

THE ATHENIAN COLLOQUIUM.

SUBMISSION IN RESPONSE TO ELECTORAL REFORM GREEN PAPER.

STANDARDS, QUALITIES AND EXPECTATIONS.

The most important principles to be observed in our electoral system are:

- representation, because that is the purpose of a system of representative democracy,
- an open political environment, without which a democratic system that cannot flourish,
- universality, because that distinguishes democracy from other systems,
- integrity, because confidence in the system cannot be maintained without it,
- transparency in electoral administration, because this enables the community to see that the basic principles are being observed.

There should be genuine equality and this requires that the circumstances of all electors be taken account and reasonable adjustments made to ensure their ability to participate in the democratic process.

The overarching guiding principle should be that whatever encourages and facilitates the participation of eligible electors in the democratic process should be supported and whatever limits, restricts or inhibits their participation should be rejected.

Neither unsubstantiated claims of abuse nor the occurrence of occasional minor irregularities should be considered as grounds for restrictive measures whose real intent is to disenfranchise particular groups of voters.

Effectiveness, efficiency and flexibility should be pursued, but only to the extent that they contribute to achieving the basic principles.

The present system of conducting elections provides grounds for great confidence in the integrity of the electoral process, particularly because

- the AEC is justifiably seen as an independent body,
- the system of paper ballots greatly facilitates scrutiny of the process and reduces vulnerability to error, dishonesty and malfunction,
- every stage of the process is open to the examination of scrutineers,
- the system of multiple counts greatly increases the likelihood that any errors will be detected and corrected.

The system should not be compromised for the sake of the appearance of modernity, cost-cutting or speed.

The system of representation, including the use of single member constituencies, is far from perfect and a public debate on structural improvements would be welcome. Whatever changes might be considered, however, requirements of inclusiveness and transparency would remain fundamental.

COMMENTS ON SPECIFIC ISSUES RAISED IN THE GREEN PAPER.

The legal framework for elections.

3 (a). The most important area of harmonisation is in voting methods. A system in which a vote is a formal in one election but an identical vote is informal in another is bound to increase informal voting and undermine confidence in the system. Either all systems should have optional preferential voting or, less desirably, none should.

3 (d). Understanding of the electoral laws needs a continuing programme of education which should include material in community languages. The information can be reinforced by educational material in polling booths. In the design of educational material regard should be had to differences between our system and those which obtain in other countries and to misconceptions identified by research.

The franchise.

4 (b). It would be unreasonable to take the right to vote away from those noncitizens who have enjoyed the right and been part of the Australian community for some 25 years. This is a group of people whose numbers will inevitably decline. Depriving any elector of the franchise is a most serious step and should be rejected unless there is compelling and overwhelming reason to do so, which is hard to imagine in a practical sense. If this group were to be deprived of the franchise, it should have been done in 1984, when new enrolments from such residents were cut off. To deprive them of the vote now would be tantamount to reneging on an agreement.

4 (c). Electors should not be deprived of their right to vote merely because of their place of residence. Such electors should have a right to opt for enrolment where their circumstances make participation practical.

4 (d). Extending the facility for provisional enrolment by lowering the age of enrolment e.g. to 16 could assist in ensuring that young electors were on the roll when they became old enough to vote. A system of voluntary voting and even enrolment could give undue influence to educational, religious or sporting institutions which were in a position to ensure the enrolment and voting of groups of young electors. While the secrecy of the ballot would offer some protection from pressures of persons in authority, the provision of institutional facilities for enrolment, transport to the polling booth etc would favour the participation of some groups rather than others.

4 (e) (i). There are no cogent reasons for denying the right to vote to any persons serving a sentence. Deprivation of voting rights is not part of the sentence which of which the central column is the deprivation of the prisoner's liberty. Prisoners have both a current and a future interest in the conduct of our political system. Decisions of Governments have an impact on them and, in many cases, on their families. The additional punishment is a breach, arguably of the letter of our international obligations and certainly of their spirit. Being a prisoner is a "status" within the meaning of the International Covenant on Civil and Political Rights.

