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Submission to the Standing Committee on Finance and Public Administration Parliament House, Canberra, ACT 2600

Senator Brown and his republican colleagues have in their ranks some of Australia's leading constitutional experts, fully capable of designing a republican constitution. These include two former Chief Justices of the High Court, Sir Anthony Mason and Sir Gerard Brennan.

Senator Brown's colleagues undoubtedly have Australia's best interests at heart. They seemingly believe that they can design a republican constitution demonstrably better for all Australians than our present one, albeit our present one having served Australia faultlessly since its inception, 107 years ago. I note the UN 2007/8 Human Development Index Report on 177 countries assessing them as desirable places to live. The top 19 of the 177 includes 12 countries having the same system of government as ours, with Australia No. 3 after Iceland and Norway.

Such a republican constitution would reflect their:

- (a) love of Australia; and
- (b) their confidence that their proposed model would be better for all – or at least a clear majority of Australians.

If, therefore, that confidence is strong, as it must be in their opinion, they should do two things:

1. Publish it initially for comment among their colleagues which would produce perhaps some "fine tuning", and
2. Hold an internal plebiscite among those seeking change to ensure it has the democratic support of a demonstrable majority of them, and not just the so-called elites or leaders.

Having designed a model they confidently believe is better for all of us and which is supported by a demonstrable majority of them, they should then attempt to convince the electorate of its superiority by pointing out specifically why it is better; its estimated cost to the taxpayer and the extra costs to explain to the uninformed electorate precisely what a plebiscite is; the time frame required to complete the change.

That model, having the support of those seeking it, could/should be made public for widespread examination and put straight to a referendum. This is confirmed by senior and respected republican constitutional expert, Professor Cheryl Saunders, who wrote:

“It follows that if there is to be further consideration of a republic, there should be at least three elements of the information campaign. The first should explain the current arrangements and the implications of the move to a republic. The second should explain the proposed alternative. The third should be designed to deal with queries that arise during the campaign, before the vote takes place.”

Page 206 of the book *Constitutional Politics* (UQPress 2002), co-authored by republican former leader, Professor John Warhurst.

The first element I understand is to be launched by Australians For Constitutional Monarchy early in 2009. The second is what the electorate awaits to encourage an informed vote.

This is a landmark statement which summarises perfectly the essential steps required for those who seek to change our system of government.

There are features of a plebiscite which require answers which I feel sure Senator Brown and/or his supporters can supply, and I request his/their answers to the questions following:

- Why is it that for the first time in our history we need to have a referendum preceded by two non-legal non-constitutional and expensive plebiscites, i.e. why not go straight to the referendum as provided by our Constitution? The quality of the model they design could be almost an assurance of success, but it must be available to the electorate well before any plebiscite to enable quiet examination without pressure of short deadlines.
- Is Senator Brown aware of the almost total ignorance in the electorate of the word “plebiscite/s”, i.e. of their ability or non-ability to change anything?

Can he please advise:

- his understanding of the meaning of the word “plebiscite/s”; and the cost to provide an Australia-wide and detailed explanation of them? I have asked a large number of people: “Do you know what a plebiscite is?” Virtually no one knows.
- the costs to the taxpayers of two of them?
- responses to the criticisms of Australia’s leading republicans below?

Republican constitutional experts, some of which we list below, are quite clearly sceptical if not critical of the use of plebiscites, e.g.

Professor George Williams: “A plebiscite is a glorified opinion poll; it does not have any constitutional significance whatsoever.” (Proceedings; Senate Legal and Constitutional Committee, Tuesday, 13 April 2004)

Tim Fischer: “A plebiscite would have no power to change anything and would be absolutely no guarantee of a successful republican end process.”

Professor Greg Craven: “It is futile to think a plebiscite will solve the problem.” “Their plan for a festival of republican plebiscites combines the buoyancy of the Titanic with the transparency of a rigged horse race.” (“Fix is on for the people’s republic”, *Australian Financial Review*, 27 July 2004 p.59)

Amanda Vanstone: “A plebiscite is an abrogation of responsibility.”

Bill Peach: Of course they (plebiscites) don’t change the law or anything like that.” (Corowa Conference, December 2001)

Malcolm Turnbull: “Let the ALP do their plebiscite thing IF they get elected. A referendum is the only way. Peter Costello is very against plebiscites and is very close to Craven.” (2004 Telecon.)

Will Fowles (ARM): “From an organisational perspective, it (a plebiscite) also serves to give the ARM a tangible and achievable goal, the delivery of which can be claimed as a win ... it will also make the ALP feel better about itself.”

