

# **AUSTRALIAN COUNCIL FOR THE DEFENCE OF GOVERNMENT SCHOOLS**

## **PRESS RELEASE 563#**

### **PETITION FOR SEPARATION OF CHURCH AND STATE**

The petition to the House of Representatives requesting the parliament legislate for separation of church and state, signed by 370 citizens in 2012-13, was entered into the Hansard on 12 December 2013. The attached faxed letter to the Attorney-General asking him to clarify his reasons for denying the request, and asking him to reconsider, is in the link below together with the text of the petition.

[Petition for Separation of Church and State](#)

### **re: petition for separation of church and state**

AUSTRALIANS UNITED (australiansunited@ymail.com)

To: australiansunited@ymail.com



## **Petition for Separation of Church and State**

In 2012, 370 citizens signed a petition requesting that the federal parliament legislate for separation of church and state in Australia. It was entered into Hansard on 12 December 2013. A fax has recently been sent to George Brandis, the Attorney-General, concerning his evasive, unsatisfactory response, requesting that he reconsider the government's position.

**THE RATIONALIST ASSOCIATION OF NSW INC.**

**Established 1912**

**58 Regent St., Chippendale NSW 2008**

Mr George Brandis

Attorney-General

Parliament House

Canberra ACT 2600 Fax: (02) 6273 4102

Dear Attorney-General

I refer to your letter of 12 May 2014 MC14/03755. This letter was in response to Dr Dennis Jensen's letter to you from the Standing Committee on Petitions of 2 January 2014. It concerned the petition signed by me as the principal petitioner, and 370 other citizens.

As you acknowledge in your letter to Dr Jensen, our petition concerned our desire for 'legislation for the separation of church and state in Australia.'

Your letter clearly equates separation of church and state with religious freedom. It does not speak to the central concern of our petition: the *lack* of effective constitutional separation of church and state in Australia.

With respect to religious freedom, according to the latest 2012 International Religious Freedom Report of the United States Government's Bureau of Democracy, Human Rights and Labor, concerning Australia,

**... there were no reports of abuse of religious freedom in government institutions.**

In Australian society at large, the Report found,

**There were few reports of societal abuses or discrimination based on religious affiliation, belief, or practice, and prominent social leaders took positive steps to promote religious freedom.**

The point is, your concern for religious freedom in Australia seems overstated as well as being incidental to our petition. Our concern, which you appear to avoid, is our claim that there is no effective constitutional separation of church and state in the constitutional monarchy of Australia.

In the *Defence of Government Schools* case [*Attorney—General (Vic) (Ex rel Black) v Commonwealth* 1981 146 CLR 559] the High Court considered the first clause of s.116 – *The*

*Commonwealth shall not make any law for establishing any religion* - which directly involved the question of separation. Sir Ronald Wilson said:

**The fact is that s.116 is a denial of legislative power to the Commonwealth and no more ... The provision therefore cannot answer the description of a law which guarantees within Australia, the separation of church and state.**

Sir Ninian Stephen said s.116,

**... cannot readily be viewed as the repository of some broad statement of principle concerning the separation of church and state, from which may be distilled the detailed consequences of such separation.**

The Chief Justice, Sir Garfield Barwick, endorsed Sir Ronald Wilson's view.

At a Christian conference in 2006 Justice Keith Mason, then Chief Justice of the Supreme Court of NSW, said Australia has not needed to .. 'erect a strong wall of constitutional separation of church and state.' ('Law and Religion in Australia', a paper presented to the National Forum on Australia's Christian Heritage', Canberra, 7 August.)

In 2008, a concerned citizen, Carmelo Michael Vescio, took out a writ in the High Court to oppose federal funding of the Pope's World Youth Day, held in Sydney that year. *Vescio* [case S292 of 2008] was rejected 2-1 by the Court as 'technically vexatious'.

Mr Vescio's barrister was your former colleague, Mr Peter King, the former member for Wentworth. In the High Court on 23 June 2008 he said:

**According to [Thomas] Jefferson who propounded the corresponding US constitutional guarantee [the First Amendment, corresponding to s.116 of the Australian Constitution], the very reason that religion must be quarantined from politics and politics should stay out of religion is to prevent entanglement of the two, in the long term interest of representative government.**

Mr King referred to *Church of the New Faith v Commissioner of Pay-Roll Tax* [1983] 154 CLR and *Walz v Tax Commission* 397 US [1980]. He cited the latter:

**We must draw lines with reference to the three main evils against which the establishment clause was intended to afford protection: sponsorship, financial support, and active involvement of the sovereign in religious activity.**

The point here is, constitutional separation of church and state prevents government entanglement with religion such as the federal government funding the Pope's World Youth Day to in excess of \$20M. This funding seemed to illustrate Macfarlane and Fisher's comment in *Churches, Clergy and The Law* (Federation Press, Sydney, 1996) that 'In the Australian legal setting the 'wall' [of separation] is perhaps a semi-permeable membrane'.

It is also true, we suggest, that as the Queen who is Australia's head of state is simultaneously the Supreme Governor of the Church of England in England, it is counter-intuitive there is effective constitutional separation of church and state in Australia. How could there be such a

separation when a major religious figure is head of state? In addition, no constitution of the Australian states separates church and state.

Given these facts, we suggest it could be fairly said Macfarlane and Fisher's 'semi-permeable membrane' is not good enough for a government that is supposedly secular. While churches do not participate in lawmaking, federal governments clearly favour and fund religion while judiciously avoiding making laws to do so. The most recent example was the federal government's \$500M+ funding of religious chaplains in public schools, which the High Court has twice found to be unconstitutional [*Williams S307/2010 & S154/2013*] as the funding was not supported by legislation.

We suggest the positional comments from Sir Ronald Wilson, Sir Ninian Stephen, Sir Garfield Barwick and Chief Justice Mason cited above are evidence that there is no effective constitutional separation of church and state in Australia. Consequently, we ask: will you reconsider legislating to separate church and state in Australia?

If you will not, will you explain why not? Can you show us, in constitutional law terms, where we are wrong? We would appreciate a direct answer from you Attorney-General as this is a very serious question that goes to the core of Australian Government.

We look forward to hearing from you.

Yours sincerely

Max Wallace PhD

vice-president

31 July 2014

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## **THE PETITION**

House of Representatives *Hansard* 12 December 2013 p.2512.

National Religion

To the Honourable Members of the House of Representatives in the Parliament assembled:

This petition of citizens of Australia draws to the attention of the House the fact that s.116 of the Australian Constitution prevents Parliament from making any law establishing any religion. However, in the 1981 Defence of Government Schools case the High Court said s.116 does not mean separation of church and state, but prohibits government from establishing a national state religion. Over thirty years have elapsed since that case. As recognised in the federal government's Gonski report, critical inequalities between public and many private schools have developed; Australia's multiculturalism has become more diverse; community values systems are more complex.

We therefore ask the House to legislate for separation of church and state in Australia in keeping with the changing values of contemporary Australians. We request: legislation that prohibits (1) government establishing any religion, not just a national religion, but providing any advantage to any religion or non-faith as an effect of legislation (2) passing any law, or undertaking any administrative action that allows the sponsoring or supporting (financially or otherwise) of any religions or alternative non-faiths such as atheism. We ask the House to recognise the words of our first prime minister, Edmund Barton, the ‘the whole mode of government, the whole province of the State is secular’, allowing the manifestation of any belief or non-faith, subject only to limitation by law, but sponsoring or supporting none.

From 370 citizens

Petition received.

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