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Submission to the House Standing Committee into Machinery of Referendums

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Abstract

This submission makes five recommendations to reform the process around referendums including, a) encouraging the public to develop an informed opinion about a proposed Constitutional change, b) assessing the most effective communication delivery channels for reaching all potential voters, c) providing broader funding arrangements, d) compelling the Governor-General to not issue a writ if a Bill for constitutional change is created by a parliament where both houses are dominated by one political party, and e) reviewing the Commonwealth Electoral Act 1918 to include a provision for citizen assistance in elections and referendums relating to new Constitutions.

Keywords: constitution, referendum, political governance

Introduction

This submission strongly supports the House Standing Committee on Legal and Constitutional Affairs and its Inquiry into the Machinery of Referendums. As the author of a book on political governance, commentator on constitutional affairs, I welcome the opportunity to comment on the need to review the effectiveness of the Referendum (Machinery Provisions) Act 1984.

While the focus of the Committee's Inquiry is the distribution of for and against arguments to electors, this submission takes a broader view to the referendum process. It argues that the time has come to rethink how referendums are conducted so they cope with the demands of the 21st century and meet the expectations of an Australian public that is quite different to the one that existed when the Act was passed back in 1984.

Many Australians, take comfort in the belief that their constitutional referendum process allows citizens to influence the direction of government and hold their politicians accountable.

However, this cosy assumption is incorrect. The Constitution only allows citizens to vote on government-initiated referendum issues that have already been drafted, debated and passed by political representatives. By the time an issue gets to a referendum there has been so much rhetoric, spin, misinformation and deception from all sides, including supposed "experts", that the public finds it next to impossible to develop an informed opinion. Lacking knowledge and conviction, they tend to become very cautious in their decision-making and usually vote "No" on referendum proposals regardless of their merit.

1 a): Processes for Preparing the Yes and No Cases for Referendum Questions

The fundamental problem with Section 11 of the Referendum Act is that it does not take into account:

- Low literacy levels – Between 46% and 70% of adults in Australia have literacy and numeracy skills below the levels required to meet the demands of everyday life and work (Adult Literacy and Life Skills Survey – ABS 2006). This means that a majority of the people will not only struggle with the Yes/No arguments posted to them, they will have trouble understanding the Bill and political that initiated the referendum in the first place.
- Complex or highly politically charged issues – Issues such as changing from a Constitutional Monarchy to a Republic are both highly complex and politically charged and it is next to impossible to summarise the key points for change, or against change, in the 2000 word text-based format prescribed by the Referendum Act.
- Undecided voters – The Referendum Act contains no means of encouraging voter commitment to the referendum process, which is, getting undecided voters to commit to either the Yes or the No case.

1 b): Public Dissemination of the Yes and No Cases

The provisions for the dissemination of public information in Section 11 of the Referendum Act have locked in the mechanism of printing pamphlets and posting them to all electors. This might have been effective in 1984 (although there is no evidence to support this), but the process has numerous drawbacks including:

- Huge cost and low effectiveness – Printing 15 million pamphlets and posting them to all registered voters in Australia is hugely expensive. This is compounded by the fact that people's attitude towards postal mail has changed and the majority of mail recipients view mail that is not transactional (bills, statements and customer communication) as junk mail and bin it immediately.
- Ignores electronic communication – There has been almost exponential growth in the public take-up of online, mobile and broadcast technologies since 1984 and people are now more inclined to get their news and current affairs from electronic media than from print news or mail.
- Ignores informal community networks – Much of the decision-making and debate about political issues occurs in informal settings such as in sporting environments, bars and pubs, clubs and associations, yet the Referendum Act does not acknowledge these avenues for engaging the public.
- Ignores the transient population – Mail-outs to registered voters ignores the fact that Australia has a large transient population with no long-term postal addresses. For instance 105,000 Australians are homeless with no fixed postal address (The Australian Government White Paper on Homelessness - The Road Home – FaHCSIA 2008).

1 c): Limitations on the Purposes for Which Money can be Spent on Referendum Issues

In 1999 the Australian Electoral Commission (AEC) spent \$66m running the Republic Referendum. \$33m of that was spent on preparing, printing and posting of information pamphlets. This was an extraordinary amount to spend on a process that failed so miserably.

