CONSTITUTIONAL REFERENDUM : 1988

THE CASE FOR VOTING

No

THE OFFICIAL 'NO' CASE. Prepared by The Federal Coalition Referendum Task Force.
TELL CANBERRA 'NO'

In the referendum on September 3, 1988, Australians will be asked four seemingly simple questions. They deal with Parliamentary terms, State elections, Local Government recognition and Australians’ rights to freedom of religion, trial by jury and compensation for property taken by Government.

However bland they appear on the surface, each proposal carries serious consequences for our Parliamentary democracy and individual rights.

There is a common theme to this referendum — more power to the central government in Canberra.

The Government is trying to undermine the independence of the Senate, one of the pillars of our democracy, and which has proved its worth in protecting Australia from the excesses of Government, such as the ID card. The Government is also trying to gain the power to order the States how to conduct their own elections. And the Government is tampering with rights — such as freedom of religion — which have been entrenched in the Australian Constitution for 87 years.

There is much more to this referendum than meets the eye.

The case against each question is set out clearly on the following pages. They show why you should vote NO to all 4 questions.

AUSTRALIA HAS A STRONG CONSTITUTION.

WHY WEAKEN IT?
QUESTION 1
PARLIAMENTARY TERMS — THE CASE FOR VOTING ‘NO’

WHAT IT REALLY MEANS

☐ This proposal does not mean that elections will only be held every four years.
It merely provides for a maximum period of four years between elections.
It would enable a Prime Minister to call an election for both Houses of Federal Parliament at any
time to gain political advantage.

☐ This proposal would not mean fewer elections.
It gives a Prime Minister more power to call early elections.
It does not require a government to serve out its term.
It does not mean better government.

☐ This proposal would radically change our Parliamentary system.
It abolishes the Senate’s fixed term.
It abolishes the rotation of Senators.

☐ This proposal would cripple the Senate’s independence.
It makes it possible for a government to control the Senate.
It turns the Senate into a rubber stamp.
It silences the independent voice of the smaller States.

☐ The fundamental importance of the Senate is this:
It is a House of Review and acts as a check against the excesses of the Government in power. It is
an added protection for the rights of the people.
It also protects the rights of the States and their people.
In the House of Representatives, Victoria and NSW have 90 of the 148 members, and easily
dominate the other States, the Northern Territory and the ACT.
But in the Senate, every State has 12 representatives each and therefore an equal voice. This
ensures that the interests of the smaller States are not trampled on.

WHAT LABOR REALLY WANTS

The Labor Government’s main aim is to make it easier to call elections whenever it suits its political
purpose. In fact, the Prime Minister could call an election the very day this proposal becomes law.

For this reason, Labor’s proposal does not include fixed terms for elections. That is why it
wants to abolish the fixed term of the Senate.

The Labor Government is basically hostile to an independent Senate, because it can require an
arrogant government to abandon unpopular laws, such as the ID card. The Senate’s independence
and strength is an essential democratic safeguard.

For a long time, the Labor Party has been committed to abolishing the Senate, not only
because of its independence, but also because it represents and gives equal weight to all the States.
This frustrates Labor’s aim of centralising all political power in Canberra in the House of
Representatives.

Here is what Labor leaders have said about the Senate and States’ rights:
The Prime Minister, Mr Hawke said in the Boyer Lectures, in which he advocated the abolition of
State Parliaments: ‘I do not have any idea what ‘States Rights’ are’.
The former Attorney-General, Senator Evans, launched his anti-Senate crusade in a Canberra Times
article titled “The way to abolish the Senate, or at least muzzle it, is to white-ant it from within,”
and later attacked as a ‘spurious conception’ the Senate’s role as a “defender of States’ rights.”
The Treasurer, Mr Keating, described the Senate as “the swill of Australian politics,” after it
opposed the ID card.
WHY YOU SHOULD VOTE 'NO'

1. This proposal will not guarantee fewer elections.
   The proposal is for a maximum, not a fixed, four-year term for both Houses of Parliament.
   There is nothing in this proposal to prevent the Prime Minister calling an early election
   whenever it is to his political advantage. In fact, it is proposal would almost certainly mean more
   elections, not less, because it actually gives the Prime Minister more power to call elections
   at whim.

