

23 February 2009

**Submission to the  
Electoral Reform Green Paper**

**AUSTRALIAN GREENS**

**Introduction**

The Australian Greens welcome the commitment of the Government to pursue electoral reform to make the Australian electoral system more fair and equitable, transparent and accountable. The Green Paper highlights the need for comprehensive change to the electoral system, and particularly how the current system in allowing for unrestrained electoral spending both encourages corrupting practices and entrenches the political status quo. The Greens believe that our democracy will be strengthened by greater participation and broader representation in the electoral process and that the current system militates against both.

This submission identifies a number of important issues not addressed in the Green Paper which are critical to ensuring a fairer and more transparent system. These include fixed term elections for the federal parliament, proportional representation in the House of Representatives, optional preferential voting above the line in Senate elections, the need for legislative mechanisms to guarantee truth in political advertising and the questionable capacity of the Australian Electoral Commission to enforce and police existing requirements, far less the requirements of a more regulated electoral system along the lines of Canada, New Zealand and the United States.

**1. A ban on corporate donations**

There is general acknowledgement of the serious problems of corruption and undue influence caused to the Australian electoral process by the current system of reliance on private funding through donations and other measures. The evidence provided in the Green paper illustrates clearly the extensive amount of corporate donations received by the major parties, and note that this only accounts for 20 percent of the private funding they receive. To address this at least in part, the Australian Greens support a ban on donations from corporations.

The Greens also support a ban on all anonymous donations over \$50 as proposed in the Political Donations bill.

**Recommendation**

1.1 That political donations from corporations be banned.

## **2. Disclosure regime**

A rigorous regime for disclosure of electoral funding is essential to ensure accountability and transparency in the system. The current system allows for substantial areas of funding to avoid proper scrutiny through the disclosure requirements of the Electoral Act.

The Greens support amendments to the Act to require all the component activities of private funding, including donations, fundraising activities, membership fees, investments and debt be properly disclosed.

Additionally, the Greens propose that the time frame of the current disclosure regime does not enhance transparency or accountability. Lodgement of returns at the end of the financial year which are then made public on the first working day of February in the following calendar year, results in a public disconnection between the cause and effect of the spending. A system which required continuous disclosure would better address the goals of transparency and accountability. Online disclosure could make this requirement less onerous than it currently is.

### **Recommendations**

2.1 That full disclosure requirements are applied to all sources of private funding.

2.2 That mechanisms for continuous disclosure of electoral funding be investigated.

## **3. Truth in Political Advertising**

The Australian Greens support the introduction of legislation to ensure truth in political advertising. Legislation to impose controls on political advertising and penalties for breaches would enforce higher standards, improve accountability and promote fairness in political campaigning and the political system generally.

Elections are an opportunity for political accountability and it is critical that representations are accurate and honest. Under the current system, it is possible for advertising that contains misrepresentation and outright false statements to go unchallenged and without penalty. This can be particularly damaging in cases where the advertisements are presented by third parties, which under the current system are not required to identify themselves and therefore make known their own political or ideological position. This practice flies in the face of transparency, accountability and fairness which should be integral to the electoral process.

Although such legislation was enacted briefly in Commonwealth law in 1983 -1984 it was repealed with the support of both the major parties. Opposition to such legislation relies on the argument that it infringes the right of free political communication. However truth in political advertising legislation introduced in South Australia in 1985 was found to be constitutionally valid by the High Court.

The Greens advocate amendment to the Commonwealth Electoral Act to make it an offence to authorise or publish an advertisement purporting to be a statement of fact when the statement is inaccurate and misleading to a material extent, similar to legislation introduced in South Australia.

### **Recommendation**

3.1 That legislation to ensure truth in political advertising is introduced.

## **4. Fixed Term elections for Federal Parliament**

The benefits of fixed term elections are widely recognised. The Greens advocate for the adoption of fixed three-year terms for the federal parliament to improve the democratic objectives of the Australian electoral system. Under the current system, the Prime Minister has discretion on the timing of an election which accords considerable advantage to the incumbent government.

Minor parties, new parties and independents are significantly disadvantaged under this system as they have less capacity to plan, prepare and fund election campaigns with their limited resources. Furthermore, fixed term electoral cycles will facilitate the system of public electoral funding which is advocated in this submission.

The Greens support the adoption of fixed three-year terms federally as this important change does not require a referendum to change the Constitution but can be achieved through legislation.

