

SUBMISSION

TO THE JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

concerning the

Referendum (Machinery Provisions) Amendment Bill 2022.

Regarding the proposal “Disapplication of section 11 of the Referendum (Machinery Provisions) Act 1984”, and specifically that Section 11 of the Referendum (Machinery Provisions) Act 1984 does not apply during the period as therein prescribed, it is submitted that such is a gross departure from the intent of the existing provisions to provide concise and compelling argument both in favour and not in favour of a referendum question, in order that voters can consider the contesting ideas of both sides prior to voting.

Putting aside that it is a long-established legal requirement, the provision of ‘for’ and ‘against’ argument documents is the very minimum which voters expect their elected representatives to provide, given that no voter can be certain that every media and public opinion and comment is sufficiently reliable and relevant to be included in any weighing up of the facts, as voters move towards making their voting decision.

It is not sufficient, indeed it is flawed, to presume that the funding of an as yet undefined mechanism intended to counter what has been described as ‘misinformation’ relating to the public debate on the issues associated with the referendum is by any measure an appropriate substitute for argument documents.

In fact, the proposal that there be a misinformation counter mechanism is a concerning proposition in itself, more expected in a country much less democratic than Australia. Some questions begged by the proposal are that, within this proposed mechanism, who determines what is misinformation and what is not, to what tests will information be subjected in order to make this determination, and what risk management processes will be in place to avoid errors of judgement and either bias or prejudice creeping in?

Specifically on the matter of who determines what is misinformation, the critical point which has obviously been overlooked in the development of this proposal is that each and every person involved in such determination will hold

a personal opinion, and there is no way whatsoever that it can be guaranteed absolutely that neutrality will prevail, irrespective of experience, qualifications, reputation and quality of process.

The principle involved here is not only that an as yet unknown misinformation counter mechanism is being substituted for argument documents, it is more that voters are being denied their right to decide for themselves using the established and proven process of argument documents.

Instead of being able to consider two opposing arguments, and to then decide which they favour, voters will instead have to seek out information and opinion, and then try to measure the value of what they find, as to whether or not it is misinformation, against the output of faceless people.

By any reasonable comparison, this is wrong. Firstly, it is wrong because it assumes every voter has the capacity and opportunity to undertake sufficient research, and secondly it is morally wrong to expect them to, especially when current legislation recognises this lack of capacity and provides a means to overcome it by way of argument documents.

It is reasonable to ask what has motivated the Government to propose this very questionable departure from the current requirement that 'for' and 'against' argument documents be published and distributed. Cost cannot be a factor where the democratic right to be informed is involved, and in any event, it has been reported that the proposed misinformation counter measure will consume hundreds of millions of dollars.

It is also reasonable to ask if, in 1984, the Government of the day saw the necessity for Section 11 of the Referendum (Machinery Provisions) Act, and if subsequently no issue has been taken with Section 11 by successive Governments, why is the current Government proposing to disapply this section, and most particularly, only for this current term?

It is surprising that the Government does not appreciate that this proposal does not reflect well on the Government. Australia's democratic allies and partners, accustomed as they are to our robust democracy, will find this proposed denial of the democratic right to be informed an unexpected and concerning event.

I ask the Senate Committee to report to the Parliament that the Bill should be amended by the removal of the provision for the disapplication of Section 11.

