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2017/18: Popular opinion on controversial issues: should Australia regularly use postal surveys and plebiscites to influence law-making?

What they said...

'You've got to have that discussion and it may be that a plebiscite, maybe even a postal survey, given the success of the marriage postal survey, could be one way to deal with that'

Prime Minister Malcolm Turnbull suggesting that a plebiscite or another postal survey could promote discussion of an Australian republic

'We shouldn't use the postal vote process again'

Peter Dutton, federal Minister for Immigration and Border Protection (and the original proposer of a postal survey on same-sex marriage) arguing that the device should not be used again

The issue at a glance

On January 1, 2018, Prime Minister Malcolm Turnbull suggested using a plebiscite or a postal survey to prompt debate on aspects of Australia becoming a republic.

<http://www.theaustralian.com.au/national-affairs/malcolm-turnbull-flags-postal-survey-for-australian-republic/news-story/98366d4e2c2825d493c6f918831fb5f8>

The Turnbull government had used a postal survey between September 12 and November 7, 2017, to gauge popular opinion on whether Australia should alter its marriage laws to make same-sex marriage legal. https://en.wikipedia.org/wiki/Australian_Marriage_Law_Postal_Survey

In the Prime Minister's judgement the success of this process made it a suitable device to use again.

There are others, however, who have reservations about the use of the survey. The Prime Minister's proposal meet with a mixed reaction from commentators and political colleagues. The Opposition condemned it as ill-considered. [https://en.wikipedia.org](https://en.wikipedia.org/wiki/Australian_Marriage_Law_Postal_Survey)

<https://www.sbs.com.au/news/very-disappointing-labor-dismisses-turnbull-s-call-for-republic-postal-vote>

The leader of the Opposition, Bill Shorten, has already pledged that if his party were voted into office at the next election it would hold a referendum on the issue of an Australian republic. (The Australian Constitution requires that before any Constitutional change can occur, such as Australia becoming a republic, the question has to be put to the electorate via a referendum.)

<http://www.abc.net.au/news/2017-07-29/bill-shorten-renews-push-for-australia-to-become-a-republic/8754948>

On January 2, 2018, a spokesperson for the Prime Minister announced that a popular vote on whether Australia should become a republic would not be held during the first term of the next Turnbull government. <http://www.smh.com.au/federal-politics/political-news/stop-the-thought-bubbles-labor-demands-malcolm-turnbull-commit-to-republic-vote-20180102-h0cehq.html>

Despite the Prime Minister's change of intention, the question of the suitability of postal votes and plebiscites to help determine government action on popular issues remains contentious.

Background

(The information contained below on representative democracy was drawn from the Museum of Australian Democracy site under the heading 'Australian democracy: an overview' and can be accessed in full at <https://www.moadoph.gov.au/democracy/australian-democracy/>

The information on direct democracy was taken from the Wikipedia entry titled 'Direct democracy' and can be accessed in full at https://simple.wikipedia.org/wiki/Direct_democracy

The information on plebiscites and referenda has largely been drawn from 'A quick guide to

plebiscites in Australia', posted on the site of the Parliament of Australia on June 30, 2011. The full text can be accessed at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2011/June/A_quick_guide_to_plebiscites_in_Australia
The information dealing with the postal vote has largely been taken from the Wikipedia entry titled 'Australian Marriage Law Postal Survey'. The full text can be accessed at https://en.wikipedia.org/wiki/Australian_Marriage_Law_Postal_Survey

Representative democracy

Australia is a representative democracy. In this political system, eligible people vote for candidates to carry out the business of governing on their behalf.

The Constitution defines the Parliament of Australia as the Queen, the Senate and the House of Representatives. Parliament, comprised of the House of Representatives and the Senate, is the basis of Australia's tradition of responsible government. In addition to making laws, Parliament holds ministers and the government accountable for their actions. Ministers must be members of the Commonwealth Parliament and regularly answer questions about their portfolios asked by other members.

The government is accountable to the people primarily through the ballot box. Parliamentary elections are held every three years and governments and representatives deemed unsatisfactory can be removed from office.

Direct democracy

In a direct democracy the decisions are not taken by representatives. All decisions are voted on by the people. When a budget or law needs to be passed, then the idea goes to the people. Large governments rarely make decisions this way. Referenda are an example of direct democracy with a system of representative government. Plebiscites and postal votes have elements of direct democracy but as their outcomes do not bind the government serve to allow the electorate potentially increased influence rather than direct power.

Plebiscites

A plebiscite is a vote by citizens on a matter of national significance which does not affect the Constitution. Plebiscites are normally advisory, and do not compel a government to act on the outcome. A plebiscite might be used to obtain electors' views on contentious issues, for example military conscription, or choosing a new Australian flag.

Only the Australian parliament can authorise the holding of a plebiscite. Before a national plebiscite can take place, an enabling bill proposing the plebiscite and setting out its purpose must be passed by parliament. The bill thereby becomes an Act enabling a vote to be conducted by the Australian Electoral Commission.

There have only been three national plebiscites in Australia:

1916: military service conscription (defeated)

1917: reinforcement of the Australian Imperial Force overseas (defeated)

1977: choice of Australia's national song ('Advance Australia Fair' preferred.)

For a proposal put to the electorate via a plebiscite to be passed requires only a simple majority. Plebiscites are not referred to within the Australian Constitution. It is up to the government proposing the plebiscite whether it is compulsory for all registered voters to participate. The capacity of government to make such voting compulsory

Referenda

A referendum is also a popular vote on a significant issue. Referenda are required under the Australian Constitution whenever a government proposes a law that affects the Constitution. For example, if a government were to propose that Australia become a republic rather than a constitutional monarchy this would have to be put to the electorate via a referendum.

