

## Community Consultation in Environmental Policy Making

Lyn Carson, University of Sydney  
Stuart White, University of Technology, Sydney  
Carolyn Hendriks, Australian National University  
Jane Palmer, Consultant

### ABSTRACT

In 2001, a consultation experiment took place during an independent legislative review commissioned by the Minister for the Environment in New South Wales. Randomly selected citizens participated in a televote and citizens' jury on container deposit legislation, and contributed to the final recommendations of the review. The trial of these innovative participatory techniques took place because a research team from the Institute for Sustainable Futures conducting the review believed that it is crucial to include typical citizens if the community's preferences are to be determined. This consultation experiment confirmed community support for the contentious option of container deposit legislation after in-depth discussion and debate. The authors claim that the greater the level of deliberation, the more confident policy makers can be in the results of community consultation. Further, they contend that some consultation methods are more likely than others to stimulate creative resolution of complex environmental issues and can certainly add value to the policy making process, especially when policies are contentious and value-laden.

*Dr Lyn Carson is a senior lecturer in applied politics at the University of Sydney, Australia. Dr Stuart White is Director of the Institute for Sustainable Futures at the University of Technology, Sydney. Carolyn Hendriks managed the social research component of the CDL review while at the Institute for Sustainable Futures. Carolyn is now with the Social & Political Theory Program, at the Research School of Social Sciences, Australian National University, Canberra. Jane Palmer organised the citizens' jury while at the Institute for Sustainable Futures, and has previously run a consensus conference in the UK (Radioactive Waste) and a citizen jury Queensland, Australia (on a major road development).*

ISSN 1443-8607

Volume 3, Number 1: July 2002, 1-13

*The Drawing Board: An Australian Review of Public Affairs*

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## Introduction

Australia has flirted with consultation methods that allow citizens to be included in public policy making. Some of these experiments have been quite bold, for example a consensus conference on genetically modified organisms in the food chain (in 1999), and deliberative polls on the republic issue (in 1999) and reconciliation (in 2001). Both the consensus conference and the deliberative polls were convened by community-based organisations (the Australian Museum and Issues Deliberation Australia respectively). The organisers were as interested in the robustness of the process as they were in the content and outcomes of discussions. One method brought together a statistically significant sample of Australians, the other involved a diverse handful of citizens. What possibilities do these innovative consultation methods hold for conscientious policy makers? How might the strengths be exploited and the weaknesses avoided? This case study addresses these questions and suggests a bold new approach to policy making.

Policies are created or changed in a variety of ways but reviews of environmental legislation usually follow a predictable path. Typically a legislative reviewer calls for public submissions or convenes a public hearing. The experts come forward and present facts and opinions and information is also sought through a review of the relevant body of literature. The reviewer analyses the data and offers policy recommendations. The wider population is rarely involved. This case study describes a more inclusive approach. Yes, expert evidence was sought *and* attention was paid to the views of the general public because the reviewer wanted to convert the rhetoric about community consultation into reality.

## Case Study

In 2000, the state Minister for Environment commissioned Stuart White from the Institute for Sustainable Futures to conduct an independent review into container deposit legislation in New South Wales, Australia. Container deposit legislation (CDL) is legislation requiring a mandatory deposit on containers — for example, soft drink bottles — to encourage their return by consumers. In addition to a technical analysis, Dr White and his research team explored community attitudes and preferences to CDL, using traditional methods of consultation such as stakeholder interviews and a call for public submissions, as well as two deliberative and democratic processes: a Televote and a Citizens' Jury. This paper focuses on how the latter two participatory approaches were used to better understand what the broader, uninvolved general public of New South Wales thought about the issue. Of particular interest was whether CDL should be introduced in New South Wales, the willingness of citizens to pay for CDL, and the appropriateness of various deposit options.

CDL is a means of recovering container materials for recycling or reuse. Another approach widely used across Australia is kerbside recycling. CDL would approximately double the current levels of recovery rates for used containers (White 2001). The major benefits from the increased recovery and recycling or reuse of containers are the avoidance of real and hidden costs, mainly the environmental costs associated with production of virgin container materials. In Australia, local municipalities and their ratepayers have funded kerbside recycling, not the packaging industry and the consumers of products. A further complication is that 50 per cent of the major product categories (soft drink and beer) are consumed away from home so they are not captured via kerbside collection.