Paul Kelly, Editor at large: “Yet it is futile to think a plebiscite will solve the problem.” (“Plebiscite is no sure path to a republic” *The Australian*, 20 November 2002)

Andrew Robb: “This suggestion of a whole lot of plebiscites and things, I think it’s just a further insult to people really.” (ABC’s *7.30 Report*, 5 August 2004)

Peter Costello: “I do not support this (plebiscite) proposal.” (Letter, 20 August 2003)

If republicans were confident they had a better (republican) system of government for all Australians, they would:

1. Publish it for all to see and examine; and
2. Put it directly to a referendum.

Why won’t they? Because seemingly they don’t have a better – or any – model.

So we ask for Senator Brown’s comment/s in response to the above republicans’ criticisms. We feel sure he can answer them to the satisfaction of all. But we request those answers to be published, and promptly, to assist us make an informed vote, should such a vote occur.

Looking ahead to a possible referendum, we have in our discussion group a number of undecideds who ask:

“Let us assume for the benefit of the discussion that nationally a YES vote results from a referendum. We refer to the words written by republican former Chief Justice of Western Australia Robert French (now Chief Justice of the High Court) in his 8 May 2008 paper *Dreams of a new republic*: “It would be a bizarre dichotomy indeed to have a republican nation with one or more of its States operating under a monarchical constitution.”

He thus acknowledges that such a YES vote would create (as in 1999) a national republic but that, in the words of another former fellow-Chief Justice of the High Court, the late Sir Harry Gibbs:

“In all States, except Victoria and Tasmania, the Constitution could not be amended to get rid of the Monarchy without a referendum. In Victoria a special majority of Parliament would be required. The position in Tasmania is not so clear. Since Australia should not change to a republic unless a referendum is carried in all States and since, if the change is to be made, all State Constitutions and the Commonwealth Constitution should be amended at the same time, it follows that if a Commonwealth-wide referendum is held, there should be a corresponding approval to the amendment of the State Constitutions. Although not legally necessary in Victoria and Tasmania, this would be a desirable course in those States as well.” (17th Conference Samuel Griffith Society)

So our question for Senator Brown is:

Does he agree with the democratic right of the citizens of each sovereign independent State and for that matter each of the two Territories, to vote for or against changing their State Constitutions – or does he state that if a national vote is YES, the States will all automatically change to State republics as was surprisingly, if furtively, planned for the 1999 referendum by the passing of the Australia Acts (Request) Act 1999 prior to the referendum result?

Many are unaware that in fact we have in Australia seven Constitutional Monarchies – all independent – and therefore all entitled to vote as independent States.

So, referring to the above hypothetical situation of a referendum YES vote nationally, but with, say, two of the States having a majority NO, how would he respond to that situation? Would they/could they secede? And if so what follows such a secession? A new and separate country? We seek his comment on how he would manage that situation, not experienced in our constitutional history before.

It is essential that we electors, especially those undecided have answers to those questions, due entirely to a total lack of knowledge of any proposed republican model constitution, and one supported by a demonstrable majority of those seeking change.

Another question put by one of our group and which we put to Senator Brown:

If we assume that the plebiscite/s produces a majority YES answer to the proposed question and then, when the finally agreed model is put to a referendum, it is found to be “flawed and unworkable” in the opinion of republican experts, will voters support a republican constitution severely criticised in those words? Because those are extracts of criticisms of the 1999 model by the late republican Professor George Winterton and by republican Professor Cheryl Saunders, both highly regarded as leading constitutional experts. These criticisms were published in the UNSW Law Journal Forum Vol.4 No. 2 (June 1998) and are available by calling (02) 9385 2237. Fax (02) 9385 1175 for \$11 posted.

To read the UNSW Journal on line go to:

<http://www.austlii.edu.au/au/journals/UNSWLJ/2.html>.

Regrettably a biased media declined to publish these criticisms so that voters were quite unaware of that model's faults in the opinion of our leading republican constitutional experts.

So if voters are presented at a referendum with a model which is similarly flawed, they will surely vote NO to it, thus resulting in the whole plebiscite procedure being of no value whatsoever, an enormous waste of taxpayers' money.

My group has the quoted criticisms of the 1999 model by ten additional respected republican constitutional experts. These I now summarise:

The late Hon. Richard McGarvie AC (republican)

Labor Party member 1949-1970, former Victorian Supreme Court Judge and former Governor of Victoria and appointed to the Constitutional Convention:

“By the time they vote, people will realise how the model would damage essential elements of our democratic system: and “How much would it strain our Federation to have the Commonwealth become a republic whilst the States are left to defend themselves” – *Victorian Bar News* Winter 1998; and “The President would have a greater mandate from parliament than the Prime Minister” – *The Age* 20.2.1998.