Governments have to act on the outcome of a referendum. For a referendum proposal to succeed

it must win the majority of votes nationally and also win in a majority of the states. This is called a 'double majority'. Since Federation there have been 44 proposals for constitutional change put to Australian electors at referenda. Only eight have been approved.

Postal surveys

The only time this means of gauging popular opinion on an issue has been used in Australia to this point was regarding changing the Marriage Act to allow same-sex marriage.

The Australian Marriage Law Postal Survey was a national survey that gauged support for legalising same-sex marriage in Australia. The survey was held via the postal service between 12 September and 7 November 2017.

Unlike voting in elections and referendums, which is compulsory in Australia, responding to the survey was voluntary. The outcome of the survey was not binding on the government, though the Prime Minister, Malcolm Turnbull, had promised that his government would attempt to change the Marriage Act if the electorate supported that action via its vote.

A survey form, instructions, and a reply-paid envelope were mailed out by the Australian Bureau of Statistics (ABS) to every person on the federal electoral roll, asking the question "Should the law be changed to allow same-sex couples to marry?" The ABS outlined processes to ensure eligible Australians lacking access to post could participate

79.5% of registered voters participated. 61.6% voted in favour of changing the Marriage Act to allow same-sex couples to marry. 38.4% voted against the change.

Internet information

On January 2, 2018, The Fraser Coast Chronicle published a comment by Owen Jacques titled 'Ballot on becoming a republic? I wish I could vote for a leader' arguing that plebiscites and postal surveys were the recourse of governments avoiding their responsibility to govern.

The full text can be accessed at <https://www.frasercoastchronicle.com.au/news/ballot-becoming-republic-give-me-someone-who-can-l/3301998/>

On January 2, 2018, The Blot Report pasted a comment titled 'Not Another Postal Vote' arguing that postal surveys are unnecessary and expensive.

The full text can be accessed at <http://www.blotreport.com/australian-politics/not-another-postal-vote/>

On December 11, 2017, The Sydney Morning Herald published a comment by Peter Dutton, federal Minister for Immigration and Border Protection. The comment is titled 'Peter Dutton: The same-sex marriage postal vote worked but we shouldn't use it again' and explains why in the minister's view, though the survey was useful in one circumstance it should not be used again.

The full text can be accessed at <http://www.smh.com.au/comment/peter-dutton-the-samesex-marriage-postal-vote-worked-but-we-shouldnt-use-it-again-20171208-h01qio.html>

On November 8, 2017, The Daily Telegraph published a comment by Gary Nunn titled 'Gay community won't forgive plebiscite pushers' which argued that considerable unnecessary personal harm had been suffered as a result of the postal survey.

The full text can be accessed at <https://www.dailytelegraph.com.au/rendezview/gay-community-wont-forgive-plebiscite-pushers/news-story/3f3c2b94deee4ae670eb0e163079b5a5>

In November, 2017, The Monthly published a comment by Judith Brett, emeritus professor of politics at La Trobe University, titled 'A travesty of process' which argues that the postal survey process is faulted on many levels.

The full text of the comment can be accessed at <https://www.themonthly.com.au/issue/2017/november/1509454800/judith-brett/travesty-process#>

(Please note: The Monthly is a subscription magazine and will allow non-subscribers access to only three items a month.)

On October 22, 2017, The Daily Telegraph published a comment by Anniks Smethurst titled 'Euthanasia debate an example of how Parliament is supposed to work' which uses the Victorian government's recently passed euthanasia legislation of the manner in which the author believes parliaments should resolve issues.

The full text can be accessed at <https://www.dailytelegraph.com.au/news/opinion/euthanasia-debate-an-example-of-how-parliament-is-supposed-to-work/news-story/c6a45ed0b1978e35f2a4ebfa49bd4683>

On September 18, 2017, The Northern Daily Leader published a report titled 'Mental health groups sound alarm over postal survey'

The article suggests the survey has been stressful and damaging for many in the community. The full text can be accessed at <http://www.northerndailyleader.com.au/story/4931048/mental-health-groups-sound-alarm-over-postal-survey/?cs=8>

On September 8, 2017, The Australian published a news report titled 'Same-sex marriage: Turnbull calls for respectful debate' which details the Prime Minister's request for civility in the same-sex marriage debate.

The full text can be accessed at <http://www.theaustralian.com.au/news/nation/samesex-marriage-yes-no-campaigners-clash-outside-church/news-story/8e9c1f3ef7dad09b13965897d697a834>

On August 24, 2017, the University of New South Wales Public Law Review published an article by Paul Kildea, Senior Lecturer, UNSW Law School titled 'The Constitutional and Regulatory Dimensions of Plebiscites in Australia'.

The article argues that although Australia's constitutional system of representative government is not well designed for national plebiscites there are no legitimate reasons for not holding one. Kildea argues that there is a need to clarify processes and determine the circumstances under which plebiscites might be necessary.

The full text can be accessed at <http://www5.austlii.edu.au/au/journals/UNSWLRS/2017/54.pdf>

On August 17, 2017, The Spectator published a comment by Stephen Chavura, lecturer in politics and history at Macquarie University, Champion College, and the Lachlan Macquarie Institute. The comment is titled 'In defence of the same-sex marriage plebiscite (or the next best option)' and explains some of the advantages to be gained from employing a plebiscite.

The full text can be accessed at <https://www.spectator.com.au/2017/08/in-defense-of-the-same-sex-marriage-plebiscite-or-the-next-best-option/>

On August 16, 2017, The University of Melbourne's Pursuit Magazine published a comment by Heath Colton Pickering, Melbourne School of Government, University of Melbourne, titled, 'Australia's Referendum Drought' which argues some of the advantages which would derive from more regular referenda.

