

# The Parliament and the People and the Role of Deliberative Polling in the South Australian Constitutional Convention\*

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*This article is an examination of the Deliberative Polling methodology adopted by the Parliamentary Steering Committee appointed by the South Australian Government to oversee the proposed parliamentary reform process in South Australia.*

*From Friday 8 to Sunday 10 August 2003 a supposedly representative cross section of the South Australian community were brought together to deliberate on parliamentary reform for South Australia. Their task was to consider the role and function of both Houses of Parliament, how the people are represented through the electoral system and ways to improve the transparency and accountability of Government.*

*How were these 'representatives' chosen? What did they do? And what did they achieve? The answer to these questions lies in the methodology of Deliberative Polling.*

The article describes Deliberative Polling as a tool designed to measure what public opinion on major issues would be like if citizens had the time and resources to become better informed. The paper outlines its use in other jurisdictions, raises questions as to its value as a polling methodology and goes on to examine the appropriateness of Deliberative Polling in the context of the role of the South Australian Constitutional Convention.

The article concludes by questioning the validity of the methodology as a means of gauging support for and bringing about constitutional change when used in isolation and suggests other alternatives that may have been utilised.

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## ***Constitutional Reform for South Australia***

The push for constitutional and parliamentary reform and the eventual South Australian Constitutional Convention began as an element of the returned Member for Hammond and now independent Speaker of House of Assembly's, Compact for Good Government with the Labor Government that came to office as a result of the support of the Member for Hammond in late 2001.

The resulting Constitutional Convention process began in mid 2002 with the formation by the government of a 'bi-partisan' Parliamentary Steering Committee. An executive group was established as the Constitutional Convention Secretariat and a 'Panel of Experts' was assembled in November 2002. Public submissions were called for in January 2003 and accepted until late June 2003.

The Parliamentary Steering Committee resolved that the Constitutional Convention would be a Deliberative Poll and formulated a series of questions for consideration by the Convention.

These were the questions to be subjected to the deliberative polling process -

Should South Australia have a system of initiative and referendum (Citizen Initiated Referenda) and, if so, in what form and how should it operate?

What is the optimum number of parliamentarians in each House of Parliament necessary for responsible government and representative democracy in the Westminster system operating in South Australia?

What should be the role and function of each of the Houses of Parliament?

What measures should be adopted to improve the accountability, transparency and functioning of government?

(1) What should be the role of political parties in the Legislative Council and what should be the method of election to the Legislative Council?

(2) What should be the electoral system (including the fairness test) and method of election to the House of Assembly?<sup>1</sup>

### ***What is a Deliberative Poll?***

The *Deliberative Poll* is a registered trade name of a survey process owned by the Centre for Deliberative Polling headed by Professor James Fishkin and based at the University of Texas in Austin. It is licensed by the Centre for Deliberative Polling for use in Australia to Issues Deliberations Australia.

'Deliberative Polling attempts to counter rational ignorance, non-attitudes and the flaws inherent in both typical opinion polls and typical focus groups. Citizens are

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<sup>1</sup> Constitutional Convention, South Australia Deliberates: The Future of Our Parliament — A Statewide Deliberative Poll — Final Report to Parliament, 29 October 2003.

given the opportunity to become informed about the issue under consideration, to consider competing perspectives on that issue, to have their questions answered, and to debate the diverse nuances of the issue with their peers. The citizens also have time to weigh the competing arguments and to draw conclusions. Deliberative Polling thus empowers individuals and the collective citizenry to make informed decisions about issues affecting their lives, their state and their nation'.<sup>2</sup>

Quoting Fishkin the originator of deliberative polling, '... the deliberative poll can be thought of as an actual sample from the hypothetical society — the deliberative and engaged society we do not have' and further 'A deliberative poll attempts to model what the public would think, had they a better opportunity to consider the question at issue'.<sup>3</sup>

'Most polls seek to predict behaviour. A deliberative poll seeks to recommend particular behaviour. That is, if the sample is properly representative and the participants have not been unfairly influenced in any way, then we can presume that most of the population would come to the same conclusions as the participants if they had the same time and the same access to information'.<sup>4</sup>

Fishkin, speaking about a deliberative poll conducted by the 'Newshour' program on the Public Broadcasting Service of America described the unique nature of the process as being 'different from ordinary polling in that a random, representative sample of the public is actually gathered in one place for a weekend to participate in face-to-face small group discussions and to pose questions to opposing experts and political leaders.

