

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

from

A Just Republic

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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:
 - (i) the functions and powers of the Head of State
 - (ii) the method of selection and removal of the Head of State, and
 - (iii) the relationship of the Head of State with the executive, the parliament and the judiciary.

A Just Republic

A Just Republic is an unincorporated association whose objectives are:

- 1 to replace the Monarch with an elected citizen as President of an Australian Republic.
- 2 to elect the Australian President by direct election by all Australian citizens.
- 3 to call for an elected Constitutional Convention to make recommendations for a Constitutional Referendum on the following issues:
 - 3.1 a system or systems of direct election of the President
 - 3.2 the need for the Constitution to recognise the sovereignty of the people, and a democratic system of government based on one vote one value
 - 3.3 the need for the Constitution to define an Executive responsible to the Parliament, which shall elect the Prime Minister and its other Officers, and an independent judiciary.
 - 3.4 the need to define the powers of the President as non-executive, eliminating the Reserve Powers in the current Constitution, and codifying the presently accepted customary role of the Governor-General, which is predominantly ceremonial, and acting on the advice of the Prime Minister.
 - 3.5 A Bill of Rights
 - 3.6 Constitutional recognition of the rights of the indigenous peoples of Australia as the original owners and custodians of traditional lands and waters.

It was formed with these objectives in March 2000, following the defeat of the 1999 republic referendum.

Its origins are in the Just Republic campaign for the Constitutional Referendum election in 1997, the direct election caucus at the Convention in 1998, and the “Yes ... and more” campaign in the 1999 referendum. In the 1997 election, two Just Republic candidates were elected – David Curtis from the Northern Territory, and Magistrate Pat O’Shane from New South Wales. These were the only elected indigenous delegates to the Constitutional Convention.

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A. The most appropriate process for moving towards the establishment of an Australian republic with an Australian Head of State

A Just Republic believes that the shift to a republican form of constitution in Australia must be a people-driven process, so that the democratic character of Australian society is enhanced by the process.

This process must begin with an acknowledgement that the people roundly rejected the 1999 republic referendum and therefore be introduced through an indicative plebiscite asking the people what options they prefer, including no change.

These options must include forms of popular election of the President and other changes to the Constitution which flow from the idea of a republic, such as:

- constitutional recognition of the rights of the indigenous peoples of Australia as the original owners and custodians of traditional lands and waters;
- electoral reform;
- a Bill of Rights;
- a definition of an Executive responsible to the Parliament;
- a definition of the powers of the President; and
- a new Preamble

This indicative plebiscite must take place at the first possible federal election, and trigger an elected Constitutional Convention, whose task is to devise a referendum or series of referenda that would implement the majority view established through the plebiscite.

This process is the same as that proposed by the Australian Republican Movement, and by the Corowa consultation. To its discredit, the Australian Labor Party has not acknowledged the need for an elected Constitutional Convention in its proposed process for a republic, which shifts immediately from the plebiscite to a constitutional referendum.

A Just Republic believes that the 1998 Constitutional Convention was greatly distorted by having half of its membership appointed by government, and by the method of election of the elected delegates. We would rather support a strictly proportional form of election of all delegates from each state and territory.

This Convention should not be limited to two weeks as was the 1998 Convention, but should be given up to one year to meet, consult and negotiate before coming to a decision about how to advance. Therefore it must be adequately resourced.

Our experience of the first process towards a republic was that it was extremely narrow, focusing on the nationality of the Head of State and avoiding any discussion about the broader problems of our Constitution and democratic system. This meant that the debate became a sterile clash between two blocs who were both strenuously asserting that Australia is a perfect society – perfect with an English monarch, or perfect except for the English monarch. The great bulk of Australians were not engaged by this focus and this debate, and felt excluded from the idea of a republic.

Our view is that an Australian republic would require extensive constitutional change and therefore would require a new constitution - a constitution which Australians would know about and identify with, because they would have helped to create it. This would greatly improve the accountability of our political institutions and political leaders and reaffirm that the people are the source of democratic legitimacy in Australia.

During the Howard governments, even our present revered constitutional institutions have been degraded, and the status of our political system has been greatly reduced in public opinion. Just consider the following:

- High Court judges repeatedly attacked by members of the government
- The office of Governor-General has virtually disappeared from public view after being significantly eroded by the previous incumbent, and by the Prime Minister expanding his role into ceremonial activity
- The military has been manipulated for short-term political gain
- Our membership of the United Nations has been recklessly abused by government
- Governments routinely lie to the people.

Other important aspects of our society, such as the role of organized labour, the rights of Aboriginal and Torres Strait Islanders, the family rights of immigrants and our obligations to asylum seekers, have also been abused, damaged and disregarded.

This experience underlines the need for a comprehensive Bill of Rights in our Constitution. Australia is now the only western democratic society without a Bill of Rights in either legislation or in the Constitution.

