

31 March 2004

The Secretary
Senate Legal & Constitutional References Committee
Parliament House
CANBERRA ACT

By Fax (02) 6277 5794

Dear Sir/Madam

INQUIRY INTO AN AUSTRALIAN REPUBLIC

This submission is on behalf of the New South Wales Council for Civil Liberties in respect of the Inquiry into an Australian Republic. The N.S.W. Council of Civil Liberties supports Australia becoming a republic and sees major civil liberties issues against the retention of the present constitutional arrangements.

(a) Hereditary rights, Nationality and Discrimination

The Council is of the view that any constitutional or government position in the Australian Constitution should not be selected simply on the basis of hereditary rights. Governmental and constitutional positions should be based on merit with that selection either being made by election or selection by the elected parliament or the elected government of the day. This is an important and fundamental principle of democracy. The selection of the top position, albeit now largely symbolic, in the Australian Constitution on hereditary rights is an attack on the civil liberty of any Australian citizen to aspire to and serve in that constitutional position.

The view that Australia has an Australian head of state in the Governor-General suffers from section 2 of the Constitution which foremost provides that the Governor-General is to represent the Queen, which in turn is defined to mean the monarch of the United Kingdom. The role of head of state is to represent the nation and the citizens of the nation and this role cannot be carried out by an office whose primary constitutional duty is to represent a foreign hereditary monarch.

A home-grown or Australian based constitutional monarchy might be considered tolerable, as in many liberal democracies, but that is not the case here. Under the present system, the hereditary family to fill the top position under the Australian Constitution, and right to the title to Queen of Australia under the *Royal Style And Titles Act 1973 (Cth)*, is a family living outside Australia. This state of affairs constitutes discrimination against Australian born citizens as well as against citizens of various ethnic and

racial backgrounds from being eligible to hold the top constitutional position, or even to be part of the monarchical family. This amounts to an effective discrimination against Australians in our own constitutional arrangements and should no longer be maintained in the 21st century.

(b) Religious Discrimination

The present arrangements for accession to the throne breach of the letter and/or spirit of Articles 18 (religious freedom), 25 (equal opportunity) and 26 (legal equality) of the International Covenant on Civil and Political Rights.

The continuation of the present arrangements with regard to the monarchy place Australia in an apparent breach of its human rights obligations under these important conventions that have been signed and ratified by Australia. Therefore, the Australian constitutional arrangements should be amended so that Australia does comply with its important obligations under these significant international conventions concerning human rights.

(c) Sex Discrimination

Under the present rules of succession, the first born male is to take the throne. The present Queen Elizabeth II is only Queen of Australia because she had no brother. While the present Queen has been able to carry out the duties of the office, she would never have had the opportunity to do so if any of her siblings had been male despite the fact of her being first born, or more importantly being better suited to fill the position.

This blatantly sexist provision in the Acts of Succession is in stark contrast to the *Sex Discrimination Act 1984* (Cth) which outlaws discrimination on the grounds of sex. Yet again in respect of the monarchy, the ancient Acts of Succession override important provisions of Australian law in the *Sex Discrimination Act*. This is an attack on the civil liberties of Australian women to expect equal treatment under the law.

(d) International Human Rights

Australia is a party to the Convention Determining Discrimination In Respect of Employment And Occupation and the important cornerstone Covenant on Civil and Political Rights. The operative part of these

conventions is in Schedules 1 and 2 respectively of the *Human Rights & Equal Opportunity Commission Act 1986* (Cth). The present arrangements and in particular, the rules of succession and their discriminatory provisions, do not sit well with Article 1 of the Convention Concerning Discrimination In Respect of Employment And Occupation which seeks to outlaw “any distinction or exclusion of preference on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”. The present constitutional arrangements with regard to the monarchy appear to be in direct contravention of many of those areas. The provisions concerning succession of the monarch also appear to be in breach of the letter and/or spirit of Articles 18 (religious freedom), 25 (equal opportunity) and 26 (legal equality) of the International Covenant on Civil and Political Rights.

The continuation of the present arrangements with regard to the monarchy place Australia in an apparent breach of its human rights obligations under these important conventions that have been signed and ratified by Australia. Therefore, the Australian constitutional arrangements should be amended so that Australia does comply with its important obligations under these significant international conventions concerning human rights.

(e) Protection of Human Rights

It is sometimes maintained that the existence of a constitutional monarchy acts as a brake on executive government and assists in the protection of human rights. As attractive as this argument may be, it is not borne out by historical precedents in Australia or elsewhere. In historical terms the monarchs, King Victor Emmanuel III of Italy and Emperor Hirohito of Japan did nothing to prevent the rise of fascist and military dictatorships in those countries in the 1920's and 1930's. Indeed many historians would argue that they facilitated the rise of these dictatorships.

More pertinently for Australia, Queen Elizabeth II was unable to intervene when a military coup took place in Fiji ousting the democratically elected government. Pursuant to Imperial Conferences of 1926 and 1930, together with the enactment of the Statute of Westminster in 1931 (which was ratified in Australia in 1942), the Queen no longer interferes in Australian affairs except for the appointment and dismissal of the Governor-General and the Governors of the States. The monarch simply could not intervene so as to prevent an abuse of human rights in Australia and indeed Her Majesty did not intervene in Queensland in the 1970's when the right to protest was curtailed.

Further the continuance in the belief that the monarchy in some way does give a protection against human rights is a dangerous fallacy. This belief actually operates to make Australians more sanguine and less careful about their loss of civil liberties than they otherwise should be.

Conclusion

The N.S.W. Council of Civil Liberties believes Australia should dispense with the present constitutional arrangements in favour of a republic. The current arrangements are unacceptable and conflict with section 116 of the Australian Constitution, the *Sex Discrimination Act* and Australia's obligation under the Convention Concerning Discrimination In Respect Of Employment And Occupation. The provisions also appear to be against the spirit of the *Race Discrimination Act 1975 (Cth)*, the *Human Rights & Equal Opportunity Commission Act 1986* and the International Covenant on Civil & Political Rights. That Australia continues such arrangements in the breach of such important provisions to protect civil liberties in the 21st century is unacceptable.

While amendment of the rules of succession might address the issues of religious [paragraph (b) above] and sex [paragraph (c) above] discrimination, such amendment would effectively require British legislation. Such legislation does not seem likely and the other issues would remain.

Only the move to a republic, with all Australian citizens being able to aspire to all Australian constitutional positions, will properly address all the civil liberties issues raised in this submission.

The N.S.W. Council of Civil Liberties does not have a policy of favouring any particular model of republic but makes the following points.

- (1) The office of head of state should be open to all Australian citizens, irrespective of race, colour, sex, religion, national extraction, sexual orientation or social origins;
- (2) The selection should be made either by the electorate or by the elected Parliament. A decision by the elected Government alone would comply with the above principles but for such an important office in symbolic terms, it would be a more open and democratic process if selected by Parliament or by direct election;

- (3) Deciding which model should ultimately be put to the electorate in a referendum, the electorate should be consulted either by way of plebiscite or by way of an elected convention. The Council has no policy favouring
- (4) one way of another but it would be important that any plebiscite or election for a convention be as close as possible to the same electoral format as a referendum where the opinion gained will reflect as closely as possible those ultimately voting in a referendum.
- (5) The advancement of Australia to a Republic from the present discriminatory provisions would be both an important constitutional and symbolic step forward for the civil liberties of all Australians regardless of their background.

If you wish us to elaborate further on the above points or if we can be of further assistance, please do not hesitate to contact us.

Yours faithfully

DAVID BERNIE
Vice President
New South Wales Council of Civil Liberties