The full text can be accessed at <https://pursuit.unimelb.edu.au/articles/australia-s-referendum-drought>

On August 9, 2017, The Northern Territory News published an editorial titled 'Stop wasting precious cash' which argued that a postal survey was expensive and unnecessary.

The full text of the editorial can be accessed at <http://www.ntnews.com.au/news/opinion/stop-wasting-precious-cash/news-story/77ac2574fd2a3b69e074b0ac58dbb7e6>

On July 25, 2017, SSB News published a report titled 'Chair of the National Mental Health Commission Allan Fels warns a gay marriage plebiscite could have mental health consequences.' The text looks at possible mental health risks as a result of the postal survey. It can be accessed at <https://www.sbs.com.au/news/mental-health-fears-over-plebiscite>

On September 15, 2016, The Conversation published a comment by Graeme Orr, Professor of Law, The University of Queensland titled ' Why Australians should say 'Yes' to the same-sex marriage plebiscite' in which the professor argues why a plebiscite may be necessary to resolve this issue.

The full text can be accessed at <https://theconversation.com/why-australians-should-say-yes-to-the-same-sex-marriage-plebiscite-65461>

On August 8, 2016, the ABC published a comment by Joel Harrison, a Lecturer at Macquarie Law School, Macquarie University, Sydney, titled ' Against Popular Will: Why Plebiscites Need Not be Binding' which argues for the advantages of non-binding plebiscites.

The full text can be accessed at <http://www.abc.net.au/religion/articles/2016/08/08/4514900.htm>

On April 7, 2016, The University of Melbourne's Pursuit Magazine published a comment by Professor Carolyn Evans, Deputy Vice-Chancellor and Deputy Provost, University of Melbourne, titled 'Why Parliament Should Decide on Same Sex Marriage.' The comment focuses on the responsibility of Parliament as a law-making body.

The full text can be accessed at <https://pursuit.unimelb.edu.au/articles/why-parliament-should-decide-on-same-sex-marriage>

Advantages of postal surveys and plebiscites

1. Postal surveys allow the government and the opposition to be informed of the electorate's opinion on divisive issues

Supporters of plebiscites and postal surveys argue that although Australia's is a representative style of government within which the electorate votes for its political leaders to act on the voters' behalf, there are circumstances within which the Parliament needs to be aware of the electorate's views on an issue.

The decisive components of an issue that might be referred to the people directly are that it is one around which there is no clear national consensus and that it is a significant or important issue which affects the electorate directly. 'A quick guide to plebiscites' posted on the Internet site of the Parliament of Australia, on June 30, 2011, states, 'A plebiscite might be used to obtain electors' views on, say, military conscription, or choosing a new Australian flag.' https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2011/June/A_quick_guide_to_plebiscites_in_Australia

Justifying the Government's recourse to a postal survey on the question of same-sex marriage, the federal Minister for Immigration and Border Protection, Peter Dutton, argued for the special circumstances that made such a gauging of the popular view necessary. Dutton stated, ' [T]he reason is the nature of this issue and the significance of a proposal to fundamentally change a social foundation stone that dictated the break-glass option of the postal plebiscite.'

<http://www.smh.com.au/comment/peter-dutton-the-samesex-marriage-postal-vote-worked-but-we-shouldnt-use-it-again-20171208-h01qjo.html>

It has further been argued that some highly contentious issues may also require the additional support of a national vote or survey on the issue to back the decision ultimately taken by the Parliament. This view was put by Stephen Chavura, lecturer in politics and history at Macquarie University, Campion College, and the Lachlan Macquarie Institute. Chavura stated, 'It is for times like these that taking the path of direct democracy makes sense, when an issue is unusually contentious, divisive, and vexing, and when no side is prepared to lose graciously to a parliamentary vote.' <https://www.spectator.com.au/2017/08/in-defense-of-the-same-sex-marriage-plebiscite-or-the-next-best-option/>

2. Postal surveys promote debate and engender public interest

Australia's Prime Minister, Malcolm Turnbull, claimed that one of the aims of a postal survey is to promote 'respectful debate' on the contested issue. According to this line of argument, in the lead-

up to and during the period within which votes can be lodged, there is likely to be widespread community discussion of the issue. This will occur among interested individuals as well as being embodied in the positions put by lobby groups on both sides of the question.

Shortly after the postal survey regarding the legalisation of same-sex marriage was announced, Malcolm Turnbull stated, 'I encourage all Australians to engage in this debate, as we do in all debates, respectfully.'

The Prime Minister went on to state, 'You cannot expect your side of the argument to be respected unless you respect the other side of the argument and the people who put it.' The Prime Minister argued that the debate was an opportunity to promote mutual understanding around an issue of great social consequence.. <http://www.theaustralian.com.au/news/nation/samesex-marriage-yes-no-campaigners-clash-outside-church/news-story/8e9c1f3ef7dad09b13965897d697a834>

Analysis of the traffic on and membership of sites and groups advocating for different sides of the same-sex marriage issue reveals that each gained support over the course of the debate.

