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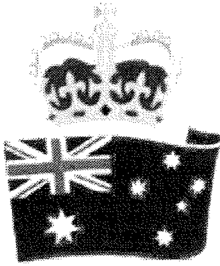

Australians for Constitutional Monarchy

Submission

To the House of Representatives Legal and Constitutional Affairs Committee:

Machinery of Referendums Inquiry

(*Referendum (Machinery Provisions) Act*, 1984)

October, 2009

1. Introduction

1.1 This is a submission by Australians for Constitutional Monarchy ("ACM") to the Machinery of Referendums Inquiry by the Legal and Constitutional

Affairs Committee of the House of Representatives. (Information on ACM is set out in Appendix A)

1.2 On 10 September 2009 the Committee Chairman Mr Mark Dreyfus QC MP announced that the Attorney-General, The Hon. Robert McClelland MP, on behalf of the Special Minister and Cabinet Secretary, Senator the Hon. Joe Ludwig, had asked the Committee to inquire into and report into the machinery of referendums.

1.3 The Committee initiated the inquiry and invited submissions addressing the terms of reference[i] by Friday 9 October 2009.

2. ACM's Submissions

ACM submits that the *Referendum (Machinery Provisions) Act,* 1984:

(i) Retain the democratic right of every Australian to see and read the Yes and No cases;

(ii) Provide public funding for the Yes and No cases;

(iii) Direct that the counting of referendum results be in accordance with clear words of and manifest intention in section 128 of the Constitution;

(iv) Provide a framework for the calling of further constitutional conventions on questions of great moment, (but not on matters already determined by the people, such as a preamble or removal of the Australian Crown);

(v) Provide that in seeking any vote by the electorate on the Constitution, the Commonwealth be required to proceed only in accordance with the way the Constitution provides. This is to ensure that the details of any change are known before the vote, and not after.

2. Submission: That the Act retain the democratic right of every Australian to see and to read the Yes and No cases.

2.1. Sending out a "Yes/No booklet" summarising the arguments in a referendum, and providing full details of the proposed changes has been a feature of Australian political life for close on one century. Originally proposed by a Labor government with conservative support, this essentially democratic practice is based on a direction to the Electoral Commissioner contained in Federal legislation, now the *Referendum (Machinery Provisions) Act*, 1984 ("the Act").[ii]

2.2. This provision was originally introduced in 1912 by a Labor government, the Prime Minister, Mr. Andrew Fisher who acknowledged the strong conservative support for the proposal : "It is pleasing to find both sides are agreeable to this proposal." [iii]

Referring to the fact that this process was followed in relation to the adoption of the Constitution itself, he said:" The object then was to make the electors acquainted with the Constitution which they were to adopt for the government of their country. The proposal here is to enable the electors to obtain in a concise form the arguments for and against the proposals. ...The proposal here is to enable the electors to obtain in a concise form the argument for and against the referendum proposals. There can be nothing worse for a country than to expect the people in it to vote for or against the alteration of the constitution without knowing what they are doing."

2.3 The Attorney General, William Morris Hughes, said the measure was based "upon sound common sense. The people will naturally want to know why the Constitutional Alteration Bills have been introduced. I submit that they will be quite unable to ascertain that by attending public meetings because on the platform the honourable member for Bathurst and I will say a number of most interesting things that have no relation whatever to those Bills. Under this measure it is proposed to tell them the plain facts of the case, as set forth by each side." [iv]

2.4. The Home Minister, King O'Malley, succinctly described the process as "...sending out to the people the kernel of the speeches which have been delivered on the proposed amendments to the Constitution." [v]

2.5. Speaking for the recently fused conservative opposition parties Alfred Deakin said : "It is our duty, when we ask electors to vote for or against momentous proposals of this kind, to give them the best material we have in order that they may form an independent judgement." [vi]

2.6 Since those days there has been disappointment in some circles as to the reluctance of Australians to approve proposals for constitutional change. Eight out of forty four proposed laws to change the constitution have been approved. Some would no longer be needed by those who would expand central power; changes in constitutional interpretation by the High Court have made them otiose.

2.7.But there is of course no objective rate at which referendums should be approved. As Mrs Mirabella MP put it in a question addressed to Professor Williams in an earlier Roundtable of this Committee: "You referred to statistics leading to a drought of constitutional referenda." [vii]

"What objective analysis says there is an ideal number of constitutional referenda? Farmers know what a drought is in an agricultural sense, but in a political-legal sense how do we know what the ideal number is? What is the formula? Is there an ideal number?"

