

Electoral Reform Green Paper: Strengthening Australia's Democracy

September 2009

Submission

I commend the Federal Government (in particular former Special Minister of State John Faulkner) for commissioning this Green Paper focusing on the infrastructure of Australia's democracy, and for inviting submissions from the public. All Australians have an inestimably important stake in the health of their national democracy. In this submission, I will focus on those issues (as summarised in Chapter 15) which have been highlighted as being most pertinent for public consideration, and which I feel most warrant explicit reforming action by the Federal Government.

One matter that perhaps lies beyond the scope of the process instigated by this Green Paper relates to the state of Australia's political parties. While it seems that in general, there is a considerable level of public faith in the mechanical aspect of Australia's electoral processes (e.g. 1.23, p.14) today, this level of faith exceeds the level of faith that Australian voters have in their political parties. Political party membership numbers in Australia, if they were publicly disclosed, would almost certainly reveal that per-capita political party involvement in Australia is in a steady state of decline and has been so for several decades. This fact has substantive implications for the strength of Australia's representative democracy on a scale that arguably dwarfs the negative implications arising from all the other individual matters of concern raised in this Green Paper.

Issue 4(d): Should the voting age and/or enrolment age for Australian elections be lowered?

In Australia from what I understand, the minimum legal working age appears to vary from state to state, but generally speaking, it seems that children are permitted to commence work from the time they are roughly 14 and 9 months. They cannot vote until they are 18. To my mind, the "no taxation without representation" line is an old line but still a telling one; in Australia currently, citizens *can* pay income tax without direct representation. This is not a situation consistent with our core democratic values. It seems to me to be a form of gentle paternal tyranny. It is also illogical. I don't believe it makes a great deal of sense to prevent Australians who we judge to be mentally capable enough to work and to drive motor vehicles on our roads from voting.

In light of the fact that the minimum working age varies, and that in realistic terms many fourteen year-olds likely have no interest in exercising their democratic rights, I believe a fair and reasonable step forward would be to allow children to voluntarily enrol to vote at the age of 16. This age would allow the option of enrolment to be presented as a packaged element of the school curriculum focusing on Australia's democratic practices and history. This scheme would allow those children who wish to exercise their democratic rights to do so, while those children who don't wish to vote immediately would not need to at that stage of their development. Voting should be compulsory for everyone who chooses to enrol early, so as not to cause confusion regarding compulsory voting once children turn 18.

Any concern that children may not have "developed" enough at 16 to exercise their democratic rights appropriately is mitigated by such an early voluntary enrolment scheme. This line of argument also sidesteps the somewhat inopportune reality that a not insignificant proportion of adult voters likely would have comparable levels of intellectual development (or worse) than the best and brightest of the nation's youth.

Issue 5(a): Do the current voting systems for the House of Representatives and the Senate offer an appropriate balance between representation and responsiveness? If not, what changes should be made to the voting systems for the House of Representatives and/or the Senate?

The broader issue of proportional representation and in particular, the possibility of introducing the concept of multi-member electorates to Australia's federal electoral system in the lower house is an issue that warrants serious and professional consideration. Improving proportional representation significantly would change the structure and nature of our electoral system; perhaps for the better, but it would not be a change that could be taken lightly. I would advocate a formal public inquiry specifically focusing on the issue of proportional representation and whether or not the introduction of multi-member electorates would be a worthwhile improvement to our democracy. It seems to me that the scale and breadth of such change is vast enough that it can not reasonably and wholly considered as a mere component of the consultation process associated with this Green Paper.

Two narrower changes to the voting systems for the House of Representatives and the Senate that also warrant serious consideration are the introduction of fixed four-year terms for the House of Representatives and the reduction of the six-year term for Senate representatives to three/four years in order to align with the House of Representatives. Implementing a regime of fixed election terms would ensure that the government of the day does not have the power to

manipulate the election date so as to suit its own base political purposes. It would also serve to discourage the “continuous campaigning” paradigm that the major Australian political parties (in particular) have adopted over the past decade (e.g. Issue 10(c) raised in the Green Paper). Such a change would also mesh comfortably with an increase in parliamentary terms from three to four years. With the election date fixed in advance, and the government of the day granted an extra year to implement its program of work, a considerable incentive would be created for governments to get on with the job of governing, make hard decisions when required, and generally speaking not be so poll-driven and election-focused.

