

SUBMISSION TO THE ELECTORAL REFORM GREEN PAPER: STRENGTHENING AUSTRALIA'S DEMOCRACY

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1. HARMONIZATION VERSUS INNOVATION

An underlying hypothesis of the Green Paper seems to be that harmonization between state/territory and federal election laws is a positive and desirable goal. I would debate such a hypothesis. The premise of the argument seems to be that electoral law diversity between jurisdictions is problematic because it can confuse people. For example, maybe a voter in NSW could mistakenly assign only some of his or her preferences in a federal election (where full allocation of preferences is required) because they confuse it with state elections where allocation of preferences (beyond the first) is optional. Such reasoning process seems to take a dim view of the average citizen. Indeed this view of the citizenry is fundamentally incompatible with the ideas behind universal suffrage and democracy itself. Democracy assumes people to be competent to participate meaningfully in public affairs, and so should our electoral laws. While it is important that Australia's electoral laws can be understood by most people, it is similarly crucial that the electoral system treats Australian voters as though they are capable. Otherwise surely the very premise that all citizens are entitled to vote must be viewed as questionable!

Additionally, harmonisation must assume that Australia has mastered electoral law, and the goal is thus to conserve the electoral utopia we have achieved, rather than try new—different—ideas within the jurisdictions in order to move closer to it. With harmonisation comes a loss of innovation. If the goal is to make all state/territory and federal election laws substantially the same, than new reforms will be discouraged. This is particularly worrying when we consider our past as an electoral leader. The Australian colonies were electoral innovators precisely because they were different. The colonies (and later the states) were willing to experiment with secret ballots, extensions of the franchise and campaign finance regulation. Without innovation, the secret ballot would never have been introduced; women would still be prevented from voting; party finances would not be funded by the state. All these innovations began in a state and then spread. I would imagine that countless other experiments have been less successful and have not spread (unicameralism perhaps?).

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Harmonisation assumes that we've got everything right and should now just be seeking to preserve what we have. But a simple glance at any public opinion survey reveals that Australians could hardly be described as enamoured with their system, do not often participate in politics (except where is compulsory), and are ill-informed about political affairs. Thus, we cannot reasonably conclude that Australia has mastered democracy. Reforms are waiting to be discovered and implemented that might change this state of affairs, but a move to harmonise our electoral laws will necessarily defeat this agenda. Rather, diversity between our electoral systems is something to cherish, and Australia will ultimately be better for it.

Perhaps the diversity of Australia's electoral laws does confuse some voter, contribute to spoiled ballots or a disengaged electorate. But if so, to simply conclude that diversity is, of itself, is a bad thing is to 'throw the baby out with the bath water'. Rather, we should seek to minimise confusion by better informing our citizens and more actively encouraging them to be engaged with their electoral system.

2. QUALITY OF PARTICIPATION – VOTER EDUCATION

It needs to be made explicit that voter turnout in triennial elections is not the end of the story in a democracy. All votes are not equal, and the distinction between quantity and quality of participation is crucial. Surely a lower turnout of engaged citizens casting sincere and informed votes and participating in other forms of democratic participation is *more* desirable than a 100% turnout of disenchanted voters casting ill-informed or insincere votes. What meaning does an ill-informed vote for candidate X have? What is the value to democracy of an insincere or unconsidered (not ill considered) expression of an opinion? Aspiring to a 100% turnout without giving any thought to the quality of votes should not be the aim of our electoral system.

In any case, in a nation with enforced compulsory voting (whether one imagines that the duty extends merely to attendance at the polling booth or one adopts the High Court's hardline view), the primary goal of electoral education (and other election laws) must be the improvement of the *quality* of electoral participation. The primary goal of our electoral laws need not be to achieve voter turnout (quantity), because state coercion is used to (largely) achieve it. To my mind, Chapter 9 of the *Green Paper* focuses too much the use of education as a method of achieving that slight (but important) bit of extra electoral participation amongst groups with lower turnout rates, to the neglect of making sure the voting that occurs is more meaningful.