2.8. Some will disparage the Australian Constitution as being a " horse and buggy " document. But few Americans would so disparage theirs, although theirs is twice as old. And the rate of constitutional change in the US is not vastly divergent from ours. That our r Constitution has lasted so long is not criticism. Indeed it is one of the few constitutions which has been so successful and lasted so long, surely an indication of quality rare in the world.

2.9 Anecdotal evidence is sometimes advanced that the Yes/No booklet is little read. At the Roundtable referred to above, Professor Williams said: "I remember that when the republic referendum was put I asked my class of about 150 constitutional law students which of them had read the 71-page booklet. Not one of those students indicated that they had read the booklet from back to front. If you cannot get students who are studying the topic interested in reading the information, what hope is there that other electors will actually read it? It is a failed education process; it clearly needs reform." [viii]

The fact that students in a university law school had not read the 1999 Yes/No booklet may well reflect the students' other priorities and pressures – the referendum was held in or close to an examination period. In addition, according to some polling, there is a disinterest among the young in republican change. In any event, a class of constitutional law students could not be considered a sample representative of the Australian population. This anecdote, however interesting, does not constitute a sound basis for serious policy change, or a justification for the removal of a time honoured and democratic practice.

2.10. Indeed anecdotal evidence from talk back radio and to an extent the internet suggests there was an interest in the Yes/No booklet, and that it is read by interested electors. The point surely is that in a democracy, the principal arguments should be easily accessible to all. In the absence of evidence of a better way to communicate, and of providing electors with a ready reference, it is difficult to understand calls for the abolition of the right of electors to see and retain a summary of the principal Yes and No arguments advanced and approved by their representatives.

2.11. While the internet was not available in 1912, it is generally agreed that a print version of a document is better than the web for careful reading and reflection. In addition not everyone enjoys access to the internet.

2.12. Other participants attacked the No case in particular as a "disgrace". One could allege the same about political debate; much depends on the political views of the reader.

2.13. The point that the arguments in the Yes/No booklet have been approved by the very representatives who introduced, spoke and voted on the proposed law is overlooked by critics. This is above all a political and not an academic process. The electors are entitled to hear the best arguments as perceived by their representatives. It is demeaning to the elected representatives that their views - as they would wish to put them- should not be seen in a concise and accessible form by the electors. Above all it would be undemocratic if the people were not to have these in a concise form to which they may such recourse as they wish.

2.14. Moreover , the truth is more likely to emerge from an adversarial process such as that encouraged by the Yes/No booklet. As Milton once observed:" "Let Truth and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter." [ix] In a democracy we should have confidence in the good sense of the Australian people, and their ability to discern which argument they find most persuasive.

2.15. It would be condescending in the extreme to keep the political arguments from the people and to substitute the mediation of some elite group which will have their own views about constitutional change.

2.16. There will be some who will say the electors will receive all of the political arguments on both sides through the media. This view was in fact put to the Parliament in 1912.

Mr.Ryrie said[x] : "I think we can safely leave the matter to the press. If we send every elector a copy of The Sydney Morning Herald, The Worker, The Catholic Press, and The Watchman, it would be sufficient."

But Mr Charlton disagreed.[xi] He said: "We know from experience, however, that the press do not put the true position before the electors of Australia. I do not blame the press. They have a certain policy to support and they are entitled to do the best thing for their own side. But as representatives of the people we should not permit only one side – and in some cases no side at all- to be put before the people. The only way out of the difficult is, I think, to print as is proposed, a statement for and against the proposed amendments."

2.17. Whatever the role of the Press in 1912, it is a sad fact that in the last referendum in 1999 the mainline media failed to a significant degree in their ethical duty to present the news objectively. That is before we look at comment and opinion, where the mainline media was overwhelming oriented to one side.

As Lord Deedes observed: "I have rarely attended elections in any country, certainly not a democratic one, in which the newspapers have displayed more shameless bias. One and all, they determined that Australians should have a republic and they used every device towards that end." [xii]

2.18. Sir David Smith says: "In the meantime the media were conducting their own campaign for the republic. They occasionally published articles and letters to the editor contributed by supporters of a "No" vote, but there was no attempt at anything approaching balance, and supporters of a "Yes" vote were given open slather, as also were the journalists themselves and their editors." [xiii]

"For example, when former Governor-General Sir Zelman Cowen and former Chief Justice Sir Anthony Mason signed an open letter for the republic, it was published on page 1 of The Australian. The open letter in reply, signed by, amongst others, former Governor-General Bill Hayden and former Chief Justice Sir Harry Gibbs, was published on page 10 of The Australian. This media campaign was so insidious, even intimidating, that our research revealed that, out in the community, while "Yes" voters seemed always ready to declare their voting intentions, "No" voters did not want other people to know how they intended to vote."