A comprehensive people-driven process of creating a republican constitution is a powerful means of recovering our institutions, social values and democratic rights. Australian society is in urgent need of such a process, and it would be an important and positive contribution to the global community in these dangerous times.

B Alternative models for an Australian republic

- (i) the functions and powers of the Head of State
- (ii) the method of selection and removal of the Head of State, and
- (iii) the relationship of the Head of State with the executive, the parliament and the judiciary.

A Just Republic supports a federal republic of Australia, with a modernized, democratic constitution, including recognition of the rights of Aboriginal and Torres Strait Islander peoples, a Bill of Rights, electoral reform, and a popularly-elected President.

Without the benefit of wide consultation since the time of the 1998 Constitutional Convention, A Just Republic supports the main direct election model proposed at the Convention.

Under this model, there is a non-executive presidency, analogous to the present role of the Governor-General, but one with real powers which are codified. It would also codify the existence of a Prime Minister and Cabinet as the main executive institution in our political system.

The present balance of power between the House of Representatives and the Senate is maintained, in that the Senate can still block Supply, but of itself this does not trigger the fall of the government and a general election. However, there is now a possible reference to the High Court by the President to determine any question of the government breaking the Constitution.

This issue should be further debated by an elected Constitutional Convention, following the necessary indicative plebiscite.

Direct Election Model proposed by Direct Presidential Election Group, 1998 Constitutional Convention

Eligibility:

Every Australian citizen qualified to be a member of the Commonwealth Parliament and who has forsworn any allegiance, obedience or adherence to a foreign power shall be eligible for election and to hold office as the Australian Head of State, provided that he or she is not a member of the Commonwealth Parliament or a State or Territory Parliament at the time of nomination nor is a member of a political party during the term of office as Head of State.

Nomination:

Nominations for the office of Australian Head of State may be made by:

- (a) Any Australian citizen qualified to be a member of the Commonwealth Parliament;
- (b) The Senate or House of Representatives;
- (c) Either House of a State or Territory Parliament;

(d) Any Local Government.

Shortlisting:

A joint sitting of the Senate and House of Representatives shall by at least a two-thirds (2/3) majority choose no fewer than three (3) candidates from eligible nominees for an election of the Head of State by the people of Australia.

Election:

The election of the Head of State shall be by the people of Australia voting directly by secret ballot with preferential voting by means of a single transferable vote. Parliament shall make laws to regulate campaign expenditure by and for candidates contesting an election for Head of State and to provide advertising and campaign support through a single body authorised and funded by the Parliament.

Tenure:

The Head of State shall hold office for two (2) terms of the House of Representatives and shall be ineligible for re-election at the next Head of State election.

Dismissal:

The Head of State may be dismissed by an absolute majority of the House of Representatives on the grounds of stated misbehaviour, or incapacity, or behaviour inconsistent with the terms of his or her appointment.

Casual Vacancy:

A casual vacancy in the office of Head of State shall be filled by the appointment of a caretaker by an absolute majority of the House of Representatives who shall hold office until the election of a new Head of State at the next House of Representatives election.

Non-Reserve Powers:

The existing practice that non-reserve powers should be exercised only in accordance with the advice of the Government shall be stated in the Constitution.

Reserve Powers:

Existing reserve powers shall be partially-codified as generally provided in the Republic Advisory Committee's 1993 report (see attached) where the Head of State retains appropriate discretion. However, the Head of State shall not dissolve the House of Representatives by reason of the rejection or failure to pass a money bill unless and until the procedures under section 5A of such report have been followed or unless an absolute majority of the House of Representatives has requested such dissolution.

Republican Advisory Committee 1993:

5A. Dismissal of the Prime Minister - constitutional convention

- 1) If the Head of State believes that the Government of the Commonwealth is contravening a fundamental provision of this Constitution or is not complying with an order of a court, the Head of State may request the Prime Minister to demonstrate that no contravention is occurring or that the Government is complying with the order.
- 2) If, after giving the Prime Minister that opportunity, the Head of State still believes that such a contravention or non-compliance is occurring, the head of State may apply to the High Court for relief.
- 3) If, on application by the Head of State, the High Court is satisfied that the Government of the Commonwealth is contravening a provision of this Constitution or not complying with the order of a court, the High Court may grant such relief as it sees fit including a declaration to that effect. The High Court shall not decline to hear such application on the ground that it raises non-justiciable issues.
- 4) If on an application by the Head of State, the High Court declares that the Government of the Commonwealth is contravening this Constitution or not complying with the order of a court and the Prime Minister fails to take all reasonable steps to end the contravention or to ensure compliance with the order, the Head of State may dissolve the House of Representatives.
- 5) If the Head of State dissolves the House of Representatives under this section, he or she may also terminate the Prime Minister's commission and appoint as Prime Minister such other person who the Head of State believes will take all reasonable steps to end the contravention and who will maintain the administration of the Commonwealth pending the outcome of the general election following the dissolution referred to in subsection (4) above.
- 6) The exercise of the powers of the Head of State under this section shall not be examined by any court.