2. This proposal includes another attempt to introduce simultaneous elections,
   a further device to reduce Senate powers.
   The Australian people wisely rejected this idea in referendums in 1974, 1977 and 1984. It was
   wrong then and it is wrong now. In fact, in 1977 Labor's Senator John Button admitted that
   simultaneous elections reduced the power of the Senate. He said the Labor Party wanted to see the
   proposal passed because, in his words, "it limits the significance and influence of the Senate."

3. This proposal is a direct attack on the fundamental purpose and structure
   of the Senate.
   At present, the House of Representatives has a maximum term of three years, while the Senate has
   a fixed term of six years. By turning the Senate into a mirror image of the Lower House with an
   identical four-year flexible term, the whole purpose of the Senate would be fundamentally
   undermined.
   This proposal would strip the Senate of its powers and independence. A Prime Minister would
   be able to sack the entire Senate whenever it disagrees with the Government or votes against bad
   laws like the ID card. The Prime Minister could do this by immediately sending the whole
   Parliament to a new election.
   This proposal, under the guise of a four-year term, is an attack on the integrity and
   independence of the Senate. This integrity and independence provides the fundamental checks and
   balances necessary to a truly democratic Parliament.

4. This proposal would undermine our bi-cameral Parliamentary system.
   A bi-cameral system provides two separate and distinct chambers with the Lower House controlled
   by the Government and with the Upper House providing the essential checks and balances of a
   House of Review under our Westminster system.
   The proposal will place the Senate constantly under the hammer of the Prime Minister, reducing its
   ability to act fearlessly in the public interest.

5. This proposal would give the Federal Government more power over
   the Senate.
   It would allow the Government to push laws through the Senate under the threat of an early election.
   This was admitted by the Minister for Justice, Senator Tate, when he told the Parliament that the
   proposal for simultaneous elections contained in Question 1 means that it would be in the Senate's
   self-interest "not to push to the brink too many propositions too early in the Government's life."

6. This proposal would give the Federal Government more power over
   the States.
   The proposal would allow the Government to ignore the people from the smaller States and their
   legitimate voice in Canberra. It would undermine the Constitutional balance enshrined in the concept
   of giving all States, regardless of population, an equal voice in Canberra through the Senate.

7. This proposal rejects recommendations of the Government's own
   Constitutional Commission.
   Two questions need to be asked. First, if the Government is serious about fewer elections, why did
   it reject the Constitutional Commission's recommendation that it must serve a minimum of three
   years before calling an election? Second, why did the Government reject the Constitutional
Commission’s recommendation that the Senate’s term be two terms of the House of Representatives? In effect, the Government has rejected the advice of its own experts.

There is more to this proposal than meets the eye. It has hidden and dangerous consequences which would forever remove the essential checks and balances in our democratic system of government. It means more power for the Prime Minister and the Government, and less power for the States. It does not even guarantee fewer elections or better government.

**NO MORE POWER TO CANBERRA. VOTE 'NO'.**

**IN A NUTSHELL WHAT DOES THIS PROPOSAL MEAN?**

- It does not mean four years between elections.
- It does not mean fewer elections.
- It does not mean better government.
- It does not require a government to serve out its term.
- It does, however, radically change our Parliamentary system.
- It abolishes the Senate’s fixed term.
- It abolishes the rotation of terms for Senators.
- It will reduce the Senate’s independence.
- It makes it easier for a government to control the Senate.
- It gives a Prime Minister scope to call more early elections.
- It gives nothing, but takes much away.

**QUESTIONS YOU SHOULD ASK**

☐ What’s wrong with a four-year term for the House of Representatives?

If it was just that, nothing. But this proposal is at the expense of the Senate. It threatens the basis of our democratic system by eroding the Senate’s independence and transferring more power to the Prime Minister. Even the Hawke Government’s hand-picked Constitutional Commission saw the dangers in that.

☐ Wouldn’t four year Parliaments mean fewer elections?

No. It makes more elections likely. The proposal will abolish the fixed term of Senators and the staggering of those terms, and this means any Prime Minister will be free to call an election for both the House of Representatives and the entire Senate whenever he chooses. This fundamentally reduces the power and independence of the Senate.

Mr Hawke is being completely hypocritical about this. In the past five years, he has gone out of his way, including use of the double dissolution device, to call elections for his political advantage. His record is bad enough as it is. Removing the constraints will make it even worse.