Prior to the weekend gathering, these participants take a poll. They are then given carefully balanced introductory background materials to prepare them for the informal discussions that will take place over the weekend.

After the weekend of small group deliberations and large group Q&A sessions with experts, participants' opinions are sampled, providing insights into the views of informed citizens'.<sup>5</sup>

### ***The Convention's Deliberative Poll***

Preceding the South Australian Constitutional Convention's deliberative polling process were twenty-six community meetings which took place throughout South Australia during February and March 2003, including many regional country meetings. Nearly 1700 people attended these meetings. The meetings were

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<sup>2</sup> Ibid.

<sup>3</sup> Tim Dunlop @ [www.onlineopinion.com.au](http://www.onlineopinion.com.au).

<sup>4</sup> Ibid.

<sup>5</sup> From [www.pbs.org/newshour/btp/dop\\_background.html](http://www.pbs.org/newshour/btp/dop_background.html) — *What is a Deliberative Poll* — No. 16

informed of the Constitutional Convention issues and questions and about possible parliamentary reforms. Members of the Parliamentary Steering Committee and the 'Panel of Experts' addressed these meetings.

In South Australia the Deliberative Poll involved a random, representative sample of South Australian voters being surveyed by telephone about parliamentary reform in June 2003 with questions designed in collaboration with *Newspoll* (a news Corporation affiliate, the holders of the Australian license for Deliberative Polls) and the Parliamentary Steering Committee.

The 1,201 people originally interviewed by telephone were invited to attend the Convention and 809 responded that they would like to attend. Trained volunteers contacted this group by telephone again to provide them with information and to help them overcome any perceived obstacles preventing their attendance.

### ***The Representative Sample***

The Final Report of the Constitutional Convention describes the recruitment process for the representative sample.

The random sample of 1,201 potential delegates (voting age residents of South Australia) were initially interviewed between June 16 and June 22, 2003. These respondents were typical of respondents in other random sample surveys conducted by *Newspoll*, and reflected a spread of demographics and opinions that might be found in the general population at that time:

- 49 per cent were male, and 51 per cent female;
- 42 per cent were employed full time, 17 per cent part time, with the remainder not in paid employment (this category includes homemakers, students, retirees, and unemployed people);
- 24 per cent claimed to have a household income of \$60,000 or more, 30% an income of \$30,000 to \$59,000, 31 per cent a household income of less than \$30,000 (15 per cent refused to provide income information);
- 74 per cent lived in the Adelaide metropolitan area, 26 per cent in regional South Australia.<sup>6</sup>

A discussion paper drafted by the 'Panel of Experts' and other briefing materials were distributed to the 809 delegates who indicated they would attend. Of the 809 original potential delegates, 330 people eventually attended the Convention.

The Constitutional Convention Deliberative Poll was then conducted from 8 to 10 August 2003 at the Adelaide Town Hall and at Parliament House. The people attending were assigned to groups of 15 with a 'neutral' group facilitator and a

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<sup>6</sup> Constitutional Convention, South Australia Deliberates: The Future of Our Parliament — A Statewide Deliberative Poll — Final Report to Parliament, 29 October 2003.

group manager. They debated, discussed and questioned in their small groups and in plenary sessions were able to ask questions of competing experts and advocates.

On Sunday 10 August 2003 the delegates were surveyed again with the same questions they had been asked 8 weeks earlier by telephone.

The delegates then had a final group discussion about their three key priorities for parliamentary reform in South Australia.

The final recommendations included a reduction of the current 8 year term for Members of the Upper House to 4 years, an 'increase' in the independence of the Speaker of the Lower House, increased citizen's involvement in Parliamentary processes including Citizen's Initiated Referenda and the introduction of optional preferential voting.<sup>7</sup>

The Final Report was released by Issues Deliberation Australia on Monday 1 September 2003.

