

Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Members of the Joint Standing Committee on Electoral Matters,

Thank you for the opportunity to make this submission on the *Referendum (Machinery Provisions) Amendment Bill 2022*.

Due to the wide-ranging scope of the Bill and the limited amount of time set aside to respond my comments will mostly be general in nature. Some of them may overlap with more detailed observations I made in my submission into the *Inquiry Into The 2022 Election*.

Overview of the Bill

Schedule 1 — Postal voting

As noted in my previous submission, changing the guidelines around postal voting doesn't change the fact that, for regional and remote Australia, the delays in the timely delivery and return of postal ballots creates issues with the loss of franchise. This is an Australia Post problem, not one that can be fixed by changes to AEC process.

29. These amendments recognise that it is not always possible for a voter overseas to find an authorised witness, especially during local disruptions. The amendments do not allow a postal voter to electronically send their PVC or postal ballot paper. For the avoidance of doubt, voting itself remains a paper-based process.

Perhaps the Committee should determine the importance of defining a process for providing safe, secure electronic voting.

Schedule 2 — Scrutiny

42. This amendment is intended to ensure voters retain significant opportunity to vote via pre-poll, while also attaining the benefits that a more clearly defined pre-poll period provides to the AEC, such as providing additional time to secure the most appropriate pre-poll facilities and allows more certainty in planning for all participants in the referendum process.

This uncertainty would disappear with fixed-term Parliaments.

48. Item 10 inserts new subsection 90(1A). This allows for the opening of pre-poll ordinary ballot boxes and the removal and sorting of ballot papers from 4pm on voting day. It also provides that scrutineers present during any of these actions cannot object to a ballot paper before the close of voting at 6pm. No counting of the ballot papers can occur until after close of voting at 6pm.

There are significant issues with early opening and sorting of pre-poll votes. The issue of attendance by external scrutineers – a role and responsibility set out in legislation – at the unsealing of the ballot box and observation of the sorting process has not been addressed. These safeguards provide not only security of the process but also ensure that Australia's electoral system can operate in a fair, open and transparent manner.

Schedule 3 — Authorisations

I have no issues with this change in general, but some areas need clarification.

69. New subsection 3AA(3) clarifies that if more than one proposed law for the alteration of the Constitution is submitted to electors on a day, the dominant purpose of the communication or

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intended communication of matter is to be determined as if all of the proposed laws submitted to electors on that day were a single referendum

Historically many referendums conducted on the same day covered wildly different questions. If we look at the 1977 referendum, the questions covered included

- to ensure that Senate elections are held at the same time as House of Representatives elections;
- to ensure, as far as practicable, that a casual vacancy in the Senate is filled by a person of the same political party as the Senator chosen by the people, and that the person shall hold the seat for the balance of the term;
- to allow electors in Territories, as well as in the States, to vote in constitutional referendums; and
- to provide for retiring ages for judges of Federal courts.

The last three were carried but the first wasn't. To suggest the topics were all from the same tree is either misleading or ignorant.

84. New section 110CA uses the definition of "foreign campaigner" from sections 4 and 287AA of the Electoral Act, which covers each of the following...

The inclusion of New Zealand citizens appears to have pre-empted the discussion currently taking place with this committee over the right off New Zealand citizens resident in Australia to vote. Until that matter is resolved part of this section may be considered jumping the gun.

Schedule 4 — Referendum financial disclosure

97. In December 2021, the House of Representatives Standing Committee on Social Policy and Legal Affairs handed down the recommendations of its Inquiry into constitutional reform and referendums. This included the recommendation that the Referendum Act be amended, consistent with relevant provisions in Part XX of the Electoral Act, to:

- *prohibit referendum campaign organisations from receiving gifts or donations of \$100 or more from foreign donors; and*
- *require referendum campaign organisations to disclose gifts or donations above a certain threshold.*

While the intent is good, I believe that it doesn't go far enough. As per my previous submission there is no reason why the disclosure threshold shouldn't be reduced to zero and donations by foreign entities reduced to the same amount. This could be done quite simply by requiring all donations to be matched against the electoral roll. In the cases of corporations or organisations this could be done by requiring pre-registration before donating and a similar requirement to match against this list.

There may also be unintended consequences where foreign platforms (such as GoFundMe) are swept up as foreign entities when fundraising for an Australia-based proponent in a referendum.

112. New paragraph 109B(a) provides that in Part VIIIA a reference to a referendum entity does not include a reference to the Commonwealth, a State or a Territory. This means the Commonwealth, a State or a Territory will not be subject to the obligations of referendum entities under this Part (for example, providing a referendum expenditure return under new section 109E).

States, Territories and the Commonwealth should be required to disclose funding or gifts to referendum entities at the time of transaction, not at some future time buried in a Budget document. Allowing this to stand without subjecting it to scrutiny during the referendum process has no other purpose than to obscure the funding.

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Schedule 5 — Designated electors

I have no issues with this change.

Schedule 6 — Contingency measures

I have no issues with this change.

Schedules 7 and 8 — Modernisation, terminology, and bulk amendments

Here we get to the fine details and, as always, that's where the devil is. In the absence of a specific objection it can be assumed I have no issue with that clause.

Clause 4 – Disapplication of section 11 of the Referendum (Machinery Provisions) Act 1984

This section effectively removes the requirement for a Yes and No case to be presented, whilst allowing the Government of the day to place a thumb on the scale by funding a completely unbiased, absolutely straight-forward “*neutral education program*” that would in no way only present one side of the argument.

The other issue is that this is a “temporary” measure, lasting only for this term of Parliament. By a remarkable coincidence there is only one referendum proposed for this term of Parliament.

In my opinion this is a very cynical approach designed to produce a specific outcome for a specific referendum question. “Temporary” legislative changes are inherently bad, either because they are introduced to overcome a one-off hurdle, or lapse into permanence without due scrutiny.

If cost saving is an issue, providing a platform on an official referendum page allowing anyone to present the case for and against would not be expensive. To ensure those who are not technologically literate could receive all sides of the argument the case for and against could be provided to the media of record with a requirement to provide equal space and airtime.

Kind regards,

Mark Yore