

“What Part of Section 128 Don’t You Understand?”

A Submission by Sir David Smith * to the Senate Finance and Public Administration Committee January 2009

On 6 November 1999 the Australian people voted overwhelmingly to reject a referendum proposal to change this country’s system of government from a constitutional monarchy to a republic. The proposal was rejected in all six States and in the Northern Territory. It was rejected by 72% of the nation’s federal electorates.

Since then, republicans, and especially the Australian Republican Movement, have resorted to silly stunts and meaningless slogans to try and keep the issue of the republic alive, but the issue remains of no interest to the vast majority of Australians.

Over the same period there has been no evidence whatsoever of any attempt by republicans to fashion an alternative republican model, or even to try and breathe any life into the rejected model. They still claim that they want a republic but they cannot make up their minds as to what sort of republic. Worse still, they seem to have given up trying.

Instead of doing what section 128 of the Australian Constitution requires them to do – producing a Bill and bringing it before the federal Parliament – they have devised the plebiscite proposal which is now the subject of the Bill that Senator Bob Brown has introduced, and the subject of an inquiry by this committee.

The plebiscite proposal is a deceitful and illegitimate way of avoiding the obligations imposed by the Constitution. The Constitution clearly sets out the obligations placed on the Parliament if it wishes to bring about constitutional change, and the procedures which the Parliament must follow in order to achieve that end. A plebiscite is not one of those procedures.

The plebiscite proposal is deceitful because, no matter how the people vote, their vote will achieve absolutely nothing – it will change nothing. What it might do, however, in the unlikely event that enough people vote for it, would be to persuade voters to reject the present Constitution while the nation would continue to be governed by that same rejected Constitution. Given that the republicans have been unable to devise an alternative system of government over the past decade, the nation could face a long period of constitutional instability. And if the next republican model, when eventually it emerges, were also to be rejected by the Australian people, the damage to our national psyche and self-respect would be devastating, to say nothing of the damage to our system of government.

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The plebiscite proposal is deceitful because it invites the Australian people to reject their present Constitution without telling them what, if anything, is to be put in its place. Worse still, as stated above, it could leave the nation with nothing in its place.

The plebiscite proposal is illegitimate because it avoids the only lawful way to change the Constitution by observing the provisions of section 128, and it suggests to those who lack the necessary knowledge that this is a lawful alternative way, which of course it is not.

Both in the text of the Bill itself, and in his second reading speech, Senator Brown has misled the Parliament. The very title of the Bill – *Plebiscite for an Australian Republic Act 2008* – suggests that the Bill will result in an Act for an Australian republic, when clearly it will not. The Bill proposes that the question to be put to the Australia people is “Do you support Australia becoming a republic?” The question is meaningless and dishonest – there is no such thing as “a republic” and the Bill does not tell the voter what sort of republic they would be voting for. The world has more than 150 republics and all of them are different.

As the distinguished Canadian writer and political commentator, Mark Steyn, wrote in Canada’s *National Post* on 11 November 1999: “The defeated republican forces now say that next time the question should simply ask whether Australians favour a republic per se and leave it until later to work out whether it’s going to be the Mary Robinson model or the Saddam Hussein model. The devil is in the details – and to demand that the electorate reject an actual, specific monarchy in favour of a vague, unspecified republic is as absurd as asking them to vote for a monarchy and reassuring them you’ll let ‘em know afterwards whether they’ll be getting Elizabeth II, Emperor Bokassa or Mad King Ludwig of Bavaria.”

The Bill carries the deception even further by proposing that the provisions of the *Referendum (Machinery Provisions) Act 1984* should apply to the plebiscite when the provisions of that Act do not apply to a plebiscite, and were never intended to. This is simply an underhand way of attempting to give the plebiscite proposal the legislative support and legitimacy which it lacks.

In his second reading speech Senator Brown further compounds the element of deception that is inherent in his plebiscite proposal. In his second paragraph he states that the purpose of his Bill “is not to change the Constitution but rather to ascertain the will of the Australian community on the republic question” but there is no such question – we still do not know what kind of republic the process is designed to give us. And Senator Brown goes on: “If the majority supports Australia becoming a republic, the specific details of the most suitable model to adopt can then be worked out in a context of that certainty.” What certainty? As the specific details of a model have not been worked out in the decade since the referendum, Senator Brown is indeed drawing a very long bow if he believes that the plebiscite will immediately solve all of the republicans’ drafting problems for them. They have been tossing around at least two irreconcilable alternatives for the past twenty years, and at times as many as ten variations, and they still can’t decide on which one they want.

I urge the Committee to recommend that Senator Brown’s flawed Bill be rejected and that he be told to go back to the drawing board and produce the constitutional amendment that he so obviously believes the Australian people need and want. Using the procedures laid down in section 128 of our Constitution we may indeed finish up buying his pig in a poke some day (though I sincerely hope not) but we want to see the pig first.