[The statistical results although not immediately relevant to the theme of this article are attached as Appendix A]

### ***Deliberative Polling as a Methodology***

So what is it about Deliberative Polling that recommended it as the most appropriate methodology for the Constitutional Convention and the best means of gauging the views of South Australia?

#### **Rational ignorance**

The developer of Deliberative Polling, Professor Fishkin, in relation to the Deliberative Poll sponsored in part by the 'Newshour' program of the Public Broadcasting Service of America in January 2003 said, 'Some people call this a poll with a human face: It has the statistical representativeness of a national sample, but the concreteness and immediacy of real people'.<sup>8</sup>

The methodology of the Deliberative Polling is an amalgam of the techniques of qualitative and quantitative research methods and uses such techniques as interviews, group discussions and cognitive mapping and the analysis of such data along with the collection of survey data about people's attitudes, beliefs and behaviour which is also subjected to statistical analysis.

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<sup>7</sup> Ibid.

<sup>8</sup> *By the People: A National Conversation About America in the World* — [www.pbs.org/newshour/btp](http://www.pbs.org/newshour/btp)

A Deliberative Poll, its supporters claim, gives ‘citizens a chance to become more knowledgeable about current issues and provides them with a public space to express their views. It moves the conversation beyond the usual sound bites and into the gray areas of real experience’ and further that ‘during the group discussions participants learn from one another’.<sup>9</sup>

To date more than twenty such polls have been conducted worldwide including the British Deliberative Polls on Crime in 1994, on Europe in 1995 and on the Monarchy in 1996. In Australia Deliberative Polls had been conducted before the South Australian Constitutional Convention; namely the Republic Convention in 1999 and the Deliberative Poll on Aboriginal Reconciliation in 2001.

Issues Deliberation Australia, the Australian arm of Issues Deliberation America and the convenor of the Constitutional Convention depicts Deliberative Polling as being ‘modeled after ancient Athenian democracy’ in that it ‘seeks to examine what the public would think if given an opportunity to be informed and to deliberate with their peers on topics of social and public policy’. They argue that citizens are ‘often uninformed about key public issues’ and that conventional polls represent ‘the public’s surface impressions of sound bites and headlines’ and that the public have ‘little reason to confront the tradeoffs or invest time and effort into acquiring information’.<sup>10</sup>

The proponents of Deliberative Polling seem to regard the model of representative democracy as no longer adequate to the task and argue that the solutions to many social issues are arrived at by partisan means with the interests of political parties and interest groups, with particular ideologies that can exclude consideration of a range of alternative and possible effective solutions, dominating the debate and decision making process.<sup>11</sup>

Professor Fishkin himself takes the view that ‘with the old smoke-filled rooms, you’ve got deliberation from an unrepresentative group. With polls, primaries and referendums, you get mass participation but not a lot of deliberation because ordinary citizens have a lot of other things to do with their time. So this is an attempt to have the best of both worlds’.<sup>12</sup>

This view is supported by some, such as Tim Dunlop a PhD student examining the role of intellectuals in Australia, who has argued that the Deliberative Polling methodology requires ordinary citizens and the experts to come together as equals. Dunlop argues that in any unmediated forum the experts will tend to dominate and that others are inclined to defer to them. The Deliberative Poll, he says, has an

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<sup>9</sup> Ibid.

<sup>10</sup> Issues Deliberation Australia — @ [www.i-d-a.com.au](http://www.i-d-a.com.au)

<sup>11</sup> Ibid

<sup>12</sup> *By the People: A National Conversation About America in the World* — [www.pbs.org/newshour/btp](http://www.pbs.org/newshour/btp)

equalizing effect on that power imbalance by providing a model of intellectual practice where the role of the intellectual is to merely make themselves available for public deliberation and not to offer ready made solutions that ignore the wishes of ordinary citizens.<sup>13</sup>

Norman Bradburn of the University of Chicago in a paper delivered in 1998 to a meeting of the American Association for Public Opinion Research confirms the methodology described by Dunlop and adds, ‘The fact that the small groups [that the participants are divided into for the purpose of the focus group element of the process] are themselves microcosms of the population contributes to the probability that each respondent will be exposed to a wide variety of views from all kinds of people with whom they would not interact every day’.<sup>14</sup>

