

# Part 1: Australia's Electoral Architecture

## CHAPTER 1: INTRODUCTION TO THE AUSTRALIAN ELECTORAL SYSTEM

This chapter provides background information to inform the discussion of issues and options in future chapters. It contains a broad outline of the arrangements which are currently in place for federal, state and territory and local government elections in Australia. It also outlines some key ways in which Australia's electoral environment is changing.

### OVERVIEW OF THE CURRENT ARRANGEMENTS

#### *Elections in a federal system*

- 1.1 Under Australia's federal system, there are separate Commonwealth, state and territory governments and legislatures. Each of the six states has its own state constitution, and the parliaments of the six states and the Commonwealth may make laws in accordance with their respective constitutions. The Australian Capital Territory (ACT), Northern Territory (NT) and Norfolk Island (NI) have been granted self-government by the Commonwealth, and their legislatures may pass laws accordingly. The Australian Government decided in May 2009 to reform the voting system for the Norfolk Island Legislative Assembly and provide more certainty about when elections are held. NI is therefore not within the scope of this paper. To the appropriate extent, the issues raised in this paper will be taken into consideration should any new arrangements be required for NI. The phrase 'the territories' in this paper refers to the ACT and NT, but does not include NI. The territories of the Cocos (Keeling) Islands, Christmas Island and Jervis Bay are non-self-governing territories. They have special arrangements for the representation of residents' views and needs, and are not included in this paper.
- 1.2 The Commonwealth (federal), state and territory parliaments are all directly elected by the people in accordance with the constitutional and legislative requirements that apply in each jurisdiction. Each jurisdiction has its own electoral administration body which is responsible for conducting elections. Local government elections, under diverse arrangements, are conducted according to state or NT law; there is no separate local government in the ACT.

#### *Overview of federal elections*

##### *Federal constitutional requirements*

- 1.3 The Australian Constitution establishes a system of representative government at the Commonwealth level. The Constitution establishes, and defines the powers of, the Australian Parliament, and requires that the Parliament consist of two houses composed of representatives directly chosen by the people:
  - the House of Representatives, which must include members from each of the states in numbers that are in proportion to the voting populations of the states; and
  - the Senate, which must include members in numbers that represent the states equally.

- 1.4 In accordance with its powers under section 122 of the Constitution, the Parliament has provided for representation of the territories in the House of Representatives and the Senate.<sup>1</sup>
- 1.5 The Constitution requires that the number of members in the House of Representatives be, as nearly as practicable, twice the number of Senators. It provides that the House of Representatives has a maximum term of three years, and that state Senators are to serve terms of six years, with half of the Senate becoming vacant every three years.
- 1.6 Writs for the House of Representatives election and for the Senate election in the two territories are issued by the Governor-General. A writ for the Senate election in each state is issued by the Governor of that state. The Constitution sets out qualifications and disqualifications regarding who may be elected to the House of Representatives and the Senate.<sup>2</sup>
- 1.7 The Constitution may be altered only by a referendum at which a proposed amendment is supported by a national majority of electors and a majority of electors in a majority of states (a 'double majority').<sup>3</sup>
- 1.8 Relevant sections of the Constitution are discussed in more detail in future chapters.

#### *Current composition of the House of Representatives and the Senate*

- 1.9 At present, the House of Representatives consists of 150 members chosen from single-member constituencies (electorates) which within each state and territory contain approximately equal numbers of voters. Under Commonwealth legislation which sets out the criteria for determining the number of members to be chosen in the territories,<sup>4</sup> the ACT and NT are guaranteed representation of one member each, and are currently represented by two members each, based on the size of their population.
- 1.10 Senators are elected from multi-member constituencies: each state or territory votes as a single constituency for a set number of Senators. There are presently 12 Senators for each state, with six being elected every three years. Under Commonwealth legislation, the ACT and NT are each represented by two Senators, each of whom serves for one term of the House of Representatives.

