



Australian Government

Electoral Reform Green Paper

STRENGTHENING AUSTRALIA'S DEMOCRACY

September 2009



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Message from the Special Minister of State



As has often been remarked, democracy is not now, and never will be, a 'finished product'. From its origins, each state that has adopted this system of government has been confronted with the question of how democracy can best be achieved through a process that supports that society's objectives. Needless to say, each society that has answered this question has done so in different ways, leading to a proliferation in the forms of democratic government around the world. When choosing between the competing influences of the United Kingdom and United States' approaches to democracy, the conventions which led up to Federation chose elements of both, creating a uniquely Australian system.

Each generation must answer this question anew. And the response can change dramatically over time. An Australian living in 2009 has a radically different understanding of what democracy means compared to a British subject living in the colonies in the mid-19th century. This is an inherently good thing – imagine a system of government where voting was not secret, where the franchise was based on the ownership of property rather than the age of majority, where the upper house was appointed rather than elected, where women and Indigenous Australians were not able to exercise their democratic right, and responsibility, of casting a ballot, and where elections were not run by an organisation that was independent of government.

The Constitution is the basic document which establishes the major principles of our system of government, providing separately for the House of Representatives and for the Senate, and that both shall be chosen directly by the people. However, it is the *Commonwealth Electoral Act 1918* (the Electoral Act), that acts as the major piece of legislation governing how Australian democracy operates in practice. The Electoral Act has not been the subject of comprehensive review since 1984, and many of its fundamental principles have not been scrutinised for a long time before that. The Rudd Government believes that now is the appropriate time to question whether the current Electoral Act is usefully serving its purpose, and specifically whether the Electoral Act provides the best possible framework for democracy in Australia.

But what do we understand democracy to mean to us today? We will all have different responses to that question. Indeed, this paper seeks to draw out those different answers, and to apply them to specific aspects of electoral law, such as the processes that apply to enrolment, how votes are counted, and how seats in parliament are allocated.

Nevertheless, I would hope that there is some commonality in our answers. I would expect that all Australians believe that the right to vote is one of our most cherished and fundamental human rights, and one that should not be taken away lightly. In practice, this also means there should be no unnecessary barriers placed between someone who has the right to vote, and that person effectively exercising that right. I am not sure that our current laws achieve this objective; I am absolutely sure that we can do better.

This Green Paper asks what the objectives of our electoral system are, assesses whether current electoral law meets these objectives, and, where it does not, examines possible alternatives. It also seeks to deal with some of the challenges which currently confront us, and to take advantage of some of the opportunities which these challenges present. These include:

- At the 2007 federal election, of an estimated eligible population of around 14.8 million, more than 1.1 million persons were not enrolled to vote; more than 700,000 enrolled persons did not cast a vote and more than 500,000 informal votes were cast. In total, more than 2.3 million persons who were entitled to vote for the 2007 election did not fully exercise their franchise. Maximising participation in elections requires effort on several fronts, including improving enrolment processes, improving civic education, amending or harmonising the rules governing the casting and formality of votes, and improving and harmonising accessibility of voting services.
- Of those who vote, the methods of voting are changing. Postal and pre-poll declaration voting have become increasingly popular – for example, approximately 14.6% of all votes in the 2007 federal election were early votes, compared to 9.5% in 2001. Meanwhile, the role of technology in Australians' lives is also changing. There has been an increasing trend toward electronic transactions and interactions, including with governments. For example, the internet is now Australians' single most preferred method of contacting government. New and improving technologies open up the prospect of online enrolment, online updating of enrolment details, online registration of political parties and candidate nominations, and electronic voting and counting. Use of technology in these ways will need to be offered in a way that ensures that public trust in the delivery of such services is maintained.
- Federal, state and territory governments are increasingly working together in a range of forums to achieve greater harmonisation in a range of areas. Harmonisation offers a number of benefits including efficiencies, greater certainty, reduced compliance costs and improved effectiveness and integrity of laws. While there is considerable similarity in electoral processes across federal, state and territory jurisdictions, there are also considerable differences, and as a result there is scope for greater consistency. Opportunities to streamline exist in areas such as voting systems, electoral administration activities, enrolment requirements and processes, party registration requirements, campaign regulations and polling arrangements. Australians reasonably expect that our various election management bodies will be able to work cooperatively, so as to provide the best possible electoral services to all.
- The character and composition of Australia's population is changing over time. Migrants to Australia are being drawn from an increasingly diverse range of places, with increasing numbers of Australians speaking a language other than English at home. The Australian population is highly mobile, travelling, living and working in different areas of Australia, and internationally. Further, demographic projections indicate that there is likely to be a rapid increase in the average age of the population in coming years, and that Australia's population will be increasingly concentrated in capital cities. These demographic developments raise a variety of issues, such as how eligible voters are enrolled, the way electoral education is undertaken, and what kinds of polling services are provided.
- Since 1918, the Electoral Act has had only one major rewrite, and that was in 1984. Consideration needs to be given to modernising federal electoral laws. A number of provisions of the Electoral Act have become outdated and do not well reflect what happens in reality under their terms; the highly prescriptive nature of federal electoral laws can make them susceptible to becoming quickly outdated; and the wording of a number of sections of the Electoral Act is relatively complex and difficult to understand.

