

Submission

on the

Plebiscite for an Australian Republic Bill 2008

to the

Senate Finance and Public Administration Committee

**Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600**

Telephone: 02 6277 3530

Facsimile: 02 6277 5809

Email: fpa.sen@aph.gov.au

Website: www.aph.gov.au/senate/committee/fapa_ctte

by

FamilyVoice Australia

4th Floor, 68 Grenfell St, Adelaide SA 5000

Telephone: 1300 365 965

Facsimile: 08 8223 5850

Email: office@fava.org.au

Website: www.fava.org.au

28 January 2009

TABLE OF CONTENTS

1. Introduction.....	1
2. A national plebiscite.....	1
3. Becoming a republic	2
4. Plebiscites and referendums.....	2
5. Manipulation by plebiscite	3
6. Republic referendum 1999	3
7. Public opinion polls.....	4
8. “Do you support Australia becoming a republic?”	4
9. Recommendation.....	5
10. Endnotes.....	5

1. Introduction

The Senate Finance and Public Administration Committee is inquiring into the *Plebiscite for an Australian Republic Bill 2008*, which was introduced into the Senate by Senator Bob Brown and referred to the Committee by the Senate on 13 November 2008.

The Bill would require the Minister responsible for the administration of the *Commonwealth Electoral Act 1918* to hold a “national plebiscite” at the time of the next general election for the House of Representatives. The plebiscite would be on the question: “Do you support Australia becoming a republic?”

The Committee has called for public submissions which are due by 6 February 2009. The Committee is due to report to the Senate on 15 June 2009.

2. A national plebiscite

The Australian Electoral Commission explains the notion of a plebiscite or advisory referendum:

“An issue put before the electorate which does not affect the Constitution is called an advisory referendum or a plebiscite. Governments can hold advisory referendums to test whether people either support or oppose a proposed action on an issue. The Government is not bound by the ‘result’ of an advisory referendum as it is by the result of a Constitutional referendum. Australian Governments, Federal, State and Territory, have held advisory referendums on various issues:

“Military service plebiscites were held in 1916 and 1917 but, as they were not proposals to amend the Constitution, the provisions of section 128 of the Constitution did not apply. Electors in all federal Territories were permitted to vote. Both the military service plebiscites sought a mandate for conscription and were defeated.”¹

The Parliamentary Handbook notes that:

“In Australia referendums on questions that do not affect the Constitution are usually called plebiscites. They have no legal force. Three national plebiscites have been held: two on the conscription of troops during World War I and one on a national song in 1977.”²

The Explanatory Memorandum to the Bill notes that:

“Based on figures from the 2004 federal election, which are the latest available, the financial impact of holding a plebiscite in conjunction with the next federal election will be approximately \$10.5 million.”³

Since a plebiscite has no legal force and is not binding on the Commonwealth Government, it is effectively a large and very expensive public opinion poll. Modern opinion polling techniques are frequently used by political parties and governments and can determine public opinion on well defined questions with an accuracy of a few percent. Furthermore, this can be achieved at a cost of thousands, not millions, of dollars.

In the current context of the global financial crisis, holding an expensive plebiscite instead of conducting an opinion poll at modest cost represents an unwarranted waste of taxpayers’ money.

3. Becoming a republic

For Australia to become a republic, the Australian Constitution would need to be amended in accordance with Section 128, which requires a referendum to be passed by an overall majority of electors in Australia and by a majority of electors in a majority of States.

A former Governor of Victoria, Richard McGarvie, in his 1999 book *Democracy: choosing Australia's republic*, explains the process for amending the Australian Constitution by referendum as follows:

“The usual way of deciding whether to make a change to the Commonwealth Constitution is by a referendum upon a Bill passed by both Houses of the Commonwealth Parliament which becomes an Act and amends the Constitution if approved by the required majority vote.”⁴

The Australian Constitution was one of the earliest national constitutions to be adopted initially by referendum of the people. This approach may have been inspired by the earlier adoption of the Swiss Federal Constitution in 1848 by the electorate.⁵ Australia is one of very few countries with constitutions which can be amended only by referendum of the people.⁶

The Australian people owe a great debt to our Founding Fathers for their wisdom in protecting our Constitution in this way from change that is ill-considered or against the will of the Australian people.

Since the process for changing Australia from a constitutional monarchy, as at present, into a republic requires a binding referendum, conducting a non-binding plebiscite is a waste of time and effort. It is also potentially misleading to ask the Australian people to vote in plebiscite whether they want a republic, when a plebiscite cannot achieve that result.

4. Plebiscites and referendums

Professor David Flint, National Convenor of Australians for Constitutional Monarchy, comments on some differences between plebiscites and referendums:

“The Founding Fathers of Australia were well aware of the fact that starting out as a republican, Napoleon Bonaparte skilfully used seven constitutional plebiscites – just questions without details - to take and to increase his hold on power.

“As a result, Europe suffered over two decades of war resisting his attempts to subjugate the continent. They were also well aware of the fact that his nephew, Napoleon III, followed this practice of using plebiscites to seize and consolidate his power.