And the record speaks for itself. We have had two elections since he became Prime Minister in March 1983. He called his first election within 19 months, although another election was not due until 1986, and then he called the second in 1987, again well before it was due. If Mr Hawke had gone his full term, there would have been only one election since 1983, and the second one would not have been due until March 1989.

☐ What’s in this for Mr Hawke?

This proposal gives Mr Hawke the option of an extra five months in office.

At present, a half-Senate election has to be held by early June 1990, and the Government would probably call a House of Representatives election to coincide with it. This proposal, however, would extend the Senate’s term beyond 30 June 1990, to as late as 17 November 1990, so that he could delay the election until then.

☐ How does the proposal affect the Senate?

Drastically. It would become a mere echo of the House of Representatives through a change to its basic structure — abolition of both its present fixed six-year term — and the staggering of Senators'
State’s laws being rewritten and changed by voters in other States.
People living in South Sydney or Toorak would decide how people in the vast outback of Western Australia elect their own local member to their own State Parliament. This clearly is neither fair nor democratic.

If accepted as a legitimate way of forcing change on the States, this process could be used again by the Government to poke its nose into all sorts of issues which are none of Canberra’s business.

2. This proposal will not guarantee fair elections.
The proposal does nothing to prevent gerrymanders — the rigging of electoral boundaries.

Some States already have “one vote, one value” in their electoral systems. Despite this, the Labor Governments in Victoria, South Australia, and Western Australia would stay in power with 48.7 per cent of the vote, 47.8 per cent of the vote and 46.5 per cent of the vote respectively. At the Federal level, the Hawke Government could win the next House of Representatives election with only 47 per cent of the vote.

In other words, even where the supposed “one vote, one value” is already the law, Labor could stay in Government although the majority of people vote against them.

3. This proposal means one rule for the States — another for Canberra.
The Hawke Government is trying to force on to the States a rigid numerical system which does not apply in Federal elections. The Australian Constitution has always made allowances for the more isolated and less populous States. This is why Tasmania is guaranteed five members in the House of Representatives, and why each State elects 12 Senators no matter what its population — NSW with 3.2 million voters, Queensland with 1.6 million voters, and Tasmania with only 300,000.

4. The proposal could have many legal flaws.
Before the Bill for the proposal was passed by the Senate, the Government was forced to admit errors in it, and hastily patch up serious mistakes. Because the Government ruthlessly gagged the debate before the Senate had time properly to test it for even more flaws, there will inevitably be long, complex and costly High Court challenges if the proposal becomes law.

Since these battles will be fought between the Commonwealth and the States, the taxpayer will pay the lawyers’ bills.

REJECT ANOTHER CANBERRA POWER GRAB.
KEEP LABOR’S HANDS OFF THE STATES.
VOTE ‘NO’.

QUESTIONS YOU SHOULD ASK

☐ How would this proposal affect the conduct of State elections?
It would give the High Court unprecedented new powers to intervene directly in State polls. The proposed new sections 124C and 124D would allow any elector to challenge State electoral boundaries. They would also set up a mechanism for a State election to be held on a State-wide basis with no single-member electorates, just like a Senate election, under laws which could be made by the Federal Parliament. For example, if the Federal Government was unhappy with the electoral distribution in Western Australia, that distribution could be overturned. As a result, voters could lose their rights to have a local member. This is a total infringement of the rights of the States, and the rights of their voters.

☐ Will the proposal ensure fair elections?
No. First, it allows a 20 per cent difference in the number of people in different electorates, so that some people will have less say than others. More importantly boundaries can still be rigged to give advantages to a party or a particular candidate through gerrymanders, which allow a government to hold power without a majority of votes. This proposal does nothing to prevent gerrymanders.

☐ Has Labor been unfairly deprived of Government in Queensland?
No. In the 1986 State election, Labor received 41.3% of the vote; in 1983 — 44%; in 1980 — 41.5% and in 1977 — 42.8%. Even after all preferences in Labor’s best election year (1983), they could only obtain 46.6% of the State-wide vote. It’s Labor’s lack of electoral appeal in Queensland that explains their lack of success.
What mistakes have been found in this proposal?
The original proposal, before mistakes were found in the Senate by the Opposition, would have stopped the Government’s own electoral system for the ACT, and forced major changes in the method of electing the NSW and Tasmanian Legislative Councils. There may be more mistakes and unintended consequences still to be found because the Government gagged the debate before the proposal could properly be considered. In the years ahead the High Court is assured of many complicated cases arising out of it.

