
The Parliament of the Commonwealth of Australia

A Time for Change: Yes/No?

Inquiry into the Machinery of Referendums

House of Representatives

Standing Committee on Legal and Constitutional Affairs

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Canberra

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Contents

Foreword	vi
Membership of the Committee	ix
Terms of reference	xii
List of acronyms and abbreviations	xiii
List of recommendations	xiii
1 Introduction	1
Referral of the inquiry	2
Context of the inquiry	4
Government Advertising Guidelines	4
Green Paper on Electoral Reform	5
2 History of the Yes/No pamphlet	7
The use of the Yes/No pamphlet since 1912	8
3 Current provisions	11
Introduction	11
Unanimous passage of the amendment bill	12
Yes/No case optional	13
‘Equal’ status of the Yes and No arguments	15
Limitation on Government expenditure	15
1999 referendum	20
Are the current provisions adequate?	22
4 Alternatives and Suggestions for Change	27

Drafting of the Yes/No arguments	27
Drafted by parliamentarians	29
Drafted by an independent body	29
Combining parliamentarians and an independent body	32
Experience of other jurisdictions	33
Content of the Yes/No pamphlets	34
Format of the Yes/No pamphlet	38
Dissemination of the Yes/No pamphlet	40
Constitutional engagement	45
Public education campaigns.....	46
Deliberative democracy.....	47
Creating a national conversation.....	48
Limitation on Government expenditure	49
5 Committee Comment and Recommendations	53
Introduction	53
Processes for preparing the Yes/No arguments.....	55
Dissemination of the Yes/No arguments	59
Limitations on Australian Government spending	64
Additional issue	68
Dissenting Report	71
Appendix A: List of submissions	75
Appendix B – List of Hearings and Witnesses	77
Appendix C – List of Exhibits	81
Appendix D: Section 11 of the Referendum (Machinery Provisions) Act 1984 (Cth)	83
Appendix E: Table of Australian Referendum Results	87

Appendix F: Bibliography	91
Parliamentary Inquiries	91
Acts and Bills	91
Journal articles.....	92
Parliamentary and Committee papers.....	92
Books	93
Media and Online resources	93



Foreword

In 1911, two proposals to change the Constitution were put to Australian electors at the third referendum since federation. Both proposals were soundly defeated. The Government of the day felt that the proposals were sound and necessary changes to the Constitution and that their defeat could be explained, at least in part, by electors being misinformed on the issues and the Opposition's misrepresentation of the proposals to the Australian public.

It was for this reason that in 1912 the Government undertook to post to each elector a document which would provide the arguments for and against the proposed change and the text of the Constitution identifying the proposed changes. The Yes/No pamphlet, as it became known, was an innovative development in the way in which the Australian Government communicated with electors.

It has now been almost 100 years since the introduction of the Yes/No pamphlet. Its form has changed very little since 1912 and it is also the only official material provided to electors prior to a referendum. In 2009, it is appropriate to ask whether there is a more effective way to engage and inform the Australian public about the Constitution and proposed constitutional change.

Before the Government can amend the Constitution, section 128 of the Constitution requires that a majority of electors in a majority of states approve of the proposal. It is therefore as important today as it was in 1912 that electors understand the proposal being put to them so that they can make an informed decision at a referendum.

Constitutional change in Australia is not common. Since Federation, Australian electors have accepted only eight out of 44 proposals to change the Constitution. Since the introduction of the Yes/No pamphlet in 1912, the rate is six out of 39 proposals.

Although not every proposal to change the Constitution will have widespread support, it is also clear that a lack of understanding still plays a part in an elector's

decision to vote 'No'. Indeed, the 1999 republic referendum campaign showed this directly when the No Committee used the 'Don't know - Vote no' slogan.

Under the *Referendum (Machinery Provisions) Act 1984 (Cth)*, the Government is only able to provide electors with the Yes/No pamphlet prior to a referendum. In order for the Government to campaign more broadly, amending legislation would be required. During this inquiry, the Committee asked whether the Yes/No pamphlet provides sufficient information to allow electors to make an informed decision at a referendum. The answer appears to be no. Although the Yes/No pamphlet is a valuable document which provides electors with the views of their elected representatives, it is insufficient as the sole material provided to electors prior to a referendum.

