

Submission No 012

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6 October, 2009

Committee Secretary
House of Representatives Standing Committee on
Legal and Constitutional Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

RE: Inquiry into the machinery of referendums

Dear Sir/Madam,

I wish to make a submission to the *House of Representatives Standing Committee on Legal and Constitutional Affairs* about their Inquiry into the machinery of referendums.

I am writing to express my support for current provisions in the Referendum (Machinery Provisions) Act 1984¹ with regard to the terms of reference of this Inquiry². I am not convinced of the need for a radical change in the way that the Yes and No cases for a particular referendum question are communicated to the voting public. I think the legislation works well as it is.

Summary

Without a briefing document being made publicly available, where the need for this Inquiry is discussed (if such a document exists), I can only guess at the content of potential changes to the machinery of referendums that this Inquiry will consider.

The current legislation is appropriate, as it lends itself to the production of a balanced and fair document outlining both sides of a referendum question whilst listing the proposed changes to the referendum. The Yes and No case pamphlets are mailed out to voters for them to read and consider.

I think it would be inappropriate for Commonwealth money to be made available for the Yes and No cases of a referendum for the purpose of funding partisan mass media advertising. Fund raising to cover the costs of television, newspaper, radio or internet advertising should be a task left to proponents of the Yes and No cases in a referendum.

¹ See Appendix 1 – Section 11 of The Referendum (Machinery Provisions) Act 1984

² See Appendix 2 - Inquiry into the machinery of referendums Terms of Reference

Terms of Reference for his Inquiry - Part One

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 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;

At present Section 11 of the Referendum (Machinery Provisions) Act 1984 describes a process for preparing the Yes and No cases for referendum questions. The main format for this information is a pamphlet that contains the Yes and No cases up to a prescribed word count as well as the text of the proposed changes to the Constitution. The prepared pamphlets are mailed out to all electors. The expense for this is to be borne by the Commonwealth. The Referendum (Machinery Provisions) Act 1984 includes the provision to make the information contained in the pamphlets available over the internet or by any other relevant presentations.

These provisions for explaining the proposed changes of a referendum to the public and distributing the information regarding the proposed changes to the Constitution have been adequate for quite a while now, and the legislation has been suitably modified to include the provision of this information to the Australian public over the internet. Where a group of people want to lobby the public for a particular vote in a referendum, that special interest group has every opportunity to raise funds independently of the Commonwealth and promote their cause as they see fit. This is what happened during the referendum vote for a republic that occurred nearly ten years ago. I have no problem with the current arrangements in the Referendum (Machinery Provisions) Act 1984.

So, as a member of the public I am left wondering what the exact purpose of this Inquiry actually is. I can only presume that this inquiry was called, with the deadline for submissions put at very short notice, to make significant changes to the way in which the

Yes and No cases for a referendum question are communicated to the public. I can only continue to guess that a major change that may by some be seen to be advantageous would be to have the Commonwealth pay expenses for mass media advertising such as television commercials and newspaper advertisements for both the Yes and No cases, or worse, to remove the requirement for proposed changes of the Constitution to be communicated to the public through a printed pamphlet that is to be posted to every household.

The House Standing Committee on Legal and Constitutional Affairs issued a press release about this Inquiry on the 10th of September claiming that:

‘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 noted above, Section 11 of the Referendum (Machinery Provisions) Act 1984 already includes the ability for the Commonwealth to fund the dissemination of the Yes and No cases by internet:

“(4) The Commonwealth shall not expend money in respect of the presentation of the argument in favour of, or the argument against, a proposed law except in relation to:

...

(ac) the distribution or publication, by or on behalf of the Electoral Commission, of those pamphlets, translations or presentations (including publication on the Internet);”

Without any real reasons detailing the need to initiate this Inquiry having been supplied by the Committee, I will argue against the use of Commonwealth funds to pay for

television, newspaper or radio advertising advocating a particular vote in a referendum, even if both the Yes and No sides were to be provided with an equal amount of Commonwealth funds for the purpose.

Some of the reasons against providing Commonwealth funding for partisan mass media advertising during a referendum under Section 128 of the Constitution are summarized in the following paragraphs:

The organisations taking funding for the Yes and NO cases may not be representative of wider points of view on that topic.

This is particularly the case with the republic issue and the stance of the ARM with regard to the issue of models for a republic. There are a large number of views on a suitable model for a republic. By way of disclosure of personal interests, I am one of a number of Copernican Republicans who propose a model for an Australian republic that includes the regular direct election of an Australian to play the role of The Queen in our Constitution while keeping the role of an appointed Governor-General as the representative of the head of state. The leadership of the ARM is aware of these new Copernican models but seems intent on promoting their own models that roll The Queen and the Governor-General into the one position as head of state for Australia. The ARM are entitled to take whatever stance they wish to take on the republic, but they do not have the right to claim to be representative of all republican views. They are part of a Coalition of Australian Republicans.

For more information about the Copernican models see: <http://www.copernician.info>

The public does not have a good understanding of the Constitution and the general public is for the most part disengaged from the political process.

Television advertising can not improve the public's understanding of the Constitution, even if it can induce positive or negative feelings on particular topics. It would be

dishonest to pretend that an advertising campaign could improve the public understanding of such a complex topic as our Constitution and system of government. There is a strong case for a Commonwealth funded program to improve the public's understanding of our system of government and civics in general. The charged atmosphere in the few weeks leading up to an important referendum vote is not, however, an appropriate time for a general civics education program to suddenly take wing.