<https://storyful.com/blog/2017/11/15/how-grassroots-campaigning-shaped-australias-same-sex-marriage-debate/> As other surveys have indicated that the debate does not appear to have

affected voter intentions, it seems likely that what it achieved was an activation of those with a pre-existing opinion. [https://storyful.com/blog/2017/11/15/how-grassroots-campaigning-shaped-australias-same-sex-marriage-debate/http://www.smh.com.au/federal-politics/political-](https://storyful.com/blog/2017/11/15/how-grassroots-campaigning-shaped-australias-same-sex-marriage-debate/http://www.smh.com.au/federal-politics/political-news/samesex-marriage-arguments-may-not-have-swayed-postal-survey-vote-survey-finds-20171109-gzi41w.html)

[news/samesex-marriage-arguments-may-not-have-swayed-postal-survey-vote-survey-finds-20171109-gzi41w.html](https://storyful.com/blog/2017/11/15/how-grassroots-campaigning-shaped-australias-same-sex-marriage-debate/http://www.smh.com.au/federal-politics/political-news/samesex-marriage-arguments-may-not-have-swayed-postal-survey-vote-survey-finds-20171109-gzi41w.html)

This activation of the electorate is also suggested by the fact that there were some 90,000 new enrolments added to the electoral roll, entitling these voters to participate

in the postal survey. [https://storyful.com/blog/2017/11/15/how-grassroots-campaigning-shaped-australias-same-sex-marriage-debate/http://www.smh.com.au/federal-politics/political-](https://storyful.com/blog/2017/11/15/how-grassroots-campaigning-shaped-australias-same-sex-marriage-debate/http://www.smh.com.au/federal-politics/political-news/samesex-marriage-arguments-may-not-have-swayed-postal-survey-vote-survey-finds-20171109-gzi41w.html)

[news/samesex-marriage-arguments-may-not-have-swayed-postal-survey-vote-survey-finds-20171109-gzi41w.html](https://storyful.com/blog/2017/11/15/how-grassroots-campaigning-shaped-australias-same-sex-marriage-debate/http://www.smh.com.au/federal-politics/political-news/samesex-marriage-arguments-may-not-have-swayed-postal-survey-vote-survey-finds-20171109-gzi41w.html)

<http://www.abc.net.au/news/2017-08-25/same-sex-marriage-90,000-people-added-to-electoral-role/8842670>

Supporters of further postal votes, plebiscites and referenda argue that they are a way of involving and energising the electorate. Heath Colton Pickering of the University of Melbourne's Melbourne School of Government has stated, 'People are more motivated about politics when voting on a

specific area of public policy. It's more engaging than voting for your local candidate; in fact, some international surveys have shown that only around 25% of people can even name their local federal MP.'

<https://pursuit.unimelb.edu.au/articles/australia-s-referendum-drought>

Colton Pickering further noted that regular reference to the voters on particular issues is a feature of some democracies. He stated, 'The idea is commonly used at the state level in the United

States. At last year's presidential election, American voters in Massachusetts were also given four additional policy questions. Two issues passed, one of which included support to legalise the recreational use of marijuana - a common 'sticking' point that most politicians choose to avoid.'

<https://pursuit.unimelb.edu.au/articles/australia-s-referendum-drought>

3. Postal surveys can break a political impasse on a significant, divisive issue

It has been noted that the postal survey on the legalisation of same-sex marriage served to resolve a political stalemate around a significant, divisive issue. This occurred because there was no clear direction within the government on the same-sex marriage issue.

Plebiscites have been held to resolve similarly divisive issues. There have been three plebiscites in Australia; two were held on the conscription of troops during World War I, in 1916 and 1917

(both defeated), and one on a national song, in 1977. Resort to plebiscites often comes when governing parties are divided. In the Great War, Billy Hughes, leading a divided Labor

government, went to the people to try to secure a decision for conscription that he could impose on his own party. <http://www.theaustralian.com.au/news/inquirer/tale-of-two-plebiscites-as-turnbull-shorten-jostle-for-advantage/news-story/b10797f6eb46de2798e483c1a0b15bd1>

Though plebiscites at a national level are rare, they are not unusual at the state level. Professor Twomey, of the University of Sydney, pointed out that plebiscites have been used to deal with

divisive state issues such as prohibition, daylight saving time, Sunday shopping hours and pub closing times. Professor Twomey has noted ' [At a state level] we have a long history of using plebiscites to deal with divisive issues.' <http://www.abc.net.au/news/2017-08-22/fact-check-same-sex-marriage-postal-survey/8826300>

In the case of the same-sex marriage postal survey, the issue was a divisive one within the federal government. There was no policy consensus between the Prime Minister, Malcolm Turnbull and the more socially liberal members of the government, who favoured legalising same-sex marriage, and the socially conservative members of the government, who opposed it.

Former Prime Minister, Tony Abbott, had previously promised a plebiscite on same-sex marriage as a means of forestalling having to formulate a new policy position on this divisive issue.

However, a plebiscite could only be held with the support of the Senate as it requires enabling legislation to bring about a plebiscite. The government could not secure a majority in the Senate for its Plebiscite (Same-Sex Marriage) Bill 2016. Labor, the Greens and the Xenophon team twice acted together in the Senate to vote it down. The Government used a postal survey rather than a plebiscite to determine popular opinion on the issue as the postal survey did not require an Act of Parliament. <http://www.abc.net.au/news/2017-08-22/fact-check-same-sex-marriage-postal-survey/8826300>

Thus, a postal survey proved of particular use to the government in dealing with the issue of legalising same-sex marriage. In a similar manner to a plebiscite, it allowed the government to refer to the electorate an issue about which it did not have a workable consensus. It also allowed the government to gauge the electorate's view on the issue despite not being able to secure a majority in the Senate to pass an enabling Act for a plebiscite. <http://www.smh.com.au/comment/peter-dutton-the-samesex-marriage-postal-vote-worked-but-we-shouldnt-use-it-again-20171208-h01qio.html>

The general utility of plebiscites and postal surveys to resolve political deadlocks has been acknowledged by Graeme Orr, Professor of Law, The University of Queensland. In an opinion piece published in The Conversation on September 15, 2016, Professor Orr stated, 'Representative government, at its best, is holistic. But occasionally there is an issue that it fails to resolve, and which is simple and discreet enough that a plebiscite is a second-best way through the impasse.' <https://theconversation.com/why-australians-should-say-yes-to-the-same-sex-marriage-plebiscite-65461>

4. Postal surveys retain Parliament's power to determine legislation as they are not legally binding on the government

Though some critics of the postal survey maintain such instruments are futile as they do not compel the government to act on the wishes of the people, others argue that this is a strength of both postal surveys and plebiscites. Both these measures for gauging popular opinion (postal surveys and plebiscites) are advisory not binding. Once the government has determined the opinion of the electorate on an issue, it may then investigate and debate the question further and propose something different.

