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Small Parties, Big Changes: The Evolution of Minor Parties Elected to the Australian Senate[*]

Zareh Ghazarian

Minor parties, sometimes referred to as small parties, have been the subject of much interest, especially in European political systems where they have often been crucial in forming coalition governments. In recent years, however, there has been growing interest in minor parties in Australia. This was not always the case as it was the major parties which were the centre of political attention. This is understandable given Australia follows the Westminster system where the government is formed by the party (or parties) that wins a majority of seats in the lower house. The Australian parliamentary system, however, has a powerful Senate.[1] Indeed, the Senate has almost all the powers of the House of Representatives. Furthermore, a bill must be passed by both houses in order to become law. Aside from its structural importance, the Senate is the chamber in which minor parties have won parliamentary representation, sometimes wielding the balance of power and exerting significant influence over the policies of governments.

The following discussion will explore the rise of minor parties in Australia, with particular emphasis on the parties that won seats in the Senate in the post-war period. It will highlight the significant changes to the type of minor party winning Senate representation over the last seven decades, especially in terms of their sources of mobilisation and the role they seek to play in the political debate. I aim to show how newer minor parties are qualitatively different to older minor parties.

Minor parties elected from the 1950s to 1983 were the result of major party fragmentation. They had policy platforms but positioned themselves as either opponents or 'watchdogs' of the major parties. Minor parties elected from 1984, however, advanced a specific policy agenda linked to broader social movements. This evolution in the type of minor party elected to the Senate has implications for party competition, national government and policy outcomes. In highlighting the changing type of minor party winning Senate representation, I hope to construct an analytical framework to understand the role and power of minor parties in contemporary Australian politics.

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[*] This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 17 March 2017.

[1] Stanley Bach, *Platypus and Parliament: The Australian Senate in Theory and Practice*, Department of the Senate, Canberra, 2003.

This discussion will examine parties in the chronological order in which they were elected to the Senate, starting in 1949, when the voting system of proportional representation was used for the first time, and including the most recent election in 2016. It draws on information obtained through interviews I conducted with parliamentarians, office-bearers and supporters of minor parties, as well as from official party documents, media reports and academic analyses. In some cases, I use pseudonyms to maintain the anonymity requested by those who generously gave their time and discussed their thoughts and feelings about minor parties in Australia.

The rules of the game

As Maurice Duverger reminds us, the electoral system can shape the party system.[2] This has implications for the ability of minor parties to win Senate contests. Prior to 1949, a 'winner takes all' system of voting was used to elect senators. From the first federal election in March 1901—which was for the whole Senate—up to and including the half-Senate election in May 1917, the system was 'multi-senator-plurality'.[3] This resulted in lopsided outcomes in which either the government or opposition parties dominated the chamber.

In 1948, the Chifley Labor government enacted the single transferable vote (STV) method of proportional representation for Senate elections.[4] This change was to have a significant impact on subsequent Senate elections.[5] In 1983, the Hawke government made further changes to the Senate voting system. These reforms, which first applied to the federal election in 1984, also had a profound effect on subsequent Senate contests.[6] As shown in Table 1, twelve minor parties have won Senate representation in the 33 years since the reforms, compared to just three minor parties over a similar period prior to the reforms.

In 2016, the Turnbull government responded to growing calls to reform the Senate electoral system after new minor parties, especially the Australian Motoring Enthusiast Party, were able to claim Senate seats with a very small primary vote. Under the reform, voters are no longer required to give preferences to all candidates.

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2   Maurice Duverger, *Political Parties, their Organization and Activity in the Modern State,* 3rd edn, trans. B. North and R. North, Methuen, London, 1967.

3   Ian McAllister, Malcolm Mackerras and Carolyn Brown Boldiston, *Australian Political Facts*, 2nd edn, Macmillan, South Melbourne, 1997, p. 68.

4   David M. Farrell and Ian McAllister, *Australian Electoral System: Origins, Variations and Consequences,* University of NSW Press, Sydney, 2006.

5   Campbell Sharman, 'The representation of small parties and independents in the Senate', *Australian Journal of Political Science*, vol. 34, no. 3, 1999, pp. 353–61.

6   Joan Rydon, *A Federal Legislature: The Australian Commonwealth Parliament 1901–1980*, Oxford University Press, Oxford, 1986; Campbell Sharman, 'The Senate, small parties and the balance of power', *Politics*, vol. 21, no. 2, 1986, pp. 20–31.

Instead, voters needed to indicate their first six parties or groups in order of preference above the line on the ballot paper, or at least 12 candidates if voting below the line.

Table 1: Minor parties elected to the Australian Senate since introduction of proportional representation

Minor party	Year first Senate seat won
Democratic Labor Party (DLP)*	1955
Liberal Movement	1974
Australian Democrats	1977
Nuclear Disarmament Party (NDP)	1984
WA Greens	1990
Australian Greens	1996
Pauline Hanson's One Nation	1998
Family First	2004
'New' DLP	2010
Liberal Democratic Party (LDP)	2013
Palmer United Party (PUP)	2013
Australian Motoring Enthusiast Party (AMEP)	2013
Derryn Hinch's Justice Party	2016
Nick Xenophon Team	2016
Jacqui Lambie Network	2016

*Originally called the Australian Labor Party (Anti-Communist).

The 'old' minor party type: the 'secessionists'

The Australian Labor Party (Anti-Communist), which was later renamed the Democratic Labor Party (DLP), was the first minor party to break the major party monopoly in the Senate. It won its first seat in the Senate in 1955. The party came about as a result of a dispute within the Australian Labor Party (ALP) over the issue

of perceived communist influence in its ranks.[7] The DLP positioned itself as an anti-communist force and its hostility towards communism underpinned its policy ethos, especially in the areas of foreign affairs, defence and public policy.[8] Moreover, the DLP positioned itself as an explicitly anti-Labor Party. In fact, the party stated this by describing its purpose as a 'road block…across the ALP's path and so deny it the fruits of office'.[9] Moreover, the party sought to 'wage a war of attrition against the ALP and so compel it to break its communist connections and again become the acceptable alternative' party of government.[10]

The DLP won seats until the 1970 election. It continually opposed Labor in electoral terms and sided with the coalition in the Senate on questions of policy.[11] The party placed greater emphasis on promoting socially conservative moral policies throughout the late 1960s and early 1970s, but its principal objective remained as being an anti-Labor Party.[12] However, after failing to win seats following the 1970 election, the DLP disintegrated. The party re-formed in Victoria in the 1980s and, as will be discussed later, returned to the Senate in 2010, albeit with a different source of mobilisation and raison d'etre.

While the DLP was in the Senate, the Liberal Reform Group emerged in 1966. The group later became the Australia Party and was made up of 'disillusioned Liberals'[13] who were united by their opposition to the Vietnam War, as well as to the DLP's presence in the Senate. The Australia Party gained significant attention in the political debate but was unable to win a Senate seat at a general election.[14]

The next minor party to win Senate representation was the Liberal Movement, a party which resulted from a split within the Liberal and Country League (LCL) in South Australia. It was led by the South Australian LCL Premier Steele Hall, who had sought to modernise the operation and policy agenda of the LCL.[15] Hall had also embarked on a campaign to reform the state's malapportioned electoral system, from which his party had benefitted. Hall's changes to the electoral system contributed to the LCL's state election loss in 1970, making his position as leader untenable. He resigned from the party and created the Liberal Movement as a faction within the

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7   P.L. Reynolds, *The Democratic Labor Party*, Jacaranda, Milton, Queensland, 1974.
8   Democratic Labor Party, *Focus:* Journal of the Democratic Labor Party, July 1965; M. Lyons, 'Defence, the family and the battler: the Democratic Labor Party and its legacy', *Australian Journal of Political Science,* vol. 43, no. 3, 2008, pp. 425–42.
9   Democratic Labor Party, *Origin and Role of the DLP NSW Branch,* Sydney, NSW, 1969, pp. 3–4.
10 Ibid.
11 L.F. Crisp, 'The DLP vote 1958–1969—and after', *Politicals*, vol. 5, no. 1, 1970, pp. 62–6.
12 Lyons, op. cit.
13 Sam Everingham, *Gordon Barton: Australia's Maverick Entrepreneur*, Allen & Unwin, Crows Nest, NSW, 2009, p. 113.
14 Ibid.
15 Steele Hall (ed), *A Liberal Awakening: the LM Story*, Investigator Press, Leabrook, SA, 1973.

LCL in order to pursue a 'centrist' program in opposition to the LCL's socially conservative policies.[16] Eventually Hall and his supporters split from the LCL to formally set up the Liberal Movement Party.[17] Hall stood as the lead Senate candidate in South Australia at the 1975 double dissolution election and won the party's first seat in federal parliament.[18] He promised to keep the major parties accountable while pursuing 'middle-of-the-road' policies. This approach caused *The Australian* newspaper to label him a 'fence-sitting enigma'.[19]

While Hall returned to the Liberal Party in 1976, the Liberal Movement's brief presence in the Senate had a longer lasting legacy for the role minor parties could play in the chamber. It demonstrated how a 'centrist' party could act as an intermediary between the major parties in the Senate. Indeed, the Liberal Movement set the template for the next minor party to have a significant presence in the Senate—the Australian Democrats.

The Australian Democrats

The Australian Democrats refined the Liberal Movement's idea of being a 'watchdog'. This was most explicitly declared with the party's mantra—coined before the 1980 election—to 'keep the bastards honest'. The Democrats was formed by former Liberal minister Don Chipp and two groups—The Australia Party and the New Liberal Movement[20]—which like Chipp had broken away from the Liberal Party. Chipp, who resigned from the Liberal Party after serving as a sitting member in the House of Representatives from 1960, had built a public profile as a proponent of 'centrist' policies, especially during his time as Minister for Customs.[21]

The onset of the constitutional crisis played a crucial role in the emergence of the Democrats. The crisis occurred as the result of a battle in the Senate between the major parties—the ALP and the Liberal–Country Party Coalition—that eschewed concerns for constitutional conventions as both sides sought to secure executive power.[22] In the aftermath of the crisis, in which Prime Minister Gough Whitlam was

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[16] Dean Jaensch and Joan Bullock, *Liberals in Limbo: Non-Labor Politics in South Australia, 1970–1978*, Drummond, Richmond, Vic, 1978.
[17] H. Sugita, *Challenging 'Twopartism': The contribution of the Australian Democrats to the Australian party system*, unpublished PhD thesis, Flinders University of South Australia, 1995.
[18] Jaensch and Bullock, op. cit.
[19] E. Cummins, 'The Steele Hall enigma: A maverick who'll sit on the Senate fence', *The Australian*, 4 June 1974, p. 9.
[20] The New Liberal Movement formed in 1976 after the dissolution of the Liberal Movement.
[21] John Warhust, 'The Catholic lobby: structures, policy styles and religious networks', *The Australian Journal of Public Administration*, vol. 67, no. 2, June 2008, pp. 213–30; Warhurst, '1977: Don Chipp's new party', in Warhust, *Keeping the Bastards Honest: The Australian Democrats' First Twenty Years*, Allen & Unwin, St. Leonards, NSW, 1997.
[22] Bach, op. cit.

dismissed by the Governor-General Sir John Kerr, there was growing interest in alternatives to the major-party dominance of the parliament and this revived interest in a centrist party.[23]

By 1976, Chipp had begun to lay the groundwork for a new party and in 1977 he officially launched the Australian Democrats. Remnants of The Australia Party, the New Liberal Movement and some Liberal Party members, who had similar 'disenchanted' views to Chipp, either joined the party or offered support.[24] The Democrats also incorporated broad policy pillars which reflected the ideals of particular social movements, especially environmental and socially progressive policies.[25] In the early years of its existence, however, the party focused on positioning itself as a 'watchdog' and 'umpire' of the major parties in the Senate.[26] The party did this most effectively when it held the balance of power in the chamber and in Senate committees where it could carefully scrutinise the decisions of major parties.

Accounting for the early minor parties

A common feature of the three minor parties elected to the Senate from 1955 to 1983 is that they were created as a result of major party fragmentation. Parties that have emerged in this way are not unique to Australia. Studies of European systems, for example, have highlighted how new minor parties emerged after disputes over policy or personality within larger parties. In classifying these parties, Australian scholars have argued they be thought of as 'secessionist' parties.[27] An important feature of these parties in the Australian case is the role they sought to play in the political system. They had policies—the DLP advocated socially conservative policies, while the Liberal Movement and Democrats had socially progressive goals. Nonetheless, they mainly used their position in the political system either to frustrate and block the ALP from gaining government (in the case of the DLP) or to act as centrist 'watchdogs' of the major parties (in the case of the Liberal Movement and Democrats). The next wave of minor parties to win Senate representation rejected this approach of focusing on major parties. Rather, they sought to advance their own policy agenda in parliament.

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[23] Sugita, op. cit.

[24] Ibid.

[25] Dean Jaensch, *The Australian Party System*, Allen & Unwin, Sydney, NSW, 1993.

[26] Interviews with Lyn Allison, 2005 and Meg Lees, 2005.

[27] Dean Jaensch and David Mathieson, *A Plague on Both Your Houses: Minor Parties in Australia*, Allen & Unwin, St Leonards, NSW, 1998, p. 27; Keith Richmond, 'Minor parties in Australia' in Graeme Starr, Keith Richmond and Graham Maddox (eds), *Political Parties in Australia*, Heinemann, Richmond, Vic, 1978, p. 331; Rodney Smith, *Against the Machines: Minor Parties and Independents in New South Wales*, Federation Press, Leichhardt, NSW, 2006.

The rise of these newer minor parties coincided with changes to the electoral system brought about by the Hawke government in 1983. These reforms, which were first used in the 1984 election, included increasing the number of senators for each state from ten to twelve. This was because the government sought to increase the size of the House of Representatives from 125 to 148 members and thus triggered the 'nexus' provision in section 24 of the Constitution.[28] The increase in the number of senators to be elected for each state reduced the percentage of the vote needed to achieve a quota from 9.1 per cent in full-Senate elections to 7.7 per cent. In a general election, when only half the Senate is elected, the quota fell from 16.6 to 14.4 per cent. The significance of this reform was that it reduced the electoral task confronting minor parties.[29]

A Group Ticket Vote (GTV) was also implemented. The government described this as a much simpler method of voting for the Senate. By simply indicating their first preference, voters would have their preferences distributed by the Australian Electoral Commission (AEC) in accordance with the voting ticket lodged by their preferred party.[30] The rate of GTV was especially high (between 98 and 99 per cent) for electors voting for the major parties. The introduction of the GTV meant that 'wheeling and dealing' of preferences would be a crucial feature of Senate contests.[31] The Hawke reforms also introduced election funding which allowed candidates to receive funding if they won at least four per cent of the primary vote. This measure was designed to encourage new minor parties to stand for election as the state would effectively subsidise their campaigns if they won enough votes.

The rise of a new type of minor party: issues-oriented parties from the left

The changes to the electoral system coincided with the election of the first of the new type of minor party in 1984—the Nuclear Disarmament Party (NDP). The NDP emerged from community opposition to uranium mining and concerns about Australia's foreign policy, especially Australia's relationship with the United States.[32] The NDP began to mobilise when the ALP overturned its policies on nuclear issues at

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[28] Section 24 of the Constitution states that 'The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators'. This is referred to as the 'nexus' provision. It means any increase in the size of the House—to reflect population growth, for example—requires a corresponding increase in the membership of the Senate.

[29] Shaun Bowler and Todd Donovan, 'The limited effects of election reforms on efficacy and engagement', *Australian Journal of Political Science*, vol. 47, no. 1, 2012, pp. 55–70.

[30] Marian Sawer, 'Above-the-line voting: how democratic?', *Representation*, vol. 41, no. 4, January 2005, pp. 286–90, www.tandfonline.com/doi/abs/10.1080/00344890508523323.

[31] Henry Mayer, 'Big party chauvinism and minor party romanticism' in Henry Mayer and Helen Nelson (eds), *Australian Politics: A Fifth Reader*, Longman Cheshire, Melbourne, 1980, p. 345.

[32] M. Quigley, 'Rise and fall of the NDP', *Current Affairs Bulletin*, vol. 62, no. 11, 1986, pp. 12–19.

the party's federal conference in July 1984.[33] Concerned about Labor's policy direction, a small group of people based in Canberra created the NDP. The nascent party agreed to have only three policies—banning nuclear weapons in Australian territory, prohibiting foreign bases in Australia, and halting the mining and export of uranium.[34]

Within a few months the party gained thousands of members, including Peter Garrett, the lead singer of rock band Midnight Oil, and had a presence in all Australian jurisdictions. Concerned that the new party would diminish its own electoral performance, the ALP in NSW used the GTV system to run a 'put the NDP last' campaign. While Peter Garrett, who was the NDP's lead Senate candidate in NSW, won almost 10 per cent of the primary vote, the party missed out on winning a seat because of Labor's tactics. In Western Australia, however, the NDP was not seen as much of a threat by the major parties and was able to win Senate representation on the back of ALP preferences.

Despite its success, the NDP soon split over internal disputes concerning its operation and organisation.[35] The party managed to win a seat in NSW in the double dissolution election in 1987, even though it won just 1.5 per cent of the state's primary vote. On this occasion the NDP benefitted from the halving of the quota as well as the fact that the ALP did not deprive the party of crucial preferences.

The emergence of the NDP marked an important change in the type of minor party elected to the Senate. The source of the NDP's mobilisation was different to that of earlier minor parties. Rather than emerging as the direct result of major party fragmentation, the NDP sought to advance a specific policy agenda and had clear links to the broader peace, disarmament and anti-nuclear movements. The NDP was also the precursor to subsequent 'green' parties.

Following the demise of the NDP in the late 1980s, a new party, the Vallentine Peace Group, was created in Western Australia. It was led by Jo Vallentine who had won the Western Australian Senate seat for the NDP in 1984. The Vallentine Peace Group was clearly a continuation of the NDP in Western Australia given the bulk of its membership consisted of former NDP members.[36] Vallentine stood as the lead Senate candidate for the new party at the 1987 election. She was returned to parliament after winning almost five per cent of the primary vote and 'wheeling and dealing' preferences effectively.

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[33] 'Political chronicle: Australia and Papua New Guinea: the Commonwealth', *Australian Journal of Politics and History*, vol. 30, no. 2, pp. 248–55.
[34] Interview with Michael Denborough, 2007.
[35] Interview with Jo Vallentine, 26 August 2007.
[36] Ibid.

By 1990, the WA Greens had been created by melding the Vallentine Peace Group with other green groups and parties in the state.[37] The WA Greens went on to win Senate seats in the federal election of 1990 with Jo Vallentine as the lead candidate, and again in 1993 following Vallentine's resignation, with a policy platform linked to the peace, disarmament and environmental movements.[38]

The Australian Greens joined the WA Greens in the Senate in 1996 when Bob Brown won the party's first Senate seat in Tasmania. The origins of the Australian Greens can be traced back to the United Tasmania Group, the first 'green' party in the world.[39] The Australian Greens was a separate entity to the WA Greens and was linked to various conservation movements.[40] The party's platform was concerned with protecting natural resources, and it promoted a suite of socially progressive policies.[41] In 2003, the WA Greens was incorporated into the confederation of the Australian Greens and in subsequent elections the party consolidated its position in the Senate.

Issues-oriented minor parties from the right: One Nation and Family First

The election of Pauline Hanson's One Nation Party to the Senate in 1998 was a significant development given minor parties elected since 1984 had been from what would be considered the left of the political spectrum. One Nation, on the other hand, was from the political right. The party was built around Pauline Hanson, whom the Liberal Party had disendorsed in 1996 following comments she made about race and immigration.[42] Hanson attracted significant support as an 'anti-system' politician and quickly created a party which posed a significant electoral challenge to the major parties, especially the John Howard coalition government.[43]

One Nation corresponded to the populist right party type.[44] Like other populist right politicians, Hanson presented seemingly simple proposals to deal with complex policy issues. Moreover, Hanson was a charismatic figure and her core message resonated with sections of the electorate feeling disenchanted with the policies of the major

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[37] Ibid.

[38] Scott Bennett, 'The rise of the Australian Greens', Research Paper no. 8, 2008–09, Parliamentary Library.

[39] Geoff Holloway, 'The Wilderness Society: The transformation of a social movement organisation', Occasional Paper no. 4, Department of Sociology, University of Tasmania, Hobart, 1986.

[40] James Norman, *Bob Brown: Gentle Revolutionary,* Allen & Unwin, Crows Nest, NSW, 2004.

[41] Narelle Miragliotta, 'One party, two traditions: radicalism and pragmatism in the Australian Greens', *Australian Journal of Political Science*, vol. 44, no. 4, 2006, pp. 585–96.

[42] Michael Gordon, 'A martyr to the end', *The Age*, 23 August 2003, p. 1.

[43] Clive Bean, 'Nationwide electoral support for One Nation in the 1998 federal election' in M. Leach, G. Stokes, G. and I. Ward (eds), *The Rise and Fall of One Nation*, University of Queensland Press St Lucia, Qld, 2000; Murray Goot and Ian Watson, 'One Nation's electoral support: where does it come from, what makes it different and how does it fit?' *Australian Journal of Politics and History*, vol. 47, no. 2, 2001, pp. 159–91.

[44] Paul Hainsworth, *The Politics of the Extreme Right: From the Margins to the Mainstream*, Pinter, London, 2000.

parties.[45] One Nation won its only Senate seat in Queensland in the 1998 election, securing more than a quota in its own right. The party could have won seats in other states had the major parties not used the GTV to preference One Nation last. When the party left the Senate in 2004 it had all but collapsed and Hanson was looking like a spent force.[46]

Hanson, however, kept chipping away. She contested subsequent elections, not always as a One Nation candidate, and remained a prominent figure in the political debate by regularly appearing in the media as a commentator. By 2016, Hanson had rejoined One Nation and mounted a modest campaign with 27 candidates. Placing emphasis on themes she had campaigned on 20 years ago, Hanson also called for a temporary ban on Muslim immigration to Australia as well as a royal commission into Islam. In the Senate contest the party won a national primary vote of 4.3 per cent. In Queensland, Hanson returned to parliament after winning 9.2 per cent of the primary vote which equated to 1.2 of a quota. In Western Australia, the One Nation Party won 4 per cent of the primary vote which equated to 0.52 of a quota, a similar result to NSW. One Nation ended up winning Senate seats in Western Australia and NSW thanks to the flow of preferences.

The Family First Party, another party from the political right, won Senate representation for the first time in 2004. The party advanced a socially conservative policy agenda and had links to Assemblies of God churches, which led to debates about whether it was a 'religious party'.[47] It promoted the concept of the 'nuclear' family and opposed laws that would give same-sex couples access to IVF treatment and adoption. The party also promoted ideas it believed would strengthen the country's 'values'. For example, it opposed euthanasia and pornography. Moreover, Family First had a deep suspicion of the Australian Greens and its suite of socially progressive policies, especially concerning gender identity and harm minimisation approaches for drug users.

Even though it secured just 1.9 per cent of the primary vote, Family First won its Victorian Senate seat thanks to Labor Party preferences. The party, however, could not consolidate its position in the 2007 and 2010 elections, primarily as it was deprived of major party preferences. Family First was, however, able to return to the Senate in 2013. The focal point of the party was Bob Day who was the lead Senate candidate in South Australia. He directed a more centralised approach to campaigning

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[45] Interview with Scott Balson, 29 August, 2005; Goot and Watson, op. cit.
[46] Hanson was expelled from her party in 2002 and was convicted and jailed for electoral fraud in 2003. The Queensland Court of Appeal later quashed her conviction.
[47] Haydon Manning and John Warhurst, 'The old and new politics of religion,' in Marian Simms and John Warhurst (eds), *Mortgage Nation: The 2004 Australian Election*, API Network, Perth, 2005.

and discouraged candidates from communicating directly with the media. Instead, candidates were instructed to direct inquiries to the party's website. Candidates were also advised to avoid media appearances so that they would not overshadow the public profile of the wider party. Despite winning just 4 per cent of the statewide primary vote, Bob Day managed to secure a Senate seat as a result of shrewd preference deals. The fact that the Greens directed preferences to Family First underscores this, although the Greens party was primarily seeking to safeguard its own electoral prospects rather than supporting Family First. Bob Day was returned in the 2016 double dissolution election

A party back from the dead: the 'new' DLP

In 2010, as One Nation and Family First were in a state of rebuilding, the Democratic Labor Party won a Victorian Senate seat. Returning to the upper house 40 years after leaving the chamber was a remarkable feat for a party many considered to be dead in Australian politics. But the 'new' DLP was qualitatively different to the party of the 1950s, 1960s and 1970s. The party had shifted its position in the political system. It no longer sought to act as a roadblock to Labor. Nor did it seek to rail against the threat of communism. The primary focus of the reconstituted DLP was to advance issues closely associated with socially conservative movements.

While previously the DLP had sought to highlight its socially conservative moral credentials, especially in the 1972 election, in 2010 it advanced issues that were closely aligned to broad social movements. These included the 'right to life' movement, with which it had significantly strengthened its links during its reformative period.[48] The party also opposed pornography, the use of IVF by single women and lesbians, euthanasia, fertility control and same-sex marriage. It supported a 'zero tolerance' policy on illicit drugs and stem cell research. Even though the party won just 2.3 per cent of the statewide primary vote, it secured a Senate seat through preference swaps. Using the GTV to its advantage, of course, was not an option available to the DLP in its earlier incarnation.

More 'issues-oriented' minor parties from the right: Liberal Democrats, the Australian Motoring Enthusiast Party and the Palmer United Party

The 2013 election was significant for the minor party system because an unprecedented number of new parties won representation. The Liberal Democratic Party (LDP), the Australian Motoring Enthusiast Party (AMEP) and the Palmer United Party (PUP) all won seats for the first time. These parties resembled right

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[48] Steve Lillebuen, 'Drug use focus of DLP in Senate', *The Age*, 17 September, 2010.

populist parties, especially because of their distinctive organisational arrangements and policy platforms.

The LDP emerged in the ACT in 2001, but took a more sophisticated approach to elections when David Leyonhjelm, a former vet, became the party's treasurer and registered officer. Leyonhjelm had a long history in politics having been a member of the Labor Party in the 1970s and the Liberal Party in the 1980s. He was also chairman of the Shooters Party in NSW in the early 2000s. Leyonhjelm was integral to restructuring the party. The LDP's first electoral forays in the ACT were disastrous and the party experienced difficulty with the Australian Electoral Commission when it sought to become a national party. The AEC argued the party's name was too similar to the Australian Democrats and the Liberal Party. Leyonhjelm and the national executive agreed to change the party's name to the Liberty and Democracy Party. In 2008, the party changed its name to the Liberal Democratic Party (Liberal Democrats) and, despite objections from the Liberal Party and the Australian Democrats, the AEC allowed the party to use this name in future elections.

The Liberal Democrats' principles were based on classical liberalism and advanced notions of free trade, freedom of choice, and support for small government. As a result the party supported policies such as euthanasia, the use of cannabis, and same-sex marriage. It also promoted the right of all citizens to own firearms, as well as ending prosecutions for victimless crimes, which it defined as illegal but which did not threaten the rights of anyone else. These included 'crimes' such as abortion, public nudity and the consumption of pornography.[49]

The LDP's 2013 campaign was built on a sophisticated approach to using the GVT. The party attracted preferences from a range of minor parties through preference deals. As well, Leyonhjelm was a controlling force in the Outdoor Recreation Party (Stop the Greens) and the Smokers' Rights Party which assisted the LDP in winning Senate representation by way of directing their preferences to Leyonhjelm.[50]

The Palmer United Party was created just before the 2013 election. The party was established by businessman Clive Palmer who had a lengthy history in coalition politics. He was media spokesman for Queensland Premier Joh Bjelke-Petersen in the 1980s and was involved with the 'Joh for Canberra' campaign in 1987. A life member of the Liberal National Party of Queensland (LNP), Palmer's advance towards a parliamentary career began in 2012 when he tried to become the LNP's candidate in the seat of Lilley in order to stand against then treasurer Wayne Swan. Within a few

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[49] Liberal Democrats Party, 'Victimless crimes policy', website, 27 November 2017, www.ldp.org.au/victimless_crimes.
[50] Deborah Snow, 'David Leyonhjelm: trouble shooter', Sydney Morning Herald, 28 June 2014.

weeks, Palmer decided he could not support the coalition's asylum seeker policy and withdrew from the contest. He also became highly critical of the economic policies of LNP Queensland state government and the influence of lobbyists on government policy. He subsequently resigned from the LNP.

Freed from the constraints of party discipline, Palmer became a regular contributor to the political debate and often appeared in the media. With apparent support for his innovative proposals to solve policy problems, especially from his home state of Queensland, Palmer began to build momentum as a political force. He built a high public profile and presented himself as an anti-system figure. He created his new party with the aim of 'tak[ing] away the game from professional politicians who say the same thing'.[51] As leader of his new Palmer United Party, he branded the established parties boring because they had the same broad social and economic policies. Central to Palmer's new party were policies aimed at reducing income tax, stimulating the economy and reducing the size of government. Concurrently, the PUP advocated policies to increase the age pension and change the offshore processing of asylum seekers on the grounds that it wasted taxpayer funds.

Palmer's core message resonated with sections of the electorate feeling disenchanted with the policies of the major parties. He reportedly funded the PUP's $12 million federal campaign. The party was so well resourced it reportedly outspent Labor in advertising in the final week of the campaign. PUP contested every lower house seat and fielded candidates in every state and territory. It won a national primary vote in the lower house of 5.5 per cent, which made it the fourth best performing party behind the major parties and the Greens. Moreover, Palmer won the coalition-held lower house seat of Fairfax, which was a remarkable result for a new party.

PUP also claimed Senate seats in Western Australia, Tasmania and Queensland after attracting a national vote of 4.9 per cent at the general election. Its best result was in Queensland, where it won 9.9 per cent of the primary vote. The party also benefited from preferences directed to it from the Australian Greens, which believed the PUP's asylum seeker policy was more humane than the policies of the major parties. While Palmer attracted much media attention, the PUP quickly disintegrated with two of its senators, Jacqui Lambie and Glenn Lazarus, resigning from the party. Electoral support for PUP fell and it failed to consolidate its position in the Senate at the 2016 election.

Like the PUP, the Australian Motoring Enthusiast Party also emerged just before the 2013 election. Unlike the PUP, the party had limited resources and a very low public

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[51] 'Palmer to Contest Election with New Political Party', ABC website, 14 May 2013, www.abc.net.au/news/2013-04-25/clive-palmer-to-go-ahead-with-political-party/4651998.

profile during the campaign. The party was concerned with advancing a broad range of social and economic goals that supported 'average Australians'. For example, the party was committed to protecting notions of mateship and community, while also seeking to lower taxation.

The party's views on the role of government provided further insight into its overall position in the political debate. The party aimed for smaller government with minimal interference in social and economic issues. An underlying sense that the major parties had abandoned average Australians was also apparent in the AMEP's policy outlook. Indeed, the party stated that it arose in response to 'the realisation that the rights and civil liberties of every-day[sic] Australians are being eroded at an ever increasing rate' and promised to 'bring focus back to the notion that the Government is there for the people, not, as it increasingly appears, the other way around'.[52] The party also sought to safeguard the 'Australian way of life' from the policies of 'irresponsible' minorities.[53] The party, therefore, was mobilised by motoring enthusiasts but also sought to attract those who were dissatisfied with the policies of the established parties.

The AMEP won just 0.5 per cent of the primary vote in the Senate in Victoria but its candidate, Ricky Muir, secured a seat. This was primarily due to the sophisticated preference deals suggested by political consultant Glenn Druery. Indeed in 2013, Druery, who advised interested minor parties how to best maximise their electoral prospects, met with what he called the 'minor party alliance', which comprised new minor parties unsure about how to best organise their preference flows. By following Druery's advice, the AMEP was able to attract preferences from a range of minor parties which helped it claim its Senate seat.

The 2016 entrants: the Nick Xenophon Team, Jacqui Lambie Network and Derryn Hinch's Justice Party

The 2016 double dissolution election resulted in the most diverse range of parties entering the Senate in the postwar era. In addition to the major parties and the Greens, there were the Liberal Democrats, Family First and Pauline Hanson's One Nation, all of which had previously been represented in the chamber. Three new forces also won representation.

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[52] Keith Littler, 'Motoring enthusiasts have a political voice', Australian Motoring Enthusiast Party website, 13 May 2013, www.australianmotoringenthusiastparty.org.au/news/2992057.

[53] Australian Motoring Enthusiast Party website, 'Senate commitments and policy', 2013, www.australianmotoringenthusiastparty.org.au/Senate-Commitments; Heather Ewart, 'Where does Rick roll? Missing senator-elect drives power struggle', *ABC 7.30*, 29 October 2013.

The Nick Xenophon Team was created by Nick Xenophon, who had a long history in South Australian politics. He was elected to the South Australian Legislative Council in 1997 on a 'No-Pokies' platform. Following his election to the Senate in 2007, Xenophon established a national profile as an independent who used his position in parliament to advance issues, especially around gambling. He also tried to influence public policy, such as the Rudd government's economic stimulus package and water policy for the management of the Murray Darling Basin.

Unaligned with either major party, the media savvy Xenophon gained a reputation for advocating common sense solutions to policy problems. In 2016, he launched the Nick Xenophon Team which won three Senate seats, all in South Australia, as well as the lower house seat of Mayo. In 2017, Xenophon launched a new party, SA Best, with a view to running candidates at the 2018 South Australian state election.[54]

In a similar way, Jacqui Lambie also sought to leverage the high public profile she had built in Tasmania. Elected in 2013 as a PUP candidate, Lambie built a profile as a forthright politician concerned about her state as well as the 'average Australian'. She resigned from the PUP in 2014 and remained in the Senate as an independent. Prior to the 2016 election, she created the Jacqui Lambie Network and gained much media coverage for her support of the death penalty for foreign fighters and the reintroduction of national service. She also attracted attention for her views on Islam and sharia law and a proposal to ban the wearing of the burqa. Lambie had a reputation as a strong critic of the broad economic policies of the major parties, arguing they had lost touch with ordinary citizens. In 2016, her views clearly resonated with sections of the electorate as she won 8.3 per cent of the primary vote, well above the level needed for a quota in the double dissolution election.[55]

The third new minor party to win representation was Derryn Hinch's Justice Party, which was established by Derryn Hinch prior to the 2016 election. Hinch had developed a very high public profile as a journalist and media personality, so much so that for much of his career he was known as the 'human headline'. The party was concerned with being tough on crime, especially the sexual abuse of minors, as well as seeking to reform parole and bail processes. Hinch had several convictions and served a prison sentence for breaching suppression orders by revealing details of alleged criminals. At the age of 72, Hinch became one of the oldest federal parliamentarians ever elected after winning six per cent of the primary vote in Victoria.

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[54] Since this paper was written, Nick Xenophon has resigned from the Senate to stand as a candidate in the South Australia state election.

[55] Since this paper was written, Jacqui Lambie has resigned from the Senate on finding she held dual British citizenship which under the Constitution made her ineligible to sit in Parliament.

Evolution of parties elected to the Senate?

