Women for an Australian Republic

Submission to House of Representatives Standing Committee on Legal and Constitutional Affairs

Inquiry into the Effectiveness of the *Referendum (Machinery Provisions) Act 1984*

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HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
INQUIRY INTO THE *REFERENDUM (MACHINERY PROVISIONS) ACT 1984*

Introduction

1. Women for an Australian Republic (WfaAR) welcomes this Inquiry into the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) and whether it can be changed to increase the people's engagement with the Constitution. Like all republican groups that participated in the 1999 referendum on the Republic and have actively campaigned on this issue since, we have an interest in the conduct of referendums, plebiscites and the operation of Section 128 of the Constitution.

2. WfaAR assumes that text-based material on the Yes and No cases will continue to be communicated to all voters for the foreseeable future but not necessarily posted to each voter as a variety of distribution methods now exist. Voters should be able to choose the method of receipt that is most useful and convenient for them. WfaAR supports the continuing use of printed information materials subject to the comments on decreasing levels of text-based literacy below.

COMMENTS ON THE COMMITTEE'S SPECIFIC REFERENCES

Section 11 of the Act – Preparation of Yes and No Cases; Dissemination of the Yes and No Cases; Spending of Public Money on Referendums

The processes for preparing Yes and No Cases can be improved by:

3. Independent vetting of the text for the Yes and No cases by a panel consisting of expert public servants and independent advisers not associated with the Yes or No cases. This would ensure that what is eventually published is factually correct. It will also permit refutation of arguments made by each side instead of leaving questions/arguments unanswered if raised by one case but not the other. This will allow greater evenness in presenting both cases to the public and make the process less adversarial. Far too much effort has been wasted when worthwhile changes to the Constitution are not made (referring particularly to the 1988 proposals) because of scaremongering by the No case. The only losers, in the end, are the people.

4. The reason we suggest independent vetting is because of the errors contained in the official material produced by the No case for the 1999 referendum on the Republic. Statements made by the No case in the pamphlet were factually wrong or misleading.[1]

[1] They included: (i) "Our constitutional Head of State, the Governor-General..." (factually incorrect; this is not stated in the Constitution); (ii) "....the Governor-General is an Australian citizen and has been since 1965". (factually true but misleading because the Constitution does not stipulate that the Governor-General must be an Australian citizen); (iii) the change to a Republic would require "69 untried and untested changes to the Constitution" (factually true but misleading because the majority of changes required only substitution of the word "President" for "Queen" or "Governor-General"; (iv) "the Prime Minister can keep the President in office indefinitely" (possible but misleading as highly unlikely in practice); and concluded by (v) labelling the 1999 Republic as "undemocratic" (misleading because we already had a fully functioning "democratic" system of government under any definition

5. Arguments for and against being explained in one page each, as opposed to the 2000 words (or average thereof) provided for in the Act, s11 (1), (2) and (3). This will reduce printing and distribution costs and assist comprehension.

6. Arguments for and against identifying the authors and authorizers of each case and stating the names and electorates of members of Parliament who voted for the Yes and No cases. This will increase transparency.

7. Arguments for and against being vetted to determine the reading age required to understand them.

8. Removing the requirement in the Referendum Act to show all changes to the Constitution in their entirety. This works sensibly where only the insertion or deletion of single clauses is required but where consequential wording changes are implied by proposed changes, these could be summarised rather than each one spelled out[2]. This will make explanations shorter and less costly.

Dissemination of the Yes and No Cases can be improved by:

9. Preparing a short, simple English version of the Yes and No cases especially if the 2000 word provision remains. This would assist both non-English speaking background voters and those people with minimal reading skills (assuming text-based formats remain).

10. Information flow face-to-face through community/local meetings. This will require additional funding and preparation time. It will also require training of presenters and facilitators. Street theatre and other dramatised forms of "storytelling", for example: produced for television and the internet, may be other options to get the message across and would be a good way to communicate with some voters.

