

Submission – Inquiry into Referendum (Machinery Provisions) Amendment Bill 2022

We thank the Joint Standing Committee on Electoral Matters for this opportunity to contribute to the inquiry into the provisions of the [Referendum \(Machinery Provisions\) Amendment Bill 2022](#).

Our submission is focused on the temporary disapplication of section 11 of the *Referendum (Machinery Provisions) Act 1984* (Cth). The relevant clause:

Section 11 of the Referendum (Machinery Provisions) Act 1984 does not apply during the period:

- (a) beginning on the day this section commences; and*
- (b) ending on polling day for the first general election of the members of the House of Representatives held after the commencement of this section.*

We agree that there is a need to broaden the methods of official communication available to the Commonwealth. There are also legitimate reasons for the Government to spend money in a referendum outside of the scope of what is currently permitted.

The Bill allows the Commonwealth to fund educational campaigns to promote voters' understanding of referendums and the referendum proposal, and it broadens the available methods of official communication. It does this by suspending limitations on the Commonwealth as is consistent with the 1999 referendum and proposed 2013 referendum.

However, repeated temporary suspensions of the section highlight the need for a permanent solution. The proposed change leaves decisions on educational material to the Parliament and parliamentarians on an ad-hoc basis rather than establishing a permanent, reliable, and publicly trusted process for producing neutral and informative material. *Such a solution exists and has been successfully used in several jurisdictions – most notably Ireland* (refer to Appendix C for detail).

To address this need:

We recommend that the Bill establish the requirement for a *Citizens' Referendum Review* for any future referendum.

The function of this process would be to provide an informational summary to the public including a clear explanation of the proposal, a clear explanation of its context, and summaries of Yes/No arguments. Critically, it would be developed by a 'jury' of randomly selected everyday Australians from all walks of life. As judges find juries complementary and fundamental to public trust in the justice system, this similar instrument can be an effective complement to Parliament.

Under the current approach, the intended presentation of Yes and No campaigns will be placed in the hands of active interest groups who have a focus on winning at all costs rather than simply informing the wider population. This creates an incentive for polarising arguments, which in turn fuels distrust, misinformation, and polarisation, and can often ultimately undermine the integrity of the referendum.

The Citizens' Referendum Review approach would support a less polarising education campaign by involving a new voice (everyday people) and would explore the arguments for and against any proposed constitutional amendment without the negative campaigning incentives present for any active interest.

The Irish *Oireachtas* (Parliament) was able to advance constitutional reforms in controversial areas including marriage equality and abortion by using a similar approach from which there are clear lessons for Australia as was noted in the House of Representatives Standing Committee on Social Policy and Legal Affairs' 2021 *Inquiry into constitutional reform and referendums*.

In its report, The House Standing Committee on Social Policy and Legal Affairs 2021 *Inquiry into constitutional reform and referendums* said, “that there are valuable lessons that could be learned from both the Irish constitutional reform process and the Uluru dialogues.” (3.86)

The Commonwealth can achieve its goal of a less polarised education campaign and its underlying goal of an informed voting public. 17 million voting citizens will not read complete proposals in detail, but 100 people selected in this method have stronger incentives to do so – and the wider community will be more likely to read their 10-20pg self-written summary.

Any educational communications approach that originates within the Government will face charges of bias that threaten the integrity of the education campaign and the referendum process itself. It is therefore critical that an independent citizen-led process is established to build trust and integrity into the referendum without being an exercise in campaigning and advocacy.

The recommendation in detail: A Citizens’ Referendum Review

Australia should establish the requirement for a Citizens’ Referendum Review which makes use of deliberative democracy principles that can ensure the integrity and public trust of future referendums (Refer to Appendix A for a summary of deliberative democracy principles).

Around the world, Parliaments are making use of citizens’ assemblies to assist them in addressing complex public policy issues. French President Emmanuel Macron recently announced The Citizens’ Convention on the End of Life which will feature 150 French citizens’ providing recommendations on assisted dying laws. The German Bundestag President Bärbel Bas recently announced intentions to establish multiple citizens’ assemblies and the Irish Oireachtas just received the recommendations from their Citizens’ Assembly on Biodiversity.

Picture such a process: 100 everyday Australians, chosen by democratic lottery to be representative of all parts of the country, all walks of life, ages, backgrounds, and lifestyles, being brought together in Canberra over three weekends to find common ground on the question:

What do all Australians need to know about the [insert topic] referendum?

Their role would be to share what they learn in a self-written, plain English informational booklet that is distributed to the wider public. It would include a clear explanation of the proposal, a clear explanation of its context, and summaries of Yes/No arguments.

They would consider the referendum proposal as put to them by Parliament. They would hear from a wide range of expert speakers, advocates, and members of the community (some of whom they would nominate themselves). They would spend time discussing the issues and developing their understanding of the different perspectives in the community. They would ultimately write an information booklet for their fellow citizens. It would be a shared work of people from all walks of life carefully explaining the potential constitutional change in plain language.

