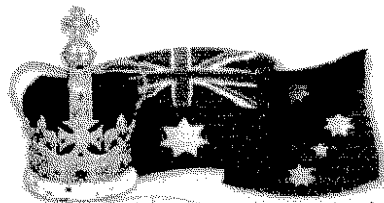


THE
**AUSTRALIAN
MONARCHIST
LEAGUE**



Australians Protecting the Constitution
ABN 50 476 001 156

22nd January 2004

The Secretary
Senate Legal and Constitutional References Committee
Parliament House
Canberra ACT 2600

Dear Secretary,

THE INQUIRY INTO AN AUSTRALIAN REPUBLIC

We set out below our interim comments on the Inquiry into an Australian Republic established by the Australian Senate. We would appreciate being called before the Inquiry to present our arguments.

1) **GENERAL:**

- A) The Discussion Paper produced by the Legal and Constitutional References Committee of the Australian Senate entitled 'Inquiry into an Australian Republic' is so biased in favour of a republic that it is an affront to the democratic Institution of the Parliament. The reported private comments of individual members of the Inquiry do nothing to bolster confidence that the Inquiry will reach an impartial finding.
- B) The Discussion Paper raises thirty questions on matters relating to the complexities of changing to a republic, but the terms of reference allow no provision for the electorate to voice their dissent to any sort of republic!
- C) The Senate is a House of Review and has no proper business in using its resources to attempt to activate an issue the Parliament and the electorate have already dealt with.

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in Australia was
The Late
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2) HEADING - RECENT HISTORY OF MOVES TOWARDS A REPUBLIC:

A) The Paper states "*Recent polling suggests that a majority of Australians now support the move to an Australian Republic*" It refers the reader to endnote ^{V1} which relates to a Newspoll survey published in The Australian of the 15th November 2002 which actually showed that 52% of those surveyed in July 2001 were in favour of Australia becoming a republic.

I would suggest to the Inquiry that a majority of 2% of 1, 200 telephone interviews (or roughly 0.006% of the population) conducted two and a half years ago is a poor basis on which to make such a strong statement as "a majority of Australians now support the move to an Australian Republic", particularly when of that 52%, 13% were indicated that they were only "*partly in favour*"!

One also wonders why the Committee did not refer to the more recent poll conducted between the 1st and the 3rd of November 2002 which revealed a decline in total support of a republic to 51% of which 18% were only partly in favour! The same November 2002 poll revealed that 54% of those surveyed thought that the republic issue was a "*distraction from Australia's real problems*".

3) HEADING – ISSUES TO BE CONSIDERED
SUB-HEADING - WHO IS THE CURRENT HEAD OF STATE?:

A) It is noted that the Paper does not capitalise the words 'Head of State' or 'Sovereign'.

B) Under this sub-heading, reference is made to an opinion: "*..that the Governor-General is appointed to represent The Queen, not Australia.*" Although some allusion is made to the powers of the Governor-General under the comments in Question 1, surely reference should have been made at this time to the wording of the Constitution and in particular to Sections 61 and 62 which make clear that whilst under Section 2 the Governor-General is "*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*" such appointment is also "*subject to this Constitution*" which means that the Governor-General, on his appointment, assumes in his own right the exercise of the authority of The Queen under the Constitution i.e.:

61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

The independence of such Authority was made clear in 1975 when the action taken by the Governor-General to resolve the issues then confronting the Nation were indisputably his own and without consultation with The Queen.

4) SUB-HEADING - TITLE OF HEAD OF STATE:

A) The Paper states that “*Some might see ‘Governor-General’ as an antiquated term, redolent of Australia’s British Colonial past.*” This comment is a total misrepresentation of the fact. Prior to Federation, which created an Australia totally independent of the British Government, no Governor-General ever existed in the Australian Colonies, only following our independence. The fact that the Australian Governments until after 1926 chose to retain links with the British Government does in no way detract from the fact that on Federation in 1901, Australia became a Sovereign and independent nation.

5) HEADING - A PROCESS FOR MOVING TOWARDS AN AUSTRALIAN REPUBLIC:

A) The Paper relies heavily on the Conference held in Corowa in December 2001, yet that Conference was a private Conference convened by the Corowa Shire Council and funded by the Council and the Victorian Centenary of Federation following the private agenda established by the former Governor of Victoria the late Richard McGarvie and other individuals.

B) The endnotes of the Discussion Paper refer to ‘Government representatives’, however it is understood that all participants attended by invitation or application, not by delegation!

It appears that the web-site established for the Conference is defunct.

- C) The Australian Monarchist League is not in favour of the Government holding one or more plebiscites. A plebiscite has no legal meaning and is not governed by any legal process and can therefore be used by the framer of the question to manipulate public opinion to obtain the answer it requires to legitimise its programme. Our Founding Fathers had considered the use of plebiscites and firmly rejected that option as being contrary to the Westminster System.
- D) For a Government to use one or more plebiscites to overcome a previous referendum defeat also establishes a very dangerous constitutional precedent.
- E) The suggested question deriving from the privately organised Corowa Conference "*Should Australia become a republic with an Australian Head of State*" is a trick question and can be legally challenged on the basis that, whilst the Constitution does not refer to the term, there is sufficient evidence to confirm that the Governor-General is Australia's Head of State.

Even former Prime Minister Paul Keating referred in 1995 to the Governor-General as Australia's Head of State and a recent Newspoll December 2003 survey asked questions on the Governor-General stating "*The Governor-General is the Head of State of Australia.*"

CLOSING COMMENTS:

From the time the Australian Labor Party Conference held in Hobart in 1991 voted to encompass a Republic as Party Policy, there were eight years of continuous campaigning for a republic and for the different models of electing or selecting a President, including the meetings of the Republican Advisory Committee established in 1993 cumulating in the Constitutional Convention which met in 1998 and the 1999 Referendum and the associated campaigns all of which cost well in excess of one hundred million dollars funded by the Australian taxpayer.

In 1999, the Australian Newspaper admitted that for ten years it had been trying to 'influence' the Australian People to accept a republic and had failed. The Australian Newspoll of November 2002, as previously mentioned, showed that 54% of those surveyed indicated that the republic issue was a "*distraction from Australia's real problems*".

It is thus evident that the opinion polls the Discussion Paper seems to rely upon so heavily, clearly indicate that not only is there is absolutely no overwhelming majority in favour of a republic but rather quite the reverse with most Australians being of the opinion that the matter of constitutional change has been well and truly debated and a decision already taken.

The proposals raised in the Discussion Paper to hold a series of plebiscites, Parliamentary Joint Committees and a further Constitutional Convention and Referendum will therefore serve only to further alienate the people should any further time and particularly additional monies be expended on this issue.

A handwritten signature in black ink, appearing to be 'P Benwell', written over a horizontal line.

Philip Benwell MBE
National Chairman
Australian Monarchist League