2.19.He referred to some "particularly nasty and offensive examples of the one-sided nature of the debate: The Daily Telegraph's 'Queen or Country' masthead; The Australian's "scales of justice" motif featuring a Crown versus a slouch hat; and that newspaper's offer of "Vote Yes" bumper stickers to readers." Sir David gives other examples and Dr Stone has provided a scientific analysis of two outlets – "serious newspapers" from which one would have expected better[xiv].

2.20. Finally it would be useful to recall the words of Senator Rae in the 1912 debate. This should be borne in mind by those who argue for the replacement of the Yes/no booklet with the observations of some so – called neutral panel of elite experts. Senator Rae, who must have been in touch with the feelings of the people, called for the booklet to be written in the "clearest and simplest English...I hope no lawyers will be engaged in the preparation...(but) practical men (who can put the case) in the language of the bullock driver or drover." [xv]

Notwithstanding their excessive dependence today on the mediation of professional "spin doctors" it remains true that the need for plain English will be better appreciated by the elected representatives of the people.

3.Submission: That the Act provide public funding for both the Yes and No cases.

3.1. In the 1999 republican referendum, the Commonwealth funded the official campaigns for the Yes and No cases. Committees were appointed to manage the funding in accordance with strict accounting requirements. These campaigns could not begin until one month before the vote, and the blackout on electronic media advertising applied. Both requirements advantaged the better funded Australian Republican Movement. The constitutional monarchists cannot and do not complain about that.

3.2. But at least both sides in 1999 had recourse to public funding. This is consistent with the public funding of elections. There are good arguments against the public funding of elections. But while elections are publicly funded, it would be inconsistent not to fund referendum campaigns. As a result of the public funding of elections, the voters expect a certain level of advertising and the impact of each individual advertisement tends to be less than when advertising was less frequent. To create the necessary impact over the natural resistance that viewers have developed as a defence to the onslaught of political advertising in elections, there is a need to similarly enlarge campaign advertising about a referendum.

The solution is either to abandon the public funding of elections, or to extend this to referendums.

3.3. This was a democratic measure. It offered some balance to fact that well endowed interest groups can have an advantage in putting their case to the people. This is especially so where the mainline media campign strongly for one side, even in the presentation of the news, which was clearly the case in 1999. We submit that it ought to be followed in future referendums.

3.4. In 1999, the government chose to be guided by the votes recorded in the 1998 Convention election in appointing the Yes and No committees. This had the broad support of the major proponents on each side. This we suggest is an appropriate precedent where the proposed law the subject of a referendum is based on the recommendations of a convention.

3.5. In the absence of a convention, we propose that the membership of the Yes committee be authorized by a majority of those members of the Parliament who voted for the proposed law and desire to establish such a committee. We also propose that the membership of the No committee be authorized by a majority of those members of the Parliament who voted against the proposed law and desire to establish such a committee.

3.6. We suggest one change from the process adopted in 1999. Both Committees were required to submit their advertising material and their strategies to the Ministerial Council on Government Communications for approval. To avoid any leak of material which should obviously be confidential, and which we are informed occurred in 1999[xvi], we suggest that the Auditor General should exercise appropriate surveillance over these matters rather than the Ministerial Council.

3.7. We suggest that the total sum of public moneys to be expended in the Yes and No campaigns in a referendum be calculated on the basis of one dollar for each elector, appropriately indexed from this year. This amount, we propose, should be set aside at each referendum, and be divided equally for the public funding of the Yes and No campaigns.

4.Submission: That the Act direct that the counting of any referendum results be in accordance with the clear words and the intention of section 128 of the Constitution.

4.1. ACM argues that the method adopted hitherto in counting results in referendums, no doubt done in good faith, is nevertheless not consistent with the Constitution.

4.2.The relevant part of section 128 provides: "And if in the majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's Assent."

4.3. For the purposes of this submission, the key words then are"electors voting." The current practice is to treat only those voting Yes or voting No as "electors voting".

