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BY: LACA

18 Anita Street  
BEAUMARIS VIC 3193  
0429176725  
ggd@netspace.net.au  
2009-10-09

The Secretary  
House of Representatives Standing Committee on Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Sir or Madam,

Submission No 015

## Submission to Inquiry into the Machinery of Referendums

**Brief Summary:** My submission to the above Inquiry includes the brief summary of the main points below.

### 1. Concern that Inquiry might lead to weakening the quality of the present referendums machinery

With no indication of perceived inadequacies of the 1984 Act or tangible example of improvements, but an irrelevant mention of the pamphlets' 1912 origin, it seems possible that a retrograde weakening of the Act might be under consideration, so a case for the importance of not diluting the pamphlet provision is made.

### 2. Need for retention of limits on Commonwealth expenditure in relation to cases for and against

Section 11 of the Act confines Commonwealth expenditure to neutral matters. Any loosening of those restrictions is likely to permit an imbalance between the YES and NO cases and overshadowing of the key significance of the existing arrangement for the pamphlets.

### 3. Possible mirroring of the pamphlets by a Commonwealth referendum website

Despite concern about overshadowing of the primary and universal role of the pamphlets, some strictly circumscribed replication of the pamphlets on an official Commonwealth website could have merit.

### 4. Stronger, more consistent monetary penalties required

Certain penalties are too low. Penalties should all be expressed in penalty units, and not in cash amounts.

## Main Submission:

### 1. Concern that Inquiry might lead to weakening the quality of the present referendums machinery

The terms of reference of the inquiry state neutrally what the Committee is to review and report on, which is the *Referendum (Machinery Provisions) Act 1984*, and they do not specify any particular additions or deletions to the Act that might have formed a motivation for the inquiry.

The Chairman's media statement quotes him saying, "*The Yes and No Cases for referendum questions were first introduced in 1912. At that time, the pamphlets were innovative and necessary to inform the electorate about the proposal submitted to referendum. In 2009, it is appropriate to ask whether there is a more effective way to engage and inform people about the Constitution and proposed constitutional change.*"

As the pamphlets provided for in Section 11 of the Act survived the amendment process in 1984, it would seem that electors should be able to assume that they were considered an effective way to engage and inform people about the Constitution and proposed constitutional change as recently as 25 years ago.

It is somewhat misleading, and not particularly relevant, to make a statement about the 1912 origin - which was 95 years ago - without offsetting any pejorative association with that distant date by conceding that the present Act had been brought up to date in 1984, when the Hawke Government initiated changes to modernize it.

The major changes in communications since 1984 in digital electronics, which have produced the internet, mobile text messaging and new audio and audio-visual media and formats, will possibly raise matters of interest and opportunity for the Committee, although it is noted that certain sections of the Act already contain provisions relating to the internet.

While such changes must not be ignored, there must be concern about several aspects of approaches other than the prescribed pamphlets, whether those approaches replace the pamphlets or are in addition to them.

The pamphlets have certain important advantages over other likely competitors, which are:

- The pamphlets do not disadvantage electors that lack the technology to use competing approaches.
- The pamphlets are required to consist of written words only, which is exactly what the Constitution and the proposed Alterations are confined to, so they do not stray into producing the distracting and emotive effects of graphics, colour, animation or sound, and that keeps arguments and debate focussed, as it should be, on the text of the Constitution, the proposed Alterations and the arguments for and against them.
- The pamphlets and their contents, which are restricted to a defined maximum number of words, are easily quoted, in writing or orally, unlike other forms of presentation.

## **2. Need for retention of limits on Commonwealth expenditure in relation to cases for and against**

Section 11 of the Act confines Commonwealth expenditure to neutral matters. Any loosening of those restrictions is likely to permit an imbalance between the YES and NO cases and overshadowing of the key significance of the existing arrangement for the pamphlets.

## **3. Possible mirroring of the pamphlets by a Commonwealth referendum website**

Despite concern about overshadowing of the primary and universal role of the pamphlets expressed above, which is in no way retracted, some strictly circumscribed replication of the pamphlets on an official Commonwealth website could have merit. The easy access from such a website on electors' computers and mobile phones should be beneficial, provided that prohibitions against misuse are enacted.

## **4. Stronger, more consistent monetary penalties required**

Certain monetary penalties appear to be too low. The monetary penalties prescribed in Part X are nearly all \$1,000 although a few are either \$500 or \$5,000. Penalties should all be expressed in penalty units, as is the penalty in the newer Section 121A relating to internet offences, and not in cash amounts.

A more appropriate general penalty today would seem to be 50 penalty units. The low penalty of \$500 for breaching advertising requirements of the Act represents a very small amount in comparison to the cost of any remotely useful advertisement, and would seem to relate more to a relatively personal notice such as a small birth notice in classified advertising.

Yours sincerely,



Geoffrey Goode