



**SUBMISSION TO THE PARLIAMENT OF AUSTRALIA'S
JOINT COMMITTEE ON ELECTORAL MATTERS**

REFERENDUM (MACHINERY PROVISIONS) AMENDMENT BILL 2022

INTRODUCTION

Ms Kate Thwaites MP
Member for Jagajaga
Chair of the Joint Standing Committee on Electoral Matters
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14 December 2022

Dear Ms Thwaites

On behalf of the Real Republic Australia I wish to present a submission to the Committee's inquiry into the *Referendum (Machinery Provisions) Amendment Bill 2022*.

I give permission for this submission to be released publicly.



David Muir AM
Chair
The Real Republic Australia

REFERENDUMS AND THE REAL REPUBLIC AUSTRALIA

The Real Republic Australia makes this submission because we believe that reform of our Australian Constitution is overdue in many aspects.

As such reform can come about only through a series of referendums, we wish to help ensure that relevant legislation is best able to meet the need for more frequent referendums in the years ahead.

The Real Republic Australia primarily advocates for an Australian republic with a genuine directly elected Head of State. In October 2022 we released a discussion paper (*at right*) to stimulate public debate both on the republic issue and our genuine direct-election model.

The discussion paper's title, *Your Choice/The People's Choice* sums up our model – our Head of State should not be chosen for us by a hereditary system and should not be picked for us by politicians.

Australians should choose their Head of State through a genuine direct-election model. We do not support the Australian Republic Movement's idea of more than 800 federal and state politicians handing down to voters a shortlist of candidates.

That is not direct election and echoes the "politicians' republic" model that failed at the 1999 referendum because voters did not want politicians picking their Head of State for them.

Other reforms – other referendums

However, we strive to present our case for a republic within a framework of wider reforms to the Australian Constitution that would benefit all Australians and our nation's governance, including:

- recognition of Aboriginal and Torres Strait Islanders in the Constitution,
- eliminating costly by-elections with a referendum question creating a Senate-style casual vacancy system for the House of Representatives,
- four-year, fixed, and synchronised terms for both houses of Federal Parliament to stop prime ministers gaming the system by picking election dates, cutting the number of elections now costing more than \$300 million, and ensuring government mandates are not hostage to Senators elected years earlier,
- breaking the constitutional nexus that demands the lower house is twice the size of the Senate – a reform that if not taken would one day see a lower house of 300 MPs and around 150 Senators,
- cutting the number of Senators for each state, possibly to the original six per state at Federation, while retaining two apiece for the NT and ACT,
- constitutional recognition of local government, and
- instituting a fairer process for changing the Constitution and including voters in the NT and ACT in both parts of the "double majority" needed to secure passage of a referendum question.

It is our view that a long-term process aimed at delivering such constitutional reforms and others should be established.

The Real Republic Australia has released details of a "roadmap" (*at right*) for achieving that aim based around a series of Australian Constitutional Assemblies comprising average voters and an independent expert chair to assess proposed changes as a means to avoid the partisan politicking that has hampered reform efforts in the past. Our suggested approach reflects one used successfully in Ireland which, incidentally, is a republic with a Westminster-style parliamentary system including a directly elected Head of State with codified powers to ensure there is no rivalry or clash of responsibilities with Ireland's prime minister and cabinet leading the executive government.

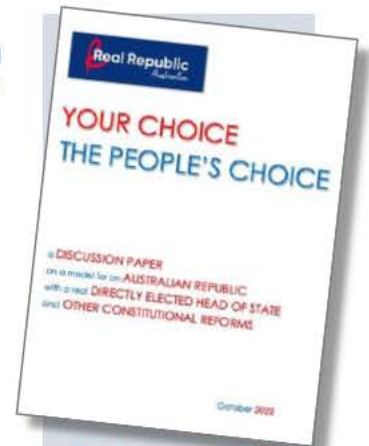
Our history

The Real Republic Australia was formed at the time of the 1998 Constitutional Convention held in Canberra which preceded the failed 1999 republic referendum. Convention delegates such as Brisbane's former Lord Mayor, the late Clem Jones AO; the former mayor of North Sydney and independent MP in both the NSW and Federal parliaments, the late Ted Mack; and former independent federal MP for the Victorian seat of Wills, Phil Cleary; and others all unsuccessfully supported the concept of a directly elected Head of State.