We submit that the clear meaning of the section is that the number of "electors voting " includes those who voted, whether or not those votes are formal or informal, or indeed are deemed to be formal by the application of nothing more than administrative fiat.[xvii]

4.4. We submit this should be done by providing in the Act that the number of electors voting shall include those deemed to have cast informal as well as formal votes.

4.5. This conclusion is supported by the opinion of His Honour Mr Justice Handley in an important conference paper delivered in 2002.[xviii]

4.5. His Honour observes there that while voting in a referendum is compulsory, "clearly those electors who ignore their duty to vote are excluded from the relevant calculations."

" But what of those electors who did obtain ballot papers and placed them in the ballot boxes whose votes were informal for some reason? It seemed to be that an informal vote is, as the expression itself indicates, nevertheless, a vote. The fact that it is informal means that it cannot be recorded as either a vote of approval or as a vote of disapproval. Nevertheless, it seems on the language of this part of s.128 that informal votes had to be counted in order to determine whether 'a majority of all the electors voting approved' the law."

4.6. His Honour refers to the Constitution of Switzerland at the time when our Founding Fathers drafted Section 128.(It was this provision which attracted them to insert a similar requirement in our Constitution.) The Swiss provision required the approval of the majority of the electors, and not just those actually voting, to carry an amendment to that Constitution, "a more demanding requirement than that found in s.128 of our Constitution."

4.7. This, His Honour says, " ...can be demonstrated by a simple example. Assume that in Switzerland and Australia there were 12 electors, 6 of whom voted in favour of the referendum, 4 voted against it, and 2 failed to vote. The referendum would be lost in Switzerland because the 6 votes in favour did not constitute a majority of the electors, but the referendum would be carried in Australia 6 votes to 4 on the votes actually cast. Thus under the Swiss Constitution, at least in its form in 1901, electors who failed to vote, or who voted informal, were effectively voting 'No'."

4.8. The Founding Fathers, he says, "were aware of the referendum provisions in the Swiss Constitution and they clearly rejected its requirement for approval by a majority of the electors. Under s.128 electors who fail to vote are ignored in the tally. On the other hand, it seems to me from the text of the section that informal votes, the "Maybe" in the title of this talk, cannot be ignored and are effectively "No" votes."

4.9. There is one precedent cited by His Honour, the only one available. This is a decision of the Court of Session in Scotland in the case of *Latham* v. *Glasgow Corporation*[xix]

4.10. "The case arose under the local option provisions in the *Temperance (Scotland) Act* 1913," His Honour notes. "Section 2(3) of that statute provided that a no-licence resolution, or a limiting resolution, put to the electors in a local government district should be deemed to be carried if certain percentages of 'the votes recorded' were in favour of the resolution. The Act provided in effect for a mini-referendum to determine whether there should be no licensed hotels in a local government district, or no more than a particular number."

4.11. The Lord President (the senior judge, or as we would say, the Chief Justice) said at 712-3:"What is the meaning of the expression 'votes recorded'? According to one contention 'votes recorded' are those ballot-papers which, when submitted to the Returning Officer at the count, are passed by him as good and effective votes. If this contention is correct, spoilt ballot-papers, which the Returning Officer rejects at the count as either unmarked, or as marked ineffectually, are excluded in the computation of the statutory proportions. The other view is that by 'votes recorded' is meant all votes in the form of a ballot paper put into the ballot-box by a voter in the exercise of his right or duty to vote. If this view is the right one, it matters nothing whether on examination the vote so recorded turns out to be 'spoilt', because the ballot-paper is unintelligible to the Returning Officer or---not being

marked at all---is purely neutral and ineffective. Between these two views we have to decide ..."

4.12."I think a voter records his vote," the Lord President continued, "when he puts his ballot-paper into the ballot-box; and I do not think it is material that, owing to carelessness or ignorance, or inexperience he has failed so to mark his ballot-paper as to make the vote he thus 'records' an effective exposition of his opinions. Moreover, having regard to the requirement of certain proportions and majorities of votes contained in sub-section (3) of section 2, I have difficulty in construing that sub-section on any other basis than that those proportions or majorities relate to the total number of persons who come and exercise their privileges at the poll, whether those privileges have been exercised effectively or ineffectively."

4.13."The view which the Lord Ordinary (the trial judge) took was that 'votes recorded' meant ballot-papers passed by the Returning Officer at the count. For the reasons stated, it seems to me that this view is unsound."