One typical argument in opposition to such a change relates to the question of what happens when a government “runs off the rails”. Some would likely be concerned at the lack of recourse available to force a government to an election if its actions are deemed broadly untenable due to incompetence, malpractice, or some other extreme circumstance. If the Opposition controlled the Senate, in this circumstance, Section 57 of the Australian Constitution could be invoked by the Governor-General in order to force a double dissolution election. If the government controlled both houses of parliament, this recourse would not be available and the government would theoretically be able to do as it pleased until the next fixed election date came around. Realistically speaking, one must consider that this is not substantially dissimilar to the situation that Australia finds itself in today. The level of competition between the major parties today in itself ensures there are already heavy disincentives in place for federal governments to act appropriately and be seen by the public to be acting appropriately. Indeed, the current situation is arguably even less favourable, because today federal governments are currently afforded the dangerous power to call elections earlier than required, as politically prudent.

With respect to the Senate, there is no substantive logical reason why parliamentary members are afforded longer terms of office (six years) than their colleagues in the House of Representatives. The current situation is no doubt confusing for many voters, and needless complicates our democracy. There is also substantially less public oversight over the process through which party candidates for the Senate are selected and subsequently elected than there is for the House of Representatives. This supports the case for shorter terms for members of the Senate. Representatives of the Senate generally do not have any direct local connection with the constituents they represent, as members of the House of Representatives generally do. It is, for example, certainly the case that a significantly larger proportion of voters would be able to name their federal member of the House of Representatives than the Senators representing their state in parliament at any given time. These factors together make a

compelling case for the alignment of the standard Senate parliamentary term with that of the House of Representatives.

Some other, simpler changes (e.g. “quick wins”) to federal voting systems suggested in the Green Paper also warrant consideration. The Robson Rotation mechanism for preparing ballot papers as implemented in the ACT and Tasmania appears to be a straightforward means of ensuring that voters who choose to “donkey vote” (e.g. vote for the first candidate on the ballot) do not contaminate the overall results. Including candidate photos on ballot papers is another simple mechanism that could be introduced to assist voters in fulfilling their democratic responsibilities. Many voters may know of their local candidates more by face than by name. Including candidate photos on ballots would make it more likely that voters cast their vote for the candidate that they most wish to vote for than is currently the case.

Issue 5(b): Should optional preferential voting be introduced for the House of Representatives?

As mentioned in the Green Paper, optional preferential voting has already been introduced into the lower houses of New South Wales and Queensland. Aligning the other states and territories and our federal electoral system with these two states would have multiple noteworthy benefits:

- It would result in a simpler, easier to understand system of voting for all Australians. The needless confusion that results from having different voting schemes across different state and territory jurisdictions and at different tiers of government would be for the most part eliminated.
- Voters would be free to withhold preferences as they see fit. They would not need to preference any given party if they do not believe that party’s performance warrants it. Currently voters in jurisdictions other than New South Wales and Queensland (and all voters federally) are forced to state a preference for all parties. Often this is not an informed preference, as voters do not know of all of the parties/candidates taking part in the poll.
- Implementing nationwide optional preferential voting in the lower house would likely result in an overall reduction in the number of informal votes registered. Voters who “just vote 1” federally would have their votes counted, which is a fairer expression of their democratic preference than the current outcome.

Issue 5(c): For the Senate, should preferential above-the-line voting be introduced? Should

optional preferential voting below the line be introduced?

Aligning with a nationwide system of optional preferential voting in the House of Representatives, I believe it would make sense to introduce a system of optional preferential voting “below the line” and “above the line” on Senate ballot papers. Currently, voting “below the line” is something of an absurd activity, with voters forced to enumerate their preferences between tens of candidates, many or most of whom they would not have heard of or know next to anything about. Freeing voters to preference just the candidates *they actually wish to indicate preferences for* would be a considerable improvement on the current system of voting, and simplify matters greatly for those who choose to vote “below the line”.

Allowing voters to preference party groups “above the line” would align this form of voting with both the “below the line” form of voting for the Senate and the optional preferential voting advocated in my response to Issue 5(b). This would allow voters (should they so choose) to express their ordered, individual preferences on a party-by-party basis, overriding the backroom deals concocted by the party groupings themselves. Both of these changes would represent an improvement in the “purity” of the individual preference that voters express at elections, and therefore would represent an improvement to democracy in Australia.