Clem Jones led a team of Queensland delegates elected to the Convention including former Deputy Mayor of Townsville, Ann Bunnell, and Brisbane lawyer David Muir – now chair of the Real Republic and chair of the Clem Jones Group.

The late Clem Jones (1918-2007) was Brisbane's longest serving Lord Mayor from 1961 to 1975 and is acknowledged as the driving force behind the city's development from what was often dismissed as a big country town to a modern, vibrant world-class city.

His estate, through the Clem Jones Group, continues to promote an Australian republic with a genuine directly elected Head of State.



Our [discussion paper](#) is available on our website realrepublic.au



Our '[roadmap](#)' is available on our website realrepublic.au

THE NEED FOR A REVIEW

In light of the proposed referendum on a voice to the federal parliament by Aboriginal and Torres Strait Islander peoples, it is appropriate that a review of the *Referendum Act* is being undertaken.

But at the same time, it is telling that a review of the Act is needed because, as the inquiry's background note explains, "it has not been used since 1999 and has not kept pace with the successive modernisations made to the *Electoral Act*".

It was in November 1999 that two questions – on a preamble to recognise indigenous Australians and a question on our nation becoming a republic – were put to voters, with both failing to secure the necessary votes to pass.

We point out that not only has it been almost a quarter-century since Australian voters were last asked to approve amendments to the Constitution at a referendum, it was 1977 – 45 years ago – when any referendum question was approved.

When it comes to constitutional reform, our nation's record is not good. As the Committee would be aware only eight out of 44 referendum questions have been approved by voters since Federation.

The list of failed referendum questions is clearly not dominated by radical and unworkable propositions for change. A number of proposals to amend our Constitution have been put to voters on several occasions without success.

A stumbling block has always been the requirement of Section 128 of the Constitution for a so-called "double majority" – a majority of votes nationwide as well as a majority of states returning a "yes" vote. Another stumbling block has been the often politically partisan nature of public debate on proposed reforms.

THE NEED FOR A REFORMED PROCESS

We submit that just as the *Referendum Act* requires updating because of the length of time since our nation last experienced a referendum, the process for addressing constitutional change is also in need of updating.

As mentioned above, the Real Republic Australia alone advocates for an Australian republic with a genuine directly elected Head of State as well as for several other constitutional reforms as detailed on page 3 above that would benefit our nation and its governance.

We recognise other individuals and organisations, including political parties and individual MPs, may have other reforms they would like to see explored or progressed.

In 2019 the Australian Law Reform Commission (ALRC) launched its [Where next for law reform?](#) project, suggesting that the most significant reform would be to revise the Constitution itself.

In an [information paper](#) issued by the ALRC as part of the project, it said that since it was established in 1975 it had produced 91 reports on various topics related to Commonwealth law including 56 reports which identified constitution "obstacles" to the effective operation of the law in Australia.

The ALRC added, however, that it had only once recommended constitutional reform – a 1994 recommendation to entrench a proposed Equality Act in the Constitution to most effectively deliver equality in Australia.

"When constitutional issues have arisen, they have typically been beyond the scope of the inquiry. Even when the ALRC has attempted to grapple with the constitutional issues that arise, it is often impeded by uncertainty as to the scope of constitutional provisions, which undermines efforts to recommend appropriate and effective reforms," the ALRC paper said.

The ALRC paper put forward the Constitution itself as a potential topic for law reform.

"A law reform inquiry may reinvigorate the conversation on constitutional reform in the 21st century and provide an impetus for government to engage with the amendment process," it said. "The ALRC anticipates such an inquiry would represent a particularly valuable opportunity to review some of the technical and structural aspects of the Constitution that have not attracted public debate, but may have significant impacts on law reform."

