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### **Submission to the Senate Committee on Procedure**

#### **Inquiry into the Proposal to Replace the Parliamentary Prayer with an Invitation to Prayer or Reflection**

Dear Committee

I am an Associate Professor of Constitutional Law at Monash University. I have written extensively about section 116 of the *Australian Constitution*, which provides a limitation on the federal parliament's power in respect of religion and am the author of *Religious Freedom and the Australian Constitution: Origins and Future* (Routledge, 2018).

This submission deals with the following issues:

1. Why the Senate has prayers
2. The Senate's prayers are distinctly Protestant
3. Human rights issues with the Senate's prayers
4. Constitutional issues with the Senate's prayers

#### **1. Why the Senate has prayers**

Parliament did not introduce prayers because of 'our Judeo-Christian heritage', as is sometimes claimed. Parliament introduced prayers in response to lobbying from churches.

During the 1890s when the *Australian Constitution* was being drafted, the colonial churches began a campaign of petitions calling for three things. The petitions read:

1. That in the preamble of the Constitution of the Australian Commonwealth it be recognised that God is the Supreme Ruler of the world, and the ultimate source of all law and authority in nations.
2. That there also be embodied in the said Constitution, or in the standing orders of the Federal Parliament, a provision that each daily session of the Upper and Lower Houses of the Federal Parliament be opened with a prayer by the President and Speaker, or by a chaplain.
3. That the Governor-General be empowered to appoint days of national thanksgiving and humiliation.

The Constitutional Convention drafting the *Australian Constitution* received 49 petitions to this effect containing more than 36,000 signatures.

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The petitioners achieved two of their aims. The preamble to the *Constitution* says that in deciding to federate the Australian people were 'humbly relying on the blessing of Almighty God'. And prayers began in Parliament in June 1901.

It is interesting to note that the Constitutional Convention did not start its day with prayers. And, only some of the colonial Parliaments had prayers. Indeed, some of them had even abandoned the practice by the time of the Constitutional Convention. Some of the delegates to the Constitutional Convention considered the parliamentary practice to be a 'farce', 'a perfect piece of mockery' and a 'matter of ... indifference'.

## 2. The Senate's prayers are distinctly Protestant

The Senate starts each sitting day with compulsory Christian prayers.

The prayers used in the Senate (and in the House of Representatives) are not denominationally neutral, as some claim (this claim amounts to a concession that the prayers are Christian in character). The prayers are in fact distinctly Protestant in character.

Below I have reproduced the text of the prayers recited by the President of the Senate and the Speaker of the House of Representatives along with the text of the Lord's Prayer from the Bible and the Prayer for the High Court of Parliament from the *Book of Common Prayer* (which is the official Anglican service book).

<p>Almighty God, we humbly beseech Thee to vouchsafe Thy special blessing upon this Parliament, and that Thou wouldst be pleased to direct and prosper the work of Thy servants to the advancement of Thy glory, and to the true welfare of the people of Australia.</p> <p>Our Father, which art in Heaven, Hallowed be Thy name. Thy kingdom come. Thy will be done in earth, as it is in Heaven. Give us this day our daily bread. And forgive us our trespasses, as we forgive them that trespass against us. And lead us not into temptation; but deliver us from evil: For thine is the kingdom, and the power, and the glory, for ever and ever. Amen.</p> <p>-Senate Standing Order 50 -House of Representatives Standing Order 38</p>	<p>Most gracious God, we humbly beseech thee, as for this Kingdom in general, so especially for the High Court of Parliament, under our most religious and gracious Queen at this time assembled: That <u>thou wouldst be pleased to direct and prosper all their consultations to the advancement of thy glory</u>, the good of thy Church, the safety, honour, and welfare of our Sovereign and her Dominions; that all things may be so ordered and settled by their endeavours, upon the best and surest foundations, that peace and happiness, truth and justice, religion and piety, may be established among us for all generations. These and all other necessities, for them, for us, and thy whole Church, we humbly beg in the Name and Mediation of Jesus Christ our most blessed Lord and Saviour. Amen.</p> <p>-Prayer for the High Court of Parliament, <i>Book of Common Prayer</i></p> <p>Our Father which art in heaven, Hallowed be thy name. Thy kingdom come, Thy will be done in earth, as it is in heaven. Give us this day our daily bread. And forgive us our debts, as we forgive our debtors. And lead us not into temptation, but deliver us from evil: For thine is the kingdom, and the power, and the glory, for ever. Amen.</p> <p>-Matthew 6: 9-13 (King James Version)</p>
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When parliamentary prayers were first introduced in 1901, the Catholic Archbishop of Melbourne complained that the prayers were “distinctly Protestant”.

In the 2016 census, 13.3% of Australians reported being Anglican. It is not obvious why the Senate should have official prayers based on the practices of a minority religious group.

