

8 December, 2008

Senate Standing Committee on
Finance and Public Administration
Canberra, ACT, 2600

INQUIRY INTO PLEBISCITE FOR A J AUSTRALIAN REPUBLIC

Senators:

I submit for your consideration—

- a] the enclosed pamphlet *A Crowned Republic? &*
- b] the following remarks...

We can have a republic without, in the federal sphere, a President. This would be desirable, at least in the short term, because it is the problem of how to elect a President which clouds the debate.

It is already generally accepted that the Governor-General is the Commonwealth's head of state. But the Queen of the United Kingdom appoints the Governor-General; in fact that role, and if required terminating his/her appointment, is almost all that is left, in practice, of her constitutional powers.

Save one! She has the power, under section 2 of the Constitution, to assign to the Governor-General *such powers and functions of the Queen as Her Majesty may be pleased to assign to him.*

As a preliminary to the Plebiscite why not take the Queen out of the picture? A simple resolution of both Houses of Parliament should be enough to authorise Her Majesty to assign to the Governor-General the function of nominating her successor. That role would continue, for the incumbent of the day, until the Constitution were amended.

Taking the actual Queen out of the picture, as a first step, would provide a cleaner slate for a plebiscite on whether the people want a Republic.

[Citizen] 

A

Crowned Republic?

by



=====

Governor-General

2. A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, *such powers and functions of the Queen as Her Majesty may be pleased to assign to him.* [Emphasis added]

from Chapter I, Commonwealth of Australia Constitution

=====

Australia may or may not wish to become a Republic. We certainly need to rid this country of the British monarchy. And that can be done without getting rid of the Crown. Simply, and without limiting future options. Here's how...

A Crowned Republic?

The question of a republic for Australia has been put back on the agenda, even if only half-heartedly. This issue does not stir people because our present arrangements seem to work okay. "If it ain't broke don't fix it!" And citizens know that there are larger issues facing the nation today, both in politics and economics.

So we could continue the Howard solution and leave well alone, at least for the time being. But can the issue be put back in its box? Better, surely, to see whether a process can be identified which would prove acceptable to most voters, and thus have on the back burner a solution which, when formally proposed, will not attract the automatic opposition which most constitutional amendments face.

At bottom, republicans want to replace the Queen with an Australian head of state. They don't care that the Queen these days is simply a figurehead, whose only actual functions are to approve recommendations for Governor made by Premiers, and for Governor-General by the prime minister. And they don't care that heads of government in this country will simply not nominate a non-Australian to those posts. They want to feel fully independent of Britain, as India is for example.

At least they feel no need to withdraw us from the Commonwealth of Nations, so the Queen (and her successor) would continue to be recognized as an important figure in our international affairs. Our prime minister would continue to have Royal contact at world and regional meetings with her.

Monarchists, the other party, want to keep the status quo. Most would be prepared to concede one point, that the Governor-Gen-

eral should be regarded as the nation's head of state. But this simple solution does not satisfy most republicans. Saturated by US news, our electors would like to have a vote for the Australian president, just as they imagine American voters do. (The existence of the US Electoral College is unknown to the average Aussie.) So this is where the problems start.

Who is to be boss? If we had a popularly-elected president he would naturally feel that he had a mandate from the people. But our system calls for Parliament to be paramount: the prime minister, so long as he retains the confidence of the House of Representatives, is head of government, "the Boss". How can we be sure that two elected leaders, head of government and head of state, would work co-operatively together?

More Problems — Simply electing the Governor-General by popular franchise might work if only the words of the federal Constitution did not give him (or her) such enormous power. And it does not even name the office of Prime Minister. Any such move would need to be done in association with amendments which gravely re-defined the authority of the Governor-General. Even if the electorate wished to restrict the power of the PM of the day, this would be so...not that restricting the power of the PM might not be a desirable option! In fact, the ability of the G-G to dismiss a PM if she perceives him to be acting unlawfully could well be one which the electorate—this long after the anger of 1975—might wish to keep. And nominal control of the Defence Forces, as Commander-in-Chief, serves well to indicate that the armed forces should be beyond politics.

In corporate governance, which might serve as a microcosm of the national governmental problem, there are at least two "bosses" and the typical firm cannot operate constructively unless they work in harmony. The Chairman represents the directors, and the Chief Executive Officer controls the organization. In most companies there is no monarch but there is a substitute—the idea of "the Company". Discussions about fundamental issues inevitably involve concepts such as the good of the company, the traditions of the company, and "what the shareholders would accept". In many ways this concept serves the role that is played, at the political level, by the monarch.