Everybody in Australia accepts that elections should be conducted fairly and democratically. But when the fine print of this misleading proposal is examined, there are powerful reasons for voting against this unnecessary and potentially dangerous change.

DON'T LET CANBERRA RUN YOUR STATE.
DEFEND A DEMOCRATIC SYSTEM THAT WORKS WELL.
VOTE 'NO'.

QUESTION 3
LOCAL GOVERNMENT — THE CASE FOR VOTING ‘NO’

WHAT IT REALLY MEANS

☐ This proposal is detrimental to Local Government and ratepayers.
Canberra is making Local Government take a leap in the dark.
It could result in Local Government being replaced by large, impersonal Regional Government,
ultimately controlled from Canberra.
It does not give Local Government any guarantees, protection, or rights.

☐ This proposal will not stop arbitrary dismissals or amalgamations of Local Government bodies.
It could also allow the abolition of Local Government in any part of a State.

☐ The proposal is uncertain and vague.
The proposal is open to countless interpretations.
It is a legal minefield that will keep the High Court busy for years.

Labor is threatening the future of Local Government with this proposal. It will give Canberra an interfering foot in the door, and as with the other referendum proposals, give more power to the Federal Government at the expense of the States. It could pave the way to regional government responsible directly to Canberra, not the States.

WHAT LABOR REALLY WANTS
Labor has always sought to by-pass State Governments and implement its policies through fewer but larger regional forms of Local Government, which it finds easier to dominate.
In his Boyer Lectures, the Prime Minister, Mr Hawke, said we must have “one government with unquestioned powers” and went on to argue that this meant eliminating the States, and dealing directly with what he described as “relevantly demarcated geographical areas”... in other words, regions.
Labor's Senator Burns expressed similar sentiments in the Senate on May 23. Both the Prime Minister and Senator Burns tried to argue that eliminating the States would give more power to Local Government, but this is not the case.
The real power would go to Labor's regional authorities.
WHY YOU SHOULD VOTE 'NO'

1. This proposal is detrimental to Local Government and ratepayers.

   The proposal requires States to maintain “a system of Local Government.”

   This loose phrase leaves completely undefined important matters such as the structure, role, basic rights and responsibilities of Local Government. Under this proposal, a “system” of Local Government in the future need not necessarily be the Local Government bodies we have today. The Government has recently admitted that this could include regional authorities.

   The proposal will clear the way for the Federal Government in Canberra to intervene directly in Local Government matters, and thereby completely ignore the States. This will be the forerunner of Canberra exercising substantial power over Local Government “bodies” — not necessarily existing councils and shires as we know them today.

   Labor, for years, has wanted to make Local Government a kind of “branch office” for Canberra, and keep Local Government under Canberra’s control.

   This would make State Governments irrelevant. It would also abolish the independence of Local Government bodies. This is a fundamental and dangerous shift in power to Canberra.

2. This proposal will not stop either arbitrary dismissals or amalgamations of local government bodies.

   This proposal does nothing to protect present Local Government bodies from arbitrary dismissal or forced amalgamation. It would still have allowed the former NSW Labor Government to summarily dismiss the elected Sydney City Council. It could cement a State’s right to hire and fire Local Government bodies at will. In the Senate on 31 May, the Minister for Justice, Senator Tate, admitted that under this proposal, a State Government could dismiss a council and never reinstate it.

3. This proposal is uncertain and vague.

   The meaning of the phrase “a system of Local Government” is uncertain. What would happen is that the High Court would inevitably have to determine what it means. And such a determination, in case after case, could not possibly take into account the particular needs and obligations of more than 800 Local Government bodies, spread right across Australia with different responsibilities, revenue bases, and political constituencies.

   In any case, Local Government already exists in every State. It is recognised in the Constitutions of the States of Victoria, NSW, South Australia and Western Australia and is soon to be recognised in Queensland and Tasmania. So, not only is the proposal uncertain and vague, but it achieves nothing — except more power for Canberra and endless legal challenges.