4 (e) (ii). Depriving persons thought to be of unsound mind of their right to vote should occur only under strict requirements where an impartial body has made a determination on the person's mental health. The criterion should not be the vague

one of “unsound mind” but the more objectively ascertainable one of “incapacity to understand the nature of the act of casting a vote”. It is true that, for example, a person suffering from some degree of dementia may cast their vote on the basis of opinions formed the long ago and issues of doubtful contemporary relevance. This does not, however, differentiate them from many other electors.

Representation and voting systems.

5 (a). Most democratic countries use multimember constituencies with a form of proportional representation. Such systems offer the following advantages:

- The parliament more accurately reflects the opinions and alignments of the electors. (The artificiality of a "two party" system generated by single member constituencies has been demonstrated when proportional systems have been introduced, for example in New Zealand, Scotland and Wales. Significant changes have taken place in party representation once the electors' wishes are given free expression).
- Political parties are obliged to pay attention to the wishes and needs of electors in all constituencies, instead of focusing on a small number of "marginal" constituencies.
- Electors are less likely to feel disenfranchised than they may when their preferred tendency has no chance of representation. In day a lecturer at (In many countries any important motivation for implementing systems of proportional representation has been to maximise social solidarity – e.g. Chile the Netherlands and Switzerland).
- In most such systems electors have much greater influence on which candidates are elected and political parties tend to take more account of the views of the whole range of electors. Because electors still have to vote for individual candidates, rather than for a party list, they can vote for the party of their preference without having to follow the “official” party ticket.

(Some major democracies with single member constituencies operate with multi-party systems because of the operation of historical and regional factors, e.g. Canada and India, or because of features of the electoral system such as the second ballot, e.g. France).

As to the supposed disadvantages of such a system:

- countries with multimember proportional systems have traditionally shown governmental stability e.g. all the Scandinavian countries, the Netherlands, Switzerland, post-war Germany. Also, even though Italy is often held up as an example of government instability, it in fact had one government, a coalition based around the Christian Democratic Party, from 1949 until 1994;
- many Australian governments have been coalitions. Major parties frequently operate as coalitions of organised factions;
- a major party would be able to obtain 50% of the seats if it could persuade 50% of the electors to support it;
- there is no reason to believe that the informal vote would increase unless a system included compulsory preferential voting, something which is not a

feature of most multimember systems elsewhere (Ireland and Malta being exceptions),

- the supposed disadvantages have not been evident in Tasmania nor were they evident in the 1920s in New South Wales.

5 (b), (c), (e) and (f). To help ensure that electors' votes which express a clear intention are not invalidated and that electors are not forced to indicate artificial preferences between completely unknown candidates:

- optional preferential voting should be introduced for the House of Representatives,
- optional preferential above-the-line voting should be introduced for the Senate,
- optional preferential voting below-the-line voting should be introduced for the Senate.

These features are already in force in State elections in New South Wales and have largely been uncontroversial.

5 (d) and (g). Harmonisation is desirable if the harmonised arrangements are helpful in ensuring that electors are able to cast a valid vote.

Enrolment and participation.

7 (b) and (c). Since it is the duty of citizens to enrol and to update their enrolment details there seems no objection in principle to those duties being exercised on their behalf. It would however be essential that electors be given the opportunity to verify, and if necessary challenge, any information concerning their enrolment. This would be particularly important for anything which would remove an elector from the roll. An elector may, for example, give a "residential address" for convenience in dealing with various matters which is not the place in which they regularly reside. Online enrolment and update of enrolment details would simply introduce to the electoral process methods which are widespread for other types of process, provided that electors had opportunities to verify and rights to challenge what was done.

7 (d). The best model might be to prescribe a process but allow the AEC a discretion to be exercised on the basis of prescribed principles.

