

Department of Finance

Response to Question on Notice

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON SOCIAL POLICY AND LEGAL AFFAIRS

Inquiry into constitutional reform and referendums

Hearing of 7 October 2021

Written Question on Notice 5 (Mr Wallace)

Who is responsible within government for conducting reviews of how referendums are conducted, and their success or failure in procedural terms?

- a. What reviews were undertaken after the last referendum in 1999?

Response

The Department of Finance provides advice on the legislative and operational framework for holding a referendum, in consultation with the Australian Electoral Commission (AEC).

A relevant parliamentary committee may also undertake an inquiry into the conduct of a referendum upon a referral from a Minister or following referral from the House of Representatives or the Senate.

The Joint Standing Committee on Electoral Matters (JSCEM) conducts inquiries into matters relating to electoral laws. JSCEM also considers Referendum Act processes in the context of bills referred to JSCEM for inquiry and report.

As noted by the JSCEM in its 2019 Report, the Committee's recommendations are designed to enhance the work of the AEC, the Australian Government, and the operation of the *Commonwealth Electoral Act 1918* (Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (Referendum Act) to deliver improved electoral processes.

The former House of Representatives Standing Committee on Legal and Constitutional Affairs also considered constitutional matters, including referenda. In 2009, this Committee undertook an inquiry into the effectiveness of the Referendum Act in providing an appropriate framework for the conduct of referendums titled, 'A Time for Change: Yes/No? Inquiry into the Machinery of Referendums.' This included consideration of the 1999 referendum. The report is available at [www.aph.gov.au/Parliamentary Business/Committees/House of Representatives Committees?url=laca/referendums/report/fullreport.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=laca/referendums/report/fullreport.pdf).

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Written Question on Notice 6 (Mr Wallace)

By what process are referendums held in other developed democracies? What are some examples of similarity or difference with the process in Australia?

Response

The department has not undertaken comparative work on referendum mechanisms in other developed democracies.

The Committee may wish to consider the following sources for similarities and differences in referendum processes for other nations:

- Submission of Swiss Embassy in Australia to the Legal and Constitutional Affairs Committee's 2019 Inquiry into nationhood, national identity and democracy
- Beigbeder Y (2011) 'Referendum' in Max Planck Encyclopedias of International Law
- Fisch W (2006) 'Constitutional Referendum in the United States of America' American Journal of Comparative Law 54:490-491
- Twomey, A (2007) 'Constitutional amendment within federations: The role and influence of sub-national states' 10.

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Written Question on Notice 8 (Mr Wallace)

The Committee understands that the Department of Finance has responsibility for the Referendum (Machinery Provisions) Act 1984 ('Referendum Act') and electoral policy.

- a. Is there any process for periodic review of the Referendum Act and referendum procedures?
- b. Is there work being done now to review or update the Referendum Act, specifically the machinery provisions, to ensure that the Act is fit for purpose to support a contemporary referendum?
- c. Does the Department have a view on whether such a review is needed before Australia sees another constitutional referendum?

Response

The Department of Finance has policy responsibility for electoral matters (including referendums) and provides advice to Government as required.

Any potential referendum reforms are a matter for Government.

The Government has undertaken substantive electoral reform to modernise electoral processes through the *Commonwealth Electoral Act 1918*. Where possible, this modernisation process has included consequential amendments to the Referendum Act.

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Written Question on Notice 9 (Mr Wallace)

How does the Referendum Act regulate use of social media and digital platforms during referendum debates? Are current referendum policies in this area informed by similar provisions in the Electoral Act 1918?

Response

The *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) contains provisions that aim to promote free and informed voting at referendums by:

- allowing voters to know who is communicating referendum matter through authorisation laws;
- making persons participating in public debate relating to referendum matter responsible for their communications; and
- ensuring that obligations imposed by the Referendum Act in relation to communications can be enforced.

These provisions apply across print, digital and electronic communications.

The Referendum Act requires communications on referendum matters to include the details of the person who authorised the communication. Referendum matters are matters intended or calculated to affect the result of a referendum. These requirements are set out in detail in sections 110C and 110D of the Act, and mirror the provisions outlined in the *Commonwealth Electoral Act 1918* (the Electoral Act).

The provisions regulating the communication of referendum matters in the Referendum Act reflect the regulation of communication of electoral matter in the Electoral Act.

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Written Question on Notice 11 (Mr Wallace)

Should the function of proposed citizen councils, assemblies or working groups be prescribed in the Referendum Act?

Response

Any proposed changes to the *Referendum (Machinery Provisions) Act 1984* are a matter for Government.

Department of Finance

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Written Question on Notice 12 (Mr Wallace)

and Proof Hansard 7 October 2021 Page 9

During a referendum campaign period, how are donations regulated?

- a. Are donations received and expenditure by campaigners required to be publicly disclosed?
- b. How are foreign donations regulated?

Response

Entities that are considered disclosure entities under the *Commonwealth Electoral Act 1918* are also disclosure entities under the *Referendum (Machinery Provisions) Act*. However, the requirements for disclosure entities under Part IX of the Referendum Act relate to the authorisation of referendum matter.

Noting that a referendum has not been undertaken since 1999, the Referendum Act does not currently include provisions regarding funding and disclosure from either domestic or foreign sources, which would be a matter for Government to consider in advance of any future referendum event.