QUESTIONS TO ASK

☐ Does this proposal pose any danger to our democratic system in Australia?

   It certainly does. It threatens the independence and authority of the States. It would encourage the Federal Government to use the open-ended “external affairs” power to intrude into Local Government by entering into international treaties. This would allow the Federal Government to override State and local decisions and policies, as happened in the Tasmanian dams case.

☐ Is the Government sincere in its claim to be making Local Government stronger?

   No. While the Hawke Government offers doubtful recognition it has since coming to office in 1983, significantly reduced Local Government finances by cutting road funds and Commonwealth grants. More and more, it attaches strings to the amount of money it does give. Labor has failed to help Local Government financially — and all householders know it when they pay higher rates for reduced services.

   While the Hawke Government is claiming to strengthen Local Government, the fact is that Local Government no longer has a guaranteed share of income tax receipts as it did under the previous Coalition Government. Its funds from this source have been cut. Road funding has also been slashed in each of the last three years.
Is the Federal Government fair dinkum about working with Local Government?

No. It abolished the Advisory Council for Inter-Governmental Relations, the major forum which gave Local Government an equal voice with State and Federal Governments in resolving problems between the three tiers of Government.

This proposal would not force the Federal Government to consult in other ways with Local Government. It is typical of the Government's real attitude to Local Government that it slashed road funds by $35 million in the May Economic Statement — without prior consultation.

What did Local Government itself want?

Local Government associations have consistently argued that if there is to be Constitutional recognition, it should be much stronger than this proposal. The Australian Council of Local Government Associations and the Council of Capital City Lord Mayors have loudly argued that an entirely new chapter should be added to the Constitution.

And most importantly, both bodies wanted protection against undemocratic dismissal or amalgamation. This proposal clearly does not satisfy these demands.

Does the proposal apply to Territories?

No. There are a number of councils in the Northern Territory, and for reasons best known to the Government itself, the proposal will not apply to councils there. The Government is not sincere.

Why is the Government ignoring its own experts?


The advisers, a body called the Distribution of Powers Advisory Committee, after extensive study, gave many solid reasons for recommending against Constitutional recognition, among them being: uncertainty as to how the High Court would interpret such a Constitutional provision; doubts about the real need for such recognition; and the undesirability of entrenching in the Constitution another level of government which would compete with the States.

These carefully considered recommendations were dismissed out of hand by the Government. The Australian Constitution should not be thoughtlessly changed. Vague and uncertain proposals should not be carelessly written into the document which is fundamental to our democratic processes. This proposal changes nothing for Australians — except for the worse. And again, it panders to the Federal Government's increasing desire for more power, centred in Canberra.

STOP CANBERRA'S POWER GRAB.
PROTECT YOUR SYSTEM OF LOCAL GOVERNMENT.
VOTE 'NO'.

QUESTION 4
RELIGION, JURY AND PROPERTY — THE CASE FOR VOTING 'NO'

WHAT IT REALLY MEANS

This proposal threatens rights and freedoms all Australians have now.
The proposal threatens the future of State Aid for independent schools.
It also threatens Government funding for the welfare work of religious bodies, including hospitals.
It would weaken our rights, not make them stronger.

This proposal is inadequate, unnecessary and legally flawed.
It puts together three questions of fundamental importance to all Australians in a 'take it or leave it' package.
WHY YOU SHOULD VOTE ‘NO’ — ON RELIGION

Freedom of religion in Australia is not currently under threat. Why replace certainty with uncertainty? If this proposal were passed, it could open up all the old sectarian conflicts. For example, Government funding to Church and other private schools is today secure. If this proposal is carried, there is no guarantee that such funding would continue.

This has been admitted by the Minister for Justice, Senator Tate, who told the Parliament: “I cannot, nor can anyone, give an absolute, untempered guarantee.”

If this proposal becomes law, the opponents of funding for Church schools are certain to reopen the High Court challenge to State Aid. They will be able to do this because the proposal omits the very words from the Constitution which last time stopped their challenge. This will inevitably revive the divisive bitterness of the past which we have now put behind us.

Moreover, the proposal is so ambiguous and flawed that other established religious rights could be directly threatened, among them prayers in schools and the broadcasting of religious programmes.