A Citizens’ Referendum Review would build trust in the referendum because everyday Australians place their trust in processes that feature people like themselves in key roles. It would be independent of Government and so addresses easy objections to any Government-led education campaign.

If the Parliament chooses to pass the Bill in its current form, our recommendation is that it still opts to establish a Citizens’ Referendum Review for any referendum held in this term. This would demonstrate the efficacy of such a body, support the integrity of any referendum and provide an example for future amendments to the Act.

We are happy to respond to your questions and appear before the Committee if requested. We appreciate your time considering this submission.

Iain Walker
Executive Director

[newDemocracy](#)

Pier 8/9, Lot 1, 23 Hickson Rd.
Walsh Bay, Sydney 2000

Iain.walker@newdemocracy.com.au

Appendix. A. Key Principles of Deliberative Democracy

It is naturally difficult for large groups of people to find agreement on complex decisions. The OECD recommends a set of *principles* that make group decision-making easier. These principles improve the deliberative quality of group work by creating an environment for the consideration of the broadest range of sources while giving participants time, and an equal share of voice and authority.

These seven principles underpin the growing wave of deliberative democracy processes around the globe:

1. **A clear remit:** A clear, plain-language challenge or question should be asked of the group. It should be a neutrally phrased question that explains the task, shares the problem, and provides a strong platform for discussion about priorities and trade-offs. The question will determine the scope of the process, setting the boundaries for what the group is considering.
2. **Diverse information:** Participants should have access to a wide range of transparently sourced, relevant, and accessible evidence and expertise, and can request additional information. Citizens should spend extensive time asking questions and identifying sources they trust for the information they need.
3. **Democratic lottery:** A stratified random sample of the community should be recruited through a democratic lottery. Simple demographic filters (age, gender, education, location) can be used to help stratify this sample to reflect the entire population. Most engagement by governments does not enable a representative cross-section of the community to be heard, instead, incentives to participate are often geared toward those with the most acute interest. The combination of random selection and a meaningful opportunity to influence a decision attracts people from all walks of life.
4. **Adequate time:** These processes develop participants' thinking on a complex issue by giving them multiple opportunities to question experts, learn from one another and find agreement on trusted sources of information. As deliberation requires adequate time for participants to learn, weigh evidence, and develop collective recommendations, the more time they are provided, the more thorough their consideration of the issue.
5. **Influence:** It is important to be clear about what impact the work of everyday citizens will have. The convening authority should publicly commit to responding to or acting on recommendations promptly. A meaningful opportunity to influence a decision must be demonstrated to participants before they commit their time.
6. **Dialogue and deliberation, not debate:** Group deliberation entails finding common ground; this requires careful and active listening, weighing, and considering multiple perspectives, every participant having an opportunity to speak, a mix of formats, and *skilled facilitation*. The task for the group is to find common ground on answers to the question, this emphasises the avoidance of simple majorities and challenges them with finding where they can agree.
7. **A free response:** A group should not be asked merely to (critically) review a government or parliamentary reform proposal. Instead, group members should be given a 'blank page' to provide their own set of recommendations with a rationale and supporting evidence that emerges from their shared learning.

Appendix. B. Why consider citizens' assemblies and deliberative democracy?

Across the globe, public authorities are increasingly using these representative deliberative processes to involve citizens more directly in solving some of the most pressing policy challenges. These processes give enough time and information to a group of randomly selected everyday people and facilitate their deliberation on an issue that leads to finding common ground on a set of recommendations.

Australia has been a pioneering, global leader in the development of this practice. OECD research¹ documents more than 48 examples of deliberative engagement practice here in Australia matched only by Germany. This suggests a national capacity to learn from experience and institutionalise these processes. The Victorian Government recently included mandatory deliberative engagement practice for local councils in its [Local Government Act 2020](#) (s55, g). The Western Australian Government's Local Government Act Review Panel also recommended in its [final report](#) the "mandate [of] deliberative community engagement in the preparation of both Community Strategies and Council Plans." (s37, d, iv).

[Evidence collected by the OECD](#)² and existing research in the field of deliberative democracy points to five key reasons why representative deliberative processes can help lead to better public decisions and enhance trust:

1. **Better policy outcomes because deliberation results in considered public judgements rather than off-the-cuff public opinions.** Most public participation exercises are *not* designed to be representative or collaborative. Consequently, they can be adversarial – a chance to air grievances rather than find solutions or common ground. Deliberative processes create spaces for learning, deliberation, and the development of informed recommendations, which are of greater use to policy and decision-makers.
2. **Greater legitimacy to make hard choices.** These processes help policymakers to better understand public priorities, and the values and reasons behind them, and to identify where consensus is and is not feasible. Evidence suggests that they are particularly useful in situations where there is a need to overcome political deadlock or make difficult trade-off decisions.
3. **Enhance public trust in government and democratic institutions by giving citizens an effective role in public decision-making.** People are more likely to trust a decision that has been influenced by the considered judgement of everyday people than one made solely by elected MPs.
4. **Make governance more inclusive by opening the door to a much more diverse group of people.** Deliberative processes, with their use of democratic lotteries and stratified sampling, bring in people proportionate to their presence in society, making the group visibly representative in terms of age, gender, disability, education, and job type.
5. **Help counteract polarisation and disinformation.** Empirical research has shown that echo chambers that focus on culture, identity reaffirmation, and polarisation do not survive in deliberative conditions, even in groups of like-minded people.

