

Chapter Three

Constitutionally Entrenching our Flag

Hon. David Jull, MP

Copyright 1996 by The Samuel Griffith Society. All rights reserved.

Thank you for inviting me here today to talk to you about constitutionally entrenching the Australian National Flag.

I am glad to say that your invitation was one of the first that I was able to accept in my capacity as Minister for Administrative Services in the new Howard Government.

In accepting your invitation, I saw an opportunity to reiterate the Government's views on the subject of the national flag.

The Coalition Government is strongly committed to the national flag.

It was this commitment to the flag which, during the election, led us to promise to amend the *Flags Act* 1953 to "guarantee that all Australians would be consulted before any changes to the national flag were made".

In our pre-election policy statement on veterans we stated:

"The Australian National Flag, as a national symbol, belongs to the Australian people, not the Prime Minister or the Government of the day.

"Clearly the present legislative arrangement whereby the National Flag can be changed by an Act of Parliament, without the views of the Australian people being taken into account, is unacceptable."

On ANZAC Day, the Prime Minister stated :

"It's a very simple proposition...we will amend the *Flags Act* so that in future there can be no change to the Australian flag without all of the Australian people being consulted."

Before turning to this and the issue of constitutionally entrenching the flag, I think it would be worth recalling the flag's historical development.

I must say that few issues excite as much passion in the community as the question of the Australian National Flag.

And I believe that one of the reasons for this is that it is so effective a design: as a potent symbol of our nation and its history, it occupies centre stage in any debate about where we have come from and where we are going.

The Australian National Flag is the oldest of our national symbols.

Despite this, the history of the flag, like the contents of our Constitution, is not as well known by Australians as it should be.

This has undoubtedly made the flag an easy target for those who believe that its symbolism is anachronistic.

But even the most cursory examination of the story of how we came to choose our flag will reveal that it is, again like our Constitution, distinctly Australian and democratic.

The Australian National Flag was by no means the first flag to be designed in Australia.

As early as about 1823, two military officers were credited with the first recorded attempt to design a 'national' flag for Australia.

Significantly, this early design, known as the National Colonial Flag, featured a stylized representation of the Southern Cross, on the red cross of Saint George, and included the Union Jack.

It is also worth mentioning the Australasian Anti-Transportation League flag, unfurled in 1851, which again featured the Southern Cross and the Union Jack.

Three years later, in 1854, the Eureka flag was raised by gold miners at Bakery Hill, Ballarat.

This flag captured the spirit of protest and demonstrated the power of flags as symbols.

Finally, I should mention the flag of the Federation movement of the 1880s and 1890s which gave substance to their slogan: "One people. . .One destiny...One flag".

Long before Federation, therefore, Australians had come to see flags as a means to express and define their views, ambitions and unity.

It was not, however, until 1900, with Federation looming, that the Australian public were directly involved in a search for a national flag.

A Melbourne journal, the *Review of Reviews for Australasia*, launched a competition for this purpose in November 1900, offering a first prize of £50.

The journal, drawing on the symbolism of popular flag designs of the last hundred years, suggested that entries in the flag competition incorporate the Union Jack and the Southern Cross.

Upon Federation in 1901, the new Commonwealth Government announced it would also run a flag competition for two flags: "one for the merchant service and one for naval or official use".

The *Review of Reviews* agreed to combine its entries with those submitted to the official government competition, but it was not a requirement of the official competition rules that the Union Jack be included in a design for it to be considered by the judges.

Furthermore, the combined prize money of the two competitions, now £150, was increased to £200 by a donation from a private company.

In all, more than 32,000 entries were received from all over the world and from people of all ages and backgrounds, even an unnamed State Governor.

Among the more peculiar entries was a design depicting native animals playing cricket with a winged cricket ball, and another which included a rather portly kangaroo aiming a gun at the Southern Cross!

What, might we ask, did the judges make of such bewildering variety?

Mr J S Blackham, chief of staff of the *Melbourne Herald*, and Chief Executive Officer of the federal competition, candidly admitted that many of the entries could be described as "miracles of misplaced ingenuity".

In the end, the judges settled on five designs that were almost identical.

The winning designs, named the Australian Red and Blue Ensigns, were gazetted in 1903, the same year as Samuel Griffith's appointment as foundation Chief Justice of the High Court.

Since 1903, the Australian National Flag has remained unchanged, with one exception - the addition, in 1908, of a seventh point to the Commonwealth Star to symbolize the Commonwealth Territories.