The Constitutional Convention’s Final Report to Parliament of October 2003 in its Project Description further refined this idea of the relatively ignorant populace becoming better informed for the purpose of offering informed opinions. In its outline of the purpose of the Deliberative Poll in determining the attitudes of South Australians to various options for parliamentary reform the Final Report observed:

‘Most citizens have neither the time nor other resources to become maximally informed on any one public policy issue. Parliamentary reform is no exception. To facilitate the informed voice of the South Australian people on parliamentary reform, it was considered crucial to ensure that the Constitutional Convention delegates were exposed to a range of *competing* perspectives. By exposure to competing arguments, delegates were guided through a systematic and comprehensive consideration of the pros and cons of the various options for reform. The informed voice of this microcosm of the South Australian population could then be taken into account during the formulation of Government policy and any future changes to the South Australian Parliament’.<sup>15</sup>

No one in this day and age could seriously mount an argument to counter the view that a better informed community and in the case of reform of the South Australian Parliament, a better informed electorate is desirable. But there are a number of doubts about the value of this intensive and narrow education process for a few citizens. If the results of the polling process are to be used to implement change which affects the wider community what validity do the outcomes have?

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<sup>13</sup> Tim Dunlop @ [www.onlineopinion.com.au](http://www.onlineopinion.com.au)

<sup>14</sup> Norman Bradburn — Polls: Deliberative and Non-Deliberative, May 1998, p. 3 @ [www.cloud9.norc.uchicago.edu](http://www.cloud9.norc.uchicago.edu)

<sup>15</sup> Constitutional Convention, South Australia Deliberates: The Future of Our Parliament — A Statewide Deliberative Poll — Final Report to Parliament, 29 October 2003

### **If only anyone could be persuaded to listen**

So what do Deliberative Polls deliver? Are they comprised of a true representative sample? Do they provide a real opportunity for citizens to become more knowledgeable about the issues before them? Is the result a better informed citizen? Are they a true forum for the consideration of a full range of alternative solutions to questions? Do the participating experts and the representative citizens come together at a deliberative poll as equals? What are the meaningful results of such polls and are the opinions as gauged accurate?

There are a number of critics of Deliberative Polling from the field of public opinion research and from those with an interest in the development of public policy.

Ignoring the complaints of those who are simply not happy with the outcomes of particular Deliberative Polls, such as some monarchists and direct electionists after the deliberative poll on the republic, there are a number of valid criticisms of the process.

The proponents of Deliberative Polling rely very heavily on the validity of the random sampling techniques used to select their representative sample of citizens. In the case of the South Australian Constitutional Convention the sample was determined using a stratified random sampling process employed by *Newspoll*. This involved the selection of household telephone numbers from current telephone listings for each geographic region of the State and the random selection of an individual registered on the electoral roll in each household. To include people who were not immediately contactable by telephone a system of call-backs and appointments were used. The data was then weighted by gender, age and geographic location.<sup>16</sup>

Most critics of the method of determining the sample for a deliberative poll concede that the selection can never be a precise science. However, in our view even the literature of Issues Deliberation Australia demonstrates that the sample contains a bias merely by being made up of those who a) expressed a willingness to participate in the 25 minute initial interview b) devote in this case a minimum of three days of their time to attend the Convention c) undertake to read the research material d) accept payment to attend and other expenses and d) actually attend and participate.

Gabor Toka of the Department of Politics at the Central European University in Budapest argues that there is an element of self selection in the recruitment of delegates in that the well informed and/or politically involved citizens more often agree than others to participate.<sup>17</sup> 16 Also there is a very real chance that in the

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<sup>16</sup> Ibid.

