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The G-G Should Resign

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Australia's constitutional system cannot function properly with a Governor-General inserting himself into contemporary political debate. If the current Governor-General wishes to do so, then he should resign the office.

At the Garma Festival of Traditional Cultures in north-east Arnhem Land last weekend, Governor-General David Hurley urged Australians to move quickly to secure an unspecified constitutional amendment to recognise Aboriginal and Torres Strait Islanders. His Excellency gave the comments to an ABC television reporter on August 3, saying of a referendum for constitutional recognition that 'it's been put on the table... terms are on average three years, and three years in the cycle of the country is a very short time... so we need to move fairly quickly on what we think are going to be the outcomes here.' His Excellency also warned of what would happen if the government did not get the question right: 'when we get to the referendum our history is if we vote No, they're very either slow to resurface, or they don't resurface.'

The Governor-General's comments represent an extraordinary intervention into a strongly-contested political topic. There is rarely an appropriate occasion for the Queen's representative to give comments to a journalist, and there is never a time for a Governor-General to give comments to a journalist about proposals to amend the Australian Constitution. While His Excellency stopped short of expressing outright support for a Yes vote at a referendum, the act of presuming that a referendum is going to occur and that it should be done sooner rather than later are both politically-loaded comments. It reveals a departure from detached impartiality on the issue, and can be interpreted as revealing a preference on the underlying policy question. A Governor-General should make every effort to avoid even an appearance of this.

Indeed, not only has the parliament not been presented with a bill to initiate a referendum, there is currently no consensus from 'recognition' supporters on what a referendum question should ask. The content of the question, and whether the question will be asked at all, are still very much live policy questions.

Compounding the Governor-General's error was the venue for making the comments. The Garma Festival of Traditional Cultures, held annually in north-east Arnhem Land in the Northern Territory, is a four-day festival of Indigenous cultural exchange. Key features of the Garma Festival are speeches and policy discussions, and it has in recent years become a venue for discussion and engagement on the matter of constitutional reform. The Governor-General's participation this year coincided with the provocative comments by renowned Indigenous leader Galarrwuy Yunupingu, who threatened to throw the Australian Constitution into the sea if the Commonwealth did not



present a model for substantive constitutional reform. 'If they don't come to us with an answer, we will tell you what... the Yolngu people are going to do... We will dismiss the Constitution... we thrown [sic] it out of Australia into the saltwater... It will be wonderful. The Yolngu people will stand on the land and see if that document will float away into the ocean,' Dr Yunupingu said. Such comments could, with little difficulty, be regarded as a threat to unilaterally declare independence from the Commonwealth.

The role of the Governor-General is too often written off as a ribbon cutting, rubber-stamping accoutrement of the Australian Constitution. This is an inaccurate description. Aside from the ceremonial duties, the Governor-General has the important duty to safeguard the Australian Constitution. And at the heart of the Australian Constitution and Australian political tradition is the principle of parliamentary sovereignty. This means that it is the role of the House of Representatives and the Senate to debate and resolve policy questions. The individual appointed to the office of Governor-General should, like the monarch he or she represents, strive to stay above the political fray. To do otherwise would violate the trust of Her Majesty and the Australian people by using the position to make political demands or set a political agenda.

This is not to say that the Governor-General's position should somehow exist in a vacuum outside the political arena. The Crown is at the apex of Australia's constitutional structure. It is by definition a political entity. But it plays a different role than the other constitutional entities. The political role of the Governor-General is to ensure that the process of lawmaking complies with all relevant constitutional requirements and conventions. Vice-regal interventions in the political process may be more dramatic in the case of intractable parliamentary crisis. Such was the case in 1975, when the unpopular Whitlam government was not able to pass appropriation bills in the Senate, leaving the federal government in the position of not being able to function. It was only resolved when Governor-General Sir John Kerr commissioned Malcolm Fraser as caretaker prime minister on the condition that Fraser would in turn immediately pass appropriation bills and advise Sir John to dissolve parliament and declare a double dissolution election. This was not a constitutional crisis, as historians often refer to it, but was an occasion where a Governor-General exercised the power of the office under the constitution in an appropriate manner to put an end to a political crisis.

Even in these circumstances, the Governor-General is not required to answer questions from television journalists at an event with strong political themes. Governor-General Hurley's comments were so far afield of appropriate vice-regal behaviour that it calls into question whether His Excellency should remain at the post.

None of this should detract from General Hurley's long and outstanding service as a soldier and senior officer in the Australian Army, including a stint as Chief of the Australian Defence Force from 2011 to 2014. The nature of these comments has however undermined the dignity of his current office. The standards of behaviour of vice-regal appointees are high for a good reason – to ensure that political questions are answered by the people through their elected representatives in parliament. Conduct to date is sufficient to justify a resignation, and would help ensure that such interventions do not become a regular and accepted part of the vice-regal role. Any further such interventions and resignation should be requested forthwith.

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