The minor parties elected to the Senate from 1955 to 1983 were created as a result of the fragmentation of the major parties. Importantly, they demonstrated that minor parties could win seats and play a role in the Senate, which was otherwise dominated by the major parties. From 1984, however, there was a shift in the type of minor party elected to the upper house. These parties were mobilised around specific policy demands, rather than created from major party fragmentation. They also sought to bring about policy change, rather than oppose an established party or to act as an intermediary in parliament. These parties highlighted perceived policy shortcomings and promised to address them if elected.[56] The emergence of minor parties advancing a specific policy agenda is not a uniquely Australian phenomenon and has been observed in other liberal democracies.[57]

In some European systems, for example, a range of new minor parties have emerged with the goal of getting 'other parties to pay attention to the issues that it would like to see dominate electoral competition'.[58] These issues are often on the margins of the political debate and are significantly different to the concerns of established major parties, which tended to converge on broad economic and public policy. Moreover, the policy demands of these new minor parties are also closely associated with those of various new social movements. Thus, minor parties elected to the Australian Senate since 1984 can be thought of as 'movement' parties.

How can we account for the rise of these parties in the Australian Senate, especially since 1984? Research shows us that new social movements have become significant drivers of political debate in liberal democracies, especially since the 1970s.[59] In some cases, the emergence of political parties was underpinned by new social movements that believed the issues they considered important were neglected by the established parties, and also by low electoral thresholds.[60] In Australia, similar to the European experience, the changing political debate and electoral system has contributed to the

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[56]   Edward G. Carmines and James A. Stimson, 'On the evolution of political issues', in William H. Riker (ed.), *Agenda Formation*, University of Michigan Press, Ann Arbor, Mich., 1993.

[57]   Ibid.

[58]   Christopher Green-Pedersen, 'The growing importance of issue competition: the changing nature of party competition in Western Europe', *Political Studies*, vol. 55, no. 3, October 2007, p. 609.

[59]   F. Feher and A. Heller, 'From red to green', *Telos*, vol. 59 (Spring), 1984, pp. 35–45; Ian Marsh, *Beyond the Two Party System: Political Representation, Economic Competitiveness, and Australian Politics*, Cambridge University Press, Melbourne, 1995.

[60]   F. Muller-Rommel, 'Social movements and the Greens', *European Journal of Political Research* vol. 13, 1985, pp. 53–67; Herbert Kitschelt, 'Left-libertarian parties: explaining innovation in competitive party systems', *World Politics*, vol. 15, 1988, pp. 194–234; Herbert Kitschelt, 'Movement parties' in Richard S. Katz and William Crotty (eds), *Handbook of Party Politics*, Sage, London, 2006; Thomas Poguntke, 'Political parties and other organizations', in Katz and Crotty, ibid.

rise of 'movement' parties since 1984. Table 2 highlights that new social movements played a key role in mobilising 'movement' parties, especially when they felt the issues they considered important were not being effectively dealt with by the major parties.

Table 2: Analytical summary of the changing type of minor party elected to the Senate

Party	Year first elected to Senate	Source of mobilisation	Primary political objective	Type of minor party
DLP	1955	major party fragmentation	block ALP from regaining government	secessionist
Liberal Movement	1974	major party fragmentation	act as intermediary between major parties	secessionist
Australian Democrats	1977	major party fragmentation	act as intermediary between major parties	secessionist
Nuclear Disarmament Party	1984	new social movements	advance specific policy agenda	movement
Vallentine Peace Group	1987	new social movements	advance specific policy agenda	movement
WA Greens	1990	new social movements	advance specific policy agenda	movement
Australian Greens	1996	new social movements	advance specific policy agenda	movement
One Nation	1998	new social movements	advance specific policy agenda	movement
Family First	2004	new social movements	advance specific policy agenda	movement
'New' DLP	2010	new social movements	advance specific policy agenda	movement
Liberal Democratic Party (LDP)	2013	new social movements	advance specific policy agenda	movement
Palmer United Party (PUP)	2013	new social movements	advance specific policy agenda	movement
Australian Motoring Enthusiast Party (AMEP)	2013	new social movements	advance specific policy agenda	movement
Derryn Hinch's Justice Party	2016	new social movements	advance specific policy agenda	movement
Nick Xenophon Team	2016	new social movements	advance specific policy agenda	movement
Jacqui Lambie Network	2016	new social movements	advance specific policy agenda	movement

As shown in table 2, the peace and disarmament groups underpinned the emergence of the NDP at a time when the major parties were seen to be ineffective in dealing with issues concerning nuclear disarmament. When the NDP disintegrated, the

movement contributed to the rise of the Vallentine Peace Group and the WA Greens.[61] The Australian Greens, meanwhile, had strong links to the broader conservation groups that emerged in the 1960s.[62]

Unlike the peace and disarmament groups, the conservation movement had more success in persuading the Hawke Labor government in particular to take its conservation agenda seriously and enact policy.[63] This meant that the conservation movement had less need to spawn a political party as it already had the opportunity to influence government decisions throughout the 1980s and early 1990s. However, this changed when Paul Keating replaced Bob Hawke as prime minister and reduced the scope of the movement to influence government policy.[64] Faced with less influence on government, elements of the conservation movement contributed to the rise of the Australian Greens.[65] The Australian Greens, however, consolidated its position as more than just an 'environment party', especially when it advanced anti-war and socially progressive policies during the Howard government era.[66]

One Nation's emergence is also an example of a broad social movement precipitating the creation of a political party as a vehicle to attempt to influence the political debate.[67] The groups that underpinned One Nation were concerned with the economic, Indigenous and immigration policies of successive governments.[68] Family First was created by elements of a social movement. The party attracted voters who held socially conservative views on issues such as same-sex relationships and the idea of what constituted a 'family', in addition to a deep suspicion about the policies of the Australian Greens. The DLP's return to the Senate in 2010 also highlighted the change that had occurred in the type of minor party being elected to the Senate. The reconstituted DLP was far more concerned with advancing a specific policy agenda with links to socially conservative groups than it was about stopping Labor from winning government.

The rise of the Palmer United Party was similar to One Nation in that a charismatic leader acted as the lightning rod for a broader movement dissatisfied with the economic policies of the major parties. The Australian Motoring Enthusiast Party and

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61 Vallentine, op. cit.
62 Miragliotta, op. cit.
63 Amanda Lohrey, 'Ground-swell: the rise of the Greens', *Quarterly Essay*, no. 8, 2002, p. 30.
64 Nick Economou, 'Backwards into the future: national policy making, devolution and the rise and fall of the environment' in K.J. Walker and K. Crowley (eds), *Australian Environmental Policy 2: Studies in Decline and Devolution*, UNSW Press, Sydney, 1999, p. 71.
65 Norman, op. cit.
66 Miragliotta, op. cit.; Bennett, op. cit.
67 Ian Ward, 'One Nation: organisation, party and democracy', in M. Leach, G. Stokes and I. Ward (eds), *The Rise and Fall of One Nation*, University of Queensland Press, St Lucia, Qld, 2000, p. 101.
68 Geoff Stokes, 'One Nation and Australian populism' in Leach, Stokes and Ward, op. cit., pp. 26–32.

the Liberal Democrats, both elected in 2013, also had links to broad movements concerned about the role and size of government. Derryn Hinch's Justice Party, the Nick Xenophon Team and Jacqui Lambie Network were also bolstered by ties to groups and movements, such as those concerned about gambling, justice, and the role and power of 'ordinary' Australians in influencing national policy decisions. The electoral fortunes of these three parties were also enhanced by leaders with high public profiles. Moreover, in the 2016 double dissolution election they faced lower electoral thresholds.

The emergence of 'movement' parties was so significant that one previously 'secessionist' party—the Australian Democrats—could no longer maintain Senate representation, though it did seek to evolve in the face of electoral challenges. The emergence of the NDP in 1984 served as a warning to the Democrats about how it could lose electoral representation to a party with specific policy goals. Indeed, the party leaders who succeeded Chipp sometimes tried to modify the party's role as an 'intermediary' by responding to changes in the political debate. They were aided by the fact that the party was not beholden to any social movement or interest group. For example, Janine Haines sought to emphasise the party's environmental policies, while Janet Powell emphasised the party's peace and disarmament credentials. Subsequent leaders also placed emphasis on various issues they felt were important and would resonate with voters.[69]

The Democrats' ability to modify its policy focus led some commentators to describe the party as 'the chameleons of politics'.[70] The Democrats demonstrate how a 'secessionist' party attempted to evolve into a 'movement' party, and faced significant challenges in doing so. In particular, concerns about the policy focus of various leaders led to internal disputes which often destabilised the party and eventually contributed to its demise.[71] Compared to 'secessionist' parties like the Democrats, 'movement' parties are not equipped to be 'political chameleons' as they are mobilised by social movements with the aim of achieving specific policy goals. Another problem for the Australian Democrats was that its rules forbade it, to a large extent, from making preference deals. This, coupled with the party's internal problems, meant that it could not withstand the rise of the 'movement' parties.[72]

Furthermore, reforms to the Senate voting system in 1984 created a more conducive environment for 'movement' parties to emerge. The introduction of election funding

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[69] Nick Economou and Zareh Ghazarian, 'Vale the Australian Democrats: organisational failure and electoral decline,' refereed paper delivered at the Australian Political Studies Association Conference, Brisbane, 6–9 July 2008.

[70] D. O'Reilly, 'Crash through or crash', *The Bulletin*, 29 November 1988, p. 46.

[71] Economou and Ghazarian, op. cit.

[72] David Charnock, 'Can the Australian Greens replace the Australian Democrats as a "third party" in the Senate?', *Australian Journal of Political Science*, vol. 44, no. 2, 2009, pp. 245–58.

was an important reform as it promised to offset the costs of election campaigns for 'movement' parties, thus reducing the financial barriers confronting nascent parties.[73] The introduction of the GTV also provided 'movement' parties with an opportunity to significantly influence the policy debate, especially as they could 'wheel and deal' preferences with the major parties. The GTV, however, has been a double-edged sword for 'movement' parties. Beneficial preference deals allowed Family First and the reconstituted DLP to win Senate representation in 2004 and 2010, respectively. But the GTV disadvantaged other 'movement' parties, such as the NDP in 1984 and One Nation in 1998, when major parties deprived these parties of preferences and stopped them from winning Senate representation. While the Hawke reforms reduced the electoral barriers confronting 'movement' parties, the tactical decisions of the major parties, especially on the question of where they direct preferences, still have a significant impact on the representational outcome of Senate contests.

Conclusion

There has been a change in the type of minor party elected to the Australian Senate. The first parties were the result of major party fragmentation and sought to act as opponents or 'watchdogs' of the major parties. The minor parties elected since 1984, however, have been part of the constellation of 'movement' parties. Mobilised to pursue specific policy agendas, these parties have closer links than their predecessors to the goals pursued by social movements. The return of the DLP to the Senate in 2010 and the continued election of new minor parties to the Senate crystallised the change in the type of minor party elected to the Australian upper house. Rather than focus on the major parties, these modern minor parties sought to advance specific policy goals while drawing on support from broad groups in society.

Question — Over the last 30 to 50 years there has been an increasing concentration of wealth in a smaller percentage of the population. That seemed to play a part in Donald Trump's victory. I was wondering if you think it is having any impact on the Australian political system and minor party representation.

Zareh Ghazarian — There is clearly a link there. I think there is a sense that there are winners and there are losers. The candidates and parties we have seen in Australia—Lambie and Hanson in particular—play on that idea. When real wages are

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[73] Zareh Ghazarian, 'State of assistance? Political parties and state support in Australia', *Australian Review of Public Affairs*, vol. 7, no. 1, 2006, pp. 61–76.

not going up, we see great uncertainty about 'traditional' jobs, especially in the manufacturing sector, and when we see metropolitan Australia doing so well but the rural and regional areas doing not so well, there is an appetite among voters to seek alternatives, to look at what is going on elsewhere. I think that is where a lot of these minor parties, especially from the right, are able to draw their support.

It was Bill Clinton who said, 'It's the economy, stupid!' It is about the economy. It is about responding to the economic and social problems that are emerging. The economy is very much a concern. I do not think there is a day that goes by without some sort of press report about the cost of housing and the pressures that people are facing to pay off their mortgages. It contributes very nicely to the narrative that these parties are putting forward—the system that we have had for the last few generations is broken and needs to be fixed, and it cannot be fixed by an established politician. It has to be fixed by someone from the outside. I think that is the Trump approach and to some extent that is the Hanson approach.

Question — I was wondering whether you have been paying attention to the very recent Dutch election, where the two major parties were in a grand coalition and there was an absolute splintering of the vote, with the combined major party vote going down to about 27 per cent, to the point where you could almost say there is not such a thing as a major party anymore. Do you have any thoughts about the relevance of that in the Australian sphere?

Zareh Ghazarian — That is a great observation to make. When we think about the European systems in particular they love to use the proportional representation system we use in the Senate, but they use it for electing governments. Whenever you have that sort of system you are always going to be splintering the vote and ultimately ensuring that any government that gets in will have to deal with coalition partners. The voting system we use for the Australian lower house cuts all that off. It ensures that it becomes a battle between the two major parties. It amplifies the majority and you usually have one clear winner at the end of the election—barring the last few years!

I do think there is a very close association between the electoral system and the electoral outcome. On the point of the Dutch elections, there is this sense that the political right, the populist right, however they are framed in the media, are on the march. I am not so sure that they are. In another recent European election in Austria, the Greens, the left-of-centre candidate, did so very well and ultimately defeated the right. In the Western Australian state election there was this sense that Hanson was going to be dominant. I remember speaking to a journalist on the Friday prior to the election and it was his view that the battle had already been won and there would be a

new government, but the main question was how many seats would Hanson win in the lower house? Of course we now know that the party struggled to win around about five per cent of the vote. While there is much media excitement about these right parties, the electoral reality suggests that they are not really the force they appear to be.

Donald Trump is used as another example, but Donald Trump was not just an independent. He was not just a populist candidate. He was the official nomination of the Republican Party. If party A is not going to win, it is going to be party B. In this case, Donald Trump was leader of party B. He was able to leverage the party recognition to take himself to the White House.

Question — You have emphasised a number of times that the greatest growth in minor parties is from the right, and in terms of the number of parties you are undoubtedly correct. But the largest single minor party is surely the Greens, who are a party on the left, probably to the left of the Labor Party. My question is—are there different factors influencing the growth of minor parties on the left from those that influence the growth of minor parties on the right?

Zareh Ghazarian — That is a very good question. It seems that the left-of-centre vote for the minor parties is consolidated with the Greens. There have been myriad Greens parties and they only started to consolidate in the late 1990s. Once that happened, we saw the rise of the Greens as the real third force in the Australian Senate. Then there was no more need for another Green party, or another party that advanced a socially progressive agenda, or another party concerned about Australian foreign policy, or another left-of-centre minor party concerned about justice and equality. That is all being funnelled to the Greens. However, the parties on the right all have their own different agendas. Some are about race. Some are about immigration. Some are about the leadership styles of government. Some are about things concerning economic protectionism, and others are all about advancing economic liberalism. There is much more variety on the right. I do not think we see that sense of consolidation towards one party from the right that is able to take all those different things into account. Whereas with the left, I think the Greens have been able to do that very effectively.

Government–Citizen Engagement in the Digital Age[*]

David Fricker

I am grateful for the opportunity to speak today, in Australia's Parliament House, on the topic of government–citizen engagement. In particular, I would like to focus on the role of government information management as a means to improve that relationship between the Commonwealth Government and all Australians and, in this fast-paced, digital age, how we can build the public's trust and confidence in the departments and agencies that implement the policies of the government.

Because it is *information* that is the 'new resource' of the digital age, and as we accumulate more and more data we are creating information assets with enormous potential. This offers tremendous opportunities for government to deploy more advanced and effective services, and in a much more agile and responsive way—and of course it also presents significant risks, for example around privacy and security. But we will not realise the benefits of the digital age nor can we mitigate the risks unless we take information management seriously—by valuing information as a national resource, valuing our government data holdings as a national asset and adjusting our behaviours and policies accordingly.

This is the principal role of the National Archives of Australia—to ensure that the information collected and created by the Commonwealth Government upholds integrity and accountability of government processes and drives innovation and improvement across all the processes of government. Today I would like to outline the changes that we are making to fulfil this role in the digital age.

We are accustomed to having national conversations concerning the management of essential resources—two notable examples are energy and water. We have these conversations because the security and prosperity of the nation depends on the availability of these resources—in particular availability that is predictable, reliable and consistent in quality. Both energy and water are key to every aspect of our lives— basic necessities for health, education, industry and culture. Because of this, we understand that our national prosperity will depend on our ability to manage these resources, finding the right market mechanisms to connect suppliers and consumers, and finding the right regulatory framework to encourage innovation while ensuring interconnectivity and interoperability across the national supply network.

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[*] This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 28 April 2017.

There is another major resource that needs a similar treatment—Australia's information resources. We are living in the Information Society. Just as we need water and energy, information has become a basic essential for every aspect of our lives from basic individual human rights through to our economic prosperity and even our national security. For example, access to justice, recognition of rights and entitlements, enfranchisement in our democracy, accountability of our public institutions and the elimination of corruption are underpinned by government information that is complete, accurate, authentic and publically accessible.

Our economy is increasingly a digital economy. The 'unicorns' and the 'disruptors' that are most often used to define 21st century corporate success come from the tech sector and have found rich revenue streams through the provision of cheap, ubiquitous online services, connecting consumers and consumables through clever information management.

And information management is key to our national security. Along with land, sea, air and space, cyber is now well established as the fifth domain of warfare—and indeed all those hostile activities short of all-out war such as espionage. At the national level, and within the multilateral mechanisms of the international system, proper stewardship of information has never been more important to preserve national security and maintain trusted relationships with our partners and allies.

Our management of information is also important as a foundation for identity—be it individual identity or our national identity. Mass movement of people, through war, natural disaster or migration is not new—it has been a constant feature of human history. What is new is the globalisation of data, and the fact that geographical dislocation no longer necessarily means cultural dislocation. It is easy for people to live a large proportion of their lives in a cyber bubble, selecting the news, opinions and entertainment that fit their own social values, aligned with their own 'tribe'. Culture was once associated with a locality or a place, and as it moved with people around the world it blended and adapted, perhaps best exemplified in Australia's own experience of multiculturalism. But in today's Information Society, culture, retained as a society's collective memory, is not so strongly tied to a single place. It can be carried by an individual with all the convenience of a mobile phone and a person's 'tribe' may in fact be completely unknown to the city or country in which that person lives. This challenges traditional ideas of what constitutes a person's identity, a nation's identity and social cohesion.

But just as the challenges of the Information Society are unprecedented, so too is our capability to meet those challenges. In fact, the tools and technology at our disposal

are beyond the imagination of even recent times. Let us look at the current conditions that work in our favour.

Information itself has never been more abundant. Thanks to the advent of digital technology and of course the internet, information on every topic is immediately and freely available. We are currently experiencing a phenomenal expansion of the volume of digital information, and this shows no sign of slowing down. The majority of it is in the English language, which of course favours English-speaking nations like Australia.

It is important to note that the rate at which information volume is expanding is outstripped by the rate at which the world's computational power is increasing. The costs of information storage and access continue to diminish—and in many cases costs are being taken on by industry, providing online information services to government and citizens at no cost, deriving revenue through other means such as advertising.

Citizens are now more tech savvy and better equipped than ever, with a high penetration of internet into Australian households. In 2015, according to the Australian Bureau of Statistics, 86 per cent of Australian households had internet access, and 97 per cent of households with kids under 15 years were connected.[1] Not only are the majority of households connected to the internet, but as technology improves people have increasingly more powerful computers and personal devices at their disposal. This all sounds very promising—an abundance of information, freely flowing across the nation on ever faster networks, via cheap or free services, in more engaging and even entertaining formats. This sounds like a free market at work, on a very positive trajectory. So where is the urgency for government to act?

Let me use a water analogy again. The internet and the communications technology that supports it are like plumbing is to water. The networks, storage arrays and processors are the pipes, reservoirs, faucets, filters and fittings that carry information like water to where it is needed. But we know that even with state of the art plumbing, we will live or die based on the quality of the water we are using—be it for irrigation, washing or drinking. And in these times we are also reminded that it is when we are surrounded by flood waters that we must exercise the most caution about the water we use.

And so it is for information. Even though it is abundant and free, it is not necessarily fit for every purpose. To make the most of it we need to be able to rely on its

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[1]   'Household use of information technology, Australia, 2014–15', Australian Bureau of Statistics website, www.abs.gov.au/ausstats/abs@.nsf/mf/8146.0.

authenticity, completeness, accuracy, currency, availability and usability. And as I have said, in order to build trust in public institutions and ensure that Australians are receiving the very best public services, government needs to act to guarantee reliable availability of government information.

There are also some notable international developments that add weight to this call to action. On 25 September 2015, the United Nations gave the world its Sustainable Development Goals (SDGs), comprising a set of 17 goals to 'end poverty, protect the planet, and ensure prosperity for all as part of a new sustainable development agenda'.[2] Each of the 17 goals has a set of targets to be achieved by 2030. They build on the success and momentum of the Millennium Development Goals (MDGs), but while the MDGs were intended only for developing countries, the SDGs are universal and apply to all countries as a call to action to achieve economic growth, social inclusion and protection for the natural environment.

Not surprisingly, government's responsibility to manage information features strongly. Citizens' access to reliable information is a core component of the SDGs, in particular to Goal 16 which embraces targets to 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'.[3]

Goal 16 targets are underpinned by the adoption of laws, policies and systems that ensure the preservation and long-term accessibility of government information— specifically information that is the essential evidence of government activity. Targets are set to:

- substantially reduce corruption and bribery in all their forms
- develop effective, accountable and transparent institutions at all levels
- provide legal identity for all, including birth registration
- ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.[4]

As a further commitment to an open and inclusive society, the Australian Government has joined the Open Government Partnership.[5]

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[2] Sustainable Development Goals, United Nations website, www.un.org/sustainabledevelopment/ sustainable-development-goals.

[3] Sustainable Development Goal 16, United Nations website, www.sustainabledevelopment. un.org/sdg16.

[4] Goal 16 targets, United Nations website, www.un.org/sustainabledevelopment/peace-justice.

[5] 'Australia's first Open Government National Action Plan 2016-18', Department of Prime Minister and Cabinet, www.ogpau.pmc.gov.au/australias-first-open-government-national-action-plan-2016-18.

The Open Government Partnership is an international initiative established in 2011 that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption and harness new technologies to strengthen governance. Australia is now one of 70 countries participating in the initiative and, in December 2016, the Australian Government released *Australia's first Open Government National Action Plan*. The plan was the result of a major coordinated effort by government and civil society, including community groups, the business sector and academia. The National Action Plan commits Australia to an agenda for the next two years to strengthen the transparency and accountability of government and to build citizens' trust in Australia's governance and its institutions.

And here again, the agenda grabs the opportunities of the digital age and the possibilities of records and information management to accomplish its goals. The National Action Plan aims to achieve open data and digital transformation and to work with the research, not-for-profit and private sectors to identify and release high-value data assets—this is government treating its data as public data to make sure it is out there as fuel for the digital economy and a resource for the Information Society. The plan also includes targets to engage with the public and improve privacy and risk management capability across government, again to build trust around data sharing and release—that is, responsible sharing of information recognising that government has an obligation to be open to public scrutiny, but every citizen has the right to privacy. All of these targets are set for the responsible release of government information as public data while protecting personal privacy.

There are other targets around ensuring access to government information and calling on the Archives and others to ramp up our efforts to make sure that government data belongs to the people and is out there for the people. The final one in the Open Government Partnership is about integrity in the public sector—again, building trust in public institutions. That means strengthening Australia's ability to prevent, detect and respond to corruption in the public sector through ensuring transparency in government procurement. This comes back to government information being preserved and protected through records management and proper stewardship of government information to support the scrutiny and accountability of government institutions.

I will also briefly mention the related initiatives of the United Nations Educational, Scientific and Cultural Organization (UNESCO). In 2011, UNESCO adopted the *Universal Declaration on Archives*, which provides all UNESCO member states with a powerful, succinct statement of the relevance of archives in our modern Information Society. The declaration emphasises the key role of archives in ensuring administrative transparency and democratic accountability, and describes the role of

archives in supporting democracy and human rights, and preserving collective social memory.[6]

In 2015, UNESCO adopted the *Recommendation concerning the preservation of, and access to, documentary heritage including in digital form.*[7] The recommendation specifically addresses the importance of archives to human rights and responds to the increased urgency for government action to protect human rights in the digital age. The recommendation reminds all member states of the fundamental importance of documentary heritage, not as an historic curiosity but as a foundation for good governance.

So, what are we doing at the Archives?

Under the *Archives Act 1983*, the National Archives of Australia is the lead agency for setting information management obligations and standards for Commonwealth Government entities. Our mission is clear—ensure that the essential records of government are being kept and ensure that they remain accessible and reusable into the future. And, of course, to deliver this mission with strategies that are suited to the digital age.

And so, in October 2015 we launched our centrepiece policy—*Digital Continuity 2020.*[8] This unified approach to the creation and management of government data will introduce efficiencies across all of the operations of government, but the most important dividend will be the relationship between citizen and government. The long-term availability and accessibility of government records will connect every Australian with our nation's history and a share in our national identity. It empowers every individual to hold our democratically elected government to account and ensures that the actions of public officials are open to the scrutiny of the public they serve.

The emphasis is on 'continuity'. It is one thing to introduce a digital technology into a government to citizen transaction—across government we are constantly doing this, spending around six billion dollars each year on ICT. However, each piece of digital technology is temporary, and will most likely be obsolete within 5 to 10 years. The long-term value of the investment is not the hardware. The longer term dividends

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[6]   'Universal declaration on archives', International Council on Archives website, www.ica.org/en/ universal-declaration-archives.

[7]   `Safeguarding the memory of the world—UNESCO recommendation concerning the preservation of, access to, documentary heritage in the digital era', UNESCO website, www.en.unesco.org/ programme/mow/recommendation-documentary-heritage.

[8]   'Digital continuity 2020 policy', National Archives of Australia (NAA) website, www.naa.gov.au /information-management/digital-transition-and-digital-continuity/digital-continuity 2020/index.aspx.

will come from the data captured or created by the technology, and the extent to which it can be used and re-used into the future for any number of purposes that create public value. In today's most successful business models 'data is king' and it will be our capacity to access and use data that will enable the significant transformations of the future.

Our Digital Continuity policy advances strong governance frameworks to ensure that information is properly valued and managed accordingly. Our aim is to recognise information governance as an essential part of corporate governance. In the same way that government entities manage finances, human capital and other assets, the information created and held by government entities will come under proper management.

Information assets will not be neglected or lost in uncontrolled environments, but instead each dataset will be managed with respect to its sensitivity, security, ownership and long term re-use. Importantly, this will see the value of government information appreciate over time, carried complete and intact from one generation of technology to the next.

Accountability of government is underpinned by a records regime that upholds the rules of evidence. A chain of evidence is easily broken if entities fragment their records across various paper-based and digital systems. As part of Digital Continuity, government entities will transition to entirely digital work processes, meaning complete records will be kept of business processes including authorisations and approvals. End-to-end digital processes, operating in an information governance framework, will also ensure that records are enriched by metadata and assured by comprehensive and secure audit trails. Agencies will also have interoperable information, ready to move between successive generations of software and hardware, and seamlessly shifting through machinery of government changes. No more information obsolescence!

The data we create today has to be usable 50 years from now. I think all of us have had the experience where we have found a document on a disk, a USB, an old zip drive or perhaps a wedding video on VHS cassette. We are all accustomed to finding stuff we have created not that long ago that is inaccessible to us now because technology has moved on and we have lost the capacity to review it and to read it. To protect against this loss we have to achieve interoperability across time. Our Digital Continuity policy is ensuring that government data created today will be interoperable into the future so that those as yet unimagined purposes and benefits will be achieved.

It is important to note that most government data can be made publicly available very quickly, but we do not do that recklessly. Sensitivities arising from personal privacy, confidentiality or national security must be properly managed. We do not want Edward Snowdens in Australia. Reckless, irresponsible treatment of information undermines the prosperity of this nation and causes people real harm. However, over time sensitivity diminishes. Over time everything will be made public, and I mean everything—for example, the personal, private census information that we collect that is guaranteed by law not to be released for 99 years. So it may be 100 years or more before some records are released, but every piece of information we have will one day be made publicly available. If that were not the case we would not bother preserving it, we would not waste money keeping it. Public value is not created by preservation—public value is created by access to information.

Our Digital Continuity policy provides for data and metadata standards that will enable stronger intellectual management of records, including fast-tracking information into the public domain to uphold transparency and fuel the digital economy. The policy also recognises the need for certified information professionals across agencies and across government. This network of professionals will work to maintain adequate standards of information stewardship across the Commonwealth.

To get us started on this journey to 2020, the Archives has developed a minimum metadata set, a Business System Assessment Framework and a range of training products as part of a suite of tools and guidance that will assist agencies in meeting the policy requirements.

Launch of the Information Management Standard

And I am very pleased to be able to use this occasion today to launch the latest addition to our suite of products and resources to continue this journey—the *Information Management Standard—Australian Government*.[9]

The Information Management Standard is simple, principles-based and practical. It identifies eight principles, each with a small set of recommended actions that together set a firm foundation for all government entities to plan, conduct and monitor their information management practices. Its simple and practical approach is in keeping with the current direction of reducing red tape. It does not impose a new workload or new responsibilities. Instead, it brings clarity and simplicity to what otherwise might be a complex challenge for an agency dealing with its own digital

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[9] 'Information management standard', NAA website, www.naa.gov.au/information-management/ information-management-standard/im-standard-document.aspx.

transformation. The standard is available for download or reference at our website: www.naa.gov.au.

Conclusion

A lot has been said lately about the changing nature of democracy and the public's dissatisfaction with the traditional institutions of government. All of us in the public sector have to work hard to win back the trust and confidence of the people we serve, and this means delivering policies and programs that are responsive, inclusive and open. It requires us to be agile, to move quickly from one idea to the next, in step with the norms and expectations of our Information Society.

And the foundation upon which we can achieve this is digital continuity—a framework that ensures government data that is authentic, accurate, complete and available for use but protected from abuse. Most importantly we need reliable government records that are reusable now and in the future. Our *Digital Continuity 2020* policy and the *Information Management Standard* are designed to produce government datasets that are national assets, adding value to the government–citizen relationship, creating value for Australia's *national* digital economy and enriching our Information Society.

Question — There are two points I would like to raise. The first is this—you mentioned, unfortunately, that only 10 per cent of the information is going to be kept. In the digital age I think this is very strange. I left the public service 13 years ago and I remember that junior staff would come in, with really no idea what the department was doing, and get rid of information that we later found we could have used.

The second point I want to raise is this—you talked about the information that government holds, but there is an enormous number of NGOs out there that play an important role—non-commercial NGOs, the commercial ones can look after themselves. What is going to happen in terms of keeping the information that is going to be just as important to understand this society 100 years hence?

David Fricker — Two excellent questions. On the first question, I said 10 per cent is kept, but that is not a target. We do not start with the premise that we are only going to keep 10 per cent. We start our records authorities with an appraisal of what a government does and, through a process of analysis and cooperation with each government entity, we go through the various functions that are performed in that

agency. Based on that we identify the class of records that must be kept forever and the class of records that should be kept for, say, 10 years or until no longer necessary and then they can be disposed of. As I said, we want to preserve the essential evidence of what government did and our client is the future. So we need to anticipate what will be required in the future. So thank you for asking this question. We do not start with a target of 10 per cent. It may be 18 per cent.

You are quite right about the digital transformation by the way. Before the introduction of things like photocopiers and facsimile machines only a fairly small amount of records were created in the first place. Once the photocopier became commonplace in offices suddenly there was a tripling of the volume of records kept because of technology, because it was easy to create. Digital technology is similar. We are creating a greater volume of information. Even 10 per cent of the records that are created in the public service now are probably about 10 times more than what was created in the pre-digital era.

We aim—and we are very serious about this—to keep the essential evidence of government actions and decisions in order to uphold the accountability and integrity of government and also for the national memory. As said, it may well be 18 per cent as we explore this further. The other thing I would say on that is that not every agency is equal. Probably about 100 per cent of the Bureau of Meteorology's records are kept forever. It can change depending on the nature of the business of the agency.

On the other matter about NGOs, this is also a really vitally important topic that the National Archives is dealing with at the moment. The trend of government business is for government to do less and to outsource more, so public services are being contracted out more and more. We are accustomed to state governments performing functions funded by the Commonwealth. That is fine. State governments have their own public records offices and they keep their records. But what about NGOs? A recent example is the Royal Commission into Institutional Responses to Child Sexual Abuse. These were services provided by independent, private institutions, but really at the government's bidding. These institutions were providing a national service. As that royal commission searches for records of what happened, searches for the evidence, we are finding the records kept by those institutions are very uneven.

We are taking measures at the Archives, including in our *Information Management Standard*, to make sure that even if a Commonwealth Government service is outsourced, the private enterprise that is being contracted to do it carries an obligation of recordkeeping. They carry obligations of accountability so ultimately the Commonwealth Government can be held accountable for what they did with taxpayers' money in the name of the citizens of this country.

It is also the case that the business of government is being done quite often on third-party platforms. We have seen in the newspaper lately reports about cabinet ministers using WhatsApp and other third-party systems to communicate with one another. These are not Australian systems. They do not even exist in Australia's jurisdiction. They are American software companies or they are in overseas jurisdictions. Again, we are saying these are still records and they need to be kept. Even when you are using Gmail or WhatsApp or other platforms, if you are a public official doing the business of the government you are accountable and those records must be kept. I use social media, I use Twitter but I keep those tweets as a record of the statements I have made. That is the example we are setting.

Those are two very good, topical issues. They do both apply to the digital age. This general trend of pushing the delivery of public services to NGOs is something we are very mindful of. That is included in our information standard—making sure the right records are kept in the first place. Thank you for that.

Question — Your talk was very much about the principles and I am sure we would all agree with them 100 per cent. As a user of data, I want to raise with you three practical issues.

First of all, I cannot accept that government is simply executive government and administrative departments. But when I tried to find the opposition's response to a major report from the mid-1980s, I could find no evidence anywhere of the opposition's response to what was an important report on a matter of public policy. So there is a gap in major statements from Her Majesty's Loyal Opposition, if I might put it like that. I don't mean the day-to-day rubbish—I mean the major policy statements.

While I appreciate your comments about interoperability, and you are standing there with your records looking into the future, there are currently major issues about interoperability. When an Australian citizen ended up in a refugee camp some years ago we discovered that the Department of Immigration had a large number of different systems, from memory about 17, and none of them talked to each other. The current crisis on overpayments in Centrelink is because of incompatible systems that don't talk to each other. So if we cannot get interoperability right on a day-to-day basis, how does that challenge you preserving a record that people can use effectively?

My third question is about the quality of data. Here I will use the example of trade treaties. The government is currently commencing negotiations with the European Union. It announced it had an achievement. There is a single page on the minister's

website. There was nothing on the DFAT website some weeks later. You have to go to the European Union to find any data. When they did the national interest analysis of the Trans-Pacific Partnership Agreement it was a self-congratulatory, very short thing that totally failed in comparison to what the New Zealand government did. If the government will not give you quality data, what hope is there of preserving a record? I know your hands are tied a bit on this, but there are other institutions in society and some effort has to be made to improve the quality when the government cannot or will not.

David Fricker — Again, three good questions. If I can go to Her Majesty's Opposition first of all—my hands are not tied on the other two, but perhaps they are a little bit tied with Her Majesty's Opposition because the legislation is quite clear. The Archives Act applies to the records of the executive, not the parliament, for very deliberate reasons—it follows the separation of powers. We are about preserving the records of the executive. The parliament has particular exceptions, which includes the opposition naturally, as does the judiciary. That can affect the way in which records fall subject to our policies and the way in which they are transferred to us. But I will say that both the parliament and the courts do opt in. So they do use the Archives as a means to preserve records on a voluntary basis. It all begins with what is guaranteed under the legislation and what is not. A cabinet minister is also a member of parliament. Their party-political work, their work with their local electorates is considered private to them and is not covered by the Archives Act. There will be, when we talk about the machinations of parliament, a legal discussion because of the way the law is written.

