



The Secretary
Senate Legal and Constitutional
Reference Committee
Parliament House
CANBERRA ACT 2600

24 January 2004

Dear Sir/Madam,

**Re Submission to the Committee Inquiry into an Australian Republic.
Main paper 2649 words.**

Please find enclosed my submission.

Yours faithfully

A handwritten signature in black ink, appearing to read "Eric Jones".

(Mr.) Eric Jones

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SUBMISSION

to the Senate Inquiry into an Australian Republic

by

Eric Jones

Telephone and Fax (02) 9771 1272.

INQUIRY INTO AN AUSTRALIAN REPUBLIC

TERMS OF REFERENCE

- (a) the most appropriate process for moving towards the establishment of an Australian republic with an Australian Head of State; and
- (b) alternative models for an Australian republic, with specific reference to:
 - (1) the functions and powers of the Head of State,
 - (2) the method of selection and removal of the Head of State, and
 - (3) the relationship of the Head of State with the executive, the parliament and the judiciary.

PRELIMINARY COMMENTS.

This submission is made in the historical context that the Australian people in the 1999 Referendum decisively rejected a Republic. Indeed all the States and one Territory voted against it as did the majority of the Australian voters. The voters of the Australian Capital Territory were the only voters who were out of the mainstream of the Australian will when they voted for the Republic.

The question arises as to why there is a need for such an enquiry at this time given the expressed will of the people. However as the Senate has voted for such an enquiry this submission is made following, as requested, the Discussion Paper's outline.

In all of this the following question could perhaps be asked

QUIS CUSTODIET IPSOS CUSTODES?

Who will guard the guardians themselves?

EXECUTIVE SUMMARY.

Within the historical context of the defeat of the Republic Referendum in 1999 this submission is made with some skepticism of the need for this enquiry. However, as the reference has been made from the Senate this submission is made following the outline requested in the discussion paper.

It argues for the retention of the Westminster system with the head of state exercising the present powers. The movement towards a republic should be along the lines of either Corowra Proposal A or C. However Proposal C is preferred in that it appears to be more democratic, open, unhurried, non-directive and more consultative of the Australian people.

Some comments are also made on the five models set out on Page 15 of the Discussion Paper. It notes particularly : -

- 1) the deficiencies in Model D and E in that they require the codification of the head of state's reserve powers. This would restrict the head of state, somewhat, in exercising the powers in the best interests of the people over the vested interests of party politics;
- 2) the "direct election" approach of model D would adversely affect the Westminster system and as such should not be accepted; and
- 3) model A, because of its minimal change stands a better chance of being passed at a referendum.

SUBMISSION.

Question one. Separate head of state needed?

Should Australia consider moving towards a head of state who is also the head of government?

Answer.

No. We have basically a Westminster form and style of government, albeit with some American elements, which is superior to the American system which has a joint head of state and head of government.

In the Australian context, and given our Westminster system, combining the two roles would result in : -

- 1) to much confusion in the combined role,
- 2) to much power in the one role, and
- 3) not enough protection for the people being provided in the sense of an independent party being available who can act in the best interests of the people and against the power of the political parties.

Question two. Powers of the head of state.

What powers should be conferred on the head of state?

Answer.

The existing powers.

Question three.

What powers (if any) should be codified beyond those currently specified in the Constitution?

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Q3.

Answer.

An express acknowledgement that the head of state will, under God, always act in the best interests of the people of Australia.

Question four. Selection and Method of Voting.

Should some form of campaign assistance be available to nominees, and if so, what assistance would be reasonable.

Answer.

None - other than an article produced by themselves that sets out their candidature and is published in a pamphlet that is distributed to every household in Australia. We have well established precedents here that has worked very well in Australia. 1) Federal referendum questions have a for and against case set out in a publication, and 2) As well for some local government elections around Australia such a publication is produced.

Question five.

Should/Can political parties be prevented from assisting or campaigning on behalf of nominees? If so. how?

Answer.

It would be very difficult to prevent political parties campaigning or assisting a candidate. There would be the question of freedom of political expression. However to minimize party involvement this would be encouraged by :-

1) expressing that the major form of candidature would be in the form of the pamphlet distributed to each household;

3)

- 2) no public funding of any kind would be available to a political party or other individuals for any expenditure in support of a candidate;
- 3) the ballot paper being a separate paper from any other election ballot paper (if applicable) and show only the name of the individual, i.e., no party name would be on the ballot paper;
- 4) banning the parties from handing out how-to-vote forms at polling booths for this question only. I.e., normal how-to-votes (if applicable) for other contested election positions would still be allowed; and
- 5) political parties being banned from nominating candidates in their own right.

Question six.

If assistance is to be given, should this be administered by the Australian Electoral Commission or some other public body?

Answer.

Australian Electoral Commission.

The other assistance to prevent party involvement would have to be by the Parliament passing the appropriate legislation in the areas concerned.. However as the parties hold the power this would be difficult. The referendum question text would have to have these (and any others thought appropriate) provisions in them as an ancillary matter.

