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**Submission to the Senate Finance and Public Administration Committee Inquiry
into the Citizen's Initiated Referendum Bill 2013**

I make this submission in my capacity as a private citizen. This submission deals with the following matters:

- The Bill's objectives can be achieved through other means
- Relevant Australian literature
- The terms of reference
- Comments on aspects of the Bill

Achieving the Bill's objective through other means

The object of the Bill is 'to enable Australian citizens to initiate a proposal for a referendum to amend the Constitution.' The Bill is unnecessary to achieve that object. That object may be achieved through other, currently available means.

An ordinary petition to either House of Parliament may seek the introduction of a proposed law to amend the *Constitution*.

An ordinary petition is a much cheaper and less cumbersome way of achieving everything that the Bill would achieve.

The Bill does not really provide for a citizen's initiated referendum. It only requires the Minister to cause a proposed law that would amend the *Constitution* to be introduced into Parliament. For that proposed law to go to a referendum it must satisfy the requirements of section 128 of the *Constitution*, which in simple terms requires the proposed law to be approved by Parliament. This may not happen.

Likewise, a petition seeking the introduction of a proposed law to amend the *Constitution* may not be agreed to by Parliament. However if this happens, none of the expense and effort that the Bill requires (involving forms, fees, examinations and assessments by the Electoral Commissioner) will have been expended. The result, however, is the same: a citizen has had his or her suggestion to amend the *Constitution* considered.

Relevant Australian literature

I would draw the Committee's attention to the following publications by Professor Anne Twomey:

- *The Recall and Citizens' Initiated Elections – Options for New South Wales*, Report No 1, Constitutional Reform Unit, Sydney Law School
- 'The Recall of Members of Parliament and Citizens' Initiated Elections' (2011) 34(1) *University of New South Wales Journal* 41

Some of the issues discussed in these publications are relevant to the subject matter of the Bill.

The terms of reference.

The terms of reference for this Inquiry appear very odd in the way they are formulated. They appear to be assertions rather than questions or issues for inquiry. I would make the following brief points in connection with those assertions.

Citizens' Initiated Referendum (CIR) promotes greater openness and accountability in public decision-making

The Bill has nothing to do with public decision-making. I do not see any connection between governmental decision-making or accountability and openness in such decision-making on the one hand and a referendum to amend the *Constitution*, whether 'citizen initiated' or not, on the other. They are two very separate matters.

For example, if a citizen's initiated referendum was held to insert into the *Australian Constitution* a provision similar to the free speech provision of the First Amendment to the *United States Constitution*, I struggle to see how holding such a referendum has any impact on governmental decision-making or the openness and accountability of governmental decision-making.

Laws instituted as a result of a CIR are more clearly derived from the popular expression of the people's will

The meaning of this assertion is unclear. A referendum to amend the *Constitution*, if successful, amends the *Constitution*. If a referendum has the effect of expanding Parliament's legislative power, Parliament may choose to exercise its new power by enacting laws or it may not.

Moreover, it is not at all clear what 'laws' the assertion might be referring to. Indeed, it seems this assertion relates to a belief, held by some people, that ordinary legislation should be initiated and voted upon by the people. The Bill has nothing to do with this situation.

The only way to amend the *Constitution* is in accordance with the procedure provided for in section 128 of the *Constitution*. That procedure involves the people voting. The result of every referendum ever put to the Australian people to amend the *Constitution* is therefore an expression of the people's will.

Government authority flows from the people and is based upon their consent

As a matter of political principle or philosophy, most Australians would probably agree with this statement. As things stand today, the people may amend the *Constitution* by the procedure outlined in section 128 of the *Constitution*. The people may elect a Parliament that puts a proposal to amend the *Constitution* to a referendum.

Citizens in a democracy have the responsibility to participate in the political system

The Bill does not really promote a responsibility to participate in the political system. It only enables citizens to initiate a proposal to amend the *Constitution*. That is a very narrow form of political participation. It is also a form of political participation of little practical consequence for most people.

The content of ordinary legislation and government policy is of more practical consequence in the day-to-day lives of people than the text of the *Constitution*. The Bill does nothing to promote greater public participation in these matters.

The Inter Parliamentary Union's call on member states to strengthen democracy through constitutional instruments including the citizen's right to initiate legislation.

The Bill does not relate to the initiation of ordinary legislation. It relates to proposals to amend the *Constitution*.

Comments on aspects of the Bill

The Bill is poorly drafted. I will make comments on only some examples.

The 'guide' in clause 3 is not an accurate summary of the Bill. The guide states: 'This Act enables Australian citizens to initiate legislation that provides for the holding of a referendum to alter the Constitution.' The Bill does not do that. The Bill requires, in clause 12, that the Minister introduce such legislation into Parliament. The Bill does not permit a citizen to introduce legislation. Moreover, the Bill does give 'Australian citizens' the ability to initiate proposals to amend the *Constitution*; it gives that ability to 'electors' as per clause 6. Not all Australian citizens are electors.

The language of clauses 7 and 8 is not consistent. Clause 7 refers to 'a proposal to amend the Constitution'. For consistency, clause 8(1) should read: 'The Electoral Commissioner must, after the examination, register the proposal unless he or she is satisfied that the proposal ~~does not relate to a proposal to amend the Constitution~~ is not a proposal to amend the Constitution'.

Likewise, clause 8(2) should read: ‘If the Electoral Commissioner is not satisfied that the proposal ~~relates to a constitutional matter~~ *is a proposal to amend the Constitution*, the Electoral Commissioner must reject the application to register the proposal.’

Clause 8 imposes a duty on the Electoral Commissioner to register proposals in certain circumstances. However, the Bill does not provide for the establishment or maintenance of a register on which proposals could be registered.

The meaning of clause 6(3) is not clear. That provision states: ‘The amount of the application fee must not be such as to amount to taxation.’ This appears to assume that at a certain monetary value a fee will transform into a tax. The accuracy of this assumption may be doubted. If there is a concern to ensure that any fee payable is reasonable, the provision should state a maximum fee either in dollar terms or by reference to some other fixed amount such as penalty units used in the *Criminal Code*. For example, ‘The application fee must not exceed \$x’ or ‘The application fee must not exceed the value of y penalty units’.

Clause 10 requires signatures be obtained on a document. The clause does not require there to be any connection between that document and a proposal to amend the *Constitution*. The clause should be amended to make clear that the signatures to be obtained must be obtained on a document that (i) includes a statement of the proposal to amend to the *Constitution* and (ii) contains a notice that by signing the document a person is indicating his or her support for the proposal to amend the *Constitution*. It might be convenient for a form to be prescribed by regulation.

Clause 11 speaks of signatures being ‘validly obtained’. This expression is not defined in the Bill. It should be.

The use of the language of ‘verify’ in clause 11 is confusing. Clause 11(2)(b)(i) speaks of the proposal being verified, which is opposed to be it being rejected. Clause 11(3)(b) speaks of signatures being verified, which is the use of the same expression to mean something different. In clause 11(3)(b) ‘verify’ should be replaced with a word like ‘confirm’.

I trust this submission is of assistance to the Committee

Yours sincerely

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