“So our Founding Fathers would not have a bar of the French style ‘blank cheque’ constitutional plebiscite. Instead they chose the Swiss style referendum where all the details of the proposed change are on the table before - and not after - the vote.”⁷

The overwhelming advantage of a referendum is that the exact wording of the proposed change to the Constitution must be included in the referendum bill. Consequently, the public can consider and debate the proposed change before voting, and take the likely consequences fully into account.

Since Australia has the great advantage of a well defined referendum process for considering proposed changes to our Constitution, this process should not be bypassed by an ultimately irrelevant plebiscite which cannot change anything.

5. Manipulation by plebiscite

Last century's dictators Adolf Hitler and Benito Mussolini used the plebiscite to disguise oppressive policies in a veneer of populism. Hitler's use of the plebiscite may be the reason for Germany having had no provision since World War II for holding referendums at the federal level.⁸

Adolf Hitler's final step in seizing total dictatorial power in Germany was adroitly given a façade of respectability by means of a plebiscite.

Within hours of the death of President Hindenburg on 2 August 1934, the Nazi Reichstag announced a law, backdated to the previous day, that the office of Reich President would be combined with that of Reich Chancellor, effective from the death of President von Hindenburg, and that Hitler would hold both positions. The law was technically illegal since it violated the provisions of the German constitution concerning presidential succession.

In order to give this consolidation of power greater legitimacy, following the funeral Hitler ordered a national plebiscite giving the German people an opportunity to express their approval of his new powers. Following an intensive propaganda campaign for big "Yes" vote, the plebiscite was held. About 95 percent of electors voted, with some 90 percent being in favour. Hitler used this plebiscite result to claim that his new powers as Führer had been overwhelmingly endorsed by the German people.⁹

Examples of political manipulation by plebiscite, such as this one by Hitler, provide a salutary reminder that the plebiscite is a political tool, wide open to Machiavellian manipulation, used to attempt a veneer of legitimacy for goals that are not genuinely supported by the public.

Similar manipulation of opinion for commercial purposes was attempted by the tobacco industry during the 1980s over the advertising of tobacco products. The tobacco industry made much of the "legal to sell, therefore legal to advertise" argument, quoting opinion polls purportedly establishing strong public opinion for this principle.¹⁰ However, an opinion poll on the specific question "Would you approve of a ban on cigarette advertising?" was supported by 63% of those surveyed.¹¹ The attempt at manipulation failed and legislation to ban cigarette advertising was passed by the Victorian Parliament in 1987.

The proposal for a plebiscite on a vague, undefined republic is an attempt to manipulate public opinion when a proposal for a specific, well-defined republic may be rejected by the Australian people.

6. Republic referendum 1999

In contrast to a vague non-binding plebiscite, the Australian people were given the opportunity to vote on a specific model of republic in the referendum held on 6 November 1999. The proposed model, as recommended by the 1998 Constitutional Convention, was detailed in the *Constitution Alteration (Establishment of Republic) Bill 1999*.

In the 1999 referendum to adopt this bill, the question was presented as follows:

"A Proposed Law: To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

Do you approve this proposed alteration?"

The result of the referendum was that the Australian people decisively rejected the proposal. It was rejected in every state and with an overall "No" vote of about 55%.¹²

The result was so clear cut that the president of the Australian Republican Movement in 1999, Malcolm Turnbull, now believes a republic cannot be achieved in the near future. In an AAP report on 29 September 2008, he was quoted as saying: “I think the next time this will come onto the agenda in a form where a change could be approved and it may not even be approved then, is at the end of the Queen's reign.”¹³

Given the clarity of the rejection of a republic in 1999, what would be the likely outcome of another referendum now?

7. Public opinion polls

Public opinion polls indicate that support for a republic has fallen over the past decade.

Whereas a News Poll in August 1999 found 51% in favour of “Australia becoming a republic”, the most recent News Poll on this question, held in January 2007, found just 45% in favour. Opposition to a republic rose slightly from 35% in 1999 to 36% in 2007. Those undecided rose from 14% to 19%.¹⁴

Roy Morgan has found a similar drop in support for a republic. In November 1999 he asked electors “*In your opinion, should Australia remain a MONARCHY — or become a REPUBLIC with an elected President?*” and found 54% in favour. However, in May 2008, those favouring a republic with an elected president had fallen to only 46%. Support for a remaining a monarchy rose from 39% to 42%, while those undecided increased from 7% to 12%.¹⁵

If a plebiscite were held next year and reflected these public opinion results, it would simply confirm that the republican movement fails to command majority support among Australian electors.

What is the point of holding a plebiscite that is likely to fail to achieve public support?

8. “Do you support Australia becoming a republic?”

Section 5 of the Plebiscite for an Australian Republic Bill 2008 would formulate the plebiscite question as: “*Do you support Australia becoming a republic?*”

When a question is put to the electors in a referendum under Section 128 of the Constitution the question necessarily refers to a law which has been passed by at least one House of the Parliament. Electors are therefore able to inform themselves as to the precise change to the Constitution that would be brought about if the referendum question were to pass.