CDL is a highly contentious policy issue in Australia and internationally. Proponents and opponents of CDL both lay claim to speaking with the voice of citizens or consumers. Opponents, which include powerful beverage and packaging lobby groups, claim that CDL is an expensive waste reduction policy with limited benefits to the environment and litter reduction. The beverage industry also claims that its consumers would find CDL costly, inconvenient, and unhygienic.

Environment groups and local government organisations express a contrary view. The proponents argue that consumers and producers of container products should pay for the rising costs of recycling rather than local government and its ratepayers. Proponents also claim that citizens strongly support CDL, particularly in areas where the legislation is enacted.

Container deposit legislation is an excellent example of the citizen-consumer tension, where the costs are private, that is, they are borne by industry or consumers, and the benefits are public, because increased recycling results in environmental benefits. Citizens themselves experience ambivalent attachment to the roles of citizen and consumer (Achterberg 1996). Sagoff (1988) notes that the preferences of citizens and consumers can be incompatible and writes about his own American experience:

I, too, have divided preferences or conflicting ... 'preference maps' ... I speed along the highway; yet I want the police to enforce laws against speeding. I used to buy mixers in returnable bottles — but who can bother to return them? I buy only disposables now, but to soothe my conscience, I urge my state senator to outlaw one-way containers ... The political causes I support seem to have little or no basis in my interests as a consumer, because I take different points of view when I vote and when I shop (Sagoff 1988, pp. 52–53).

Recent studies of the benefits of recycling have exposed the cost of dumping used containers in landfill, mainly arising from the increased environmental impact of producing virgin container material (Nolan ITU 2001, Tellus Institute 1992, White

2001). This means that the environmental cost of throwing a container in the garbage, or throwing it away as litter, is as high as A8–10¢ per container (A10¢ = US5.5¢ = EUR6.0¢ as at May 2002). These environmental benefits are public benefits, accrued by the community as a whole, rather than by individual consumers or firms. The costs of implementing such a system, approximately A2–3¢ per container, are private costs, borne by consumers or industry. Therefore consultative mechanisms are required that allow participants to think like citizens as well as consumers.

The existing policy process has not been able to deal with the significant contention over almost all aspects of the costs and benefits of CDL, and there has been no public participation in the development of policy in regard to the regulation of the packaging industry in Australia. Policies have been traditionally developed in a vacuum where legislators and their staff are informed by the public service, and powerful interests have had a major influence in the development of policy. The packaging industry in Australia operates under a self-regulation model, which has failed to deliver recovery and recycling rates that are achieved in other states and countries with CDL. New approaches to the development of public policy in this area are required, particularly approaches that engage citizens in the decision making process.

The CDL Review was part of a larger investigation that was supported by the NSW Government through the Minister for the Environment during a major review of the Waste Act. The social research was part of the larger CDL Review. The non-traditional methods of consultation described here were an important component of that social research. These methods provided timely public participation on a complex issue covering many important matters including responsibility for the cost of recycling programs, litter control, employment impacts, minimisation of waste and resources use, scientific dissent, and uncertainty.

This combination of two deliberative processes was a world first and can be summarised as follows:

- *A Televote involving 400 randomly selected citizens across New South Wales in a two-staged informed opinion survey.* Participants were surveyed over the phone, then sent information on CDL that had been approved by all key stakeholders, and then surveyed again. The process relies on individual deliberation, though participants were encouraged to discuss the issues with family, friends, and colleagues.
- *A Citizens' Jury involving eleven randomly selected citizens from across New South Wales, who reflected a cross section of the New South Wales population.* The citizens participated in a three-day discussion forum involving facilitated discussions

between the lay panel and independent experts, group deliberation among the lay panel members including further research by them, as well as preparation of a final report with key recommendations. The beverage industry experts withdrew from the process at the last minute, forcing the organisers to cancel local government and environmental experts and to rely on a small group of independent speakers to avoid bias. An independent evaluator was commissioned to determine whether bias was avoided and, according to the evaluator, it was. The group members were not required to reach consensus but were asked to wrestle with the complexity of CDL and to see how close to consensus they could come.

Table 1 outlines the comparative and complementary characteristics of the two methods — both generally and in their specific application to this CDL case study.