4.14. His Honour Justice Handley then refers to section 45 of the *Referendum (Machinery Provisions) Act* 1984 which makes voting at a referendum compulsory, asking this rhetorical question: "could a voter who voted informal be prosecuted for failing to vote?" (The evidentiary problem occasioned by the secrecy of the ballot could be overcome by the fact that some voters of course would be prepared to reveal or even boast about the fact they had voted informal.)

4.15. The error in declaring an elector who casts what is deemed to be an informal vote as not voting may have led the Electoral Commission into a degree of artificiality in trying to declare questionable votes to be formal.

As Sir David Smith says: "Shortly before the referendum, the Electoral Commission issued a booklet called Guidelines to Scrutineers. Amongst other things, it contained instructions as to what would constitute a formal vote. Examples of formal "Yes" votes, apart from the word "Yes", included the letter "Y" and the words "OK", "Sure", and "Definitely". Examples of formal "No" votes, apart from the word "No", included the letter "N" and the words "Never" and "Definitely not". In addition, scrutineers were instructed that a tick would be accepted as a valid "Yes" vote but that a cross would not be treated as a valid "No" vote and would be treated as an informal vote. To compound this extraordinary ruling, the word "No" crossed out

and "Yes" or a tick written above it would constitute a formal "Yes" vote, and the word "Yes" crossed out and "No" written above it would constitute a formal "No" vote. Of course, scrutineers would have no way of knowing whether the alteration had occurred while the ballot paper was still in the hands of the voter or afterwards." [xx]

4.16."Having identified seven ways of saying "Yes" without using the word, and only four ways of saying "No" without using the word, the Electoral Commission then gave the following instruction to scrutineers."

4.17."To be a formal vote, the answer to the question need only clearly express the voter's support for or opposition to that question's proposed constitutional change, *in a language or symbol the person conducting the scrutiny understand*. (Emphasis added)".

4.18. "In other words," Sir David continues, "the validity of a particular vote could be dependent upon the linguistic skills, or the imagination, of each individual electoral official. These instructions must surely represent the most adventurous administrative interpretation one could ever hope to see of the simple legislative requirement to write "Yes" or "No" on a ballot paper."

4.19. Before the referendum, ACM proposed to the Australian Electoral Commission that they change their practice of not including informal votes in calculating the number of electors voting . The AEC declined.

4.20. Mr. Justice Handley has confirmed his opinion that there is no justification for reading into s.128 any requirement that the votes must be valid.

5. Submission: That the Act provide a framework for the calling of further constitutional conventions on questions of great moment which have not been previously examined. The framework should be based on the highly successful 1998 Constitutional Convention.

5.1. The 1998 Constitutional Convention was a most successful and democratic forum. It encouraged debate, informed the electorate and raised interest in the constitutional system. Much of this success flowed from the way in which the convention was structured and conducted and the way its recommendations were received by the government.

Accordingly we suggest that the template used then is a good basis for future major constitutional reviews.

5.2. ACM suggests this be considered a precedent both as the holding of conventions on questions of great moment. But a convention should not be called on matters already clearly settled by the electorate, at least not before a long interval has passed and issues not previously raised in an earlier convention on that subject . Otherwise this will be seen as an application of the formula sometimes attributed to certain European Union officials: "The people must keep on voting until they get it right." Accordingly it would be unwise and unproductive to hold a convention on a new preamble or on removing the Crown. There is a good argument for the calling of a convention on the Federation, but this would have to be for an extended period. This could extend to the powers of the Commonwealth, and the taxation income of the States.

5.3.The 1998 Constitutional Convention was well structured. Half the delegates, 76, were elected by a voluntary postal vote. We would not recommend a postal vote again; it is too open to the potential of abuse.

5.4.Of the other 76, 40 were ex- officio, ensuring the attendance by the Prime Minister, Premiers Chief

Ministers and Leaders of the Opposition among other leading memvers of parliament.

5.5. Thirty six were chosen by the government. They included "seven youth delegates, some indigenous leaders such as Lowitja O'Donoghue and Gatjil Djerkurra (past and present chairs of the Aboriginal and Torres Strait Islander Commission), prominent women such as Professor Judith Sloan, Julie Bishop (now MHR), Dame Leonie Kramer, Helen Lynch, and Dame Roma Mitchell; church leaders such as Anglican Archbishop Peter Hollingworth and Catholic Archbishop George Pell; and other prominent Australian men, including Professor Geoffrey Blainey, Major-General William 'Digger' James, Bill Hayden, Professor Greg Craven, Sir Arvi Parbo, Peter Sams and Lloyd Waddy."[xxi]

5.6 It has been claimed that John Howard rigged the membership of the Convention. He did not. In fact most appointed delegates were republicans. In any future convention it would be important that those chosen by government be chosen as the 36 were. By way of contrast, of those chosen to consider governance at the 2020 Summit, where the leading question was "a" republic, 98% of the delegates selected were republican, and the one monarchist present may have been chosen in ignorance of his

views. There is thus no guarantee that future governments will follow John Howard's example.

