

The Secretary,
Panel of Constitutional Experts,
Review into Recall Elections,
GPO Box 5341,
Sydney, NSW, 2001.

3 AUG 2011

Kempsey, NSW,
2440.
30 July, 2011.

FN	
LN	2011/5944J

Dear Secretary,

Review into Recall Elections: A short Submission.
Terms of Reference for Your Enquiry.

1. Desirable. Ask the people. Media publicity appropriate.
 - a) Applicability: The Swiss system of "direct democracy" is adaptable to our Commonwealth Constitution (Section 128) using a minor addition. Likewise, Recall Elections could be added in the NSW case.
 - b) Democratic principals: Benefit - more "government of the people by the people".
 - c) Improving accountability is an obvious and likely result.
 - d) Negative consequences: few, provided correct "trigger" requirements are used.
2. Mechanisms: All government is comprised of two ideas which must be kept separate.
 - # Policy : Provided by the people, delivered by Representatives.
 - # Administration; A mechanical procedure implemented by employees.
 - a) Reasons for a petition: Representative failure to adhere to policy.
 - b) Petition percentage: Administrative factor, developed to suit.
 - c) Verification process: again, technical and administrative process. Possible "Elector Card" developed using modern computer technology similar to bankcards, ATM, etc, for all electoral processes. Eliminate fraud, archaic counting processes, reduce costs.
 - d) Time limits depend on circumstances, possibly variable.
 - e) Funding: very low, if 2 c), above, adopted. Voting continuous for eg, one month. Wide media coverage should be possible.
3. If Recall Elections permitted, constitutional reform may be effected by way of amendment to State referendum laws.
 - a) Mechanisms: Primarily representatives' electoral responsibility, providing all sides of any case.
 - b) Potential questions : Open ended at this stage.
4. Other matters relevant: In 1994, The Hon Peter Reith, MHR, promoted the concept of Citizen Initiated Referenda as used in Switzerland for about 150 years. It is still valid, basically unchanged and remains the reason for the great stability of Swiss government.

Although Recall Elections are only part of C.I.R., the framework of legislation might include allowance broadening to include C.I.R. at some later date. I recommend that the Panel contact The Hon Peter Reith and Ted Mack (Councillor, Mayor, MLA, MHR,) for more details about this Direct Democracy policy. The two appended media copies relate. (1994.)

Yours faithfully,

B. Morrow

Bryan Morrow.

PLEASE SEE REVERSE SIDE OF THIS SHEET.

Reith champions the ideal of direct democracy

THE MAN who in 1988 ran one of the most successful "No" campaigns in Australian constitutional history, Peter Reith, wants to run a successful "Yes" campaign.

The change he wants is direct democracy, or citizen's initiative. Under it, the people would get a direct say to propose a law or repeal an existing law in a referendum, provided a threshold of signatures has been collected.

Reith, the Opposition spokesman on defence, is the first to acknowledge that he does not have wide support among his parliamentary colleagues. They see it as a threat, or at minimum a signal that they might not be doing such a good job. However, he thinks that if they see widespread public support for it, they will support it.

Direct democracy has been derided in Australia because it has had support from some way-out groups and political loners. For example, ACT Abolish Self-Government MLA Dennis Stevenson supports it and has a Bill before the Assembly. But it is getting wider support from the political mainstream, including from the ALP's Special Minister of State, Frank Walker.

Reith put out a "Green Paper" on it on behalf of the Coalition parties when

Crispin Hull looks at the pros and cons of the concept of citizen-initiated legislation and suggests that the idea has much to commend it.

he was shadow attorney-general in 1988. Since the election it has not been re-endorsed. Reith said yesterday that he was ambivalent about seeking its re-endorsement, preferring to seek direct public support which would then result in politicians' support.

The ACT Liberal Opposition also has a DD proposal at the drafting stage. It is very likely to go through the Assembly in some form with support from the three Independents. Reith thinks the ACT proposal will be a catalyst for the gradual introduction of DD in other states and federally.

Opponents of DD argue practicalities. How can you verify the signatures? What if lunatics hijack the system and put up silly ideas that will cost a lot to defeat? Ordinary people have no idea about drafting laws; they will cause all sorts of complications and inconsistencies with existing laws. What if conditions change after the law is passed

making it unworkable, unjust, and so on? What if inconsistent proposals are put up? What about the cost?