<sup>17</sup> Gabor Toka, presentation to the Government-Citizen Communication Workshop, Open Society Institute, Budapest, March 2002



method employed to recruit participants, any number of minority groups could go unrepresented by virtue of the sample size or the method used to recruit the sample. Groups such as those under the voting age and/or not registered on the electoral role, who are non-English speaking citizens or who for any other reason escaped the attention of *Newspoll*. In fact in the case of the Deliberative Poll on Aboriginal Reconciliation the opposite was the problem. Aboriginals comprising less than two percent of the population were deliberately over sampled so that they would have a stronger voice in the deliberations.<sup>18</sup>

Critics argue that the proposition that participants leave the poll as better informed citizens is based on the measure of opinion change from the first interview to the interview conducted at the conclusion of the poll. Discounted by the supporters of this performance measure is the phenomena well understood in the field of public opinion research, that of how opinions are formed. It is argued that people form opinions rationally in the light of their perceived interests and value structures. Respondents to surveys of opinion start with certain policy preferences based on their interests and values, process information about policy or the relevant issue, and evaluate that information in the light of their values. Their answers reflect that process.<sup>19</sup>

Arthur Lupia in an article in the January/February 2004 edition of the American journal 'Legal Affairs' argues that supporters of Deliberative Polling have no basis for a claim that the polling process 'increases civic competence' as the devisers of Deliberative Polling like to term it, in the absence of any data comparing deliberative polling to other means of changing opinions. Lupia is critical of Professor Fishkin's and others portrayal of citizens 'as 'ignorant' and 'selfish' because they do not pay attention to politics' and that 'they dismiss or underemphasize the importance of what citizens do instead of deliberating about politics.' Lupia argues that 'while some people engage in activities that may have limited social value... millions of others are raising families, helping neighbours, counseling friends and co-workers and engaging in a wide range of socially beneficial activities.' 'It is presumptuous' Lupia says, 'to conclude that society will benefit by taking people away from such activities and inducing them to deliberate about politics with strangers'.<sup>20</sup>

To the proponents of Deliberative Polling it is the size of the opinion shift that is the result most prized. The Centre for Deliberative Polling in its promotional material lists only one result that is consistent amongst all the deliberative polling exercises undertaken and that is 'Each time, there were dramatic, statistically significant

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<sup>18</sup> Gerrit Betz — Creator of Deliberative Poll Visits Carnegie Mellon — 'The Carnegie Pulse' March 2004 @ [www.tcpulse.com](http://www.tcpulse.com)

<sup>19</sup> Norman Bradburn — *Polls: Deliberative and Non-Deliberative*, May 1998, p 3 @ [www.cloud9.norc.uchicago.edu](http://www.cloud9.norc.uchicago.edu)

<sup>20</sup> The Centre for Deliberative Polling, *Deliberative Polling: Executive Summary* @ [www.la.utexas.edu/research](http://www.la.utexas.edu/research)

changes in views' and concedes that Deliberative Polling's main purpose is as 'a social experiment and a form of public education in the broadest sense'.<sup>21</sup>

The results of earlier Deliberative Polls illustrate the kind of change in opinion that the process can create. In the case of the deliberative poll conducted in the UK on the Monarchy in 1996 the changes in response to some of the propositions put to participants before the deliberative polling process as compared to after are striking. To the statement 'The Monarchy should not stay head of the Church of England' before the poll 26 per cent supported the sentiment and 56 per cent after the deliberative poll.

A number of critics of deliberative polling have pointed out that there is a readiness by the supporters of Deliberative Polling to portray such results as a new found support among the wider public for a particular proposition. However a closer examination of the statistical results of a range of Deliberative Polls bears out the contention of Gabor Toka that, 'The lower the initial familiarity of the public with the issue was, the bigger the change tends to be, and the more people gain knowledge during the experiments, the bigger the impact on their individual opinion seems to be'.<sup>22</sup>

This has led Richard Posner, also writing in the journal 'Legal Affairs' to suggest that Deliberative Polling has no more validity as a measure of public opinion than any other method but that its main advantage is that it can ensure its sponsors of a statistical gratification and he concludes

that what motivates many deliberative democrats is not a love of democracy or a faith in the people, but a desire to change specific outcomes, which they believe they could do through argument, if only anyone could be persuaded to listen . . .<sup>23</sup>

