

Direct Democracy comes to Australia
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The *Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007* ('the Plebiscites Bill') will represent a milestone for Australian political historians. The people of Australia regularly express their democratic will through elections, and on rarer occasions through constitutional referenda, but for the first time in its 106 year history the federal government is supporting direct democracy initiated by the people.

The Bill allows for plebiscites – the direct vote of qualified electors to some important public question- to occur under the aegis of the Australian Electoral Commission, and no state or territory law can gainsay it.

While the purpose of the Bill is to allow the AEC “to undertake any plebiscite on the amalgamation of any local government in any part of Australia”, the Plebiscites Bill appears to be open-ended in that it is for “the purposes of conducting an activity (such as a plebiscite) under an arrangement”. Who knows what that could imply for future questions considered important by groups of citizens. After all, direct democracy means ‘initiated by the people’, and their initiatives could surprise many.

That the conservative Howard government should be so democratically innovative is a surprise to most. Long term it matters not a jot that the Coalition’s motive is immediate and self-interested. They seek to make mischief between Labor leaders Beattie and Rudd over the Queensland Premier’s poorly-timed desire to force through large-scale local council amalgamations. The resistance to this state Labor move threatens federal Labor’s campaign to win Coalition seats in that State.

No, what matters long term is that the precedent and process for the formal direct expression of popular will has arrived in Australia.

In common language, many Australians use ‘plebiscite’ and ‘referendum’ interchangeably, but legally and constitutionally they are not. Referenda in Australia are initiated by governments. The easiest way to distinguish them here is to describe plebiscites as non-binding and referenda as binding.

If members of the Liberal and National parties’ conservative coalition had ever had any real interest in direct democracy, as members of the Conservative Party in the UK do, then they would have supported the Australian Democrats’ decades-long initiatives to introduce Citizen Initiated Referenda (CIR) in defined circumstances. Or at least they would have pursued versions of it.

Since inception the Democrats have, as part of their policy platform, championed the concept of direct democracy. In 1980 Democrat Senator Colin Mason introduced *The Constitution Alteration (Electors’ Initiative) Bill 1980*, which was a bill for an act to alter the Constitution so as to vest in the electors’ power to propose laws and to approve or disapprove such proposed laws. This bill lapsed with the dissolution of that Parliament, but was reintroduced several times over the years in an altered and improved form. These initiatives failed to gain the support of the major parties and did not proceed.

The relevant aspects of that and preceding bills are now included in my own omnibus Private Senator's Bill - the *Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualifications of Members) Bill 2000*. Don't be surprised that this bill currently languishes on the Notice Paper. In the 106 years since Federation only 17 private bills have passed. These are 7 PMBs (Private Member's Bills) and 10 PSBs (Private Senator's Bills) including last year's two - the first time Parliament has passed two in the same year. That doesn't include the five parliament-related Acts introduced by Speakers and Presidents, which might be considered a separate category of their own, non-government, but not exactly private.

The Democrats have always supported direct democracy because it is obvious many people feel disconnected from the democratic process. Not just here, but everywhere. As a result Canada, Italy, New Zealand, Switzerland, 27 states in the USA, Venezuela and Poland all have versions of direct democracy.

It is clear from over 90 submissions to the Senate Finance and Public Administration Committee inquiry on this Plebiscites Bill that many people feel strongly that they should have the right to 'have their say'. Although the Queensland Government conducted two inquiries into council amalgamations, many of the submissions indicated that communities felt they had not been consulted, that their wishes had not been taken into account by the State Government, that they had not been accorded due democratic respect.

They particularly resented the Queensland State Government foolishly trying to muzzle them by legally prohibiting local plebiscites. Although the Beattie government has scuttled back from that decision, it has had the unexpected bonus of producing the federal Plebiscites Bill.

It is gratifying that the Bill itself refers to the inalienable rights enshrined in the International Covenant on Civil and Political Rights (ICCPR), where Article 19 provides "*that people should have the right to hold opinions without interference and the right to freedom of expression*". And further, paragraph (a) of Article 25 states "*that every citizen shall have the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives.*"

It is ironic that the Coalition Government is relying on the ICCPR ratified by Australia to support its Plebiscites Bill, whereas it totally ignored Article 25 when it made the laws ending prisoners' right to vote, which were successfully challenged in the High Court by Vicki Roach recently. There is a ludicrous inconsistency here.

While recognising that Australia is a representative democracy and supporting what that entails, I support direct democracy in defined circumstances because it promotes popular engagement with the political process on questions of public importance, particularly in matters that affect people immediately and specifically.

Increasingly we need to recognise that local people are best served when they are able to determine what happens in their own backyard, whether it is the placement of a

pulp mill, the location of a nuclear power plant, or the amalgamation of their local council with another.

This is particularly important when representative governments are at odds with each other. For example the proposed pulp mill in Tasmania has local, state and federal governments in difficulties, and some very agitated citizens groups. People directly affected should be entitled to say whether they want a pulp mill or not, and if they do, whether it should be in Bass' Tamar Valley or in nearby Braddon.

