



# QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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The Secretary  
Senate Finance and Public Administration Committees

Dear Madam/Sir

## **Citizen Initiated Referendum Bill 2013**

Since the progressive era in American politics late in the 19<sup>th</sup> and early in the 20<sup>th</sup> centuries there has periodically been a clamour from both the left and the right of politics for the introduction of greater democracy into the political system.

In the progressive era the principal argument in favour of citizen initiated referenda was that the existing democratic system had failed because the legislatures were controlled by special interests, in those days particularly the railroads.

Moreover, connected with that, there was a view that money played a corrosive role in elections with those with large sums of money having a disproportionate power to control the political process.

It was also considered that allowing citizens direct access to the political process might reduce partisanship and increase the respect for the law because the laws had been passed directly by the citizens themselves.

It is clear, we would submit, that the level of partisanship, cynicism and disengagement with the political process has grown, particularly in the last two or three decades in this country at least partly, and perhaps paradoxically, because the role of government in the economy has been diminished.

It is often said that direct democracy will give citizens a greater capacity to participate in the political process as they no longer have to work through political parties or special interest groups.

Citizen initiated referenda is also vociferously opposed. It seems to us that many of the arguments against it are fundamentally anti-democratic and could be said as much about the existing political system as about direct democracy. However we would agree that to some extent the proponents of citizen initiated referenda overstate the potential benefits of direct democracy.

It seems to us that the American experience demonstrates<sup>1</sup> the reality is that initiative processes are often controlled by the same special interests or perhaps different special interests as those in elections. Money has also come to play a significant role in initiative campaigns with well funded petitioners having the capacity to turn results.

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<sup>1</sup> Du Vivier, "Out of the Bottle: The Genie of Direct Democracy" Volume 70 Albany Law Review, Page 1045

Studies in California show that 68% of all initiative campaign contributions come from lobbying groups.<sup>2</sup>

Partisan politics has entered this process as political parties have made use of referenda as stalking horses for their own policies or candidates.

Direct democracy is often criticised for producing chaotic results.

California's Chief Justice made the following remarks:

"Initiatives have enshrined a myriad of provisions into California's constitutional charter, including a prohibition on the use of gill nets and measures regulating the confinement of barnyard fowl in coops. This last constitutional amendment was enacted on the same 2008 ballot that amended the state constitution to override the California Supreme Court's decision recognising the right of same sex couples to marry. Chickens gained favourable rights in California on the same day that gay men and lesbians lost them."<sup>3</sup>

California is of course notorious for the passage of proposition 13 which it is generally conceded is significantly responsible for the current fiscal crisis of that state.

These Californian examples also serve to illustrate the oft repeated criticisms of citizen initiated referenda that they involve radical and simplistic solutions to complex problems and are costly and destructive of good planning.

Certainly, in our view, it must be accepted that reducing some of the complex issues involved in the political process to simple yes or no answers to simple questions involves significant risk.

It must also be said that much of the criticism of the role of interest groups and political parties in the political process overlooks the fundamental fact that membership of those organisations gives people a considerably greater capacity to influence and participate in the political process than if they did so as individuals. A point which has been made since the days of James Madison but is repeated more recently by writers such as Robert Dahl in his book *On Democracy* at page 185 to 186.

Having said all that the QCCL is of the view that on balance the political process could benefit from the greater flexibility and the further opportunity for input that citizens initiated referenda would bring. However, we are of the view that some of the criticisms of them are legitimate and there need to be controls on their use.

We would recommend the following changes to the subject bill for the consideration of the Committee some of which are based upon the proposal of Mr Peter Reith in 1994:

1. A higher threshold requirement is required than the 1% provided for in the Bill. We would suggest 5% of those currently enrolled to vote at a Federal election. Although we note that Mr Reith included a proposal of effectively 3%.

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<sup>2</sup> Ibid at page 1048.

<sup>3</sup> Quoted by Anne Toomey in the University of Sydney, Sydney Law School Legal Studies Research Paper No. 10/116 November 2010 at pages 3 to 4.

2. The referenda should be held on the same day as the general election to minimise costs.
3. Proposals should be sent to a committee, possibly a Parliamentary Committee, for review so that expert input can be obtained into the formulation of the question or questions to be put. This Bill deals with amendments to the constitution. The formulation of proposals to amend the constitution, it seems to us, involves a level of complexity because regard must be had to existing constitutional law. For that reason we are of the view that some expert input needs to be obtained into the formulation of the questions. It seems to us that could be done by a Parliamentary Committee calling relevant experts forward to give evidence and to submit drafts.
4. It also seems to us that consideration should be given to preferential voting, that is, making provision for multiple questions to be put on the same topic giving voters the opportunity to choose.
5. Voting should be compulsory.
6. The proponents of the cases should be provided with government funding as happens with referendums presently
7. The government should distribute to all electors yes and no case statements.<sup>4</sup>
8. As this Bill is designed for constitutional referenda the Federal nature of our system should be reflected in the qualifying requirements. For example, the signatories to the petition should reflect proportionately the population of the various states otherwise you run the risk that referenda will be promoted solely in the states with the largest population.

We trust this is of assistance to you in your deliberations.<sup>5</sup>

Yours faithfully

Michael Cope  
Executive Member  
For and on behalf the  
Queensland Council for Civil Liberties  
19 April 2013

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<sup>4</sup> Some of these points may flow from Clause 13 of the Bill. If they do we apologise.

<sup>5</sup> The writer acknowledges the assistance in the preparation of this submission of the Department of Parliamentary Library Current Issues Brief No. 21 1994 entitled *Citizen Initiated Referenda: Cure-all or Curate's Egg*