7 (g). Any changes to enrolment arrangements should only be to facilitate enrolment. The privileged status given to a driver's license is inherently discriminatory and disadvantages those who for reasons of economic circumstances, age or disability do not possess one. If any documentary evidence is needed then as wide a range of documents as possible should qualify.

7 (j). Access to information on the electoral roll is part of ensuring transparency and the integrity of the process and should be restricted as little as possible.

Registration of parties, and candidate nominations.

8 (a) to (g). Proposals for greater regulation of political parties including requiring them to become incorporated bodies, introduce preselection primaries or mandate

the form of preselection in other ways could initiate major changes in the nature of Australian politics. Provisions introduced into the United States with the best of intentions have led to a system with a strong plutocratic tendency. Such changes should not be considered without widespread public debate.

Education for electoral participation.

9 (a) to (e). Current electoral education programs are valuable and should receive greater resources. They might benefit by being more specifically targeted at causes of misunderstanding. Material in community languages, for example, might address the differences between voting systems in the relevant overseas countries and those in Australia. Similarly educational programs might target misconceptions found to exist amongst other groups such as young Australians.

The campaign.

10 (a). In general there is no good reason for treating the old and new media in different ways. This might require extending existing provisions to the new media or removing them for the old media where they cannot practically be applied to the new. The media blackout arrangements, for example, are out of date and cannot be consistently applied to all forms of media.

10 (b). A simple measure which would remove much of the temptation to use public resources for campaign purposes would be to permit government advertising only where it was identified by the name of the department or agency and did not include terms such as "Australian Government". References to "Australian Government" are inherently ambiguous and can be taken to refer either to the government of the day or to the Commonwealth. References by name to ministers should not generally be permitted in government funded advertising, at least in the campaign period and the lead up to it.

10 (e). Assessment of the veracity of political claims is a matter which should be in the hands of the electors not the courts or government agencies. Electoral material should not mislead electors as to its source and should not be able to make false statements about the policies or principles of other parties or candidates.

Polling.

11 (c). The present system of paper ballots allows a scrutiny of every stage of the process. Scrutineers do not have to understand or inspect electronic systems. Electronic voting systems will always be open to suspicion. Overseas examples do not inspire confidence.

11 (d). The fictitious nature of the alleged multiple voting or impersonation risks is clearly demonstrated by the fact that those who put forward such suggestions are reduced to speaking in terms of "possible" or "potential". These unsubstantiated allegations are merely a pretext for discouraging certain groups of electors from exercising their rights.

11 (e). This country does not have Pass Laws and there is no requirement for citizens to carry identification. As with multiple voting there is no evidence of voter

impersonation on polling day. (Giving a privileged status to a driver's license is inherently discriminatory).

11 (g). Compulsory voting is an important and successful feature of our electoral system. It emphasises the elector's duty to the community and encourages a sense of participation and voter social inclusion. By ensuring a large turnout at the polls it reduces the possibility of voter impersonation. It encourages a climate where electoral participation is not only required but facilitated.

11 (h). Conducting federal and state, or territory, elections on the same day could only result in confusing the issues before the electors.

Scrutiny of ballots.

12 (a). There is no apparent reason why pre-poll votes should not be treated on a similar basis to votes cast on the day. Those cast in the elector's home Division could be treated as ordinary votes in the same way as those cast at any other polling place in the Division and those cast outside in the same way as absentee votes.

12 (b). The National Tally Room is part of a system which inspires confidence in the electoral system. The various politicians, journalists and other commentators discussing the election in a national and neutral venue provide a demonstration of the openness and fairness of the electoral process in this country.

12 (c). The use of electronic vote counting should be as limited as possible due to the lack of transparency and difficulty of scrutiny.

12 (e). Assuming that the electoral officials continue to be responsive to candidate requests for recounts listening is unknown to order the present position. In closer electorates candidates normally have the benefit of the advice of scrutineers who have a good sense as to whether a recount might change the result.

Dispute resolution.

13 (a). Recourse to the Court of Disputed Returns is too rare to suggest a basis for changing the procedures.

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