11. Providing in the Act for dissemination of material through all forms of electronic media, particularly in visual formats. WfaAR notes that the Australian Electoral Commission (AEC) reported a high level of demand for explanatory material from voters with print disabilities at the last referendum.[3]

Expenditure of Public Funds

12. The provisions of s11 (4) need updating and expanding to include general material about the conduct and purpose of referendums, especially in visual formats. WfaAR notes that at the last referendum in 1999, around 20 percent of enrolled voters

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and that would not change). WfaAR does not suggest, however, that the printed official No case was the cause of the Republic referendum proposal failing.

[2] In 1999, the fact that 69 changes would be required to the Constitution scared people because it sounded like a lot of "big" changes were being made. It was not explained that these were mostly technical and/or consequential wording changes. Readers had to deduce that for themselves from the complete text of the Constitution printed at the back of the pamphlet. This 72 page booklet, including the complete text of the Constitution showing the Yes case changes, would have overwhelmed most people if they had found the time or stamina to read it. It is not clear why the whole Constitution was printed in the pamphlet because not every clause was being changed.

[3] www.aec.gov.au accessed 7 October 2009

had never voted in a referendum before and that it was 11 years since the other 80 percent had voted at a referendum[4]. This indicates that the public will have a continuing requirement for general information about referendums and their conduct as well as information about the change/s proposed at a specific referendum. As it is now 10 years since the last one, it can be expected that significant percentage of voters will again, next time, not have previously voted in a referendum.

13. WfaAR notes that the $15m appropriated for the Yes and No Committees in the 1999 referendum was not approved by Parliament under s11 (4) which was suspended for that particular referendum. This indicates that s11 (4) does not meet contemporary requirements. Formal appropriation processes for referendums should be regularised.

14. There may be an argument for repealing s11 (4) because it is too prescriptive and likely to become further out-of-date as circumstances change for each future referendum. WfaAR notes that the Yes and No Committees and the appointed public education committee instituted by the Government were new features of the 1999 referendum[5]. It may be preferable to provide for the specific expenditure of public funds in the legislation passed for each referendum and leave only general provisions in the Referendum Act.

Other Comments on the Conduct of Referendums under the Referendum Act

15. This Act should reflect and anticipate non-text based means of communicating all types of information about referendums as well as electronic ways to vote in the future. It should contain specific provisions to reflect increased visual literacy as opposed to text-based literacy. WfaAR notes only very limited references to non-text based voting and information, for example: in s25 (3) and Part IV (B).

16. The Referendum Act should contain a definition of "advertisement", particularly as applies to publication of non-printed material including that published on the internet. The current provisions appear to imply that "advertisements" would be paid for but this would not apply to self-published material in non-print forms. These parts of the Act require redrafting to update them.

17. WfaAR also notes, based on its experiences in 1999, that most people had obtained a large amount of information about the proposed Republic from a wide range of media sources, word of mouth and the like long before the official Yes and No case pamphlet appeared. The non-official sources are unregulated. This needs to be kept in perspective: the official Yes and No cases are not the only information sources that voters will have access to or access in the 21st century. How much store do people now place on official Government communications especially where there are a large number of other, apparently reliable, sources for the same information? Will they wait to access that information especially if it is not available until very close to a referendum?

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[4] www.aec.gov.au accessed 7 October 2009

[5] WfaAR's view is that the way the Yes and No Committees were constituted in 1999 only served to intensify the adversarial nature of the process. Both Committees produced largely uninformative, non-issues based - but highly emotive - explanatory material, TV advertisements etc. That may not be a good model to follow in future.

Conduct of Plebiscites

18. The Referendum Act does not provide for the conduct of plebiscites and other national polls. WfaAR believes that this Committee should consider what legislation is required for both, as a means of gauging national views on matters, without conducting a referendum under s128 of the Constitution. Some of these matters may not require changes to the Constitution, as the 1977 national song poll did not.

19. The adequacy of the Referendum Act for the conduct of plebiscites was canvassed during the Senate Inquiry into Senator Bob Brown's Republic Plebiscite Bill (Senate Finance and Public Administration Committee, reported 15 June 2009). Please refer to Chapter 5, specifically paragraph 5.6, which concluded that consideration should be given to a legislative framework for plebiscite processes and noted that the Referendum Act did not adequately cover plebiscites and, would not, even with appropriate modifications (unspecified) as proposed by Senator Bob Brown.