The way the public learns about what is happening in the world is vastly different to what it was in 1984 and is constantly changing with the adoption of new technologies like mobile devices, Web 2.0 and so forth. The Referendum Act should allow the AEC to determine the most cost-effective means of communicating proposed Constitutional changes to the Australian electorate first, and then create appropriate content and dissemination campaigns to match. This point is imperative as it is clear that the most cost effective means of reaching voters now is quite different to what it was in 1984 and will be very different in 10, 20 and 50 year's time.

2: Any amendments to the Act and the Conduct of Referendums

It is an irony that the Referendum Act empowers the AEC to help the citizens of other countries to not only change their existing constitution, but help them create new constitutions to replace the ones they currently live under. From Timor Leste to Namibia to Cambodia and South Africa, the AEC has actively been involved in the constitution-building processes of other nations. However the Referendum Act curtails the AEC's ability to do the same for Australian citizens.

If through a public groundswell, the Australian public wishes to create a new constitution to supersede the existing one, they cannot call on the assistance of the AEC the way that citizens in foreign countries can.

Recommendations

This submission recommends to the Committee a list of actions necessary to bring the Referendum Act into line with current community expectations, while future proofing it against community expectations in the years to come. The recommendations are:

- Instead of simple information provision, the primary goal of Section 11 should be to provide the necessary tools for the public to develop an informed opinion about a proposed Constitutional change. As such, both the Yes and No arguments should be clearly and concisely presented, including pro and con arguments for each case and the consequences for Australia if either one or the other case is taken up. This format is based on the highly successful, shock-proof Harvard Business Case Study process used around the world in every major post-graduate education institution (because it is highly effective in generating rapid understanding of complex problems and encourages deep consideration by readers). The information on each Yes/No case should be written by a credible, reliable expert in close cooperation with the AEC. The information should be put to an Advisory Board established by the High Court to review whether the information provides the background knowledge necessary to form opinions on the cases, to avoid misunderstanding and to ensure a relevant balance of information. The information should then be tested in focus groups from different demographics and locations around Australia to confirm that it is relevant, well balanced, and easy for ordinary people to understand.
- At the same time the Yes and No information is being prepared, the AEC should be assessing all the various communication delivery channels available at the time (post, email, social media, mobile communications, broadcast etc) including informal community networks and determining the most effective ones for reaching all potential voters, not just those on the electoral roll. With the delivery channels mapped out, the background information for the Yes and No cases needs to be formatted into the various forms necessary for each delivery channel in consultation with the High Court appointed Advisory Board. Each delivery channel should include a means for engaging the intended recipients so that a two-way information flow is established which will cause undecided voters to begin committing to one case or the other without locking them into a final decision until they fill in their ballots at the polling booth.

- To enable the above recommendations to occur, Part 4 of Section 11 dealing with how money can be spent needs to also be modified. 4 (ac) should include the ability for the Commonwealth to spend money publishing Yes/No arguments in the broadcast (radio & TV) and telecommunications (phone system) mediums in addition to the internet. There should be a new provision that allows the Commonwealth to publish with and through community organisations to engage members of the public who are disadvantaged, homeless and transient or otherwise socially and culturally marginalised. There would also need to be a provision for funding Advisory Board activities, market testing and communication delivery channel assessment.
- In the event that both houses of parliament are controlled by one party or political bloc (as happened during the Howard Government), any Bill to change the Constitution should be invalidated as it goes against the intention of Section 128 of the Constitution which clearly tries to ensure bi-partisan support for a Bill by the parliament. Therefore Section 7 – Writ for a Referendum should be changed to read:
'Whenever a proposed law for the alteration of the Constitution is to be submitted to the electors, the Governor-General may issue a writ for the submission of the proposed law to the electors. However, if the proposed law has been passed by a parliament where the upper and lower houses are controlled by the same party or political bloc, the Governor-General shall veto it and not issue a writ.'
- To provide the citizens of Australia with the same level of democratic assistance afforded to developing countries that Australia has helped, the Committee should also review the Commonwealth Electoral Act 1918. Specifically Section 7 Functions and Powers of Commission should include a provision for assistance in matters relating to elections and referendums (including the secondment of personnel and the supply or loan of materiel) to organisations acting for and on behalf of the Australian public in respect of proposed new Constitutions.

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