This conclusion was supported by the weight of evidence received by the Committee during this inquiry. Although it is evident that many people still want to receive the Yes/No pamphlet, many other submitters argued that the Yes/No pamphlet is insufficient for many electors. For instance, polling and survey results indicate that young women aged 18-24 know the least about the Constitution. Young women are also increasingly the most prolific users of new technology, such as the internet and social networking sites. The Committee's view is that the Machinery of Referendums Act should be flexible enough to communicate appropriately and effectively with all electors.

The shortcomings of the Machinery of Referendums Act are also illustrated by the Parliament's response to the 1999 referendum on a republic and a preamble. Before that referendum, legislation was introduced to amend the Machinery of Referendums Act. The temporary amendments provided for additional information to be provided to electors by a neutral panel of experts who would provide factual material and Yes and No Committees who would advocate for a 'Yes' or 'No' vote.

After considering the framework provided for referendums and in particular, section 11 of the Machinery of Referendums Act, the Committee has determined that changes to the legislation are necessary to assist electors in making an informed vote at referendums. In this report, the Committee has recommended significant changes to section 11 of the Machinery of Referendums Act, including removing some of the more restrictive provisions and introducing measures which are intended to provide a flexible and adaptable approach to referendum campaign information.

With regard to amending some of the current restrictive provisions, the Committee has recommended removing the limitation on government expenditure, removing the word limit for the Yes/No arguments and changing the delivery requirement to every household rather than every elector. The

Committee is of the view that some provisions should remain unchanged, including the continued authorisation of the Yes and No arguments by members of Parliament.

In looking to provide a more flexible and adaptable approach, the Committee has recommended that the Government establish a Referendum Panel for each referendum. The Referendum Panel would be responsible for developing an overarching communications strategy relevant to that referendum. This would include determining the word limit of the Yes/No pamphlet, as well as providing background and contextual material to electors on the referendum proposal. The Committee envisages that specific 'Yes' and 'No' campaigns, similar to those established in 1999, would contribute to the debate.

The changes recommended by the Committee mean that there will be more than one way to communicate with electors before a referendum. The Yes/No pamphlet will continue to be provided to electors and this will serve as a guaranteed minimum for referendum material. However, additional material, targeted more effectively to different groups of electors, can now also be provided. Above all, the Committee's recommendations are intended to provide flexibility and adaptability so that the specific requirements of each referendum can be met.

Mr Mark Dreyfus QC MP
Chair



Membership of the Committee

Chair Mr Mark Dreyfus QC MP

Deputy Chair The Hon. Peter Slipper MP

Members The Hon. Kevin Andrews MP

Mrs Sophie Mirabella MP

The Hon Bob Debus MP

Ms Belinda Neal MP

Mr Petro Georgiou MP

Mr Shayne Neumann MP

Mr Daryl Melham MP

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Committee Secretariat

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Ms Sharon Bryant (to 22/9/09)

Inquiry Secretary Serica Mackay

Research Officers Angela Arundell

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Ozi Kosemehmetoglu



Terms of reference

The Committee is to consider and report on:

1. The effectiveness of the *Referendum (Machinery Provisions) Act 1984* in providing an appropriate framework for the conduct of referendums, with specific reference to:
 - Processes for preparing the Yes and No cases for referendum questions;
 - Provisions providing for the public dissemination of the Yes and No cases; and
 - Limitations on the purposes for which money can be spent in relation to referendum questions.
2. Any amendments to the *Referendum (Machinery Provisions) Act 1984* the Committee believes are required to provide an appropriate framework for the conduct of referendums; and
3. Any other federal provisions relevant to terms 1 and 2 above, as the Committee considers appropriate.