#### *Statutory requirements*

- 1.11 The principal requirements of the federal electoral system are contained in the *Commonwealth Electoral Act 1918* (the Electoral Act). The Electoral Act establishes the Australian Electoral Commission (AEC), which conducts federal elections and referendums. It provides that voting in federal elections is compulsory,<sup>5</sup> and prescribes qualifications and disqualifications for enrolment and voting.
- 1.12 The Electoral Act sets out a range of specific requirements for various elements of the electoral process, including:
  - a process for determining electoral boundaries;
  - a process for determining the number of seats for each state and territory in the House of Representatives;

<sup>1</sup> *Commonwealth Electoral Act 1918* ('Electoral Act'), sections 40 and 48.

<sup>2</sup> Australian Constitution, sections 16, 34, 43 and 44. Further discussion of the eligibility requirements for who may be elected to the House of Representatives and the Senate is contained in chapter 8: Registration of Parties and Candidate Nominations (in particular, see paragraphs 8.10–8.15 and 8.47–8.60).

<sup>3</sup> *ibid.*, section 128.

<sup>4</sup> Electoral Act, *op. cit.*, section 48.

<sup>5</sup> Under section 45 of the *Referendum (Machinery Provisions) Act 1984*, voting in federal referendums is also compulsory.

- voting systems and formality rules for the House of Representatives and the Senate;
- compulsory enrolment and the establishment, maintenance and use of electoral rolls;
- the registration of political parties and nomination of candidates for elections;
- the issuing of writs for elections and the close of rolls;
- compulsory voting and polling arrangements, including protections for the secret ballot, and arrangements for pre-poll and postal voting;
- scrutiny of votes;
- a process for election results to be disputed in the High Court sitting as the Court of Disputed Returns;
- disclosure requirements for political expenditure and receipts including donations;<sup>6</sup> and
- public funding of political parties and candidates.<sup>7</sup>

1.13 Relevant statutory provisions are discussed in more detail in future chapters.

1.14 Key milestones in the development of the federal legislation include significant amendments made to the Electoral Act in 1984 when, among other things, the AEC was created, registration of political parties was introduced, group ticket voting was introduced for the Senate, and Australian citizenship became the primary criterion for the franchise. Further amendments enacted in 2006 brought about changes to matters including enrolment deadlines, proof of identity for enrolment and provisional voting, candidate nomination fees and disclosure thresholds. A chronology of key milestones in the development of the federal election system is at [Annex 1](#).

### **Overview of state and territory elections**

1.15 As a result of differing legislative and constitutional arrangements, the electoral situation in each state and territory is slightly different. Common across the states and territories, however, are historical links and similarities in government structure. Each state and territory parliament is directly elected by the people.

1.16 Unlike the Commonwealth's bicameral system, Queensland and the territories have unicameral legislatures, with a single house of parliament. With the exception of Tasmania, those states which have bicameral legislatures share the Commonwealth architecture of one house of members from single-member constituencies and one house of members from a multiple-member constituency. In Tasmania, the lower house consists of 25 members (five members elected from each of five electoral divisions), and the upper house consists of 15 members elected from single-member constituencies. New South Wales, Victoria, South Australia, the ACT and NT have fixed term elections.<sup>8</sup> Term lengths of members also vary across states and territories. Among the lower houses only Queensland and the Commonwealth have terms limited to three years; the lower houses in all other states and territories may sit for up to four years.

<sup>6</sup> These requirements were discussed in *Electoral Reform Green Paper – Donations, Funding and Expenditure*, released by the former Cabinet Secretary and Special Minister of State, Senator the Hon John Faulkner on 17 December 2008 for public comment. The Green Paper is available at [www.pmc.gov.au/consultation/elect\\_reform/index.cfm](http://www.pmc.gov.au/consultation/elect_reform/index.cfm).

<sup>7</sup> *ibid.*

<sup>8</sup> In 2008, Tasmanian Premier David Bartlett announced that Tasmania will seek to establish fixed term parliaments. See press release at [www.media.tas.gov.au/print.php?id=25297](http://www.media.tas.gov.au/print.php?id=25297).