One of the main functions of the Parliament of Australia is as 'a forum for debate on national issues'. https://www.aph.gov.au/About_Parliament/Work_of_the_Parliament Thus, supporters of Parliamentary authority argue it is ultimately the function of Parliament, rather than extra-Parliamentary consultative bodies, to debate the issues that concern the nation and to form laws in relation to them. Governments and parliaments have at their disposal a large support apparatus to assist them in the formulation and debate of laws.

The deliberative function of Parliament is a major reason why the Parliament should ultimately be able to form and pass laws independently rather than at the direct instruction of a majority of the electorate. Collectively, parliamentarians have access to information and expertise that allow them to make more appropriate decisions than might be made by a majority of voters. This point was made by Joel Harrison, lecturer at Macquarie Law School, Macquarie University, Sydney, who has stated, 'Ours is a system in which persons are elected to take part in a deliberative process orientated towards passing laws for the common good. Reinforcing or recovering this traditional

sense of deliberation is important.

Legislative authority is not simply the exercise of majority will...Indeed, the hope is that the legislature enacts law for the public good over private interest.' <http://www.abc.net.au/religion/articles/2016/08/08/4514900.htm>

The ultimate responsibility of the Parliament to make laws with regard to same-sex marriage and other issues was argued by Professor Carolyn Evans, Dean, Melbourne Law School, University of Melbourne, who states, 'The Australian Constitution creates a "representative" form of government. We vote for parliamentarians to represent us and those parliamentarians thrash through the details of what laws should be passed, in what terms, with what trade-offs and consequences. Given the complexity of modern society, any other system would be untenable.' <https://pursuit.unimelb.edu.au/articles/why-parliament-should-decide-on-same-sex-marriage>

5. Postal surveys are relatively inexpensive

Some supporters of a postal survey compared to a plebiscite have noted that the postal survey is a relatively inexpensive option.

On August 8, 2017, the Acting Special Minister of State, Mathias Cormann, confirmed that the postal plebiscite would cost \$122 million, saving \$160m over the amount estimated for the original plebiscite proposal. <http://www.theaustralian.com.au/national-affairs/samesex-marriage-postal-vote-to-cost-122m/news-story/bf666331befab13cc7b98c52306bcd53>

Other estimates suggested the cost difference might be greater still. Consultants PwC put the full cost of a plebiscite at \$525 million, made up of \$160 million for the ballot itself, \$66 million to fund the "yes" and "no" cases, and \$281 million in lost productivity.

In the event, the postal survey cost even less than was initially predicted. On November 16, 2017, a lower probable expenditure was announced by the Australian Bureau of Statistics (ABS), which stated, 'The ABS has also been prudent with taxpayer funds. While the costs are still being tallied, I am confident that the final cost of the survey will be under \$100m.'

<http://www.theaustralian.com.au/national-affairs/abs-brings-samesex-marriage-vote-home-20m-under-budget/news-story/f9c09ced86ab693ec7ca4e6f58005d9a>

The final cost of the postal survey was revealed on December 9, 2017, with Acting Special Minister of State, Mathias Cormann, announcing, 'Happy to report that the ABS delivered the Australian Marriage Law Survey for a total cost of \$80.5 million. Well below the \$122m Budget.'

<https://www.ouinperth.com/government-announces-postal-survey-cost-much-less-than-expected/>

It has further been noted that the value of any government expenditure is determined by what has been gained from it. In the particular case of the same-sex marriage postal survey, the cost of the survey has been justified as keeping an election pledge. The Coalition went to the election promising it would conduct a plebiscite on legalising same-sex marriage and was returned to office partially on the basis of that pledge. The Senate prevented the government passing the enabling legislation for a plebiscite, which then required the government to use the administrative option of a postal survey.

Malcolm Turnbull justified the postal survey as keeping an election promise. He stated, 'Strong leaders keep their promises, weak leaders break them. I am a strong leader.'

http://www.huffingtonpost.com.au/2017/08/07/same-sex-marriage-where-the-hell-is-it-at_a_23069529/

The Treasurer similarly justified the expense of a postal vote as the necessary cost of keeping an election promise. He stated, 'Keeping promises is money well spent.' <https://www.sbs.com.au/news/122-million-for-same-sex-marriage-postal-vote-is-money-well-spent-morrison>

Disadvantages of postal surveys and plebiscites

1. Postal surveys and plebiscites are often unnecessary and wasteful

It has been argued that both postal surveys and plebiscites are generally unnecessary as they do no more than confirm what regular public opinion surveys already demonstrate on particular social issues. Thus, they are often condemned as wasteful, given that they involve what is claimed to be needless government expenditure.

These points were made by some critics in relation to the same-sex marriage postal survey and any subsequent postal surveys after Malcolm Turnbull suggested a further survey in 2018 on the question of whether Australia should become a republic.