On interoperability and the immigration example you mentioned—this is precisely what we are doing with our Digital Continuity policy. Cornelia Rau and the scandal that you referred to, the Palmer Review that came after that and the ANAO reports subsequent to that—I am not picking out Immigration, there are many departments that have been shown to have these problems—all point to the need to establish stronger records management practices. Prior to the creation of the record, you need the systems and the policies in place to guarantee that the right records are being kept and made interoperable across systems. Those sorts of examples are precisely the incidents and events our Digital Continuity policy is responding to.

We are making progress. Big departments like Immigration, as you mentioned, but also other major departments, do have legacy systems, systems that are quite old and have been around for quite some time. But they are all working hard, using the resources that we produce—the data, metadata and information management standards—to make sure that they absorb these principles. As they redevelop, improve and enhance their systems, they are building in this compatibility across their systems.

More importantly, not only are they compatible across Centrelink or Immigration, they are compatible with the rest of the Commonwealth. This is why it why the policy is *Digital Continuity 2020*, because I know, we all know, that you cannot do this straight away. It takes years to do this. But I am much more satisfied knowing that we are moving forward over the next several years than knowing that we are going nowhere, that these problems are not being solved. Your point is perfectly valid, but these are the things that are driving us to make this change. Everybody is seized, from secretaries and ministers down, with the importance of getting this work done.

With the quality of data, our hands are not really tied. It is a matter of professional pride. Government officials, all of us, need to take pride in the records we create. At the end of the day, after I retire, after I am long gone, what is the value that I have left behind? Okay, the services that I have provided, these magnificent lectures I have delivered and the uplifting experience I have given all of you, are wonderful outcomes, but they are temporary. You will forget about me quite soon. My long-term residual value is really the information I have left behind, the records I have created, the corporate knowledge that has been accumulated. So it is a matter of professional pride for every Commonwealth public servant to create good records. This is embodied in the Archives' *Information Management Standard*—it is embodied in all the training products we produce, in all of the programs we run and indeed in the programs that the Public Service Commission run. It is part of the public service code of conduct. It is part of the public service professional standards.

We can control the quality of data. Through our archives records authorities we can insist, by law, that certain records are kept and retained. How soon they are made publicly available, again is a product of that particular agency and the propensity for those people to make data available. I do not mind saying we public servants, in my view, have a tendency towards secrecy and not towards public accessibility. I think that is wrong. I think that is something we have to keep changing. The way we are going to change that culture away from secrecy and towards public accountability is by making public servants confident that the information they are making public is not betraying national secrets, not accidently revealing private information. If a public servant knows that their information governance is strong, if they know that these records have been made the right way, that this data set is what it says it is, that they are part of a governance framework, they can confidently release data. That is the way we manage the risk of inadvertent release of sensitive information.

This is all part of building a culture across the public service which is pro disclosure and relieves this feeling that we all must be terribly secret and FOI is our enemy. We have to get over that. We have to stop whinging about FOI legislation. We have to work with it, because our value as public servants is the public data that we create, the

services that we create, the information we produce. So it is very important to me and it is very important to the way we construct these policies and guidelines. As I said, we want to make the easiest thing to do the right thing to do. We are making it easier for people to create information that is ready for release, or information that is clearly sensitive and must be protected. All of this comes from good governance, which creates good practice.

Question — I would appreciate you saying a little bit more about how your office goes about deciding which records are kept and which are destroyed. I would like to ask that question by reference to one example where I thought some files dealing with a major public policy issue should have been kept. Late last year I was asked to do an oral history interview by a university on some major reforms relating to the Federal Court of Australia. To refresh my memory I tried to get the files out of Archives. The files would have included records of negotiations with the Chief Justice of the Federal Court, submissions to the Attorney-General, policy analysis of the relationship between the executive and the judiciary—major public policy issues in my view. I was very surprised to find, after checking with both the Archives and the department, that those files had not been kept. I don't expect you to be familiar with the particular files, but can you say a little bit more about why some important public policy files are not kept?

David Fricker — Very briefly, records on policy formulation, policy that becomes law—that is enacted and directs the behaviour of government and public servants— should be kept. The records authorities that we produce, as I said earlier, analyse the activities of government agencies and determine those classes of records that are to be retained as national archives preserved in perpetuity. Unfortunately, I am not aware of that particular case, but you are right that these documents are important to demonstrate Australia's system of democracy. These documents are important to illustrate why laws have been passed in the way they have. They are important to preserve the rights and entitlements of individuals such that in the future, if people are entitled to a pension or land or whatever it might be, the information is there. They can also be of historical importance regarding a particular episode in Australia's history. They might not meet those criteria but it is important for that. Now we are also looking at economic value—datasets which should be preserved for the long-term economic value that they produce.

I would say, based on the description you gave during your question, the class of documents that includes briefs to the minister or policy advice that eventuates in legislation being passed or debated would ordinarily be kept. I would not say that mistakes never happen. One thing in this information standard is an emphasis on creating records in the first place. Historically, Archives have come in towards the end

of the process and gone in to look at the records which have already been created and are held by an agency. By then, if the records were not made in the first place or have not been well looked after, you are playing catch up.

With our Digital Continuity policy and with all of our advance policies, we are trying to get ahead of the curve. We talk about precreation of a record to make sure that the governance and the policies are right and that people are trained. Part of our Digital Continuity policy is to improve the professional standards of records management in each agency. We are stipulating that every agency has to have a chief information governance officer. Again, it is cutting red tape. You do not have to employ a new person. You do not have to build a new office. This can be a responsibility that somebody you already employ can assume. We have chief financial officers and chief legal counsels for this very reason that you raise—every agency head, every secretary, needs someone they can turn to who is expert, is qualified, is professional and can provide reliable advice to ensure they have upheld their information management obligations. These are the changes that we are trying to effect so that at the beginning of that process, from the moment those records are created, it is understood that this is valuable, this must be kept, and it has to be kept in a chain of evidence so that all of the auditing and authenticity is maintained. I am not saying mistakes were not made in the past. Of course they were. But everything we are doing today is aimed at bringing that together through better governance, better policies and better resources.

Indigenous Constitutional Recognition: The 1967 Referendum and Today[*]

Russell Taylor

This year marks the 50th anniversary of an extraordinary event in the history of Australia and I feel very privileged to be asked to share my perceptions about the nature and impact of this event.

The event, of course, being the successful 1967 referendum in which an overwhelming majority of Australians voted to amend certain sections in the Australian Constitution concerning Aboriginal people. Essentially these changes allowed for Aboriginal people to be included in the census and altered the 'race power' to allow federal parliament to make 'special laws' about Aboriginal peoples.[1]

Firstly, I should acknowledge I am neither a lawyer nor an expert on legal constitutional issues. Secondly, although I have great respect for history, I am not a trained historian, and thirdly and importantly, my comments represent my own Indigenous perspective rather than being *the* Indigenous perspective on the subject.

Perhaps as some indication of the integrity or legitimacy of my perspectives, I would refer to my experience of over 30 years as a senior public administrator involved in Indigenous affairs and, in particular, to the 15 year tenure as the last principal and inaugural Chief Executive Officer of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)—which ended in December last year. I am extremely proud of my long-term association with AIATSIS.

To provide a reminding 'snapshot' of the social and political environment in 1967, I will highlight the prevailing issues of the time:

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[*] This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 26 May 2017. The author dedicates this lecture to all those people, both Indigenous and non-Indigenous, who campaigned in support of the successful 1967 referendum. We owe them a great debt. The author thanks Peter Hugonnet AM, Capt., RAN Retired for his support and suggestions for improvements to the paper.

[1] The question put at the referendum was: 'Do you approve the proposed law for the alteration of the Constitution entitled—"An Act to alter the Constitution so as to omit certain words relating to the people of the Aboriginal race in any State and so that Aboriginals are to be counted in reckoning the Population"?'

- Australia was still coming to grips with a new prime ministerial era involving a transition from the long-term Menzies era to the relative new administration and leadership of Harold Holt.
- Domestically we continued to enjoy a long economic boom and the burgeoning mining boom was underway.
- Australia's involvement in the war in Vietnam was a major cause of social and political unrest, giving rise to emerging fiscal resourcing challenges.
- Sadly as an almost 'back to the future' scenario, Hobart bush fires claimed 62 lives and the 1966–67 summer was considered to be the worst cyclone season in eastern Australia on record.
- The four digit national post code system was introduced and STD calls were possible in most of eastern Australia.
- In the sporting arena, Red Handed won the Melbourne Cup, and, after long-term success, St George did not play in the National Rugby League Grand Final (won by the mighty South Sydney Rabbitohs) and Richmond started a new era by winning the Victorian Football League (now Australian Football League) flag.

From a broader international perspective, the 1960s were rightfully considered to be the age of protest and an era of significant reform across various important socio-political agendas (domestically and internationally) involving a number of prominent individuals as well as powerful collectives.

In May 1967, I was 19 years old and extremely unworldly and unwise regarding political matters, particularly in regard to constitutional matters. Perhaps my main concern at that time revolved around whether or not I was to be conscripted into National Service and how this might affect my life. However, despite my general unworldliness, I was nevertheless keenly aware of the discriminatory place and low social standing of Aboriginal peoples in Australia—developed in a visceral sense through the prism of the lived experience and the history of my own immediate family and kinship and community connections.

Although we were a small Aboriginal family residing in the Sydney inner city waterfront precinct of Millers Point (historically better known as 'The Rocks'), we were far from isolated from the wider Aboriginal community in Sydney (particularly in La Perouse and Redfern). As well, we were in touch (through frequent reciprocal visits and the reliable Koori 'grapevine') with family and other connections from our traditional Kamilaroi country, located in the New England area of New South Wales. Accordingly, this paper includes three components of my personal perspectives:

- a short commentary about the history up to 1967 and the nature of the challenges, demands and associated campaign for national constitutional reform on Aboriginal issues
- my personal recollection and perspective on the impact of the successful 1967 referendum
- my perspective on aspects of the significant challenges associated with constitutional recognition currently facing the nation.

The 1967 referendum questions

The 1967 referendum conducted on 27 May 1967 posed two questions. The first question for consideration referred to then and historically as the 'nexus' question represented an attempt to alter the balance of numbers in the Senate and the House of Representatives. My cursory research suggests that the coupling of the nexus question with the Aboriginal question was thought, by some political players, to have the potential to influence a more positive outcome for the nexus question. However, I do not cover this issue in this paper, suffice it to state that history shows the nexus question was not supported, having only achieved a majority in one state and a national 'yes' vote of around 40 per cent.[2]

The focus of this paper is the second question which was to determine whether two references in the Constitution which discriminated against Aboriginal people should be removed. The sections were:

> 51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:
>
> …(xxvi) the people of any race, *other than the aboriginal race* in any State, for whom it is deemed necessary to make special laws.
>
> 127. In reckoning the numbers of people of the Commonwealth, or of a State or other part of the Commonwealth, *aboriginal natives* shall not be counted.[3]

Those championing constitutional reform considered that the removal of the words 'other than the aboriginal race in any State' in section 51(xxvi), as well as the entire removal of section 127, was essential for the campaign to be successful.

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2   Strangman notes that 'Clearly a majority of electors had distinguished between the two proposals and on the nexus question had rejected the advice of the parties they traditionally supported' (Denis Strangman, 'Two defeated referendum proposals 1967 and 1977' in Richard Lucy (ed.), *The Pieces of Politics*, Macmillan, South Melbourne, Vic, 1979, p. 341).

3   Emphasis added.

It is probably unnecessary for me to state that the campaign was indeed successful, and spectacularly so, because the 1967 referendum saw the highest 'yes' vote ever recorded in a federal referendum with an unprecedented 90.77 per cent vote for change.[4] Interestingly, according to Barrie Dexter, such a successful outcome—'the size of the vote'—came as somewhat of a surprise to then Prime Minister, Harold Holt.[5]

Until that time only four out of the previous 24 referendum questions had been successful. I make the point that politically there was a bipartisan approach to this referendum and a 'no' case was not formulated or publicly articulated.[6] I will comment more about this later in this paper.

The campaign for reform

The demands and the formal campaign for constitutional reform in Aboriginal affairs leading to the successful 1967 referendum had a long, complex, tortuous and, to say the least, frustrating history. It involved many champions and heroes—Aboriginal and non-Aboriginal alike. In this paper I can't do justice to this struggle or to the role of individual leaders and participants, however I have attempted to paint a succinct picture of these demands—and the associated campaign supporting the 1967 referendum.

Universally, the demands for constitutional change were essentially about the federal government assuming control for Aboriginal affairs and therefore wresting control from the states (in concert with efforts seeking the removal of discriminatory and racist elements in the Constitution itself). Megan Davis and Marcia Langton have reminded us of the history of the calls for constitutional change and federal government control of Indigenous affairs by individual Indigenous leaders prior to the 1967 referendum. These include those made by David Unaipon (1926), Fred Maynard (1927), King Burraga (1933), William Cooper (1937), Doug Nicholls (1949) and the Yirrkala elders petition (1963).[7] To this list I would add the 1938 'Day of Mourning' protest held in Sydney involving Aboriginal leaders and activists Jack Patten, Bill Ferguson and Pearl Gibbs, as well as the 1965 'Freedom Rides' under the leadership of Charles Perkins.

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[4] Subsequently the Constitution was changed, giving formal effect to the referendum result, by the *Constitution Alteration (Aboriginals) Act 1967*, which received assent on 10 August 1967.

[5] Barrie Dexter, *Pandora's Box. The Council for Aboriginal Affairs 1967–1976*, Keeaira Press, Southport, Qld, 2015, p. 15.

[6] Nationally, 9.23 per cent voted 'no', with the highest 'no' votes recorded in Western Australia, South Australia and Queensland—said to be in those states and in rural areas where Aboriginal people were most visible.

[7] Megan Davis and Marcia Langton (eds.), *It's Our Country: Indigenous Arguments for Meaningful Constitutional Recognition and Reform,* Melbourne University Press, Carlton, Victoria, 2016, p. 4.

Such individual demands had long been supported by various organisations in a long history, which commenced in earnest from the early 1900s. The collective thinking, held by individuals and groups who wished for improvement in the lives and circumstances of Aboriginal peoples, was that the way to achieve such improvement was for the federal government to assume a greater (and controlling) role in Aboriginal affairs. According to Bain Attwood and Andrew Markus, these advocates:

> urged the federal government to recognise Aboriginal welfare as a trust vested in the nation and argued that it should actually assume an Australia-wide responsibility for Aboriginal people.[8]

This reform position became a common and shared objective for the various individuals and groups who championed positive change. They included a wide diversity of individuals, political representatives and academics; humanitarian, church, feminist and welfare community groups; trade union representatives and others. However, until the 1960s, such demands appeared to fall on deaf ears as far as the federal government was concerned and certainly were vehemently opposed, to varying degrees and on various grounds, by the states.

At the risk of excluding significant players in the progressive historical demands for reform, I have attempted to summarise some elements of these events and developments (from federation in 1901) and these are included in Attachment 1 to this paper.

Despite the apparent bipartisan political environment, the history of this referendum campaign in the relatively brief period prior to early 1967 involved ongoing parliamentary scrutiny and debate. Significantly, around this time the Federal Council for Aboriginal Advancement (FCAA, later the Federal Council for the Advancement of Aborigines and Torres Strait Islanders) was established in Adelaide in 1958. At its annual conference in 1962, FCAA formally proposed to undertake a national campaign which ultimately became the successful coordinated campaign supporting the 1967 referendum.

During 1962 and 1963, the Federal Council for Aboriginal Advancement ran a national petition campaign calling for constitutional change. The campaign highlighted the discriminatory national laws and policies controlling the lives of Aboriginals. It included compelling factual evidence of discrimination involving voting rights, marriage freedom, parenting rights, personal mobility restrictions,

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[8] Bain Attwood and Andrew Markus, *The 1967 Referendum: Race, Power and the Australian Constitution*, Aboriginal Studies Press, 1997, p. 6.

property ownership, wage rates, alcohol consumption and the diversity and inconsistency of legal settings within and between states.

Remarkably, through its efforts, the national campaign collected some 103,000 signatures in 94 separate petitions, which were presented to federal parliament and ultimately secured parliamentary support. The referendum was conducted on 27 May 1967 with the 'yes' vote carrying the day and by an overwhelming margin!

Some critique of the campaign regarding myths and/or misrepresentation

The historical records confirm that essentially the 'yes' campaign was based on the call for the attainment of 'citizenship' for Aboriginals and our emancipation from discriminatory legislative restraints on our lives and freedoms, and on enabling the federal government to make special laws for Aboriginals.

However, there is no doubt that in the appeal to the public to support the 'yes' vote, there was a degree of either deliberate or misguided misrepresentation of what the 1967 referendum was all about by those advocating reform. In making this comment, I essentially focus on key interrelated issues—citizenship, voting rights and the nature and degree of the existing legislative discrimination.

Even today many commentators, both Indigenous and non-Indigenous, young and not so young, repeat the myths associated with the 1967 referendum and which disclose a fundamental misunderstanding of the nature of the referendum. Statements such as 'when we got the vote' and 'when we became citizens of our country' are often heard and, in my view, hark back to the 1967 campaign itself which utilised similar sentiments. Indeed, the very petitions which were prepared for the public campaign were headline captioned with the words 'National Petition—Towards Equal Citizenship for Aborigines'.[9]

Citizenship

The Constitution makes no formal reference to citizenship—and, as others (including Paul Hasluck) have remarked,[10] Aboriginals already had formal citizenship via the *Nationality and Citizenship Act 1948* (supported in various contexts by state legislation).

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9   AIATSIS archives.
10   Attwood and Markus, op. cit., p. 20.

Voting rights

Aboriginal voting rights date back to the 1850s and since then various state and federal legislation (including federally in 1902, 1949 and 1962, Western Australia in 1962 and Queensland in 1965) has incorporated and supported Aboriginal franchise.[11] While I readily accept that owing to a number of significant socio-political factors (including social exclusion and discrimination, education standards, general ignorance of and misinformation about the political system, as well as the 'tyranny of distance' affecting access to voting processes), many Aboriginal people either chose not to vote or were unaware of their eligibility to vote. Nevertheless, Aboriginal franchise was clearly not part of the constitutional reform of the 1967 referendum.

Discriminatory legislation

With regard to the discriminatory legislation existing at both a state and federal level, by around 1965 most of the discriminatory laws had been repealed by various federal and state governments (and here I emphasise that I am not referring to discriminatory administrative policies or practices and/or social discrimination but rather legislation).

By 1966, at a federal level, Aboriginal people were entitled to pensions and maternity and unemployment benefits. Progressively, in Victoria in 1957, New South Wales in 1963 and South Australia in 1966, state-based legislation was amended and repealed to remove long-standing oppressive and discriminatory laws.

At the time of the 1967 referendum, Queensland and Western Australia, where Aboriginal people still lived 'under the Act', retained discriminatory legislation covering the rights, lives and freedom of Aboriginal people (although both these states had allowed Aboriginal franchise). In so saying, I do not wish to ignore or dilute the harsh reality of oppression and discrimination still suffered by Aboriginal peoples even after discriminatory legislation had been repealed.

I would certainly not wish to do this when we are celebrating the 20th anniversary of *Bringing Them Home*, the 1997 report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. This report highlighted the entrenched assimilationist policies and practices which lie at the heart of the intergenerational trauma suffered by the Stolen Generations and their families.

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[11] At the first federal election in March 1901, the franchise was extended to people eligible to vote in state elections, which in some states included Aboriginals. The following year, federal parliament passed the *Commonwealth Franchise Act 1902* which excluded 'any aboriginal native of Australia, Asia, Africa, or the islands of the Pacific, except New Zealand' from voting unless they were on the electoral roll before 1901. In 1949, parliament amended this Act to give Aboriginals who had completed military service, or who could vote in their state, the right to vote in federal elections. In 1962, this was extended to all Aboriginal and Torres Strait islander people. However, enrolment and voting did not become compulsory for Aboriginal and Torres Strat Islanders until 1984.

Sadly, I understand that many of the report's recommendations which go to supporting and healing our 'mob' have yet to be implemented. However, I am simply attempting to show that the degree and influence of discriminatory laws had positively shifted in the lead up to the 1967 referendum—although this situation did not appear to be acknowledged and was certainly not promulgated by the 1967 campaigners.

I have made the preceding comments in the interest of highlighting some myths about the 1967 referendum. I believe there are other aspects of the campaign which could be similarly challenged, however I will only focus on the preceding issues in this paper.[12]

While I do not make these comments as a criticism of the campaign or the campaigners themselves, it appears to me that those involved in the campaign did misrepresent the issues at stake, either by accident or design. I also restate that the main objective of the campaign was to secure Commonwealth Government primacy in Aboriginal affairs. Obviously the campaigners shaped and presented the case to appeal to a broader societal sense of social justice and fairness, and in ways which were easily digested and understood (and thus avoided any need to articulate the specific details of the amendments and/or any complex legal interpretations relating to these changes). My points here have resonance today in the context of the current constitutional reform discourse and I will come back to this later.

Impact of the 1967 referendum

My perception of the impact of the 1967 referendum has two strands or rather two distinct and separate narratives:

1. the immediate and short-term impact
2. the longer term impact.

These two aspects of my perspective are very different to each other.

Immediate and short-term impact

In attempting to describe the immediate and short-term impact of the 1967 referendum I am reminded of one of my late father's sayings. He would utter this expression when his expectations were not met on some key issue or event of personal importance—'They promised us the world and gave us an atlas!' This expression goes some way to describing my perception of the immediate impact of the 1967 referendum.

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[12] For example, see the debate as to whether, prior to the 1967 reforms, the Constitution prevented the Commonwealth Government from becoming involved and/or taking control of Aboriginal affairs.

The campaigners had predicted a brave new world for all us blackfellas and proposed that a successful referendum would bring about great and immediate beneficial reforms through greater recognition, the application of social equality and a new progressive era of Aboriginal affairs. From my personal perspective, however, nothing changed at all in our lives. When the result was announced, I recall a number of family and Aboriginal friends acting rather celebratory about the outcome (including, in particular, my grandmother who was a big fan of Faith Bandler). I personally wondered what all, or indeed any, of the fuss was about!

There was absolutely no evidence to me that anything had changed at all. Indeed, I remember my family discussions gave some prominence to the right to legally patronise and be served in hotels as an important (albeit misconstrued) outcome of the referendum—and I have no recollection whatsoever of any other discussions or mention of the census and/or expectations about changes in Aboriginal affairs. As far as I could tell the referendum outcome had no impact on any of our other Aboriginal relatives and/or friends and community connections.

Certainly, I did observe the local non-Indigenous community appeared to be very satisfied and comfortable with the outcome. I feel our local non-Indigenous friends and community assumed the outcome signalled, somehow overnight, the closure on a bad old racist Australia and the beginning of a good new non-racist country where Aboriginal people would be given 'fair go'. I also agree with the view that many non-Indigenous Australians regarded this line of thinking as an 'act of redemption', in that it resulted in all us blackfellas now being instantaneously the 'same as everyone else', enjoying the same rights and freedoms.[13] I recall that the press coverage (and here I am mainly referring to radio broadcasts) appeared to give this impression.[14]

So from my perspective, apart from some immediate 'feel-good' responses, in the short term the 1967 referendum had very little impact whatsoever. Similarly (and with the benefit of hindsight), it is obvious that the successive federal coalition governments—in the immediate term the Holt administration and in the longer term the Gorton and McMahon administrations—took very little, if any, action at all to alter the status quo and to assume control of Aboriginal affairs immediately following the 1967 referendum outcome. This was despite the weight of the overwhelming 'yes' vote.

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[13] Attwood and Markus, op. cit., p. 59.

[14] In my view, the outcome confirmed to the broader Australian public what it always believed of itself—that Australia and Australians were fair-minded, humanitarian people who did not tolerate discrimination. This position, however honourable and laudable and which appeared to be held by most non-Indigenous Australians, was based on a complete lack of any in-depth knowledge or understanding about Aboriginal people and the history and the prevailing nature and degree of social, economic, legal and political discrimination and pervasive state control encountered by Aboriginal people in our everyday lives.

Faith Bandler, one of the heroes of the successful campaign, expressed similar views:

> Changes following the referendum were disappointingly slow. Our earlier euphoria died down. The government despite putting the referendum to the people had themselves been lukewarm about it. This was evident not only from their pre-referendum posture but also from the absence of any real plan of action on which they should embark following the referendum. Meanwhile the lives of Aborigines virtually remained the same—still under state control…[15]

In this context we are also heavily indebted to Barrie Dexter for his memoir, entitled *Pandora's Box*, about his time as a member of the three-man Council for Aboriginal Affairs (together with economist Dr H.C. 'Nugget' Coombs and esteemed anthropologist Professor Bill Stanner) and as the newly appointed head of the Office of Aboriginal Affairs, which was established by Prime Minister Holt later in 1967 following the referendum.[16] Dexter outlines in considerable chronological detail the work of the Council in the context of public policy. In doing so he paints a most salient picture covering the five years following the referendum as a regrettable period of 'political and bureaucratic apathy and a paucity of empathy, understating of and commitment to improving Indigenous lives'.[17]

Dexter describes the initial air of optimism when Prime Minister Holt established both the Council and the Office of Aboriginal Affairs. However, the following quote from Dexter summarises his view of the period following the referendum—and in my view appropriately describes the successive coalition governments' commitment and actions up until 1972:

> the firm support that Mr Holt had shown for handling the Commonwealth's new responsibilities through the Council and the Office would, I reasoned, no doubt be continued by his governmental colleagues. *How wrong I was*!'[18]

So from a number of perspectives, and particularly my own, the immediate to short-term impact of the 1967 referendum was negligible.

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[15] Faith Bandler, *Turning the Tide: A Personal History of the Federal Council for the Advancement of Aborigines and Torres Strait Islanders*, Aboriginal Studies Press, Canberra, 1989, p. 116.
[16] Dexter, op. cit.
[17] Paul Daley 'When two old foes opened Pandora's box, it unleashed an unlikely reconciliation', *The Guardian*, 29 May 2015, www.theguardian.com/australia-news/postcolonial-blog/ 2015 /may/29/book-opens-pandoras-box-of-sad-tales-but-true-of-indigenous-experience.
[18] Dexter, op. cit., p. 23. Emphasis added.

Longer term impact

My perceptions about the longer term impact of the 1967 referendum are very different to my thoughts and negative perception about its immediate short-term impact. I consider the longer term impact to be both positive and extremely profound. I am reluctant to use the word symbolic in this context because, while the outcome could be accurately described as being symbolic in many ways, in my view the impact also had a much greater, tangible, transformative nature, and therefore is both symbolic and substantial in its historical influence.

I base this view on a variety of integrated thoughts and evidence which collectively have convinced me that the outcome of 1967 referendum does represent an unprecedented critical and momentous tipping point in the history of progressive (and regressive) developments involving Australia's Aboriginal or, as it is nowadays referred to, Indigenous affairs sector.

Regardless of any myths and/or misrepresentations, I believe very strongly that the majority of my fellow Indigenous Australians take considerable comfort, confidence and moral strength from the 1967 referendum outcome. Many of us consider the outcome to represent the historic high point in our relationship with the nation and we collectively own and cherish this historic marker, despite any pragmatic assessment of what it was all actually about.

Even if not entirely accurate, it is good to talk about citizenship in the context of the 1967 referendum as a collective marker and moral compass point regarding our existence and dignity, our cultural integrity, our quest for recognition and respect for our place in the fabric of the nation. It is good to own such a collective historic tipping point in history as I believe it acts as a uniting influence in our arguments for change and for a better world.

A new beginning

The referendum outcome was directly responsible for the involvement of the federal government in Indigenous affairs—something we take for granted today. I have no doubt the progressive public policy and administrative reforms initiated firstly by Holt through the work of the embryonic Council for Aboriginal Affairs and later, and to a much greater degree, under the Whitlam government and by successive governments (both Labor and coalition) draw from and/or owe their origins to the strident 'call to arms' represented by the positive 1967 referendum outcome. This work resulted in the dismantling of residual discriminatory laws and policies of governments and paved the way for, and supported, more enlightened approaches and developments.

Another critical and tangible (as opposed to symbolic) outcome was that the federal government was given the power to make special laws on behalf of Indigenous Australians. While as Indigenous Australians we might now question or debate whether this power has historically been used beneficially or detrimentally (for example, the Northern Territory intervention and the suspension of the *Racial Discrimination Act 1975* three times), there is absolutely no doubt such powers represent a substantive reform and a real outcome of the 1967 referendum.

Assimilation/self-determination and beyond

At the time, some commentators may well have considered that the overwhelming 'yes' vote appeared to validate the policy of 'assimilation' in the collective desire for equality. However, conversely it appears clear to me that the 1967 referendum, which in the longer term heralded a more enlightened policy approach, actually acted as a catalyst in the dismantling of the policy of 'assimilation'—initially into an era of 'self-determination' and then beyond.

This reform better acknowledged our existence, influence and voice as a distinct cultural group, and more accurately captured our position and aspirations as Indigenous Australians and our preferred relationship with governments. Hopefully such reforms can continue to lead to the elusive—and yet to be achieved— era of genuine 'empowerment', where the principles of the United Nations Declaration of the Rights of Indigenous Peoples, supported by real and shared engagement with 'our mob', are central and provide the fundamental template and drivers for any federal and/or state approaches, policies and practices in Indigenous affairs.

Census

Another significant impact which owes its origins to the 1967 referendum involves the national census and its collation from 1967 of extremely significant information about the size, composition and nature of Australia's Indigenous population.

Such information is of critical importance to the public policy community (and others, including service delivery agencies and educators) and to the creation and shaping of policy, programs and projects aimed at addressing the wicked, intractable degree of intergenerational disadvantage suffered by Indigenous Australians. The national Closing the Gap campaign and associated initiatives rely upon such demographic information to provide the basis for setting aspirations, as well as for assessing progress at the various regional, state and national levels. Closing the Gap is important business and a direct and tangible result of the 1967 referendum.

Recognition and rights

I make the observation that the public policy and administration changes flowing from the 1967 referendum also coincided with—and tended to better recognise and support—emerging Indigenous collectives (for example, Aboriginal legal and health services and Aboriginal land councils) and the formation of a collective Indigenous identity and related movements.

Such groundbreaking individuals and groups sought a range of reforms (including initially land rights) but were particularly assertive in demanding greater recognition (domestically and internationally) of Indigenous Australians as a distinct, unique and resilient cultural group and as Australia's First Nations peoples. This involved recognition of both our rights as citizens as well as our special or unique rights as the First Peoples of Australia.

Professor Larissa Behrendt wrote:

> the referendum remains an important moment in Australian history. The real achievement was the way the referendum united people across the political spectrum…it was an important step in furthering the political agenda for a new generation of Aboriginal activist.[19]

The size of the 'yes' vote

It is doubtful whether the overwhelming result of 1967 would be possible today. I say this with all due respect. However, I do so knowing that political and public perceptions have diversified and shifted considerably since 1967 and, of course, in 1967 there was the absence of a 'no' case—which would be unlikely today. I provide more comment about this later in the paper when reflecting on contemporary challenges.

In this context, the 1967 referendum and its impact is historically significant owing to the success and landslide strength of the 'yes' vote. Referring to the 1967 referendum, Davis and Langton maintain that the '1967 Referendum should be remembered on its own for a wonderful achievement of collaboration between Indigenous and non-Indigenous Australia'.[20]

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19   Attwood and Markus, op. cit., p. 167.
20   Davis and Langton, op. cit., pp. 5–6.

High point and tipping point

Similarly, as further fundamental evidence of the significant and profound impact of the 1967 referendum, I would highlight the innumerable times that the event has been and continues to be referred to in public (and other) discourse by various Indigenous thought leaders, commentators, activists, politicians, academics, public servants, educators and others. Invariably, such references provide thoughts and discussions of a comparative nature involving the circumstances and the outcomes prevailing then and those of the present.

Invariably, in this context, the 1967 event and its significance are positively judged and portrayed as having acted as a catalyst for change and as basis for right and proper consideration of Indigenous matters which need to be recognised and/or resolved.

Such common and frequent references to the 1967 referendum outcome on anniversary dates and at other special occasions serve to highlight and reaffirm the significance of the event and its impact on society. In particular the importance and significance placed on the event by both Indigenous Australians and others during such times clearly reaffirms the weighty historical impact on the nation.

I feel that while many progressive and significant socio-political developments in Indigenous affairs have occurred since 1967—for example, the Aboriginal Tent Embassy, land rights, the Mabo decision and native title, reconciliation, Paul Keating's Redfern speech, and the National Apology to the Stolen Generations[21]—the 1967 outcome is nevertheless a 'stand out' milestone as the most historic and significant influence in the relationship between Indigenous Australians, governments and mainstream Australia.

So in summary, I believe the 1967 referendum to be a watershed event, extraordinarily powerful in both symbol and substance. I believe it represents both a high point and tipping point in the history of Australia as a result of:

- the unprecedented success in the landslide 'yes' vote
- its success in securing the federal government's involvement in Indigenous affairs, and related positive influence on dismantling discriminatory laws and policies and the breaking down of the 'assimilationist' policy regime applying up to the 1970s and since that time
- its contribution to the improvement of the nation's capacity to better recognise and understand the scope and size of our Indigenous population and the degree

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[21] In my view, these are all connected to the outcome of the 1967 referendum.

of disadvantage suffered by Indigenous Australians—and therefore to design strategies to address such disadvantage

- the beneficial impact on the nature of the relationships between Indigenous Australians, governments and mainstream Australia
- its positive influence in the acceptance and recognition of Indigenous Australians as a resilient, culturally rich and unique First Nations peoples
- its unifying and mobilising effect on Indigenous Australians, as individuals and collectives, in our efforts to advocate for a better future and to do so with greater support and understanding from a more informed mainstream Australia.

A parity of esteem

I wish to record further personal thoughts about both the short-term and long-term impact of the 1967 referendum—which reflect my feelings at age 19 and which remain unchanged to the present day.

I strongly feel that in addition to addressing issues of equality and equity and the associated quest to 'close the gap' in various elements of our health, education and other socio-economic indicators, Indigenous Australians share another important aspirational objective. I refer to this quest as seeking a 'parity of esteem'.

Many people who know me are aware that I have spoken about this objective often and for some time. My long-held thoughts have been most eloquently articulated more recently by Noel Pearson, who stated:

> there is a basic democratic problem in our Country. Unless this nation continues to harbour that old pseudo-scientific belief in the inferiority of its Indigenous peoples—for some a matter of romantic tragedy and for others an unsentimentally brutal truth—then there is something wrong with the nation as a whole, rather than with the parlous minority.[22]

By the attainment of a parity of esteem, I refer to the reaching of a point in time whereby Indigenous Australians and our identities, our cultures, our languages, our histories and our dignity as resilient peoples are afforded the same degree of respect as other cultures. In this and in the Australian context, I am specifically referring to the cultures collectively referred to as Western cultures.

As Indigenous Australians, as the most resilient cultural group on the planet, we are tired of being too often referred to, treated and considered as peoples whose cultures,

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[22] Davis and Langton, op. cit., pp. 163–4.

languages, beliefs and histories are somehow inferior or secondary to others. We seek greater acknowledgement and respect for who we are and our place in the nation and the world.