- 1.17 The constitutions of each state prescribe in general terms the existence and composition of each house of parliament and the means of its election.<sup>9</sup> Each state or territory also has an electoral act (or equivalent) which sets out further details about the electoral system and provides for the enactment of regulations concerning details of electoral process and matters particular to each election. The main electoral legislation in each state and territory has been amended significantly over time. Many pieces of legislation are now highly prescriptive on matters such as eligibility for party registration and campaign process, and have been amended to meet challenges such as the regulation of online political advertising.
- 1.18 Each state and territory relies upon a separate statutory authority for the conduct of elections, and voting is compulsory in each state and territory. Variations across jurisdictions mean that the ballot papers for each state or territory may look quite different: for example, there are variations in voting instructions, methods for listing candidates, the presence or absence of ticket voting, and whether candidate photos may appear on the ballot paper. Many state legislatures are also elected according to a system of optional or partial preferential voting, unlike the compulsory preferential voting which applies for Commonwealth elections.

### *Overview of local government elections*

- 1.19 Local government is the third tier of government in Australia. Each area within the jurisdiction of one such government may be referred to as a local government area, and there are presently 556 local governments in Australia. As the Australian Constitution is silent about local government, the legal framework by which local governments are established is left to each state and the NT. Councils may make by-laws to the extent that they have the jurisdiction to do so, which can include, to a limited degree, the jurisdiction to regulate some matters affecting elections.
- 1.20 Electoral arrangements for local councils can vary to a large degree within a particular state or territory: for example, some states provide for councils to appoint their own returning officers and run their own elections. Each state electoral administration body remains available to conduct local government elections on a full cost recovery basis. A large percentage of local government elections are now conducted by postal ballot. The franchise is considerably wider for some local government elections than for Commonwealth, state and territory elections, as it can include non-residents and non-citizens. In some jurisdictions voting is not compulsory, or is compulsory only for those on the roll of residents. The legislative regime governing local government in some states also makes provision for ratepayer initiated referendums on issues such as council borrowings, how the mayor or shire president is elected, or on other issues handled by the council.
- 1.21 Unlike federal, state and territory parliamentarians, most mayors and councillors are not full-time paid representatives. Most receive a small allowance, typically less than \$10,000 per annum, to cover their expenses for discharging the duties of their office.
- 1.22 Options for reform of local government electoral arrangements are outside the scope of this paper.

### *The role of the public: participation, support and trust*

- 1.23 Public support for, and participation in, the electoral system is also important for establishing the legitimacy of the system. While voting is compulsory at federal, state and territory elections, the level of public participation demonstrated in Australia by enrolling and voting

<sup>9</sup> The operation and status of state constitutions are preserved by the Australian Constitution: section 106 of the Australian Constitution provides that the constitution of each state 'shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the state, as the case may be, until altered in accordance with the Constitution of the state'.

is comparatively high.<sup>10</sup> There is also evidence that public satisfaction with elections as a mechanism for producing government accountability and responsiveness is strong in Australia, especially when compared with other countries.<sup>11</sup> Public support and trust in the democratic process can also be observed in the respect shown for each others' rights, reporting malpractice and accepting election results. Some commentators point to problematic elections in other countries, where there is not a similar commitment to the democratic process and acceptance of election results, to highlight the importance of public support for, and trust in, the electoral process.<sup>12</sup>

## THE CHANGING ELECTORAL ENVIRONMENT

1.24 A range of factors affect the environment in which Australia's electoral systems operate. Later chapters in this paper consider some options to strengthen and modernise our electoral laws. In thinking about these options, it may be useful to be informed by a consideration of key changes that are occurring in the electoral environment, in particular demographic changes, technological developments, and opportunities for harmonisation between jurisdictions. The implications of these trends for the Australian electoral system, and particular options and opportunities for change, are discussed in future chapters.