### **What happened with the Televote and the Citizens' Jury?**

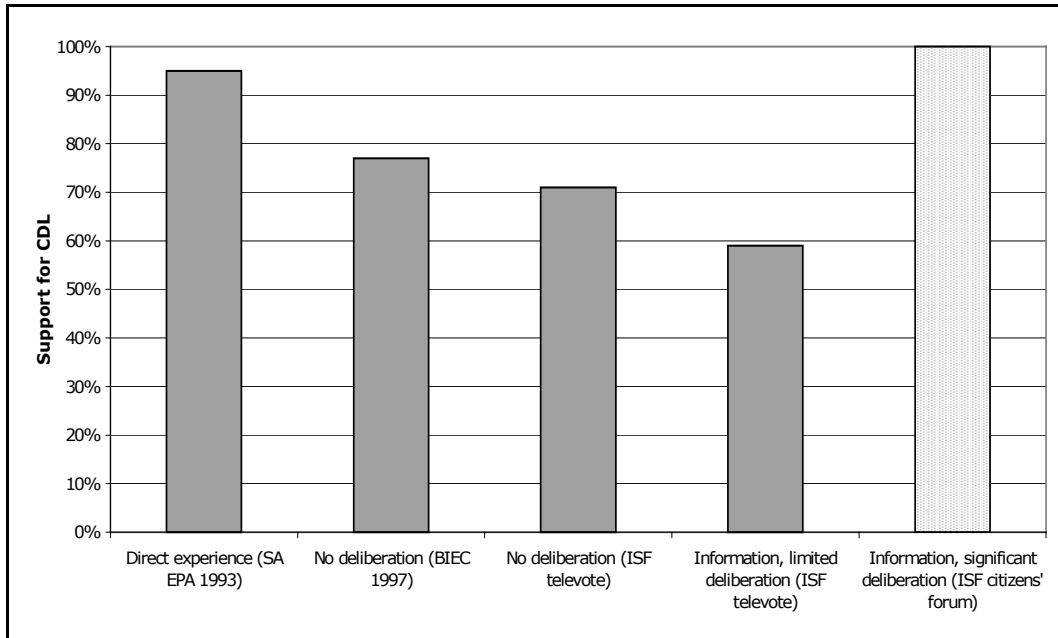
Both methods rely on discussion. Televote participants were asked a range of specific questions and asked to discuss them. Citizens' Jury participants canvassed various issues and devised their own questions. Only the question about whether CDL should be introduced in New South Wales is considered here because the respective responses provide a point of contrast for us to evaluate the strengths and weaknesses of the two consultation methods. There were many other questions and issues considered in both processes and the precise details can be found in Volume III of the Review (White 2001).

In the Televote, 400 randomly selected citizens participated in a two-stage telephone survey — the first with no information provided beyond their existing knowledge of CDL. The second survey took place one week after the receipt of background information that was developed in collaboration with the key stakeholder and interest groups. Participants were also encouraged to discuss the issue with family, friends and colleagues. In response to the question 'Do you think CDL should be introduced in New South Wales?' during stage one of the Televote — 71 per cent of participants said 'yes'. This same population was surveyed a second time, 59 per cent said 'yes'. In contrast, after two days of intensive discussions and deliberation (from Friday night until Sunday morning), eleven randomly selected citizens in the Citizens' Jury unanimously agreed that CDL should be introduced in New South Wales. Before reading any information about CDL, seven of the participants supported it, four were unsure. Having read information (prior to the group deliberations), six supported it, four were unsure and one was opposed. Why the difference in outcomes between the two? Before we speculate on possible answers to that question, some further polls could be thrown into the melting pot (see Figure 1).