In seeking this parity of esteem I believe we Indigenous Australians do not wish to deny, denigrate or usurp the cultures of others or to takeover the world. We simply seek to establish our rightful place in the nation and globally—we seek genuine mutual regard for the integrity and dignity of our ways of knowing, our ways of thinking, our ways of doing and who we are.

Despite the claims for a better world articulated by the successful 1967 referendum campaigners and despite other positives, I believe we did not go anywhere near achieving a parity of esteem at that time. Without ignoring the obvious goodwill and good faith involved, I feel the outcome of the 1967 referendum was driven by other societal influences more concerned with providing benevolent and patronising support to deal with the Aboriginal 'problem', rather than as a means of giving expression to the concept I refer to as a parity of esteem. Today we still have some way to go in this quest before we can really believe we have reached, truly share and maintain a parity of esteem between Indigenous Australians and other Australians.

Indigenous constitutional recognition—what does it mean?

I need to record that Indigenous constitutional recognition to me refers to having embedded in our Constitution both symbolic and substantive content which acknowledges Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia, acknowledges and values the richness and diversity of our cultures, and provides permanent safeguards to ensure we have a role in decision-making and will be treated fairly.

There is universal acceptance that the original Constitution, supposedly the founding document of the nation, was drafted with a complete absence of any Indigenous considerations whatsoever save some elements of discrimination and exclusion. The 1967 referendum left some significant issues unresolved, including formal recognition of Indigenous Australians (and left unchanged the voting veto on the basis of race in section 25).

I acknowledge that Indigenous recognition, in the way I have defined it, can happen outside the Constitution (through common law and other legislative provisions). However, if we concur that the Constitution is truly the foundation document of Australia, that it provides the structural basis for our system of government, and somehow reflects our values as a nation, then I believe as Australians we must support the need for amendment.

As Professor George Williams has suggested, we must accept that it is 'time to fix a silence at the heart of Australia's constitution'.[23] So there remains some important, unfinished constitutional business to be conducted.

Indigenous constitutional recognition—contemporary challenges

I wish to acknowledge the 2017 First Nations National Constitutional Convention conducted under the auspices of the Referendum Council and convened in Central Australia from 23 to 26 May. This event, which was the culmination of 12 Indigenous-only 'dialogue' forums convened around the nation, is attempting to determine the preferred position (involving both symbolic and practical reform) on constitutional recognition from the perspective of Indigenous Australians.

Given Indigenous constitutional recognition is about us, Indigenous Australians, it is entirely fitting and proper that our views have primacy in deciding the nature and form of any constitutional amendments. Accordingly, in order to determine the preferred Indigenous position, the fundamental questions being put at these Indigenous dialogue forums and the National Convention—and which will hopefully be resolved—appear to be 'Do you support constitutional change? And, if you do, what form do you think change should take?'[24]

While I have not been involved in these events, in my previous role at the Australian Institute of Aboriginal and Torres Strait Islander Studies, I was involved in the scoping, planning and scheduling of these events in consultation with the eight Indigenous members of the Referendum Council under the leadership of one of my heroes, Patricia Anderson AO.

From a broader perspective, the First Nations National Convention has as a guiding template for possible Indigenous constitutional recognition the work and recommendations of two significant national consultations. These are the 2012 final report of the Expert Panel on Constitutional Recognition of Indigenous Australians and the 2015 final report of the Australian parliamentary Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples. The First Nations National Convention can also draw from the Referendum Council's 2016 discussion paper on the topic.

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[23] George Williams, 'Time to fix a silence at the heart of Australia's Constitution', *The Sydney Morning Herald*, 18 July 2014, www.smh.com.au/comment/time-to-fix-a-silence-at-the-heart-of-australias-constitution-20140717-ztwge.html.

[24] Referendum Council, *Discussion Paper on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples*, Department of Prime Minister and Cabinet, 2016, p. 1, www.pmc.gov.au/resource-centre/indigenous-affairs/discussion-paper-constitutional-recognition-aboriginal-and-torres-strait-islander-peoples.

In the interest of brevity, and for the purpose of this paper, I do not intend to articulate the details of each and every recommendation in either of these reports and discussions, but will make some selective comments about their deliberations and findings.

Both the Joint Select Committee and the Expert Panel have indicated there is strong national support for Indigenous constitutional recognition and this appears to be confirmed by the surveys conducted by RECOGNISE as part of its recent public campaign to raise awareness of the issue. Importantly, both the committee and Expert Panel have opted for a range or package of amendments rather than any single amendment to the Constitution.

In considering these reports, the Referendum Council has summarised the key proposals as including:

- drafting a statement acknowledging Aboriginal and Torres Strait Islander peoples as the First Australians as an introduction or preamble to a proposed new law-making power in the Constitution, or enshrining it as a statutory Declaration of Recognition outside the Constitution
- amending or deleting the 'race power', section 51(xxvi) of the Constitution and replacing it with a new head of power (which might contain a statement of acknowledgement as a preamble to that power) to enable the continuation of necessary laws with respect to Indigenous issues[25]
- inserting a prohibition against racial discrimination into the Constitution
- providing for an Indigenous voice to be heard by parliament and the right for Aboriginal and Torres Strait Islander people to be consulted on legislation and policy that affects us
- deleting section 25, which contemplates the possibility of state governments excluding some Australians from voting in state elections on the basis of their race.[26]

Please refer to the Referendum Council's discussion paper for further explanation of each of these proposals.[27]

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[25] The report notes that 'To pass a law on anything, the federal government needs to identify a head of power.' At present section 51(xxvi) of the Constitution, which is referred to as the 'race power', is the 'head of power that allows the federal Parliament to make laws regarding Aboriginal and Torres Strait Islander peoples on issues such as native title and heritage protection'. The Referendum Council recommended the new head of power avoid the word 'race' and describe who the power is to be used for. Essentially it would be the power to make laws with respect to Aboriginal and Torres Strait islander peoples (ibid., p. 9).

[26] Ibid., p. 9.

[27] www.pmc.gov.au/resource-centre/indigenous-affairs/discussion-paper-constitutional-recognition-aboriginal-and-torres-strait-islander-peoples, pp. 8–11.

However, as the saying goes, the devil is always in the detail! And it also goes without saying that not only do we need to concern ourselves with the details about the content of any proposed amendments to the Constitution but we also need to have strong regard to the processes that support any referendum.

An obvious and fundamental concern about the issue of Indigenous constitutional recognition is that of securing the necessary double majority, that is a majority of 'yes' votes in a majority of states. This represents a momentous challenge in any referendum and, in my view, is particularly the case with this issue!

I quote Patrick Dodson:

> History shows us that Australians tend to be cautious when it comes to changing the constitution, particularly if the proposition put to the voting public is not well understood.[28]

Adding to my thoughts and Dodson's words, and to highlight the challenges involved, I echo the four principles adopted by the Expert Panel in developing its findings. These were that proposals must:

- contribute to a more unified and reconciled nation
- be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples
- be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums
- be technically and legally sound.[29]

There is considerable challenge in addressing these significant conditions today.

And further, the Expert Panel held concerns, as I certainly do, that:

> For many Australians, the failure of a referendum on recognition of Aboriginal and Torres Strait Islander peoples would result in confusion about the nation's values, commitment to racial non-discrimination, and sense of national identity. The negative impact on Aboriginal and Torres Strait Islander peoples would be profound'.[30]

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[28]   Davis and Langton, ibid., p. 183.
[29]   Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution*, January 2012, p. xi.
[30]   Ibid., p. xvii.

To which I would add that any negative impact would perhaps have a much deeper and more profound effect on, and say much more about, mainstream Australians and the nation with regard to its standing and position internationally—and any such negative impact would inevitably be long-term!

Importantly, in this context, the following factors of concern have also been articulated by the Expert Panel and again, in my view, are all extremely valid and reflective of the challenges ahead. According to the report, these factors are:

- whether there is strong support for the proposals to be put at referendum across the political spectrum
- whether the referendum proposals are likely to be vigorously opposed by significant and influential groups
- the likelihood of opposition to the referendum proposals from one or more State governments
- whether the Government has done all it can to lay the groundwork for public support for the referendum proposals
- whether there would be sufficient time to build public awareness and support for the referendum proposals
- whether the referendum would be conducted in a political environment conducive to sympathetic consideration by the electorate of the referendum proposals
- whether the referendum proposals would be seen by electors as genuine and meaningful so as to avoid the risk of rejection on the basis that they represent an inadequate or 'tokenistic' response to the profound questions raised by constitutional recognition of Aboriginal and Torres Strait Islander peoples.[31]

I believe that the response to these questions today would be either a resounding 'no' or give rise to serious uncertainty and I suggest that much more needs to be done. I will come back to these concerns.

To further help set the context from an Indigenous perspective, I refer to statements made at a very recent Indigenous dialogue forum held in Brisbane. The following positions were articulated by Indigenous participants, including members of the Referendum Council:

- Aboriginal people are interested in 'proper substantive change' and 'As somebody said at one of the dialogues, if we can't do something spectacular here it's not worth doing', 'People are rejecting minimalism, some sort of

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[31] Ibid., p. xvii.

poetry or nice words. What we are asking for is very modest, we just want to have a say in the affairs and legislation that affects us' (Pat Anderson AO, co-chair of the Referendum Council).

- 'Indigenous People were focused on the best model, not on how to construct a successful referendum' and 'That means that politicians are looking at something very different from what Aboriginal people are looking at, and that tension will play out' (Megan Davis, a council member and Professor of Law at the University of New South Wales).

- Indigenous Australians are rejecting the 'elite', 'politicians' model' for changing the constitution and instead are 'overwhelmingly voicing a desire for changes that give them direct power over their future' (Professor Davis).

- The 'minimalist' model is the idea conservatives in the government are most likely to support—'What we are hearing is that's not enough. They want a bit of action; they want something substantive as well' (Professor Davis).

- Indigenous people 'appear to show interest in all of the substantive reforms that actually lead to some sort of structural change: the kind of reforms that will change the way in which business is conducted between the Government and Indigenous communities' (Professor Davis).

- 'This is possibly going to be part of making history and I want to play a positive part in building a history that's going to influence the future for my kids' (Nughi and Noonuccal teacher Chelsea Rolfe).[32]

From my perspective, these comments are extremely salient and instructive!

The discussions at the Indigenous dialogues will have no doubt covered wide-ranging issues, questions and positions which embrace various extremes, from that of those who champion substantive constitutional reform to those who have no interest in the Constitution and therefore do not see any value in or need for change. I respect all such views.

In this paper I am not ignoring either the 'S' word or the 'T' word—and I readily recognise that both the issue of sovereignty and the concept of a treaty (or treaties) will provide legitimate grounds for discussions at the Indigenous dialogues and the National Convention. However, I am attempting to stick to the script in my discussion around the issue of Indigenous constitutional recognition.

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[32] These are selected quotes from ABC News found at www.abc.net.au/news concerning the recent Brisbane Indigenous dialogue forums, see 'National recognition talks show Indigenous appetite for real change, not lip service', 24 April 2017, www.abc.net.au/news/2017-04-24/indigenous-people-want-substantive-change,-talks-reveal/8467318, and 'Constitutional recognition: "politicians' model" faces lukewarm response by Indigenous Australia', www.abc.net.au/news/2017-03-07/politicians-model-constitutional-recognition-faces-rejection/8332758.

Treaty or treaties

I am aware that the issue of and any discussion about a treaty (or treaties) has been dismissed and/or assigned to an unspecified time in the future by our political leaders. I am also aware some political players feel that the concept of a treaty either detracts or places restraints around progressing constitutional recognition. I believe that this does not need to be the case and that constitutional recognition and the concept of a treaty are not mutually exclusive and can be integrated or linked in ways which can bring value and meaning to both.

I place on record my view that constitutional reform and the establishment of a treaty—or a package of treaties—between the federal government and Indigenous Australians are both worthwhile aspirations. I believe that there is considerable value and benefit to the nation in pursuing and securing both meaningful constitutional change and agreement in the form of a treaty (or treaties) in order to address unresolved issues of sovereignty and historical grievances.

I believe that as a nation, Australia should recognise that where treaty making has been used internationally (for example, New Zealand, Canada and the United States), such instruments and processes have served these nations and the relationship with their Indigenous peoples very well in the past and will continue to do so.

Concluding perspective

The preferred and legitimate Indigenous position on constitutional recognition has not yet been established and any final recommendations made to the government via the Referendum Council are awaited with particular interest. There are very strong indications that the Indigenous peoples involved in the dialogues are not simply discussing but advocating quite substantive reforms to the Constitution.

Accordingly, we have a potential convergence—or perhaps confrontation—of a package involving substantive Indigenous reform (assuming it is supported by the Referendum Council in any considered recommendations to government) versus conservative positions of what the government and others might support.

The conservative position would probably be based on a practical consideration of what might be achievable in a referendum process and other opposing views, including 'the pendulum has swung too far' type of responses from the past. As Professor Megan Davis has suggested, it will be very interesting to see how this 'tension' will play out.

Challenges

However without specific knowledge of the Indigenous preferred position, and to reflect my own Indigenous perspective on the challenges facing the country at the present time, I record the following personal thoughts:

- Securing strong support across the political spectrum for the proposals to be put at referendum will be extremely challenging. I hold this view in the context of the current political environment and the machinations of major parties, minor parties and independents, and their respective propensity for adversarial and oppositional positions and behaviours. I also note the emergence of xenophobic positions and re-emergence of the fear and/or loathing of racial and cultural difference playing out in the political and public discourse, both domestically and internationally.

- Similarly, I do not feel that a referendum today would be conducted in a political environment conducive to sympathetic consideration by the electorate.

- It is highly likely that any proposals will be vigorously opposed by significant and influential groups, possibly including one or more state governments. Unlike 1967, I expect there will be a strong 'no' case and I understand the 'no' case will be supported by government funding (in order that the federal government be seen as honest brokers). I believe the more detailed and substantive constitutional change proposed, the stronger the opposition.[33]

- Much more needs to be done, and undoubtedly more time is needed to create public awareness, before Australians can be satisfied the government has done all it can to lay the groundwork for effective public engagement and support, or otherwise, for any referendum proposals, and to dispel perceived concerns about a lack of interest.

- There is considerable risk that any referendum proposals may not be seen by electors as genuine and meaningful, so we need to avoid risking rejection on the basis that the proposals are inadequate or 'tokenistic'—my fears here relate more to the Indigenous electorate and their perspectives and likely positions.

Misgivings

To complete my own Indigenous perspectives and obvious misgivings about the current challenges, I would add the following points:

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[33] See Noel Pearson's analysis and critique of the likely opposition from 'more hard hearted unempathetic liberals who oppose any form of Indigenous rights and recognition whatsoever' in Davis and Langton, op. cit., pp. 163–179.

- Most Indigenous Australians support both symbolic *and* substantive reform and they will resoundingly reject any reform that is only symbolic, cosmetic or minimalistic in nature.
- If any substantive reforms are rejected or seriously diluted or compromised by the government then I believe the Indigenous leadership, supported by the Indigenous electorate, will simply walk away.
- From an Indigenous perspective, Indigenous constitutional recognition will take 'as long as it takes' and the timeframe will not be hijacked or unduly influenced by the political convenience or expedience and agendas of others.
- Indigenous constitutional recognition should not be achieved at any price. I am deeply concerned that any public, social or political airing of the arguments for and against constitutional change carries a real threat to our social cohesion. With this in mind, I make the following points:

  o The public debate around any proposed Indigenous constitutional recognition needs to be absolutely respectful by all involved.
  o All campaigners and advocates need to be fully aware of the sensitivities in any arguments and the potential for hurtful and divisive impact and fallout.
  o The risk in causing any immediate or longer term damage to social cohesion and unity needs to be anticipated by the avoidance of any ill-considered public statements and positions.
  o Racism and cultural denigration will divide us and will deter and even destroy any real and potentially beneficial engagement.
  o Put simply, I seek to protect my family, my children and grandchildren from harm by being denigrated and/or dismissed as second class Australians because of some misguided, uninformed or racist contribution to the debate.
  o We claim to uphold the values of a democratic country and so surely in such an important public discourse we can display all the respectful qualities of a truly civil society. This is certainly my fervent hope.

- Hand in hand with these misgivings, I reiterate my hard held concerns that *an unsuccessful referendum* dealing with Indigenous constitutional recognition *would deal a tremendous blow to Australia's international standing as a modern nation* which values its reputation for liberal thinking, equality and human rights. Further, on this issue:

  o Indigenous Australians do think about, respect and cherish our reputation as a county internationally.
  o Such nationalistic pride is not the exclusive province of non-Indigenous Australia. Mind you, as Indigenous Australians, we

approach these matters from very different cultural and historical paradigms and experiences. To a very large degree that is what the concept of Indigenous recognition in the Constitution is all about! It is about recognition and respect for our existence and history before and since 1770, and the resilience of our peoples and our cultures as the First Australians within a modern, multicultural nation made up of and shared by more recently arrived Australians.

o The indelible global blemish on the Australian nation created as a result of an unsuccessful referendum outcome would last for a very long time indeed—given the time frame required to achieve any redress (and which would require revisiting the same constitutional referendum processes).

o I repeat my view that such an outcome would speak much more harshly about the broader Australian nation than about its minority Indigenous population.

Conclusion

In conclusion, I would like to briefly revisit the issue of a 'parity of esteem' that I raised earlier. In this paper I have voiced strong reservations and concerns about the challenges in achieving Indigenous constitutional recognition. Nevertheless, I remain optimistic in the firm belief that Indigenous constitutional recognition is an honourable aspiration for all Australians, which is achievable and well overdue.

However, I would hope whatever the proposals may be and however we may conduct the debates, we could together as a nation make some significant progress towards achieving the illusive 'parity of esteem'. If we were to do this, through stronger mutual regard and respect for each other, I have no doubt Australia would be a better country and that all our lives and life choices, and those of our children and their children, would be greatly enriched and be much more rewarding and fulfilling.

In so saying, I believe that the 'wonderful achievement of collaboration between Indigenous and non-Indigenous Australia', which Megan Davis and Marcia Langton spoke about when referring to the impact of the 1967 referendum, could be revisited and repeated at some time in the very near future.

Attachment 1

The following information provides a succinct history of the demands and claims for constitutional reform relating to Indigenous Australians from federation until the 1967 referendum.

1910
Public records disclose that very soon after federation, and specifically in 1910, the Australian Board of Missions was prominent in its call for the federal government to assume control of Aboriginal affairs on a shared basis with the states.

1913
The Australasian Association for the Advancement of Science (supported by its committee on Aboriginal welfare) made similar demands after the Commonwealth assumed control of the Northern Territory in 1911 (prior to this the NT was administered by the South Australian government). At the time, the Aboriginal population (and the Aboriginal 'problem') was in the clear majority in the Northern Territory.

1920s
The Association for the Protection on Native Races (involving church and anthropological interests) urged the Royal Commission on the Constitution to recommend the Constitution be amended to enable the federal government to assume 'supreme control for all Aborigines'.[34] These demands were supported by others, including the Australian Federation of Women Voters, the Victorian Women Citizen Movement and the Australian Board of Missions.

At the same time, international interest and advocacy through the London-based Anti-Slavery and Aborigines Protection Society raised the spectre of Australia's reputation as an emerging nation and its place in world affairs and position on human rights.

1929–33
The 1929–31 papers of the Royal Commission on the Constitution recorded that the majority of the commission failed to support the collective calls for reform.

1930s
Concerted reform efforts of humanitarian, scientific and feminist community advocates were supported by various Aboriginal bodies, with the Australian Aborigines' League being the most prominent.

1938
The famous Aboriginal 'Day of Mourning' protest was held in Sydney to protest against Australia's sesquicentennial celebrations. Once again the call for the federal government to assume control of all Aboriginal affairs was the overriding issue—and importantly the protestors called for a national program that would 'raise all

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[34] Attwood and Markus, op. cit., p. 7.

Aborigines throughout the Commonwealth to full Citizen Status and civil equality with whites in Australia'.[35]

1939–45

During World War Two, advocacy for reform slowed but still continued. In 1942, when the issue of reform of Commonwealth powers was raised, the Association for the Protection of Native Races (and others) championed constitutional change to bring about federal control of Aboriginal affairs.

In 1943, the United Associations of Women and other feminist groups issued a Women's Charter which included a call for federal control of Aboriginal affairs. The Association for the Protection of Native Races (led by Sydney University's Professor of Anthropology, A.E. Elkin) made the same demand, saying it was time 'to bring into line the Aboriginal policies, acts, definitions, and regulations which prevail in different parts of the Commonwealth. They should be framed and administered from a national point of view'.[36]

1942–44

A Curtin Labor government-sponsored constitutional convention recommended that certain powers be transferred to the Commonwealth for five years. As a result, in 1944, proposals essentially covering post-war reconstruction were presented in a referendum, including transferring the power for Aboriginal affairs to the Commonwealth. It is of interest that the issue was specifically referenced with regard to Australia's post-war 'special responsibility towards the native peoples of the South-West Pacific' (including those of New Guinea).[37] No doubt such considerations included sensitivities around international concern over Australia's treatment of its own Indigenous people. The referendum failed.

1945–50

After the war years, advocacy for constitutional reform continued involving various advocacy bodies including the National Missionary Council, the Association for the Protection of Native Races and the Aborigines Uplift Society. Such campaigns were supported and indeed greatly influenced by Aboriginal organisations such as the Aborigines Progressive Association (led by Bill Ferguson) and the Australian Aborigines' League (led by Doug Nicholls and Bill Onus).

1950s

The 1950s saw the successful establishment in Melbourne of a national organisation, the Council for Aboriginal Rights, to take up the cudgel. Its main initial thrust was to test existing laws against the standards of the United Nations' Universal Declaration of Human Rights.

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[35] Ibid., p. 10.
[36] Ibid., p. 11.
[37] Ibid., p. 11.

By this time, the calls for constitutional reform had begun to gain traction. In the late 1950s the involvement of prominent socialist and feminist activist, Lady Jessie Street, who was the Australian representative of the Anti-Slavery Society, together with other socio-political developments, gave the reform objectives much more prominence and influence.

Undoubtedly, Lady Street's actions in elevating the treatment of Australian Aboriginals to the international stage and purview of the United Nations Commission on Human Rights was very powerful—and indeed compelling in the context of engaging the interest and support of the Australian public.

1956
Street's involvement coincided with the Australian Government's decision in 1956 to allow the British government to test atomic bombs in the Warburton Ranges in Central Australia, which resulted in the traditional Aboriginal people being driven off their ancestral lands. A report on the plight of these people disclosed deplorable treatment and ignited an explosion of protest from various groups, including politicians, church people, the Council for Aboriginal Rights (Shirley Andrews) and the Australian Aborigines' League (Doug Nicholls and Bill Onus), as well as the Women's International League of Peace and Freedom, the Council for Civil Liberties, members of the Communist Party of Australia, and of course the public at large.

As a result, renewed calls for constitutional change emerged with considerable public support and further public airing of the plight of the Warburton Ranges Aboriginals. Their wretched status and the horrific conditions they lived in fanned the fire of reform.

By this time, the calls for federal control of Aboriginal affairs (via constitutional change) were being indivisibly connected to the need for both the repeal of discriminatory racial laws and the conferring of full citizenship rights.

1950–early 1960s
Despite the apparent bipartisan political environment, the history of this referendum in the two-year period leading up to early 1967 involved ongoing parliamentary scrutiny and debate (championed by parliamentarians such as Bill Wentworth, Gordon Bryant and Kim Beasley snr). Significantly, it was around this time that the Federal Council for Aboriginal Advancement (later the Federal Council for the Advancement of Aborigines and Torres Strait Islanders) was established in Adelaide in 1958. At its annual conference in 1962 the organisation formally proposed to undertake a national campaign—which ultimately became the successful coordinated campaign supporting the 1967 referendum.

1962—the petition campaign
From 1962 to 1963 the Federal Council for Aboriginal Advancement prosecuted a strategy known as the petition campaign, which sought to highlight to the public the legal discrimination faced by Aboriginal people as fundamental evidence to support

constitutional change. This campaign (led by Shirley Andrews, Gordon Bryant, Barry Christopher and Stan Davey) showcased the discriminatory laws and policies controlling the lives of Aboriginals. It included compelling factual evidence of discrimination involving voting rights, marriage freedom, parenting rights, personal mobility restraints, property ownership, wage rates, alcohol consumption and the diversity and inconsistency of laws governing Aboriginals within and between states.

The main emphasis of the petition campaign was 'upon Aboriginal people being treated the same as other Australians'[38] and the campaign called for an amendment to section 51(xxvi) of the Constitution.

Despite the bipartisan political environment, the public campaign nevertheless had an interesting and somewhat testing journey. This included agreement to and rejection of a referendum by the Menzies government in 1965—which incidentally had been heavily influenced by the Student Action for Aborigines' 'Freedom Ride' protest in country New South Wales (led by Charles Perkins) which exposed to an unprecedented degree the entrenched nature and reality of racial discrimination.

Remarkably the national campaign ultimately collected some 103,000 signatures in 94 separate petitions. In addition to the public discourse, the campaign gave rise to many (supportive and opposing) cabinet and parliamentary debates and deliberations (involving a number of political luminaries including Robert Menzies, Holt, Beasley, Bryant, Billy Snedden and Hasluck) and led to two private members bills (introduced by Arthur Calwell and Billy Wentworth).

As an interesting highlight, in September 1963 Prime Minister Menzies agreed to meet with a delegation from the Federal Council for Aboriginal Advancement which included Gordon Bryant, Shirley Andrews, Joe McGuinness and Kath Walker (who later changed her name to Oodgeroo Noonuccal). During the meeting, Menzies offered Walker an alcoholic drink and was promptly informed that in so doing he was breaking the law. It was proposed that this incident encouraged Menzies to 'give the situation of the Aborigines more thought' and was considered by both Faith Bandler and Gordon Bryant as representing a 'turning point' in the campaign.[39]

1967—referendum conducted
Ultimately parliamentary support was secured and on 27 May 1967 the referendum was conducted, with the 'yes' vote carrying the day and by an overwhelming margin.

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[38] Attwood and Markus, op. cit., p. 29.
[39] Ibid., p. 33.

Question —You have emphasised how demoralising it would be for Aboriginal people if a referendum were lost, and that of course takes one immediately to how wide should the referendum be, what should be the content? Should it be formal? Should it be substantive? You also advocated for Indigenous people to have a voice and a right to be consulted. That obviously lends itself to distortion in a 'no' campaign. What are the considerations for determining whether to risk loss through including substantive provisions or whether to keep it to a minimum to enhance the prospects of success?

Russell Taylor — Even though the Aboriginal people who have been involved in the dialogues and in the current convention that is happening in Uluru have been advocating substantive reform, I do think that the leadership would try to consider not just the legitimacy of those substantive amendments but also the issue that of course we are all concerned about, which is what is doable or possible within a referendum. I think the Indigenous leadership will have regard to what is doable and might be prepared to compromise on certain elements of the substantive amendments, but I still believe that whatever is left after they do that will still be substantive.

Question — Could I ask Mr Mackerras, our well known psephologist who is here today, having heard Russell's earlier presentation, and the qualifications he made about the prospects of the constitutional amendment in relation to Aboriginal rights and recognition, what is your guess as an experienced political observer as to how that may fare today?

Malcolm Mackerras — My guess is there won't ever be a referendum for the simple reason that the Aboriginal leadership will make demands which would be described as 'making the perfect the enemy of the good', but eventually there will be a declaration of Aboriginal occupation of Australia which would be made separate to a referendum. It would to some extent help the Aboriginals to have an official declaration to that effect which is distinct from people simply saying so.

The Defeated 1967 Nexus Referendum[*]

Denis Strangman

Over fifty years ago I attended government lectures at the University of Sydney delivered by the late Peter Westerway who outlined the mostly dismal record of referendums to alter the Australian Constitution.[1] I was intrigued by this aspect of our constitutional history. In 1965, a couple of years later, I was invited to join the staff of Senator Vince Gair, who had become parliamentary Leader of the Australian Democratic Labor Party (DLP) in Canberra. One of my first tasks was to assist with the 'no' campaign in opposition to the proposal to break the nexus between the Senate and the House of Representatives. What better way of implementing and extending the knowledge gained in those lectures?

The nexus is contained in section 24 of the Australian Constitution:

> The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.[2]

The proposal was one of two put to the Australian electors on 27 May 1967 after an aborted earlier attempt which had been scheduled for 28 May 1966. The other referendum question was the proposal to amend the Constitution 'to remove the section which prevented "aboriginal natives" from being counted in the national census', and to remove 'the words "other than the aboriginal race in any State" from Section 51(xxvi)'. Together with the census aspect, this change had a symbolic

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[*] Denis Strangman gave a short presentation based on this paper as part of the Senate Occasional Lecture Series at Parliament House, Canberra, on 26 May 2017. The author would like to thank the former Clerk of the Senate, Dr Rosemary Laing, for suggesting he write this article. Thanks are also due to Tim Bryant, former Director of the Research Section in the Australian Senate, and staff at the National Library of Australia, National Archives of Australia, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), and the National Museum of Australia.

[1] Dr Peter Westerway, who died in 2015, was Secretary of the NSW ALP from 1969 to 1973. A former chair of the Australian Broadcasting Tribunal and member of the Industries Assistance Commission, he also worked for many years as a senior Commonwealth public servant.

[2] Standing Committee on Legal and Constitutional Affairs, *Constitutional Change: Select sources on constitutional change in Australia 1901–1997*, House of Representatives, Canberra, 24 March 1997, p. 15, www.aph.gov.au/Parliamentary_Business/Committees/House_of_representatives_ Committees?url=laca/inquiryinconch.htm.

significance, as well as reinforcing the power of the Commonwealth to make laws for Aboriginal people.[3]

This proposal was endorsed by what is still the largest 'yes' vote in Australian referendum history (90.77 per cent) and the nexus proposal was decisively rejected in all states except NSW and in the overall national count. At that time it was the fourth highest national 'no' vote (59.75 per cent) in referendum history.[4]

Although the nexus and census proposals had both been recommended in the 1959 report of the Joint Standing Committee on Constitutional Review (1956–59),[5] my belief in 1965–67 was that the government was more concerned about the nexus question. It hoped the underlying sympathy in the community for Aboriginal people and support for the referendum question relating to Aboriginal people would 'flow over' into a decisive 'yes' vote for the nexus proposal.

Indeed, according to the website *Collaborating for Indigenous Rights*:

> The government [in 1967] hoped that support for the other constitutional alteration being proposed at this referendum, the breaking of the nexus between the number of seats in the House of Representatives and the number of Senators, would increase by its association with the more popular alteration of clauses relating to Aboriginal people.[6]

Similarly, Scott Bennett and Sean Brennan, writing in 1999, said, 'It has been suggested that the Holt government held these two referenda on the same day in the hope that voters' support for the one, would rub off on the other'.[7] If that was the plan

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[3]   Ibid., p. 59. This is one of the more concise summaries of the contents of the proposed amendment. The *Parliamentary Handbook* says, '[it] also sought to give the Commonwealth Parliament power to make laws with respect to Aboriginal people wherever they lived in Australia' (*44th Parliamentary Handbook of the Commonwealth of Australia*, Department of Parliamentary Services, Canberra, 2014, p. 394). Henry Reynolds has suggested, 'the referendum must be seen as an event of central importance. A symbolic event enshrined in history', (Henry Reynolds, 'Aborigines and the 1967 referendum: thirty years on', *Papers on Parliament*, no. 31, June 1998, Department of Senate, p. 55, www.aph.gov.au/pops).

[4]   *44th Parliamentary Handbook of the Commonwealth of Australia*, Department of Parliamentary Services, Canberra, 2014, p. 394.

[5]   Joint Committee on Constitutional Review, *Second Report*, House of Representatives, Canberra, 1959, p. 6 and pp. 54–6, www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_committees?url=report_register/bycomlist.asp?id=140.

[6]   *Collaborating for Indigenous Rights 1957–1973*, www.indigenousrights.net.au. The website is hosted by the National Museum of Australia. It was created about 10 years ago through an Australian Research Council grant by Dr Sue Taffe, who is currently a researcher at Monash University.

[7]   Scott Bennett and Sean Brennan, 'Constitutional referenda in Australia', Research Paper no. 2 1999–2000, Parliamentary Library, p. 21.

it failed.[8] But when you look at the Bennett/Brennan citation (which is to Colin Howard and Cheryl Saunders), the Howard/Saunders claim is equivocal, with the authors stating in a footnote, 'Very possibly it was not, but certainly appearances were against the Government'.[9] In the intervening years, the nexus result has been all but forgotten, but the successful Aboriginal question has been commemorated at all available opportunities.[10]

I have been able to compare information in the available official files from the period[11] with my memory and the working files I retained from the 1965–67 period. I have placed these latter files with the National Library of Australia, and together with the files held by National Archives of Australia (some of which still require identification and clearance, including the relevant cabinet notebooks), these working files should enable future scholars to obtain an even more comprehensive overview of what happened fifty years ago. There are only a few of us still alive who were politically active in that period.

The decision to hold the two referendums was taken by Sir Robert Menzies' cabinet on 7 April 1965.[12] The cabinet submission was initiated by the Attorney-General, Billy Snedden. Although the submission does not refer to these following reasons, I now believe that the nexus proposal was prompted by continuing tensions in the

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8   There is some retrospective evidence in post-referendum correspondence from some government backbenchers to the Prime Minister, Harold Holt, that a small group of MPs might have been motivated by a significant concentration of Aboriginal voters in several electorates. The MPs included Bill Wentworth and Bob Katter (Snr). See NAA: A1209, 1967/7512, folios 13, 27, 39, 39 (a) and 132.

9   C. Howard and C.A. Saunders, 'Constitutional amendment and constitutional reform in Australia', in R.L. Mathews (ed.), *Public Policies in Two Federal Countries: Canada and Australia'*, Centre for Research on Federal Financial Relations, Australian National University, Canberra, 1982, pp. 72–3.

10   The author wrote about the nexus referendum in 'Two defeated referendum proposals, 1967 and 1977' in Richard Lucy (ed.), *The Pieces of Politics*, Macmillan, South Melbourne, 1979, pp. 338–348. The then Deputy Clerk of the Senate wrote about the nexus referendum soon after its defeat. See R.E. Bullock, 'The Australian Senate and the 1967 referendum ("breaking of the nexus") proposal' in *The Table*. vol. XXXVI, 1967.
     The Aboriginal result has been widely written about and commemorated, including on the 10th, 15th, 20th, 25th, 30th and 40th anniversaries. We have now reached the 50th anniversary for both questions. See, for example, the publication released in the 30th anniversary year, Bain Attwood, *The 1967 Referendum, or When Aborigines Didn't Get the Vote*, Aboriginal Studies Press, Canberra, 1997. See also John Gardiner-Garden, 'The origin of Commonwealth involvement in Indigenous Affairs and the 1967 referendum', Background Paper 11, 1996–97, Parliamentary Library. Gardiner-Garden wrote that, 'Many popular notions associated with the 1967 Referendum belong in the category of myths. The referendum was not whole-heartedly supported by both sides of politics, did not end legal discrimination, did not confer the vote, equal wages and citizenship on indigenous Australians and did not permit for the first time Commonwealth government involvement in Aboriginal Affairs'.

11   At the time I was researching this article, the National Archives of Australia put new requests for access on hold until July 2017 while they transferred 15 million files between repositories in Canberra.