In its final report the ALRC resolved not to suggest that the government ask it to undertake an inquiry on reform of the Australian Constitution. But it did suggest that the government consider the establishment of a standing constitutional reform body that could "in due course identify appropriate constitutional reform topics for inquiry by the ALRC".

Given the standing of the ALRC and its comments, clearly a better process for undertaking and hopefully achieving constitutional reform is required.

A new committee

We suggest that part of the answer would be to implement a recommendation for a permanent parliamentary committee to consider constitutional reforms.

In the 46th Australian Parliament, the House of Representatives [Standing Committee on Social Policy and Legal Affairs](#) conducted an inquiry into constitutional reform and referendums and [presented its report](#) in December 2021.

We note that one of the [10 recommendations](#) was for action to modernise the referendum process by making relevant changes to the *Referendum (Machinery Provisions) Act 1984* in line with other committee recommendations prior to any referendum on the question of constitutional recognition of Indigenous Australians. This task is now being carried out by the current inquiry by the Joint Standing Committee on Electoral Matters of the 47th parliament.

We also note that the recommendations made by the previous parliament's Standing Committee on Social Policy and Legal Affairs included one for the establishment of a new joint committee – the Joint Standing Committee on Constitutional Matters – to review the Constitution and examine proposals for reforms including the staging of more regular constitutional conventions with public involvement.

We are not aware of any moves made since the report was presented during the 46th parliament to establish such a committee.

However, we support its establishment as a means to examine and progress constitutional reforms.

RECOMMENDATION:

We recommend:

- **that the Committee's report on its current inquiry urge action by the government and parliament – either by expanding the provisions of the *Referendum (Machinery Provisions) Amendment Bill 2022* or through a future Bill – to realise as soon as possible the recommendation arising from the Standing Committee on Social Policy and Legal Affairs of the 46th parliament for a Joint Standing Committee on Constitutional Matters to be established.**
- **that the proposed Joint Standing Committee on Constitutional Matters be established as a statutory committee.**
- **given the nature of its work and the fact that constitutional reform requires changes to be made by referendum, that the proposed Joint Standing Committee on Constitutional Matters be established under the *Referendum Act*.**
- **in the interest of achieving bipartisan outcomes, that the proposed Joint Standing Committee on Constitutional Matters consist of 12 members:**
 - **two Members of the House of Representatives and two Senators to be nominated by the Government Whip or Whips;**
 - **two Members of the House of Representatives and two Senators to be nominated by the Opposition Whip or Whips; and**
 - **two Members of the House of Representatives and two Senators nominated by cross-bench MPs in the relevant house.**
- **that the chair and deputy chair of the committee be elected from among its members.**

Our proposed Australian Constitutional Assemblies

In its suggested plan for constitutional reform the ALRC recommended that the government “consider adopting an appropriate model that effectively engages and informs the public, while also involving the government in planning and oversight”.

The Real Republic Australia would envisage the proposed Joint Standing Committee on Constitutional Matters would undertake a lead role in the ALRC's suggested approach and identify areas of potential constitutional reform.

However, we would recommend that the proposed new committee would work in tandem with a series of proposed Australian Constitutional Assemblies, as mentioned on page 3.

We propose that individual or a group of closely related proposals for constitutional reform be considered by a specially commissioned Australian Constitutional Assembly comprising 99 members sourced by professional market research techniques in a bid to broadly represent the characteristics of the Australian community.

Each Assembly would be chaired by an independent chair appointed by the Federal Parliament.

No member of any legislative body would be entitled to join an Assembly – a feature that reinforces the fact that the Constitution is not the property of politicians but belongs to the people of Australia – and members of the media or identified supporters of a reform cause under consideration would be likewise excluded.

An Assembly would have 12 months to examine a proposed constitutional reform and make recommendations which a federal government would need to address and explain why a particular issue would be put to a referendum or why no reform would be attempted.