Question seven.

If the Australian head of state is to be directly elected, what method of voting should be used?

Answer.

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Given the compulsory nature of our voting. FULL PREFERENTIAL VOTING if there is three or more candidates. First past the post if there is only two candidates.

Question eight.

If direct election is the preferred method for election of a non-executive president, 1) will this lead to a situation where the president becomes a rival center of power to the government? 2) If so, is this acceptable or not? 3) If not, can the office of head of state be designed so that this situation does not arise?

Answer.

1) The President, notwithstanding any legislation, will become a rival center of power, under a directly elected head of state, because in the public mind they voted for a President and as such they have a moral power which is up against a Prime Minister. Also given our adversarial system of party politics the opposition of the day will "use" the opportunity to promote the Presidents views against the Prime Minister and government of the day. Even in a small sense we have this today with "progressive" Governor - Generals. Again the Irish system has seen this occur.

2) This is not acceptable. The Government is voted in by the people in the House of Representatives. The Cabinet and Prime Minister who administer the Government are formed from the peoples house.

3) I do not think so given human nature and party and partisan politics.

Question nine. Nomination.

Who should be eligible to put forward nominations for 1) an appointed head of state?

2) For an elected head of state?

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Answer.

1) and 2) any Australian citizen who is enrolled on the Federal Roll.

Question ten.

Should there be any barriers to nomination, such as nominations from political parties, or candidates being current or former members of parliament?

Answer.

Yes.

- 1) Usual barriers for standing at an election. E.g., Unsoundness of mind, bankruptcy, having been in goal for an offence of a period of one year or whatever etc. Public position they hold - such as Public Servants like the Chief Electoral Officer;
- 2) Demonstrated unfitness for the office;
- 3) A competency test to be completed satisfactorily covering the Governmental system in Australia and the rights and responsibilities of the position in regards to the Queen, the Parliament, the Executive, the Judiciary and the people of Australia;
- 4) A political party should not be able to nominate a candidate; and
- 5) Current or serving members of parliament and former members of parliament who have retired less than five years ago should be barred.

Question eleven.

Should there be a maximum and/or minimum number of candidates?

Answer. NO.

Question twelve.

Should there be a minimum number of nominators required for a nominee to become a candidate?

Answer.

Five electors enrolled on the Federal Roll.

6)

Question thirteen. Title of the head of state.

What should the head of state be called, Governor - General, President of the Commonwealth of Australia, or some other title?

Answer.

- 1) For the present Constitutional Monarchy - Governor - General (of the Commonwealth of Australia) ; and
- 2) For an elected head of state - President (of the Commonwealth of Australia).

Question fourteen. Term of office.

What should be the length of a term of office for the head of state?

Answer.

Five years.

Question fifteenth.

Should a head of state be eligible for re-appointment/re-election?

Answer.

Yes.

Question sixteen.

Should there be a limit on the number of terms an individual may serve as head of state?

Answer.

Two terms only.

Precedent here - the President of the United States of America has a limited term to reduce their influence over a longer period of time.

7)

Question seventeen. Removal. By whom?

Who or what body should have the authority to remove the head of state from office.

Answer.

- 1) for the present Constitutional Monarchy system the Prime Minister of Australia;
and
- 2) for a republic - the Prime Minister of Australia with a confirmation vote of 60% of
the members of the House of Representatives.

Question eighteen. On what grounds?

- 1) On what grounds should the removal from office of the head of state be justified?
- 2) Should these grounds be spelt out?

Answer.

- 1) Incapacity to act - such grounds as unsoundness of mind, infirmity etc. Proven
notorious conduct.
- 2) Yes they should be spelt out.

Question nineteen. Casual vacancy.

How should a casual vacancy be filled?

Answer.

Present Constitutional Monarchy system - the Prime Minister.

For a Republic. Appointment by the Prime Minister with the consent of the Leader of
the Opposition in the House of Representatives. Here both parties would have to act
on behalf of the people. Such appointee could only serve out the term remaining or
part of the term to the next general election if the people elect the President. The
people would then make the final replacement choice through the ballot box.

8)

Question twenty. Eligibility/disqualification.

What should the eligibility requirements be for the head of state.

Answer.

- 1) An Australian citizen who is willing, prior to election, or has forsworn any allegiance, obedience or adherence to a foreign power;
- 2) Be over the age of thirty five (35) years;
- 3) Demonstrated fitness for the office through competency test etc.;
- 4) Born in Australia or resident in Australia for twenty (20) years; and
- 5) Be registered on the Federal electoral roll.

Question twenty one. Disqualification.

On what grounds should a person be disqualified from becoming a head of state?

Answer.

- 1) Being a member of parliament.
 - 2) Other factors relating to the current provisions (Section 44) as listed.
- Being a member of a political party in a persons own right should not disqualify a person from becoming a head of state.

Question twenty two. Relationship of head of state with executive, parliament and judiciary.

Should the head of state have power to appoint and remove federal judges?

Answer.

Yes but only in council.

Question twenty three.