12   *Collaborating for Indigenous Rights 1957–1973*, op. cit.

coalition. These tensions stemmed from a proposed electoral redistribution in 1962 based on the then size of the House of Representatives (122 with full voting rights),[13] and an awareness that an increase in the size of the Senate could make it easier for the DLP to win additional seats in the Senate. This followed the DLP's success at the half-Senate election held on 5 December 1964, when Senator Gair was elected to represent Queensland and Victorian senator Frank McManus was re-elected. When the two senators took their seats on 1 July 1965, the Senate was composed of 30 Liberal–Country Party Coalition senators, 27 Australian Labor Party senators, two DLP senators and one independent.

Writing in 1968, political scientist Henry Mayer admitted:

> Until about 1965 most of us found the Senate extremely dull. There seemed little one could say about it, so we hurried on…The place was a stagnant backwater, which might be of some marginal use for committee work…From mid-1965 onwards the image changed. One began to hear of the 'rebellious' Senate, in contrast with an utterly docile House of Representatives…By 1967, the Senate seemed to be the focus of revolt against the Government.[14]

As to why the Aboriginal question was chosen from a smorgasbord of more than twenty constitutional changes recommended in the 1959 constitutional review report, I tend to believe that its selection (apart from the aim of a 'flow-on effect') was influenced by three background factors—the widespread publicity generated by the Student Action for Aborigines (SAFA) campaign in 1965,[15] a petition campaign

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[13] *44th Parliamentary Handbook*, op cit., p. 799. An article in the magazine *Nation* on 25 February 1967 titled 'Referendum revived' claimed NSW Liberal headquarters believed the Liberal party 'stands to lose, and the A.L.P. stands to gain six seats in the Sydney metropolitan area if redistribution goes ahead without a previous enlargement of the total numbers in the House of Representatives'. The subsequent redistribution conducted in 1968 was the first since 1955. Malcolm Mackerras wrote that, 'The Government had allowed the situation to drift for so long that the result has been a particularly massive redistribution, very much bigger than the previous one in 1955' (Malcolm Mackerras, *The 1968 Federal Redistribution*, ANU Press, Canberra, 1969, p. 1). In April 1965, when the nexus proposal was under active consideration, there were still tensions between the Liberal Party and Country Party about a redistribution. The Liberals wanted to govern in their own right and the Country Party wanted to ensure they continued as an influential 'tail' (Alan Reid, 'Reversing the roles', *The Bulletin,* 10 April 1965, pp. 14–15). Reid repeated this theory about the Liberals in an article later that year. ('The coming clash', *The Bulletin*, 25 December 1965, pp. 14–15). Writing in 2010, George Williams and David Hume drew attention to the 'vast demographic changes' that had occurred by 1967 where some electorates had almost 125,000 voters, while others had less than 40,000. They wrote that, 'It was expected that the Liberal Party and, particularly, the Country Party would lose a swath of seats in any redistribution' under the then boundaries (George Williams and David Hume, *People Power: The History and Future of the Referendum in Australia*, UNSW Press, Sydney,. 2010, p. 146).
[14] Henry Mayer, Introduction in Malcolm Mackerras, *The Australian Senate, 1965–1967: Who Held Control?*, Australasian Political Studies Association, Sydney, 1968, p. 1.
[15] In her book about the freedom ride, Professor Ann Curthoys mentions that Peter Manning and the author distributed an open letter to SAFA supporters in 1965 warning of communist involvement in

during 1962–63 directed at federal parliament by the Federal Council for Aboriginal Advancement (FCAA),[16] and agitation by the member for Mackellar Bill Wentworth (Liberal), the member for Wills Gordon Bryant (ALP) and other members of parliament.[17]

The first attempt

Proof that the breaking of the nexus was not high on the government's agenda immediately after the 1959 report is that it was only next raised in the federal parliament on 9 March 1960. The Leader of Opposition in the Senate, Senator Nick McKenna, unsuccessfully asked a question of the Leader of the Government, Senator William Spooner, as to when the government might be able to announce its decisions on the joint committee's recommendations. Senator Spooner said he did not know.[18]

A year later, on 13 April 1961, the Leader of the Opposition, Arthur Calwell, moved a motion in the House of Representatives that the recommendations of the Constitutional Review Committee be put to a referendum.[19] This debate prompted

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Aboriginal politics. This is correct. Curthoys suggests that this seemed to have little effect 'as communist students continued to work in SAFA, though in a small minority', but there is ample evidence in her book and other sources that the SAFA leader Charles Perkins was careful to avoid an impression that SAFA was communist-inspired (Ann Curthoys, *Freedom Ride: A Freedom Rider Remembers*, Allen and Unwin, Crows Nest, NSW, 2002, p. 222). Perkins' biographer, Peter Read, said, 'Perkins and Spigelman took care there did not appear to be too many members of the Communist Eureka Youth League [on the tour]'. Read also noted that Perkins rejected the offer of a public address system from a Waterside Workers Federation of Australia (WWF) representative (Peter Read, *Charles Perkins—A Biography*, Viking, Ringwood, Vic, 1990, p. 101 and p. 109). Spigelman wrote later that the WWF representative had been accompanied by a reporter from the communist newspaper *The Tribune* ('Bus tour reactions', Jim Spigelman, *Dissent*, Winter 1965, no. 14, p. 47). Perkins' approach may have reduced scepticism in the community about the ride. The ride generated enormous publicity in the daily media during 1965, which was the year when the referendum was first mooted publicly by the Menzies government.

[16] According to the website, *Collaborating for Indigenous Rights 1957–1973* (op. cit.), the national petition form, 'Towards equal citizenship for Aborigines', circulated throughout the country during 1962–63. The target was 250,000 signatures but just over 100,000 were collected (still a very respectable number) and 'over a seven-week period in 1963, every sitting day in the House of Representatives began with the tabling of these petitions'.

[17] In May 1964, Arthur Calwell introduced a private member's bill, the Constitution Alteration (Aborigines) Bill 1964, which proposed the repeal of section 127 of the Constitution and that the words 'other than the aboriginal race in any State' be removed from section 51(xxvi). Bryant was involved in the national petition campaign. In March 1966, Wentworth introduced a private member's bill proposing the whole of section 51(xxvi) be deleted and a new anti-discrimination section 117a be incorporated (see the website *Collaborating for Indigenous Rights 1957–1973*, op. cit.).

[18] Senate debates, 9 March 1960, p. 23.

[19] House of Representatives debates, 13 April 1961, pp. 806–23. Interestingly, Calwell appeared to have forgotten that Senator Wright had dissented from the nexus proposal so long as the joint sitting mechanism was part of the procedure to resolve deadlocks. (See Joint Committee on Constitutional Review, *Second Report,* op. cit., p. 178). Calwell reminded the House that the committee had also recommended the Senate remain at 60 senators. The full report of the joint committee was tabled in the Senate on 26 November 1959 following the committee's reconstitution to develop reasons for the recommendations it had made in 1958. See Senate debates, 26 November 1959, pp. 1899–1900.

several contributions, including one from the Attorney-General, Sir Garfield Barwick, who threw a proverbial bucket of cold water on the resolution, citing the absence of a draft of the proposed amendments, whether they would be understood by the voters, the expense of a referendum, and the likelihood of success.

Calwell again raised the committee's recommendations in a matter of public urgency on 12 April 1962.[20] He mentioned the nexus again on 4 December 1962 in a motion relating to the redistribution report for NSW, which may have resulted in the loss of a seat for that state.[21] In August 1964, an ad hoc sub-committee of cabinet discussed ways of achieving an increase of about 12 in the size of the House without increasing the Senate, but they appear to have been put off by the existence of the nexus.[22]

On 3 September 1964, when Senator McKenna had given notice of four bills to amend the Constitution (including the nexus), Calwell asked the Prime Minister, Sir Robert Menzies, to arrange for any referendums to be held concurrently with the forthcoming half-Senate election (which was actually held on 5 December 1964). The Prime Minister replied 'all my experience indicates that one thing you ought never to do is mix up a referendum with an election'.[23] In a discussion about the nexus on 30 October 1964, prompted by an opposition amendment to the Representation Bill 1964, the Minister for the Interior, Doug Anthony, made a very revealing statement which was an early indication of hesitancy within the Country Party about the proposal. He said, 'Speaking for myself I doubt whether any such referendum proposal [about the nexus] would ever be passed'.[24]

On 1 April 1965, Calwell introduced another motion, this time concentrating on four of the joint committee's proposals, including the nexus proposal, and pledged the ALP to support referendums 'to secure the implementation of each and every one of the recommendations in the report'.[25] His argument was based on the claim that there

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The Governor-General made a passing reference to the report in his 1960 speech to open the second session of the 23rd Parliament, stating that the government was considering the 'lengthy and carefully prepared' report (Senate debates, 8 March 1960, pp. 7–10).

[20] House of Representatives debates, 12 April 1962, p. 1633. Calwell stated: 'The Government, I find, has drafted some proposals since the matter came before the Parliament last year. The committee's recommendations that have already been drafted include all those relating to the relative sizes of the two Houses of the Parliament'. The Attorney-General, Sir Garfield Barwick, stated that he could 'see no urgency' [in putting the proposals to referendum] (House of Representatives debates, 12 April 1962, p. 1637).

[21] House of Representatives debates, 4 December 1962, p. 2866.

[22] This is mentioned in a draft paper for cabinet dated February 1967 and prepared for Anthony by the chief electoral officer (NAA: A406, E1967/30).

[23] House of Representatives debates, 3 September 1964, pp. 937–8. Menzies had had extensive involvement with past referendums, which is outlined by Professor Anne Twomey in 'Menzies, the Constitution and the High Court' in J.R. Nethercote (ed.), *Menzies: The Shaping of Modern Australia*, Connor Court Publishing, Redland Bay, Qld, 2016.

[24] House of Representatives debates, 30 October 1964, p. 2587.

[25] Ibid., 1 April 1965, p. 529.

was a danger of the Senate being in 'perpetual deadlock' because he believed the Senate would have to be increased by an even number (24). In response, Menzies indicated the government had two of the committee's proposals under consideration—the division of the Commonwealth into electorates and the repeal of section 127.

Perhaps in an attempt to divert attention away from the nexus proposal, Menzies said it would require 'a great deal of thought', but he nevertheless agreed with Calwell's reference to the dangers of an increase by 24.[26] The Deputy Leader of the Opposition, Gough Whitlam, seconded the motion. He immediately spoke about the nexus and referred to the joint committee's report and, overlooking Tasmanian Liberal senator Reg Wright's opposition to the proposal to break it, claimed the recommendation had been unanimous.[27] Up until this point, parliamentary advocacy for implementing the joint committee's recommendation about the nexus had been confined to the ALP. One wonders if their commitment was only superficial and they saw it more as an opportunity to annoy the government in the parliament.

On 23 March 1965, cabinet commenced discussion of a submission dated 22 February from the Attorney-General, Billy Snedden (Snedden replaced Sir Garfield Barwick as Attorney-General on 4 March 1964),[28] recommending the two referendum proposals (breaking of the nexus and abolition of section 127). The submission contained a highly ambitious 'possible timetable' predicated on a successful referendum outcome, with a redistribution to be conducted between October 1965 and May 1966, and an election for the House of Representatives on 17 December 1966.[29] Cabinet concluded its consideration of the submission on 7 April 1965 and agreed that the nexus be broken 'so that the House may have a flexible future'. However, it rejected as impracticable the plan to hold a redistribution based on a successful referendum result before the next election. It proposed that the enabling legislation be introduced 'not later than the Budget Session of this year, and to hold the referendum during the life of the present Parliament'. It also decided that there should be no re-distribution based on the present numbers applying in the House of Representatives.[30]

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[26] Ibid., 1 April 1965, p. 534.

[27] Ibid., 1 April 1965, p. 538–9.

[28] Williams and Hume wrote, 'Sir Garfield Barwick, Attorney-General in the Menzies government, did not support the (nexus) recommendation, and it did not progress while he remained a Minister. However, after Barwick was appointed as Chief Justice of the High Court in 1964, the proposal was dusted off and adopted by the Menzies Cabinet in 1965' (Williams and Hume, op. cit., p. 146).

[29] Cabinet submission no. 660, 22 February 1965, reproduced on *Collaborating for Indigenous Rights* website, op. cit.

[30] Cabinet decision no. 841, 7 April 1965, reproduced in *Collaborating for Indigenous Rights* website, op. cit. The Prime Minister repeated the information in a reply to a question from Calwell (House of Representatives debates, 28 April 1965, p. 923). At a meeting on 20 October, the cabinet decided that section 7 of the Constitution also be amended to 'preserve to each of the Original States at least the present number of ten Senators' (NAA: A4940, decision no. 1308).

The altruistic sounding purpose of breaking the nexus so that the House may have a 'flexible future' could also be described cynically as enabling a small increase in the size of the House while keeping the Senate at 60 senators, and thereby ensuring that the coalition parties, at least, had a chance of retaining their existing members under a new redistribution. At the same time there would be no reduced Senate quota which might favour the DLP and independents.[31]

The Constitution Alteration (Parliament) Bill 1965, which was to initiate the nexus referendum machinery, was introduced in the House by Menzies on 11 November 1965. His main argument was based around the claim that a Senate of 66 (the minimum of one extra senator for each state, making a total of eleven) would be 'perpetually deadlocked'. Furthermore, being unable to elect five and a half senators at alternating elections, the people would have to elect six at one election and five at another. Increasing the number of senators in each state by two would mean a Senate of 72, with six to be elected at each election, and would also supposedly result in a (perpetually) deadlocked Senate. Increasing each state's representation to fourteen would mean a Senate of 84 and a House of Representatives of 168, which would be too large.[32]

Debate on the nexus bill resumed on 23 November when Calwell pledged the ALP would support the bill.[33] Calwell also adopted Menzies's argument that the Senate, under the constraint of the nexus, could only effectively be increased by 24 senators. The bill was adopted on the third reading by 108 votes with 'no dissentient voice'.[34]

Meanwhile, the DLP had been developing its position on the nexus proposal. On 21 May 1965, the Victorian state executive of the DLP adopted a resolution in opposition to the nexus proposal and in support of the Aboriginal proposal. When the DLP senators Gair and McManus travelled to Canberra in August to take the seats they had won in the 1964 half-Senate election, they repeated the party's opposition, which was also endorsed by the party's federal executive in October.[35] At that stage, before the parliamentary debates, the DLP was the only publicly known centre of opposition to the nexus proposal.[36]

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[31] The author of the political chronicle section of the *Australian Journal of Politics and History*, vol. 13, issue 2, August 1967, suggested that with six extra senators added overall, the DLP would win two (p. 253). Williams and Hume state that, 'This, then, was the political calculus that underpinned the broad support for the Parliament proposal: the Liberal and Country Parties would retain seats; Labor would gain seats; and all major parties would guard against an insurgent DLP'. (William and Hume, op. cit., p. 147).

[32] House of Representatives debates, 11 November 1965, pp. 2635–8.

[33] Ibid., 23 November 1965, pp. 3059–67.

[34] Votes and Proceedings of the House of Representatives, 23 November 1965, p. 465.

[35] *Sydney Morning Herald*, 26 October 1965. See also *News Weekly*, 10 November 1965, p. 3.

[36] Strangman papers, unpublished report on the referendum campaign, p. 4. A copy of the report has been included in the Strangman referendum papers deposited with the National Library.

The nexus bill was introduced in the Senate on 30 November 1965 by the Deputy Leader of the Government, Senator Norman Henty, who repeated the arguments used by Menzies in the House of Representatives.[37] It was debated extensively on 1 and 2 December and adopted by 43 votes to eight. The eight dissidents were Gair and McManus, Queensland senator Ian Wood (LIB), NSW senator Tom Bull (CP), Tasmanian senators Reg Wright and Alexander Lillico (LIB), South Australian senator Ted Mattner (LIB) and Western Australian senator Edgar Prowse (CP). All eight senators voted for the Aboriginal referendum proposal.[38]

As if laying a 'sleeper argument' should the nexus referendum pass, Senator Gair issued a media statement on 2 December 1965 claiming that the 1959 joint committee had obtained (unpublished) legal opinions about the relevance of section 128 of the Constitution to the nexus and that those opinions supported the view that a referendum to sever the nexus would have to be carried by *every* state.[39]

In the House, debate on the nexus bill occupied one hour and 28 minutes, compared to the Senate where it occupied eight hours and 53 minutes. In the House, the debate on the Aboriginal proposal occupied one hour and 34 minutes and in the Senate, 43 minutes. Writing in 2017, Gerard Henderson (journalist, author and executive director of The Sydney Institute) suggested the lack of debate (in the community generally) over the second question reflected the goodwill towards Indigenous Australians half a century ago.[40]

Senate Leader of the Opposition, Senator McKenna, led the debate for the nexus proposal and repeated the argument of Menzies and Calwell that under the existing provisions the next increase in the size of the Senate would have to be 24, with an extra 48 in the House, making an addition of 72 extra parliamentarians.

Senator Wright was the first of the 'no' senators to speak. He emphasised that Australia did not need more senators or members of the House of Representatives and that an ideal size for the Senate was between 40 and 80 members. Wright affirmed the role of the Senate as both a states' house and a house of review. He also emphasised the importance of the deadlock provisions of section 57 of the Constitution, including

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[37] Senate debates, 30 November 1965, pp. 1882–5.
[38] Ibid., 1 December 1965, pp. 1936–1974, and 2 December 1965, pp. 1986–2025. None of these senators are still alive.
[39] This is sometimes referred to as the 'triple majority'. Vince Gair, media release, 2 December 1965, Strangman papers, op. cit.
[40] Gerard Henderson, 'Indigenous school attendance could be the most important gap', *The Australian.* 18 May 2017, www.theaustralian.com.au/opinion/columnists/Gerard-henderson/indigenous-school-attendance-could-be-the-most-important-gap/news-story/d19ef4baa29ca72ed2cd14fe6046259b.

the provision for a joint sitting of both houses, saying the position of the Senate would be weakened should the nexus be broken.

In his contribution, Senator Gair argued that the purpose of breaking the nexus was to increase the House by between 25 and 30 members and affirmed his party's opposition to any increase in the size of the House or the Senate. Extending the argument that the proposal would weaken the Senate in a joint sitting of parliament, he claimed it would also weaken the position of the senators in the respective party caucuses. Senators Wright and Gair represented the two bases of opposition to the referendum proposal—Senator Wright the constitutional position of the Senate and Senator Gair the lack of convincing evidence for an increase in the number of members of the House.

The senators who had voted against the referendum bill met in Parliament House on 9 December and agreed they did not wish for an increase in members in either house at that time. They decided on a strategy—the argument that a 'yes' vote is the 'lesser of two evils' must be counteracted and senators Gair and Wright were to jointly prepare a draft of the official 'no' case and jointly convene any future meetings.[41] The following day, the Senate adopted the Referendum (Constitution Alteration) Bill (No.2) 1965. It provided for the change in the referendum voting system from the use of numerals by the voters to their writing 'yes' or 'no' in the square beside the question.[42]

Senator Wright travelled to Brisbane on the weekend of 18–19 December 1965 and met with Senator Gair and the author in the parliamentary offices for two three-hour sessions. During these sessions a preliminary draft of the official 'no' case was agreed, which was accepted by the other senators with only minor amendments.[43] The Clerk of the Senate, J.R. Odgers, appears to have been provided with a copy of the draft 'no' case for the purpose of checking its accuracy, and responded with corrected figures relating to the costs of MPs and parliament.[44] DLP Federal Secretary, Jack Kane, who was then a member of Senator Gair's staff and who played a part in the drafting, forwarded a 'journalist's version' to the author and Senator Gair. He warned 'don't let those lawyers get away with a mass of insufferably

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[41] Vince Gair and Reginald Wright, joint press statement, Canberra, 9 December 1965, Strangman papers op. cit.

[42] Senate debates, 10 December 1965, pp. 2289–90. This action had followed from submission no. 1143, dated 19 November 1965, from Anthony (see pp. 246–8 of NAA: A4940, C4257, Constitutional Amendments 1965 Referendum), which referenced the ballot paper for the Wool Reserve Prices Plan referendum.

[43] Strangman, unpublished report on the referendum campaign, op. cit., pp. 6–7.

[44] Letter and attachment from J.R. Odgers to Vince Gair, 24 December 1965, Strangman papers, op. cit.

legalistic arguments. They will be the only ones who will read them'.[45] The 'no' case was handed to the Chief Electoral Officer, Frank Ley, on 29 December 1965.

Meanwhile, the parliamentary sponsors of the 'yes' case on the nexus and the public servants in their departments had been busy with drafting the 'yes' case. According to a minute to the Attorney-General:

> Cabinet Decision No. 1352 suggested 'that the statement of the argument in favour might be constructed, in the first instance, by the Parliamentary Draftsman drawing on the Prime Minister's Second Reading speech and, also, assuming the Opposition supports the bills, on the speech of the Leader of the Opposition'.

Drafts for 'yes' cases on both proposals were duly prepared and despatched on 16 December to the Attorney-General and the Prime Minister's Department by the acting parliamentary draftsman, C. McComas. Peter H. Bailey, the first Assistant Secretary in the Prime Minister's Department, noted that the drafts 'tend to be overly formal' and the department provided the Prime Minister with alternative texts.[46]

Acting Secretary of the Prime Minister's Department, Peter Lawler, sent copies of these alternative drafts to Attorney-General Billy Snedden for clearance with Calwell and the Leader of the Country Party, John McEwen. Calwell requested the drafts also be sent to Whitlam and Senator McKenna. Senator McKenna apparently had spent most of the night of 23 December 1965 examining the draft 'yes' case for the nexus proposal and came up with 24 amendments. He preferred a narrative style rather than the proposed question and answer style. Calwell hoped that the views of Senator McKenna might be accommodated 'to some extent, since the Senator will then be gratified to feel that he has played a part and will be valuable in mustering the support of Labor Senators'. Snedden was not supportive of the majority of Senator McKenna's suggestions. Calwell also wished that his name appear beside the Prime Minister's as authorising and preparing the 'yes' case.[47] Menzies was personally involved in a significant way with the content of the case.[48]

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[45] Undated (c. 1965) note from Jack Kane to Senator Gair, Strangman papers, op. cit.

[46] See minute to the Prime Minister from Peter Bailey, dated 20 December 1965 (NAA: A463, 1966/312, folio 81*)*. The NAA file contains a minute (folio 32) dated 21 December from Ley to his minister stating that Bailey 'is handling the "YES" case'.

[47] See minute to the Prime Minister from Lawler, dated 23 December 1965, (NAA: A463, 1966/312, folio 48). The 'no' case was written in a narrative style for the first, aborted, attempt in 1965–66 but was changed to a question and answer style for the 1967 attempt. Although the official pamphlets were supposed to be pulped after the 1966 deferment, Senator Gair obtained a copy.

[48] See, for example, NAA: A463, 1966/312, folio 48 in which Lawler seeks an answer from the Prime Minister about the suggestions made by Senator McKenna about the draft.

Interestingly, Calwell's name did appear but not that of McEwen, and instead the Prime Minister was cited as authorising the case on behalf of the government. In the official pamphlet for the 1967 attempt, McEwen's name was included, together with those of then Prime Minister, Harold Holt, and then Leader of the Opposition, Gough Whitlam.[49]

The 'yes' case for the 1966 attempt was based around a request for a 'modest increase'[50] (not enumerated) in the size of the House of Representatives without increasing the size of the Senate. It was claimed the proposed quota of not less than 80,000 people for each electorate would limit any (extravagant) growth in the absence of the nexus. A 'permanently evenly divided Senate…would be disastrous for Parliamentary democracy. It would completely frustrate a Government with a clear majority in the House'. The conclusion stated that a 'no' vote 'would cause this vital and money-saving reform to be delayed for a great many years'.[51]

The 'no' case went straight to the point:

- If you want more politicians vote 'Yes'.
- If you do **not** want more politicians, vote **'NO'**.
- Australia is already overgoverned. What we need is **not more**, but **better** politicians.
- The proposed additional 24 members of the House of Representatives would cost an additional £200,000 per year at least.
- A 'Yes' vote is a vote against the interests of small States and country districts.[52]

On 20 January 1966, Menzies announced his resignation as prime minister and on 26 January was succeeded by Holt. Menzies made no reference to the referendum as a causative factor, either then or in subsequent public writings about his political career. However, the parliamentary budget session in the Senate, which had commenced in August 1965 and which included a damaging crisis about the IPEC airfreight company, must have provided an indication of a challenging political future for the coalition.[53]

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[49] See copies of the official pamphlets for the 1966 and 1967 attempts in Strangman papers, op. cit.
[50] Official pamphlet for 1966 attempt, Strangman papers, op. cit.
[51] Ibid.
[52] Ibid.
[53] Journalist Alan Reid wrote, 'Yet while it has emerged with only minor bruises from the parliamentary session just ended it was not a good session for the Government' (Alan Reid, 'The phoney crisis', *The Bulletin,* December 18 1965, pp. 10–11). See 'The real opposition moves to the Senate', *News Weekly*, 1 September 1965, p. 2, for a summary of the IPEC issue. Sam Everingham, (the biographer of IPEC owner, Gordon Barton) wrote that following the defeat of the government in the Senate on 25 August over the IPEC issue, Sir Robert Menzies would never forgive Barton

In January 1966, an Australian Gallup Poll (taken in December) was released which showed a negative response to the nexus proposal among those polled. The figures were—Yes: 23 per cent, No: 47 per cent and Undecided: 30 per cent. The same question had been asked in May 1965 and the results then were—Yes: 33 per cent, No: 35 per cent and Undecided: 32 per cent.[54] The 'no' vote had grown significantly. In that era the Gallup Poll was about the only extensive opinion poll which covered political questions and its results were closely studied and noted. Meanwhile, the chief electoral officer had proceeded with the printing and assembly of the official pamphlet containing the 'yes' and 'no' cases for the two referendum proposals, ready for distribution to electors on about 17 February, eleven days before the legislated deadline of 28 February.[55]

Doug Anthony, who as Minister for the Interior was responsible for the Electoral Office, wrote to the new Prime Minister, Harold Holt, on 27 January 1966 alerting him to the chief electoral officer's timetable. Anthony alluded to:

> numerous comments in the various papers about the possibility of the Government abandoning the referendum, but my own belief is that we could lose more by 'chickening out' as one paper termed it, than by losing the referendum.[56]

This was followed by a letter from the chief electoral officer to the secretary of the Department of Interior conveying his understanding that 'a substantial number of members of cabinet, including Mr McEwen, is [sic] anxious to abandon or defer the holding of the Referendum'.[57]

The Chief Electoral Officer, Frank Ley, sought legal advice about his responsibility to distribute the pamphlets in such a situation. On 9 February, John Ewens, acting Secretary of the Attorney-General's Department, replied that if the Federal Executive

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(Sam Everingham, *Gordon Barton: Australia's Maverick Entrepreneur*, Allen & Unwin, Crows Nest NSW, 2009, p. 94).

[54] The results of the May 1965 Gallup poll were reported in the *Melbourne Herald* on 8 July 1965, p. 11. The results of the December 1965 Gallup poll appeared in *The Courier-Mail* on 15 January 1966, p. 3. One would have to admit that the form of the Gallup question in December 1965 was slightly 'leading'. People were reminded 'That in May we will be having a referendum on increasing the House of Representatives by 19 members – from 124 to 143 – without increasing the Senate'. That was the range of increase alleged by the opponents of the proposal but the government had not officially enumerated a specific future increase, although an increase of 21 was mentioned in an early draft of the official 'yes' case. (See p. 4 of the draft prepared by the acting parliamentary draftsman contained in NAA: A463, 1966/312, Constitution Referendum 1966 – Submission of arguments for amendment).

[55] Memorandum from Ley to the secretary of the Department of the Interior, NAA: A406, E1966/36 Part 2, folio 7–8.

[56] NAA: A406, E1966/36 Part 2, folio 5.

[57] NAA: A406, E1966/36 Part 2, folio 8.

Council advises the Governor-General not to issue writs for the referendum, Ley 'would not be under a legal duty to post the pamphlets' and, furthermore, the High Court would be unlikely to issue a writ of mandamus against him.[58] At the time, however, the government did not intend offering such advice to the Federal Executive Council until *after* the Prime Minister had informed parliament of the deferment at its resumption on 8 March.

On 15 February 1966, Holt announced deferment of both referendum proposals, citing a 'crowded and unusually active political year' ahead. He also claimed that an intensive campaign would be necessary in order 'to counter uninformed opinion and misleading propaganda already evident, which have adversely affected public support for the [nexus] proposal'.[59]

Senator Gair gave an early indication of the guerrilla warfare like tactics he would be using against the government in connection with the referendum proposal. The day after the deferment, he issued a four-page media statement declaring the postponement to be a 'victory' for the DLP.[60] Prompted by George Cook, a long-time associate in the DLP in Brisbane, the senator argued that the government could not simply abandon the referendum but needed to introduce a repealing bill in parliament and referred to a similar case from 1915.[61]

At least 50 letters and telegrams on this subject were sent by individuals and organisations to Ley, most of which 'give every indication that they are sponsored by some interested party who has the benefit of legal advice'.[62] An official from his department reported that Ley 'felt the legal obligation on him was so strong that he should have some written advice authorising him not to proceed' with arrangements for the referendum, including distribution of the official explanatory pamphlet. A written direction not to proceed was duly sent to Ley by Anthony and the pamphlets were pulped, having cost $177,635 to produce and print.[63]

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[58] NAA: A406, E1966/36 Part 2, folio 15.

[59] Harold Holt (Prime Minister), *Referendum*, media release, 15 February 1966. The 'deferment' was referred to in cabinet minute, decision no. 24, (NAA: A406, E1966/36 Part 2, folios 35–36).

[60] NAA: A406, E1966/36 Part 2, folios 25–28. A copy of the statement obtained by the government carries a stamp that it had been sighted by the chief electoral officer on 17 February 1966.

[61] See Strangman papers, op. cit.

[62] Minute 7 March 1966 from the chief electoral officer to the minister, NAA: A406, E1966/36 Part 2, folio 45.

[63] NAA: A406, E1966/36 Part 2, folios 37, 38, 44, 45. For the cost of the pamphlets see letter from the minister for the interior dated 1 September 1966 in reply to question asked in parliament by Senator Gair on 25 August 1966 (Strangman papers, op. cit.; Senate debates, 25 August 1966, p. 105).

The second attempt

For the remainder of 1966 the parties and the federal government were mostly preoccupied with the lead up to the House of Representatives election, which was announced on 11 August and held on 26 November 1966.[64] Curiously, neither the nexus proposal nor the Aboriginals proposal rated a mention in the Prime Minister's policy speech, even though there was a 'supplementary statement' on Aboriginals published conjointly with the policy speech.[65]

We now know through decision no. 46, taken on 1 February 1967, cabinet had not forgotten about the postponed proposals and the question of holding a referendum. Cabinet requested a paper be prepared by the Attorney-General's Department, the Department of the Interior and the Prime Minister's Department. The paper would examine more than just the nexus and the Aboriginals proposals, looking at the possibility of incorporating other questions. These included:

- an increase in the minimum number of House of Representatives members from each state
- the expiry of senators' terms so that concurrent elections could be held
- the expiry of the terms for senators filling casual vacancies
- allowing electors from mainland territories to vote in referendums.[66]

The 'paper' (also called a 'survey') was submitted to cabinet by the Prime Minister on 10 February 1967.[67] In regard to the nexus proposal, the authors acknowledged that it would be difficult to rebut Senator Gair's characterisation of the aim as being 'more members of Parliament' but the 'important angle to emphasize' was that the proposal would 'impose limits'. The authors suggested that cabinet consider increasing the minimum electorate quota (it was 80,000 in the 1965–66 attempt) to 85,000 or 90,000. They suggested 'a higher minimum might substantially weaken the case against the proposal'. The minimum state representation question revolved around the situation in Tasmania and whether it ought to be guaranteed six seats (by constitutional amendment) even though it might be unlikely to obtain (by population increase) a sixth seat 'for many years'.

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[64] Senator Gair expressed the DLP's opposition to the nexus and support for the Aboriginal question in the party's policy speech (Vince Gair, *Federal Election 1966: DLP policy speech delivered on 7 November 1966*, Strangman papers, op. cit.).

[65] Liberal Party of Australia, *Federal Election, 1966: policy speech delivered by the Prime Minister (Mr. Harold Holt) over TV and radio stations throughout Australia on Tuesday, November 8 1966*, Liberal Party of Australia, Canberra, 1966.

[66] Cabinet decision no. 46, 1 February 1967, NAA: A4940, C4257.

[67] Submission no. 75, 10 February 1967, NAA: A4940, C4257.

The arguments for the concurrent elections proposal included one that it would 'emphasize the fact that there is one Parliament'. In relation to the casual vacancies proposal, the authors warned that 'some Senators may treat the proposal as supporting their contention that the Senate is an independent House of Review and would regard adoption of the proposal as confirming their contention'. In regard to the territory voting proposal, the authors noted that their votes would only be added to the national aggregate result. Some of the comments contained a hint that the authors were trying to outmanoeuvre the 'no' advocates.

Some in the Country Party 'machine' were continuing to have second thoughts about the nexus proposal. At a meeting of the Federal Council of the Country Party, held over 11 and 12 February 1967, it was resolved unanimously that 'it would be unwise to proceed with a referendum as a means of increasing the size of the House of Representatives'.[68] At a joint meeting of the coalition parties two days later Prime Minister Holt announced that the necessary legislation would be introduced in the new session of parliament.[69]

In the Governor-General's speech for the opening of parliament on 21 February, the government's continuing discussion about its plans were expressed at the very end of the speech, almost as an afterthought—'Its intentions [about the referendums] will be made known in the near future'.[70] Whitlam attempted to prise some more detail from the Prime Minister but was unsuccessful.[71]

When cabinet met on 22 February 1967, it had before it submission no. 75 (the 'survey' of six possible proposals) and submission no. 103 (an alternative proposal for increasing the number of members of the House). Two days earlier, Peter Bailey from the Prime Minister's Department had pointed out that there was nothing to stop an increase of one extra senator for each state but there would be a problem in submitting this to parliament following defeat of the nexus proposal.[72]

By decision no. 80 of 22 February, cabinet agreed to proceed with the nexus and Aboriginals proposals but to increase the population quota for each electorate from 80,000 to 85,000 people. It also decided that whatever the outcome, a redistribution must be effected before the next election. If the nexus proposal was defeated, cabinet wished to give consideration to the 'alternative means' for increasing the size of the

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[68] *The Sydney Morning Herald,* 13 February 1967.
[69] Ibid., 15 February 1967.
[70] Senate debates, 21 February 1967, p. 12.
[71] House of Representatives debates, 21 February 1967, pp. 28–9.
[72] Notes on cabinet submission no. 75 (Initials P.H. Bailey as author), 20 February 1967, NAA: A4940, C4257.

House.[73] That alternative would be an increase of one extra senator for each state—a solution that neither Menzies nor Calwell had agreed with in the first referendum attempt.

On the following day, cabinet decided that the relevant legislation be introduced in the House during the coming week and that 'officials of the Attorney-General's Department and the Prime Minister's Department might put forward a draft [of the 'yes' case] in the first instance, taking the previous 'yes' case as a guide, and suggesting modifications where necessary'.[74]

On the same day, the Prime Minister told the House that the postponed referendum proposals would proceed—with the divisor changed from 80,000 to 85,000 people thus generating an increase of about 13 in the size of the House—and that relevant legislation would be introduced in the 'next week or two'.[75] An ad hoc committee of cabinet was charged with finalising the titles of the bills (on which the referendum questions would be based).