**Table 1: Comparative and complementary characteristics of CDL Televote and Citizens' Jury**

	<b>Televote</b>	<b>Citizens Jury (CJ)</b>
Selection process	Random	Random (the time commitment for the CJ may have resulted in greater self-selection than in the Televote).
Contact method	Telephone	Mail
Representativeness	Representative	Diverse group reflecting a cross section of the New South Wales community.
Number of participants	400 citizens from rural and urban New South Wales.	11 citizens from rural and urban New South Wales.
Community awareness	Large number involved (directly and indirectly). Potential for raising community awareness among friends and colleagues.	Limited number involved. Media coverage was avoided so did not raise community awareness.
Cost	A\$20,000–\$50,000 for 400 people.	A\$10,000–15,000 for 11 people.
Data	Quantitative output — sample size was statistically significant.	Qualitative output — recommendations in the form of a report prepared by the panel.
Legitimacy	Process had a greater perception of legitimacy due to numbers involved.	Process can be perceived by key decision-makers as illegitimate as it only involves 'a handful' of people — the deliberative component is not quantifiable.
Participants' knowledge	More informed than an opinion survey.	Highly informed.
Deliberative capacity	Individual deliberation though participants were encouraged to discuss with friends, family, colleagues.	Group deliberation — face-to-face, questioning of experts, facilitated discussion, variety of opinions and arguments, also opportunities for experiential learning and social interaction, e.g. could have involved field trips.
Access to information and vulnerability to manipulation	Access to summarised, printed information (agreed to by stakeholders). Avoids persuasive power of experts though some exposure to opinions of others. Could have incorporated computers, which would enable access to more interactivity and information.	Access to summarised, printed information up-front and then provided with more detailed, printed information through the course of the CJ as well as a range of visuals, e.g. videos, slides, PowerPoint.  Exposed to the persuasion, motivations and characteristics of those dominating the debate — in this way participants can also sense the values inherent in 'facts' and can use their own judgment to separate fact from rhetoric.
Self interest or public interest	Decision based on self-interest, modified through discussion with others.	Deliberation tends to steer people towards outcomes in the interest of the community. The dialogue and exposure to other positions and opinions allows for learning and consensus building.

Source: Carson & Hendriks 2000 from Carson, 2000

**Figure 1: Support for CDL amongst survey, Televote and Citizens' Jury participants**

Note that the result for the Citizens' Jury is not a statistically significant result, since the number of participants is eleven, it is shown in comparison with the other results for illustrative purposes only. N=400 (SA EPA), 1007 (BIEC), 400 (ISF Televote), 400 (ISF Televote), 11 (ISF Citizens' Jury).

A survey was conducted in 1997 on behalf of a lobby group for the packaging industry — the Beverage Industry Environment Council (BIEC). It showed 77 per cent support of CDL amongst 1,007 respondents in capital cities in the eastern states of Australia (none of these states have CDL). A telephone survey of residents of South Australia was conducted in 1993 on behalf of the South Australian Environment Protection Authority (SA EPA 1993) and 95 per cent of citizens supported CDL. (CDL was enacted in South Australia in 1978.)

## Discussion

In Australian states without CDL, a considerable majority of residents support CDL despite a lack of direct, personal experience. (Residents of Australian states know that South Australia has CDL because the deposit refund information appears on the labels of most soft drink, water, and beer containers.) Two surveys confirm this support — 77 per cent (BIEC) and 71 per cent (ISF's Televote, stage one). Perhaps they are supportive because they do not understand the complexity of enacting such legislation? When given more information, support did drop to 59 per cent (ISF's Televote, stage two). However, those respondents who shifted their opinion were less likely to have discussed the issues with others and were more likely to be female and older than 65 (White 2001, p. 26). But this does not account alone for the

increased opposition. Closer analysis shows that inconvenience, laziness and hassle factors, as well as the existence of kerbside collection, explain lack of support for CDL. Another explanation is that some participants received information that complicated an issue that had seemed simple during stage one of the Televote; but these participants had a limited opportunity to express their concerns to others or to discuss how these concerns might be addressed.

Similar behaviour has been noted amongst voters in referenda. The 1999 Australian republic referendum provides a relevant case study here. The Australian Government commissioned a former High Court Judge to implement a public education campaign costing A\$4.5m prior to the referendum and it seems to have had little success (McAllister 2001, p. 258). At the same time a research institute, Issues Deliberation Australia, conducted a Deliberative Poll (DP) involving hundreds of randomly selected citizens. All had read the referendum information. Most were confused. Support grew significantly during the DP for the model of a republic that was on offer (Carson 1999). In contrast, the wider citizenry withheld its support. Though there were other factors at work, it is possible that information may obfuscate rather than clarify, if unaccompanied by an opportunity to have questions answered and fears allayed or substantiated. Collaborative, discursive, inquiry-based approaches are now accepted as effective learning strategies (Brookfield & Preskill 1999, Killen 1996, Wells, 1999).

In contrast, participants in the Citizens' Jury had been able to express their concerns and hear the concerns of others, to receive information from independent experts, ask questions of these experts, discuss their reservations as well as the relative strengths and weaknesses of CDL amongst a group of fellow citizens. Following these independently facilitated, interactive deliberations, participants could confidently support CDL with qualifications that were acceptable to the entire group.

