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WORKING PAPER SERIES**

Letting the People Decide:

Local Government, Gay Marriage and the Politics of Referendums

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Referendums have always been a contentious part of Australian democracy. They can make change much more difficult to achieve, and represent a radical departure from the normal processes of representative democracy.

Despite being someone who wants to see a number of changes made to our Constitution, I am personally comfortable with the idea of this requiring a referendum.

I like the fact that it forces our political leaders to engage with the community on important questions about the future of our nation, and also that these national events present enormous opportunities for public engagement and education.

I think you would have to agree though that the referendum mechanism in Australia has not lived up to the ideal. This is reflected in the dismal rate of success of national referendums in Australia since 1901.

Since 1901, 44 referendum proposals have been put to the Australian people with only 8 of those succeeding. Significantly, no referendum has been passed by the people since 1977 when Australia voted, among other things, to set a retirement age of 70 years for High Court judges.

As at 2013, 36 years have passed since Australia changed its Constitution. At around one-third of the life of the nation, this is by far the longest period that Australia has gone without amending its Constitution (the next longest period was 21 years between the 1946 and 1967 referendums).

Referendum failures themselves are not necessarily a problem. Australians will understandably vote 'No' to poor proposals, and indeed public scepticism about change should be seen as a normal part of the process.

Australians understandably need to be convinced of the merits of reform, especially to a fundamental document like the Constitution.

The very low rate of success though is a problem, especially given the absence of any successful referendum for more than a third of the century.

It seems that as the necessity of changing the Constitution increases, so does our inability to bring this about.

In our book *People Power: The History and Future of the Referendum in Australia*, David Hume and I examine all of Australia's 44 referendums. We ask why so many have failed, and what needs to be done to achieve success?

We find that Australia's poor referendum record reflects the fact that our political leaders make the same mistakes time and time again. Rather than learning from the last failure, they tend to simply follow the same flawed path.

One problem is that referendums are usually approached in an ad hoc, one-off way. Australia has never put in place the long-term architecture to identify and refine the right referendum proposals, and to build popular support for change. Instead, referendums tend to emerge somewhat randomly out of the hurly-burly of daily politics and, not surprisingly, then founder.

Indeed, decades passed since Australia last had a holistic review of the Constitution in the form of the Constitutional Commission of the 1980s.

We need to recognise that tens of millions of dollars of taxpayers' money are being wasted on inadequately conceived and poorly run proposals. Rather public funds and energy wasted in this way, we should invest funds earlier in the process to generate better ideas more likely to attract popular support.

Just as we have bodies like the Productivity Commission to help identify and refine economic reforms, so too do we need such institutions in the constitutional area.

In particular, I would like to see Australia adopt a system whereby:

- A small, ongoing Constitutional Review Commission is charged with reviewing the Constitution, generating proposals for constitutional reform, consulting with the public on draft proposals and recommending them to Parliament.
- The recommendations of the Commission are feed into a regular, popular Constitutional Convention, convened once each decade or 'half-generation'. It should consider the recommendations of the Commission as well as proposals put to it by:
 - the federal Parliament,
 - a majority of the states, or
 - the petition of a large number of Australians.

The Convention should debate reform ideas and recommend proposals to the federal Parliament for submission to a referendum.