



Australian Republic Movement

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Submission to the Parliamentary Committee on Nationhood from the Australian Republic Movement

Dear Committee Members,

Thank you for the invitation to contribute to this important inquiry.

In many respects, this inquiry goes to the heart of what we at the Australian Republic Movement are campaigning for – reform to give more Australians a say and include them in the important decisions affecting them – in particular when it comes to the question of who represents them as Australia’s Head of State. For too long, the most senior role in Australia’s Constitution, our Head of State has been restricted to a family on the other side of the world, with little relevance or meaningful connection to Australia.

Ensuring our Head of State adequately represents Australians, and that Australians feel they are being served by them, should be of paramount interest to any examination of citizenship, civics education, allegiance to Australia and democratic participation.

A Commitment to Australia

Australian citizenship is, and should be, a meaningful and prized possession of all Australians. It is the formal recognition of membership of our national community and the expression of a shared commitment to our nation’s future.

Regardless of whether Australian citizenship is received at birth or through application, it comes with conditions and obligations. It is a serious and solemn commitment and responsibility.

New citizens must swear allegiance to Australia and agree to uphold its democratic norms and laws. The pledge makes this explicit:

From this time forward [under God],
I pledge my loyalty to Australia and its people,
whose democratic beliefs I share,
whose rights and liberties I respect, and
whose laws I will uphold and obey.

The oath rightly requires an unequivocal allegiance to “Australia and its people”, Australian democratic beliefs, rights, liberties and a commitment to uphold its laws.

The Australian Republic Movement supports the wording of this oath and commends its use in citizenship ceremonies. There is little contention that it is appropriate for such an oath to be taken by new citizens and that they should make that formal commitment proudly.

However, the citizenship oath differs strikingly from the oath and affirmation that elected members of the Federal Parliament (and most state parliamentarians) must undertake when being sworn into parliament. The oaths taken by senior public office bearers do not contain a reciprocal pledge of allegiance to the Australian people or its laws and interests. Rather than a pledge to serve Australia, its people or even the elected member’s electors, they must instead swear allegiance to the Monarch in accordance with section 42 of the Australian Constitution.

The oath for parliamentarians is as follows:

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law. SO HELP ME GOD!

The affirmation, which parliamentarians may make instead of the oath, simply removes reference to a deity:

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law.

The oath and affirmation both require an expression of allegiance to a monarch who reigns over sixteen nations, but whose primary focus (and cultural affinity) is dedicated to the affairs of the United Kingdom. The Australian nation, its people and its interests are not even mentioned. Most Australians would be shocked and disappointed to learn that their elected member of parliament is not required to pledge any allegiance to them or the nation.

The wording of the oath is not merely a matter of tradition. In 1920, Prime Minister William Hughes accused the ALP member for Kalgoorlie, the Hon Hugh Mahon, of misconduct on the basis that his public comments criticising the policy of the Lloyd George British Government towards Ireland, were in conflict with the oath. Prime Minister Hughes’ interpretation of the oath held that criticism of ‘His Majesty’s Government’ in Britain, was equal to criticism of the Sovereign.

Prime Minister Hughes subsequently moved a motion in the Federal Parliament calling for the Hon Hugh Mahon's expulsion from Parliament on those grounds:

That, in the opinion of this House, the honorable member for Kalgoorlie, the Hon. Hugh Mahon, having, by seditious and disloyal utterances at a public meeting on Sunday last, been guilty of conduct unfitting him to remain a member of this House, and inconsistent with the oath of allegiance which he has taken as a member of this House, be expelled [from] this House.

The motion was passed 34 votes to 17 and the Hon Hugh Mahon expelled from Parliament. During the debate, Member for Bourke Frank Anstey warned of the precedent that such a motion set:

In this Parliament am I called upon to be true to any definite principle, to uphold the rights and secure the well-being of the people, and to maintain Australian interests against all others? No. I am called here to be true and loyal, and to give my allegiance, not to my country, not to the people, but to the King, irrespective of his conduct, public or private ...

What has been said [by Mahon] has been said about a Government, but, because Mr Mahon has said something about a [British] Government, he is held to have disparaged his King. By this logic, by this code of ethics, whoever reflects on the chosen Ministers of the King defames His Majesty, and, by pursuing that argument, you can arrive at the conclusion that no man can criticise the King's Ministers without being liable to the punishment which it is proposed to mete out to the honourable member for Kalgoorlie.