This paper is the second part of the Australian Government's consultation process on electoral reform. The first paper invited comments on issues in relation to Australia's electoral funding and disclosure arrangements. The scope of this second paper is broader. Its purpose is to invite comment on a range of matters relevant to strengthening our national electoral architecture and processes generally.

In developing this Green Paper, the Australian Government has consulted the states and territories. This Green Paper is intended to provide a basis for identifying possibilities for coordinated reform to Commonwealth, state and territory electoral systems.

Comments on this Green Paper are invited by **27 November 2009**.

The Australian Government's Green Paper process on electoral reform is intended to provide an opportunity for broad engagement across the range of matters relevant to electoral law. The success of this process depends on people who care about the health of our democracy contributing to what I hope will be a rich debate and discussion. I sincerely hope that this Green Paper process will lead to reforms that successfully address the challenges, and take advantage of the opportunities, before us.

A handwritten signature in cursive script, reading "Joe Ludwig".

JOE LUDWIG

Cabinet Secretary and Special Minister of State



Overview of this paper

The purpose of this Green Paper process is to encourage public debate about options for improving and modernising Australia's electoral system. The Australian Government's *Electoral Reform Green Paper – Donations, Funding and Expenditure* raised questions of the values Australian electoral law ought to serve, and measures that could be taken to pursue those values, in the area of electoral funding and financial disclosure requirements. This paper examines a broader range of issues and options relating to Australia's electoral systems.

Part 1 of this Green Paper deals with Australia's electoral architecture.

- Chapters 1 to 3 set the scene for a discussion of specific issues and options in subsequent chapters, by outlining:
 - the current arrangements for elections in Australia, and the key ways in which Australia's electoral environment is changing (chapter 1);
 - the sources of standards for electoral systems, and suggesting some key principles for an Australian electoral system (chapter 2); and
 - the structure of current electoral laws, and broad issues that arise in considering harmonisation and modernisation of electoral laws (chapter 3).
- Chapters 4 to 6 outline current arrangements and examine options for reform in the following key parts of Australia's electoral architecture:
 - the definition of the franchise, that is, who is entitled to vote in Australian elections (chapter 4);
 - the arrangements for voting in elections for Australia's various parliaments, and the way electoral boundaries for the House of Representatives are redistributed (chapter 5); and
 - the structure and functions of electoral management bodies, focusing on Australia's federal electoral management body, the Australian Electoral Commission (AEC) (chapter 6).

Part 2 deals with key elements of the electoral process, outlining the current arrangements and examining options for reform in the following areas:

- enrolment processes, including maintenance of the electoral roll and closure of the rolls, with the aim of maximising participation and engagement with electoral processes (chapter 7);
- arrangements for the registration of political parties and nomination of candidates for election (chapter 8);
- electoral education aimed at maximising effective participation in elections (chapter 9);
- campaigning for elections (chapter 10);
- the arrangements for the casting of votes at elections, and polling processes and practices (chapter 11);
- processes for the counting of votes and the determination of election results (chapter 12);
- the resolution of disputes over the results of elections and over administrative decisions made by the AEC (chapter 13); and
- compliance with, and enforcement of, electoral laws (chapter 14).

Part 3 suggests an approach to considering the issues and options for reforming Australia's electoral systems presented in prior chapters and sets out the questions that readers might wish to consider in preparing comments on this paper.

How to make submissions

The Australian Government invites written submissions in response to this paper, which is also available at www.pmc.gov.au. Interested people are invited to respond to some or all of the specific issues raised in the paper, and, in particular, some or all of the questions outlined in chapter 15.

The closing date for submissions is **27 November 2009**. Late submissions may not be considered.