We believe this is an effective way to achieve constitutional change because it will help extract from the current process the politically partisan approach by major parties that has been largely responsible for having only eight out of 44 referendum proposals passed since Federation.

As noted on page 3, full details of our Australian Constitutional Assembly process are contained in our [“roadmap”](#) for reform.

Our proposal is based on the [Citizens' Assembly](#) process that has been used successfully in Ireland to assess and achieve constitutional and other reforms.

RECOMMENDATION:

- **We recommend that the Committee's report on the *Referendum (Machinery Provisions) Amendment Bill 2022* suggest either further amendments to the *Referendum Act* or stand-alone legislation to make provisions for a series of new consultative bodies to be called Australian Constitutional Assemblies that can assess and make recommendations on constitutional reform issues referred to them.**

FINANCIAL DISCLOSURE

We wish to make comment and suggestions on some other elements of the Bill before the Committee, starting with proposed provisions for financial disclosures as outlined in Schedule 4 of the Bill.

We note that Schedule 4 of the Bill amends the *Referendum Act* to establish “a simplified financial disclosure and foreign donation restrictions framework for referendum campaigning based on Part XX of the *Commonwealth Electoral Act*”.

As detailed in the explanatory notes, the proposed amendments include banning foreign donations of \$100 or more for referendum campaigning, and prohibiting foreign campaigners from fundraising or directly incurring referendum expenditure in a financial year equal to or more than \$1,000, which mirrors the *Electoral Act*.

As the Bill’s explanatory notes state:

“The threat of foreign influence in democratic referendums can risk undermining democratic integrity, and has the potential to erode democracy by compromising trust in voting results and trust in political participants. The limit on foreign campaigners from authorising referendum matter, and restricting their donations and fundraising or direct incurrence of referendum expenditure, is a mechanism to counteract the effects of foreign influence in Australia’s democracy and maintain Australians’ trust in their referendums, which supports the protection of public order. Genuine freedom to vote at referendums requires freedom from undue influence or interference, and foreign-sourced campaigning or donations amount to an undue influence in a domestic public referendum debate.”

The Real Republic Australia believes a total ban on any donations to or spending on referendum campaigns should apply to foreign individuals or entities.

We suggest that even the proposed \$100 donation ceiling leaves room for the aggregation of individual donations. We further suggest that even with a proposed \$1,000 reporting threshold for reporting of referendum expenditure, foreign individuals or entities may still be able to play a role in a referendum campaign through offshore funding of internet advertising campaigns.

Overall, our submission is based on the principle that referendums are designed to alter the Australian Constitution which outlines the governance of our nation and that only Australian voters through the ballot box should be able to alter it.

The controversy over Section 44 and the foreign citizenships of some MPs lends weight to the belief that only Australians should be involved in altering our Constitution.

RECOMMENDATIONS:

- **We recommend that the Bill makes it an offence to seek or receive a donation or gift of any size from a foreign individual or entity for the purposes of referendum campaigning.**
- **We recommend that the Bill makes it mandatory to report to the Australian Electoral Commission – with suitable penalties for non-compliance – knowledge of any donations or gifts made by a foreign individual or entity for the purposes of referendum campaigning.**

In our separate [submission to the Committee for its inquiry into the 2022 federal election](#) the Real Republic Australia supported proposals to scrap the indexing of the existing donation disclosure threshold – currently \$15,200 – but also stated our belief that a proposed \$1,000 threshold was still too high.

Instead we recommended a \$200 threshold and cited in support information from the USA showing a large rise in the proportion of small political campaign donations of US\$200 or less. In short, our argument was that like the USA we have seen in Australia increased “crowdfunding” of candidates or parties based on relatively small donations and if a suitable disclosure threshold is not applied, then a significant proportion of donations will go unreported and unrecorded.

We believe the same threshold should apply to donations/gifts for referendum purposes. In addition, we believe that donations/gifts by Australian individuals or entities for the purposes of referendum campaigning should be reported to the AEC and voters should have knowledge of all such donations/gifts before casting their votes.