List of acronyms and abbreviations

AEC	Australian Electoral Commission
ASCII disk	American Standard Code for Information Interchange disk
Cth	Commonwealth
CPoR	Citizens' Parliament on Referendum
JSCEM	Joint Standing Committee on Electoral Matters



List of recommendations

Committee Comment and Recommendations	53
Recommendation 1	55
The Committee recommends that the Australian Government introduce amendments to section 11 of the <i>Referendum (Machinery Provisions) Act 1984</i> (Cth) to improve the referendum process.	
Recommendation 2	57
The Committee recommends amendments to the <i>Referendum (Machinery Provisions) Act 1984</i> (Cth) to remove the current restrictions on the word limit of the Yes/No arguments.	
Recommendation 3	57
The Committee recommends that the Australian Government introduce amendments to the <i>Referendum (Machinery Provisions) Act 1984</i> (Cth) to require a Yes/No pamphlet to be delivered to every household, not every elector.	
Recommendation 4	58
The Committee recommends that, consistent with section 11 of the <i>Referendum (Machinery Provisions) Act 1984</i> (Cth), the respective Yes/No arguments should continue to be authorised by those members of Parliament who voted for or against the proposed law.	
Recommendation 5	59
The Committee recommends that if a constitution amendment bill is passed unanimously by both Houses of Parliament, then <i>all</i> members of Parliament be responsible for authorising <i>both</i> the Yes and No arguments.	

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- Recommendation 6** 60
- The Committee recommends that the Australian Government develop and implement a national civics education program to enhance the engagement of the Australian public in democratic processes and to improve knowledge and understanding of the Australian Constitution.
- Recommendation 7** 62
- The Committee recommends that amendments to the *Referendum (Machinery Provisions) Act 1984* (Cth) provide for the establishment of a Referendum Panel using a method of appointment which ensures independence and bipartisanship. The Panel would be specifically appointed for each referendum for the purposes of promoting that referendum and educating voters about the referendum arguments.
- Recommendation 8** 63
- The Committee recommends that membership of the proposed Referendum Panel should be a maximum of eight persons, and should include a representative of the Australian Electoral Commission.
- Recommendation 9** 64
- The Committee recommends that the proposed Referendum Panel be responsible for determining an appropriate and relevant information and communications strategy for the referendum, including identifying what education material should be distributed and the methods of distribution.
- Recommendation 10** 64
- The Committee recommends that the proposed Referendum Panel be responsible for determining the maximum word length which is to be the same for the Yes and No arguments.
- Recommendation 11** 65
- The Committee recommends the Australian Government introduce amendments to remove the current limitation on spending imposed by section 11(4) of the *Referendum (Machinery Provisions) Act 1984* (Cth) and to include provisions to ensure that spending is directed to referendum education and to equal promotion of the Yes/No arguments.
- Recommendation 12** 67
- The Committee recommends that amendments to the *Referendum (Machinery Provisions) Act 1984* (Cth) establish that the Australian Government be responsible for determining the budget available to the Referendum Panel for referendum education and campaign activities.

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- Recommendation 13**..... 67
- The Committee recommends that the proposed Referendum Panel have the power to make recommendations to the Australian Government concerning the budget to be provided for a referendum campaign.
- Recommendation 14**..... 67
- The Committee recommends that the Referendum Panel be responsible for establishing and determining the budget available to the Yes and No campaigns which should be funded equally.
- Recommendation 15**..... 67
- The Committee recommends that the Australian Government introduce amendments to the *Referendum (Machinery Provisions) Act 1984 (Cth)* to require the proposed Referendum Panel to provide to Parliament a report of its activities and expenditure at the conclusion of the referendum.
- Recommendation 16**..... 68
- The Committee recommends that, consistent with the current provisions of the *Referendum (Machinery Provisions) Act 1984 (Cth)*, the Australian Electoral Commission continue to be responsible for the conduct of referendums.
- Recommendation 17**..... 69
- The Committee recommends that the Australian Government consolidate and harmonise the machinery of referendums provisions with the *Commonwealth Electoral Act 1918 (Cth)*.