Issue 5(d): Would there be benefits in greater harmonisation of voting systems? and

Issue 5(f): What strategies do you think could reduce the level of unintended informal voting?

As indicated in my responses to issues 5(b) and 5(c), I believe that one of the key benefits if harmonising our voting systems with respect to optional preferential voting would reduce the level of unintended informal voting significantly. Further to this, I would also advocate a relaxation of the scrutineering guidelines in relation to the use of ticks or crosses on the ballot paper. If a voter marks a single candidate or party grouping on the ballot paper with a tick or a cross (e.g. aligning with the OPV changes advocated earlier), I believe the voter’s intention should reasonably be considered clear and the vote counted as a vote for the candidate or party in question. That such votes are counted as valid should not of course be advertised publicly, and voting using such marks should not in any way be encouraged. Considering such marks as a valid (even if not syntactically correct) expression of the voter’s intentions would further decrease the level of unintended informal voting.

Issue 5(j): What changes, if any, should be considered to the current composition of electoral divisions?

The prospect of an Indigenous electorate for the federal House of Representatives or perhaps preferably, an Indigenous multi-member electorate for the Senate (e.g. as raised in Section 5.105) is in my view worthy of serious consideration. In general, my preference would certainly be for our electoral systems to operate on the “one vote, one value” principle, which an Indigenous electorate or Senate seat would, on face value, contradict. On the other hand, evidence suggests that many Indigenous Australians are excluded from the electoral roll as a result of their itinerant place of residence or because they effectively live on the fringe of mainstream political society. Indigenous Australians are also severely underrepresented in parliaments across the country and in mainstream politics. It could therefore be argued that some prescribed representation in one or both of the federal houses of parliament would more closely align our democracy with the “one vote, one value” principle than is currently the case.

Issue 5(k): Should any changes be considered to address the issue of members or Senators retiring before the end of their terms?

It is my belief that the current mechanism (e.g. party office appointment) for filling casual anti-Senate vacancies is fundamentally anti-democratic. Ideally, all Senators in our parliaments should be elected by the people; at the very least, Senators who fill such vacancies should be forced to face electors at the next poll. Aligning the representative term of office of the Senate with that of the House of Representatives as suggested in relation to Issue 5(a) would effectively present a solution to this problem as well.

Mid-term resignations (and by-elections) in the House of Representatives should also be more actively discouraged by our federal electoral system. Except in extreme circumstances (e.g. family illness, personal illness, death), members of parliament should be reasonably expected to commit to serve a full term of office if they are offering themselves up for election. I would support a model whereby the exceptional circumstances in which a mid-term resignation is permitted are legislated for or else codified through constitutional amendment (e.g. in this instance the Governor-General could officiate on resignation applications), and a restriction of resignations introduced accordingly. It is quite simply not fair for a Member of Parliament’s constituents if their member of parliament contests an election but does not intend to serve a full term of office, particularly if they do not disclose that intention. Extreme circumstances aside, this is effectively an act of deceit by the Member of Parliament concerned, or in the very least, a dereliction of duty.

Issue 7(a): How can enrolment processes best ensure maximum participation in Australia’s elections?

The Australian Electoral Commission could be granted the authority to work more closely with the state motor licensing authorities (e.g. RTA, VicRoads) and CentreLink to facilitate the maintenance of the electoral roll. All customer interactions with these agencies could be predicated by a cross-check of the electoral roll (via supporting technology) to verify that the customer's details are up-to-date, and the customer prompted to enrol, or update their enrolment details if necessary (for example, if their permanent address has changed). For some such a system has concerning implications for privacy and information security, but realistically, both state motor licensing authorities and social security authorities already maintain information relating to a customer's name, date of birth, and residence. It would make perfect sense to leverage these "high interaction" agencies to provide more potential triggers for voters to ensure that their enrolment details (e.g. presently maintained by the AEC - a "low interaction" agency) are up-to-date.

Issue 7(b): Are there any changes that you think should be introduced to enrolment processes, such as:

- automatic enrolment?
- automatic update of enrolment details?
- online enrolment?
- online update of enrolment details?

