

Inquiry into an Australian Republic

On 26 June 2003, the Senate referred the Inquiry into an Australian Republic to the Senate Legal and Constitutional References Committee.

The Committee has determined to report by **3 August 2004**.

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.

The committee is also required to facilitate wide community participation in this inquiry by conducting public hearings throughout Australia, including in rural and regional areas.

Lodging Submissions

The closing date for lodgement of submissions with the Committee is **31 March 2004**. Submissions become Committee documents and are only made public after a decision by the Committee. Unauthorised release of submissions is not covered by parliamentary privilege. Further assistance can be obtained by phoning the secretariat on (02) 6277 3560.

The Committee encourages the lodgement of submissions in electronic form to legcon.sen@aph.gov.au. Please ensure that a postal address and phone number is enclosed with all email submissions.

PROGRESSIVE LABOUR PARTY

Di Gibson, President

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Introduction:

The Progressive Labour Party is one of the few registered political parties that have a fairly detailed policy for a new Republic. This policy presents a comprehensive strategic approach that also advocates and outlines the extensive involvement of the people in the process towards creating a republic. This would result in the people owning the outcome of the process that is not only the Republic but also its new constitution. The issue of the Head of State is only one small first step in this process and not necessarily the most important step. However, because the terms of Reference of this Inquiry are extremely limited, which characterises it as a Minimalist type of Inquiry, we will address the Head of State issue only – while emphasising that this is a serious shortcoming of the Inquiry. Nevertheless, because we are aware of the importance of at least some input we have decided to submit that part of our Policy that deals specifically with that aspect. We can only answer some of the 30 Questions of the Discussions paper because the details sought are not as yet in our Policy.

We first provide an outline of our ***The Republic, Policies for Political, Electoral and Constitutional Reform***. The complete policy can be viewed on our website www.progressivelabour.org

Preamble:

a/ The PLP proceeds from the premise that major political, electoral and constitutional reforms are long overdue in Australia and that they will not be tackled by the major parties. In developing a blueprint for change we prioritise an order in the change process on the basis of urgency and achievability. Therefore, what follows is an ambit package, eg. proportional representation for all Parliaments is high on the list, followed by the abolition of state upper houses, followed by the creation of a two-tier structure of elected government. Depending on the changing preferences of the Australian people some stages may be speeded up, collapsed or skipped altogether. What we present here is an overall concept for change.

b/ Our principal policies for a new Republic are:

President: elected DIRECTLY by the people, with symbolic powers only:

Note: the Irish Presidential model provides a useful guide: strictly symbolic powers unlike the present powers of either the Monarch or Australian Governor-General. In addition, persons who have been members of any Parliament during the past 10 years cannot be candidates. Steps would be enforced to prevent expenditure by parties or business interests of large sums of money to distort the result of the poll.

A President is needed to perform a variety of ceremonial and legislative functions.

Two-tier system of elected government: National government and a much strengthened local government system, coupled with administrative local government regions

Proportional Representation: aimed to create greater diversity in Parliament

Improvement in the Quality of Political Executive Government, with consideration of a number of options for democratisation and broadening of cabinet government in Australia.

Fixed four-year parliamentary terms

A comprehensive Bill of Rights

Safeguards for: **(a)** the environment; **(b)** Indigenous Peoples' rights; **(c)** other minority groups

c/ PLP policy is aimed at creating the Maximalist Republic, a Republic for the people, by the people and of the people - as it should be! A mere change of ceremonial Head of State would still leave Australia with a rigid and archaic constitution, an outmoded political system and a grossly unequal society. This would be piecemeal tinkering of the worst kind. The time has come to consider clear alternatives to the federal form of government, the two-party system, the electoral system and the scope of government. A Bill of Rights, constitutional protection of the environment and a conciliatory settlement of indigenous rights need to be incorporated in a Republican constitution.

d/ The PLP has adopted the position that a sovereign people naturally have the unfettered right to rewrite and replace their constitution if they believe this to be a requirement for their survival, prosperity and improvement of their democracy. The PLP holds that what has happened in Australia in recent years is like putting the cart before the horse.

Neither major party has a program for significant constitutional and political change.

e/ The notion that a government can be enterprising - and enabling - itself is the antithesis of the view that only private enterprise can deliver economic recovery, jobs and future prosperity for Australia. Many other countries, even those with a significant private sector, have entirely government-owned or jointly-owned public corporations to run key industries, e.g. France and Norway. As the PLP is of the view that Australia should aim at government enterprise rather than privatisation it becomes imperative to build real quality and independence into the Government and Parliaments and to ensure that Government and Parliaments cease to be the servants of powerful multinational corporations and financiers in the private sector.