Following the adoption of the national flag there was some confusion regarding the proper use of the Blue Ensign.

There was uncertainty whether it was available for public use or restricted to official purposes.

In addition to this, people were apt to use the Red and Blue ensigns interchangeably according to their own personal preference.

On 15 March, 1941 Prime Minister Menzies issued a press statement to encourage the Australian public to fly the Blue Ensign on land and for Australian merchant ships to continue to fly the Red Ensign.

After World War II, the Chifley Government sought to promote the use of the flag by raising its profile.

In 1947, Prime Minister Chifley issued a statement in support of Prime Minister Menzies's earlier statement, encouraging more general use of the Blue Ensign.

Accordingly, the flag also became a prominent feature of naturalization ceremonies in the post-war immigration boom.

Finally, in a move designed to clear up any remaining confusion regarding the status and design of the flag, the Menzies Government passed the *Flags Act* in 1953.

The Act, which received enthusiastic bipartisan support, formally established the Blue Ensign as the Australian National Flag and defined the correct dimensions of the symbols which constitute the flag.

The Act received Royal Assent from the Queen during her 1954 visit to Australia.

This was the first time an Act of the Australian Parliament had received assent in this way and the first time a reigning Australian sovereign visited Australia.

The Menzies Government had already begun the practice of issuing flags to all public schools and community groups in 1951.

In keeping with this policy of raising awareness in our foremost national symbol, the Menzies Cabinet directed that the flag be flown by all Commonwealth government departments.

Despite the formal recognition of the status of the national flag in statute law, parliamentarians have more recently become concerned that the flag could be changed without reference to the people of Australia.

The previous Government made it clear that they were in favour of changing the flag, but despite raising the issue on a number of occasions they proved unwilling to clarify how they would go about it.

In response, Coalition members introduced a number of *Flag Amendment Bills* since 1984.

The purpose of these bills was to include in the *Flags Act* a clause that would require a plebiscite to change the flag.

Throughout this period, despite attempts to politicize the issue, opinion polls continued to show that the weight of public opinion was in favour of retaining the flag as it is.

Consequently, during the recent election campaign we promised to legislate to amend the *Flags Act* to state that no new flag could be adopted without a plebiscite of the people.

We are now in a position to keep that promise.

An Act of Parliament requiring a plebiscite is, of course, a lesser standard than entrenching the existing design in the Constitution, and I will come to that later.

An amendment to the existing *Flags Act* is attractive for its simplicity, for it only requires the approval of Parliament in the normal way.

But it must be remembered that Parliament cannot bind its successors, and a clause in the *Flags Act* requiring a plebiscite could be removed through the usual processes of legislative amendment.

Nevertheless, an amendment to the *Flags Act* for a plebiscite puts the flag in the hands of the people, and it would be a hard case for any politician to explain why Australians should not be asked to approve any change to what is after all the most important national symbol of Australia.

Also, no politician would seek a plebiscite unless it was clear the public was in favour of change, and had shown support for an alternative design.

These factors combined with the cost of a vote would deter disingenuous attempts to change the flag.

In the context of introducing a plebiscite clause, consideration will need to be given to the extent to which details on the mechanics of a plebiscite would need to be included in the Act.

Consideration needs to be given to such issues as:

- * How would the process of instituting a plebiscite be set in motion?
- * How would it be conducted?
- * How might new flag designs arise?
- * How would designs be selected for inclusion on the ballot paper with the current design?
- * How many alternate designs might be placed on the ballot paper?
- * How would the ballots be counted?

To date, only one of Australia's national symbols has been chosen by way of a plebiscite.

In May, 1977 Australians were asked to choose 'a national song' from four selections.

For this plebiscite, the Government decided that voting should be on a preferential basis, but no special legislation was put in place to govern the conduct of the national song poll.

The Chief Electoral Officer at the time decided that the poll would be conducted in accordance with the provisions of the *Electoral Act* relating to House of Representatives elections, with the votes for the songs being counted as if they were candidates.

Australians selected *Advance Australia Fair* as their national song.

In 1984, the Hawke Government proclaimed it as the National Anthem.

I do not envisage that our proposed amendment to the *Flags Act* will set out the exact method of the conduct of a plebiscite.

That is really something that should be considered when or if a plebiscite is required.

Enshrining or entrenching the flag in the Constitution sets a much higher threshold for change, for this could only be done by way of constitutional amendment.