RECOMMENDATIONS:

- **We recommend a \$200 threshold for the disclosure of donations to referendum campaigns to ensure we avoid the future possibility of one-third or more of donations not being captured by a legislated threshold.**
- **We recommend that real-time disclosure rules apply to donations/gifts made by individuals or entities for the purposes of referendum campaigning.**

CONTINGENCY MEASURES AND ONLINE ACTIVITY

Schedule 6 of the Bill amends the *Referendum Act* to give the Australian Electoral Commissioner powers to take appropriate action in relation to the conduct of a referendum in the event of a declared emergency – similar to provisions now available under the *Commonwealth Electoral Act*.

We note that these powers are largely related to enabling the Commissioner to respond to physical emergencies, such as floods, cyclones, fires and other natural disasters. However, we suggest the type of unilateral powers proposed should also be vested in the Commissioner to allow them to respond to cyber-attacks on the referendum process.

Reports about cyber-attacks point to the potential threat they pose to our commercial, political, and personal activities and we believe that legislation linked to the Australian Constitution should include provisions with appropriate responses to tackle any such threats.

This is especially relevant if we are to embrace widespread online voting at future elections as mentioned in the following section of this submission.

RECOMMENDATION:

- **We recommend that the Committee's report requests the government to draft further amendments to the Bill and to the *Commonwealth Electoral Act* to include cyber-attacks within the definition of declared emergencies for which the Australian Electoral Commissioner can exercise relevant powers in relation to the conduct of a referendum.**
- **We recommend that such powers in relation to cyber-attacks include the ability to direct the immediate withdrawal of misleading online information about matters subject to a referendum or the referendum process itself or to direct the closure of an offending website or online platform.**

ONLINE VOTING

In our separate submission to the Committee for its inquiry into the 2022 federal election cited above, the Real Republic Australia supported in principle the adoption of online voting as part of our proposed model for a genuine directly elected Head of State in a future Australian republic.

We take the opportunity of this submission to suggest to the Committee that examination and development of a safe and secure online voting system for future referendums should be a priority for the government.

A referendum would be a good initial application of online voting as it requires a simple "yes" or "no" vote with both totals being tallied on a state and territory basis, along with informal votes, and with no preferences to distribute.

- **We recommend that the Committee's report requests the government to examine and develop a system of secure online voting to be initially applied at a future referendum and that the *Referendum Act* be amended to make provision for such a development.**

FUNDING OF REFERENDUM CASES

In the current debate surrounding the planned referendum on an indigenous voice to the Federal Parliament, the government has declared it will not fund separate "yes" and "no" cases but will provide a "neutral" public education campaign about the referendum process.

We understand that no rules currently exist for funding "yes and "no" cases and that any decision on funding is made by government prior to any referendum.

We suggest greater certainty is needed if constitutional reform is to become more common in the future as we believe it should.

RECOMMENDATION:

- **We recommend that the Committee's report requests the government to take steps to develop and legislate by amendment to the *Referendum Act* a formula for funding "yes" and "no" cases for future referendums.**
- **We recommend that the task of exploring such a formula and making recommendations be given to the proposed Joint Standing Committee on Constitutional Matters mentioned above.**

CONCLUSION

While advocating a range of constitutional reforms including a genuine directly elected Head of State in an Australian republic, the Real Republic Australia does not believe we should scrap our existing Constitution and start again with a blank sheet.

We believe the Constitution should not be a static document and we do not subscribe to any approach that would leave untouched forever every provision drafted by the "Founding Fathers".

While the Constitution was drafted by what were then some of the former colonies' finest minds, they do not represent today's Australia. For a start there was no equal role for any "Founding Mothers" nor any contribution by indigenous Australians.

We wish to see a considered, deliberate, and effective process for updating our Constitution based on a voter-centred approach by employing a series of community-focussed Australian Constitutional Assemblies as outlined above that would lead ultimately to a series of referendums under a long-term work plan.

To do so requires a *Referendum Act* that is "fit for purpose" and we trust the Committee's current inquiry achieves that aim.