It could open the way to extreme sects and practices.

WHY YOU SHOULD VOTE ‘NO’ — ON TRIAL BY JURY

The trial by jury proposal is similarly and hopelessly flawed, and would undermine our existing rights enshrined for seven centuries since Magna Carta. At present, a person charged with any serious offence has the right to a jury trial. This proposal would enshrine in our Constitution lower standards of rights than Australians already have.

Further, the meaning and nature of trial by jury would change. It paves the way for majority verdicts — perhaps two out of only three jurors — and for juries to be chosen on the basis of race, sex, education or professional qualification, or other grounds.

Thus it opens the way for the destruction of the concept of trial by jury which it purports to preserve.

WHY YOU SHOULD VOTE ‘NO’ — ON PROPERTY

Australians already have adequate safeguards in the important area of compensation for property compulsorily acquired by governments. The proposed slogan would not improve this position.

Moreover, it would allow the government to confiscate the property of a Territory government without the need to provide any compensation.

☐ This proposal is inadequate, unnecessary and legally flawed.

It is inadequate because the proposal is an “all or none” choice. The three proposals stand together, robbing you of real freedom of choice.

It is unnecessary because the Australian Constitution already recognises trial by jury, religious freedom and the right to compensation if a government compulsorily acquires your private property. This proposal does not strengthen, and may indeed weaken, the force of those provisions. And does anybody seriously suggest that these fundamental freedoms are under threat in Australia?

It is legally flawed because there is a very real danger that by defining such rights in so much detail, those rights are in fact limited and weakened, and subject to endless legal challenges in the courts. This has already happened in America, where the courts are full of such cases.

DON'T RISK THE RIGHTS YOU ALREADY HAVE. DON'T VOTE MISTAKES INTO THE CONSTITUTION. VOTE 'NO'.

QUESTIONS YOU SHOULD ASK

☐ Are religious freedoms under threat in Australia right now? No!

☐ Which religious freedoms are threatened by these changes?

This proposal would put at risk our established religious rights and freedoms.

The broadcasting of church services and religious programmes could be banned.

The precedent for these prohibitions comes from the United States, which has a constitutional guarantee of religious freedom very similar to this proposal, and where Supreme Court rulings have limited religious freedom rather than enhancing it.
Additionally, there are some specific practices in various religions or religious sects which offend against prevailing social standards and freedoms. These practices, sometimes offensive to a majority of Australians, could gain immunity under this proposal.

**Will State Aid continue?**
The proposal would create an opportunity for the opponents of State Aid to challenge the 1981 High Court decision in the notorious D.O.G.S. case which sought to stop government funding of Church and other independent schools.

That case created bitter dispute in the Australian community, dividing friends and families. That bitterness has faded over the years since the High Court ruled that the Constitution's words as they then stood, and still stand, were not violated by government funding to religious schools. This proposal removes the crucial words — which relate to making a law to establish a religion — and thus opens the way for renewed challenges to State Aid.

**Are there flaws in the trial by jury proposal?**
Yes. At present, persons charged with any serious offence are entitled to trial by jury.

Under this proposal, some people facing charges would no longer have this right.

The traditional form of trial by a jury of 12 fellow citizens could be a thing of the past.

**Will this proposal improve existing rights to compensation?**
No, there is already such a provision in the Constitution, but this has made no difference to people's rights under existing Commonwealth laws, which the government itself concedes are in need of radical overhaul.

Each of these questions, in various ways, is flawed and inadequate. There is no good reason for endangering the rights we already have, or for writing into the Constitution new provisions which are uncertain in their effect, contradictory, and unnecessarily complicated.

**DON'T ENDANGER THE RIGHTS YOU ALREADY HAVE. VOTE 'NO'.**

**HOW TO VOTE**

1. **Proposed?** To alter the Constitution to provide for a 4-year maximum term for members of both Houses of the Commonwealth Parliament. **NO**

2. **Proposed?** To alter the Constitution to provide for fair and democratic parliamentary elections throughout Australia. **NO**

3. **Proposed?** To alter the Constitution to recognize local government. **NO**

4. **Proposed?** To alter the Constitution to extend the right to trial by jury, to extend freedom of religion, and to ensure fair terms for persons whose property is acquired by any Government. **NO**

**LIBERAL**

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