If not for the enactment of the *Parliamentary Privileges Act 1987* removing the power of the Parliament to expel members, such a precedent would have had the potential to create a constitutional crisis in the contemporary parliament for (the majority of) members who have expressed support for a more independent Australia and Australian Constitution.

It is noteworthy that the schedule of the Constitution containing the oath refers specifically to the "*King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time*" which predates the current formal title of "*Queen of Australia*", used since 1973. As much as supporters of the monarchy frequently attempt to claim the Monarchy as an Australian institution, it was, is and will remain an inherently British national institution, and one which the Constitution and oath still refers to directly.

In 2001 the House of Representatives Procedure Committee recommended that a change to the oath be made to recognise the people of Australia, and that the change be put to a referendum. The Committee recommended that the oath take the form contained in the *Constitution Alteration (Establishment of Republic) Bill 1999*, which read as follows:

Oath:

Under God I swear that I will be loyal to the Commonwealth of Australia and the Australian people, whose laws I will uphold.

Affirmation:

I solemnly and sincerely affirm that I will be loyal to the Commonwealth of Australia and the Australian people, whose laws I will uphold.

The Australian Republic Movement continues to support these reforms.

There has been some latitude given to the Prime Minister to define the oath taken by ministers when being sworn into the Ministry. The present version, reinstated by Prime Minister Scott Morrison, was originally introduced by former Prime Minister John Howard and includes reference to the Queen:

The Oath of Office in 1996-2007 and 2018-Present

I, [Minister's full name], do swear that I will well and truly serve the people of Australia in the office of [position] and that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second. So help me God!

The Affirmation of Office in 1996-2007 and 2018-Present

I, [Minister's full name], do solemnly and sincerely affirm and declare that I will well and truly serve the people of Australia in the office of [position] and that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second.

However, there is no need for this to be the case.

The oath introduced by former Prime Minister Paul Keating in 1993 simply read:

I [full name], do swear that I will well and truly serve the Commonwealth of Australia in the office of [Minister, Portfolio]. So Help Me God!

And the affirmation:

I [full name], do solemnly and sincerely affirm and declare that I will well and truly serve the Commonwealth of Australia in the office of [Minister, Portfolio].

The exact wording of the oath continued to evolve, maintaining reference to the Queen under Coalition Governments and excluding it under Labor Governments.

Justices of the Federal and High Courts must also swear an oath of allegiance to the Queen, in addition to the pledge to “do right to all manner of people according to law without fear or favour, affection or ill-will.”

It is also a requirement for members of the Australian Defence Force to swear allegiance to the Queen. Rather than a pledge to defend the Australian nation, its people or interests, members are required to commit themselves to resisting the enemies of the Sovereign instead.

It is beyond question that the allegiance of parliamentarians, judges and members of the Australian Defence Force lie with Australia and its people first. So why must they be forced

to continue to make pledges of allegiance to a foreign monarch of a former colonial power over and above the people of Australia?

This ongoing misrepresentation of allegiances becomes even more ludicrous in the wake of the parliamentary dual citizenship revelations that shocked the 45th Parliament. Despite a number of parliamentarians being referred to the High Court or forced to resign for holding British Citizenship, upon re-assuming office they were immediately required to swear allegiance to Her Majesty the Queen of the United Kingdom. The Monarch of the United Kingdom is herself the Sovereign of 16 nations – yet retains the right to preside over the Australian Parliament, and is inexplicably immune from those same Constitutional implications affecting Australian parliamentarians.

The real or perceived notion of divided loyalties that section 44 seeks to eliminate is no less relevant to the Monarch, if not more. We have already established that it is improper for members of parliament to hold dual citizenship, as it would be for any parliamentarian to actively advance the interests of another nation while holding office. Yet this is precisely the untenable position of multiple allegiances the Monarch finds herself in, and which the Australian Republic Movement actively seeks to resolve.

