

The Standing Committee on Finance
and Public Administration
Parliament House
CANBERRA ACT 2600

19th January 2009

Dear Sir/Madam,

Re: Submission objecting to the Plebiscite for an Australian Republic Bill 2008

Thank you for the opportunity to comment on a Bill for an act to require a Plebiscite on whether Australia should become a republic.

The Referendum (Machinery Provisions) Act 1984

What is objectionable and unconstitutional is that Clause 6 of the Plebiscite Bill (**Annexure "A"**) seeks to use provisions of the Referendum (Machinery Provisions) Act, 1984 to gain some sort of validity. A glaring anomaly that any clear thinking lawyer would find amusing.

The Referendum (Machinery Provisions) Act 1984 was never intended to be the vehicle for a plebiscite and the constitutional validity of using Section 6 of the Plebiscite Bill will open itself up to injunctive challenge.

Referendum 6th November 1999

Similar to Citizens Initiated Referendum (we are subjects not citizens) a plebiscite will be equally unconstitutional. Section 128 of the Australian Constitution proclaimed on Tuesday 1st January 1901 (**Annexure "B"**) provides Her Majesty's subjects with the tool to vote down any attempt for change. Republicans on the 6th November 1999 failed to convince the Australian electorate when 54.87% voted **NO** to the republic proposal whilst 60.66% voted **NO** to the Preamble proposal.

The 1937 Irish Plebiscite

As some 42% of Australians or almost 7 million people, can claim Irish ancestry it would be wise to revisit the plebiscite of 1937 in Ireland.

J M Kelly M.A., B.LITT., DR.JUR. Professor of Jurisprudence and Roman Law, University College, Dublin writes on the plebiscite vote:

"The necessary legal provision was made by the Plebiscite (Draft Constitution) Act, 1937, which was not expressed to be an amendment of the existing Constitution, or to confer the force of law on what the plebiscite determined. The Act merely provided (s.2(1)) that: **'The Draft Constitution shall be submitted to a plebiscite of the people in accordance with this Act'. The vote was: 685,105 in favour; 526,945 against.**"

"The Irish Constitution" J M Kelly (p.2)

President Eamon De Valera's cunning in submitting a cloaked plebiscite question added more to the shroud of secrecy:

**"Do you approve of the Draft Constitution
which is the subject of this Plebiscite?" (Annexure "C")**

Without details of the Draft Constitution a confused electorate was unable to grasp the importance of the plebiscite question and months later inherited a Draft Constitution that they were totally ignorant of adding more fuel to the flames of hostility that remain in Ireland/Northern Ireland to this day.

Recommendations

The legislative draftsmen of the Plebiscite Bill have failed to give Section 6 any validity. The Referendum (Machinery Provisions) Act 1984 was enacted specifically to deal with referenda proposals to the Australian Constitution, not plebiscite proposals.

Section 11 of The Referendum (Machinery Provisions) Act 1984 (**Annexure "D"**) sets out how a proposed law consisting of not more than 2,000 words of arguments in favour and arguments against should be distributed to electors, a small matter that the draftsmen of the Plebiscite Bill seem to have neglected.


It is my opinion that the Plebiscite Bill seeks to illegally circumvent Section 128 of The Australian Constitution by starting a plebiscite petition for a nationwide referenda, and as Section 6 in the Plebiscite Bill may be repugnant to Australian law, this Bill should be rejected.

Finally to all those dissembling party politicians who hang on the coat tails of this plebiscite proposal the following words may be of some benefit:

"In the final analysis it is the Constitutions and Laws of the Commonwealth and the States, and the High Court interpretations of such, that determines what we can or cannot do in our daily lives. It is, therefore, to those Constitutions, Laws, and Court interpretations that we must continuously look for guidance and succour in our living, work and play, **AND NOT TO THE DISSEMBLING PARTY POLITICIANS.**"

(Arthur A Chesby, Research Analyst in Constitutional Law and a former Federal MP)

Yours sincerely


Paul L Owens JP

2008

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Plebiscite for an Australian Republic Bill
2008**

No. , 2008

(Senator Bob Brown)

**A Bill for an Act to require a plebiscite on whether
Australia should become a republic**

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1 **A Bill for an Act to require a plebiscite on whether**
2 **Australia should become a republic**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Plebiscite for an Australian Republic*
6 *Act 2008*.

7 **2 Commencement**

8 This Act commences on the day on which it receives the Royal
9 Assent.

10 **3 Interpretation**

11 In this Act:

12 *electors* means all persons qualified for enrolment and for voting
13 under Part VII of the *Commonwealth Electoral Act 1918* and
14 validly enrolled to vote under Part VIII of that Act at the time of
15 the next general election for the House of Representatives.

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Minister means the minister responsible for the administration of the *Commonwealth Electoral Act 1918*.

