

## Chapter 5

### The Referendum (Machinery Provisions) Act 1984

5.1 This chapter considers clause 6 of the Plebiscite for an Australian Republic Bill 2008 which states:

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.<sup>1</sup>

5.2 The Explanatory Memorandum notes of clause 6:

Clause 6 provides that the process for holding the plebiscite would follow, as nearly as practicable, the normal process for a referendum under the *Referendum (Machinery Provisions) Act 1984*.<sup>2</sup>

5.3 According to Professor Williams and Associate Professor Lynch, who support the proposed plebiscite, the *Referendum (Machinery Provisions) Act 1984* (the Act) is not the appropriate means of conducting the proposed plebiscite. They maintain that it is not sufficient for clause 6 of the bill to provide for 'such modifications as are necessary' to the referendum process laid down in the Act. They continued:

Although its provisions have been updated occasionally since originally enacted, the legislation requires more substantial amendment before it is next used.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 structures.<sup>3</sup>

5.4 Professor Williams and Associate Professor Lynch argued for new legislative provisions to be drafted to 'clearly stipulate the process which is to be followed' given the likelihood of one and even additional national plebiscites or polls in the process of Australia becoming a republic. According to them, such provisions could be enacted either as a distinct Part of the *Referendum (Machinery Provisions) Act 1984* or separately.<sup>4</sup> Professor Williams explained their position:

---

1 Clause 6 of the Plebiscite for an Australian Republic Bill 2008.

2 Plebiscite for an Australian Republic Bill 2008, *Explanatory Memorandum*, p. 2.

3 Professor G Williams and Associate Professor A Lynch, *Submission 114*, p. 2.

4 Professor G Williams and Associate Professor A Lynch, *Submission 114*, p. 2.

My final point is that I do not think the bill at the moment deals adequately with the need for supporting legislation to enable the plebiscite or preliminary vote to operate. The last time we had a plebiscite was either 1977 or 1917, depending on your definition. In either case, they required legislation of a kind that the referendum machinery act cannot supply. It is really directed to a constitutional referendum according to the strictures and texts of section 128. I think it needs separate legislation to actually support a plebiscite. It need not be lengthy or difficult. Indeed, you can look at legislation such as that which supported the voting in of the Constitutional Convention in 1998 as an example of how this can be dealt with easily and adequately.<sup>5</sup>

5.5 Australians for Constitutional Monarchy (who are opposed to the bill) also held the view that separate legislation to that of the Act was required:

Para 6 of the Plebiscite for an Australian Republic Act 2008 Bill makes specific reference to a reliance upon the Referendum (Machinery Provisions) Act 1984. We do not believe that the Act is an appropriate vehicle and that separate legislation would need to be enacted if a plebiscite is to be held, as was the case with the 1916 and 1917 plebiscites.<sup>6</sup>

5.6 The committee acknowledges concerns for separate legislation to support plebiscite processes. It appreciates that such concerns will continue so long as separate supporting legislation is not established in relation to plebiscites considering both a republic and potentially other issues of national significance in the future. For this reason, the committee suggests that any such initiatives in the future consider the establishment of a supporting legislative framework which details the plebiscite process to be followed.

---

5 Professor G Williams, *Committee Hansard*, 29.4.09, p. 54.

6 Australian Monarchist League, *Submission 18*, Attachment A, p. 1.