End of PLP Policy Section

Conclusion: It is PLP Policy that the President is elected DIRECTLY by the people, and should enjoy symbolic powers only. Our Policy does not dwell specifically on the following issues raised in your 30 Discussion questions, stated below, eg.

How will the Presidential candidates nominated? Who or what body will vet the nominations or make a selection for the people to vote on? What is his/her relationship with the Government/Parliament? Could the President take political positions? Could they be former politicians? Should the so-called Reserve Powers now said to be held by the Governor-General be codified? What bodies should assist the President, in various ways?

We regard all such questions as of importance but the principal ones "Directly Elected" and "Symbolic Powers Only" are of overriding importance in our view - as is the realisation that there are a whole range of constitutional reforms beyond the Presidency that need to be addressed. We will restate your 30 Discussion Questions below and briefly provide some provisional answers to them in the context of overall PLP policy.

Your 30 Discussion questions:

1. *Should Australia consider moving towards having a head of state who is also the head of government?*

No.

2. *What powers should be conferred on the head of state?*

Symbolic powers only.

3. *What powers (if any) should be codified beyond those currently specified in the Constitution?*

The PLP has not dealt with that (quite contentious) issue in its policy document but in general we would be opposed to the President exercising powers which are unclear and subject to a variety of interpretations on the basis of unwritten conventions. We would prefer such conventions to be codified so that all the powers are transparent for all citizens.

4. *Should some form of campaign assistance be available to nominees, and if so, what assistance would be reasonable?*

We support generous public campaign assistance available to candidates in elections (this is in our Policy) and, understandably, would support comparable assistance to Presidential candidates as well. This would open the contest to any person put forward as candidate. The alternative of making it a contest for the well heeled and/or those supported by strong corporate interests only is anathema to PLP policy. In fact, a cap on direct and indirect private donations should be instituted. The level of public financial support should be substantially higher than for candidates for political office because, in this case, the electorate is the entire nation and much more ground needs to be covered than, say, one electoral district.

5. *Should/Can political parties be prevented from assisting or campaigning on behalf of nominees. If so, how?*

The PLP's position is not known on this issue at this stage.

6. *If assistance is to be given, should this be administered by the Australian Electoral Commission or some other public body?*

Yes, this would seem very desirable.

7. If the Australian head of state is to be directly elected, what method of voting should be used?

Cannot answer this question at present – no policy.

8. If direct election is the preferred method for election of a non-executive president, will this lead to a situation where the president becomes a rival centre of power to the Government? If so, is this acceptable or not? If, not, can the office of head of state be designed so that this situation does not arise?

a. No, it won't necessarily lead to that situation at all. Comparative information available about contemporary Republics that have **directly elected and symbolic** Presidents makes a mockery of the frequent contentions of particularly conservative commentators in Australia, eg. constitutional lawyers, political scientists and politicians, that (a) any directly elected President would provide an undesirable, competitive authority to the Government (PM) of the day because s/he has been directly elected and would have a popular mandate; (b) direct election would invite any pop stars, sports heroes or other figures of high popular status to run for President while lacking the suitable experience required for the functions of the Office. Comparative study in this subject-area, which is disturbingly scarce in Australia, shows clearly that neither of these fears can be substantiated. These views are most likely aired as a result of ignorance and/or with the purpose to maintain the undesirable status quo of the current political establishment and the constitutional situation.

b. In answer to the question "would this be acceptable"? Answer is NO. **The following six Republics have Direct Election combined with Symbolic Presidencies: Ireland, Finland, Portugal, Austria, Hungary and Iceland.** We are not aware of any "dual authority" problems there flowing from that combination. Although France and the US have directly elected Presidents we don't count them here because they have Executive Presidents. We regard the US Presidential system as undesirable for Australia.

Furthermore, there are many other Republics that have Symbolic or largely Symbolic Presidencies combined with a form of Indirect Election (including Electoral Colleges), eg.

Italy, Greece, Switzerland, Germany, Malta, Czech Republic and South Africa (seven). No problems are reported about dual authority conflicts from These countries either.

c. Quite obviously the office of head of state can be designed so that the situation of "rival power centres" doesn't occur **or** is sensibly managed. Constitution makers

in all of these countries above have considered this question and build in safeguards to avoid it, successfully as experience demonstrates. Surely, this can be done in Australia as well but it should be left to (often) vague “Constitutional Conventions”

9. *Who should be eligible to put forward nominations for an appointed head of state?*

We have no policy on this. We do not support an appointed head of state. This question is “Not Applicable” for us.