Reith and other proponents have solid counter-arguments, the most pertinent being that DD works in more than 20 states of the US and in several European countries.

Signatures can be verified by sampling; a suitably high threshold prevents lunatic proposals and referendums are generally held with ordinary elections, thus cutting costs.

Reith proposes a system of a parliamentary committee hearing to air any proposal and even a system of advisory opinions from the Federal Court on legal matters.

As to the quality of laws ordinary people might put up, Reith, Professor Geoffrey Walker and others argue that under the present system Parliament often passes badly drafted laws with unintended consequences. Besides, a citizen's initiative could easily get access to drafting help.

Philosophically, proponents of DD are republican (in the classic sense) and democratic. Sovereignty resides in the people.

Practically, the instances of DD referendums are of less importance than the

fact that the possibility of having them is there. If a citizen's initiative is allowed, politicians get a bit more careful about passing bad laws. A Government might be popular, but one of its agenda items might be detested by a majority. Under the present system, the Government can crash through with its unpopular agenda item. With citizen's initiative, it would be more careful lest it have egg on its face after a referendum to repeal it.

Australians have a fairly poor opinion of their politicians. The 1988 Issues in Multicultural Australia Survey, for example, found that three out of 10 voters thought the Government could be trusted to do the right thing. Only one in five thought the Government knew what it was doing.

There seems to be a circle of cynicism and apathy: voters cannot do anything about the incompetence and untrustworthiness of their politicians, so why care? Proponents of DD argue that if people feel they can do something, they have less cynicism in the process. Reith argues that the present representative system is good, but could be better with citizen's initiative added to it.

"It's a great idea; it's like all good ideas, it is simple as anything," Reith



Peter Reith: "It's a great idea; like all good ideas, it is simple as anything."

said "But hardly anybody really knows anything about it. Once people understand they will be overwhelmingly in favour of the idea, but it will not happen overnight. I want to see people talk about it and understand it."

Reith does not want to get bogged

down in details, but he draws a common theme from the eight proposals that have been put forward in Australia: a threshold of 2-5 per cent of voters' signatures; a majority of voters; and a referendum generally to be held at the next election. He wants an informed and transparent process with the implications of a proposal well analysed beforehand.

In Australia, citizen's initiative had been Labor Party policy until the 1960s. The factional system and Paul Keating's strongly held view that political sovereignty comes from the floor of the House of Representatives make it unlikely that it will go back on the platform in the near future.

However, with increased education and communications, people are going to get more demanding and better informed on political issues. When that is combined with better communications, people are going to demand a more direct say — more often than a vote every three years.

The alternative is to continue on with the good but imperfect system we have now, where we surrender all power to Parliament for three years with no recourse when politicians do dumb things and pass idiotic laws — which, alas, they often do

THE CONSTITUTIONAL REFERENDUM

The Commonwealth of Australia's Constitution provides for compulsory referendums for Constitutional Amendments presently initiated only by Parliament.

Constitutional Referendum would permit people also to initiate amendments to the Constitution.

SUMMARY

Simply put, Citizens Initiative and Referendum means that:

1. The people would have the right to initiate by petition and thus have a Binding Referendum in the changes to the Constitution.
2. The people would have the right to **initiate** by petition and thus have a Binding Referendum held on the repeal of an existing law.
3. The people would have the right to initiate by petition and thus have a Binding Referendum to propose new legislation.
4. The people would have the right to initiate by petition and thus have a Binding Referendum on a Law that has passed through Parliament in the normal way but that has not been enacted.
(The peoples Veto).

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CITIZENS INITIATIVE AND REFERENDUM

Mounting interest and support for a Citizens Initiative and Referendum (C.I.R.) has raised some interesting points. Not the least and perhaps the most important point is the definition of what C.I.R. means. It is important because unless there is an accepted standard of phraseology people generally will become confused.

The **initiative** is a procedure that allows a prescribed number of Voters to compel the holding of a binding poll on whether a proposed law of their own choosing should be adopted, or whether a particular law already in force should be repealed. Although we distinguish the initiative from the Referendum, the initiative obviously involves the holding of a "Referendum" in the ordinary sense of the word.

There are two (2) initiatives, Constitutional and Legislative.

1. The **Constitutional initiative** gives a prescribed number of Voters the power to petition for the holding of a Ballot on a proposed amendment to the Constitution.
2. Under the **Legislative initiative** the petition causes the proposed measure to be placed on the Ballot paper for submission to the electorate without any action or intervention by the Parliament.