Section 128 of the Constitution stipulates that amendments must be passed by both Houses of Parliament, or in some circumstances by one House alone.

The issue is then put to the people.

For an amendment to be successful, it requires an overall national majority of voters and the approval of a majority of voters in a majority of States.

This sort of 'double majority' sets a very high standard to both including a provision relating to the flag in the Constitution and any subsequent attempt to change it.

Taking into account a State by State preference has special significance in respect of the Constitution, where a change may alter the balance of powers between the Commonwealth and the States, but it is not necessarily relevant to the choice of a national flag, which, it can be argued, should be made by the Australian electorate collectively.

Certainly, State views were not formally taken into account in the original selection of the flag in 1901.

Indeed, when the two flag competitions were combined in 1901, new judges had to be chosen because the State Premiers felt that they should not judge a Commonwealth contest.

In any event, bearing in mind the results of the 42 referenda held since Federation, we can deduce that Australians are quite conservative when it comes to amending the Constitution. Only eight have been passed, with two more attaining national majorities but failing to achieve a majority in four States.

This must partly, at least, be taken as an indication of the Australian people's satisfaction with the Constitution as it stands.

I understand the appeal of protection of the flag under the Constitution.

We must, however, have regard for the realities of a referendum.

The voting record on referenda is also the clearest indication that Australians may not approve entrenching the flag in the Constitution.

This would not be because Australians do not value their flag.

It would be yet another sign that Australians are happy with the way in which the Constitution is framed and are reluctant to tamper with it.

In this respect, it may be that our Founding Fathers were wise to avoid detailing everything in the basic law of our nation.

Countries to which we, and indeed our Founding Fathers, have compared ourselves, have avoided this route as well.

By not including the minutiae of government in our Constitution, Samuel Griffith and the Founding Fathers ensured that our polity would be flexible enough to avoid the sort of constitutional crises which might jeopardize our entire system of government.

The stability of our system testifies to their success.

Altering the Constitution is not a measure to be taken lightly.

History is replete with stories of how unintended consequences have caused great problems later on.

An attempt to entrench the flag in the Constitution after it has stood the test of time for close to a hundred years might be portrayed by some as an act of weakness, an admission that it has lost the respect of those it was designed to represent.

Entrenchment in the Constitution is also likely to polarize views on the flag and divide Australians unnecessarily.

In our attempt to build consensus on this issue, we must make sure that we do not diminish the highly positive status that the flag currently enjoys amongst Australians from all walks of life.

These sort of issues should be taken into account when contemplating change in the Constitution.

It is not an argument against change *per se* - after all, history has the benefit of 20/20 hindsight - but it is an argument for prudence.

If we look at how other countries have gone about establishing their flags we can see a number of similarities.

The flag of the United States, for example, was proclaimed by Executive Order of the President in a similar way to which the Governor-General proclaims additional flags in Australia under the *Flags Act*.

As such, it too can be changed by a further Executive Order without reference to the people.

The Canadian national flag was formally adopted by resolutions of Parliament and proclaimed by the Queen to take effect on 15 February, 1965.

The current Union Jack was established by Royal Proclamation (not legislation) on 1 January, 1801 with the political union of Great Britain and Ireland.

It achieved its hundredth birthday on the very day the Australian Commonwealth came into being.

It is true that a number of countries have defined and protected their national flag through their Constitution.

France, Iraq and the Former Yugoslav Republic of Macedonia have followed this path.

In closing, I would reiterate that the Coalition Government is firmly committed to keeping our flag as it is, unless the Australian people themselves choose an alternative.

Our protection of the national flag through the *Flags Act* will ensure that the flag cannot be changed without reference to the Australian people to whom it really belongs.

We will also continue to promote the flag through the free issue of flags through Federal Members of Parliament and Senators to all schools, local councils, churches and other non-profit or benevolent community organizations, associations and groups that have occasion to display the flag on special public occasions or in halls or meeting rooms.

We will also continue our other information and publicity activities.

I would hope that by becoming more familiar with the history of the flag, Australians will appreciate and understand the symbolism of the flag.

The three symbols which comprise the design of the flag each represents an aspect of our identity: the Southern Cross - our geography, the Commonwealth Star - our polity, and the Union Jack - our heritage which has provided us with a common language, democratic ideals, and our political institutions.

We should have nothing but pride in a flag which has served us so well.

I would suggest to you that pride and respect in the Australian National Flag will remain the best safeguards against those who wish to rewrite our history for purely political purposes.