In so much that automatic enrolment describes the enrolment of a citizen to vote without their involvement or direct consent, I don't believe that this approach is the best way forward. Depending on the particular agencies that a given person interacts with during the course of their life, the personal information these agencies hold may or may not be entirely accurate at any given point in time. Voters should instead be encouraged to take ownership of their enrolment and to actively maintain their enrolled address, with prompting from government agencies they interact with where feasible. The approach described previously in response to Issue 7(a) would in my view be a preferable approach.

Additional funding should also certainly be allocated to the Australian Electoral Commission to facilitate online enrolment and the online maintenance of enrolment details. The current system, which appears to involve a combination of an online form and a paper-based form that must be mailed in, is undeniably a clunky and inadequate system. If the government is serious about encouraging higher enrolment levels and ensuring that voters do not inadvertently "fall off" the roll, it should be serious about removing all obstacles to enrolment that can be reasonably be removed - sadly the current process for maintaining one's enrolment is

something of an obstacle course. It is surely the case currently that many voters who change their addresses relatively frequently (e.g. students, travelling professionals and others who often rent) either lose track of where they are enrolled or else remain enrolled at the wrong address or in the wrong electorate. If there was an easy but secure method of maintaining one's enrolment online, many such people would be able to avoid either falling off the electoral roll or remaining enrolled at the wrong address. Enrolment could and should also be offered over the counter at Australia Post outlets.

Issue 7(h): What 'close of rolls' period do you think is appropriate?

- Should the roll close date be set later in the election period?
- Should enrolment on polling day be permitted?

If the government does indeed seek to maximise the proportion of the population who are properly enrolled and vote in elections, it surely stands to reason that people should be allowed to enrol to vote throughout the campaign period and indeed on the day of an election if need be. Presumably additional funding would need to be allocated for the Australian Electoral Commission to provide further (likely dedicated) staff and resources to facilitate this in an effectively functional way. For example, one to two dedicated staff members could be allocated per electorate to assist with processing enrolments on election day. These staff members could be posted to a particular nominated polling booth in each electorate, and could process enrolments either electronically if the technology is available or through co-ordination with a centralised call-centre operated by the AEC.

Historically, governments and other commentators have raised concerns around the possibility of enrolments being manipulated by unscrupulous individuals or organisations if enrolment was allowed right up until election dates. These concerns may be partially valid, but should be considered in context. There is no strong history of electoral fraud or manipulation of the electoral roll in Australia. Although electoral rolls are still individually printed for separate use at each booth, the application of technology available today should enable the effective and secure processing of both enrolment and voting, to an even greater degree than is currently the case.

Issue 8(b): Are there any changes that you think should be introduced to party registration arrangements, such as:

- requirements regarding the conduct or organisation of political parties, such as requiring them to become legal entities?
- different rules for party names?

- rules to address 'party-hopping' for registration?

Today, there is a certain degree of incongruity when it comes to the issue of transparency in our electoral system and our democracy more broadly. Freedom of Information (Fol) is a hot button issue in our political system today, with the media and the public wanting increasing access to the operations and performance of bureaucracies at every tier of government. On the other hand, the public has little to no oversight over political parties, which are essentially "black box" private entities. It should be of concern to us that entities over which we have no internal view are administrating our society. Can the organisations running our governments really be called "democratic" organisations? Or are they simply oligopolies - glorified cabals?

In harmony with this point of view, I would advocate that political parties registered with the Australian Electoral Commission should be required to be registered as legal entities, and be forced legislatively to table a public annual report to the commission. This annual report should at a minimum contain basic annualised information regarding membership numbers across the country's geographic areas (e.g. ideally per branch and at least, per state/territory), financial incomings and outgoings and the numbers of paid officials and the amount that they are being paid. It should also contain information regarding the democratic processes that the party has engaged in throughout the year (e.g. for example, preselections, elections for party executive positions, party conferences). The public have a right to know the basic "vital signs" of the political parties they are voting into office. If a given political party's membership is in decline, or is increasing, this is an important piece of information that voters should have a right to know about.