THE REFERENDUM

Some types of Referendum are familiar enough in Australia and New Zealand. But remember that here we are talking specifically about referendums that firstly, **are automatically binding and, second, must be held if a certain number of Voters sign a petition.**

SMH

Wednesday, August 17, 1994 17

Putting power in the palms of the public

Government of the people, by the people,
for the people need not be an impossib^{le}
dream, argues TED MACK.

RECENTLY the Liberal frontbencher Peter Reith, the Democrat leader, Cheryl Kernot, and I held a seminar to promote the concept of allowing the public to put questions to referendum as opposed to the executive government's monopoly of referendum questions that now exists.

In other words, a relatively minor addition to our system of government which allows the public to have a role in setting the political agenda.

The reaction from the holders of power, and those who believe in elitist theories of government, bordered on the hysterical. It was as if they were touched by a red-hot poker.

Alexander Downer immediately jumped into the centralist bed with Paul Keating. He applied the gag to Reith - so much for liberalism and free speech. Tim Fischer, leader of the Nationals, had apoplexy. Well, he might, being the leader of the most successful minority group in the country. Any thought of the public being able to participate in the public agenda, majority rule and one-vote-one-value is obviously a menace.

Elitists in the media and the bureaucracy who claim the right to know what's best for us poured forth a deluge of abuse and character-assassination arguments. Anyone who supported referendums initiated by the public, not by them or the government, was a "loopy populist", "a political eunuch" or a right-wing fanatic, they howled.

Why, it would give power to rich, powerful interest groups which could control the media, they claimed (as if that wasn't already the case). The public didn't know what's good for it (political correctness - silence, you tiny fool).

It would interfere with "consistent national policy formation". (Like the consistent policies for pay TV and the media, privatisation, airports and air safety, uranium or the policies that brought one million unemployed.)

Laurie Oakes in the *Bulletin* summoned up all his powers of ridicule at the very idea of people having the right to vote on a specific issue. All those "right-wing extremists" and "well-endowed interest groups" would "hijack the system" was Laurie's opinion of the majority view of the Australian public. Democracy properly consisted of people being permitted to choose a "representative" offered by the "Labor Party" every three years, he intoned.

The *Herald* editorial (July 20) reinforced this view and fulminated that the public might even "challenge unpopular government programs" (the swine! the ungrateful wretches!).

Geoffrey Barker in the *Financial Review*, after character-assassinating proponents of CIR, offered the view that "a high degree of apathy may be essential to the efficient functioning of a modern democracy". Sounds like *Brave New World* revisited, where the government hands out pacifiers to keep the citizenry in a state of euphoria.

If the arguments put forward by the critics of direct democracy are accepted you would logically remove any right to vote. If the public cannot be trusted to vote on a single issue after a focused debate, how can it vote in a general election with a multiplicity of issues obscured by media concentration on personalities?

Democracy is relatively new in its modern forms. It has developed over the past century to a faintly acceptable level in about 40 of the world's 200-odd nation States. It must evolve.

In all Western democracies there are high levels of dissatisfaction. In Australia, a huge number of people cast their votes negatively at the last Federal election.

In contrast, the record in Australia of direct democracy is certainly better. It shows that majorities will not trample minority rights and that publicity and money will not affect decisions that people feel strongly about. Witness the failure of the Yes cases in the 1916 and 1917 conscription referendums at the height of jingoism or the 1951 "Ban the Communists" referendum at the height of the Cold War or the overwhelming vote of support for the Aboriginal people in 1967.

The only Australian example of a direct democracy government was that evolved at local government level in North Sydney from 1980-88. It resulted in an unprecedented success in economic, environmental and social terms with an approval rate of 90 per cent of the voters at the 1987 elections.

One of the outstanding features of the Constitution is that the people are sovereign, not Parliament. People have both a legal and moral right to participate in the decisions that affect them irrespective of the merits of their decision.

The view made famous by Edmund Burke in 1774 that representatives are elected to govern and should exercise their superior wisdom and judgment irrespective of the wishes of the electorate with the implication that the public will always reject the "necessary hard decisions" is no longer acceptable.

Ted Mack, the Federal Member for North Sydney, is unique in having represented his area at all three levels of government as an Independent.