Even if the Monarchy is to be retained, the introduction of an oath and affirmation to the Australian people and our national interests would help to restore some confidence that the most senior office bearers in the Australian Constitution are required to give primary and undivided consideration to the promotion of their interests, and help address the unfortunate and currently widespread view in the community that members of parliament do not serve the public as they should.

Civics Education and Awareness of the Australian System of Government

To play a meaningful role in Australia's democratic decision-making and system of government, citizens must have at least a basic level of understanding of how it functions and their obligations and rights within it. The most foundational of Australian laws is the Australian Constitution. Regrettably, a 2015 poll by Ipsos Mori found that only 65% of Australians "had heard of the Australian Constitution", let alone knew how they can participate in the institutions it prescribes.

Even lesser known is the Queen's role in that Constitution. For all her popularity, the overwhelming majority of Australians do not associate Queen Elizabeth II with a role in Australia's system of government or as Australia's Head of State.

An Essential Media poll in May 2018 found that only 34% of Australians polled knew Queen Elizabeth II was Australia's Head of State, with a further 30% believing it was her representative the Governor General, and 24% believing Australia's Head of State is the Prime Minister.

Awareness differs greatly by age, with 47% of Australians aged over 55 aware that the Queen is Australia's Head of State, compared to just 22% of those aged 34 years old and under (38% of this cohort believe the Prime Minister is Australia's Head of State). A majority of all age groups polled were unaware of her role as Australia's Head of State.

A nation's head of state is intended to be a high profile, unifying figure that speaks for the people of that nation. Clearly, the Monarchy is not performing that role effectively if, after nearly seven decades as Australia's Head of State, two-thirds of Australians are unaware they are performing the role.

The Australian Republic Movement supports a greater emphasis on civics education in Australian schools. Ignorance about Australia's system of government can lead to an increased sense of alienation from the decisions being made. There is a growing sense that some positions are reserved for elites and kept out of reach of ordinary Australians. While that notion is debatable for elected parliamentarians, it is a simple matter of fact for Australia's Head of State, which is undeniably and perpetually reserved for the eldest member of an elite aristocratic family on the other side of the globe. The position of Australia's Head of State is treated like a family heirloom to be passed from generation to generation rather than being returned to the Australian people for them to decide who will hold that position into the future. The most senior role in our democratic Constitution is its least democratic feature.

A Commitment to Australia's Success and Prosperity

The role of citizens in our democracy is bound not only to their commitment to Australia, but their direct interest in contributing to the wellbeing of the community in which they live. Transient populations have less incentive to invest their resources and energy in local outcomes as they will not necessarily be able to enjoy the longer-term gains that such commitment brings. Those who have an ongoing commitment to a community are far more likely to contribute to its wellbeing.

Representatives in a democracy also gain credibility and legitimacy through the shared experience of living and working in the communities they represent. By doing so they align their personal fortunes with those of their constituents, and have a stake in their community's success. Only by aligning their own interests with their constituents can they truly represent them. Just as it is contentious for MPs to live outside of their electorate, so too should it be contentious for our Head of State to live outside the country. It is no wonder that Australians feel disconnected from their Head of State when their Head of State shares no direct interest in their success, does not share a common cultural understanding or experience of living and working in Australia.

Accountability

Typically, representatives who are unable to effectively represent a constituency can be held to account within pre-defined term limits, elections and preselection processes. No such accountability exists for our Head of State. They are appointed (hereditarily) for life, regardless of ability or merit. They are not required to publish or justify their decisions, are exempt from the level of scrutiny applied to other office bearers, and they maintain sole discretion over the publication of their decisions and correspondence.

There is no current mechanism available to hold an individual occupying the role of Head of State accountable for their actions. While it is possible for the Government to remove the Governor-General as the Monarch's representative, it is not possible to remove the Monarch. The only means to achieve such accountability is to amend the Constitution through the conduct of a lengthy and costly referendum, which even then focuses on the nature of the

office, rather than the actions of an individual. The nature of the Head of State's powers and responsibility for constitutional affairs makes this particularly problematic in the event of a constitutional crisis.

A lack of accountability and transparency engenders distrust and is at odds with accepted democratic standards in Australia. It would not be considered acceptable for any other public office position and is not appropriate for the office of Head of State.

