

I ask that you consider and accept the following supplementary submission to the committee and trust that it is not too late to have it included,

Also I would ask that my previous submission needs amending on p7....where it states "it may be accepted that the United Kingdom may not answer the description" omit the word not as it is a mistake.

also in my submission as it appeared in the submissions booklet, it seems there was somehow a mistake made which I haven't quite figured out, on page 12 it is numbered ..1)2)a)b)1)2)3)4)5)6)7)8) it should read as it does on the net, 1)2)a)b)3)4)5)6)7)8)9)10).

Also could you please make sure that all form letters are recorded for the benefit of the report and can you get back to me with the numbers received and inform me of their content, as I am sure there were at least 300, many of them were in the format of submission 4 and I would be pleased to know how many got to Canberra.

Thank you very much, and I must say that your secretary Rose Verspandonk needs congratulating for the way she kindly treats people at hearings, this lady gets in amongst the crowd and makes sure that everyone knows what's going on and makes sure that they may have a say, I think she deserves a pay rise at least.

Yours Pat Coleman

SUPPLEMENTARY SUBMISSION TO THE SELECT COMMITTEE ON THE
REPUBLIC REFERENDUM.

At the Townsville hearing on the 20th of July I was asked a question by the committee which I feel I did not adequately answer, and in that respect did not clarify the point I was trying to make before the committee.

The question asked of me related to previous questions asked of other witnesses and this was,

“Well the PM can dismiss the Governor General now, so what will be any different if the bill gets up”

My answer was that we would lose an extra layer of accountability.

I will turn now to the argument that will back up my claim.

Although it is a sorry state of affairs that we have a head of state that gets to ride around in Rolls Royce's or Bentley's as the case may be from time to time, this blue blood has whether I or you like it or not –a legal position and this has been reaffirmed in the latest high court case on this issue *Sue v Hill*.

This does not derogate from the fact that England is in fact a foreign power and has no legislative power over us whatsoever and it is unlikely that a monarchist like John Howard would ever cede those powers back to England and its parliament due to the simple facts of economic reality and economic jealousy.

But the fact remains that even though appeals to the privy council have been abolished and that we are a distinct legal personality of our own and I might add a sovereign personality, the Queen is of course still, aside from any arguments over whether its an English Queen or an Australian Queen, she is a part of our constitution as it stands.

Section 1 of the constitution states that

(1) The legislative power of the commonwealth shall be vested in a federal parliament, which shall consist of the Queen, a senate, and a house of representatives, and which is herein after called “the parliament”, or “the parliament of the commonwealth”

And further sections 59 and 60` state that

59. The Queen may disallow any law within one year from the Governor Generals assent, and such disallowance on being made known by the Governor General by speech or

message to each of the Houses of Parliament, or by proclamation, shall annul the law from the day the disallowance is so made known.

60. a proposed law reserved for the Queens pleasure shall not have any force unless and until within two years from the day of on which it is presented to the Governor General for the Queens assent, the Governor General makes known, by speech or message to each the Houses of the Parliament, or by proclamation, that it has received the Queens assent.

As I have stated I am a republican, but what I have to say is that I am also a law student and what the government is proposing for section 59 is simply saying that the President will have the reserve powers of the GG. But one of the powers that the GG has is clearly to reserve a law for the Queens pleasure for her to assent or not to assent.

Thus a layer of accountability will be lost and will place in the PM's hands the power to dismiss which will not be justicable and the power to pass laws that will be unfettered, not only because the GG wont be able as a last resort to go to that -dare I say it or even admit it ...higher authority. But as seen in the consultation draft the government wants to begin to place some sorts of restrictions on who may be able to appeal from supreme courts to the high court, so ultimately not only will the President not be able to do anything about it but neither will the people.

If this is looked at in a real sense using environmental impact studies and approvals as an example, you will see there that there has to be layer upon layer of accountability (At least before the Biodiversity bill).