On January 2, 2018, the Blot Report stated, 'The wasteful, divisive postal vote on same-sex marriage... blew over \$80 million determining that the proportion of Australians in favour of same sex marriage was precisely the same (within statistical error) as in previous opinion polls.

It is highly likely that the same will apply to such a device on the republic question, with another \$80 million going up in smoke at the same time. A most recent Australian Electoral Study (2016) gave support for a republic at 53%, while an Essential poll indicated that 44% of the population supported becoming a republic, while 30% of the population opposed it. It also seems that the majority of parliamentarians in both houses are in support of becoming a republic.'

<http://www.blotreport.com/australian-politics/not-another-postal-vote/>

Prior to the same-sex marriage postal survey critics had also claimed that the measure was unnecessary as a large number of previous surveys had already indicated Australians' view on this issue.

A poll published in The Guardian shortly after the government announced its intention to have the Australian Bureau of Statistics conduct a postal survey found that 'most support marriage equality and 80% plan to vote in survey'. The poll found that 57% of the sample favoured a change to the law to allow marriage equality, with 32% against and 11% saying they did not know. These figures substantially replicate the results of the postal survey released three months later.

<https://www.theguardian.com/australia-news/2017/aug/21/most-support-marriage-equality-and-80-plan-to-vote-in-survey-guardian-essential-poll>

A large number of previous polls had produced very similar results. From February to April 2012, the House of Representatives conducted an online survey to provide a simple means for the public to voice their views on same-sex marriage and the two bills in the Parliament which sought to legalise it, the Marriage Equality Amendment Bill 2012 and the Marriage Amendment Bill 2012. The survey closed on 20 April, having received approximately 276,000 responses, including about 213,500 comments. Of these responses, 64.3% supported same-sex marriage, or approximately 177,600 of the respondents. https://en.wikipedia.org/wiki/Public_opinion_of_same-sex_marriage_in_Australia

In an editorial published on August 9, 2017, The Northern Territory News stated, 'The problem, of course, is that we already know that most Australians support same-sex marriage and just expect our elected officials to get on with the job and pass the laws.

Poll after poll, including the NT News's own, show the majority of Australians support same sex marriage, or don't care enough to fight against it. The NT News says all opinions for or against same-sex marriage are valid and worthy to be heard but the pointless waste of taxpayer money is not.

The millions spent paying for plebiscites which our pollies wish to use to sidestep their duties in parliament could much better be used to increase pensions, provide free travel for the elderly, lower costs of living or provide bill relief for our nation's most vulnerable.'

<http://www.ntnews.com.au/news/opinion/stop-wasting-precious-cash/news-story/77ac2574fd2a3b69e074b0ac58dbb7e6>

2. Postal surveys may not supply an accurate indication of the electorate's views

Those who dispute the utility of plebiscites in general and Australia's recent postal survey in particular argue that the measures may not result in an accurate gauge of popular opinion. One of the primary concerns is that under the Australian Constitution referenda are compulsory (that is, all registered voters have to take part). Plebiscites, on the other hand, are not referred to in the Constitution and only have to be compulsory if the enabling legislation that the government puts in place makes them so. Critics maintain that plebiscites that are not compulsory cannot be relied upon to be a true representation of the attitudes of the Australian population. The voter turnout may be too small to give a clear indication or it may be skewed in some way. Perhaps more people favouring one side of the issue than another vote or perhaps electors in one state or in a

particular socio-economic group are less represented among those who complete the plebiscite. The postal survey authorised by the Turnbull government is also voluntary which means that critics feared it would not produce an accurate reflection of the views of the electorate. In an opinion piece published in *The Monthly* in November, 2017, Judith Brett, emeritus professor of politics at La Trobe University, explained why a non-compulsory survey could undermine the public's acceptance of the vote. Professor Brett stated, 'But, even if two thirds of the population "vote" in the survey (a very high number in the context of voluntary voting), and three quarters of respondents support the Yes case, it still won't deliver a clear majority outcome of those eligible to vote, and will give grounds for whichever side loses to query the outcome.'

<https://www.themonthly.com.au/issue/2017/november/1509454800/judith-brett/travesty-process>.

There has also been concern that the circumstances under which the survey is distributed and can be filled in is open to tampering. Professor Brett notes, 'This survey is all postal. Forms are received by post, and filled in anywhere. There is even provision for "a trusted person" to complete the survey for you. The instructions on the ABS website describe this as "a private arrangement between the eligible Australian and the trusted person", adding that "A person cannot self declare or claim themselves to be a trusted person for someone else." But as there is no formal process for nomination, how would the ABS know? <https://www.themonthly.com.au/issue/2017/november/1509454800/judith-brett/travesty-process>

In the event the high level of voter response (nearly 80%) went a long way toward allaying fears about the validity of the process. Critics, however, maintain that it remains an intrinsically flawed one.

3. Postal surveys and other forms of direct democracy allow elected governments to avoid fulfilling their function

Opponents of the use of postal ballots, plebiscites and other forms of direct democracy as a means of making political decisions argue that they allow governments to sidestep the role for which their members are elected.

Those who support this view argue that governments are elected to govern, that is, to make decisions on behalf of the electorate, and that should governments regularly seek a public vote to resolve difficult issues the resources of government would not be being used properly.

This point was made by Owen Jacques in a comment published by *The Fraser Coast Chronicle* on January 2, 2018. Jacques was responding to suggestions made by both the Prime Minister, Malcolm Turnbull, and the Opposition leader, Bill Shorten, that each would call for a public vote as part of the process for deciding whether Australia should become a republic. Jacques stated, 'This was always going to be a key danger of Turnbull's same-sex marriage ballot. A decision that ought to have been made by the politicians we pay was foisted on to the people.