To address widespread public concerns about branch-stacking in some of our political parties, I would also advocate that the Australian Electoral Commission played a greater role in internal party preselections. For example, the AEC could be granted the authority and associated funding to "audit" a limited percentage of party preselections in the lead-up to an election year, and to verify the veracity and fairness of the results. AEC staff could do this by formally reviewing the returns of preselections and privately interviewing members involved in the voting or personal campaigns. The additional oversight this would create upon the preselection process would encourage our political parties to run clean, free and fair internal elections (patently not always the case now), and to greatly discourage branch-stacking. The introduction of this new form of oversight would also serve to increase public confidence in our political parties, and by association, our democracy.

Issue 10(d): Do you believe the current media blackout arrangements should be changed in any way?

To minimise the likelihood that political advertising will play a decisive role in election campaigns, the Broadcasting Services Act (e.g. as referenced in Section 10.6 of the Green Paper) could be amended to increase the election advertising blackout from three days to a week before election day. Public relations rhetoric should not supercede the primacy of facts and balanced journalism in the nation's democratic debate, particularly in an election campaign's final week.

Issue 10(f): Are there any changes that you think should be introduced to the arrangements governing the neutrality of the polling booth?

As described in Section 10.71 of the Green Paper, political parties can currently erect posters and signage at polling booths on a first come, first served basis. This seems at first blush a reasonable proposition, but the reality is different. "First come, first served" polling booth setup is becoming increasingly problematic at booths in tightly contested electorates. The major parties, in particular, often aim to monopolise. Local party organisations have been known to setup advertising material en masse on election eve, and even in some electorates to hire security personnel to "guard" the material until the following morning. Anecdotally, young activists either affiliated with or loosely affiliated with certain political parties have been known to embark on "search and destroy" operations on opposition advertising material on the evening before an election, making such absurd precautions necessary. Under these sorts of conditions, the party organisation with the most resources and money to splash around clearly ends up with the most representation outside polling booths. In itself this is not necessarily a negative thing (supposing funding and resources is roughly equivalent to support), but it becomes a negative thing when an effective monopolisation of polling booth areas occurs, generally at the hands of one or both of the major parties.

To address this, I would advocate the introduction of legislation that clearly indicates the amount of "fixed" political advertising that is permitted per-political party within a certain distance of each polling booth entrance. This limitation should be fixed with a view towards encouraging a roughly equal level of representation outside polling booths from all participating political parties that have a reasonable level of support. Such a limitation would also reduce the amount of wasted paper, ink and other resources that are expended (particularly by the major parties) specifically for the purpose of making public relations statements on election days. Our political parties should also be held more accountable than is

currently the case to the rules and regulations regarding the conduct of elections and the neutrality of polling booths, and the financial penalties associated with misconduct increased (e.g. refer to Issue 14(a) discussed below) so as to represent a realistic deterrent.

Issue 10(g): Should any changes be made to the arrangements governing how-to-vote cards?

It is difficult to judge just how many reams of paper and how much ink is exhausted through the production of “how-to-vote” cards for election days in Australia. Although many (particularly those with some history as activists or members of political parties) may have some sentimental attachment to the handing-out of how-to-vote cards for their parties outside polling booths, surely the time has come to consider the extent of the wastage that is involved. Many voters are not gladdened, on polling day, to have numerous pieces of paper thrust into their path by enthusiastic polling booth workers. Arguably, the needless and often mindless proliferation of “how-to-vote” materials serves to reinforce the “disconnect” that exists between ordinary people and the political establishment.

As an alternative, parties could be required by the AEC to lodge their how-to-vote cards a set period in advance of the polling date. The AEC could then produce a set number of laminated booklets for each electorate that contain the how-to-vote recommendations of each political party that deigned to submit a card, and these booklets could be provided to voters as they entered the polling booth and returned to AEC staff upon completion of their vote. Party activists could still have a role outside polling booths dispensing advice to voters about their local candidates and providing advice if necessary on how-to-vote information for absentee voters.

Issue 11(b): What changes, if any, are needed to the current postal vote processes for federal elections?

As described in Section 11.24 of the Green Paper, political parties currently are able to distribute postal vote application forms to electors together with other party-political material. Electors are requested to return the postal vote applications to political party mailing addresses. This mechanism is concerning on a number of levels:

- A considerable level of faith is placed in political parties to not manipulate the content of postal vote applications received from electors.

- Postal applications distributed direct to electors by political parties may contain imbalanced or unfair accompanying party-political information. Those parties with greater financial resources available can use this to their advantage.

