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**Parliament of Australia
House of Representatives
Machinery of Referendums Inquiry
Invitation to make a Submission**

Submission No 020

**From
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Ms Sharon Bryant
A/g Committee Secretary

Thank you for the invitation to make a submission to -

- 1/ The effectiveness of the *Referendum (Machinery Provisions) Act 1984* in providing an appropriate framework for the conduct of referendums, with specific reference to:
 - a) Processes for preparing the Yes and No cases for referendum questions;
 - b) Provisions providing for the public dissemination of the Yes and No cases; and
 - c) 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;
- 3/ Any other federal provisions relevant to terms 1 and 2 above, as the Committee considers appropriate.

Our submission addresses the specific reference of:

- 1/ The effectiveness of the *Referendum (Machinery Provisions) Act 1984* in providing an appropriate framework for the conduct of referendums, with specific reference to:
 - a) Processes for preparing the Yes and No cases for referendum questions;
- And
- 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;

Summary

The remarkably low success rate of referenda in Australia, i.e. zero over the past 30 years, offers an opportunity to pioneer a new model that reduces the obfuscation and divisiveness of the referendum process; one that would enable participation by everyday citizens in the judicious framing of referenda (cases for and against). This process, similar to the Citizens' Assembly process pioneered in Canada, would be instigated when the government decides that an issue needs to be put to a referendum. An independent commission would help to design the process and oversee it. A Chair would be appointed in each instance. A Citizens' Parliament on Referendum would be implemented. The members would be randomly sampled citizens, stratified by gender, age,

education and aboriginality (consistent with the wider population), one person per electorate. They would deliberate, facilitated by independent moderators, and assisted by experts on the issue who would develop materials, make presentations and be cross examined by members. The 'charge' given to the members would be to develop the framing of the question to be asked and to prepare a fair and balanced case for and against the question. This would be accepted by government. Members would receive daily payment for the days they deliberate as well as travel costs. Funding would be allocated for the dissemination of the pro and con case. Other funding by interest groups for dissemination of the pro and con case would be strictly limited. This would provide a model for citizen engagement and deliberation on public policy questions, and help to create an environment more conducive to informed, deliberative citizens' participation and collaborative governance.

Introduction

The history of Australian referenda shows a remarkably low success rate, with only 17% carried since 1906, and with the last referendum to be carried being as far back as 1977. One can only deduce that the Australian population has a low trust in those putting forward the proposed changes, and/or in the referendum process, and/or Australian society has a low tolerance for change. Regardless of the reason, given their almost predictable defeat over the past 30 years, referenda have not been a good use of public money.

Two Canadian Provinces (British Columbia in 2004 and Ontario in 2006) have pioneered a remarkable experiment in referenda, from which Australians would do well to learn - the Citizens' Assembly. In each case, rather than using an independent commission to reform their electoral systems, the province used randomly selected citizens, one per riding, to develop the model and the case for change which was then put to a referendum.

In British Columbia, the first referendum was passed by 58% of the voters, reaching above 60% in all but two of the ridings; however it was not adopted due to the high bar of 60% of the vote needed in each riding. Neither the second referendum in BC four years later, nor the referendum in Ontario was carried.

However, what was of particular interest to Australia was the research that showed that a significant number of voters who could not understand the very complicated case that had to be presented in the referendum, said they voted for it because they trusted the process and the randomly

selected participants as being fair and unbiased, independent of party political interests.

The Case for Deliberative Democracy to Bolster our Representative Democracy

Our system of democracy which focuses on periodic competitive elections appears to be ineffective in achieving the highest ideals of democratic politics, of involving the active participation of the citizenry in the decisions that impact them. Even compulsory voting in elections and referenda do not foster a sense of empowered citizenship. Research on the democratic deficit in Australia shows remarkably low regard for politicians and the political process; and more and more young people are failing to register to vote. Of interest here, experiments in deliberative democracy throughout the democratic world, have shown that representative democracy can be effectively bolstered by deliberative democracy, with everyday citizens empowered to deliberate policy and programs, with their outcomes influencing decision-making.

This submission proposes that the principles and practices of deliberative democracy can assist the referendum process to be more participative, equitable and efficacious. In so doing, it can help to build new relationships between citizens and democratic political institutions, with the result that both governmental accountability and legitimacy can be enhanced.

We propose that by integrating deliberative democracy in the referendum process, citizens will have a more effective route to supplement and enhance the formal decision-making processes of our democratic government. Deliberative democracy will enable everyday citizens, representative of the demographics of the population, to take part in reasoned discourse, listening to diverse viewpoints, exploring and developing options, weighing them carefully, and selecting preferences through mutually respectful discussion. The outcomes of their deliberations will be influential in the decision-making process, in this instance, of framing the referendum question to be asked, and explaining the pro and con cases in a fair and balanced manner.

We base our proposal on evidence from deliberative democracy initiatives world-wide which have resulted in judicious decisions which the people accept, often giving governments legitimacy to achieve more comprehensive reforms than otherwise they would have been able.