4 National plebiscite to be held

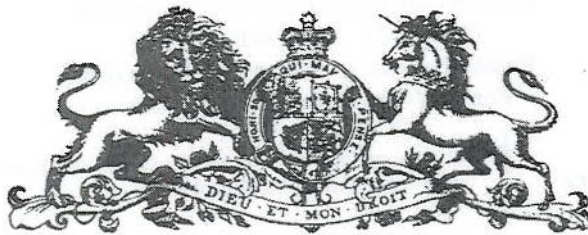
The Minister must cause the question specified in section 5 to be submitted to electors at a national plebiscite to be held at the time of the next general election for the House of Representatives.

5 Question to be submitted to electors

The question to be submitted to electors in accordance with section 4 is “Do you support Australia becoming a republic?”.

6 Application of Referendum (Machinery Provisions) Act 1984

The *Referendum (Machinery Provisions) Act 1984* applies to the submission of the question specified in section 5 and the scrutiny of the result of the plebiscite with such modifications as are necessary to allow the submission of the question and scrutiny of the result on the same basis as a referendum under that Act.



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No. 1.]

TUESDAY, 1 JANUARY.

[1901

By the QUEEN.

A PROCLAMATION.

VICTORIA R.

WHEREAS by an Act of Parliament passed in the Sixty-third and Sixty-fourth Years of Our Reign intituled, "An Act to constitute the Commonwealth of *Australia*," it is enacted that it shall be lawful for the Queen, with the advice of the Privy Council, to declare by Proclamation, that, on and after a day therein appointed, not being later than One Year after the passing of this Act, the people of *New South Wales*, *Victoria*, *South Australia*, *Queensland*, and *Tasmania*, and also, if Her Majesty is satisfied that the people of *Western Australia* have agreed thereto, of *Western Australia*, shall be united in a Federal Commonwealth under the name of the Commonwealth of *Australia*.

And whereas We are satisfied that the people of *Western Australia* have agreed thereto accordingly.

We, therefore, by and with the advice of Our Privy Council, have thought fit to issue this Our Royal Proclamation, and We do hereby declare that on and after the First day of *January* One thousand nine hundred and one the people of *New South Wales*, *Victoria*, *South Australia*, *Queensland*, *Tasmania*, and *Western Australia* shall be united in a Federal Commonwealth under the name of the Commonwealth of *Australia*.

Given at Our Court at *Balmoral*, this Seventeenth day of *September*, in the Year of our Lord One thousand nine hundred, and in the Sixty-fourth Year of Our Reign.

GOD SAVE THE QUEEN!

◆ Queen Victoria's proclamation, 1 January 1901 reproduced in the *Commonwealth of Australia Gazette* (NLA)

SCEIDEAL.
SCHEDULE.
FUIRM AN PHAIPEIR BHALLOIDE.
FORM OF BALLOT PAPER.
FUIRM EADAIN AN PHAIPEIR BHALLOIDE.
FORM OF FRONT OF BALLOT PAPER.

Có-buille
Pobalbreite

Plebiscite
Counterfoil

Uimhir }
Number }

An sonuionn tú leis an D réact-Dúnraect is
adár don Pobalbreite seo?

Do you approve of the Draft Constitution which
is the subject of this Plebiscite?

Sonuim Yes	
Ní sonuim No	

TREORAÇA 1 DTAOÓ AN PHAIPEIR SEO
DO MARCAIL.

MÁ sonuionn tú, cuir an marc "X" sa
céarnóg os comne an focail "sonuim."
MARA n-sonuionn tú, cuir an marc "X" sa
céarnóg os comne na bfoical "Ní sonuim"

INSTRUCTIONS FOR MARKING THIS PAPER.

If you approve, place the mark "X" in the
square opposite the word "Yes."

If you do not approve, place the mark "X"
in the square opposite the word "No."

FUIRM CHUII AN PHAIPEIR BHALLOIDE.
FORM OF BACK OF BALLOT PAPER.

Uimhir }
Number }

Dáilcéannas

Constituency of

Pobalbreite ar an D réact-Dúnraect, 1937.

Plebiscite on the Draft Constitution, 1937.

Nóta.—Ní foláir an uimhir ar an gcó-buille do beir ar cúl an
páipeir ballóire, leis.

NOTE.—The number on the back of the ballot paper is to correspond
with the number on the counterfoil.



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REFERENDUM (MACHINERY PROVISIONS) ACT 1984 - SECT 11

Distribution to electors of arguments for and against proposed law

(1) Where:

(a) a proposed law for the alteration of the Constitution, being a proposed law passed by an absolute majority of both Houses of the Parliament, is to be submitted to the electors; and

(b) within 4 weeks after the passage of that 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.

(2) Where:

(a) a proposed law for the alteration of the Constitution, being a proposed law passed by an absolute majority of one House of the Parliament only, is to be submitted to the electors; and

(b) within 4 weeks after the second passage of that proposed law through that House 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.