5.7 To avoid compromising future conventions through a gerrymander, we propose that they consist of the parliamentary officeholders present at the 1999 Convention together with elected representatives. Under this scheme each State and Territory could have a number of delegates equivalent to one half of the number of MP's and Senators representing that State or Territory. Similar voting rules would apply as in the Senate. To these could be added a small number of nominated members chosen by agreement between the prime minister and leader of the opposition.

5.8. Prime Minister John Howard also appointed two senior parliamentarians, Ian Sinclair (National Party) and Barry Jones (ALP) as Chair and Deputy Chair of the Convention. Again this may be contrasted with the 2020 Summit, where the Prime Minister was not a delegate but appointed himself to be one of the co-chairs of the Summit. In addition the crucial governance session was chaired by persons from the media with no experience of chairing parliamentary meetings. The Chair and the Deputy Chair of the Convention proved to be highly competent; both incidentally were and are republicans. We suggest these positions only be filled by those with a record of chairing meetings efficiently and impartially, and by agreement between the Prime Minister and Leader of the Opposition.

5.9. The proceedings of the 1999 Convention followed those of Parliament. They were recorded in Hansard, unlike the 2020 Summit where certain governance resolutions were subsequently changed surreptitiously. We suggest thta any convention be required to follow the practice established in 1999.

5.11. While there is no way to ensure a government act on the principal recommendations of a Convention, it is appropriate to recall what happened in 1999, if only to encourage future governments. John Howard promised at the time of the 1999 Convention that if clear support for a particular republican model emerged from the Convention, his government would, if returned at the next election, put that model to the Australian people in a referendum before the end of 1999.

5.11. Although the preferred republican model did not obtain an absolute majority at the Convention, it was passed by 73 votes in favour to 57 against with 22 abstentions. The Prime Minister agreed, with widespread media approval, to put that model to a referendum. This was done in 1999, after a delay in the Senate.

5.11. In most respects the Convention proved an appropriate forum for encouraging debate, informing the electorate and raising interest in the constitutional system. (By way of contrast, whether in the absence of any fairness in the selection process, its management and chairing, decision making record keeping, fundamental error in its recommendations, the 2020 Summit was precisely the sort of venue which entirely inappropriate to serious examination, debate, public

information and the raising interest in the constitutional system.) [xxii]

6. Submission: That the Act be amended to provide that in seeking any vote by the electorate on the Constitution, the Commonwealth government will be required to proceed only in accordance with and under the terms of section 128 .

6.1. The Constitution envisages one way and one way only for the Constitution to be amended. A Bill proposing the change must be presented to and approved by the Australian people before it can receive Royal Assent.

6.2. The Founding Fathers were well aware of the use indeed the misuse of "blank cheque" plebiscites by governments in the nineteenth century where a question only, designed by the regimes "spin doctors", is presented to the people. This was a regular feature of various French regimes in the nineteenth and late eighteenth centuries, particularly by Napoleon 1 and Napoleon III. The Founding Fathers deliberately and carefully chose the Swiss style plebiscite where the details of constitutional change are on the table **before,** and not after, the vote.

6.3. This provision would prevent a government from seeking a vote of no confidence in our Constitution

while keeping secret the detail of any changes or not even agreeing on what the changes should be. The serious danger is that if a plebiscite question were passed on some fundamental issue, it could create years of constitutional instability with no guarantee that change would eventually be adopted.

6.4. It is difficult to conceive of a more irresponsible way to affect constitutional change. But it has been seriously and repeatedly proposed to circumvent the very clear rejection by the people in 1999 of the republican referendum.

(This was not as is said because John Howard manipulated the Convention, or the referendum question. It should be remembered that the referendum was on the model proposed by the republican majority at the 1998 Constitutional Convention. It was the preferred model of the greater part of republican parliamentarians, Federal and State, and by most of the nation's mainline media outlets. The question was based on thta model, although the curious objections of the Australian Republican Movement to the inclusion of the words "President" and "Republic" were rejected.)[xxiii]

Our Parliament has a duty to protect the Constitution from such a rash and ill-considered measure.