Now both the Coalition and Labor see public ballots as the best way to make a difficult decision. Rather than risk alienating voters over a strong and considered stance, they can take it to the people and let them blame each other.' <https://www.frasercoastchronicle.com.au/news/ballot-becoming-republic-give-me-someone-who-can-l/3301998/>

Jacques further suggests that the general public does not have the knowledge or expertise to take the major decisions which it is the role of a well-resourced Parliament to make. He states, 'This new trend of politicians throwing their hands up must not become a well-trodden path for Australia. The public doesn't have access to the depth of knowledge that government has -- researchers, experts, experienced policy makers and lawyers ought to be weighing in.'

<https://www.frasercoastchronicle.com.au/news/ballot-becoming-republic-give-me-someone-who-can-l/3301998/>

Favourable comparisons have been made between the Victorian government's recent willingness to take difficult decisions regarding euthanasia legislation and the federal government transferring issues to the public through a consultative process.

In an opinion piece published in *The Daily Telegraph* on October 22, 2017, Annika Smethurst observed, 'Victorian MPs proved that they were mostly capable of handling a difficult debate and dealing with this decision on their own...

Confining this decision to parliamentary chambers has meant that any community debate over voluntary-assisted suicide has been relatively free of the bitterness shown in the same sex marriage campaign... the voluntary assisted dying debate proves that Parliament is the best forum to resolve these issues.' <https://www.dailytelegraph.com.au/news/opinion/euthanasia-debate-an-example-of-how-parliament-is-supposed-to-work/news-story/c6a45ed0b1978e35f2a4ebfa49bd4683>

4. Postal surveys and other forms of direct democracy can lead to division and community distress

It is argued that one of the functions of government is to debate issues of public concern in an ordered and controlled manner.

Despite the poor behaviour of some members of Parliament during debates, opponents of postal surveys and plebiscites maintain that highly contentious issues are best thrashed out within the confines of parliament as this limits the potential for offence and disorder.

Critics of the postal survey claim that the debate it prompted was not always conducted respectfully and that much harm was done within the Australian community as a result.

Digital youth service ReachOut noted that there was a 20 per cent surge in people accessing its online advice relating to LGBTIQ issues in the month following the Turnbull government announcing the same-sex marriage postal survey. ReachOut CEO Jono Nicholas claimed that young LGBTIQ Australians are the regular recipients of vilification and that the national debate about their right to marry was 'heightening this level of distress'.

<http://www.northerndailyleader.com.au/story/4931048/mental-health-groups-sound-alarm-over-postal-survey/?cs=8>

Many same-sex marriage advocates wanted a free vote on the issue in federal Parliament and opposed a public vote - whether by plebiscite or postal survey - partly because of fears about the mental health impacts of a broadly-based community debate. National Mental Health Commission co-chair, Allan Fels, said the survey debate had heightened discrimination against gay and lesbian Australians and that those on both sides of the issue were suffering distress. He stated, ' People get very stressed about this topic and debates can get out of hand.' <https://www.sbs.com.au/news/mental-health-fears-over-plebiscite>

It has been noted that many people opposed to same-sex marriage also claim to have been the victims of discrimination. Federal Liberal Party vice-president Karina Okotel, who openly rejected same-sex marriage noted, ' A culture has developed whereby it's acceptable to vilify, mock, abuse and shame anyone who stands in the way or even raises questions about whether we should legalise same-sex marriage. I have been called a homophobe, a bigot and been told that my views are disgusting.' <http://www.northerndailyleader.com.au/story/4931048/mental-health-groups-sound-alarm-over-postal-survey/?cs=8>

Liberal senator Dean Smith has condemned the postal survey suggesting that community distress and disharmony are an inevitable consequence of such public debates. Senator Smith stated, 'We have had two binding plebiscites previously in 1916 (and) 1917. They were acrimonious and they divided communities...Postal plebiscites, national plebiscites are corrosive to our representative parliamentary democracy.' <https://www.sbs.com.au/news/mental-health-fears-over-plebiscite>

5. Regular postal surveys, plebiscites and referenda could leave the electorate with voter fatigue

It has been suggested that Australian voters are already required to exercise their democratic rights quite frequently. Adult voters vote in a minimum of one federal and one state election every three years. In most states they vote for upper and lower house representatives and on the federal level they vote for their lower house representative and half the Senate positions apportioned their state at each election. https://www.aph.gov.au/About_Parliament/Work_of_the_Parliament/Elections

Residents and ratepayers are also required to vote in council elections every four years.

<http://knowyourcouncil.vic.gov.au/guide-to-councils/council-elections/how-elections-work> Voting at all these levels is compulsory and failure to do so attracts a fine.

Regular additional voting through postal surveys, plebiscites or referenda is likely to be seen by some voters as a burden.

Initial voter reluctance is claimed to be indicated by the number of young Australian voters not registered to vote. An ABC 7.30 report telecast on May 12, 2016, noted, 'Half of all 18-year-olds and a quarter of 19-year-old Australians are not yet enrolled to vote in [the next] election. With around 350,000 youth votes that will not be cast in 2016, it makes them the most under-represented voting group. Around 608,000 Australians 25 years and older are also not enrolled, adding up to almost a million missing voters or almost six per cent of eligible voters who won't be going to the polls.' <http://www.abc.net.au/7.30/half-of-australias-18-year-olds-will-not-vote-in/7410384>

Among registered voters, voter turnout is commonly used to measure political engagement; however, with voting compulsory in Australia a high turnout may still mean voters are weary of the process.

A 2015 German study suggested that more frequent voting may exacerbate disaffection. The study found that voters can become demotivated for up to six months after an election.

