

AC PAPER NO. 2: ONE REFERENDUM OR SEVEN?

(OR: TWO COUNTRIES, NOT ONE?) – FIRST DRAFT

SOME OBSTACLES TO AN AUSTRALIAN REPUBLIC**AS SEEN BY:**

1. **THE CHIEF JUSTICE OF THE HIGH COURT, THE HON. ROBERT FRENCH A.C.**
2. **A LEADING REPUBLICAN CONSTITUTIONAL EXPERT, PROF. GREG CRAVEN**
3. **THE LATE SIR HARRY GIBBS, FORMER CHIEF JUSTICE OF THE HIGH COURT**
4. **'FACT' – SEE BELOW**

1. The Chief Justice of the High Court Robert French as a Federal Court Judge in W.A, gave his paper *Dreams of a New Republic* for the Sir Ronald Wilson Lecture; Delivered to the Law Society of Western Australia: 8 May 2008.
http://www.fedcourt.gov.au/aboutct/judges_papers/speeches_frenchj34.html

“... *In the move to a Republican Constitution the position under State Constitutions will also have to be considered. It would be a bizarre dichotomy indeed to have a Republican nation with one or more of its States operating under a monarchical constitution.*”

The republican Hon. Daryl Williams AM QC was reported to have written, in relation to the possibility of some states remaining as constitutional monarchies and some changing to republics, that it would be “a constitutional monstrosity”.

2. Republican Prof. Greg Craven (now Vice-Chancellor of the Australian Catholic University), in his paper in the Centre for Independent Studies *Policy* : Spring 1992 edition headed

“The Constitutional Minefield of Australian Republicanism” wrote:-

1. “... there are virtually no questions in Australian constitutional law and theory more complicated and perplexing than those that surround the process by which the monarchy might be abolished.”
2. “... the mere abolition of the monarchy in the Commonwealth sphere would have no effect whatsoever on the position of the Crown in the States” [see Hon. Robert French above.]
3. “...Australia could not become a republic without the holding of a referendum, both nationally and in the six States.”
4. “... in Australia, we effectively have not one but seven monarchies;”
5. “Some of the arguments presented here would, if accepted, pose an absolute constitutional bar to an Australian republic.”
6. “The catch is that such an amendment [to our constitution - ed.] would require the simultaneous and unanimous consent of all six State legislatures; ...” [see the late Sir Harry Gibbs below]
7. “Naturally, would-be constitutional reformers in the present context hardly wish to be saddled with making a call for revolutionary action, even if that action would be no more dramatic than a peaceful (but *technically unconstitutional*) plebiscite.” [italics added - ed.]
8. “... on its face, s.128 permits the amendment only of the Commonwealth, and not the State Constitutions.”
9. “... it is abundantly clear that the line espoused by some republicans – that there are no conceivable constitutional difficulties in the way of an Australian republic – is far from accurate.”

To obtain the 4-page original from which the above extracts come, request C.I.S. for a copy.

Also see his article “How to sink the republic” in the *Australian Financial Review* of 11 May 2009, where he says among other things “Particularly in the case of a republic, winning a referendum is as challenging as talking over Kerry-Ann Kennerly.”

3. The following quote is from the late Sir Harry Gibbs, former Chief Justice of the High Court:

In all States, except Victoria and Tasmania, the State 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 held simultaneously in each State a referendum to seek a corresponding approval to the amendment of the State Constitution. Although not legally necessary in Victoria and Tasmania, this would be a desirable course in those states as well.

(7-9 March 1997 *Samuel Griffith Society* “A Republic: the issues” –<http://www.samuelgriffith.org.au/papers/html/volume8/v8chap1.htm>)

4. **Fact:**

Australia is governed by 7 monarchies and 7 constitutions because each of our 6 States had separate monarchical constitutions before they united as a federation.

So 7 referenda are needed to resolve any constitutional changes to those 7 constitutions. But at least 5, if the late Sir Harry Gibbs' words above are given effect.

Please ask your Premier and/or State Attorney-General for his/her comment and forward to AIDC below.