

## PROBLEMS WITH A PLEBISCITE FOR A REPUBLIC

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To constitutional conservatives, plebiscites are an aberration, even an abomination. To me they're sometimes a way to resolve really big questions that do not require constitutional change. But I do agree that plebiscites are completely toxic for anything that can only be resolved by the people at a referendum.

There have been three plebiscites in our history. The first two were during the Great War seeking public approval for conscription for overseas service. The Commonwealth had the capacity to conscript under the defence power, and had done so for military service within Australia. However, Prime Minister Billy Hughes twice took it to the people at a plebiscite, because of the gravity of forcing people into combat, and because he lacked a clear parliamentary majority to pass legislation.

The third plebiscite, a postal one as you know, was last year on same-sex marriage, arising from a decision that I made as prime minister. The High Court had earlier held that the *Constitution* gave the parliament power to change the traditional definition of marriage; but given the parliament's previous opposition to it, divisions in the Liberal-National parliamentary ranks, and the seriousness of the subject, I thought that the best way to resolve this was via the people.

It may make sense to put very serious and deeply personal matters to the people at a plebiscite; but it's altogether different to put a question to the people at a plebiscite, if it would then have to go back to the people again at a referendum. This is the difference between plebiscites that decide, and plebiscites that discredit. Why ask the people twice? Why double the cost of

resolving the matter? But most of all, why hold a glorified opinion poll on something that could only be resolved by the people voting subsequently on a specific proposal to change the *Constitution* – when the plebiscite could delegitimise the *Constitution* we have, without putting anything in its place?

There are many reasons to vote against a Shorten government at next year's election. A Shorten government would mean even more spending, even more taxing, and even more expensive-and-unreliable wind and solar power. As well, any Shorten government would spend vast amounts of time and money, not on improving people's lives, but on trying to turn the country into a republic, even though there's nothing currently wrong with Australia that becoming a republic would fix. A republic wouldn't make us more independent, it wouldn't give us a stronger identity and it certainly wouldn't do anything for jobs and growth. Rather, it would provide endless distraction from the policy reforms that might actually be change for the better.

If Labor wins, it's a near certainty that Australia will have a fourth plebiscite: this time to gain agreement for the idea of a republic before doing the hard work of winning support for any particular form of republic. In a speech to the Australian Republican Movement's annual dinner in July last year, Opposition Leader Bill Shorten said that 'by the end of our first term, we will put a simple straightforward question to the people of Australia: Do you support an Australian Republic with an Australian Head of State? And if the yes vote prevails', he said, 'then, we can move on in a second term, to discussing how that Head of State is chosen'.

This is the ultimate cop out because there are lots of different types of republic. There's a republic with a president appointed by the government; a republic with a president

appointed by the parliament; and a republic with a president elected by the people.

Even with the same nominal powers, how the president gains office would critically determine how much authority he or she has and how much of a rival the president would be to the prime minister.

And when it comes to powers, there are different types of presidents. For example, there are entirely ceremonial presidents, ceremonial presidents with a significant role in a crisis, presidents that run foreign policy leaving domestic policy largely to a prime minister, and executive presidents that run the government rather like an elected version of an eighteenth century monarch. Unless you don't care about the detail – you just want a republic, and any republic will do – it's impossible to say whether you're in favour of one, until you've seen the specific proposal.

Then there's the question of an Australian 'Head of State', a term that's not found anywhere in the *Constitution* itself, which refers merely to the Queen and to the Governor-General who exercises all Her powers. In a 1907 case, the High Court described the Governor-General as the 'Constitutional Head of the Commonwealth' and the State Governor as the 'Constitutional Head of the State'. Some editions of the Commonwealth Government Directory have referred to the Governor-General as the 'Head of State in whom the Executive Power of the Commonwealth is vested'. Prime Ministers including Kevin Rudd and Malcolm Turnbull, at different times, have described the Governor-General as our 'Head of State'.