Improving the quality of the voting that takes place requires more than just education; it involves making politics itself more engaging and rewarding. To adopt a market analogy, we must look at the "product" (ie. politics) that is being sold. The price is already low: a few minutes of time each week or month to keep in touch, trundling out to a polling booth every few years and maybe a stamp to write to your local member or a political discussion with friends. But the product somehow seems to be not worth even this small effort to many citizens. If it were, why would Australia view it as necessary to compel its citizens to the polling place to ensure their participation? It seems politics itself, rather than the electoral system, needs to be more interesting and engaging.

The current adversarial system of a rigid disciplined party government simply ratifying what amount to executive decisions in the legislature (archaically called "legislation"), all the while opposed at every step by a weak opposition who are not empowered with the same resources as the governing party (and therefore do not have the ability to present fully formed and costed policy) and whose leader's leadership is constantly at issue, is not conducive to an engaged citizenry. This is especially true when voting is erroneously purported as the only legitimate way for a citizen to voice their opinion. Voting is one of the least effective and most vague and indirect forms of political participation, and an overemphasis on it

encourages an unnecessary sense of powerlessness in citizens. Isolation and disengagement from politics hardly seems unlikely when all that is consistently reported is harsh partisan attacks and endless speculation about leadership—and the only thing a citizen believes they can do about it is to vote for the other major party at the next election. Even I, someone who is very interested in politics, find myself routinely disengaging on important issues, because they only ever reduced to simple “for or against” a government proposal or endless questions about leadership of one or other party. Do we really wonder why the average citizen is cynical?!

But how do we achieve more sincere and/or engaged voters? While quality, unlike quantity, cannot be achieved by electoral laws alone, electoral laws can help. Laws providing for electoral education are important to achieving informed votes. I unequivocally support initiatives like APAC on free-to-air TV and civics education in schools. Community cabinets and other initiatives are useful too. However, one of the problems with community cabinets and 2020 summits is that they tend to engage the already engaged.

Additionally, there are many reforms, achievable using electoral law, that I think could *help* make politics itself more engaging. However, many will be considered as too ‘radical’ or ‘un-Australian’ to stand any realistic chance of happening in any short term time frame. However (putting my pragmatist’s cap on) I wish to highlight a few, more minimalist, reforms that could begin the process of making Australian politics less isolating and unpleasant.

PARTY LEADERSHIP CONVENTIONS

The current and alternative Prime Minister are selected by the parliamentary leadership. Without any input from the electorate, the position of government or Opposition leaders do not themselves have any significant democratic legitimacy. Sure, electors vote for a local representative, a delegate of a party who is pledged to vote for a member of their political party (or coalition of parties) in a leadership vote. But this is hardly a particularly profound source of democracy legitimacy.

Indeed the absence of the leader’s legitimacy, particularly in opposition, is plain for everyone to see. No matter who is the leader of the opposition—no matter how competent, charismatic or deserving they are—the leader’s position is subject to constant attack. The governing party and the media can easily destabilise a leadership by implying dissent, suggesting challengers or highlighting opinion polls (inherently unfavourable to the opposition). While the media has a role in perpetuating and exacerbating the frail position of the Opposition leader, the undemocratic process of leadership election itself provides the basis for leadership speculation.

Leadership conventions—formal, public gatherings of the party rank-and-file to vote on a leader—seem to be one of the most obvious democratic reforms for Australia. It seems leadership conventions would be advantageous to both major parties, at least when they’re out of government. Certainly, conventions would cost, but the state should be willing to take up that cost on behalf of political parties because open, accountable leadership conventions would greatly increase the quality of Australian democracy. Leadership conventions might enable politics in this nation to be something more than endless gossip about party leadership. The leader would have democratic legitimacy and challengers could only replace the leader by themselves convincing the party membership to vote for them. Leadership conventions might also boost party members by offering another—very visible—reason to join a political party.