The participants made eight major recommendations under the headings: *easy access; pricing; containers to be covered by CDL; industry involvement in the design of the system; level of deposit; cost-benefit analysis; impact on non-deposit recyclables and existing recycling systems; impact on community groups*. Their recommendations demonstrate the sort of thoughtful and intelligent solutions of which typical citizens are capable. Their first recommendation is included below by way of example.

Finally, in South Australia, where CDL has been in force for over 25 years, overwhelming support did not need qualification. Almost the entire community — 95 per cent of respondents — supported the legislation, despite the requirement that consumers return containers to licensed depots. Depots are spaced within approximately five kilometres from any resident in the Adelaide metropolitan area, and therefore are less convenient than states or countries where refunds are available at retail outlets (the recommended model in the CDL Review).



**Recommendation 1: Easy Access**

The forum unanimously recommends that access to redemption venues for containers be easily accessible to all members of the community. Considerations must include:

- provision for urban collection depots to be within a five kilometre distance of all residents
- elderly, disabled, non-ambulatory, non-car owners and housebound groups are catered for
- consideration of the needs of all the rural population.

***Discussion***

There are groups in our community who would not be able to transport redeemable containers to a depot. These groups would include the elderly, disabled, non-ambulatory and other housebound individuals. There would need to be a provision for these containers to be collected from their residences. There was considerable discussion on how this service could best be implemented. One suggestion would be to provide a mobile collection service to the residences of the above-mentioned groups.

Another concern would be for isolated rural areas where access must be available for all including non-car owners. Some suggestions included shopping centres to provide Reverse Vending Machines (RVMs) or redemption centres in the shopping centres. Some concerns were hygiene, maintenance, aesthetics and staffing. Regular clearance of RVM's would be required to address the concerns previously mentioned. It was suggested that major retailers could provide a joint service within a shopping complex. The forum felt that it would be inequitable for smaller operators to provide the same facilities as those provided by larger centres.

There was discussion regarding the distribution of redemption centres and it was felt that a five kilometre radius within suburban areas was acceptable. After discussion regarding locations and community acceptance of these centres, the forum felt that existing refuse centres could be modified for this use.

**Representativeness and Deliberative Capacity**

The organisers selected the Televote and Citizens' Jury processes because they seemed to be complementary (see Table 1). The Televote offered a representative sample of the New South Wales population where the Citizens' Jury did not. Though

representative, participants in the Televote had limited opportunities to have their questions answered — unless they undertook their own research. The Citizens' Jury offered in-depth discussion of the issues and time to ask questions, debate various positions, reflect on individual and public interests, articulate personal and communal fears and concerns, and finally to create joint possibilities. The Televote did not allow for this facilitated discussion or measured recommendations.

Ricardo Blaug speaks about the importance of building 'deliberative capacity' if we are to create circumstances in which effective public participation can occur (1999, pp. 146–147). Deliberative capacity depends on good information, and requires time and practice to do it well, as well as the motivation that springs from a group's energy. This energy is deliberative capacity's greatest resource. Effective deliberation also requires the services of skilled, independent facilitators who can allow the group to find its own path and to avoid dysfunctions that can emerge in unmoderated groups. The Televote participants had access to good information that had been agreed to by the protagonists in the debate and they had time to consider this information, but they lacked the opportunity to benefit from a 'group's energy'. Any unresolved issues required personal research. Table 2 illustrates the differences between various participatory processes, exploring their strengths and weaknesses particularly in relation to opinion formation. We have included opinion polling, criminal juries, and referenda so that we can compare weak and robust methods.

Once governments decide to include the views of the general public in a legislative review such as this one, it is necessary to judge the relative importance of both representativeness and interactive deliberation. In this instance, the Televote served to confirm what was already known — that the New South Wales population supported the idea of CDL. Having access to more information did not shift this view for the majority of participants — except in the case of those with a limited opportunity to discuss it. The Televote answered one important question — *would people think differently about CDL if they were aware of its complexity?* The answer was — yes, and no. Majority support remained *and* we speculate that those whose support was withdrawn were wary once exposed to the complexity of the debate without having an opportunity to puzzle out a resolution. This could not have been deduced from the surveys conducted amongst those who currently experience CDL because these surveys were merely opinion polls which did not deal with the complexity of the issue. Respondents might appreciate its personal benefits but be unaware of disbenefits that do not directly affect them.

