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Submission on Referendums Framework Bill

Tēnā koutou,

1. The Trust Democracy committee, which is elected to represent Trust Democracy's members, has written this submission on the Referendums Framework Bill (Bill).
2. Trust Democracy (TD) was established as a non-profit incorporated society in 2019. TD's purpose is to foster democratic innovation for a fair, just and inclusive society.
3. The structure of this submission uses the overarching objectives stated in the Bill's explanatory note.
4. As set out in the Referendums Framework Bill the stated objective is on the mechanical aspects of the conduct of any referendum held with a general election. These mechanical objectives include enabling the Electoral Commission to conduct referendums using the same voting places and electoral staffers for the election, provides counting of the referendum votes and the release of the results either with or following the general election, and provides that the offence and penalty provisions of the Electoral Act apply to similar offences committed in relation to referendums. The Bill also regulates referendum advertising in much the same way as the Electoral Act regulates election advertising.
5. Whilst the Bill follows the current Electoral Act in relation to election advertising it fails to acknowledge or address the serious threats to democracy that the current Electoral Act allows. As the Green MP Celia Wade-Brown pointed out in the Bill's First Reading nowhere in the Bill is there any reference to and/or suggested changes to the problematic issues of advertising and financing:

“the Bill does allow for advertising for referenda. But, again, this Government has not listened to the Independent Electoral Review. Is the balance between free speech and undue influence correct? Why do we allow overseas promoters to influence democratic outcomes in our country? The report of the Independent Electoral Review, which some of you do not seem to have read, recommended tighter controls both on total spend and on recording where donations came from.”
6. History should be our guide here. The influence of money in attempting to sway the 1992 and 1993 referendums on MMP by large corporates, the Business Roundtable and chambers of commerce should be cause for significant rethinking of financing and advertising around referendums.

7. However, advertising and campaign financing are not the only issues that this Bill is silent on. Nowhere in the Bill are there any references to the complex nature of referendums, their negatives, as well as positive aspects. The processes and outcomes of referendums could be vastly improved by closely examining and learning from experiences of countries and states that have undertaken democratic innovations that they have adopted alongside referendums to enhance the process and outcomes.
8. We will provide examples of such democratic innovations below but first given the Bill's failure to articulate the complex nature of referendums we feel it necessary to ensure they are understood. Referendums offer certain advantages:
 - Accessibility, inclusiveness, and efficiency
 - They produce tangible results that can put pressure on elected representatives to implement the outcomes, thereby establishing more direct consequences and impacts that strengthen democracy.
9. However, research into referendums has concluded there are downsides to referendums that can and have dire consequences for a polity. For example:
 - Democratic deficit: they fail to provide for reasoned public discussion and to produce well-considered decisions due to the lack of opportunities for 'public reasoning which allows for the informed reflection and discussion of ideas before decisions are reached.'
 - They lack incentives to participate. 'My vote is not going to make any difference.'
 - The irony of a referendum is that while it typically asks voters to check a simple "yes" or "no", it is actually one of the most complicated forms of voting because the policy issues at stake are complex; the wording of the question on the ballot is often technical; during the campaign, voters are often bombarded with information from political players and advocacy groups they have never heard of.
 - Studies have shown that referendums usually inspire lower turnouts than general elections. This means that despite their resemblance to direct democracy in action, referendum results often depend less on the true balance of public opinion and more on which side has the more energised supporters. If the idea is to let the people decide, the truth is that minority opinions can easily take the wheel. Politicians offering up referendums cannot assume that mainstream views will prevail.
10. Given the problematic nature of referendums – the most infamous recent example being the Brexit fiasco – it is a monumental omission at the heart of this Bill to fail to acknowledge the complexities of referendums and how these might be addressed.
11. Trust Democracy is not opposed to referendums per se. They are one tool in the democratic toolbox, but they need to be complemented by other methods that overcome the disadvantages we have outlined above. Research into referendums has found that when other democratic innovations such as citizens assemblies, citizens juries and other forms of deliberation – sometimes called hybrid democratic innovations (voting and deliberation-based participation) – are used in conjunction with referendums then hybrid processes can strengthen reliance and trust in the information provided, invigorate citizen awareness of the issue(s), increase trust in the democratic process and politicians, restrain the role of elites, interest groups and money, and provide checks and balances.
12. We offer three examples where hybrid forms of referendums and deliberation have been successfully conducted in three countries at varying levels of governance: one at the level of the nation-state (Ireland), one at the Provincial level (Canada) and one at the level of states (USA).

Ireland

13. Ireland is recognised as a country that has made extensive use of hybrid democratic innovations. These include the 2018 referendum on abortion,¹ and the referendum on gender equality in 2024,² both of which had used citizens assemblies as deliberative methods to inform the referendums proposals.

Canada

14. A citizens assembly was created by the government of British Columbia to investigate changes to the provincial electoral system.³ On October 25, 2004, the citizens assembly proposed replacing the province's existing first past the post (FPTP) system with a single transferable vote (STV). This recommendation was put to the electorate in a referendum in 2005.
15. Ontario established a citizens assembly modelled on the British Columbia experience in 2006.⁴ Similarly, to change the voting system from FPTP to STV. The assembly recommended Ontario adopt an MMP system. A referendum on changing the voting system was held in 2007.

USA

16. The Irish, British Columbia and Ontario hybrid democratic innovations were conducted at the level of constitutional change but there are other examples where hybrid models are being used to help inform citizens and provide well thought through information. The US state of Oregon has initiated the Oregon Citizens Initiative Review.⁵ The Oregon Citizens Initiative Review (CIR) is a citizens jury that deliberates about a ballot initiative. In a CIR, organisers select a panel made up of a random sample of 18-24 citizens who are demographically representative of the population. The panellists meet for five days to learn and deliberate about a ballot initiative – a proposed law or constitutional amendment that is drafted by, and can be enacted by a direct vote of, citizens – that will be voted on in an upcoming election. Citizens Initiative Reviews have been taken up by other US states including Colorado, Arizona, and Massachusetts, as well as being held in Switzerland and Finland.

Conclusion

17. Everywhere in the world liberal democracies are struggling with issues of trust in politicians and democratic processes. Cheerleaders for referendums hold these out as a means of giving back the power to the people, but too often fail to recognise the significant weaknesses and their inherent potential for disastrous outcomes. A hybrid model of democratic innovations which combines deliberative processes such as citizens assemblies and referendums could help address democratic deficits and restore credibility and trust in politicians and democracy.
18. Trust Democracy accepts that referendums can play a valuable role in fostering democratic accountability and outcomes that reflect the interests of its citizens. However, to be genuinely

¹ <https://www.electoral-reform.org.uk/the-irish-abortion-referendum-how-a-citizens-assembly-helped-to-break-years-of-political-deadlock/>

² <https://citizensassembly.ie/previous-assemblies/assembly-on-gender-equality/>

³ <https://participedia.net/case/1>

⁴ <https://participedia.net/case/46>

⁵ <https://participedia.net/method/citizens-initiative-review>

democratic, they need to be combined with deliberative processes, the outcomes of which can assist citizens to make informed decisions when it comes to voting in a referendum.

19. Trust Democracy recommends that this Bill be withdrawn until such time as the issue of advertising and the financing of campaigns has been addressed and work is undertaken on developing potential hybrid methods of democratic innovations.
 20. We would like to make an oral submission to the Committee.
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