Other critics of Deliberative Polling and of specific deliberative polls, such as Ron Brunton writing in the Brisbane Courier Mail on 3 March 2001 about the Deliberative Poll on Aboriginal Reconciliation, have argued that 'deliberative polls are just a subtle form of indoctrination, intended to strengthen political positions favoured by the cultural elites.' Brunton and his fellow skeptics argue that this indoctrination occurs in a number of ways. In relation to the Deliberative Poll on Aboriginal Reconciliation Brunton expressed concern at the list of panelists, which included himself, and the draft of the briefing paper prepared by the organisers for the 'representative Australians' and claimed that neither showed evidence of balance.<sup>24</sup> Other critics, such as journalist Paddy McGuinness, have questioned the use of some chairpersons and experts. McGuinness used the example of 'celebrities'

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<sup>21</sup> The Centre for Deliberative Polling, *Deliberative Polling: Executive Summary* @ [www.la.utexas.edu/research/](http://www.la.utexas.edu/research/).

<sup>22</sup> Gabor Toka, presentation to the Government-Citizen Communication Workshop, Open Society Institute, Budapest, March 2002.

<sup>23</sup> Richard Posner, *Smooth Sailing*, 'Legal Affairs': January/February 2004.

<sup>24</sup> Ron Brunton, *Courier Mail*, 3 March 2001.

such as Barry Jones and Ian Sinclair as Chairmen who, he says, have become regular attractions on the Australian deliberative poll circuit and whose opinions, McGuinness argues, are well known and therefore their influence upon the process can not be ignored.<sup>25</sup>

Others have argued that the facilitator led group discussions are at risk of being influenced by the facilitator who may be seen by the participants as a person of some authority and with perhaps a greater knowledge of the subject matter than others. Also there is a likelihood that others in the groups, the well dressed, the articulate, the professionals, might be seen as leaders of opinion. Arthur Lupia cautions that 'science provides mixed messages about the relationship between deliberation and competence. Many studies reveal that some group interactions actually decrease competence; one example is the organizational malady of 'groupthink'.<sup>26</sup>

Momentarily forgetting, it seems, that Issues Deliberation Australia is the licensed agent for Deliberative Polls in Australia (and extensively uses the services of *Newspoll* in its processes) Sol Levevic head of *Newspoll* in Australia told ABC Radio soon after the results of the Deliberative Poll on the republic that 'you can't take the results of this deliberative poll to be predictive of the electorate.' He added that 'it's just a very interesting experiment in how people can change their attitudes if they are exposed to a lot of information.' Mr Levevic concluded, 'some members of the electorate can come to a different conclusion if they get involved more deeply in the issues. The challenge, of course, is how you can do that in the real world.'<sup>27</sup>

It has been pointed out by Ron Brunton that the results of the Deliberative Poll on the republic issue in 1999 in no way reflected the results of the republic referendum. After an exhaustive public education program during the campaign and the wide ranging publicity that the Deliberative Poll itself gained the model for the republic adopted by the 347 'representative Australians' at Old Parliament House on 24 October 1999 was soundly rejected by the electorate at the referendum shortly after.<sup>28</sup>

It could be argued that the referendum campaign was to a degree hijacked by the political 'elites' that the deliberative polling process seeks to exclude. However it is inevitable that these elites, be they the experts, the academics, the media or even the people's representatives — the politicians, are going to play a role in the implementation of any outcomes. This was the case during the campaign on the

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<sup>25</sup> Ibid. Barry Jones and Ian Sinclair have presided at all three Deliberative Polls held in Australia.

<sup>26</sup> Arthur Lupia, *The Wrong Track*, 'Legal Affairs', January/February 2004]

<sup>27</sup> Sol Levevic, *Newspoll* — ABC Online 'PM — *Newspoll* head dismisses weekend republic poll' — PM Archive, 25 October, 1999

<sup>28</sup> Ron Brunton, *Courier Mail*, 3 March 2001

republic referendum question and we suggest it will be the case in any attempt to implement the outcomes of the South Australian Constitutional Convention.

Further questions arise in relation to the value of deliberative polling and the use of its outcomes in the formation of public policy. Not the least of these is the question of the cost of conducting such polls which involve a large number of paid facilitators and administrators. They also normally require the provision of payments to participants, venue hire and catering costs and in some cases travel and accommodation costs.