### *Demographic developments*

- 1.25 The character and composition of Australia's population is changing over time. For example, census data indicates that an increasing number of Australians were born overseas.<sup>13</sup> From 1996 to 2006 alone, the overseas-born population increased by 13%, from around 3.9 million to 4.4 million. Now, approximately 24% of the total Australian population was born overseas.<sup>14</sup>
- 1.26 In addition, migrants to Australia are being drawn from an increasingly diverse range of places.<sup>15</sup> Migrants to Australia during 2006-07 had been born in over 200 different countries.<sup>16</sup> In 2008, approximately 3.1 million Australians (16% of the population) spoke a language other than English at home, an increase of 10% since 2001.<sup>17</sup> The electoral process will need to support the full participation in and contribution to Australia's democratic tradition and political culture by the increasing proportion of Australians from diverse cultural backgrounds.
- 1.27 Australia's population is also highly mobile, travelling, living and working in different areas in Australia and internationally.<sup>18</sup> Many Australians have multiple nationalities and active political, social or economic interests in other countries. A highly mobile population, whose interests are increasingly global, provides challenges in ensuring enrolment and voting is accessible, flexible and relevant.

<sup>10</sup> International Institute for Democracy and Electoral Assistance (IDEA), *Voter Turnout Since 1945: A Global Report*, 2002, p. 80, available at [www.idea.int/publications/vt/index.cfm](http://www.idea.int/publications/vt/index.cfm).

<sup>11</sup> P Norris, 'Confidence in Australian democracy' in M Sawer (ed.), *Elections: Full, Free & Fair*, Federation Press, Leichhardt, 2001, pp. 210-211.

<sup>12</sup> M Maley, 'Australian Electoral Law: Not a Model for Others' in G Orr, B Mercurio and G Williams (eds.), *Realising democracy: Electoral law in Australia*, The Federation Press, Sydney, 2003, pp. 45-46.

<sup>13</sup> Australian Bureau of Statistics (ABS) Media Fact Sheet, 'More than one in five Australians born overseas: Census', 27 June 2007.

<sup>14</sup> ABS publication 1301.0, *Year Book Australia*, 2008, p. 209.

<sup>15</sup> ABS publication 3412.0, *Migration, Australia*, 2006-07, p. 48.

<sup>16</sup> *ibid.*, p. 37.

<sup>17</sup> ABS publication 1301.0, *Year Book Australia*, 2008, p. 455.

<sup>18</sup> ABS publication 3412.0, *Migration, Australia*, 2006-07, pp. 21, 39, 66.

1.28 In addition, demographic projections indicate there is likely to be a rapid increase in the coming years of the aged population,<sup>19</sup> and that the Australian population will be increasingly concentrated in capital cities.<sup>20</sup> As disability increases rapidly with age, Australia's ageing population will also lead to a rise in the number of people with a disability.<sup>21</sup> In 2003, approximately one in five Australians had a disability, with the 85 years and over age bracket recording the highest disability rate (81%).<sup>22</sup> An increase in aged electors, the consequent rise in the number of people with a disability, and proportionally smaller population centres in regional and remote Australia will directly impact on the types of voting services which will be required.

### *The technological environment for elections*

1.29 The role of technology in Australians' lives is also changing over time. In recent years there has been an increasing trend towards electronic transactions and interactions, including with governments. The internet is now Australians' most preferred method of contacting government,<sup>23</sup> and in 2008, 31% of Australians used the internet for the majority of their contact with government, which is more than double the rate reported in 2004-05 (14%).<sup>24</sup> The Australian Government Information Management Office has noted that:

'Adoption of newer technologies means that changes in use and take-up of e-government services are occurring quickly and are likely to continue to expand in the future. These changes, and the increasing blurring of boundaries between technologies, will present challenges for government service delivery.'<sup>25</sup>

1.30 Australia's electoral system will be challenged by the need to balance use of technology in dealing with electors with maintaining public trust in the delivery of these services. Electoral arrangements will need to remain adaptable, and positioned to enable technology to be used as and when appropriate to improve service delivery.

