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PUBLIC LAW

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Committee Secretary
Standing Committee on Finance and Public Administration

By email: fpa.sen@aph.gov.au

Dear Committee Secretary

Inquiry into the Plebiscite for an Australian Republic Bill 2008

Thank you for the opportunity to make a submission on this Bill. As a preliminary matter, Professor Williams wishes to disclose his membership of the National Committee of the Australian Republican Movement. This submission is not made on behalf of, or in consultation or collaboration with, that organisation. All views are expressed on the basis of our academic expertise alone.

We support the objective of this bill – the holding of a national plebiscite simultaneously with the next federal election. A plebiscite is the best way to re-engage with the republic debate. It would give all Australian voters an opportunity to formally indicate their support or otherwise on the transition of Australia to a republic. It should be emphasised that a plebiscite is not a binding vote and in no way replicates the constitutional purpose served by a referendum (for this reason we prefer to avoid the term, occasionally employed by the Australian Electoral Commission, ‘advisory referendum’). A plebiscite as envisaged by this Bill is an appropriate way of gauging the level of support of the Australian public for a move to a republic.

If a majority of the electorate does not support the proposition, this should signal the end of the debate for the time being. If, however, there is majority support for the proposition, the plebiscite will enable an appropriately focused debate on the type of republic that Australia might become. It may well be that the choice between competing models of republic is, in turn, also best resolved by a plebiscite before a proposed law for the amendment of the Commonwealth Constitution is put to the people for their formal approval in a referendum.

We agree that for this plebiscite the question to be put to the Australian people should be simple and without elaboration. It should either be in a form like that proposed in the bill, or could give the electorate the choice of supporting either retention of Australia’s status as a constitutional democracy with a monarch, or a move from that status to become a republic.

The plebiscite should not be the only means that Australians are given the opportunity to be involved. This issue goes to the heart of our structure of government and our national identity. Australians should certainly be given a say at the ballot box through a plebiscite, but should also be able to engage in the debate through other means. The government, prior to a plebiscite, should establish a community process by which people can debate and have their say about the question of Australia becoming a republic. This would provide an early means of debating the models that could be considered in the event of a successful plebiscite and would help to begin a grass-roots community conversation about the questions involved. This process could also play an important educative role in giving people the opportunity, such as at forums held in cities in rural and regional areas, to listen to all arguments.

The *Referendum (Machinery Provisions) Act 1984* is not the appropriate means of conducting the plebiscite. Although its provisions have been updated occasionally since originally enacted, the legislation requires more substantial amendment before it is next used. For example, the Act could much more effectively address the issue of public education, especially the use of modern techniques, such as online material, in order to ensure that it provides the best process for engaging contemporary Australians. In any event, that Act is not the right vehicle for a plebiscite because its terms and processes are specifically concerned with the holding of referenda complying with the legal requirements of s 128 of the Commonwealth Constitution. By contrast, a plebiscite need not necessarily meet the same strictures.

The AEC reports that only two national plebiscites have been held in the history of the Commonwealth, both seeking approval for the conscription of military service during World War I. At that time, the Constitution forbade the participation of electors in the Federal Territories in referenda polling, but notably this prohibition was set aside for the purpose of the 1916 and 1917 plebiscites. Different again was the 1977 National Song Poll that was used to determine ‘Advance Australia Fair’ as the national anthem. The Poll was obviously not a referendum since no constitutional alteration was to occur, but nor was it classified by the AEC as a plebiscite. This was presumably due to several distinguishing factors – voting was not compulsory and electors were asked to rank their preferences amongst the four songs on the ballot.

Given the likely importance of one, and potentially a further, national plebiscite or poll in the process of Australia becoming a republic, there is much to be said for the drafting of new legislative provisions to clearly stipulate the process which is to be followed. These could be enacted either as a distinct Part of the *Referendum (Machinery Provisions) Act 1984* or separately. It is not sufficient for section 6 of this Bill merely to provide for ‘such modifications as are necessary’ to the referendum process laid down in the 1984 legislation.

Yours sincerely

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