Perhaps the most obvious failure of the Constitutional Convention's Deliberative Poll as a means of considering options for constitutional reform is the narrow basis on which the participants were required to deliberate and the artificial nature of the a deliberative process that separates the public debate from the common action. The narrow basis on which participants are required to deliberate is illustrated by the question before the Constitutional Convention on Citizen Initiated Referenda (CIR). This proposition was put as a choice between CIR and no CIR. Deliberation on any other form of direct democracy was not proposed. In the artificiality of a deliberative poll environment the citizens exclusively engage in the discourse and the public officials act. This effectively removes from the deliberations those who have a history of community problem solving through organised groups or professional expertise.

We would argue that the use of a Deliberative Poll for the purpose of considering constitutional change is based on a misunderstanding of modern political democracy. Richard Posner notes that the proponents of Deliberative Polling claim it to be a recreation of the system of Athenian democracy, where the citizenry as a whole were legislature and court. However, that is no longer feasible in a complex modern democracy. Posner says that 'a modern democracy for reasons of efficiency and feasibility, is a representative democracy, which involves a division between rulers and ruled. The rulers are drawn from a governing class consisting of ambitious, determined and charismatic seekers of power, and the role of the citizenry is to vote candidates for officialdom in and out of office on the basis of their perceived leadership qualities and policy preferences.'<sup>29</sup>

The result of the Constitutional Convention was a body of data derived from the Deliberative Poll process that now must run the gauntlet of interpretation, codification and implementation by the same elites that deliberative polling specifically excludes from the process. To turn the views of the newly informed 'representative South Australians' into constitutional reform will require it to pass through the legislative process where the elites lay in wait. Five Bills drafted on the instructions of the Speaker of the House of Assembly await introduction. It will be interesting to see what fate awaits them given the absence of any of the obligations of 'ownership' of the measures on the part of the major political parties, the public

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<sup>29</sup> Richard Posner, *Smooth Sailing*, 'Legal Affairs': January/February 2004

service, the media and the wider community and the less than convincing process from which they have been derived.

What must be asked of the decision to use Deliberative Polling in the reform of the South Australian constitution is: Has representative democracy failed to such an extent that a body such as the South Australian Parliament elected on the widest of possible franchise would allow itself to be usurped in the consideration of its own reform by a

Deliberative Poll? The answer is course that it did not. The Constitutional Convention and the Deliberative Poll were foisted upon it. The Parliamentary Steering Committee was not appointed by the Parliament but by the government and the Convention itself and the questions it was convened to address were part of a political agreement rather than any community driven push for change. This has created a situation which is quite fortuitous for those elites. They can now disown the Convention process and its outcomes.

To use the results of Deliberative Polling, a no doubt valid commercial tool for market research, as the sole means of determining public policy would be an affront to the parliamentary institution and an abrogation by its elected membership of the legislature's role.

### ***Other Models for the Conduct of the Convention***

Were there other options available to the Parliamentary Steering Committee for the conduct of the Constitutional Convention? Indeed, was a convention necessary? Any consideration of processes already familiar to the South Australian electorate would have identified a number of alternatives.

Using the argument that a representative forum for the consideration of such matters already exists — the Parliament - there are a number of its procedures that singularly or in combination may have been used to canvas and determine constitutional change.

It needs to be remembered that amendment of the State's constitution is achievable via purely legislative means, unlike the Commonwealth Constitution only certain provisions require approval by referendum. In most cases an absolute majority will suffice.<sup>30</sup>

The South Australian Parliament has a long history of using Select and Joint Committees to arrive at bipartisan or compromise positions on matters of public policy. These Committees have enhanced relevance for minority governments and

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<sup>30</sup> *South Australian Constitutional Advisory Council — First Report: South Australia and Proposals for an Australian Republic*, September 1996.

minor parties who have variously used them as a means of determining policy or influencing outcomes. Their powers and procedures allow them to call for submissions, seek expert advice, conduct or commission research, hold public and private hearings, produce and circulate discussion and position papers and even commission the drafting of legislation. A Select or Joint Committee established with broad terms of reference and representative of the make-up of the Parliament may have delivered proposals that the Parliament itself, given the process, would find it difficult not to pursue.