So the presence in our system of an actual monarch might not be necessary. Could monarchists in that case give up the Queen as part of their demands if the rest of the system did not change? Could we have a Crowned Republic, where the British Queen bowed out but the Crown, in right of the Commonwealth of Australia, remained? It might be a legal artefact, and a more or less temporary stage, but still a well understood and acceptable concept.

Practicalities - A referendum to achieve this might not be passed but it seems that the result could be achieved without the need for a referendum. Of course both main parties would need to agree but the people would simply have to find the result acceptable. All that would be needed would be for the Queen to assign certain powers and functions to the Governor-General, which she is empowered to do under the last clause of section 2 of the Constitution...she may assign "such powers and functions of the Queen as Her Majesty may be pleased to assign to him".

She, following the lead of Prince Charles, her presumptive successor, has long made it plain that Australia's constitution is our concern. They would presumably accept a resolution of the Federal Parliament,

especially if it were unanimous or overwhelming, asking that she hand over the following powers and functions to the Governor-General:-

- the right to appoint Administrators as required, and deputies; and
- the appointment, on the advice of the Prime Minister, of his (or her) successor.

(This argument ignores ss. 58, 59 and 60, re the Disallowance and Reservation of bills, as they are already dead letters. In due course, section 61 would also need amendment but that is purely a wording issue.)

The second transfer listed, the right to appoint a new Governor-General, is really the only true function which remains to the Queen. (The end of Peter Hollingworth's term demonstrates that in practice public confidence is needed for a Governor-General to continue in office: there is probably no need for a legal procedure to rid the polity of an unpopular head of state. A legal procedure could be developed and eventually adopted but this is a detail, given the way the system actually works.)

Once Her Majesty had issued an instrument to the effect proposed we would in future read all references to her in the Constitution as references to *the Crown*. So the Commonwealth's constitutional arrangements would no longer include a living monarch but instead a disembodied Crown. We would have a Crown without a monarchy, in practice a republic without an elected president...in brief, a Crowned Republic.

Difficulties - The essential elements of this scheme, as outlined, do not mean that there would be no difficulties to complicate its basic simplicity—but they are all soluble...

What if the Palace wanted a referendum? Answer, compromise on a plebiscite which might not require the difficult requirement of a majority of *states* as well as a majority of

voters. (An additional advantage is that a plebiscite could include overseas citizens in the vote, most of whom are excluded under existing law and practice.) If a plebiscite were not carried then of course forget it. There is no legal need for a referendum, as the wording of the Constitution would not be changed.

But the Schedule to the Constitution, setting out the oath (and affirmation) of allegiance wordings, might need a referendum! Perhaps, but this is a detail: the vote could be tacked on to the next general election.

What about the Royal Style and Titles Act? What about it? As a statute it can be repealed by Parliament.

Some critics may consider that this proposal is *too* simple, even tricky. But if it works, even as a step on the way to a more fully considered republic, then surely it has merit. And merit it has, for the following reasons:-

- a] it secures an Australian incontestably as head of state;
- b] it avoids textual amendment of the body of the Constitution;
- c] it skips the problematic argument about electing the Governor-General;
- d] it removes the issue of codifying the powers of a Head of State;
- e] it recognizes that the Queen's actual involvement in our polity is already minimal;
- f] it involves Her Majesty in giving away her powers, not having them taken away;
- g] it retains the Crown but loses the monarch, so we become a Crowned Republic.

A final reason might be that it could be seen as a favor to the UK, our friend but no longer our guardian. We have not been a colony for 108 years, and the British might appreciate it if we stop trying to share their Queen!

Moderate adherents on each side of the current Republican debate should be able to compromise on this suggestion. (If not, at least let's take a baby step and let Parliament declare that the Governor-General is our head of state.) Moderate republicans should agree because it gives us indisputably an Australian head of state. Moderate monarchists can continue to honor Her Majesty as Head of the Commonwealth of Nations. This is more than a ceremonial role, at least with the highly-experienced present monarch: Prime Ministers of many nations value her wisdom.

Finally, this is a step which politeness does not require be put off until the death of Queen Elizabeth. It can be carried out within months of the two main parties agreeing. And then Australia could move on.

#