Should the head of state have the (royal) prerogative of mercy?

Answer.

YES.

Question twenty four.

Should the head of state be 1) free to seek constitutional advice from the judiciary and
2) if so, under what circumstances?

Answer.

1) YES.

2) Under any circumstance. As well the head of state should be under no requirement to inform the Prime Minister or any other Minister of State. As well the member of the Judiciary should be under an obligation not to disclose such consultation to any other person. However, disclosure by mutual consent could apply.

Question twenty five. Position of the states.

What is the best way to deal with the position of the states in any federal Australian republic?

Answer.

As the Commonwealth of Australia was created from the colonies to form the states in the original compact the best way, and only respectful way, is for them to make up their own minds on what they do. They should be free to make their own decision in this matter. If a state wishes to retain the Monarchy as the Monarch of their state they should have the right to do so. In this matter the Commonwealth of Australia is subsidiary to the States of the Commonwealth of Australia.

Question twenty six. A process for moving towards an Australian republic.

Should there be an initial plebiscite to decide whether Australia should become a republic, without deciding on a model for that republic.

Answer.

Not sure but would say Yes.

However here I would say that the plebiscite would be much easier to defeat than when you have a proposed model!

Question twenty seven.

Should there be more than one plebiscite to seek views on broad models? If so, should the plebiscites be concurrent or separated?

Answer.

In fairness to the Australian people and their need to carefully consider the models proposed the plebiscites should be separate. (If you have them concurrent the debate on the models could be lost in the "politics" of the major question of becoming a republic.)

Question twenty eight.

Should voting for a plebiscite be voluntary or compulsory?

Answer.

Voluntary.

For such an important decision we should have voters who vote on a considered basis.

This is rather than have voters who just turn up at the polls and who vote, without thinking, on the basis of a how-to-vote piece of paper handed to them on the voting day.

11)

Question twenty nine.

What is the best way to formulate the details of an appropriate model for a republic?

A Convention. A Parliamentary inquiry? A Constitutional Council of experts?

Answer.

A Convention - perhaps combined with some elements of a plebiscite.

the convention could be modeled on the Convention held prior to the 1999 referendum. Talking here about a process that draws a balance of interested people and the wider Australian people. -half appointed/ half elected by postal vote on a voluntary basis.

Question thirty.

What is the preferred way for a process to move towards an Australian republic?

Answer.

No preferred option - either Corowra Proposal A or C but majoring on C.

I like C because it is more consultative and democratic for the people of Australia.

However I do not regard with favour the comments that virtually tells the Government that it has to "toe its line" and do everything it says it has to do. Sometimes the Government has to take decisions not only in its partisan sense but the wider interests of the Australian people.

Proposal A has the advantage of a much "quicker" process but runs the risk of being seen as another "Politicians republic" and would be easier to defeat.

On balance then notwithstanding that I do not think that either option is fully to be preferred I would opt for OPTION C.

OTHER ITEMS.

1) Governor - General / President.

To maintain their position as **Commander of the Defence Forces** who acts on the advice of the Prime minister.

2) Impeachment provisions should be provided in a real way if any provision in this regard is made for proven misbehavior or incapacity. This would have to be through the Parliament. I have no particular views on the nature or provision in this regard.

Extensive research would have to be done on models that are used around the world.

However to make it more democratic consideration should also be given to the people having a "Citizen initiated initiative" for removal of the head of state.

3) FUNDING for YES and NO CASES for all voting whether for as plebiscite or a referendum question should be provided on an equal basis so that no one side is advantaged.

SOME COMMENTS on the models listed on page 15 of the discussion paper.

NOTE. I DO NOT CLAIM THAT THESE ARE EXHAUSTIVE COMMENTS ON ALL ASPECTS OF THE MODELS.

Model A. Prime - Minister . McGarvie Model.

* Has minimal change. Fits pretty well into the existing provisions. Could be branded "elitist". However with by- partisan political support would probably be carried at a referendum especially as it addresses to some degree "she works mate whv change it" view of the ordinary Australian.

Model B. (Model put to the referendum)

* Discredited by its loss at the 1999 referendum. Recycling it would simply mean another likely defeat.

Model C. (Electoral College)

* Somewhat like Model A but on a limited collegiate basis. Less "elitist" than model A but provides for some voters input through the election of the college. However it is likely to be viewed as denying ordinary Australians as having a real say in the election or appointment of the head of state.

Model D. (Direct Election A)

* Would adversely affect the Westminster system and the relevant arrangements and powers between the Parliament. Executive etc. and the head of state.

Despite having great appeal for the voters the full ramifications have not been realised yet.

As well the model suffers in not providing the uncoded reserve powers for the head of state that the people of Australia need for their protection in times of political crisis.

This is particularly needed in those times when there is a major standoff between the major political parties. There needs to be an unbiased third party umpire who has real power.

Model E. (Direct Election B - Hayden model)

* Largely suffers the same aspects as model D.

Again QUIS CUSTODIET IPSOS CUSTODES? (Who will guard the guardians themselves?)