The Prime Minister introduced the two pieces of referendum legislation in the House on 1 March 1967. The nexus proposal contained the increased divisor as indicated earlier and the Aboriginals proposal now provided for removal of the words 'other than the aboriginal race in any State' from paragraph xxvi of section 51 of the Constitution. It emerged later that a meeting of the joint parties that morning had discussed the nexus proposal for one and a half hours.[76]

Arguments used by the Prime Minister in his second reading speech included:

- the range of matters dealt with by members of the House was wider than in the earlier years and the burden on members had increased considerably
- the Commonwealth was now dealing with matters that were formerly the province of the states
- there would be an upper limit on the number of members of the House
- with an increase of only one senator per state (under the nexus), the possibility of a deadlocked Senate could be increased

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[73] Cabinet decision no. 80, 22 February 1967, cabinet submissions no. 73 and no.103, NAA: A4940, C4257.

[74] Cabinet decision no. 89, 23 February 1967, NAA: A4940, C4257. A curious item in *The Australian* (25 February 1967) stated, 'The Opposition supports the referendum but Labor sources said yesterday that their leader, Mr Whitlam, would not want the party to be labelled as co-sponsor with the Government. So he is expected to ask the Government to consult him on the case after it has been prepared'.

[75] House of Representatives debates, 23 February 1967, p. 114.

[76] Ibid., 1 March 1967, p. 267.

- state representation would be protected by guaranteeing to all states a minimum of ten senators.

Whitlam followed the Prime Minister and gave his assurance 'that my Party, in the Parliament and outside the Parliament, will support this Bill and the referendum without reservation, equivocation or qualification'. He accused 'some members of one political party' (a reference to the DLP) of wanting an increase in the Senate because that is the only place where they could secure parliamentary representation. He referred to the ALP's support at its 1961 federal conference for all the proposals of the Joint Standing Committee on Constitutional Review (1956–59) and declared 'There can be no question that we will do our best to see that the people know the arguments in favour of this referendum in which we strongly believe'.[77]

In his speech of support, Anthony repeated Holt's argument for a need to increase the number of members so as to ease 'the heavy burden' on 'those genuine members who are trying to do their duty'. He referred also to the growth in the weight of work and the volume of legislation. He acknowledged that the Country Party 'has never had any firm policy on this matter'. As well, he confirmed that the federal council of his party had issued a statement that it was 'unwise to have a referendum to break the nexus as a means of increasing the size of the Parliament'.[78] The nexus bill was adopted by 114 members with 'no dissentient voice'. The debate in the House of Representatives had taken one hour and 55 minutes and the Aboriginals bill, which followed immediately, occupied one hour and 15 minutes.[79]

The two constitutional bills were introduced in the Senate on 2 March, with the Leader of the Government, Senator Henty, delivering a speech identical to Holt's second reading speech in the lower house. The Aboriginals proposal was adopted after a debate of 38 minutes (compared to 75 minutes in the House of Representatives) but the nexus bill occupied 10 hours and 10 minutes of debating time, mostly over 7 and 8 March 1967, in contrast to the House debate of one hour and 55 minutes. Passage of the two bills was complicated by a 'call of the Senate' to ascertain whether all senators were present, required by then standing order 234. Under the standing order, senators were usually given three weeks' notice that a roll call was to be held but this was reduced to one week.[80]

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[77] Ibid., 1 March 1967, pp. 264–6.
[78] Ibid., 1 March 1967, pp. 272–3
[79] Ibid., 1 March 1967, pp. 260–2 and 264–278.
[80] Senate debates, 8 March 1967, pp. 361–2. According to the *Annotated Standing Orders of the Australian Senate*, the procedure is now called a 'roll call' and is covered by standing order 110 (www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/aso).

In his supporting speech, Senate Leader of the Opposition, Senator Lionel Murphy, like Whitlam in the lower house, cited the endorsement of the joint committee's proposals by the 1961 ALP federal conference. He repeated the argument that the representative 'burdens' on members of the House required extra numbers. He also argued that more members of the House would mean more people from whom to draw for the establishment of select committees. Senator Prowse interjected 'Would not that argument apply also to the Senate?' Senator Murphy replied that if one looked at the matter on the surface only, one would say yes, but the representational duties of members prevented them from engaging in committee work.[81]

The point to make is that this explanation was offered in 1967, but in the 1970s Senator Murphy played a major role in the development of the Senate committee system, which has outpaced the development of committees in the House of Representatives over the past 47 years. Curiously, Senator Murphy also accused the government of subverting the Constitution by its decision not to proceed with the 1966 attempt, but there is no record of Senator Murphy or the ALP supporting Senator Gair's protests about the suspension of the referendum process.

Senator Gair was the first of the opponents of the nexus proposal to speak. Later, 10,000 copies of his speech were printed for distribution among voters. He reiterated the DLP's opposition to any increase in the size of either house and referred to the Gallup Poll results of January 1966 which showed 47 per cent of respondents were opposed.

Senator Gair sought to personify the nexus by referring to the strong support of Richard Edward O'Connor QC for the nexus during the Australasian Federal Convention debates in 1897. O'Connor was not well-known historically and this attempt did not succeed. Senator Gair claimed that the nexus was better than a quota (divisor) as a check against unwarranted increases and preserved the position of the Senate in the national parliament. Engaging in some hyperbole, Senator Gair claimed that 'More than 20,000 members of the DLP throughout Australia will spread the No argument amongst their workmates and friends'.[82] Coalition senators listening to his speech, cognisant of the dependence of their parties on DLP preferences in state and federal elections, must have wondered if a major fight over the issue would be useful and productive.

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[81] Senate debates, 7 March 1967, pp. 274–9. Senate debates, 7 March 1967, pp. 274–9. For a discussion on the emergence of the Senate committee system see Rosemary Laing, 'The Senate committee system: historical perspectives*', Papers on Parliament*, no. 54, December 2010, www.aph.gov.au/pops.

[82] Ibid., 7 March 1967, pp 274–314, and 8 March 1967, pp. 285–292.

As anticipated, the other major opponent of the nexus bill was Senator Wright. He strongly defended the role of the Senate and the nexus and alleged the proposal had been put forward 'simply for Party manoeuvring'. He opposed an increase in the size of either house but said it was 'quite a practicable proposition' (if necessary) to increase the number of senators by one for each state.[83] Senators Lillico, Mattner, Wood and Reg Turnbull (an independent from Tasmania) also spoke against the bill.

Prowse, the Country and Democratic League (CDL) senator from Western Australia, opposed the subject matter of the referendum but voted for the bill 'to give to the people of Australia the opportunity to rebut the nonsense that has been foisted upon them'.[84] Along with Senator Hannaford, the senators who spoke against the bill voted against it.[85] Senator Bull, who was in hospital, reiterated his opposition in a statement released in Canberra,[86] and Senator McManus, who was also ill, advised of his continuing opposition.[87]

The second reading of the bill was passed by 48–7 and, after a brief debate on the third reading, the bill was finally passed 45–7.[88] However, while the bill was in the committee stage, Western Australian senator Malcolm Scott (LIB), probably at the prompting of the government, unsuccessfully moved an amendment to change the title. This had some significance because the question on the ballot paper was based on the title of the bill,[89] but it must surely have had only minor potential for reinforcing the 'yes' vote.[90] Senator Murphy, on behalf of the opposition, opposed the amendment and it was defeated on the voices. On 7 March, the referendums were set

83   Ibid., 7 March 1967, pp. 299–306.
84   Ibid., 7 March 1967, p. 311
85   In February 1967, Senator Hannaford notified his colleagues in the South Australian Liberal and Country League that he would sit on the cross-bench as an independent. This decision was related to his stance against the Vietnam War. See entry for Douglas Hannaford, *The Biographical Dictionary of the Australian Senate*, biography.senate.gov.au/hannaford-douglas-clive.
86   *The Daily Advertiser* (Wagga, NSW), 10 March 1967.
87   Strangman op. cit., unpublished report on the referendum campaign, p. 21.
88   There appears to be nothing significant in the difference between the two divisions. The vote on the third reading was taken at about 11.15 pm. and some of the 'yes' supporters may have decided to leave early knowing that their vote was not crucial to the outcome.
89   The *Referendum (Constitution Alteration) Act 1906* required the following wording be used for the ballot question: 'Do you approve of the proposed law for the alteration of the Constitution entitled [*here set out the title of the proposed law*]?' See www.legislation.gov.au/Details /C1906A00011.
90   The three titles are contained in the speeches by senators Scott and Murphy (Senate debates, 8 March 1967, p. 352.) The title of the bill adopted in 1965 was 'A Bill for an Act to alter the Constitution in relation to the Number of Members of each House of the Parliament'. The title of the bill under debate was 'A Bill for an Act to alter the Constitution so that the Number of Members of the House of Representatives may be increased without necessarily increasing the Number of Senators'. The new title proposed by Senator Scott was 'A Bill for an Act to alter the Constitution so as to Remove the Need to increase the Number of Senators whenever the Number of Members of the House of Representatives is increased'.

down for 27 May 1967, but there was to be no public announcement of the date until the bills were through both houses.[91]

There was now a group of 10 senators opposed to the nexus proposal with at least one senator from each state.[92] Senators Gair and Wright were again asked to draft the official 'no' case on behalf of the other senators. The final draft was formulated on 2 April. At a meeting on 5 April, it was agreed that copies of the 'no' case should be made available to the media prior to its official release by the chief electoral officer so that it could receive maximum publicity, and that 'vote no' committees should be established in each state.[93] The 'no' case was substantially the same as that agreed on for the postponed 1966 attempt. However, Senator Gair had fortuitously obtained a copy of the 'pulped' 1966 official booklet, and the authors, noting the question and answer approach of the 'yes' case, adopted that style.

On 30 March, the Clerk of the Senate, J.R. Odgers, sent senators Gair and Wright some wording for possible inclusion in the 'no' case. It was based around a characterisation of the Senate as the 'states' assembly'. While that suggestion was not incorporated, another suggestion that the proposal was the first step of a 'plot' was incorporated in the official 'no' case.[94]

On 21 March, senators Gair and Wright wrote to the chairman of the Australian Broadcasting Commission (ABC), Dr James Darling, seeking equal time for the presentation of the 'no' case. They had discovered equal time had been granted to both sides in the 1951 referendum about communism.[95] In a confidential cablegram to Holt (who was on an official visit to Taipei) dated 5 April, the acting Prime Minister, John McEwen, advised that the ABC was considering a 75:25 split for the 'yes' and 'no' cases but a majority of cabinet favoured granting equal time. Holt responded that he also favoured equal time. The ABC plans were again discussed by cabinet on 11 April and on 14 April. Dr Darling advised Senator Gair that on the nexus question there would be equal time of 60 minutes on television and 90 minutes on radio.

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[91] Cabinet minute, 7 March 1967, decision no. 118, NAA: A4940, C4257.

[92] Senator Prowse was considered to be a part of the ten but did not play an active role. His support for the 'no' side was placed on the record in an item in the *Weekend News* (WA) on 13 May 1967 titled 'No-man Prowse starts late'.

[93] Strangman op. cit., notes from 'no' senators meeting, 5 April 1967.

[94] Strangman papers, op. cit., letter from J.R. Odgers to Senator Vince Gair, dated 30 March 1967. The wording from Odgers which found its way onto page 10 of the official pamphlet was 'Remember that this proposal to remove the nexus is likely to be only the first step to remove other constitutional safeguards embedded in the Constitution for the protection of the States. The plot was hatched by the Constitutional Review Committee and the next step of the super-planners at Canberra is for joint sittings of the two Houses to resolve legislative disagreements', to which the drafters of the 'no' case added 'without any double dissolution'.

[95] Strangman papers, op. cit.

Senators Gair and Wright then wrote to the controller of programs at the ABC to advise that in all states, except Tasmania, the local DLP secretary would be the responsible person to negotiate these arrangements. Senator Wright was to be the responsible person in Tasmania.[96] Senator Wright also made arrangements for the 'no' senators to tape five minute talks in Canberra at the ABC studios and suggested the following caption be shown behind the speaker, 'Increase Politicians NO. Help Aboriginal Race YES'.[97]

Each of the DLP state secretaries was familiar with electoral advertising on television and radio. They ensured that the 'no' senators in their state were accommodated within the allocations, but in some cases they and others filled in when slots were vacant. In South Australia, for example, R.L. Reid, a senior lecturer in politics at Adelaide University, was associated with the 'no' side and gave at least two supportive talks on ABC radio, presumably arranged by the DLP State Secretary, Mark Posa.[98]

In NSW, a 'vote no' committee had been established with the NSW Clerk of Parliaments, Major-General John Stevenson, as its secretary—which was noted by the 'yes' proponents. A biographer later wrote:

> A man of decided opinions who supported the bicameral system, he openly advocated the (successful) 'No' vote in both the State referendum on the abolition of the council in 1961 and the Federal 'nexus' referendum in 1967.[99]

'Vote no' committees apparently did not get off the ground in the other states, although there were several public meetings which utilised some of the 'no' senators and DLP representatives.

As early as 29 January, Senator Gair had announced Condon Byrne, a barrister and former senator, as the leader of the Queensland DLP team for the next Senate election. Byrne played a prominent role in the referendum, touring North Queensland in the final week of the referendum campaign.[100]

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[96] Strangman papers, op. cit., letter to N. Hutchison, ABC controller of programs, from senators Gair and Wright, dated 20 April 1967.

[97] Strangman papers, op. cit.

[98] Strangman papers, op. cit., transcripts of radio talks by R.L. Reid on 9 May 1967 and 16 May 1967 (incomplete). See also R.L. Reid, 'Electorates plot seen in referendum', *Sunday Times*, 14 May 1967.

[99] J.B. Hopley, 'Stevenson, John Rowlstone (1908–1971)', *Australian Dictionary of Biography*, National Centre of Biography, Australian National University, adb.anu.edu.au/biography /stevenson-john-rowlstone-11765/text21043.

[100] Strangman papers op. cit.

The 'yes' side also had assistance from outside the federal parliament. In a remarkable article in *The Western Sun*, published by the state executive of the Australian Labor Party in Western Australia, L.F. Crisp, described as 'Professor LF Crisp of the Chair of Political Science, Australian National University', wrote an article entitled 'Why the Nexus Should Go'. In this article he excoriated the DLP and accused it of wanting to force increases in the number of senators so the quota would be lower and 'more Senate seats will be brought within reach of this little veto group'. He went on to say:

> And so these self-advertised apostles of principle, these self-proclaimed guardians of traditional moral values, are revealed as grasping self-interested manoeuvrers for seats without responsibility, exploiters of an outmoded old Constitution from motives of gross party self-seeking.[101]

The campaign was fought mainly in the 'free' outlets available to both sides—parliament, the ABC free time and the print media, particularly the letters to the editor columns (and included a 'vote yes' letter from a 'John Howard' of Earlwood).[102] Holt had stated in March 1967 that the 'yes' case would be stated so clearly and shortly that a long campaign would not be necessary and the government would rely on the press, radio and television.[103]

On 18 May, a little over one week before the referendum, journalist Alan Reid attacked the Senate officers in his column in the widely read *Bulletin* magazine. He wrote:

> I do not like criticising officials. They cannot answer back publicly. I have rarely criticised them in some 30 years of political reporting but I think what follows has to be said: some of the Senate officers seem to suffer from a sense of inferiority as far as the House of Representatives is concerned. To maintain the status of their chamber, some of them help individual Senators to push what they regard as the constitutionally justified role of the Senate to extremes. There is no doubt that some of them are advising the Senate on what should be the tactics of the 'No' case in the referendum seeking to break the constitutional nexus between the

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[101] 'Why the nexus should go', *The Western Sun* (Perth), no. 84, vol. 8, p. 2. This article was originally cited by Paul J. Duffy, 'The Democratic Labor Party: profile and prospects', in Henry Mayer (ed.), *Australian Politics: A Second Reader*, F.W. Cheshire, Melbourne, 1969, p. 404.

[102] The letter from future Prime Minister John Howard appeared in *The Sydney Morning Herald* on 25 May 1967 and was basically an attack on a statement made by Senator Gair about the workload of parliamentarians. In the week prior to the referendum, advertisements on behalf of the Labor Council of NSW and the Australian Council of Trade Unions, the NSW Liberal Party, the NSW nexus vote 'no' committee, and Senator Ian Wood appeared but neither side was spending large funds on print advertising.

[103] *The Canberra Times*, 23 March 1967.

Senate and the House of Representatives. As I see it this is an intrusion into politics and as such justifies comment. For involved in this issue is a far larger issue than whether postal rises are delayed. At stake is the supremacy of the House of Representatives as the chamber in which the majority provides a Government…[104]

Reid clearly had Senate Clerk J.R. Odgers in mind. The reference to 'postal rises' related to an occasion on 12 May when the Senate had thwarted an attempt by the government to raise postal charges.[105]

Alan Reid was not a friend of the Senate. As I recall the situation, the Senate Clerk had basically responded to questions from Senator Gair and other 'no' senators about constitutional and procedural matters and, as was noted earlier, on 24 December amended a set of figures within the draft of the official 'no' case for the first attempt. It is true that on 30 March 1967 he offered a line of argument for inclusion in the draft 'no' case for the second attempt but it was not acted upon.

On 18 May (a day the House was broadcast on ABC radio), the government arranged a contrived 'debate' about the 'no' case in the House of Representatives knowing full well that there were no supporters of the 'no' case in the House. Anticipating this debate, Senator Gair wrote to Holt requesting to appear at the bar of the House to present the 'no' case, but this was not acceded to.[106] In his contribution, Whitlam referred to an increase of one extra senator in each state, supposedly supported by the DLP, and characterised it as 'the Odgers plan' which the DLP had adopted.[107] We now know from the departmental files available that officials from the Department of Prime Minister had been discussing this same idea themselves. Whitlam also attacked Major-General Stevenson's involvement in the 'no' campaign. The following day in the Senate, George Branson, a Liberal senator from Western Australia, asked the Leader of the Government, Senator Henty, about 'Mr Whitlam's cowardly attack on the Clerk of the Senate'. Senator Henty referred to a report of the incident in *The Canberra Times* that day and deplored the attack 'made on a very valued servant of the Senate'.[108]

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[104] Alan Reid, 'Looking at certain unhealthy factors in the Senate', *The Bulletin,* May 20, 1967, p. 18. Although published with a date of 20 May, the issue was available earlier in the week.

[105] Bullock, op. cit. Bullock commenced his article with the words, 'The year 1967 was one of the most remarkable years in sixty-seven years of the Australian Senate's history'.

[106] Senator Gair's letter was dated 16 May 1967. In his reply dated 17 May, Holt conveyed an implied rejection of the request to appear at the Bar of the House, stating, 'There are forms of the Senate available to you to state [your] views in that Chamber should you so decide when the proceedings of the Senate are being broadcast or otherwise' (see Strangman papers, op. cit.).

[107] House of Representatives debates, 18 May 1967, pp. 2369–84.

[108] Senate debates, 19 May 1967, p. 1781. On 19 May 1967, *The Canberra Times* reported Whitlam's reference to the 'Odgers plan' in an article entitled 'Whitlam hits "interference"'.

On 19 May 1967, Senator Gair placed a question on the Senate Notice Paper asking if the authors of the official 'yes' case were assisted in preparing their case by full-time officers of the Commonwealth Public Service in the Prime Minister's Department and, if the answer was in the negative, would the Prime Minister make available to the Senate files on the referendum so that they could be examined. I am unsure if this question was prompted by someone 'in the know' or if it was a 'fishing expedition' to identify the unpublicised involvement of officials. In any event, it was envisaged by Senator Gair as a counter shot in the referendum campaign. The question was never answered but its mere asking created discussion among public servants long after the referendum had been held.[109]

Four months after the referendum, Holt suggested to his departmental officials that the reply to Senator Gair's question should say that the draft was 'prepared outside Government service, it was finally settled by the three signatories [Holt, McEwen and Whitlam] and secretarial assistance was drawn upon'.[110] This was disingenuous to say the least. First Assistant Secretary, Peter Bailey (who on the first attempt in December 1965 had conveyed 'alternative' versions of the 'yes' case to the secretary of his department) advised his superior, Geoffrey Yeend, that 'I have almost come to the view that we could say that it is appropriate for official assistance to be given for any referendum'.[111]

The chairman of the Commonwealth Public Service Board, Sir Frederick Wheeler, was brought into the discussion following an inquiry from the Secretary of the Prime Minister's Department, Sir John Bunting. Wheeler advised that the statutory framework (for example, the Referendum Act) 'does not give any support' to the proposition that it is perfectly proper for public servants to prepare referendum cases. He concluded 'the more I think about it, the more I tend to feel that referenda are, despite their differences from elections, nevertheless in practice within the field of party politics'.[112] His opinion was not incorporated into the department's draft responses.

On 16 October 1967, Sir John Bunting advised Holt that there had been assistance but 'not in the sense of creating argument'.[113] By February 1968, Bailey had advised the departmental secretary of proposed new wording—'Assistance in its preparation was given as required by full-time officers of the Public Service in accordance with Ministerial instructions'.[114]

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[109] NAA: A463, 1967/2446.
[110] NAA: A463, 1967/2446, folio 12, 2 October 1967.
[111] NAA: A463, 1967/2446, folio 15, 18 October 1967.
[112] NAA: A463, 1967/2446, folio 10, 17 August 1967.
[113] NAA: A463, 1967/2446, folio 17, 16 October 1967.
[114] NAA: A463, 1967/2446, folio 26, 28 February 1968.

The issue of public service involvement in referendums had not been completely put to rest. On 12 March 1974, an official from the Department of Urban and Regional Development contacted the Department of Prime Minister and Cabinet (PM&C) in relation to his department's possible involvement in the forthcoming referendum on local government bodies. He was told that their (PM&C) involvement was limited to the preparation of the 'yes' case and any subsequent variations were carried out, at the political level, in the prime minister's office. He was alerted to the unanswered question from Senator Gair in 1967 and advised that the wording from Bailey had been agreed at departmental level.[115]

Referendum day and the aftermath

The table below shows the result of the 'nexus' referendum.[116]

State	Enrolled	Votes	For	%	Against	%	Informal
New South Wales	2 315 828	2 166 507	1 087 694	51.01	1 044 458	48.99	34 355
Victoria	1 734 476	1 630 594	496 826	30.87	1 112 506	69.13	21 262
Queensland	904 808	848 728	370 200	44.13	468 673	55.87	9 855
South Australia	590 275	560 844	186 344	33.91	363 120	66.09	11 380
Western Australia	437 609	405 666	114 841	29.05	280 523	70.95	10 302
Tasmania	199 589	189 245	42 764	23.06	142 660	76.94	3 821
Total for Commonwealth	**6 182 585**	**5 801 584**	**2 298 669**	**40.25**	**3 411 940**	**59.75**	**90 975**

Obtained majority in one State and an overall minority of 1 113 271 votes.

The estimated cost of holding the two referendums was $1,041,000.[117] A perusal of post-referendum reports from divisional returning officers and Commonwealth electoral officers for the states reveals several common themes:

- occasional misuse of the specimen ballot paper in the official pamphlet as a ballot paper
- lack of publicity and activity by political organisations, including a diminished number of party workers outside the polling booths
- a last-minute realisation by voters that referendums were being held.[118]

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[115] NAA: A463, 1967/2446, folio 32, 19 April 1974.

[116] *44th Parliamentary Handbook*, op. cit., p. 394.

[117] Australian Electoral Commission, 'Costs of elections and referendums', www.aec.gov.au/Elections/ Australian_Electoral_History/Cost_of_Election_1901_Present.htm.

[118] NAA: A406, E1967/30, Part P, Department of Interior, Electoral Office.

The Prime Minister, Harold Holt, was 'delighted' with the Aboriginals result but reiterated his pre-poll opinion that a majority for 'no' on the nexus 'would be a victory for prejudice and misrepresentation'. He believed that:

> the majority of electors chose to ignore the advice of those to whom they normally look for guidance on political issues…Saturday's vote was not so much against the breaking of the nexus with the Senate as a vote against more politicians of the National Parliament. This view, however ill-advised we might regard it to be, nevertheless must be accepted as representing a strong persuasive force at least during the life of the present Parliament.[119]

Senator Gair saw the nexus result as 'a great triumph' for the ten 'no' senators, declaring, 'the Australian voter proved that he does not wish to see an increase in the number of parliamentarians'.[120] Senator Wright said the outcome was a tribute to the understanding of the Australian people and Tasmanians in particular. He added, 'The small States have shown that they recognise the value of the Senate as a unit of the Federal Parliament'.[121]

Whitlam said he was disappointed with the result and would now like to see a referendum on the abolition of the Senate.[122] He said, 'The abolition of the Senate would be a great contribution to Australia. The Labour Party would be in favour of this'.[123]

Despite the generally low-key activity throughout Australia on referendum day, an episode in Adelaide had implications for electoral and referendum law. In Adelaide an ALP member of the House of Representatives, Clyde Cameron, picked up a bundle of DLP 'vote no' cards from a polling booth and forwarded them to the state Commonwealth Electoral Officer, Mr Summers, claiming they were illegal and misleading. Summers forwarded a sample to the deputy crown solicitor for his opinion. DLP State Secretary, Mark Posa, later reported to the author that the Commonwealth Police visited the printers seeking confirmation of the South Australian how-to-vote card.

The NSW Commonwealth electoral officer also forwarded five copies of how-to-vote cards authorised by senators Gair and Wright to Ley in Canberra, commenting:

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[119] Harold Holt, (Prime Minister), *Result of Referendum*, media statement, Canberra, 28 May 1967, P.M. No 55/1967.

[120] Vince Gair, press statement, Brisbane, 27 May 1967, Strangman papers, op. cit.

[121] *The Mercury* (Hobart), 29 May 1967.

[122] *The Canberra Times*, 29 May 1967.

[123] *The Mercury* (Hobart), 29 May 1967.

> I know that the top part 'How to vote NO more politicians' is misleading really, but to place the word 'More' before 'Politicians' in Question 1 is downright deliberately misleading. As the misrepresentations of the DLP were one of the major factors in a 'NO' vote being returned, I feel this is something which could warrant the setting up of a Court of Disputed Returns – (under) Part VI, Section 27 of the Referendum (Constitution Alteration) Act?[124]

On 2 June 1967, Ley sent a memorandum to the secretary of the Attorney-General's Department seeking advice about the how-to-vote card and copied in the two state chief electoral officers. On 23 August, A.C.C. Menzies, on behalf of the secretary of the Attorney-General's Department, responded that in relation to the (NSW) card there was no evidence before him that the card was, in fact, authorised or printed by these persons (senators Gair and Wright). Furthermore, A.C.C. Menzies distinguished between directions that might mislead or interfere with an elector '*making* his decision to vote' and in 'the *casting* of his vote, that is to say, the actual operation of marking the ballot paper.' He went on to say, 'Accordingly, I would not, myself, think that the card could be regarded as misleading or interfering with an elector in or in relation to the casting of his vote'.[125] This was copied to the chief electoral officers in South Australia and NSW and there the matter rested with no action being taken.

The partisan opinions expressed by the NSW chief electoral officer in this instance underline the inappropriateness of the Australian Electoral Commission (AEC)[126] acting as a 'neutral body' for drafting the official referendum cases, a role that was wisely rejected by a spokesperson for the AEC in 2009.[127]

Interestingly, the campaign and result did not unduly handicap the career of Senator Wright.[128] As we now know, Prime Minister Holt disappeared on 17 December 1967 and John Gorton became prime minister on 10 January 1968. Gorton appointed

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[124] NAA: A406, E1967/30, A406, Part N, folios 67–69 (A.C.C. Menzies' advice, pp. 30–2 in digitised version), folio 46 (Ley's memorandum to the Attorney-General's Department, p. 53 in digitised version), folio 44 (NSW chief electoral officer to Commonwealth chief electoral officer, p. 58 in digitised version), folio 42 (note to SA Chief Electoral Officer Mr Summers, p. 61 in digitised version). See also Strangman papers, op. cit.

[125] NAA: A406, E1967/30.

[126] Between 1973 and 1984, the AEC was known as the Australian Electoral Office. Prior to this it was a branch of the Department of Home Affairs. The AEC was established as an independent statutory authority in 1984.

[127] House Standing Committee on Legal and Constitutional Affairs, *Time for Change: Yes/No*, report of the inquiry into the machinery of referendums, House of Representatives, December 2009, p. 28.

[128] Eleven days before the referendum, *The Mercury* (Hobart, 16 May 1967) reported that disciplinary moves against Senator Wright had been under consideration (see also *The Brisbane Telegraph*, 16 May 1967). Tom Frame later stated that Billy McMahon wrote to Holt on 13 June advising him not to take action on both senators Wright and Wood (Tom Frame, *The Life and Death of Harold Holt*, Allen & Unwin, Crows Nest, NSW, 2005, p. 211 and p. 344, endnote 21).

Senator Wright as Minister for Works and Minister in Charge of Tourist Activities from 28 February 1968.

Nor did the DLP suffer at the 1967 Senate election. Its vote increased from 8.4 per cent recorded in 1964 to 9.8 per cent and two extra senators were elected (Queensland senator Con Byrne and Victorian senator Jack Little).[129] Senator Turnbull was also returned as an independent in Tasmania.

The 'strong persuasive force' of the nexus result, as noted by Holt, lasted much longer than the 'life of the present Parliament' which was dissolved on 29 September 1969. Indeed, there was no major increase in the size of the House of Representatives or the Senate until seventeen years later at the federal election of 1 December 1984, when the Senate was increased from 60 to 72 (two extra senators per state) and the House from 124 to 148 (a total increase in parliamentarians of 36).[130] 'Perpetual deadlock' did not ensue, as the 'yes' campaigners had confidently predicted.

The federal result may also have had a 'slowing effect' on the temptation of state governments to increase the size of their lower houses. In the following 10 years most of the increases in state lower houses were relatively small, apart from an increase of 39 to 47 seats for the South Australian House of Assembly for the May 1970 election, a size which remains unchanged to this day.[131]

At the federal level, the 'no' campaign was a resounding historical success but the DLP senators were not there to see its lasting effects—all five of its existing Senate representatives were defeated at the 1974 double dissolution election.

As memories of the emphatic 1967 defeat faded, there were perfunctory attempts to again seek to break the nexus. A draft bill was endorsed by plenary sessions of the Australian Constitutional Convention in 1975 and 1976. In 1983, Senator Michael Macklin (Australian Democrats) succeeded in getting the Senate to pass a similar bill. Also in 1983, the Attorney-General, Senator Gareth Evans, referred the subject for consideration to the Australian Constitutional Convention. In 1988, the Constitutional Commission recommended that the nexus be broken—in a summary of the evidence from submissions, the author of the summary noted the strong support for breaking the nexus given by former Clerks of the House of Representatives, Norman Parkes,

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[129] Cathy Madden, 'The Democratic Labor Party an overview', Parliamentary Library, 18 July 2011, www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/DPLOverview.

[130] *44ᵗʰ Parliamentary Handbook*, op. cit., p. 799, appendix 11.

[131] University of Western Australia, *Australian Politics and Elections Database*, elections. uwa.edu.au/statedetail.lasso?statesection=Parliament.

Jack Pettifer and Doug Blake.[132] No doubt they were as strong in their opposition to the nexus as the Senate Clerk J.R. Odgers was in his support of it.

In 1967, the 'no' side had promised the Australian people 'no more Parliamentarians' and for a significant period that was the case at the federal level. One can debate the nature of the 'no' senators' arguments but they achieved what they had set out to do. The result might not have been as emphatic as that for the Aboriginal question but it deserves its place in referendum history.

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[132] See reports of the Constitutional Amendment sub-committee report and the Structure of Government sub-committee, *Minutes of Proceedings and Official Record of Debates of the Australian Constitutional Convention*, Government Printer, Sydney, 1985 and standing committee reports, *Final Report of the Constitutional Commission*, vol. 1, Australian Government Publishing Service, Canberra, 1988.

Parliament and National Security: Challenges and Opportunities[*]

Anthony Bergin

In this paper I will offer some suggestions for strengthening and deepening parliament's engagement with issues of national security, and why this should not be left entirely to the Prime Minister and the leaders of our defence and intelligence agencies. First, let me turn to national security and the parliamentary landscape.

Constitutional convention declares that the power to make Australia's national security policy is firmly in the hands of the executive branch of government. Broadly, national security covers public policy concerning foreign relations, defence, intelligence, and relevant facets of counterterrorism, immigration and border protection.

Many national security problems now directly impact on the states. The states have an interest in the role of the Australian Defence Force (ADF) in domestic counterterrorism, countering violent extremism and natural disaster response. In counterterrorism, Joint Counter Terrorism Teams (JCTTs) consist of officers from the Australian Federal Police (AFP) and state/territory police, and work with the AFP and the Australian Security Intelligence Organisation (ASIO). In natural disasters, it is the states that have primary responsibility. The states are vital in protecting critical infrastructure.

Aside from custom and convention, the dynamics of parliamentary involvement in national security continue to be shaped by four powerful realities of Australian political life. First, the Prime Minister's authority in relation to national security continues to grow. This might be desirable for managing a coherent national security policy or for acting quickly, but it can easily suck oxygen out of an open policy process, limit other parliamentary voices and, on occasion, other ministerial voices.

When the leader of the opposition is briefed by the Prime Minister on national security decisions it often brings the occupant into the 'cone of silence'.

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[*] This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 30 June 2017. Author's note: Russell Trood was originally asked to present this paper, but he sadly passed away early this year. Russell was a Liberal senator for Queensland from 2004–2010 and deputy chair of the Senate committee on Foreign Affairs, Defence and Trade. He had enormous respect for the Senate and the parliamentary committee processes. The Prime Minister, the Hon. Malcolm Turnbull, described him as 'one of Australia's finest foreign policy minds' and the Attorney-General, Senator the Hon. George Brandis, said after Russell's passing that 'we're all better for knowing him'.

While sensible to have policy continuity, pushing too hard to get consensus on national security can act to inhibit debate and critical thinking and reduce accountability.[1] Bipartisanship can inhibit parliament from scrutinising operational matters with more vigour, or from using the full breadth of parliament's powers to compel information from the executive.

Second, all political parties increasingly seek to achieve and enforce party discipline. While this undoubtedly has considerable logic in the modern Westminster system, if it is overused or applied too strongly it constrains members and senators from taking independent action, and weakens the capacity of opposition and backbench parliamentarians to hold the executive to account in national security.

Third, members and senators are less likely to have a background in international relations, defence or domestic security than one in law, education or politics. Those parliamentarians with an interest or expertise in national security may exercise greater influence than their colleagues. Parliamentary oversight on these matters may in some ways depend on the strength of such individuals.

Fourth, despite what I said about Australian politicians generally treating national security in a bipartisan fashion, the modern parliamentary ritual tends towards political point scoring. This makes it more difficult to analyse complicated national security issues with the rigour they deserve. Despite these trends, parliament's processes and procedures continue to offer many opportunities to ventilate national security issues and, theoretically, strengthen the ability of backbenchers who want to develop their interests in national security policy.

I would now like to turn to the topic of parliament and war powers. In recent years, there have been increasing calls by civil society groups and some representatives from the minor parties for greater parliamentary scrutiny over the executive's long-held prerogative to deploy Australian military forces overseas. In 2011, the UK moved to a system in which parliament must be involved in any decision to go to war. In 2013, the House of Commons debated a government motion for the UK join US-led strikes in Syria. The motion was defeated and Prime Minister Cameron responded by saying he would respect the result.