10. *Should there be any barriers to nominations for an appointed head of state?*

No policy on this. “Not Applicable” for us.

11. *Should there be a maximum and/or minimum number of candidates?*

No policy.

12. *Should there be a minimum number of nominators required for a nominee to become a candidate?*

No policy on this. Most countries have a minimum (which varies quite substantially), some even a maximum as well.

13. *What should the head of state be called?*

President of Australia.

14. *What should be the length of a term of office for head of state?*

No policy, we are aware of the variations in the Republics mentioned above. These are questions that should be put to voters in multi-question plebiscites.

15. *Should a head of state be eligible for re-appointment?*

No policy. Most Republics have eligibility of one further term.

16. *Should there be a limit on the number of terms an individual may serve as head of state?*

See question 15.

17. *Who or what body should have the authority to remove the head of state from office?*

There is no specific PLP policy but in the case of Direct Election the possibility of recall by the people should logically be included. Perhaps a special majority of parliamentarians in a joint sitting of both houses could be an additional method – which is used in some of the Republics mentioned.

18. *On what grounds should the removal from office of the head of state be justified?*

No policy available.

19. *How should a casual vacancy be filled?*

No policy.

20. *What should the eligibility requirements be for the head of state?*

No PLP policy. However, most Republics have the same criteria as for the parliamentarians, especially the lower house.

21. *On what grounds should a person be disqualified from becoming head of state?*

No policy. Most Republics have the same criteria as for MP's, plus minimum age limit.

22. *Should the head of state have the power to appoint and remove federal judges?*

No policy. "Not Applicable"

23. *Should the head of state have the prerogative of mercy?*

No policy. "Not Applicable"

24. *Should the head of state be free to seek constitutional advice from the judiciary and, if so, under what circumstances?*

No policy. "Not Applicable"

25. *What is the best way to deal with the position of the states in a federal Australian republic?*

The PLP favours the abolition of the states and the creation of a two-tier system: expanded national and expanded local governments.

26. Should there be an initial plebiscite to decide whether Australia should become a republic, without deciding on a model for that republic?

We don't think so because from the opinion polls in the mid to late 1990s it was already obvious that the voting public wanted a republic provided that there would be a directly elected President. Research after the Referendum further established that the referendum question was rejected for that reason, and the single model itself, which not only provided for a "politicians' President" but also gave the PM more power than he has now. A plebiscite without a choice of several models, certainly not just one, would be a waste of money – and might even be productive of a negative answer again!

27. Should there be more than one plebiscite to seek views on broad models? If so, should the plebiscites be concurrent or separated?

Yes, ample use of plebiscite is strongly advocated by us. Some questions can profitably be put concurrently. With others the Government may need to separate them and put them sequentially. This strategy would not only be helpful for the head of state issue but can be used for all subsequent changes to the constitution, as envisaged by the PLP.

28. Should voting for a plebiscite be voluntary or compulsory?

The PLP policy supports compulsory voting in all elections and plebiscites.

29. What is the best way to formulate the details of an appropriate model for a republic? A convention? A parliamentary inquiry? A constitutional Council of experts.

The PLP has no specific policy on this but would favour extensive popular participation in the process. A new Convention would have to be unlike the one in February 1998, when half the delegates were selected by the Government. The result was that far more than half were politicians, or former politicians, and the result was predicatably unsatisfactory. A Convention needs to be made up of a broad spectrum of community representatives while the politicians and constitutional experts are there primarily as advisors, not as principal decision-makers.

30. What is the preferred way for a process to move forward towards an Australian republic?

Our preferred way follows from our Policy. First, an overall strategy is required which details the several areas for change, in other words a strategic plan instead of piecemeal tinkering which we have had in the last 100 years.

Beginning with the head of state and republic issues, by process of plebiscite followed by referendum, we move on to wider constitutional change, eg amending section 128, following exactly the same process, multiple question plebiscites followed by referendums. The potentially most controversial issues, like abolishing of states, improving the quality of and democratising the executive, can be left to the last round of constitutional change so that a progression of complexity is achieved over time. This facilitates the learning process amongst voters. Voters need to become familiar with the process, absorbing relevant details through debates in the media and, through this process, developing a sense of ownership and new pride in their Constitution.

The end result of that process should be a situation that is the opposite from what exists now.

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31st March, 2004