<http://www.begadistrictnews.com.au/story/4143295/have-you-caught-a-case-of-voter-fatigue/>

In a comment published in The Daily Telegraph on November 8, 2017, Gary Nunn noted the voter weariness which marked the end of the same-sex marriage voting period. Nunn stated, '[I]f one thing unifies, it's surely the relief that this postal ballot plebiscite finally ends... People in both camps have felt injured or insulted over these six long weeks. Many of the public feel fatigued. They just want it to be over.'

<https://www.dailytelegraph.com.au/rendezview/gay-community-wont-forgive-plebiscite-pushers/news-story/3f3c2b94deee4ae670eb0e163079b5a5>

Further implications

There are inevitable tensions in a democracy.

Elected governments gain legitimacy because they have been endorsed by a majority of the electorate. Rule through consent of the governed is a fundamental principal of democracy.

However, the consent of the governed is largely dependent on the electorate believing that their government is acting in their best interests. This belief seems to have broken down in many Western democracies.

Repeatedly in Australian political focus groups, designed to gauge voter attitudes, the complaint is made that politicians, and party leaders in particular, are 'out of touch'. Politicians are condemned for having no interest in or understanding of the lives of the average voter. Part of this appears to be based on the belief that politicians are overpaid and privileged. 'Never had to live on the sort of money we've got to get by on'; 'they don't know how we live'. <http://www.smh.com.au/federal-politics/political-news/voters-express-discontent-at-both-major-parties-in-fairfax-focus-groups-20170806-gxq97d.html>

Alliances to particular parties are breaking down. Voters no longer exhibit automatic loyalty to a particular party. This point was underlined by former Prime Minister John Howard in a speech given to the Australian Institute of International Affairs in October, 2017. Howard identified a 'fragmentation' of support and a reduction in the automatic attachment voters once had to the major parties. <http://www.theaustralian.com.au/national-affairs/howard-political-parties-are-losing-tribal-loyalties/news-story/d5ac427d86aded72d4cc439514c0e0ce> It has been estimated that between 30 and 40% of the Australian electorate may now be composed of 'swinging voters', electors whose vote may readily change from one election to another.

<http://www.theaustralian.com.au/national-affairs/howard-political-parties-are-losing-tribal-loyalties/news-story/d5ac427d86aded72d4cc439514c0e0ce><https://theconversation.com/factcheck-are-swinging-voters-disengaged-and-hard-to-reach-15804> More significant is the probability that these voters do not automatically assume that either of the major parties are currently serving their interests.

Associated with a lack of support for the traditional parties has been a growing interest in independent candidates or candidates from small parties representing narrow sectional interests. A parliamentary research paper released in September 2010 concluded, 'Against the decline in

support for major parties, there has been a slow but steady increase in support for independent candidates in federal and state elections since 1980.' https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1011/11rp04 It seems that a significant section of the electorate is looking for representatives who better serve their interests. These developments have significant implications for the operation of Australian democracy. Declining support for the major parties in recent times is leading to more non-majoritarian outcomes at elections. Particularly in the Senate, where Government majorities have been historically uncommon, governments have had to form alliances with a variety of independents or small party representatives in order to get their program accomplished. This has a number of consequences. It may make governments more responsive to minority views; it may also make governments less able to implement their programs which feeds community perceptions that they are weak, incompetent and ineffectual.

Calls for an increased use of plebiscites or perhaps of the newly developed postal survey are interesting in this context. In November, 2016, independent Jacqui Lambie stated her intention to work with small party leader Pauline Hanson, to have a number of plebiscites conducted at the same time as the next federal election. Senator Lambie wanted a ballot held on same-sex marriage, indigenous recognition, and euthanasia. <http://www.news.com.au/lifestyle/gay-marriage/lambie-pushing-for-wide-referendum-next-election/news-story/9d97a2dfea32ef71c14b9b3ab2b7c057>

On the one hand, gauging the popular view on current issues may make political parties more sensitive to the wishes of the electorate. Acting more clearly in accord with the popular will may also give government policies more legitimacy than they currently enjoy among many voters. On the other hand, there are concerns as to whether majoritarianism inevitably produces the best policy outcomes. One of the reasons representative government was established was the belief that governing required expert knowledge and deliberative judgement. The electorate cannot be assumed to have either.

Parliamentarians have access to Parliamentary libraries, the work of Parliamentary researchers and to the submissions of those responding to a particular bill. They participate in committees that investigate issues of concern. They have the opportunity to develop expertise and the time to deliberate. Governments have the whole apparatus of the Public Service to support their policy formulation.

If Australia ultimately develops a mode of government that makes greater use of instruments of direct democracy such as referenda and plebiscites then there is a need to ensure that all members of the electorate are as informed as possible before they form a decision and cast a vote.

The way in which the South Australian Government responded to a Royal Commission recommendation that a nuclear fuel cycle facility be established in the state is illustrative. Following the release of the Royal Commission Report recommending the setting up of the waste facility, the Premier announced the establishment of the Nuclear Fuel Cycle Royal Commission Consultation and Response Agency (CARA) to increase awareness of the Royal Commission's report and facilitate a community consultation process.

There were four elements in this community consultation and decision-making process - two citizens' juries and a series of more than 100 informal consultative meetings around the state at which citizens were invited to receive information and give feedback before a final referendum was to be held. Ultimately the referendum did not proceed because the proposal to establish the facility was rejected by two-thirds of the second citizens' jury. <http://www.abc.net.au/news/2016-11-06/sa-citizens-jury-vote-against-storing-nuclear-waste/7999262>

The above process demonstrates the degree of citizen education and pre-consultation that may need to be undertaken before a plebiscite or referendum on a significant and complex issue was held.