20. The Committee is also referred to the submission to the 2009 Senate Inquiry on the Republic Plebiscite Bill made by Professor George Williams and Associate Professor Andrew Leigh (No 114) which discusses the legislative requirements for plebiscites and polls, and concludes that new process legislation is required.

Other Matters Deserving of the Committee's Attention

21. WfaAR most particularly notes the narrow focus of the current inquiry and strongly encourages the Committee to examine constitutional change and its processes more widely. We do not believe that changes to a supporting process Act are likely to result in greater public engagement in constitutional change. The only sure way to do that is to involve the public in big ideas for change. There is also an obvious need - even demand - for continuous public education on electoral and constitutional matters that is deserving of its attention.[6]

22. The avenues for pursuing constitutional change should be expanded so that our country has something resembling the active program of constitutional change that exists in the United States.[7] This should include means to promote other polls on matters of national importance and applicability. In future, alternative polling methods will be increasingly required to reflect the people's desire for greater involvement in matters of national government.

23. Consideration of processes for change should include:

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[6] See Recommendation 1 of the 2004 Senate Inquiry, "The road to a republic". (Senate Standing Committee on Legislative and Constitutional Affairs reported 31 August 2004)

[7] www.usconstitution.net accessed 7 October 2009; this site states that hundreds of constitutional amendments are proposed in Congress each year (although few get out of committee). Another site www.c-span.org accessed 21 October 2009 states that since 1789, 10,000 amendments have been proposed to the US Constitution, 33 having been sent to the States for ratification and 27 eventually ratified. While the US constitutional change process differs significantly from ours, this does reveal a much more lively and active system of constitutional review, especially in the Parliament by the people's representatives.

(i) Changing the provision in s128 which requires constitutional change to be approved by a majority *in a majority of States (excluding Territories)*. In the 21st century, now that there is a strong concept of both "the Australian nation" and "being Australian", a simple majority of votes should be enough to make changes to the Constitution, the interests of States underlying s128 having long become irrelevant

(ii) Providing for citizen-initiated referendums, plebiscites and polls

(iii) Providing for constitutional changes allowing for multiple choice rather than acceptance or rejection of single propositions. This would require a rewrite of s128 and thinking to be applied to how multiple propositions could be properly explained to voters particularly in non-text based mediums

(iv) Conducting regular Constitutional Conventions, say every three or five years. These should be all elected gatherings (voluntary voting) with at least half the delegates to be women with provision also made for proper representation of our Indigenous peoples. The topical 1998 Constitutional Convention, which was televised, gripped the country for two weeks because it put both sides of the case under the normal rules of debate, providing knowledge and information as well as an appreciation of other points of view.

(v) Providing funds[8] for a large number of deliberative polls in all parts of the country, to allow for equal participation, as were run by non-government organisations before the 1999 referendum. These were highly successful in providing information about the choices last time but are more likely to be effective when a referendum on a specific topic/s has been called.

24. The Committee might also examine the adequacy of fines for failing to vote at a referendum. While these would need to line up with the penalties set for not voting at general elections specified under the Electoral Act, the $50 currently specified seems to be too low when compared with, say, parking fines and suggests that little store is placed on failing to vote. Pursuing and collecting such low fines may also not be a cost-effective use of taxpayers' money.

Conclusion

25. WfaAR believes that more fundamental changes to the way that the Constitution can be changed must be effected to ensure that people will engage more with the change process. We do not believe that revamping the presentation of the Yes and No cases alone, however desirable, is likely to result in increased participation. Ultimately, we think that presenting people with imaginative ideas for change and altering s128 to make the Constitution easier to change are much more likely to have the desired effect.

[8] WfaAR's view is that more public funding should be allocated to the conduct of active democracy, not less. The increases envisaged are minor compared with the size of the federal Budget and a legitimate, worthwhile and effective use of public funds.