
Course set for referendum failure

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Progressive politics is close to killing off the worthy idea of constitutional recognition of the indigenous peoples with Bill Shorten framing this referendum in the context of a treaty, an idea long anathema to majority Australian opinion.

Malcolm Turnbull was right yesterday to finger Shorten for his irresponsibility and indiscipline on the ABC's Q&A on Monday night when Shorten was enthusiastic about putting the treaty on the national agenda. This constitutional referendum has been in grave jeopardy over the past year.

Bipartisan agreement does not exist on the content of the referendum and prospects for its emergence are not hopeful. Sentiment among indigenous leaders and many indigenous people has wavered on the value of constitutional recognition with renewed support for a treaty, a new radical step.

Now Shorten has backed a post-referendum process that includes the treaty. What is his purpose? He will be applauded for adventurism but this is folly. It will help Labor win indigenous and progressive votes at the election. But it makes the passage of a referendum even more dubious and raises serious questions about Shorten's - motives.

The last political leader to venture onto this terrain was Bob Hawke with conspicuous failure.

There is now a likely prospect: people who oppose a treaty will oppose constitutional recognition. If this is true, the referendum is lost. Recovery from this point will not be easy.

A treaty raises the lethal issue of Aboriginal sovereignty. Who are the parties to the treaty? What is its meaning and legal standing? Who approves the treaty on -behalf of the people?

Shorten's comment seems to be pitched at indigenous peoples and true believers. Their impact will only make the majority of the public suspicious. Since Federation only eight out of 44 referenda have been successful. There has not been a successful referendum for 39 years. This one will only pass if it is acceptable to the conservative majority. Shorten is playing with political fire. He raises expectations among indigenous peoples. He encourages their hopes on a treaty. He creates more confusion over the referendum. Turnbull knows this. He knows about referendums, having lost the 1999 republic referendum. It was beaten in the nation overall and in every state. Turnbull knows the bar is very high and the proposition must be seen as clear and safe. Nothing else will suffice.

Immense damage to hopes for a successful referendum was done last year by Labor and the political class. This came in the final, flawed report of the parliamentary committee that recommended in favour of a constitutional ban on racial

discrimination or, -alternatively, on indigenous -discrimination. Labor's position was that only a "prohibition against racial discrimination" inserted into the Constitution by this referendum would be acceptable. This reflected much indigenous sentiment and advice.

The notion that any such referendum will pass is fantasy. This proposal runs far beyond indigenous recognition. Indeed, it exploits the idea to achieve another purpose: shifting to a constitutional bill of rights model that fundamentally alters the Constitution and system of government by empowering judges to make policy, creating a US-style wave of litigation, division and conflict.

When Tony Abbott proposed the referendum he said it was to complete the Constitution. Now Shorten, having insisted the referendum must contain a constitutional ban on discrimination, claims it should also be framed in the context of a treaty. How is this referendum supposed to pass? Few people want to discuss this issue with realism and honesty. The conundrum is apparent. No referendum can be put that is not backed by a solid majority of indigenous leaders and peoples. But any such referendum seems unlikely to be endorsed by the wider electorate. The real task of politicians, is to bridge this gap as mediators. Instead they are making it worse. These are ominous days for the future of reconciliation.