### *Opportunities for harmonisation*

1.31 It has been argued that 'for Australia to remain internationally competitive in the 21<sup>st</sup> century, we need national approaches to issues that clearly cross state and territory borders'.<sup>26</sup> Federal, state and territory governments are working together in a range of forums, including the Council of Australian Governments and other ministerial councils, to achieve greater harmonisation in a number of areas.

1.32 Broadly speaking, there is considerable similarity between the manner in which federal, state and territory elections are conducted in Australia: all feature preferential voting of one form or another, compulsory voting, enrolment on a continuously maintained electoral roll, similar qualifications and disqualifications for voting, and electoral authorities that are separate from relevant departments of state. One example of an area in which there is already a large degree of harmonisation is in enrolment arrangements: joint roll arrangements ensure that

<sup>19</sup> Department of Immigration and Citizenship, *Fact Sheet 15: Population Projections*, 7 October 2008.

<sup>20</sup> ABS publication 4102.0, *Australian Social Trends, 2008*, pp. 9-10.

<sup>21</sup> Australian Institute of Health and Welfare, *Australia's Welfare 2007*, Canberra, p. 5, available at [www.aihw.gov.au/publications/aus/aw07/aw07.pdf](http://www.aihw.gov.au/publications/aus/aw07/aw07.pdf).

<sup>22</sup> ABS publication 4446.0, *Disability, Australia, 2003*, p. 3.

<sup>23</sup> Australian Government Information Management Office, *Interacting with Government: Australians' use and satisfaction with e-government services*, 2008, p. 5, available at [www.finance.gov.au/publications/interacting-with-government/index.html](http://www.finance.gov.au/publications/interacting-with-government/index.html).

<sup>24</sup> *ibid.*, p. 34.

<sup>25</sup> *ibid.*, p. 6.

<sup>26</sup> The Hon R McClelland MP (Attorney-General), address to Standing-Committee of Attorneys-General Harmonisation Conference, 18 September 2008, available at [www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/Speeches\\_2008\\_18September2008-SCAGHarmonisationConference](http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/Speeches_2008_18September2008-SCAGHarmonisationConference).

an elector only needs to fill out a single form to enrol for federal, state and territory, and local government elections. However, as outlined in the following chapters, a number of significant differences remain between the electoral processes of various jurisdictions across Australia. As a consequence, there may be scope for greater harmonisation of electoral arrangements in a range of areas.

- 1.33 One existing avenue for cooperation between jurisdictions on electoral matters is the Electoral Council of Australia (ECA). The ECA is a consultative council of Electoral Commissioners from the electoral authorities of the Commonwealth, states and territories. It 'consults on the management of electoral rolls for Commonwealth, state, territory and local government elections to maximise their accuracy and integrity and ensure efficient and effective roll methodologies', and 'considers matters which will facilitate or improve Australian electoral administration'.<sup>27</sup>
- 1.34 An additional avenue through which harmonisation issues are being explored is through meetings of federal, state and territory ministers with responsibility for electoral matters. These have been convened to discuss the development of this Green Paper, with a particular focus on opportunities for harmonisation. Ministerial meetings were also held as part of the development of the *Electoral Reform Green Paper – Donations, Funding and Expenditure*.
- 1.35 General harmonisation issues are discussed in more detail at chapter 3; specific opportunities for harmonisation are discussed in relevant chapters.

## DISCUSSION POINTS

- 1.36 This chapter has set out background information on Australia's electoral system and outlined key ways in which the electoral environment is changing. This information sets the scene for a consideration of options to improve Australia's electoral laws and processes.
- 1.37 The challenge for governments is to preserve the key strengths and stability of Australia's electoral system while striving for greater improvements to the system to ensure that it continues to meet the needs of a changing electoral environment. Future chapters contain discussion points on specific issues and options for reform.

<sup>27</sup> Further information on the ECA is available at its website [www.eca.gov.au](http://www.eca.gov.au).