But if there is no compensation for that loss of accountability there is then no hope on the part of the people for a last avenue of appeal against oppressive laws.

As I said at the hearing there needs to be that extra layer of accountability, whether that be that the president has recourse to judicial review in the high court or that any Australian citizen may bring an action in the high court on the constitutionality of any bill or proposed law or existing law on the grounds that it is oppressive or dangerous to the ecosystem.

One merely has to remember the outcome of the *Political Broadcasts Case*, what would have happened there if a layer of accountability was lost.

By way of another analogy, Canada has solved this problem before it has arisen, they still have the Queen as their head of state but they have put into place a charter of rights and the following passages I think will adequately press my point home, and remember I told you during the hearing of a few experiences I have had one of those being the day before the hearing where a judge found me guilty on appeal in a free speech case in the Townsville district court by distinguishing every high court case on freedom of communication. I also told you that in another free speech case that Legal aid had not processed my application in time to meet the appeal time thereby stymieing my ability to go to the Queensland court of appeal.

The Supreme Court of Canada's initial activist and liberal interpretation of the Charter (subsequently followed by the lower courts) is reflected in the following figures;

Between 1982 and 1988, the Supreme Court of Canada nullified over eight federal and 12 provincial statutes for violating the charter. It upheld 16 federal and 15 provincial statutes during the same period. Provincial appellate courts on the other hand struck down 82 statutes, or statutory provisions for charter violations between 1982 and 1988. In some cases, the legislation struck down was politically very sensitive.

Over 4000 cases involving the Charter were reported between 1982 and 1990, 100 of which involved the Supreme Court of Canada. The charter's greatest impact has probably been in the area of the criminal law, where as a result of the Charter, much of the law has been recast. At least 75% of Charter cases deal with matters such as substantive criminal law, sentencing, police and prosecutorial procedures and evidence. The 1992 Supreme Court decision in R v Ascov is an instructive example of one court decision having enormous ramifications. In that case, the court considered what might constitute unreasonable delay with respect to the charter right 'to be tried within a reasonable period' and held that the delay caused by inadequate institutional resources would not necessarily be excused. The decision resulted in a total of 51 791 charges in the province of Ontario alone being stayed between October 1990 and November 1991 (9% of all charges) as a result of unreasonable delay"

(Taken from; Legislative assembly of Queensland, Legal Constitutional and Administrative review Committee, Report No.12, November 1998, The preservation of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?, p39)

Now that is accountability, what are you going to give us if your flawed model goes ahead? Nothing, and to make matters worse you are all bound by party discipline to vote for this as is.

I asked the committee about why the senate voted down a resolution to stick by what the convention asked for, and that was not three years after the date of the referendum that there should be another convention to instigate ongoing constitutional review.

So what happens is you take away an avenue of last ditch appeal and don't compensate us and then you take away the last thing entirely HOPE, have you ever had a situation where you had nothing left but hope, for many it's the only reason they don't put a bullet through their own heads or hang themselves or slit their wrists.

HOPE is a powerful thing, and if you want to attach at least the possibility of another convention to the referendum question then you take away everything from the people. But I hope that you will realize your folly.

I have told you all previously that you aren't following the right procedure for putting this question to the Australian people, and it is a warning although I cannot do anything about it hopefully some hot shot constitutional lawyer can.

So what we have is constitutionally required freedom of communication between government and the people concerning political matters and a matter concerning a referendum conforming s128 of the constitution being burdened because people are not

going to be able to make a proper and fair choice because you wont allow any extra information to be in the questions, such as an extra question on direct election or a bill of rights or further constitutional review.

And I might be only a first year law student, but I have seen another case called *R v Coco* 179CLR 427 , in that case it was decided that governments must have consideration i.e. must not interfere with human rights when passing laws .So that means that if you don't ask the right questions then you are denying us the right to chose and if you are denying us our right to chose whether we can elect our head of state or have a bill of rights you are infringing a human right to democracy and freedom.

Pat Coleman