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House of Representatives Standing Committee on Social Policy and Legal Affairs
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Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Constitutional Reform and Referendums

I take this opportunity to make the following submission on behalf of The Samuel Griffith Society in my capacity as its Executive Director.

Public awareness and education

One of The Samuel Griffith Society's chief aims is to raise awareness about the Commonwealth Constitution and its virtues by promoting public discussion of matters of constitutional significance, undertaking and supporting research into Australia's constitutional arrangements, and engaging in public education activities. As such, the Society welcomes efforts to increase public awareness of the Constitution.

The Society believes that these efforts should include the history of Federation and aim to foster greater understanding of how the Constitution came about, the principles that underpinned its adoption, and the reasons why this was such a significant step for the nation. Although high school Legal Studies classes are an effective means of exposing some Australian secondary students to the Constitution, more could be done to educate students and the wider community about the Constitution's unique fusion of Westminster and US influences, and its underlying federalist policy rationale.

The Society would be particularly welcoming of any opportunity to contribute further to the development of such initiatives in future.

The referendum process

The Samuel Griffith Society fully supports the constitutional amendment process outlined in Section 128 of the Constitution. This process is both an effective means of altering the Constitution when appropriate, and an effective safeguard of the Constitution and its virtues.

The framers of the Constitution conceived of the referendum process as a means by which the Australian people could be empowered to exercise a ‘veto’ over any proposed reform.¹

Critically, the Constitution was deliberately designed to be relatively difficult to alter in order to afford maximum protection to the states.² As articulated by former Commonwealth Attorney-General T. C. Brennan, KC:

“... the Constitution was made hard to alter of deliberate and set purpose. It was a solemn compact which recognized not merely the rights of the people of Australia as a whole, but the rights of the people of the States as political entities, and it was not intended to be capable of alteration by every gust of passion, or in response to every catch cry ...”³

The stability afforded by this solid constitutional foundation has been a significant contributor to Australia’s ongoing prosperity. While Australia’s Constitution has made it one of the most stable liberal democracies in the World, more malleable constitutions elsewhere have tended to undermine democracy and provide limited protection against authoritarianism.⁴ In contrast to that of Australia, the experience of many other nations demonstrates that constitutions that are easy to amend are more susceptible to abuse and more likely to produce political instability.⁵

¹ *Official Report of the National Australasian Convention Debates*, Adelaide, 22 March to 5 May 1897, 1021 (Isaacs); Richard Miles, ‘Australia’s constitutional referendum: A shield, not a sword’ (2007) 35(4) *Journal of Representative Democracy* 237.

² Richard Miles, ‘Matters of the heart and the heart of the matter: the constitutional referendum in Australian politics,’ (2000) 25(2) *Alternative Law Journal* 53, 55.

³ T. C. Brennan, *Interpreting the Constitution: A Politico-Legal Essay* (Melbourne University Press, 1935), 320.

⁴ Australia is rated the 10th most stable country in the world, with the 8th highest HDI ranking and the World’s 8th oldest constitution: Fund for Peace, *Fragile States Index 2021*, *Fragile State Index* (Statistics, 2021) <<https://fragilestatesindex.org/global-data>>; United Nations Development Programme, *Latest Human Development Index Ranking 2020*, *Human Development Reports* (Statistics, 2020) <<http://hdr.undp.org/en/content/latest-human-development-index-ranking>>; Constitue Project, *Constitutions: Australia 1901*, (Statistics, 2021) <<https://www.constitueproject.org/?lang=en>>.

⁵ See e.g.: ⁵ John Mukum Mbaku, ‘Threats to democracy in Africa: The rise of the constitutional coup’, *Brookings Institute*, (Opinion, 30/10/2020) <<https://www.brookings.edu/blog/africa-in-focus/2020/10/30/threats-to-democracy-in-africa-the-rise-of-the-constitutional-coup/>>; Joleen Steyn Kotze, Africa faces a new threat to democracy: the ‘constitutional coup’, *The Conversation*, (Opinion, 9/2/2017) <<https://theconversation.com/africa-faces-a-new-threat-to-democracy-the-constitutional-coup-72011>>; Ryan Eustace, ‘Fluid Constitutions: A Latin American Phenomenon’, *Council on Hemispheric Affairs* (Article, 3/7/2014) <<https://www.coha.org/fluid-constitutions-a-latin-american-phenomenon/>>; Rodrigo Álvarez, ‘The times they are a-changin’... Challenges in Latin America’ (2017) 15(2) *International Journal of Constitutional*

Past experience has also shown consistently that the Australian people have engaged positively with the existing referendum process, with high turnout and low rates of informal voting at previous referenda.⁶ Other methods of community consultation, such as Citizen Juries and Deliberative Polling, are no substitute for a referendum in which all eligible Australians are afforded an equal say.

Conclusion

The Samuel Griffith Society is grateful for the opportunity to have made this submission.

The fact that, since 1999, the nation has experienced the longest period in its history without a referendum should be seen as an indication of Australians' overall satisfaction with our existing constitutional arrangements, rather than a sign that major reform to the referendum process is required.

Xavier Boffa
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Law 291, 294-295; Mong Palatino, 'How ASEAN Strongmen Use Legal Reform to Weaken Democracy', *The Diplomat* (Opinion, 7/3/2018) <<https://thediplomat.com/2018/03/how-asean-strongmen-use-legal-reform-to-weaken-democracy/>>; Clauspeter Hill and Jörg Menzel, *Constitutionalism in Southeast Asia* (Konrad-Adenauer-Stiftung, 1st ed, 2010) vol 1, 16-17.

⁶ Miles (n 1), 241-242.