7. Summary of Submissions:

ACM submits that the *Referendum (Machinery Provisions) Act,* 1984 ("the Act"):

(i) Retain the democratic right of every Australian to see and read the Yes and No cases;

(ii) Provide public funding for the Yes and No cases;

(iii) Direct that the counting of referendum results be in accordance with the clear words of and manifest intention in section 128 of the constitution;

(iv) Provide a framework for the calling of further constitutional conventions on questions of great moment, (but not on matters already determined by the people, such as a preamble or removal of the Australian Crown);

(v) Provide that in seeking any vote by the electorate on the Constitution, the Commonwealth government be required to proceed only in accordance with the way the Constitution provides. This is to ensure that the details of any change are known before the vote, and not after.

This submission has been approved for and on behalf of Australians for Constitutional Monarchy by Emeritus Professor David Flint, National Convener.

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Appendix A: Australians for Constitutional Monarchy

A1. ACM, whose national office is at Level 6 , 104 Bathurst Street Sydney, Box 9841 Sydney 2001, telephone (02) 92512500, fax (02) 92615033, and whose principal website is http//:www.norepublic.com.au, and email acmhq@norepublic.com.au, is established with the following mission:

To preserve, to protect and to defend our heritage: the Australian constitutional system, the role of the Australian Crown in it, and our Australian National Flag.

A2. Launched in June, 1992, ACM is the nation's oldest and largest constitutional monarchist organization. Its Charter signatories included Justice Michael Kirby, the Rt.Hon. Sir Harry Gibbs, former Chief Justice of Australia , Justice Lloyd Waddy, Neville Bonner AO,

Dame Leonie Kramer, The Hon Barry O'Keefe, Sir John Atwill, Dr Margaret Olley, The Hon Helen Sham-Ho MLC and others. The first National Convenor was Justice Waddy, who was succeeded by Professor David Flint. The national Executive Directors have been successively Mr. Tony Abbott, Mrs. Kerry Jones and Mr Thomas Flynn. Since its inception, Divisional Councils and Branches have been formed across the nation. ACM, a major grassroots community organisation, is non-aligned politically. ACM campaigns for the retention of the existing Constitution, the essence of which is declared in the Preamble to the Commonwealth of Australia Constitution Act, 1900 (Imp.) as approved by the Australian people. The Preamble recites the people's agreement, "humbly relying on the blessings of Almighty God," to unite in "one indissoluble Federal Commonwealth under the Crown."

A3. In the lead-up to the referendum in 1999, ACM organized a campaign for the election of delegates to the Constitutional Convention winning 19 seats with 72.82% of the constitutional monarchist vote. (Other groups winning seats included the Australian Republican Movement (ARM) with 27 seats, the Ted Mack group with 2 seats, the Australian Monarchist League with 3, Safeguard the People with 2, Real Republic with 2, Clem Jones Queensland Constitutional Republic Team with 3 and Queenslanders for Constitutional Monarchy with 2.)

A4. At the Constitutional Convention elections, ACM was able to forge there a powerful coalition with four smaller constitutional monarchist groups there, earning the praise of Cardinal Pell for our unity and our dedication to principle.

A5. A Parliamentary Library Research Paper concluded: "The main monarchist organisation is ACM....By 1999 ACM, like its opposite number ARM in the case of republicans, appears to have become the spokesperson for monarchists."[xxiv]

A6.Based on the vote received in the 1998 Convention election, ACM delegates were appointed to all eight seats allocated to constitutional monarchists on the ten person official Vote No Committee established to manage the Vote No advertising campaign in the 1999 referendum.

A7. In a parallel but distinct campaign with supporter funded advertising, ACM appointed directors and opened offices in every state, with coordinators in every electorate.

A8. Marshalling over 50,000 supporters across the Commonwealth, ACM ran a tight and ultimately successful campaign which resulted in a landslide rejection of the politicians' republic in every State and 73% of electorates.

A9. When, after the referendum, the republicans announced their plans for a series of plebiscites, ACM adopted and has consistently denounced this as an

irresponsible attempt to gain a vote of no confidence in the world's most successful constitution.