Leadership conventions are just one way that we might seek to reinvigorate the legislature. Since the redundancy of the legislature and the disempowerment of the Opposition are the core reasons for the disenchanting nature of Australian politics, perhaps we ought to have an inquiry specifically into the

relationship between legislature and executive, similar to that conducted in the 1970s in Ontario (the Ontario Commission on the Legislature).

OPTIONAL PREFERENTIAL VOTING

I fully support the introduction of optional preferential voting in both Senate and House elections mooted in Chapter 5 of the *Green Paper*. Compulsory preferential voting seems to me to mandate insincere voting. Additionally, it breeds cynicism and disenchantment amongst people who do not want to vote for one of the major parties (or indeed any particular candidate), but are ultimately forced to rank one higher than the other and have their vote count for that party. Such voters are thus left with the (rather disenchanting) options of breaking the law by voting informally and forgoing the opportunity to express sincere opinions for other candidates (or refusing to vote at all), or expressing an insincere preference.

While improving the quality of formal votes, we need to be clear that optional preferential voting must logically end compulsory *voting*. For if voters are not compelled to have all preferences—or even a second preference—on the basis that they may not reasonably have a second preferred candidate, how can they logically be compelled to have a first preference? If we accept that a citizen can justifiably not want to vote (for example) for four of five candidates, how can we then not accept that same justification for five of five candidates?

Higher-than-worldwide-average turnout could probably still be maintained. Attendance at the polls on Election Day and even depositing the ballot papers in the ballot box could still be compulsory, but the actual act of expressing preferences in writing on the ballot paper could no longer be compulsory. This would represent a true achievement of the myth of compulsory attendance which is subscribed to by a high proportion of Australians but emphatically refuted by the High Court. There can be far fewer objections to the state compelling citizens to attend a polling booth on a given day than to the current compulsion to express a preference on every single nominated candidate.

It seems that optional preferential voting might just have the effect of mitigating against the worst effects of compulsory voting (to simultaneously hide and breed discontent) and the remove the moral repugnancy of compulsion while still maintaining a sense of voting as a duty amongst society and keeping up our high voter turnout levels. Whether or not candidates would be elected without a majority of at least 50% + 1 vote remains to be seen, but I fail to see how a candidate elected by an artificial majority is any better than a candidate elected by a true, sincere plurality. To design an electoral system that rewards the amassment of an insincere majority is to design a system that takes into account only half the meaning of citizens' votes – the quantity – and disregard the quality (and therefore the full meaning) of the votes.

FIXED TERMS

In the *Green Paper*, the fixing of election dates for federal elections was only mentioned in the context of conducting the state and federal elections all on the same day. However, I would like to urge the consideration of fixed term elections for federal elections, independent of state election dates. In my mind, three year fixed terms are desirable. While I personally think shorter terms are better, four year fixed terms would be preferable to the executive tyranny that we now have in regards to election dates.

In modern day Australia there can be no honest defence of the Prime Minister advising the Governor General when to call an election. We no longer have a fragile coalition of independent or loosely aligned representatives forming the government, like we did in early Westminster days. We now have solid,

permanent and unchanging political parties. Our single member districts, combined with our majoritarian voting system (the alternative vote) and only minor regional diversity do not tend to produce minority governments. The arguments that variable length terms are needed in case the PM loses support of the house mid-term just do not stack up. If the PM resigns or dies mid-term, the elected deputy leader would step up in the interim before a leadership convention would be held to elect the new leader of that political party (ie. the PM).

Furthermore, electoral law and administration could be more efficient (and cheaper?) with fixed term elections. Campaign finance laws and political party structures to comply with them could be set to a fixed time schedule. Political parties would know when to concentrate on competing for the hearts and minds of citizens. Additionally, wide-spread cynicism about the timing of elections would be eradicated.