But in my view governments need the capacity to react quickly to events. Involving parliament could hamper its ability to do so and impose a heavy additional burden on decision-making. The unique knowledge of complex foreign affairs issues

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[1]   Andrew Carr, 'Is bipartisanship on national security beneficial? Australia's politics of defence and security', *Australian Journal of Politics and History*, vol. 63, no. 2, 2017.

needed and the access to intelligence required for informed decision-making pose additional challenges to greater parliamentary involvement.

Governments are elected to govern and there is no greater responsibility than to protect the national interest. Central to this task is the onerous need to decide when military force should be deployed. Australians expect their governments to make difficult policy choices. In simple terms it is about democratic legitimacy—allowing a government to govern, unless parliament no longer has confidence in the government.

But some contend that going to war is too important to be left solely to the Prime Minister. Instead, parliamentarians should have the right to vote on military action and should have an obligation to explain their position. Senator Nick Xenophon, for example, made exactly this argument quite recently at the Australian Strategic Policy Institute in a speech with a great title, 'Kill the chicken to scare the monkey'. Xenophon argued in favour of war powers reform, against a backdrop of a changing regional strategic environment and a potential future confrontation between the United States and China. Xenophon stated quite plainly that he doesn't think any Australian participation in the South China Sea conflict ought to occur until 'every member of the Australian parliament has had a chance to vote on it'.[2]

From this idea flow a number of questions. For the entire parliament to give an informed vote, it stands to reason that they would require more information to do so. Given most of them vote along party lines, then there is an argument that it would be better go straight to the party executive and do a deal. In general it would mean extending the inner circle privy to such sensitive information to include each and every parliamentarian. It is not a show stopper but members of the defence and intelligence communities would resist this idea.

More importantly, however, there is the challenge of determining precisely what kind of government decision should trigger action—is it any deployment of the ADF, a commitment for a certain period, a certain force structure? Could action under a United Nations (UN) Security Council decision constitute an exemption? Would a commitment to peacekeeping trigger the need for a vote? In our complicated world, the occasions and circumstances in which force, in its various manifestations, is required are becoming more difficult to describe and define. Having parliament involved at every turn would impose a heavy additional burden of decision-making in relation to issues that are already among the most difficult government makes—and the most carefully considered.

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[2]   Nick Xenophon, 'On killing chickens and scaring monkeys', address to the Australian Strategic Policy Institute, 20 April 2017, www.aspi.org.au/video/senator-nick-Xenophon-address-war-powers-reform-kill-chicken-scare-monkey.

A parliamentary authorisation model could perhaps be framed in such a way as to address at least some of these concerns. Xenophon, for example, advocates a model that distinguishes between 'wars of choice' and 'wars of necessity'. He argues that this provides the necessary flexibility to take into account a range of contingencies, protects the security of classified information, and provides for the time-sensitive nature of emergencies.

'Wars of necessity' are defined as—and I quote Senator Xenophon—'military actions taken in self-defence and [which] require the use of rapid and/or covert military force'. In other words, actions provided for in Article 51 of the *Charter of the United Nations*. Conversely, 'wars of choice' are those covered by either the framework of collective action in Chapter VII of the UN Charter or a request for assistance from the legitimately constituted government of a state.

But I would agree here with the Australian Strategic Policy Institute's Rod Lyon, who argues that the distinction between wars of necessity and choice is not that useful. By allying ourselves with other countries, aren't we, Lyon asks:

> effectively saying that we accept an element of automaticity to our involvement in conflicts where they are attacked?…it sounds more than a little odd subsequently to claim that we take all such treaties as denoting mere wars of choice. If we thought that, why did we sign a treaty?[3]

Dr Lyon is also right to question the idea that wars of necessity are just wars of self-defence. In the Second World War, for example, even before our home front was attacked, we confronted a group of adversaries 'who wanted fundamentally to reshape the world'.[4] Even if they hadn't attacked Australia, it is right to question how we could have sat that one out. Strategic necessity does not end at our low-water mark.

There are some other issues to consider. Passing legislation to grant parliament control over expeditionary military deployments may invite the judiciary to review the legality of them. In my view we should be very wary of involving judges in what are essentially political decisions. Xenophon rightly acknowledges that a degree of flexibility in executive power is necessary to allow for unforeseeable circumstances. Indeed, our Constitution and High Court jurisprudence substantiate that executive power is subject to control by the legislative branch of government. But just because something can be done, does not mean it should be, or that it is the right thing to do.

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3 Rod Lyon, 'Wars of necessity, wars of choice', *The Strategist*, 26 April 2017, www.aspistrategist. org.au/wars-necessity-wars-choice/.
4 Ibid.

Furthermore, where the government of the day does not have control of the Senate (which is usual in Australian politics) to give the parliament a vote would add confusion and ambiguity to overseas deployment decisions. Under these circumstances parliamentarians would be able to prevent the executive from sending armed forces on operation with no immediate consequence to themselves—it would be all check, with no balance.

I suppose a one chamber vote might be workable if a decision on troop deployments was thought necessary. But then, we have that in effect already in the House of Representatives where members can change a government or the majority party can change a leader if they oppose a war strongly enough. Even if we introduced a parliamentary vote to go to war, it would be unlikely to make any practical difference to the actual outcome. I cannot think of a single example where it would have changed a decision on Australia's commitment to send our troops to war. We should therefore, in my view, preserve the existing relationship between the parliament and cabinet when it comes to decisions about overseas military deployments.

That said, while an extension of war powers may be a bridge too far, parliament's role could be considerably enhanced in this area. Government might take parliament into its confidence more often, for example providing a statement to parliament outlining the basis of the decision and reporting more regularly on the progress of military operations. In some cases time could be set aside in the parliamentary schedule for a debate. The defence subcommittee of the Joint Committee on Foreign Affairs, Defence and Trade could consider inquiring into the desirability of Australia extending some measures of authority to parliament over the overseas deployment of the ADF.

I would like to suggest four measures to strengthen parliament's role in national security. First, parliament should be respected as the forum for considering national security issues. Existing parliamentary procedures can be better utilised to more fully consider and debate, for example, foreign affairs, defence, intelligence and border security. Doing so would reinforce the standing of parliament while also giving parliamentarians the opportunity to contribute to policy thinking.

For many years governments have seemed inclined to bypass the parliament when dealing with security issues. This is regrettable but in part has been a result of rapid changes in the way parliament engages with the media and a view by government that the micro parties really can't be educated to contribute anything meaningful—that it is better to have conversations behind the scenes with them. But it must be said that it has simply suited the political imperatives of successive governments—not necessarily the cause of good public policy.

Australian governments should commit themselves to ensuring that the Australian parliament is the primary national institution for discussing and debating the nation's national security policy. They should ensure that parliament is the forum for pronouncements on all key national security policy decisions and that it is provided with regular opportunities to discuss, consider and debate policy issues.

It is regrettable that recent defence white papers have been launched in military aircraft hangers or at naval bases. Just last month we saw the defence minister announce that Australia will increase our troop numbers in Afghanistan, an announcement made not in the parliament but in a response during Senate estimates. Contrast this with what we saw in Canada a few weeks ago when Canada's foreign minister launched Canada's new foreign policy, not at some diplomatic meeting or a mega conference, but right on the floor of the Canadian parliament.

Second, we should develop parliamentarians' education in national security. In these challenging and uncertain times, good national security policy choices call for parliamentarians who have been sufficiently educated and informed on national security matters. This could include providing a new members' orientation program focused on national security, an enhanced program of regular informal briefings by senior public servants, site inspections of specific national security agencies, and participation by parliamentarians in national security exercises. It could also include the creation of a cross-party parliamentary friendship group dedicated to improving knowledge and understanding of Australia's national security policy through seminars, lectures and briefings by experts in the field.

Third, we should develop what I would call parliamentary diplomacy. Although many senators and members regularly engage with foreign government officials and parliamentarians through various mechanisms, such as parliamentary friendship groups, overall our parliamentarians are a rather underused resource in our foreign relations. At a time when the nation's overseas diplomatic footprint is ranked 20th out of 35 OECD countries and 19th in the G20 group,[5] there is room for some creative thinking to identify opportunities to make better use of interested and able parliamentarians to enhance our international presence.

One useful measure would be to expand the structured and focused outgoing parliamentary delegations program. No doubt they would have to bear the brunt of the tabloids having a crack about expenditure on overseas 'jollies' by our politicians! In conjunction with the relevant parliamentary committees, the Minister for Foreign Affairs and the department should consider ways in which members and senators

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[5]   Lowy Institute for International Policy, *Global Diplomacy Index 2016*, globaldiplomacyindex. lowyinstitute.org/# (as of 8 November 2017).

might make useful contributions to the conduct of Australia's international diplomacy. For example, this could be through parliamentary participation in international negotiations, attendance at diplomatic conferences, membership of delegations and participation in special missions for which a parliamentarian has unique knowledge or experience.

I can hear you say 'don't all our representatives think they are smart and want a high profile', however what I am suggesting only risks diverting valuable resources from government, or creating 'fake' programs where the less knowledgeable members or senators can't do any real damage. But we live in a democracy so we need to manage those risks. None of us has all the answers!

Fourth, I suggest we should review parliamentary committee resources, enhance the potential impact of committee reports, and examine committee mandates. The parliamentary committee system is impacted by the general bipartisan agreement on the overall thrust of national security policy. While this makes it easier to pass legislation and looks better in international negotiations, it also means that the two major parties do not press for committees to have access to sensitive information.

Moreover, bipartisanship means that sometimes the larger policy questions are not vigorously debated, leaving the committees to look at marginal areas of disagreement. It will be interesting to see what comes out of the inquiry, conducted by the defence subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, which aims to find out if our two major political parties could reach a bipartisan agreement on defence planning and if it is desirable that they should.[6]

Turning to the committees themselves, several suggestions can be made to strengthen their role in national security. A material improvement in parliament's role in national security issues requires increased human and financial resources for key committees. The resources allocation to the functions of parliament has eroded steadily over recent years. This has had an impact on the length of committee inquiries, the employment of staff, the ability to have witnesses attend hearings and the capacity of members to undertake inquiry related travel, among other things.

The Senate and the House of Representatives should each review the staffing and resourcing of its committees. These reviews should examine the extent to which greater budgetary constraint has affected the provision of staff to parliamentary committees with responsibilities in national security. The chairs of the key national

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[6] Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Inquiry into the benefits and risks of a bipartisan Australian defence agreement, as a basis of planning for, and funding of Australian defence capability', www.aph.gov.au/Parliamentary_Business/Committees/ Joint/ Foreign_Affairs_Defence_and_Trade/BipartisanDefAgreement.

security committees should take much more advantage of making secondments to their committees from among personnel in the national security agencies. Secondments would not only increase committees' human resources and build staff expertise, but improve the secondees' knowledge and understanding of the working of parliament and the role it plays in the administration and oversight of Australia's national security policy.

Parliamentary reports in the areas of foreign affairs, defence and national security are not always given the attention within government agencies that they deserve or that the committees expect. As Professor Julius Sumner Miller was fond of saying, 'Why is it so?' I think the answer relates to the way committee reports are structured and presented. Committee chairs need to consider this and work to ensure that time pressure, other responsibilities, level of experience or even want of interest, does not discourage different approaches. Compared to some other parliamentary systems, not least in the UK, Australian committees are more deferential to ministerial preferences and place a higher premium on secrecy. We certainly do not want committees to be places where politicians park difficult decisions or become, as Sir Barnett Cocks, former Clerk of the House of Commons, once observed, 'a cul-de-sac down which ideas are lured and then quietly strangled'.

So let us consider, in a bit more detail, some of the existing parliamentary committees relevant to national security, all of which would benefit from some degree of reform. Take, for example, the Joint Standing Committee on Treaties (JSCOT) which has struggled with the fact that international instruments arrive on its agenda only after they have been negotiated by government, often through a protracted process. Committee members would be better placed to offer comment and review at an earlier stage when there is still the opportunity to make a valuable contribution. This could occur through a confidential briefing of the committee or perhaps by including key committee members in negotiating delegations. JSCOT could consider encouraging treaty negotiators to provide JSCOT with regular updates on the progress of treaty negotiation, or to include committee members in negotiating delegations, or both.

The Joint Standing Committee on Foreign Affairs, Defence and Trade has a wide remit, and together with the Senate Foreign Affairs, Defence and Trade Committee, assumes much of the parliament's burden of investigation and oversight of foreign affairs and defence. Some of us will ask why there are two committees with overlapping remits when a joint standing committee might serve both houses. I suspect the reason is historical and, like the Constitution, not easy to change but maybe it would be worth taking a fresh look at this issue.

The bipartisan consensus between the major parties on defence and the self-selecting nature of the defence subcommittee suggests that this is largely a discussion between people who agree. I would note here that the few parliamentarians with military experience will on the whole be more comfortable with technical issues and military matters. Over time some of the joint committee's inquiries have resulted in influential reports valued by governments. This is especially the case when the reports are unanimous, they address an issue ministers are not confident about or where the ministers may be concerned about the objectivity of their departments, or when they offer a novel take on a controversial or neglected issue.

I would note that often the influence of committee reports is felt years later, because they shape the marketplace of ideas rather than exercising direct influence over policy at a given time—although I could not find a survey on committee reports and influence on government policy. Perhaps we could refer this question to a committee!

The need for its inquiries to be referred by an appropriate minister or by resolution of one of the houses of parliament is, however, a constraint on the committee's independence. This condition is a vestige from a bygone era that compromises the committee's capacity to make a potentially valuable contribution to policy debates in Australia. It should be removed. Committees should have power to self-refer and initiate their own inquiries outside of their powers to consider matters arising from annual reports of relevant agencies. Of course, either house can give a referral but it is more common for the Senate. A committee can approach a minister to get a reference, but if committee members think the minister will not support the request they are unlikely to ask for it!

The committee's public education role would be enhanced if the practice of ministerial appearances before the committee for private briefings was extended to public briefings on matters of contemporary importance, such as events in Afghanistan or the Middle East. Alternatively, it might consider following the example of the House Economics Committee before which the governor of the Reserve Bank regularly appears. Although the heads of Australian government departments are not statutory officers, inviting the secretary of the Department of Foreign Affairs and Trade to provide a regular update to the foreign affairs subcommittee on the state of Australia's international relations would be a valuable exercise in public education.

Let me say something about the Parliamentary Joint Committee on Intelligence and Security (PJCIS)—one of parliament's busiest committees in recent years. Since September 2014, when the National Terrorism Threat Level was raised to 'probable', there have been eight legislative packages progressed through the federal parliament. It should be noted that ASIO and the AFP also come under the Senate

Legal and Constitutional Affairs Committee. The *Intelligence Services Act 2001* mandates that the PJCIS comprise of six members of the House and five senators. It is currently required to have a membership of a majority of government members. Consequently, its findings often align with the government of the day. This is the committee that the government immediately refers that counterterrorism legislation to and it has served as a check and balance really well.

One might argue that the committee has performed this scrutiny role almost too well in the sense that it does not always serve immediate security needs. In some cases it has taken two years between the legislative update requested for operational needs and the actual approval (such as legislation lowering the age for control orders). That is not helpful to people on the ground. It is fair to say that approvals have, however, sped up when the committee is better informed and has more knowledge of the topics. In other words, once people have been in the committee for a while they have the history, context and perspective to make quicker decisions and to understand the issues. But what happens when new people rotate in? We are repeatedly losing this maturity and knowledge base.

When law enforcement and security agencies recommend changes, these are carefully asked for based on what they need. But one of the side effects of the joint committee's work is that you can get a watered-down version of legislation. As a result agencies have sometimes been cautious about proposing new laws because they know they may lose something else as a consequence, even from pre-existing and therefore previously approved laws.

Sometimes the agencies have to justify the need for a law to be ongoing, such as the control order law and laws around keeping people in detention—once passed, the agencies still have to go back each year and defend the need for it. The committee may decide the need or urgency is no longer there. But, shortly down the track, circumstances may change again, making the law vital. That is tough for law enforcement and security agencies. Balancing the important oversight role of the committee with the need of law enforcement to be agile and responsive to on the ground matters is a tough dilemma. But there is no doubt counterterrorism legislation is best developed in a considered and ongoing manner in order to anticipate, as well as respond to, the changing threat environment. And here the committee has served us well in terms of the legislative review process and typically including public inquiry into that process.

One way to institute an additional check would be to have all six intelligence agencies appear before Senate estimates. Right now only the Office of National Assessments and ASIO do so. Only one of the six intelligence agencies, ASIO, is required to

produce an annual report to parliament, and any sensitive or operational parts of that report are redacted. I would suggest all six intelligence agencies should produce an annual report to parliament.

In the UK, the Intelligence and Security Committee of Parliament has a broadly similar role to that of our intelligence and security committee. Although the UK committee is made up of parliamentarians, it reports to the Prime Minister, not the parliament. Nevertheless, it has a wider, more intrusive oversight mandate. In 2013, the committee's powers were extended when its enabling legislation was amended to permit it to examine or otherwise oversee the expenditure, administration, policy and, very interestingly, operations of the UK's key intelligence agencies.

Expanding the role of Australian parliament's intelligence committees to oversight operations to see not just if they are lawful but rather effective, does, however, raise some curly questions. For example, who would scrutinise an operation if our parliamentarians themselves were involved? Such a change would probably mean overturning the historical practice of not applying to members and senators the same checks required of public servants and instead subject our parliamentarians to the security clearance regime.

What would happen, for example, if one or more parliamentarians failed to be security cleared? I should add here that the Parliamentary Joint Committee on Intelligence and Security is the only one where the Prime Minister has to approve appointments to the committee. That is set out in the *Intelligence Services Act 2001*. While some might argue that those excluded through this process would be unable to represent voters adequately, and thus this move would present a challenge to our democratic system, I argue that it does not. It simply excludes people without a clearance from accessing information that is sensitive, and given that this rule would now apply to everyone on the committee, this is surely a democratic outcome. I would add that members of equivalent committees in the UK and USA require security clearances. And by the way, the PJCIS secretariat staff are required to be security vetted to the highest levels.

Moreover, the greater number of people who are given sensitive information and intelligence, the higher the chance of leaks and compromised operations. And there is another consideration that I touched upon earlier. Processes and approvals within the intelligence and security committee are sped up when its members are more knowledgeable and experienced—both with respect to the issues at hand and the function of the committee itself. The rotational nature of the committee means this maturity and knowledge base can be lost.

My earlier suggestion regarding the importance of education is relevant here as well—if all parliamentarians are better equipped to engage with difficult national security issues, they will come to parliamentary committees better prepared. I would add purely as an aside here that the Inspector-General on Intelligence and Security (IGIS), while not based in the parliament, is a critical position in our system. The Inspector-General has unfettered access to all information on operations, including classified information. The IGIS doesn't report to the public, and this may give a perception of less oversight, but the IGIS does report to government.

The thrice-yearly Senate estimates process is the locus of accountability in the Australian system. For all its faults—and there is no doubt that they have become quite politicised—estimates hearings provide senators with the opportunity to vigorously question executive officials and officers. The fact that any senator can ask questions and that the estimates process occurs three times a year is impressive. It is an incredible accountability mechanism. The role of smaller parties to use their votes in the Senate to propose committee references, particularly in the defence realm, should not be overlooked. One area that escapes parliament's systematic attention is the foreign aid budget. Another area is capability planning within the Department of Defence. Perhaps they could become part of the regular work program of the Senate Foreign Affairs, Defence and Trade Committee.

To conclude, the role of the parliament as a forum for discussing national security, investigating new and significant policy challenges and overseeing executive authority, particularly in relation to intelligence activities, has grown significantly. That growth has been reflected in the steady but rather piecemeal expansion of the parliamentary committee system, which now covers all areas of national security policy. If anything, the process has been evolutionary as parliament has rather carefully and cautiously tested its ability to push the boundaries of its role, sometimes against strong resistance from ministers.

But reform has changed the institutional culture of the parliament. It has legitimised parliament's role as an increasingly important partner of the executive in the conduct of Australia's national security policy. There is undoubtedly room for further expansion of this role, as I have pointed out. Enhancing parliament's role in national security would reinforce executive accountability, expand public access to policy processes, improve the quality of public debate about national security and strengthen our democratic foundations. Our parliamentarians should move the needle in the direction of change to improve and strengthen the management of our national security policy in an era of growing complexity and challenge.

Question — I was very intrigued by your proposition that decisions to go to war are most carefully considered and I'd like to test that against the decision to invade Iraq in 2003. We had the Flood inquiry into intelligence, which established a lot of failures, but we haven't had an inquiry into the decision-making process, like the Chilcot inquiry in the UK. I think it is widely understood that when the archives are eventually thrown open and academics feverishly look for cabinet submissions, policy papers and so on they will actually find nothing. Secondly, you referred to the UK current practice and Prime Minister Cameron's respect for the resolution of the House of Commons in relation to Syria. It is my understanding that most European countries also have provisions requiring parliamentary approval for going to war—I think Ireland, France, Austria, Sweden, the Netherlands require parliamentary approval. Have they all got it wrong or why should Australia be different?

Anthony Bergin — On the decision-making around the commitment to go to war in Iraq—we haven't had a formal inquiry in Australia like the Chilcot inquiry, that is absolutely true—I think until we actually know the processes of decision-making we won't be able to come up with a formal judgement about whether all the different arguments were considered. At the moment the official history of our involvement in the Iraq War is being written so we will know more in time. At the time, I supported the war decision, but in the light of further information I think I wouldn't have supported it. I think what you are saying is that until we conduct a comprehensive examination of the whole way in which that decision was conducted, it is difficult to say that all circumstances and the way it evolved were factored into the decision-making.

On the point that you've raised about overseas examples, where parliament gets to vote or gets some involvement—and obviously the United States is very important here in terms of their model—I am speaking in the Australian context. You asked are all the others wrong. I think you have to look at the circumstances of each particular country. I am not going to repeat all the arguments I set out at length in the talk, but I believe it is a bridge too far, however I also think the parliament can do more. For example, I thought it was quite stunning that the Australian parliament did not have a debate on Afghanistan in 2010. Amazing when you think about the length of time we were involved in that war before there was any parliamentary discussion. Parliament can certainly play a much greater role. I find it disappointing, for example, that the parliament has spent much more time looking at the politics of commemorating wars of one hundred years ago than at our involvement in wars right now. So I absolutely concur with you that we should be doing more but let's look at the Australian case rather than saying because they do it overseas we have got to follow them.

Question — I'm Sue Wareham from Australians for War Power Reform. You argued against both houses having to vote before a deployment to international armed conflict. One of the arguments against both houses having a vote is that it could prevent the country from going to war when it is actually required, but the only situation in which that would occur is if the government could not convince the opposition that we need to go to war. Now if the opposition is not convinced that there is a good case for going to war, then one could say there is probably not a good case for war. Can you comment on that?

You also mentioned that a need for a vote in both houses could delay a deployment when we need speed, but one of the points made by the President of Australians for War Power Reform, Paul Barratt, is that our forces are generally not kept in a high state of readiness and there is always delay in any event.

In referring to ANZUS, I thought you were saying Australia goes to war every time the United States goes to war and the ANZUS treaty compels it to be that way. Many people would argue that the ANZUS treaty does not actually say that Australia needs to go to war whenever the US does and the fact that we do is seen by many people in this country as a big, big problem.

Anthony Bergin — On the role of the opposition, the point that I was making was that if you include the entire parliament then you are also talking about the Senate, and the new normal in Australian politics is that we are going to have micro parties represented on a continuing basis in the Senate, so it is definitely not just the role of the opposition.

On the issue of readiness and my point that certain circumstances may require quick decisions, for a start I'm not sure that Mr Barratt would have access to the readiness levels of the ADF. My point is that there are circumstances where governments need to make decisions in a timely manner and locking that into parliamentary debate and procedures could potentially not serve the national interest. The other point I would make is that whenever I've seen these arguments about war powers for the parliament, it is not clear what exactly the factual circumstances are. For example, would our deployment to Timor have required a parliamentary vote even though originally it was a stabilisation mission? The factual circumstances of where and how our military are deployed now are very varied. It is not as simple as Senator Xenophon's distinction between wars of choice and wars of necessity.

The final question you asked about ANZUS—the answer to your question is no, of course we are not automatically obliged to go to the assistance of the US under any circumstances involving conflict. But countries don't enter into treaties that require

some form of collective self-defence unless they think they will act on it. Now you are right, it is not automatic, it is up to the individual country, but you don't enter into those sorts of treaties unless you are prepared to very seriously consider the option of joining a conflict.

Question — I was wondering if there is an in-between option where the cabinet votes to decide if we go to war, rather than it being up to the Prime Minister and the parliament. I understand there is a body within the government—the national security committee—which includes the Attorney-General, the Minister for Defence, the Minister for Foreign Affairs, the Deputy Prime Minister and the Prime Minister, who all get regular, top-secret security briefings and updates. There could be a body within the cabinet or within the government that is very well-informed and which meets to take a vote as opposed to putting it to the whole parliament.

Anthony Bergin — That is what happens now—the national security committee of the cabinet is already involved in those executive decisions about deployment, or am I missing the point you are making?

Question — My understanding is that Bob Hawke committed us to the first Gulf War without calling the cabinet together and consulting them. My reading of the situation is that that doesn't necessarily happen and I am suggesting it could be made a requirement.

Anthony Bergin — I think it would almost be unheard of if a prime minister did not try to leverage the national security committee of cabinet in a decision about troop deployments. It happens as a matter of course. I take your example of Bob Hawke. I don't know in the Gulf War whether he actually drew in the cabinet—I'd be surprised if he didn't talk to the foreign affairs and defence ministers. I believe, as a formality, the national security committee of the cabinet would be convened to consider those sorts of executive decisions.

Question — I agree with your point that the bipartisanship in Australian politics on national security issues doesn't really lend itself to having a good discussion on these issues, so could you expand on why this is the case? Why do we have such bipartisanship?

Anthony Bergin — I think the answer is that parliamentarians believe that if they are seen to be rocking the boat on a security issue they are somehow perceived as disloyal, that public safety is far too important to be left to politics. I have noticed, for example, that when parliamentarians have come out with a different view, let's say on South China Sea policy, they are often criticised in the media for taking a different

position to their party. I think the emphasis on trying to seek consensus has had a retrograde effect. On the one hand it is good to have policy continuity, but if senators and members are drawn too much into an artificially constructed consensus on national security it actually doesn't help advance public debate. In a way it is telling parliamentarians to do what they are supposed to be doing—to argue, debate, discuss and so forth. As I said, it is curious that we have spent more time in the parliament discussing issues to do with commemorating battles from one hundred years ago than we have on some of our current conflicts. I would like parliament not to throw away bipartisanship but certainly to be much more willing to test an argument when it comes to national security. I think that is only healthy. It is an unfortunate trend, as your question implies, that parliamentarians are constrained by not wanting to be seen to rock the boat or as disloyal to the national interest if they question defence policy or counterterrorism settings. I think debate is healthy, as you are suggesting.

Question — The power of the parliament is considerable when you think about the budget processes. Everything you have said is perfectly right but it goes much deeper and outside the typical national security committee environment and national security questions because it goes right to the resourcing issues which parliament is well and truly in control of.

Anthony Bergin — One healthy debate that the Australian parliament had was about the adequacy of defence spending and whether we should aim for two per cent and so forth. There was one recent defence white paper that promised a lot and then within two weeks the money wasn't there and that prompted a lot of parliamentary discussion about the adequacy of defence budgets, which goes to your resourcing question. Again tying it to the previous question, have we got too much consensus, I think your point—are we adequately resourcing our military, our policing agencies, our intelligence agencies—that is a debate that doesn't often get heard in the parliament. I agree it is an important area where there should be debate and scrutiny.

Between Law and Convention: Ministerial Advisers in the Australian System of Responsible Government[*]

Yee-Fui Ng

It is hard to feel sorry for politicians. Yet it is undeniable that a modern day minister has many different responsibilities, including managing policy, the media and political issues. Ministers also have to mediate with and appease various stakeholders, including constituents and interest groups. Within the political structure they have to work cooperatively with their prime minister, members of parliament and their political party. It is impossible for one person to shoulder all these tasks single-handedly.

Newly elected ministers are faced with a vast and bewildering bureaucracy inherited from the previous government. Although the public service is supposed to be impartial, ministers may not be willing to trust the bureaucracy when a few moments ago it was serving their opponents. Understandably, ministers have the desire to have partisan advisers whom they trust to advise them. This has led to the rise of the ministerial adviser.

Ministerial advisers are personally appointed by ministers and work out of the ministers' private offices. In the last 40 years, ministerial advisers have become an integral part of the political landscape. It all started with the informal 'kitchen cabinets', where a small group of the minister's trusted friends and advisers gathered around the kitchen table to discuss political strategies. This has since become formalised and institutionalised into the role of the partisan ministerial adviser as distinct from the impartial public service. The number of Commonwealth ministerial staff increased from 155 in 1972 to 423 in 2015—an increase of 173 per cent.

Ministerial advisers undertake a wide range of functions. Tony Nutt, a former ministerial adviser, stated that:

> a ministerial adviser deals with the press; a ministerial adviser handles the politics. A ministerial adviser talks to the union. All of that happens every day of the week, everywhere in Australia all the time…including, frankly,

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[*] This paper was presented as a lecture in the Senate Occasional Lecture Series at Parliament House, Canberra, on 21 July 2017. The lecture draws from material in Yee-Fui Ng's book *Ministerial Advisers in Australia: The Modern Legal Context,* Federation Press, Annandale, NSW, 2016.

the odd bit of, you know, ancient Spanish practices and a bit of bastardry on the way through. That's all the nature of politics.[1]

In my research, I interviewed 22 current and former ministers and members of parliament, including four former premiers, two former treasurers, five former senior ministers, one leader of the Australian Greens and two former Speakers of the House of Representatives.

A strong theme that comes through the interviews is that ministerial advisers are extremely influential. The interviewees stated that some ministerial advisers, such as the chief of staff of the Prime Minister and very senior ministers, were more powerful than many ministers and members of parliament. Former Deputy Premier of Victoria John Thwaites stated that:

> Often the ministerial advisers you find in the prime minister and premier's office are as powerful, or more powerful, than some ministers. The head of the media unit, the chief of staff and maybe one or two advisers in the prime minister's and premier's office are more powerful, have more influence on the decision-making in most cases than certainly junior ministers and more than most ministers.[2]

Some ministerial advisers are also given significant discretion to speak on their minister's behalf. Beyond this, there is an intimacy that develops between ministers and their advisers due to the high pressure political environment and long working hours involved in a minister's office. Former federal minister Lindsay Tanner said that:

> There is an intimacy in a ministerial office. People work ridiculous hours. You are living in each other's pockets. It is a relatively small area. You are under intense pressure. So the perceived power of ministerial advisers, some of it just arises from that intimacy. And by definition you have access, and you're talking about the weather or the football. So there's a trust or there's a bond. And there's a much more fertile ground for those kind of exchanges than someone who's coming to see you every two days.[3]

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[1]   James Campbell, 'Tony Nutt told police minister Peter Ryan "to put a sock in it", *Herald Sun*, 4 March 2013, www.heraldsun.com.au/news/victoria/tony-nutt-told-police-minister-peter-ryan-to-put-a-sock-in-it/news-story/d3e0f283571b2a55a107c387a90f13a6.
[2]   Interview with John Thwaites, Melbourne, 6 May 2014.
[3]   Interview with Lindsay Tanner, Melbourne, 5 March 2014.

Former Victorian Premier Steve Bracks said that ministers may see their advisers more than they see their partner.[4] This creates a relationship forged in fire—leading to intimacy, trust and confidence between ministers and their advisers.

Peta Credlin, chief of staff to former Prime Minister Tony Abbott, is a notable example of a formidable ministerial adviser who was widely regarded as one of the most powerful figures in Australian politics. The *Australian Women's Weekly* 2015 Power List rated her as Australia's most powerful woman and she was ranked as number one in *Business Review Weekly's* Spinners and Advisers Power Index. There were frequent media reports about Credlin giving directions to and berating ministers and members of parliament. Credlin also sat in on cabinet meetings and vetted ministers' staff selection and media appearances, to their consternation. As a Liberal party insider stated, 'She's tough, she's a player, she makes demands, she gives directions, she bawls people out'.[5] Credlin undoubtedly had a lot more power and influence than most ministers. The star of ministerial advisers has well and truly risen.

At the same time, there is a reduction in the influence of public servants relative to ministerial advisers. For instance, former Prime Minister Kevin Rudd would ignore his department for months at a time and essentially froze the secretary of his department out.[6] Consequently, ministerial advisers became his primary source of advice. But perhaps the reduction of public service influence is best illustrated by a story told by one of the interviewees. He was at the opening of Monash Suzhou (Southeast University–Monash University Joint Graduate School), which was attended by the Victorian Premier, the Premier's chief of staff and the departmental secretary. There was one chair in the front row for the departmental secretary, but not the chief of staff. The chief of staff said to the departmental secretary 'move over', and the secretary moved. The chief of staff sat in the front row.

So the locus of power has shifted from public servants to ministerial advisers. As a consequence there has been a significant change in the structure of the executive due to the addition of ministerial advisers as an extra layer between ministers and public servants. However, ministers and public servants are subject to elaborate administrative law accountability frameworks, while ministerial advisers operate in a fluid, largely unregulated universe.

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[4]   Interview with Steve Bracks, Melbourne, 12 March 2014.

[5]   Matthew Knott, 'The Power Index: Spinners, the Most Powerful is…Peta Credlin', *Crikey*, 23 February 2012, www.crikey.com.au/2012/02/24/the-power-index-spinners-the-most-powerful-is-peta-credlin.

[6]   Paul Kelly, *Triumph and Demise: the Broken Promise of a Labor Generation*, Melbourne University Press, Carlton, Victoria, 2014, ch. 5.

The insertion of ministerial advisers into the executive can be seen as a 'new public management' imperative to increase the responsiveness of the public service to the elected politicians. Former Prime Minister Paul Keating noted that the public service reforms of the 1980s were intended to bolster the position of ministers compared to public servants, as well as to increase the responsiveness of the public service.[7] Former minister David Kemp said that the intent of the ministerial staff system was to counter the impact of the 'imperial public service' which was not elected and had 'an excessive influence on government and was not under the control of the elected government'.[8] This shows that the motivation for the introduction of the ministerial adviser system was to directly counteract the influence of the public service on the minister, as well as to enhance the efficiency of the system.

However, I argue that the rise of ministerial advisers shows the triumph of efficiency over accountability. This is particularly clear in terms of the appearance of ministerial advisers before parliamentary committees. In a couple of incidents, ministerial advisers have been banned from appearing before parliamentary committees on the basis that there is a constitutional convention that they do not appear. This happened in the 'children overboard' incident at the Commonwealth level and the 'Hotel Windsor' incident at the Victorian level.

In the 'children overboard' incident in 2001, the Prime Minister claimed that an asylum seeker boat was exceptional—the passengers had thrown their own children overboard. Within a few days several public servants found out that the children overboard story was false. They notified a ministerial adviser for the defence minister about this. Nonetheless, over the following weeks, and in the midst of an election campaign, ministers continued to make public statements about asylum seekers throwing children overboard. When pressed for evidence, the press secretary of the defence minister asked a public servant to email two photographs to him. The photos were actually of two brave navy sailors who rescued terrified asylum seekers and their children in the open sea when their boat sank. The press secretary was informed soon after that the photos were not of children being thrown overboard but of the rescue operation. The ministers released these photographs to the media as evidence of children being thrown overboard. Even after being made aware that the photos were misleading, the ministers did not correct the public record.