In addition to inviting written submissions as outlined below, an online discussion forum will be open from Monday 9 November to Friday 13 November 2009, providing an opportunity for members of the community to provide comments and engage with each other in relation to the matters raised in this paper. More details on the forum, and advice on how to register to participate will be provided through the website at www.pmc.gov.au.

Important: A cover sheet must accompany all submissions.

The cover sheet will require a 'name for publication' for your submission (unless anonymity has been requested). This can be an individual, group or organisation. This name will appear with your submission when it is published online.

The cover sheet will also ask you to provide contact details (your name, postal address, email address (if applicable) and an optional contact telephone number) should further information or clarification be required. We may also contact you to inform you of the policy process relating to electoral reform or seek your views on related matters. These personal contact details (apart from the submitter's name) will only be used for these purposes and will not be published.

The cover sheet will also require you to indicate clearly if you want all, or part, of your submission **to be treated as confidential or anonymous**. Please note that unless indicated as confidential, all submissions will be published on the internet at www.pmc.gov.au after the closing date and will therefore be available to the public. If you indicate on the cover sheet that part of your submission should be treated as confidential, it would be appreciated if you could provide the confidential part of your submission as a separate document.

Please ensure that your submission does not contain any third party material (material written by others) which you have not received permission to reproduce.

The Australian Government also reserves the right not to publish any submission, or part of a submission, which contains offensive language or potentially defamatory material, or which does not comply with the guidelines below.

The cover sheet is provided at page 9 of this document. It is also available from the website at www.pmc.gov.au, or by contacting the Electoral Reform Secretariat by email: electoralreformsecretariat@pmc.gov.au; or by telephone: (02) 6271 5499.

Guidelines for submissions

Submissions should be clearly marked 'submission'. Correspondence will not be considered a submission unless it is clearly marked as such.

Please limit email attachments to 10MB in size (total). Attachments should be in Microsoft Word (DOC), Rich Text Format (RTF) or Portable Document Format (PDF). Transmission by email is not a secure medium. If you have concerns about using this medium or if your submission is sensitive, please send your submission to the postal address below.

Where to send your submission

You may lodge your submission by email, post or facsimile.

The email address for submissions is:

electoralreformsecretariat@pmc.gov.au

Alternatively, you can post a submission to:

Electoral Reform Secretariat
Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Your submission can also be sent by facsimile to (02) 6271 5776. Receipt of submissions may be confirmed by contacting the Secretariat.

If you have questions about the Green Paper process, please contact the Secretariat on telephone (02) 6271 5499 or by email to electoralreformsecretariat@pmc.gov.au.

Privacy

Your views are being sought for the purpose of informing the Australian Government's policy decisions on electoral reform. We may also contact you to inform you of the policy process relating to electoral reform or seek your views on related matters.

Personal information that you provide will only be used for these purposes. Personal information may be disclosed to the Cabinet Secretary and Special Minister of State or to officers of the Department of Finance and Deregulation and the Australian Electoral Commission as members of the Electoral Reform Task Force for the purposes outlined above. Contents of your submission may be included in subsequent publications.

Confidentiality Statement

All submissions will be treated as public documents, unless the author of the submission clearly requests otherwise by marking all or part of the submission as 'confidential'. Public submissions may be published in full on the website, including any personal information of authors and/or other third parties contained in the submission. If your submission contains personal information about any person who is not an author of the submission, please indicate on the cover sheet if the person or persons have **not** consented to the publication of their information.

Any request under the *Freedom of Information Act 1982* for access to a submission marked 'confidential' will be determined in accordance with that Act.



Cover sheet for submissions

Electoral Reform Green Paper – Strengthening Australia’s Democracy

This completed form must be included with your submission. If completing by hand, please ensure your writing is clear and legible.

| DETAILS FOR PUBLICATION | |
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| So that your submission can be published on the website, www.pmc.gov.au , we need you to provide a name for publication that you are happy to have appear with your submission. If you are submitting on behalf of a group or organisation, this may be your group’s or organisation’s name. | |
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| CONTACT DETAILS | |
| We need to collect some personal information in case we need to contact you should further information or clarification be required on your submission. We may also contact you to inform you of the policy process relating to electoral reform or seek your views on related matters. Personal information that you provide will only be used for these purposes. The personal information may be disclosed to the Cabinet Secretary and Special Minister of State or to officers of the Department of Finance and Deregulation and the Australian Electoral Commission as members of the Electoral Reform Task Force for the purposes outlined above. | |
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