

WOMEN for an Australian Republic

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Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs

Inquiry Into Constitutional Reforms and Referendums

“We always overestimate the change that will occur in the next two years and underestimate the change that will occur in the next ten. Don’t let yourself be lulled into inaction.” - Bill Gates

Introduction

1. Women for an Australian Republic (WfaAR) has continuously campaigned in favour of an Australian Republic since 1999. We take a close interest in constitutional change issues including public information; civics education; active and informed citizenship; referendums and polls.
2. WfaAR considers that the landscape against which constitutional change takes place has changed considerably since the 2009 House of Representatives inquiry into the Referendums (Machinery Provisions) Act 1984. Our submission to that inquiry – at which we did not give evidence - is attached. Most, if not all, of what WfaAR submitted there still applies. We note that only two relatively minor amendments were made to the Act in 2013 in response to the earlier inquiry, implementing two out of 17 recommendations.

A Changing Environment for Constitutional Change in the 2020s

3. In the last 20 years, we have seen shifts in how the public is consulted about and involved in governance changes, for example:
 - the 2020 Summit (2008) – looking into the future by a group selected by the federal Government with a blue-sky remit to suggest ideas albeit constrained by additional cost
 - Indigenous Recognition and proposed constitutional changes – citizen initiated with wide public consultation (2012 to present)
 - the Same-Sex Marriage Plebiscite (2017) – 80% participation in voluntary vote with outcome unexpected by the federal Government
 - Randomly selected panels of voters determining policy to be legislated - now occurring in the ACT

in the context of:

- the advent and ubiquitousness of social media.

4. In this submission, WfaAR will not cover the ground we canvassed for the 2009 parliamentary inquiry. Much has been written on this subject, including informed voting, by constitutional lawyers, political scientists and interested others, before and since. Instead, we put forward a number of suggestions for consideration by the Committee.

5. To modernise constitutional change in Australia, we need to remove some things that have been around for too long, are too old-fashioned and that have failed to produce change (don't keep doing the same things if they don't succeed) and introduce others that fit the contemporary environment and people's interests; time availability; attention span; education levels and understanding of community/citizenship responsibilities and engagement. This should also be put in the context of the effectiveness of our elected representatives to keep up with the times and explain their plans and expectations for the future. This is, undoubtedly, being influenced by public opinion about how well politicians do their jobs and how well they are regarded generally (changes over time).

Get Rid of Received Wisdom

6. Recent research conducted by the Grattan Institute has indicated that the greatest impediment to policy change in Australia is public opposition to mooted changes [see Note 1]. Some of this is imagined rather than real, the surprising success - to some - of the same-sex marriage plebiscite being a case in point both in participation and result.

7. Furphies and red-herrings attaching to "referendum aversion" are:

- Proposals can only be put once and/or proposals can only be put when they are sure to pass

Comment: there is no reason for this to be the case as the Athenians well knew [2]. This belief dooms sensible and necessary changes - including procedural and administrative ones - being put to voters when they should be. That is to say when this reason is not being used as a convenient excuse for inaction by politicians. What is there to stop proposals being put multiple times and in quick succession? The Republic, for instance, will require one or more plebiscites (to gauge public views on a number of its elements over time) followed by a final referendum and this could be achieved over three years. Government does not always have to win referendums especially if they are not the will of the people. For instance the 1999 Republic referendum, as proposed by the Howard Government, was lost. At present, this thinking is significantly stalling Indigenous Recognition to the point where all parties to the debate are mired in the complex detail of competing proposals and fearful of failure.

- People don't want to vote in referendums or plebiscites

Comment: to deal with this we need regular referendums and plebiscites so that voters become accustomed to also voting on proposals for change at general elections. Significant changes such as the Republic and Indigenous Recognition deserve their own time in the sun and clear air. The same-sex marriage plebiscite put paid to the idea that people don't want to vote to bring about change (80% participation rate in a voluntary, non-binding poll with a 62/38 result).

- Constitutional change costs too much

Comment: True, ie additional, costs need to be accurately calculated and the impact on the federal Budget (minor) articulated. Voter involvement in government is not only a requirement of Australian citizenship but a necessary cost of our democracy. Constitutional change votes held in conjunction with federal elections would have minimal additional costs. In some cases, for instance not revising and modernising the s 44 citizenship provisions for membership of parliament has a significant cost to the representativeness, continuity and stability of our governance (and is still not resolved); the same applies to recognition of local government. The amount of money spent on referendums since Federation is a drop in the ocean against total Commonwealth spending over the same period.

- There is something sacred about the 1901 Constitution and it shouldn't be changed; it should be difficult to change

Comment: our current Constitution is out-of-date and unfit for purpose. It should be regularly updated and amended to suit changed circumstances and times. WfaAR views with increasing concern the proliferation of "uphold the Constitution" groups (some well-funded and influential) that are acting as a brake on change and seeking unnecessary or inappropriate workarounds to further their goals, for example Uphold and Recognise's role in the Indigenous Recognition debate and inquiries [3].

Changes to s 128 of the Constitution

8. The essential problem with s 128 is that it makes the Constitution almost impossible to change and brings with it consistent failure (last successful referendum was 1967; last referendum was twenty-two years ago – many currently enrolled voters have never voted in a referendum). The concept that the "Founding Fathers" – they were all men – got it right for eternity, is an article of faith borrowed from the United States of America, and should not be imposed upon our own Constitution, that was a hybrid and very focussed on the administrative requirements of

Federation. Rightly women and other groups today, do and should have much to say about what is in the Constitution including how it should be changed.