Global examples include:

- The Participatory Budget of Porto Alegre Brazil that enables direct participation of citizens in developing the city budget;
- The Tuscany Law on Participation (Law No. 69) that enables and supports citizen-led public participation;
- The Hampton Virginia Municipal Government where government and citizens have worked together to build a deliberative community that has changed governance;

Examples in Australia include:

- Dialogue with the City, a large scale, multi-faceted deliberative process in WA that empowered citizens to develop the plan for the metropolis;
- The recent NSW Climate Consensus Project, where representative groups of everyday citizens deliberated to develop climate change policy and programs, adopted by local governments.

Citizens' Assemblies

The Citizens' Assemblies are the most compelling illustrations of a new model for referenda. The overall process is outlined below:

Implementation plans for the Citizens' Assembly were developed and adopted by government.

Assembly members were selected via a stratified random sample, one person per riding (electoral district) to represent the gender, age and aboriginality demographics of the population. Those who received invitations and expressed an interest were randomly selected to attend an information session where the considerable commitments of participating were outlined. Of those who agreed, a final stratified random sample was made of one male and one female per riding - a total of 160 Assembly members in BC, and 103 in Ontario.

All selected members of the Citizens' Assembly were paid daily for their participation (around \$150 a day) plus travel expenses.

The Citizens' Assembly deliberated over many months (a year in BC and eight months in Ontario), mostly on weekends, before making its recommendation; with the recommendation going to referendum approximately six months later (although in BC there was a second, repeat referendum four years later).

The deliberations consisted of several phases including;

- A learning phase - where members were educated about the

current system as well as alternative systems and potential principles for assessing those systems;

- A deliberation phase where participants were facilitated through dialogue and deliberation to explore, develop and perhaps transform their preferences and perspectives, integrating expert advice with greater communitarian understanding; and
- A decision phase where participants sought common ground and took ownership of the Assembly's decision.

The views of the broader citizenry were included through local meetings in each riding as well as hard copy and on-line submissions.

The preference adopted by the Citizens' Assembly, together with the agreed explanation, was put to the people in a referendum.

Prior to the referendum, neither of the Citizens' Assemblies were funded to take and explain their findings to the broader population, though in both cases, many participants organised to do so where they were able. This was seen by many participants and observers to be a weak link in the process.

Applying the Citizen Assembly Process to the Australian Referendum - The Citizens' Parliament on Referendum

1/ Legislation will be developed to enable the periodic constitution of a Citizens' Parliament on Referendum (CPoR), of randomly selected citizens, stratified by gender, age, education and aboriginality (which matches socio-demographic data from the most recent Census), one per electorate, to frame the question to be put to the vote and to develop the pro and con case for any referendum that is called.

2/ An independent body (Commission), perhaps of universities or other unaligned organisations, and including experts in deliberative democracy design, will be selected for a three year period to design and oversee any Citizens' Parliament on Referendum (CPoR) processes.

3/ When government determines that an issue should be resolved through a referendum, the Commission will be asked to put the Citizens' Parliament on Referendum (CPoR) process into operation. This process will include:

- a) Selection of an independent Chair for the CPoR process.

- b) Allocation of funding of the CPoR process.
- c) Random selection of the CPoR members, one person per electorate, with the sample stratified by age, gender, education and aboriginality so as to be representative of the population.
- d) Appointment of independent moderators, skilled in helping groups to deliberate.
- e) Handing of the 'charge' or specific task for the CPoR to carry out, including the development of the framing of the referendum, as well as the case for and against.
- f) Selection of 'experts' on the subject representing different viewpoints to develop materials and address the CPoR members.
- g) Organisation of a timetable of a series of deliberative meetings for CPoR members and expert support, the time and duration depending on the complexity of the issue of the referendum.
- h) Organisation of opportunities for broader public input.
- i) Videoing of the presentations and cross examination of experts to be made available on internet as they occur.
- j) Small group deliberations of CPoR members to be held in camera.
- k) Payment of CPoR members for the days of deliberation, with the fee similar to that of a juror, as well as travel costs.
- l) Dissemination of pro and con materials developed as a result of the CPoR to be publicly funded.
- m) Strict limits put on any additional funding provided by interest groups to disseminate the pro and con case.

4/ The findings of the CPoR will be submitted to government for their ratification. Having accepted the CPoR framing of the question and the wording for and against, the government will put in motion the referendum process, including the agreed budget and process for dissemination of information. If, in an exceptional case, the government determines that it is not willing to ratify the CPoR outcomes, the government must put this in writing, including the reasons for this decision, and disseminate this information widely to the public.

Conclusion

By implementing a Citizens' Parliament on Referendum, the public distrust in the referendum process can be minimised. The CPoR process will avoid much of the party political nature of referenda, including the framing/wording of the question with the resultant public cynicism often engendered; as well as drastically reducing the often confusing pro and con cases of competing interest groups. This will give the public trust in the referendum process, that it has been proffered fairly and equitably, and will give citizens greater confidence that they have understood the

issues and can make a reasoned decision.

In terms of democratic governance, the Citizens' Parliament on Referendum can be seen as a model for citizen engagement and deliberation on public policy questions. In so doing, it can help to create an environment more conducive to informed, deliberative citizens' participation and collaborative governance.

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