Visual advertising can not convey complex ideas.

This point should be self-evident. A visual advertising campaign has no hope of conveying the complexities of the major changes to the Constitution and our system of government that a referendum vote may usher in.

A visual advertising campaign can be emotive, as it plays on people's identities.

Providing Commonwealth funding to third party organizations could lead to a very socially divisive advertising campaign that could lead to potentially violent confrontations between proponents of the Yes and No cases of a referendum topic, especially if the topic is for a republic. If, by contrast, a partisan organization was dependent on the goodwill of corporate sponsorship and public donations then if divisive advertising is produced the threat of a loss of private funding would force the organization to pull offensive ads or else loose the funding they would require to continue with their advertising campaign. With Commonwealth funding of television advertisements for the partisan Yes and No cases, a series of shock or attack ads that part of the population may find offensive might be shown repeatedly during decisive times of an election campaign. There would be no real curb on offensive advertising if it were to be funded by the Commonwealth.

Constitutional changes through s128 referendums are difficult to achieve.

Very few referendums are passed by the Australian people. There have, however, been some notable referendum wins when a proposed change has had widespread support in the community and from both political parties. A proposal to provide Commonwealth funding for partisan television advertising campaigns during a referendum vote may have been seen as a way to sneak major constitutional changes past a disengaged public, even while there may be no consensus on the referendum issue in question. I think such a strategy would be wrong for a number of reasons. If there is a wish for constitutional change, the main efforts should be going into finding a model for change that will have wide consensus in society. I think that with regard to the republic issue, the Copernican Models do have the ability for widespread consensus although the times may not yet be ripe for that to be evident. We want the best for Australia, our system of government and for Australians.

Another concern is the way the change to a republic has been planned.

There was a plan to have a number of non-binding plebiscites on whether people agreed that Australia should be a republic and on selecting a particular model. Without any real information covering what needs this Inquiry was set up to address, I can only guess at the content of some of the professional submissions to this Inquiry before they are made public and while we still have a chance to submit a comment. I suspect that only once the deadline for submissions has passed will we be in a position to know what this Inquiry was set up to address by perusing the list of submissions.

It is generally accepted that a non-binding plebiscite affirming the wish of Australians for Australia to become a Republic will be successful. If during the same vote a list of models is presented and chosen from, then there will be a method for selecting the head of state that will achieve the greatest votes – by definition. The agreed assumption, going off opinion polls, is that Australians want a directly elected head of state for a republic. Any genuine referendum vote to change the Constitution so that Australia becomes a republic, however, is not expected to have an easy passage. Even if a referendum

question was designed with the preferences expressed through the series of plebiscites it still may not pass.

Therein lays a potential danger to our Constitution through changing the Referendum (Machinery Provisions) Act 1984. Given that the republic issue is likely to be one of the next topics to go to referendum, and given that there has been public debate that we will have a number of non-binding plebiscites about a republic first, a threat to our system of Government could materialize if there were confusion in the public about whether the next vote on a republic was going to be for a non-binding plebiscite or if it was to be a true referendum under Section 128. If some of the measures about writing and distributing the Yes and No case pamphlets in the Referendum (Machinery Provisions) Act 1984 are removed or changed, then there might be confusion as to whether the vote was non-binding or whether it was a referendum proper under s128. A change to the Referendum (Machinery Provisions) Act 1984 that curtails the production and distribution of the Yes and No cases pamphlets as it is now expressed in the Act could be understood as a form of electoral deception if such a change were to be followed shortly after by nationwide votes on the issue of the republic. Without any detailed reasoning for the need of this Inquiry, we can only assume that it could be a part of a wider covert strategy of Constitutional change that the public has no knowledge of.

Conclusion

I wish to express my support for the Referendum (Machinery Provisions) Act 1984 as it now stands. I do not see any need to make changes to the way information about a referendum is communicated to the public. Furthermore, there have been no arguments put and no case whatsoever has been made indicating why the provisions in the Act regarding the dissemination of information about a pending referendum are no longer suitable. This Inquiry looks like it has been hastily set up. I look forward to reading through the published Inquiry submissions after the deadline for submissions have passed so as to learn what the intended purpose of this Inquiry actually is. The public has a poor

understanding of our Constitution and our system of government, and there is a real need to have a comprehensive program for teaching civics so that people in the public can feel they can contribute more readily. The few weeks leading up to a referendum vote are not the appropriate time for broadcasting partisan 'education' about civics and government to the public. Commonwealth funding for partisan television, newspaper, radio and internet advertising for both the Yes and No cases during a referendum campaign will not result in a greater engagement of the public with our system of government, it is more likely to have the opposite effect.

The Referendum (Machinery Provisions) Act 1984 is just fine as it is. The Commonwealth and taxpayers should not be expected to pay for mass media advertising excesses in the weeks leading up to a referendum vote. It is appropriate for proponents of the Yes and No cases in a referendum to garner financial support from willing supporters in the community. The side that resonates most with the sensibilities of the community is likely to be able to raise a larger pool of finances for making their case through the media. That is an appropriate way to fund political advertising. The pamphlet documenting the Yes and No cases as produced under the Referendum (Machinery Provisions) Act 1984 are a balanced and fair way to distribute information about a referendum. It works just fine as it is.

Please feel free to contact me if you would like me to elaborate on any of these points.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'RVose'.

Robert Vose

Melbourne

Personal Blog at <http://www.7gs.com/becrux>