Senior Republican Dr John Hirst

“An affront to republican principles” and “a blot on the scheme” – *Quadrant*, June 1998.

Republican Sir Anthony Mason AC KBE CBE

Former Chief Justice of the High Court of Australia. He disagrees with the dismissal of a President “without prior notice and without even the need to state reasons”.

Republican and former NSW Governor and Head of State of NSW the late Hon. Gordon Samuels AC

“It sounds a warning to those who would place the responsibility for dismissing a President in the hands of a majority – any majority – of the Parliament without at least specifying the rules of procedure” – UNSW Forum launch 23.5.1998.

Republican Professor Brian Galligan, Lecturer in Political Science, University of Melbourne

“It is not properly a republican model at all” – *Quadrant* April 1998.

Republican Pat O’Shane AM, Aboriginal Magistrate on the issue of the model:

“A monster – an absolute monster” *SBS Insight* 22.4.1999.

Republican Mr Harry Evans, Clerk of the Senate, and arguably Australia’s most senior Public Servant, wrote of the dismissal process “the most ridiculous Constitution alteration proposal I have ever heard of” and “No other country has been so misguided as to adopt such an obviously unbalanced arrangement” – Letter, 10.6.1999.

Republican Sir Zelman Cowen PC AK GCMG GCVO KStJ KTcr

“I am troubled root and branch by the notion expressed in the dismissal of a president” – Joint Select Committee Hansard p.210, 6 July 1999. “I think that what is proposed is prima facie very disturbing” p.216.

Republican Hon. Peter Costello

“I do not believe this is an optimal model. I think it is a hybrid on a hybrid. It is a compromise.” 1998 Constitutional Convention, p.975.

Republican Thomas Keneally AO “The biggest structural change since Federation” – Channel 9 *Nightline* 18.1.1999.

Other Quotes to Remember:**Professor Greg Craven, Professor of Government and Constitutional Law:**

Read what a republican constitutional expert says of our Constitution:

“...our existing constitutional framework is fundamentally sound.”

“...it is one of the great democratic documents of the modern world.”

“The ultimate proof of the Constitution’s quality has been its fundamental success.”

“The Constitution is the greatest asset we have.”

“I also passionately believe in the Australian Constitution.”

“The more we engage in civilized conversation about it, the better.”

Published in *CEFA News*, Vol.1, 2004

Malcolm Turnbull, former republican leader:

“You’ve got to be practical. Conservative republicans will never agree to abandon the Westminster system. Members of Parliament don’t want a separate executive presidency. It breaks their lock on ministerial positions. But the strongest argument is that we already have a perfectly good, functioning democracy. Governments go in and out. They are more answerable to the voter than, say, the British ones. We have elements of Westminster, elements of Washington. It’s a uniquely Australian system that works well.” – From an interview with Frank Devine in *The Australian*, Monday, 16 July 2001 p.13.

Republican Sir Gerard Brennan:

“But the principal objection to an elected presidency is the risk – perhaps the likelihood – that the president, armed with the authority of a popular mandate, might exercise executive, and possibly, reserve power to frustrate the policies of impair the powers of the Prime Minister and the Government. There would be two hands on the tiller of national interest.” – 4th Geoffrey Sawer Lecture, 14.7.2001.

SUMMARY

For voters to be expected to answer YES or NO TO the proposed plebiscite question “Do you support Australia becoming a republic?”, they need to know what sort of republic. If asked “Do you support being given a replacement car”, a normal and logical answer would be: “Well, what sort of car?”

“I don’t want a bomb. I don’t want a ute, and I don’t want a yellow car, and please not a gas-guzzling 4-wheel drive”. “So would you kindly tell me first what sort of a car.” The same applies to a replacement constitution. “I need to know firstly – ‘What sort of constitution?’ Who knows, it might be a South American or African model or even a US one that the adjoining Canadians voted 83% not to want, and which I certainly don’t want, and which Turnbull doesn’t want. (See above re Westminster system)

So please, Senator Brown, give us the details now (which you'll have to do anyhow for a referendum model).

OUR FLAG

I called the joint office (as I understand) of Senators Brown, Milne and Ludlum and it confirmed that they supported a change of our flag.

This confirms a 12 July 2004 which I made to Senator Brown's office and was told "he would be supportive of moves to change it) and I note it for the record, as it helps the electorate to make an informed vote.

Who knows – the Greens Party may well have in mind asking the question "Do you want to change our flag?" accompanied by the Greens Party's enthusiastic support for a YES vote.

So, Senator Brown, our group asks: Do you support a change to our flag and do you support another plebiscite to try to change it.

Kindly publish your answers so that as earlier we can make an informed vote.

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P. LANGFORD GIBSON