Nor is obvious why, as the text of the prayers states, the Senate as an institution and Senators individually should be declared to be servants of God working to glorify God.

### 3. Human rights issues with the Senate’s prayers

The Senate’s prayers are compulsory. Senate Standing Order 50 provides: “The President, upon taking the chair each day, shall read the following prayer: ...” Compulsory prayers in Parliament are inconsistent with religious freedom.

The compulsion is visited upon:

- The President, who is commanded by the Standing Order to pray,
- Senators present in the chamber, who are compelled to engage in a group religious observance: the prayers read by the President speak of “we” and “our”, and
- Other persons present in the galleries, who have the option either of conforming to and participating in a Protestant religious observance or leaving the gallery to avoid that participation.

Compulsory prayers of their nature compel individuals to engage in religious practice. Compulsory prayers in a legislature also amount to engaging in corporate religious worship on the part of the nation.

The practice of having official prayers endorses particular religious beliefs or traditions, favouring them over others. It is also exclusionary. It sends a message to non-adherents of the preferred religion that they are not truly full members of the community.

Canadian Courts have said the following about the effects of official prayers:

- “The recitation of the Lord’s Prayer, which is a Christian prayer, and the reading of Scriptures from the Christian Bible impose Christian observances upon non-Christian pupils and religious observances on non-believers.”  
*Zylberberg v Sudbury Board of Education* (1988) 52 DLR (4th) 577 (case about compulsory prayers at start of school day)
- “The right to be excused from class, or to be exempted from participating, does not overcome the infringement of the Charter freedom of conscience and religion by the mandated religious exercises. On the contrary, the exemption provision imposes a penalty on pupils from religious minorities who utilize it by stigmatizing them as non-conformists and setting them apart from their fellow students who are members of the dominant religion.”  
*Zylberberg v Sudbury Board of Education* (1988) 52 DLR (4th) 577, 656
- “to physically leave the chamber for the duration of the prayer highlights the exclusive effect of the practice. Rather than limiting the religious nature of the By-law, the possibility so afforded accentuated it.”  
*Mouvement laïque québécois v City of Saguenay*, 2015 SCC 16, [101] (case about official prayers at start of municipal council meetings)
- “The prayer recited by the municipal council in breach of the state’s duty of neutrality resulted in a distinction, exclusion and preference based on religion — that is, based on Mr Simoneau’s atheism — which, in combination with the circumstances in which the prayer was recited, turned the meetings into a preferential space for people with theistic beliefs. The latter could participate in municipal democracy in an environment favourable to the expression of their beliefs. Although non-believers could also participate, the price

for doing so was isolation, exclusion and stigmatization.”

*Mouvement laïque québécois v City of Saguenay*, 2015 SCC 16, [120]

- “When Mr Simoneau went to meetings of the municipal council, he had to choose between remaining in the chamber and conforming to the City’s religious practice, excluding himself from the practice by refusing to participate in it, and physically excluding himself from the chamber for the duration of the prayer. If he chose to conform to the council’s practice, he would be acting in direct contradiction with his atheistic beliefs. If he chose to exclude himself from the prayer either by refusing to participate in it or by leaving the chamber, he would be forced to reveal that he is a non-believer.”

*Mouvement laïque québécois v City of Saguenay*, 2015 SCC 16, [121]

- “giving those who preferred not to attend the recitation of the prayer the time they needed to re-enter the council chamber, far from tempering the discrimination, exacerbated it”

*Mouvement laïque québécois v City of Saguenay*, 2015 SCC 16, [122]

These comments are equally applicable to the practice of having official prayers in the Senate.

Official prayers are inconsistent with the right to freedom of religion or belief because they *compel* people to engage in religious observances. It is no part of that right to compel others to conform to one’s religious beliefs or practices.

Moreover, official prayers, which of their nature preference one religious tradition over others, are inconsistent with Australia’s secular and religiously plural social fabric.

#### **4. Constitutional issues with the Senate’s prayers**

Section 116 of the *Australian Commonwealth* provides: “The Commonwealth shall not make any law ... for imposing any religious observance”.

Standing Order 50 plainly imposes a religious observance. If Standing Orders can be considered a species of “law” then Standing Order 50 in its current form would be unconstitutional.

My view is that Standing Orders may well be considered a species of law: section 116 uses the phrase “any law” indicating a broad conception of that concept, and there is old Privy Council authority ruling on the validity of Standing Orders of the State Parliaments.

#### **5. Conclusion**

I have attached a copy of an article I wrote in *The Conversation* (22 August 2017) titled “Parliamentary prayers are divisive and unconstitutional, and should be scrapped” for your reference.

I trust this submission is of assistance.

Yours sincerely

**Luke Beck**