In the case of the three other plebiscites held by the Commonwealth it was also clear precisely what would follow if the question were to pass, notwithstanding the non-binding nature of a plebiscite.

The 1916 plebiscite asked: “*Are you in favour of the Government having, in this grave emergency, the same compulsory powers over citizens in regard to requiring their military service, for the term of this war, outside the Commonwealth, as it now has in regard to military service within the Commonwealth?*”¹⁶

The 1917 plebiscite asked: “*Are you in favour of the proposal of the Commonwealth Government for reinforcing the Australian Imperial Force overseas?*” The proposal was to conscript men for overseas service in sufficient numbers to make the total reinforcements (including volunteers) up to 7000 a month.¹⁷

The 1977 plebiscite invited electors to express a preference for one of four proposed national songs: “Against the background that ‘GOD SAVE THE QUEEN’ is the NATIONAL ANTHEM to be played on Regal and Vice Regal occasions, electors may indicate their preferences as to which of the tunes of the songs listed below they would prefer to be played on other occasions.”¹⁸

By contrast with the above plebiscite questions, the plebiscite question which would be required to be put by the 2008 republic plebiscite bill is imprecise.

It is well-known that those who favour Australia becoming a republic are deeply, probably irreconcilably, divided over the form such a republic should take. The key issues are the means of electing or appointing a president, the powers a president would be granted and the procedure for removing a president should that become necessary.

The plebiscite which would be required by the Bill would essentially be a very expensive opinion poll.

It would not assist at all in determining what form of republic, if any, would attract the support of a majority of electors in a majority of States. For Australia to become a republic, a precise referendum question under Section 128 of the Constitution needs to be put to the electors.

Those advocating a republic should refrain from seeking the expenditure of Commonwealth funds on futile, meaningless exercises such as the proposed plebiscite. They should wait until they believe there is a constitutional majority in favour of a specific republican model before seeking to have a question put to the electors on this matter.

9. Recommendation

The Plebiscite for an Australian Republic Bill 2008 should be rejected and those advocating a republic should instead devote their efforts to formulating their preferred specific republican model.

10. Endnotes

-
1. http://www.aec.gov.au/Elections/referendums/Advisory_Referendums/index.htm.
 2. <http://www.aph.gov.au/library/handbook/referendums/index.htm>.
 3. *Ibid.*, p 2.
 4. McGarvie, Richard, 1999 *Democracy: choosing Australia’s republic*, (Melbourne University Press: Melbourne), p 241.
 5. *The State, the People and the authorities*, Swiss Confederation, Federal Department of Home Affairs FDHA; <http://www.bar.admin.ch/archivgut/00591/00645/index.html?lang=en>.
 6. Other national constitutions amendable only by direct referendum include those of Switzerland, Ireland, Denmark and Japan. See: Aroney, Nicholas, “Formation, Representation and Amendment in Federal Constitutions”, *American Journal of Comparative Law*, Vol. 54, No. 1, December 2006.
 7. Flint, David, 16 June 2008, “Republicans expect to lose the next referendum: that’s the only reason for their plebiscites”, *An opinion column from the national convenor*, Australians for Constitutional Monarchy; http://www.norepublic.com.au/index.php?option=com_content&task=view&id=1479&Itemid=4.
 8. "Referendum", *Wikipedia*, 11 Jan 2009; <http://en.wikipedia.org/wiki/Plebiscite>.
 9. "The Triumph of Hitler: Hitler Becomes Führer", *The History Place*, downloaded 11 January 2009; <http://www.historyplace.com/worldwar2/triumph/tr-fuehrer.htm>.

-
10. *Tobacco in Australia: Facts and Issues*, 3rd Edition, Section 11.1.4 “Industry arguments to retain tobacco advertising”; <http://tobaccoinaustralia.org.au/>.
 11. Opinion poll by the Roy Morgan Research Centre in June 1987, cited in *The Victorian Tobacco Act 1987 – the untold story*, ed. Dorothy Reading, Second Edition October 2007, VicHealth, Victoria; www.vichealth.vic.gov.au.
 12. <http://www.aph.gov.au/library/handbook/referendums/r1999.htm>
 13. Flint, David, "Republic not inevitable: Malcolm Turnbull", *Australians for Constitutional Monarchy*, 30 September 2008; http://www.norepublic.com.au/index.php?option=com_content&task=view&id=1568&Itemid=4.
 14. http://www.newspoll.com.au/image_uploads/0103%20republic.pdf.
 15. “Now Only 45% of Australians Want a Republic with an Elected President (Down 6% Since 2001)” Finding No. 4290 May 07, 2008 <http://www.roymorgan.com/news/polls/2008/4290/>.
 16. <http://www.aph.gov.au/library/handbook/referendums/p1916.htm>.
 17. <http://www.aph.gov.au/library/handbook/referendums/p1917.htm>.
 18. <http://www.aph.gov.au/library/handbook/referendums/p1977.htm>.