Non-binding plebiscites have their place. They are an expression of opinion that politicians must then take into account. Representative democracy requires representatives to make decisions on behalf of voters. It is the bedrock of our system.

There are circumstances when voters make the final decision, and Australia's constitutional referenda fall into that category.

Plebiscites that are little more than an opinion poll are likely to have little effect unless they are done on a large scale. There is no doubt that if a plebiscite vote meant that the majority of people in local councils to be amalgamated were opposed to that proposition, it would give the Queensland Labor Government pause, even 'though it does not mean that the State government has to take popular opinion into account and change the law accordingly.

The question is – will the Plebiscites Bill encourage a further look at CIR?

CIR has a different effect from a plebiscite as it seeks to require governments and parliaments to act on the opinion of a majority of the voters. It is not just any opinion. CIR is inevitably and rightly constrained to defined circumstances. To do otherwise risks rule by the mob, when emotion not reason prevails. Without constraint CIR could also potentially be an obstacle to effective government if the system permitted too many issues, particularly fringe issues, to be the subject of referenda.

The fears can be over-stated. Even in countries similar to Australia, such as New Zealand, where CIR have been established since 1993, the results have not necessarily brought about any legislative change, although they have, according to researchers, been the trigger for political parties to amend legislation, or introduce legislation on particular issues.

However, based on the experience of other countries, there is sufficient research and experience from their direct democracy structures to be able to construct an effective form of it for Australia.

In the past the Democrats have proposed a strict system that would only allow proposals with widespread community support (determined by either a percentage of voters, or by establishing a numerical base point of signatures on a petition) to get a proposal to the referendum stage. This approach mirrors most other jurisdictions where there is some kind of minimum percentage of voters or petitioners before a citizen initiated referendum can proceed.

In some jurisdictions CIRs are binding on the legislature. That type of direct democracy can be open to abuse under voluntary voting systems if there is a small voter turnout influenced by powerful sectional interest groups. Australia has the safeguard of a compulsory voting system and therefore a high voter turnout. A further safeguard would be if the vote was binding only when the voter turnout was (say) more than 60% and if a clear majority of votes cast were in favour. Below those percentages the result should not be binding and would have advisory status only.

Another safeguard could be that once the citizen initiated referendum has passed, the resolution would not automatically pass into law until it was approved by the Federal Parliament. This provides an important check on popular referenda backed by powerful sectional interests, ensures full legislative scrutiny and ensures that the final decision rests with the elected representatives.

Although it has been considered by many that any Parliament would be reluctant to oppose any resolution backed by a wide cross-section of the community, the experience in New Zealand, shows that even on CIRs where voter turnout was over 80% and a favourable vote of over 80% was achieved, the Parliament did not necessarily feel obliged to legislate on the matter in line with the result.

A further possibility exists for direct democracy. Although there may be issues which do not reach the required number of signatures or percentage of voters for the matter to go to referendum, if 0.5% of the population petitioned over an issue, then it would automatically be referred to a parliamentary committee, which would determine whether a referendum would be held.

In the legislation establishing the mechanism for CIRs there would also have to be some sort of limit on the funding of the campaigns for or against, otherwise the opportunity for special interest groups to obtain the requisite signatures and then spend vast amounts of money promoting their side of the argument could impact on the effectiveness and fairness of direct democracy and possibly create an imbalance.

No doubt in the CIR legislation there would be some issues that could not be subject to CIR – these might include taxation, appropriations, matters affecting the court system, questions arising from Court decisions, or even contentious issues such as immigration.

It is increasingly clear that Australians are often disenchanted with our political system, and there is a feeling that they are not listened to on many issues. In the past, ordinary Australians used protest and public meetings to make the Government and politicians aware of their dissatisfaction about an issue. When large numbers of people protested against the Vietnam War, the Government took notice and changed direction. The Coalition Government has ignored at least two large protests in the recent past, one against the Iraq War and the other in relation to reconciliation. Those who participated in these lawful protests probably feel that their wishes were ignored.

Direct democracy has been shown to improve people's engagement with the political process – in 1993 prior to the *Citizen Initiated Referenda Act 1993*, New Zealanders were asked if they agreed with the statement "*Politicians don't care what people*

think” and 66% of those surveyed agreed with that statement. In 2005, that figure had reduced to 44%.

Direct democracy could provide an important mechanism for re-engagement with the political process in Australia. As the UK Conservative leader David Cameron said recently during the ‘Stand Up Speak Up’ campaign *“I want us to end the age of top-down, ‘we know best’ politics. Politics should be bottom-up and open – driven by the passions and priorities of the public.”*

All Australian political parties have declining membership. The age of the masses being signed up political party members has gone. Ways need to be found to re-engage Australians in our democracy so that voters feel empowered when they need to be. Much greater active participation in democracy is a model which Australia should embrace.

Possibly the federal Government’s call for plebiscites on issues like council amalgamations and the location of nuclear power plants will be the starting point.