### **Recommendation**

4.1 That legislation is introduced to adopt fixed three year terms for the federal parliament.

## **5. Proportional Representation in the House of Representatives**

The Australian Greens advocate the introduction of proportional representation in the House of Representatives on a whole of state basis as provided for in the Constitution and, guided by the principles of the single transferable vote in the Hare-Clark-Spence (HSC) system of voting.

This is the single most important reform for achieving true democracy in Australia, replacing single member electorates with multi-member electoral districts. The number of seats won by each party would more accurately reflect the vote obtained by respective political parties, while maintaining an appropriate degree of local representation and community access to local politicians.

Proportional representation has been adopted throughout continental Europe, in the European Parliament, in Ireland and New Zealand. Like suffrage for women and the secret ballot, it is fundamental to achieving the modern democratic ideal of one person, one vote, one value.

Under the current system, in a typical electorate the winner may gain much less than 50 percent of primary votes but after preferences are distributed, takes the seat. A majority of voters are therefore represented by a candidate or a party they voted against. Nationally, the 'elected' government usually has most primary votes cast against it.

Proportional representation in the House of Representatives would "enable every section of political opinion which can command the requisite quota of votes to secure a number of representatives proportionate to its numerical strength", according to the report by the Returning Officer and State Statistician to the new Commonwealth parliament in 1901. Proportional representation would result in the membership of the parliament reflecting exactly what the Australian people voted for and would enhance the prospects of election for minor and new parties as well as independents, further strengthening our democracy.

### **Recommendation**

5.1 That proportional representation in the House of Representatives is introduced on a whole of state basis as provided for in the Constitution and, guided by the principles of the single transferable vote in the Hare-Clark-Spence (HSC) system of voting.

## **6. Optional preferential voting above the line in Senate elections**

The objective of electoral reform is to make our electoral system more transparent, fairer and more democratic. In keeping with these objectives is the need to give voters greater control and expression in allocating their vote. One means to achieve this is to restore the distribution of party preferences to the voter rather than leave it in the hands of the party preference arrangements as is currently the case.

In 2008 Senator Bob Brown introduced a private member's bill into the Senate which provides the legislative means for optional preferential voting above the line in Senate elections.

As Senator Brown notes in his second reading speech for the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill (2008):

“Above-the-line voting for the Senate was introduced in 1984 to address the problem of increasing informal votes. While this was an easier alternative for voters, the cost has been that the decision on preferences was removed from the voter and given to the party which the voter first selects.

The Commonwealth Electoral Act requires each party or group contesting elections to provide the Australian Electoral Commission with a paper indicating how preferences will flow if a voter chooses that party or group by voting for it above the line.

This bill removes that requirement from the party or group and returns to the voter the sole obligation to allocate preferences. The voter is advantaged because she or he decides the flow of preferences and directly chooses who is next elected if her or his vote is not used, in full, to elect the party or group of first choice.

There would no longer be competition, inducement or cross-dealing by parties or groups over preferences, nor public uproar about preference ‘deals’.

These amendments to the Commonwealth Electoral Act enhance democracy. They provide voters full control of the destiny of their vote and consequently, the make-up of the Senate.

## **Recommendation**

6.1 Introduce Senator Bob Brown's private members bill, the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill (2008) which amends the Commonwealth Electoral Act to give voters the right to allocate their vote according to their own preferences.

## **7. Improved policing and enforcement mechanisms**

The Green Paper acknowledges that under the current disclosure regime, there is poor compliance with electoral disclosure requirements by the parties and that “some Australian political parties are flouting their disclosure obligations”. This occurs largely because the Australian Electoral Commission is not adequately resourced to pursue these breaches. If, as recommended by the Australian Greens, the electoral law is amended to include a requirement for truth in political advertising, there would be further onus on the AEC to investigate, adjudicate complaints and prosecute offenders in cases where breaches occurred. This would not be possible without substantially increasing the capacity of the AEC to police and enforce these requirements.

While the Political Donations Bill currently before the Parliament proposes increased penalties for breaching the electoral law, without a properly resourced body to enforce the laws, it will not be possible to enforce the increased requirement placed on political parties, candidates, associated entities and third parties.

### **Recommendation**

7.1 That the Australian Electoral Commission is properly resourced to ensure it has the capacity to quickly and effectively enforce the requirements of the Electoral Act.