9. The essential impediment to changing the Constitution inherent in s 128 stems from the provision that a majority of votes is required to make a change to the Constitution not only in total but also in a majority of four States.

10. This latter requirement should be removed as things have moved on since Federation when retention of States' rights and roles was paramount, jealously and zealously guarded – but it will take a referendum to change it. We now have more than a century's experience with the operation of the Senate as its members represent the interests of the States and Territories although this emphasis is now much diminished as the interests and cohesion of the nation have changed over time.

11. A law for conducting plebiscites should be instituted outside the Constitution. A lot more of them should be held – for legal advances not requiring change to the Constitution; for proposed changes to the Constitution to test the waters or as preliminary steps to significant proposed changes.

Suggestions for Engaging Voters and Modernising Constitutional Change Processes

12. These are presented in no particular order:

- a) **Conduct regular Constitutional Conventions**, say every three to five years, with elected and nominated participants assisted by legal and other experts; able to be assembled by the federal Government and proposed by States and Territories singly or uniformly - could be a useful outcome of National Cabinet deliberations
- b) **Institute a rolling process for nominating amendments, additions and deletions** to the federal Constitution: proposals could be put forward by States, Territories, organisations, business and individuals, overseen by a dedicated parliamentary committee making an annual report to the federal Parliament; appoint a responsible Minister
- c) **Introduce citizen-initiated referendums and polls**
- d) **Pay voters, or reward in kind, to vote in plebiscites** – if polling organisations can do this, so can government with the aim of increasing participation
- e) **Sponsor trips to the national capital for adults** - particularly new citizens - to learn about our democracy and institutions in addition to other leisure activities (could be as little time involved as a day). A citizen's understanding of the role and design of Canberra, as the planned capital of a modern democracy, should not stop at Year 6; expand the National Capital Authority's

remit to carry out extensive public information and education programs – and advertising - with increased staffing and funding

- f) **Conduct regular deliberative polls** – these could now be effectively conducted using online meeting technology as well as in person for more difficult or important topics/debates (non-interactive online tutorials would also be a valuable resource); these will need to be funded
- g) **Promote the concept of active and informed citizenship** as exercised in the voting booth. This is part of our national identity as well as a requirement of being an Australian citizen
- h) **Identify and recognise women and Indigenous people who are advocates and activists for constitutional change** including those who are not constitutional lawyers. It is important for women to be able to confidently express opinions about “secret men’s business” as constitutional change tends to be regarded. Seeing and hearing other women doing it will help
- i) **Institute legislated penalties for incorrect or misleading information or claims in YES/NO case materials including those spread through the media including social media.** Require such material to be immediately removed or destroyed by the platform or publisher concerned
- j) **Implement electronic voting for referendums and polls** and for electing delegates to attend Constitutional Conventions and the like as soon as possible
- k) Prime Ministers, Ministers and all members of federal Parliament (especially crossbench members particularly if holding the balance of power [1]) and all State and Territory political and community **leaders to speak positively about the future and promote federal constitutional change as essential, compulsory and an important way to achieve effective planning for the future**
- l) **Pursue a separate Bill of Rights** to reduce pressure on the current contents of the Constitution. This would likely spark considerable community interest; would require different handling from previous (recent) attempts, for instance through a number of Constitutional Conventions
- m) **Voluntary voting** in referendums – could be attractive if we end up with voluntary voting for our Head of State
- n) **No Government sponsored or funded NO cases**, or funds provided for promotion of NO cases by other parties

- o) **Each question requiring a YES or NO answer**; no multiple questions with a single YES or NO response.

Conclusion

13. WfaAR's take on all of this is that voter awareness about constitutional change, let alone active and informed citizenship, will only improve if it becomes a regular habit, an easy one at that. There is no point investing in civics education with no practical application or result. Frequent plebiscites and polls, often at the touch of a button, and referendums becoming an expected feature of regular visits to the ballot box, whether online or in person, would provide that practical application. In short, practice will make perfect. People want to be involved and they want to have a say about how they are governed. They can be and they can.

Notes

1. Grattan Institute, Gridlock Report, www.grattan.edu.au/report/gridlock 25 July 2021, accessed 6 August 2021
2. In 406 BC, the Athenians defeated the Spartans in the Battle of Arginusae at sea. However, the commanding generals were unable to prevent a disaster shortly afterwards in which the crews of the 25 Athenian warships that were lost, drowned in a storm. Public anger was so great that the assembly voted, after much manoeuvring and delay for festivities, to execute six of the eight generals. This was a decision that the Athenians quickly came to regret and one worthy of a second vote when things had calmed down and commonsense could prevail.
3. For instance, see number of references to and evidence given by research and lobby group Uphold and Recognise – note the order of these words - in the Final Report of the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, Canberra, November 2018. Committee co-chair, Mr Julian Leeser MHR, is also prominently and publicly associated with this group.

Reference

Parliamentary Library, Research Paper no. 11 2002-03, 23 June 2003. The Politics of Constitutional Amendment, Scott Bennett, Politics and Public Administration Group. www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp0203/03rp11 accessed 6 August 2021