Then there's the issue of what constitutes a republic. John Howard often referred to Australia as a 'crowned republic'. Howard, of course, was a fierce opponent of the 1999 republican

referendum. Even so, someone who believed that the Governor-General was our ‘Head of State’, like Malcolm Turnbull – and who believed that we are already a crowned republic, like John Howard – could conceivably vote yes to Shorten’s question, but without in any way supporting Shorten’s real objective, which is to remove the Crown from the *Constitution*. In other words, Shorten is posing a trick question to prejudge the real issue, which is whether to support whatever republic is the one on offer.

One of the reasons why the previous 1999 republican referendum failed was because it wasn’t just supporters of the Crown that voted against it. Some people who wanted an elected president and some people who wanted an executive president voted against the proposal for a president with the Governor-General’s powers but appointed by a two-thirds majority of the parliament. But even this would have been a significant change to our present system of government because a president with a bigger parliamentary mandate than the prime minister is unlikely to be as politically self-effacing as Governors-General representing the Crown, removable by the Queen on the advice of the prime minister.

Shorten is correct that ‘a lot of people voted no because of the model, not because of the republic’ but it is dead wrong to say that we ‘were given one vote to settle two questions’. The question is not whether we support the idea of a republic but whether we are prepared to support any particular type of republic. No serious person could decide whether to support a republic without knowing what sort of a republic it would be. That would be as silly as agreeing to get married before you knew your potential spouse.

Still, posing a loaded question implying that our existing system is not wholly Australian, even though all the Queen’s

powers are exercisable by the Governor-General, and even though the *Constitution* can't be changed except by the Australian people, could gull a majority of the public into voting 'yes' on patriotic grounds, even though that would undermine our *Constitution*, without improving it. It would be an exercise in constitutional vandalism. It would be putting a wrecking ball through our *Constitution* before a replacement is agreed upon.

For me with same-sex marriage, a plebiscite before change was a way to respect something that had stood since time immemorial. For Shorten with a republic, a plebiscite before change is a way to prejudge something that's yet to be determined.

Shorten and his republican allies should do the hard work of deciding what type of republic they think could improve our system of government and might gain popular support and then seek to put that to the people at a referendum. Only then, would it be a fair choice: between the system of government we have, and that has served us well for over a century, versus a specific alternative without the Crown, where Queen Elizabeth II and the young royals would be just foreign celebrities, rather than a living link to one of the oldest institutions of Western civilisation.

Quite apart from people's views on the merits of Australia becoming a republic, there's a fundamental problem with Shorten's proposal for bringing it about. He's putting the cart before the horse, seeking to gain approval for an end without any agreement on the means for making it happen. It's a sneaky, devious, tendentious ploy that should be opposed by everyone concerned to protect constitutional due process, regardless of where they stand on the substantive issue.

I'm very pleased to say that in two recent interviews, Attorney-General Christian Porter has described the Shorten plebiscite option, of an 'opinion poll' first and 'then sort out the details later', as 'stupid', 'dishonest' and 'dumb'. It was like 'saying to people you must decide right now whether or not you're going to move house and I'll tell you later where you're going to live' and it should have had much more scrutiny. This bears repeating again and again.

But there are many Shorten proposals that should have had more scrutiny: the proposal to remove negative gearing from residential property investments that would impact on housing values and the rental market; the hit on retirees' income through the removal of dividend imputation credits; the impact on long-term economic growth of higher company tax rates; the effect on productivity of the abolition of the construction industry watchdog; the possible strike wave from removing the Fair Work Commission's powers on essential services; and the impact of tripling unreliable and expensive wind and solar power, let alone the weakening of border protection when Labor MPs think sovereignty should be vested in supranational agencies.

It was Paul Keating who said that when you change the government, you change the country. People don't yet appreciate the scale of the change that could come. Bill Shorten doesn't just want to change the government; he wants to change the system of government. This needs far more consideration now, before the election; not afterwards, when it may be too late.