS RELATING TO SECTION 44 OF THE CONSTITUTION

I write regarding the following Terms of Reference for the Committee's inquiry:

C. Whether the Parliament should seek to amend section 44(i) (for example, to provide that an Australian citizen born in Australia is not disqualified by reason of a foreign citizenship by descent unless they have acknowledged, accepted or acquiesced in it);

D. Whether any action of the kind contemplated above should be taken in relation to any of the other paragraphs of section 44 of the Constitution, in particular sections 44(iv) and 44(v);

It is my strong view that for the Parliament to seek to amend the Constitution as contemplated in these Terms, absent any other proposed amendments, would constitute a self-serving exercise by Australia's political elite.

The Australian Constitution, venerable as many hold it to be, contains significant flaws in need of correction.

I reject the pragmatism of incremental change. Two of the last three amendments to be passed, in 1977, were concerned with, in effect, amending the terms of employment of those exercising power on behalf of Australians, namely Senators and judges. The third expanded the franchise to citizens in Territories.

Australians have not been asked to contemplate any significant change to our system of government in decades, if at all since Federation. 'Minimalist' republicanism simply does not rate as 'significant'. Indeed, the 1999 referendum is a study in the failure of adherents to the incremental change mantra.

We need a Constitution that establishes an Australian state free from legal shackles to its imperial heritage: our Constitution should be an act of its free peoples, not an Act of the Parliament of the United Kingdom. Our Head of State should be one of us, and the position held by that person ought to be what we acknowledge as we pay respect to the law on entry to a courtroom.

Our Constitution must include a Bill of Rights, because we have seen in the Northern Territory Intervention and the suspension of rights under the *Racial Discrimination Act 1975* what happens when rights are merely legislated.

Our Constitution must pay due respect and regard to the original legal systems that applied in Australasia, the systems of its First Peoples.

It is in the context of these significant opportunities for constitutional reform that our leaders ought to contemplate a re-ordering of government in our country to deliver a 21st century approach to health and education responsibilities, so that we no longer suffer through buck-passing and waste.

We ought to ask ourselves whether the majoritarian cartel that is a consequence of our current representative system, founded in the Constitution, is delivering the quality of governance we deserve. Perhaps the growing disjunction between Government and Opposition and the electorate at large is a product of the fundamentally flawed pretence that mass parties can adequately present unified perspectives to electors all-too-aware of their internal divisions.

In short, Australians should have a thorough discussion about a new Constitution.

Not because its entirely broken (although parts of it certainly are), but because we should aspire to higher ideals of democratic representation rather than settle for the status quo just because it's easier.

If amending section 44 forms part of a more comprehensive package of constitutional reforms, all well and good.

But presenting such an amendment, which only serves those who contemplate a political career, while failing to present any amendments that would deliver meaningful, positive change in the lives of many Australians is self-interest in leadership's clothing.

Yours sincerely,

Rewi Lyall