Representative Democracy

At the heart of Australian democracy is the notion that Australians have the right to choose representatives who align with their values to make decisions on their behalf, and our system of representative and responsible government is the core feature of our Constitution.

Modern Australia has benefited from migration from nations all across the world, and the unbroken ancient connection and presence of Australia's First People, to build a new nation. Together, we have become one of the most democratic, multicultural and prosperous nations on Earth.

While there were many that conceived of Australia as an extension of the British Empire, few if any Australians conceive of our nation in that way today. The 2016 Census shows 67% of Australians were born in Australia. Of the remainder, almost one in five arrived since 2012. Only 3.9% of Australians were born in the UK – less than the combined number of Australians born in India and China. Only a small minority of those born outside of Australia were born in a country with the British Queen as their monarch. An increasing number of Australians (23.3%) now list 'Australian' as their ancestral heritage; a display of primary connection to Australia rather than any other national heritage. More than half of Australians declared themselves as third generation Australians (where they, and both parents were born in Australia).

We are a proud, independent nation – a nation of nations - with a vast variety of national and cultural backgrounds coming together for the common good.

Yet our Constitution has failed to keep pace with these developments. How democratically consistent is it to have a hereditary head of state appointed from only one of those heritages, rather than chosen on merit by Australians, to exclusively serve Australia's interests?

Our Constitution was written to allow it to evolve. The drafters of the Australian Constitution intended for it to be a living document, responsive to the nation's needs and its people. For that reason, the authors of our Constitution included the referendum provision, not with a super-majority of two-thirds or some insurmountable hurdle but with a simple majority of voters nationally and the concurrence of a majority of voters in a majority of states, consistent with our Federal system of government. It was written to be responsive and should now be representative of the needs of Australians.

Hereditary, genetic selection is not the only restriction governing who can serve as our Head of State. Our Head of State is also required to be the first-born heir in their family and have particular religious convictions (in communion with the Church of England as its Supreme Governor). Even if the hereditary selection of head of state was removed, the subsequent discriminatory selection criteria pro-actively excludes Australia's Catholics, all Pentecostal

and most protestant Christians, Jews, Muslims, Hindus, Atheists and anyone not accepted to be in Communion with the Church of England (at least 86.7% of the Australian population in 2016). As the recent debates regarding religious discrimination show, it would be considered abhorrent to apply such criteria to any other public office position.

An Australian, Chosen by Australians as our Head of State

As the Constitution stands, Australians do not choose who becomes Australia's Head of State. The heir apparent automatically assumes the throne and becomes our Head of State with no further official approval required.

Constitutional reform that places that important decision in the hands of Australians, would re-engage the public in important discussions about Australian values, democracy and what they would like to see from our system of government. It would increase awareness of the Constitution's existence and substance and the role and office of an Australian Head of State. The participatory nature of a public referendum on for constitutional change would involve the public directly in the decision-making process and be one of the most substantial acts of civic participation in recent decades outside of an election.

If passed, the referendum would be a resounding rejection of the idea of elitist hereditary rule and an endorsement of the independence of Australian democracy. The office of the Australian Head of State would increase in profile and awareness about who our Head of State is, and the important role they perform, would increase. For the first time since European settlement, Australians would have the opportunity to have a head of state that represents them. Discriminatory provisions that exclude most Australians of faith (and those without faith) and on the basis of their genetics would be abolished. Our Head of State could finally represent Australian values and champion Australia's interests and people. They could be a unifying figure; a role-model that resonates with Australians.

Concluding Remarks

We strongly believe that the method for the selection of our Head of State works against the promotion of democratic participation, inclusion and the development of a cohesive national identity. If the most senior role in our national Constitution does not live up to the standards and values that Australians hold deeply, then we cannot expect Australians to feel represented by them and have ownership as citizens over them. Parliamentarians, judges, members of the Australian Defence Force and other such positions that require an oath should swear an allegiance to those they serve: Australians. Until such a time as constitutional and legislative reform to correct these inconsistencies has been achieved, there will be an ongoing democratic deficit in our Constitution and our nation.

We thank the Committee for the opportunity to share our views and would welcome the opportunity to contribute further to the Committee's deliberations.

Yours faithfully,

Peter FitzSimons AM, on behalf of the Australian Republic Movement.
Chair of the ARM