Another option worthy of possible consideration is a variation of a procedure used by the Parliament, admittedly without a meaningful outcome, in the debate on the reform of the laws relating to prostitution. The procedure involved cognate or simultaneous debate of five Bills representing different levels of reform of the relevant legislation. The result was the elimination of all but one Bill at the second reading stage which was taken through the remaining stages after considerable amendment. Such a process for the consideration of a range of options for constitutional reform accompanied by a period of public education and media attention before the debate (as was the case with the Prostitution Bills) may garner public support for the process and even enhance the level of respect for and understanding of the Parliament.

There are numerous other models for the implementation of constitutional change such as conventions of elected representatives, as the Federation Conventions of the 1890's were, or plebiscites or referenda. However, one often stated factor is essential regardless of the methodology and that is wide support for change. The history of Federal referenda makes it clear that any question for constitutional reform, any proposal for change to our public institutions requires bipartisan support for it to be carried. The genesis and the subsequent conduct of this particular campaign for constitutional reform did not and still does not enjoy that level of support. The Constitutional Convention Deliberative Poll with its many deficiencies we suggest has done nothing to encourage it. ▲

## APPENDIX A

## DETAILED FINDINGS FROM PRE- AND POST- DELIBERATION SURVEYS: QUANTITATIVE RESULTS

The following results detail the comparisons between pre deliberation opinions and knowledge and post deliberation opinions and knowledge of the representative South Australian delegates to the Constitutional Convention on the key areas identified for parliamentary reform in South Australia.

*Table 1: Belief in Current Parliament*

	Before %	After %	Change pp
Perceived effectiveness of the current system	54	67	+13
Appreciation of MP's effectiveness in doing job	66	83	+17
Perceived Value of the role of Committees	70	96 +	26

*Table 2: Endorsement of Bi-cameral Parliament*

	Before %	After %	Change pp
Belief in the need to continue with two Houses of Parliament	65	80	+15
Belief in power of both Houses to block legislation	76	84	+8

**Table 3: The Upper House (Legislative Council)**

	Before %	After %	Change pp
Current size of the Upper House was considered to be about right	58	65	+7
Number of terms should continue to be unlimited	59	72	+13
Upper house to stand for election every 4 years	66	75	+9
Continue the current system of proportional representation	35	62 +	27
Change to a mix of regional and proportional representation	56	36 -	20

**Table 4: The Lower House (House of Assembly)**

	Before %	After %	Change pp
Current size of the Lower House was considered to be about right	57	41-	16
The size of the Lower House should be less	32	7	-25
The Size of the Lower House should be more	6	50	+44
Ministers should be drawn from both Houses	72	73	+1

**Table 5: The Role of the Speaker**

	Before %	After %	Change %
OK for the Speaker to remain fully involved in the Party	22	15	-7
Speaker can belong to the Party, but not have any involvement	32	39	+7
Should resign from their Party, become independent MP	44	45	+1
Total: Speaker should be independent in some way	76	84	+8



**Table 6: Citizens Initiated Referenda**

	Before %	After %	Change pp
In favour of Citizens Initiated Referenda	65	64	-1
Against Citizens Initiated Referenda	32	35	+3
CIR should apply to change existing laws	10	22	+12
CIR should apply to Proposing new laws	7	7	same
CIR should apply to Both existing and new laws	75	70	-5

#### Ranked Level of Support for Different Types of CIR

**Table 7: Types of Citizens Initiated Referenda: Good Idea vs. Bad Idea?**

	Good Idea %	Bad Idea %
Direct Citizens Initiated Referenda	37	61
Indirect Citizens Initiated Referenda	49	48
Two Step Citizens Initiated Referenda	71	27

**Table 8: RANKED Preference for Different Types of Citizens Initiated Referenda**

	Preferred Type %
Direct Citizens Initiated Referenda	13
Indirect Citizens Initiated Referenda	20
Two-Step Citizens Initiated Referenda	42
NO CIR at all	23

Source: *Constitutional Convention, South Australia Deliberates: The Future of Our Parliament — A Statewide Deliberative Poll — Final Report to Parliament, 29 October 2003.*