¹ OECD (2020), *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, OECD Publishing, Paris, <https://doi.org/10.1787/339306da-en>.

² Ibid.

Appendix. C. Background on constitutional reform and referendums in Ireland

In 2012, Ireland established a Convention on the Constitution by [resolution of both Houses of the Oireachtas](#). Its task was to consider several possible changes to the Constitution and make recommendations. The Resolution committed the Government to respond to each recommendation made by the Convention. It was comprised of 99 members, 66 of which were everyday Irish citizens chosen by democratic lottery, and 33 of which were Members of Parliament.

The Convention met over 18 months between 2012 and 2014. It discussed 10 issues in all. Several of its recommendations resulted in amendments to the Constitution made through referenda.

The Constitutional Convention used the model of deliberative democracy, in which citizens participate meaningfully in decision-making. This involves:

- A democratic lottery of ordinary citizens, who are provided with a range of information
- Expert presentations from speakers, some nominated by citizens themselves
- Facilitated small-group discussions to avoid groupthink and grandstanding
- Plenty of time to consider all the perspectives on an issue
- An emphasis on working to find common ground positions with people different to your 'bubble' rather than it being an individualised activity
- Recommendations fed into the political process are written entirely by citizens

We ask the Committee to especially note that the Convention considered the provision for same-sex marriage which required amending the Constitution by referendum. The Convention recommended such an amendment and the subsequent referendum on this proposal passed on 22 May 2015, and the [Thirty-fourth Amendment of the Constitution \(Marriage Equality\) Act 2015](#) was signed into law on 29 August 2015. **This made Ireland the first country in the world to legislate for same-sex marriage in a traditionally socially conservative country through a process that required constitutional amendment by referendum.**

| Note: We have no policy view on any issue – these examples are used to demonstrate their clear political difficulty.

Arguably, the provision for same-sex marriage would not have been put to the Irish people during the socially conservative *Fine Gael* government's tenure if not for the clear recommendation of the Convention. Including representatives of all the parties in the deliberations (33 political members came from all the parties) ensured a high degree of cross-party consensus in favour of the process — both in favour of the referendum and in favour of the Convention.

In 2016, following the success of the Convention on the Constitution, both Houses of the Oireachtas established what is known as [The Citizens' Assembly](#). The Resolution asked the Citizens' Assembly to consider several matters including the Eighth Amendment of the Constitution which prohibited abortion.

The Assembly was composed of a chairperson, appointed by the government, and 99 ordinary citizens '[randomly selected so as to be broadly representative of Irish society](#)' in terms of age, gender, social class, and regional spread.

The assembly deliberated on the Eighth Amendment throughout five sessions from November 2016 until April 2017. Members were given information on the topic, heard from 25 experts, and received 12,000 submissions from members of the public and interest groups.

The Assembly members overwhelmingly agreed that the constitutional provision on abortion was unfit for purpose and that its article should not be retained in full ([87% of members](#) agreed). The Assembly members also made a [series of recommendations](#) about what the legislation should cover and about the term limits that should apply.

As per its terms of reference, the Assembly submitted its recommendations and [final report](#) to the Oireachtas in June 2017. The Assembly's findings were reviewed by the Joint Committee of both Houses of the Oireachtas, which agreed with the need to remove the article, but advocated a [simple repeal](#) (without inserting a new provision in the Constitution). The [final Referendum Bill](#), however, accorded with the 'repeal and replace' recommendations made by the Assembly.

The Citizens' Assembly results initially faced criticism. Some commentators felt that they didn't represent the views of the public. [Opinion polls](#) at the time certainly showed a different picture. An Irish Times/Ipsos MRBI poll in May 2017 found just 23% of the public in favour of legalising abortion in all circumstances. However, once the public had had a chance to consider the matter more deeply during the referendum campaign, the results were strikingly like that of the Assembly. In the Assembly, 64% voted in favour of "terminations without restrictions". In the referendum, 66.4% voted in favour of repealing the eighth amendment, effectively legalising abortion in Ireland.

That the referendum result so closely reflects that of the Citizens' Assembly shows that the Assembly was more aligned with the national consciousness than some had thought. Notably, in exit polls approximately 40% of voters could name recommendations and insights emerging from the Citizens' Assembly process, demonstrating that it connected with the wider population.