A10. Today, the organisation continues to advocate the retention of the constitutional monarchy or crowned republic as the preferred model of governance for our Commonwealth, as well as support for the retention of our Australian Flag. ACM's activities are wide and diverse. They include publishing journals and books, maintaining websites, producing educational materials, providing speakers for public forums and organising gatherings where fellow Australians can have an opportunity to learn more about the unique system of government that has helped to safeguard our cherished democratic traditions and freedom. Each year since 1999, ACM has held a National Conference which brings together delegates from its divisions and branches.

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[i] The Committee is to consider and report on:

1. The effectiveness of the Referendum (Machinery Provisions) Act 1984 in providing an appropriate framework for the conduct of referendums, with specific reference to:
a. Processes for preparing the Yes and No cases for referendum questions;
b. Provisions providing for the public dissemination of the Yes and No cases; and
c. Limitations on the purposes for which money can be spent in relation to referendum questions.
2. Any amendments to the Referendum (Machinery Provisions) Act 1984 ("the Act") the Committee believes are required to provide an appropriate framework for the conduct of referendums;
3. Any other federal provisions relevant to terms 1 and 2 above, as the Committee considers appropriate.

[ii] Under section 11 of the Act, where within 4 weeks after the passage of a proposed law through both Houses of the Parliament, there is forwarded to the Electoral Commissioner:
(i) an argument in favour of the proposed law, consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted for the proposed law and desire to forward such an argument; or
(ii) an argument against the proposed law, consisting of not more than 2,000 words, authorized by a majority of those members of the Parliament who voted against the proposed law and desire to forward such an argument;

the Electoral Commissioner shall, unless the Minister informs the Electoral Commissioner that the referendum is not to be held, not later than 14 days before the voting day for the referendum, cause to be printed and to be posted to each elector, as nearly as practicable, a pamphlet containing the arguments together with a statement showing the textual alterations and additions proposed to be made to the Constitution.

[iii] House of Representatives, 16 September, 1912, 7156

[iv] House of Representatives, 16 September, 1912, 7153

[v] House of Representatives, 16 September, 1912, 7153

[vi] House of Representatives, 16 September, 1912, 7155

[vii] House of Representatives, Standing Committee on Legal and Constitutional Affairs (Roundtable)
Reference: Constitutional Reform, 1 May 2008,
http://www.aph.gov.au/hansard/reps/commttee/R10761.pdf, accessed 3 October, 2009

[viii] Loc.cit

[ix] John Milton, "Aeropagitica," 1644

[x] House of Representatives, 16 September, 1912, 7158

[xi] House of Representatives, 16 September, 1912, 7160

[xii] The Daily Telegraph (London), 8 November, 1999.

[xiii] Sir David Smith, "The Referendum: A Post-Mortem", Proceedings of the Sir Samuel Griffith Society, 2000, Volume 12, Chapter 7,
http://www.samuelgriffith.org.au/papers/html/volume%2012/v12chap7.htm, accessed 3 October, 2009. See also Dr Nancy Stone "The Referendum Debate: A Note on Press Coverage," Proceedings of the Sir Samuel Griffith Society, 2000, Volume 12, Chapter 9,
http://www.samuelgriffith.org.au/papers/html/volume%2012/v12chap9.htm ,accessed 3 October, 2009.

[xiv] Ibid.

[xv] Senate, 20 September,1912, 7593

[xvi] Sir David Smith, loc.cit.

[xvii] Vide paras.4.15-4.19,post

[xviii] K.Handley, "When "Maybe" means 'No'", Proceedings of the Sir Samuel Griffith Society, 2002, Volume 14, Chapter 3,
http://www.samuelgriffith.org.au/papers/html/volume14/v14chap3.html, accessed 3 October, 2009

[xix] [1921] SC 694

[xx] Sir David Smith,loc cit.

[xxi] "From Constitutional Convention to Republic Referendum: A Guide to the Processes, the Issues and the Participants," by Professor John Warhurst: Parliamentary Library Research Paper 25 1998-1999.

[xxii] ACM website, "Comparing the republican way with the monarchist style," 2 June, 2008,
http://www.norepublic.com.au/index.php?option=com_content&task=view&id=1472&Itemid=4
accessed 3 October, 2009

[xxiii] ACM website, "It was the question," 28 May, 2007,
http://www.norepublic.com.au/index.php?option=com_content&task=view&id=863&Itemid=4
accessed 5 October, 2009

[xxiv] "From Constitutional Convention to Republic Referendum: A Guide to the Processes, the Issues and the Participants," loc.cit.