I would advocate a repeal of the provisions that allow for the distribution of postal vote applications with accompanying party-political advertising by political parties. Political parties should still be allowed to distribute postal vote applications if they so desire, but these applications should be sent without party-political advertising attached, and they should be returned direct to the AEC rather than to the party concerned. This minimises the potential for the introduction of bias or corruption into the postal vote application process through political party involvement.

Issue 11(c): Should electronic voting be utilised to a greater extent in Australia?

- If so, what form of electronic voting should be used?

The rate of distributed network technology adoption by the public over the last decade and the increasing public desire for more convenient government services means that it is arguably not a question of if for electronic voting, but when. Today, Australians instigate a wide array of sensitive transactions over the Internet in an effectively safe and secure manner, such as shopping, paying bills, renewing their car registration, transferring bank account funds, and completing their tax returns. This trend is set to increase over the coming decades, as more and more interactions within the economy shift from the “bricks and mortar” world to the online world. There would certainly be a significant element of risk involved in implementing a robust and secure electronic voting system for Australia, but such a system would offer numerous advantages:

- Voters would be able to vote in their electorates from wherever they happened to be geographically located. Presumably this would be initially through explicit “online enrolment” on a per-person basis, but over time this could be made widely available based on secure remote login. This has particular positive ramifications for voters living in rural or remote areas, and voters working or otherwise unavailable on election days.
- Disabled, elderly or infirm voters would be able to vote from care facilities or hospitals and would not have to be assisted out into polling booths.
- Electronic ballots could be developed to enforce “formal” voting by participants, effectively eliminating informal voting.

- Voters disenfranchised by the inconvenience of voting could discharge their democratic obligations from the comfort and privacy of their own home.

Critics of a potential system of electronic voting are quick to highlight the potential disincentives of such a system; the potential for fraud or malevolent attacks on the system by hackers or political operatives, the implications of electronic voting for the "secret ballot", and the privacy concerns associated with having the electoral roll integrated electronically into a publicly accessible software application. These concerns are not without merit, and only serve to underline the fact that electronic voting should not be pursued before time, and should not be made widely available until the underlying system is subjected to the most rigorous levels of testing and quality assurance possible. As summarised in Section 11.34, electronic voting trials have been conducted in Australia as many as eight years ago, so there is no real reason for hysteria if leading-edge industry standards are applied in the implementation of the eventual national electronic voting system.

I would advocate the Australian Electoral Commission to develop a blueprint for gradually moving the nation towards developing an electronic voting system, perhaps through a formal consultation process. We should be encouraging a cautious but forward-thinking approach. Above all, the needs and desires of ordinary people should provide the driving motivation for change in this area, rather than the technological angle alone.

Issue 12(b): Should the National Tally Room continue to operate for federal elections?

While the National Tally Room (NTR) may not be quite the functional centre of election night as it has been in years passed, I think a strong patriotic argument still exists for its retention. The nation still needs a physical locus or "gathering point" around which to gather on election nights, nights on which we celebrate our democracy. The sense of place and of history that the NTR provides once every three years is arguably worth much more to the national identity than \$1,000,000 (Section 12.34, Green Paper).

Personally I don't believe that any tangible "contamination" of the national democracy would ensue if the NTR was sponsored by one or more corporate sponsors. As suggested in Section 12.35 of the Green Paper, I would advocate that the Australian Electoral Commission seeks suitable ongoing sponsors for the NTR to subsidise running costs, in a similar vein to that pursued by the South African Electoral Commission.

Issue 14(a): Is the existing compliance and enforcement regime in the Electoral Act effective?

- If not, what changes should be made?

It seems clear (per Section 14.28 of the Green Paper) that the penalties outlined in the Electoral Act no longer act as a sufficient deterrent against violations of the Act. These penalties should be increased to relevant levels for 2009, and tied to inflation so that they progressively remain a relevant deterrent. If necessary, some consideration should be given to providing increased resources to the Australian Federal Police so as to ensure that infringements of the Act are adequately pursued, perhaps by a dedicated unit. Laws that the government does not provide sufficient enforcement resources to uphold (e.g. as described in Section 14.12, Green Paper) are practically speaking, not worth the paper they are printed on.

As per my response to Issue 8(b), I would also advocate that political parties be registered as legal entities and that associated heavier penalties introduced to the act for discretions committed by political parties or agents acting on their behalf.