The Citizens' Jury demonstrated its robustness as a participatory process. It too answered the same question — *would people think differently about CDL if they were aware of its complexity?* Some participants' views changed and their overall support strengthened. Participants were able to qualify their support and confirmed that knowing the complexity of the issue did not reduce their support for it. Further, they

demonstrated that genuinely understanding the issue through lengthy, in-depth discussions amongst peers gave them opportunities to move beyond understanding the complexity. The participants wanted to suggest solutions — or ways in which all interests might be accommodated.

**Table 2: Opinion formation using various participatory methods**

Method	Opinions Accessed	Weakness/Strength
Opinion poll	Gauges respondents' immediate response to questions on what they think, now, without opportunity for reflection or discussion or research.	Respondents are not exposed to full information or complexity of debate.  Appeals to self-interest.
Push Poll	Respondents are asked for an opinion but questions are purposely biased and misleading, e.g. Do you agree/disagree that the candidate should be prosecuted for taking bribes (when the charge has not been proven)?	Push polls involve intentional lies and are meant to mislead respondents. Push polls corrupt the electoral process by disseminating false and misleading attacks on candidates or policy platforms.  Appeals to self-interest.
Televote	Explores what respondents think now, measured against what people think after they receive additional information (with encouragement to engage in discussion with family and friends).	If discussing only with like-minded people (or not discussing at all), respondents may become confused, anxious or entrenched in their views due to the unexpected complexity of an issue. Questions can only be answered if private research is undertaken.  Self-interest is tempered by conversation with others (if discussion occurs).
Referendum	What people think now, usually after receiving written information and hearing opposing views. Opinion is expressed as a vote.	Either/or response is required and respondents may be confused and anxious about unexpected complexity of issue in the absence of debate, particularly if the outcome will alter the Constitution.  Appeals to self-interest.
Criminal Jury	What people think after they have heard evidence without any opportunity to directly question witnesses and with obligation to reach unanimous verdict. The process is regulated by tight procedures and rules.	Jurists have an opportunity to deliberate but lack the advantage of independent, skilled facilitation, hence the outcomes can indicate group dysfunctions such as group think, group polarization, domination.  Appeals to common interest.
Citizens' Jury	What people think after they have had access to full information, an opportunity to question specialists, and time to argue/discuss the merits of the case with their peers. Required to build consensus but not reach it. The process is flexible to meet the group's needs.	Allows for decisions (usually in the form of recommendations) that can take account of the complexity of the issue, minority opinions, and new ideas. Diversity of opinions and independent, skilled facilitation. Time for deliberation means that any concerns can be allayed or confirmed.  Appeals to common interest.

## Conclusions

The degree of public support for a complex policy issue, like CDL is dependent on a number of factors: the level of public experience with the policy; exposure to fair, balanced information; and exposure and involvement in discussion and debate. The most compelling argument for the introduction of CDL is its support amongst citizens who currently experience it. This argument could be tempered by a contrary opinion — that these citizens do not understand the full complexity of the issue — they have only their own favourable experience as the basis for judgment. However this support is matched by the response of a small group of citizens who were given the opportunity to engage in in-depth discussions and debate.

Those who were uninformed with no exposure to the issues or debate supported CDL. Those who were uninformed but given background information and encouraged to discuss this information, continued to support CDL. The lowest level of support came from those who were uninformed but exposed to the complexity of the arguments without the possibility of engaging with this complexity in any meaningful way.

The lessons? It seems that the greater the level of deliberation or experience, the more confident one can be of the responses. Televote responses should be analysed with close attention paid to the extent of deliberation — otherwise the interpretation of results will be distorted. The Citizens' Jury enabled participants not just to resolve their difficulties with the issue but also gave them opportunities to creatively suggest the necessary conditions for full satisfaction to occur.

These consultation methods offer an unexpected dividend for policy makers in the early stage of the policy making process. Consultation need not be an add-on, a requirement to show that the general public agrees. Instead, robust consultation methods can add value to the policy-making process, leading to more creative, considered, and legitimate decisions. Australia is grappling with many complex issues: stem cell research, reconciliation, asylum seeking and more. Citizens continue to demonstrate that they are capable of tackling such difficult, seemingly unresolvable matters within deliberative spaces. Parliamentary assemblies have failed to be either genuinely representative or deliberative and its elected members are unlikely to initiate reform. There could well be another way: robust, innovative consultation methods that can be initiated by non-elected policy makers.

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