A Senate committee was formed to investigate the 'children overboard' incident. The government refused to allow ministerial advisers to appear before the Senate committee, claiming there was a constitutional convention that ministerial advisers do

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[7] Paul Keating, 'Performance and accountability in the public service: a statement by the Prime Minister', speech delivered at Parliament House, Canberra, 1 July 1993.
[8] Interview with David Kemp, Melbourne, 17 March 2014.

not appear before Commonwealth parliamentary committees. The Senate committee was highly critical of this, stating that '[s]uch bans and refusals are anathema to accountability'.[9]

At a state level, Peta Duke, a media adviser to the Victorian Minister for Planning, had a bad day in 2010. She accidentally sent an email to a journalist at the ABC instead of her manager. The email contained the minister's media plan, which stated that the minister's office intended to run a sham public consultation for the $260 million redevelopment of the iconic Hotel Windsor. In an interview, the minister denied any knowledge of the media plan or strategy. The minister said that 'Ms Duke used inappropriate language and poetic licence in a speculative document'.[10]

The Legislative Council Standing Committee on Finance and Public Administration created an inquiry into the Hotel Windsor redevelopment planning process. The Victorian Attorney-General refused to allow ministerial advisers to appear before the parliamentary committee, claiming there was a constitutional convention that prevented ministerial advisers from appearing before parliamentary committees. The parliamentary committee concluded that its investigations were 'significantly hindered as a result of the Attorney-General's interference'.[11]

The 'children overboard' and 'Hotel Windsor' incidents highlight a method that ministers can use to effectively evade their responsibility to parliament. First, they refuse to appear before upper house committees on the basis that they have an immunity from being summoned by the other house of parliament. They then blame ministerial advisers for certain actions or inactions and distance themselves from the actions of their advisers. Following this, they bar their advisers from appearing before parliamentary committees or making other public appearances. In this way both the ministers and ministerial advisers do not appear before the upper house committee to provide an explanation, accept a sanction or to provide rectification. Thus, all facets of accountability are undermined, from explanatory accountability (where the minister explains their actions) to the minister accepting any sanction for their behaviour and undertaking remedial action to rectify the issues.

If both ministers and ministerial advisers do not appear before parliamentary committees, ministers are able to effectively escape scrutiny for their actions and deny

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[9] Senate Select Committee on a Certain Maritime Incident, *Select Committee on A Certain Maritime Incident Report*, 23 October 2002, p. xxxiv.

[10] Ombudsman Victoria, *Ombudsman Investigation into the Probity of the Hotel Windsor Redevelopment*, February 2011, p. 97.

[11] Legislative Council Standing Committee on Finance and Public Administration, *Inquiry into Victorian Government Decision Making, Consultation and Approval Processes*, Second interim report, August 2010, p. 18.

responsibility for controversial events or policies. This creates an accountability gap where no one takes explanatory or amendatory responsibility for public controversies and scandals. Consequently, the basic tenet of responsible government which seeks to ensure executive accountability is undermined. This is a failure at a systemic level, where ministers are able to utilise ministerial advisers to avoid their own responsibility to parliament.

In terms of the law, parliament has very strong powers to summon witnesses to appear before parliamentary committees. Section 49 of the Australian Constitution imports the powers and privileges of the United Kingdom House of Commons as they existed in 1901. This includes the power to compel the attendance of witnesses, arrest those who do not comply and compel those witnesses to answer their questions. This was preserved by the Commonwealth *Parliamentary Privileges Act 1987*, which was passed as a form of partial 'declaration' of the powers, privileges and immunities of parliament.

Generally, Commonwealth parliamentary committees are given the power to call for witnesses and documents. However, the source of their powers differs based on the committee. Standing and select committees derive their powers from standing orders or resolutions of the house, while committees established under statute have the powers to call for witnesses and documents provided by statute.

So it is clear that the Commonwealth houses of parliament and parliamentary committees have the power to order the appearance of persons and the production of documents. Where a person does not attend a parliamentary committee, despite an order by the committee, the committee cannot punish the individual directly but must report the matter to the house. The house can then punish for contempt those who do not comply with their orders. Section 7 of the *Parliamentary Privileges Act 1987* provides the Commonwealth houses of parliament with the power to impose punishment for contempt, including imprisoning a person for six months or imposing a fine of $5000 for an individual or $25,000 for a corporation.[12]

So here we have a disjuncture between law and politics—where the legal position is clear that parliament has the power to summon ministerial advisers to appear before parliamentary committees, while there is a political or constitutional convention claimed that ministerial advisers do not appear before parliamentary committees. My research tells yet another story about the existence of a constitutional convention regarding ministerial advisers appearing before parliamentary committees. Constitutional conventions are quite mysterious creatures. There is no general

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[12] *Parliamentary Privileges Act* 1987, section 7 (1), www.legislation.gov.au/Details/C2016C00951.

consensus on when a constitutional convention arises or the essential features of a convention. However, there are a few features that are said to characterise constitutional conventions. These are that conventions are not law, political participants believe the conventional rule is binding, and arguably the conventions have a reason.

I have conducted interviews with current and former ministers and members of parliament about their beliefs on whether there is a constitutional convention that ministerial advisers do not appear before parliamentary committees. The literature shows that the belief of political participants is an essential element in constitutional conventions being formed.

From my interviews, all nine Commonwealth politicians did not believe that a convention had been formed that ministerial advisers could not appear before parliamentary committees in all circumstances. Two political participants believed that there was a convention that ministerial advisers could appear voluntarily or in exceptional circumstances. Former ministers Kim Carr and Peter Costello objected to ministerial advisers appearing before parliamentary committees on the basis that it allows ministers to evade their own accountability to parliament by allowing the adviser to take the blame for controversies.[13] For example, Peter Costello was concerned that ministers would seek to shift blame to their advisers. He said, 'To me, it would look very weak if you sent your advisers in to take the rap for you'.[14] However, Carr and Costello agreed that advisers could appear voluntarily or under summons in exceptional circumstances.[15]

A majority of the participants (6) believed that there was no binding constitutional convention preventing ministerial advisers from appearing before parliamentary committees. Two participants explicitly denied that there was a convention. For instance, Anna Burke, former Speaker of the House of Representatives, disagreed that there was a convention that ministerial advisers do not appear before parliamentary committees. Burke argued that ministerial advisers should appear before parliamentary committees in certain circumstances, including when they had provided policy advice in the context of an issue or event, such as the 'Hotel Windsor' incident, or when there was a conflict of interest or corruption involved, on the grounds that public servants appear before committees on such issues. Conversely, she thought that advice by ministerial advisers on media strategy, such as whether the prime minister should 'wear powder blue ties', did not need to be disclosed. Burke stated that ministerial advisers should have appeared in the 'children

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[13] Interview with Peter Costello, Melbourne, 30 April 2014; Interview with Kim Carr, Melbourne, 11 March 2014.
[14] Ibid.
[15] Ibid.

overboard' and 'Hotel Windsor' incidents as their version of events would have assisted the process and understanding of the outcome.[16]

Most believed that the precedent of the 'children overboard' incident was not binding and they could change their position in the future. Two participants took a very cynical view towards conventions generally. For instance, a former senior Liberal minister stated that 'conventions are only practised until they are broken'.[17] Similarly, former minister Lindsay Tanner stated that:

> Conventions can be in the eye of the beholder and do not survive a brutal assault driven by political reasons…On an issue of this kind, people will tend to do whatever suits their short-term political interest and try to dress them up as some kind of vaguely credible precedent. But in truth, and what you'll probably find, is that various parties will adopt contradictory positions, depending on whether or not they are in government or opposition.[18]

At the Victorian level, except for one political actor, all interviewees rejected the existence of a constitutional convention. John Brumby, who was Victorian Premier at the time of the 'Hotel Windsor' incident, stated that he believed that there was a 'long-standing convention' that ministerial advisers are not called and do not appear before parliamentary committees. He said:

> At the end of the day you've got to have some limits on who you call. Is it your personal staff? Is it your executive assistant? Is it your partner? At the end of the day it is the minister who is responsible.[19]

It is clearly correct that it is necessary to draw the line about who should be called before parliamentary committees. However, the difference between ministerial advisers appearing before parliamentary committees and a minister's partner is that ministerial advisers exercise significant public functions and may be able to shed light on issues discussed by parliamentary committees.

Ten other Victorian political participants did not feel bound by a constitutional convention that ministerial advisers do not appear before parliamentary committees. Rather, when they are in opposition, they would feel free to change their position on the issue. The general consensus from the Victorian interviews is that, at the very least, ministerial advisers should appear where they are acting independently, but not

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16 Interview with Anna Burke, Melbourne, 29 April 2014.
17 Interview with former senior Commonwealth Liberal minister, 15 April 2014.
18 Tanner, op. cit.
19 Interview with John Brumby, Melbourne, 19 June 2014.

be required to speak on policy. For example, former Victorian Premier Steve Bracks said:

> I don't think there is any such constitutional convention: number one. Number two, it's a matter of practice, and my view is that if a minister is required to attend you should use the same test for an adviser attending. They are one and the same.[20]

On that basis, Bracks thought that ministerial advisers should have appeared before parliamentary committees in the 'children overboard' and 'Hotel Windsor' incidents.

Former Victorian Premier John Cain thought that ministerial advisers should appear before parliamentary committees where their functions intrude into government bureaucratic processes, such as when they comment upon advice to the minister. However, where ministerial advisers are advising on political, factional or intra-party issues, Cain thought it was not appropriate for them to appear before parliamentary committees. He stated that the refusal to allow ministerial advisers, who have provided public policy advice, to appear before parliamentary committees was self-serving for the minister of the day.[21]

Greg Barber, Leader of the Victorian Greens party, who was a member of the parliamentary committee that inquired into the 'Hotel Windsor' incident, stated that:

> What we have here is not so much a convention, we have a straight out agreement between Labor and Liberal that neither of them wants to upset the apple cart. None of them want to bring ministerial advisers into a formal system. They like them out there in the never-never world.[22]

Therefore, based on the interviews, the conventional requirement that the rule be considered binding by political participants is not satisfied at the Commonwealth and Victorian levels. There is thus no constitutional convention that ministerial advisers are prevented from appearing before parliamentary committees.

Besides the beliefs of political participants, another element required to form a constitutional convention is arguably that the convention has a reason. There is disagreement amongst commentators about the importance of the requirement of a reason and the type of reason that is required. The weight of the literature, however,

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[20] Bracks, op. cit.
[21] Interview with John Cain, Melbourne, 8 December 2014.
[22] Interview with Greg Barber, Melbourne, 13 March 2014.

indicates that reasons for a convention should be consistent with fundamental democratic principles.

The reason ministerial advisers are prohibited from appearing before parliamentary committees is purportedly to fulfil the requirements of responsible government. The argument advanced is that ministerial advisers are accountable to their minister personally, while the ministers are accountable to parliament. This rationale has been called the 'McMullan principle' after statements made by former federal parliamentarian Bob McMullan to this effect. Nevertheless, even McMullan, to whom the alleged convention has been attributed, has since clarified that there should not be an accountability gap where both ministers and advisers escape accountability. He said:

> There is a long-standing principle which I have articulated—in fact, to my embarrassment, I saw it reported in one place as the 'McMullan principle'—which says, 'Staff are responsible to ministers. Ministers are responsible to the parliament'. In the normal course, that is correct, but that means you have to accept responsibility for what your staff do. You cannot say, 'They're responsible to me but I do not care what they do; I am not going to tell you what they do. If they make a mistake, it is nobody's business'. Then there is a black hole of accountability because they deal with the departments. They give instructions, they receive directions…either ministers have to accept responsibility for what their staff do or staff have to be accountable. It cannot be that nobody is accountable.[23]

In addition, the so-called McMullan principle is weak as public servants are similarly accountable to their minister, who is then linked by the chain of accountability to parliament. Unlike ministerial advisers, public servants routinely appear before parliamentary committees. Their presence is to give an *account* of their actions to parliament, while *responsibility* for their actions falls on their minister, who may be censured in parliament. The appearance of ministerial advisers before parliamentary committees would be to perform a similar function.

Further, preventing ministerial advisers from appearing before parliamentary committees does not seem to closely embody the principle of responsible government. This is because there are strong incentives for actors within the executive to shift blame where possible. Consistent with 'public choice' theory, politicians have the incentive to deflect all the blame that comes in their direction while accepting the credit for anything that goes right to achieve, what Christopher Hood and Martin

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23 House of Representatives debates, 28 November 2006, p. 180.

Lodge call, 'the political nirvana of a system of executive government in which blame flows downwards in the bureaucracy while credit flows upwards to ministers'.[24] Of course there are exceptions where ministers have personal ethics and integrity, however by and large ministers have the overriding incentive to shift blame to another locus.

I argue, therefore, that there is no legitimate reason to prevent ministerial advisers from appearing before parliamentary committees. Indeed, ministerial advisers have appeared before parliamentary committees in South Australia five times both voluntarily and under summons for controversial issues.[25] For instance, three ministerial advisers appeared under summons before a parliamentary committee about the handling of a case where a school child was sexually abused. There has also been precedent in New South Wales for ministerial advisers appearing before a parliamentary committee both voluntarily and under summons.

In Western Australia, ministerial advisers appear before parliamentary committees as an uncontested matter both to provide details about legislative bills and in situations of controversy, including in relation to the government's decision to close the Swan Valley Aboriginal community following incidents of child abuse and family violence. Geoff Gallop, a former Western Australian Premier, stated that he strongly believed that ministerial advisers should appear before committees. He said:

> They have to appear before parliamentary committees. You can't have a minister saying, 'I'll take responsibility' and appear before committees and then be in a position to say, 'oh well, I didn't know anything about that because I wasn't told', without having any ministerial advisers being asked the same questions. I think it's rather silly. I think it creates an accountability gap that has to be filled. Ministerial advisers are an important part of the system. And in that sense, I think that they are accountable the same way as ministers are accountable—to the public interest. And the public interest is protected by the parliament, and when parliament inquires into something, they should get all the evidence that they need…It's never been an issue in Western Australia, they had to appear and they did.[26]

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[24] Christopher Hood and Martin Lodge, *The Politics of Public Service Bargains: Reward, Competency, Loyalty—and Blame*, Oxford University Press, Oxford, 2006, p. 59.

[25] Yee-Fui Ng, 'Dispelling myths about conventions: ministerial advisers and parliamentary committees', *Australian Journal of Political Science*, vol. 51, no. 3, 2016, pp. 512–529.

[26] Interview with Geoff Gallop, 7 March 2014.

There is thus ample precedent for ministerial advisers appearing before parliamentary committees in Australian jurisdictions. This shows that there is no valid reason to prevent ministerial advisers from appearing before parliamentary committees.

Therefore, there is currently a stalemate between the government and parliament about the appearance of ministerial advisers before parliamentary committees. The law is very clear that houses of parliament and parliamentary committees have strong powers to compel witnesses to appear and compel the production of documents. However, the politics of the situation has played out differently. In a few incidents, ministerial advisers have been prevented from appearing before parliamentary committees on the basis that there is a constitutional convention that they do not appear. The empirical research I have conducted demonstrates that political participants do not regard themselves as bound by any rules about ministerial advisers appearing before parliamentary committees.

In short, ministerial advisers fall in the gap between law and convention. This has happened because there are fractures and fissures in our conceptualisation of the executive—legal, political and managerial.

Our legal understanding of the executive in Australia is permeated with its historical roots from the United Kingdom. The monarch formed the original basis of executive power and there are continuing links as Australia remains a constitutional monarchy. However, over the years, the High Court of Australia has been increasingly keen to assert a uniquely Australian version of the executive and executive power, which is derived from section 61 of the Constitution, rather than the prerogative powers inherited from the United Kingdom.

The Constitution provides a strong framework of executive accountability through parliamentary control of executive spending and judicial review of decisions of officers of the Commonwealth. This means that the Constitution sets up a scheme of watchful supervision and scrutiny of the executive by the other branches of government. The legal controls are generally effective in constraining the decisions of ministerial advisers. However, this form of accountability is limited to a small subset of the actions of ministerial advisers that trespass into the boundaries of exercising executive power.

The political narrative shares the same backbone as the legal narrative through the principles of ministerial responsibility and responsible government. However, the political narrative emphasises the reduced role of parliament due to the strong influence of political parties. The political narrative of the executive is often expressed as a lament by external commentators about the Westminster system being

circumvented by politicians, in conjunction with a cynical manipulation of the concepts of ministerial responsibility and responsible government by politicians towards short-term political ends. This leads to a weak form of accountability where the government and the opposition take differing positions not based on principle but on political expediency. At the same time, each of the major political parties has an incentive not to push too hard on the issue of ministerial advisers. This systemic flaw is shown by ministerial advisers not appearing before parliamentary committees as ministers seek to avoid their own responsibility to parliament and strategically utilise ministerial advisers to evade accountability. This leads to an accountability vacuum.

The managerial account of the executive seeks to enhance the efficiency and effectiveness of the operations of the executive. The focus is on adopting private sector principles to improve the functioning of the executive. Public servants are seen to be 'can do' managers who have to operate in a businesslike way. However, an excessive focus on efficiency can undermine accountability. This is because the executive is not a simple private sector body whose predominant goal is profit maximisation. Rather, the executive has a range of additional responsibilities in addition to efficiency, such as the requirements of accountability, transparency and procedural fairness.

Therefore there are fractures and fissures in the way that we conceptualise the executive in Australia. The legal, political and managerial narratives have different underlying values and there is currently no coherent way of resolving clashes between these different values. The disjuncture between the legal, political and managerial narratives leads to systemic failures of accountability.

To sum up, there are failings at an institutional level in the Australian system of public administration. This has been exacerbated by the rise of ministerial advisers in the Australian system of government, the manipulative behaviour of politicians, and the unreflective adoption of the 'new public management' efficiency approach. So here we are, caught between law and convention, continuity and change.

Question — I think a dilemma that faces many public servants is when a ministerial adviser rings a public servant and says the minister wants you to do 'x' and the public servant is very uncomfortable with whatever the task is because it may not be appropriate, it may not even be legal. It is very much a grey area and I was wondering if you could comment on that— because you've talked about people like Ms Credlin wielding enormous power and I think in the modern Commonwealth, ministerial advisors are the people who most public servants will deal with. Can you also comment on what your research has found about cases where the requests from the minister's office might be inappropriate?

Yee-Fui Ng — That is a great question. I am a former public servant and experienced similar things. So the constitutional theory is that the minister and their advisers are one and the same—the advisor is the alter ego of the minister and therefore everything the advisor says reflects what the minister actually asked the advisor to do. In reality what you find is that advisers, because they been very influential and their numbers have grown, often act independently of the minister. One of the roles they take is to filter advice that comes to the minster. So sometimes they are acting without the minister's consent or knowledge but it is hard for a public servant to recognise when this is the case, when certain advice has been authorised by the minister and when it hasn't. I think that has caused a lot of problems—that interface between the public service and advisers. Some jurisdictions, such as Western Australia, have guidelines on how public servants and ministerial advisers should interact with each other and the boundaries and what happens if a public servant is not sure whether the advice really does come from the minister or not. That might be a good way to resolve such issues.

Question — I wonder if you have any comments on the relative power of ministerial advisers in Australia compared to other countries around the world with similar political systems.

Yee-Fui Ng — That is actually the subject of my second book which I am desperately writing at the moment. Right now I am looking comparatively at advisers in Australia, the United Kingdom, Canada and New Zealand. We can see across the Westminster system an increase in the power of advisers overall, the numbers of advisers and the influence of the advisers and the type of the roles they perform—they started with purely administrative roles and moved into public policy and media roles—has become very entrenched in all of these countries. The power and influence of these advisers has grown in the Westminster system, which might suggest there is something that minsters are not getting from public servants in these systems so that they look to alternative sources of advice. But the accountability frameworks in all of these systems are quite different. In the United Kingdom and Canada they are more

highly regulated. In the UK there is a cap of two advisers per minister and in Canada there is a whole bunch of legislation that regulates lobbying, conflict of interest and so forth. In Australia we have a lot of advisers but we are less worried about them for some reason. If you look overseas there is a more concern about the roles of these advisers and the implications for our democracy.

Question — In the other Westminster systems you have looked at, are advisers required to appear before parliamentary committees?

Yee-Fui Ng — In some jurisdictions there has been a struggle as well. In Canada in 2010, the government said there is a new policy where advisers don't appear before parliamentary committees but even after that an adviser still appeared before a parliamentary committee there. In the UK they have taken a more principled approach so there are guidelines about public servants appearing before parliamentary committees called the Osmotherly rules. They changed the Osmotherly rules in 2005 to say that when the parliamentary committee specifically calls for any person, including special advisers—their version of ministerial advisers—that named person is presumed to appear and if the minister chooses to appear in that person's stead that is okay as well. This means that somebody appears before the parliamentary committee. Before this rule some advisers refused to appear. Since that rule very major, very powerful advisers have appeared before committees, including to comment on the Iraq War and other major issues. So that has definitely created a change in the practice. An adviser has appeared before a parliamentary committee in New Zealand and there has been no issue.

Question — You referred to a conflict between the committee's ability to summons people and parliamentary convention. Was it never tested in court? When the parliamentary convention argument was put up did they no longer try to summons the person? I can't understand why it wasn't challenged.

Yee-Fui Ng — In the children overboard incident the parliament eventually backed down and didn't issue a summons for the advisor to appear. They didn't go that extra step. In the Hotel Windsor incident they did issue a number of summonses but the government just ignored them and said what are you going to do about that? Nobody brought that matter to the courts. There is a way of bringing the courts into the process which is to enact legislation that says if you are in contempt of parliament, the courts can step in and impose a punishment on anybody who does not comply. This has been done in a couple of states. So that is one option—to bring in the courts by enacting legislation.

| **Trust, Parties and Leaders: Findings from the 1987–2016 Australian Election Study**[*] | *Sarah Cameron and Ian McAllister* |

Monitoring the health of democracy is important in any political system. This can be done most effectively by using large-scale, national public opinion surveys. In addition to monitoring the health of the system, public opinion results are important in providing information to policymakers about how they can improve the effectiveness of the system.

This paper examines three aspects of the health of the Australian political system, namely public opinion towards trust in the institutions of government, views of the political parties, and feelings towards political leaders.

The context to this study is the growing international trends which show increasing public disaffection with established parties and leaders. Most dramatically, this has been manifested in the election of Donald Trump as President in the United States, but it is also apparent in Europe with the election of a party outsider, Emmanuel Macron, as the French President, and in Britain with the Brexit vote. These and other examples demonstrate that there is a strong and growing populist undertone to public opinion.

What is sometimes called an 'anti-politics' populist trend is also apparent in Australia. It has manifested itself in declining public trust in the political process, negative evaluations of political parties, and in declining support for the major political leaders. We examine these trends in Australia using, in some cases, almost 50 years of academic opinion polls.

The data

The evidence for our evaluation of public opinion across these three areas comes mainly from the Australian Election Study (AES), a large-scale national survey conducted after each federal election since 1987. In some cases, we also have comparability with surveys conducted in 1967, 1969 and 1979. This provides us with an unrivalled, almost half a century perspective on changing public opinion towards politics in Australia.


Each survey asked around 250 questions of the respondent, covering such topics as their perceptions of the election campaign, their vote in the election and past voting history, views of the leaders, general political and social attitudes, and their social background. This is easily the most comprehensive survey of political opinion conducted in Australia. Full details of the surveys, the files, and reports can be found at www.australianelectionstudy.org.

Views of democracy

The surveys consistently ask a range of questions which tap into public attitudes towards democracy. We focus on two questions here, satisfaction with democracy and trust in politics.

Satisfaction with democracy is measured by the question—'On the whole, are you very satisfied, fairly satisfied, not very satisfied or not at all satisfied with the way democracy works in Australia?' When this question was asked of the 2818 respondents who answered the 2016 AES, we found that satisfaction with democracy was at its lowest level since shortly after the 1975 dismissal of the Whitlam Labor government. In 2016, just 60 per cent of those interviewed were either 'very' or 'fairly' satisfied with democracy, compared to a high of 86 per cent in 2007 (see Figure 1). This represents a very substantial 26 percentage point decline in satisfaction in less than 10 years.

Figure 1: Satisfaction with democracy
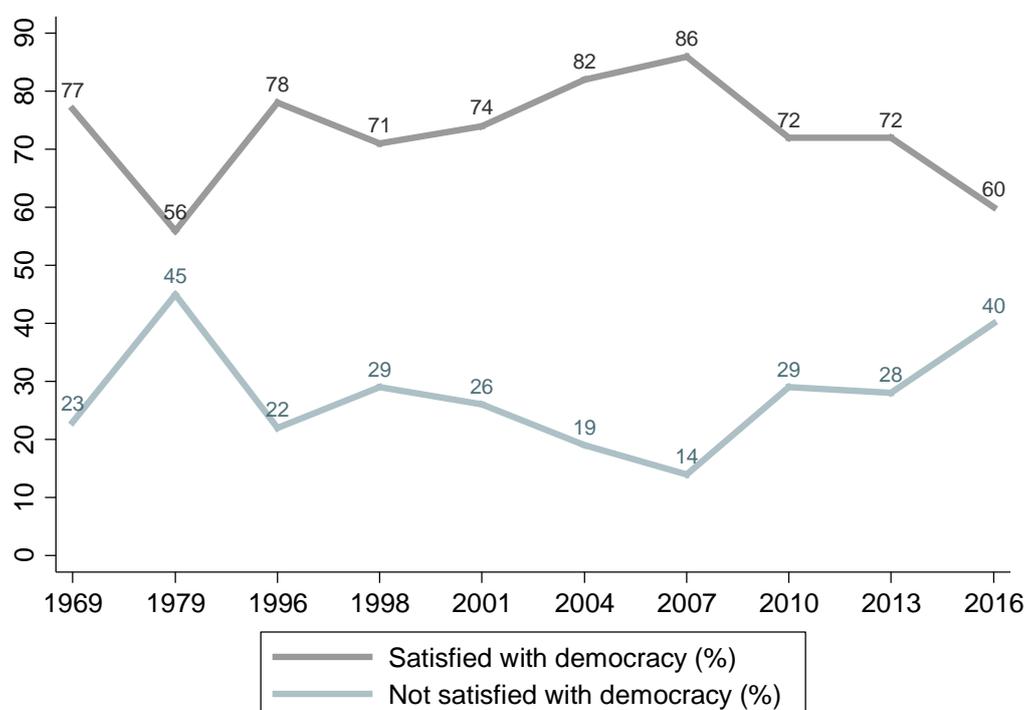
One objection to the satisfaction with democracy measure is that it is simply measuring changes in the electoral fortunes of the parties. The graph shows that there are two peaks in satisfaction—in 1996, when the Howard Liberal government was elected, and in 2007, with the election of the Rudd Labor government. There is certainly some correlation with partisanship in the measure, but we also have other survey evidence, using a different survey and a different methodology, which supports our conclusion that there is declining satisfaction with democracy.

Since 2008, the ANU has also conducted the ANUpoll, a national survey of public opinion conducted several times per year. A question that we consistently ask is 'What do you think is the most important problem facing Australia today?' This is an open-ended question so, unlike the one used in the AES, the respondents have complete freedom to mention a problem which is at the top of their concerns.

The two major problems mentioned by the ANUpoll respondents are the economy/jobs and immigration. However, since 2010 (which broadly corresponds to the election of the Gillard minority Labor government), we have seen the rise of 'better government' as one of the three major concerns of the Australian public (see Figure 2). Indeed, in several of the surveys, 'better government' is ranked second only to the economy/jobs, and in the most recent ANUpoll, conducted in early 2017, 16 per cent of the respondents mentioned 'better government'. This provides important confirmation that there is indeed a widespread concern among the public about how politics is conducted in Australia.

Figure 2: Most important problem facing Australia
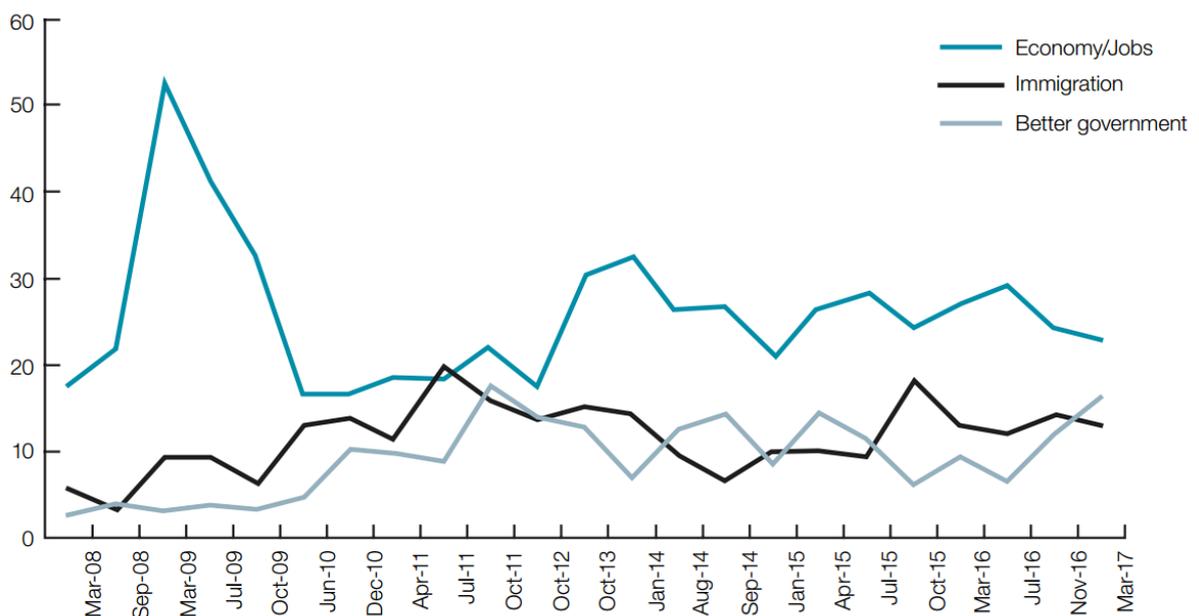
Note: Chart shows responses to the open-ended question: 'What do you think is the most important problem facing Australia today?' Source: ANUpoll on Attitudes to Housing Affordability, March 2017.

Where does this place Australia in the international rankings about public views of democracy? Comparative evidence to address this question can be found in the Comparative Study of Electoral Systems project, of which the AES was a founding member. Placed in a broad comparative perspective, Australia now ranks around the middle of a range of mainly OECD countries, just behind Germany and France and just ahead of Poland and Ireland (see Table 1). However, if we were to insert the high point of 2007 into the table, Australia would have ranked near the top along with the mainly Scandinavian countries.

Table 1: Satisfaction with democracy, international comparisons

1. Norway	93	8. Canada	65	15. Korea	45
2. Switzerland	84	9. France	65	16. Portugal	40
3. United States	80	10. Germany	64	17. Czech Republic	35
4. Sweden	80	11. *Australia*	60	18. Turkey	33
5. Japan	74	12. Poland	55	19. Mexico	29
6. New Zealand	73	13. Ireland	54	20. Slovenia	16
7. Austria	67	14. Israel	54	21. Greece	6

Note: Table shows percentages

The second measure we have to monitor public opinion towards democracy is trust in politicians (see Figure 3). The AES has consistently asked the question—'In general, do you feel that the people in government are too often interested in looking after themselves, or do you feel that they can be trusted to do the right thing nearly all the time'. Once again we have comparisons to surveys conducted before 1987. The patterns show that in 2016 trust was at its lowest level since the question was first asked in 1969. In 2016, no less than three-quarters of the respondents believed that 'people in government look after themselves'.

What explains this declining level of political trust? One argument that has been advanced is that the decline is largely accounted for by the young, and that changing intergenerational norms and values about politics accounts for the decline. There is partial support for this argument from the data. Comparing satisfaction with democracy across the lifecycle, separately for the 2007 and 2016 surveys, shows little lifecycle variation in 2007 but some variations in 2016 (see Figure 4). In 2016, we observe two declines in satisfaction—among those aged in their 30s, and among those aged in their 50s. Each decline has different causes. Among those aged in their 30s, weak economic performance and housing affordability are the main drivers. Among those aged in their 50s, government changes to superannuation and taxation generally are the main drivers.

Figure 3: Trust in politicians
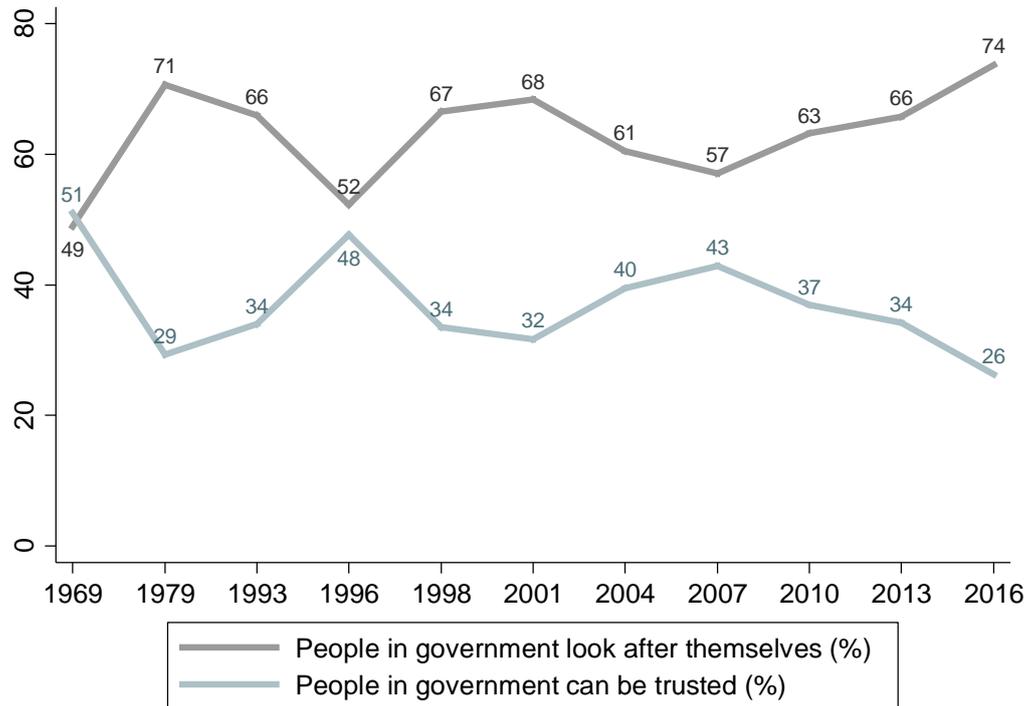
Weak economic performance does, then, appear to be a factor in declining satisfaction with politics. This is reflected in higher levels of economic insecurity registered in the AES, along with a view that governments are unable to influence the economy positively. For example, in 2016, just 19 per cent of the respondents believed that the government would have a positive impact on the economy over the coming year. This compares with almost twice that number in the previous election. Moreover, just 25 per cent of coalition voters believed the government could have a positive impact in 2016, down from 62 per cent in 2013.

In addition to weak economic performance, other factors underpinning declining trust in the system include the rise of the career politician. This is reflected in a view that politicians are unable to keep promises, and by the perception that they are motivated less by public interest than their own personal electoral survival. Also reinforcing this view is the overly partisan nature of political debate. Finally, politicians consistently increase voters' expectations about what they can do if elected to government, and when these expectations are unfulfilled, this increases the public's dissatisfaction with them.

Figure 4: Age and satisfaction with democracy
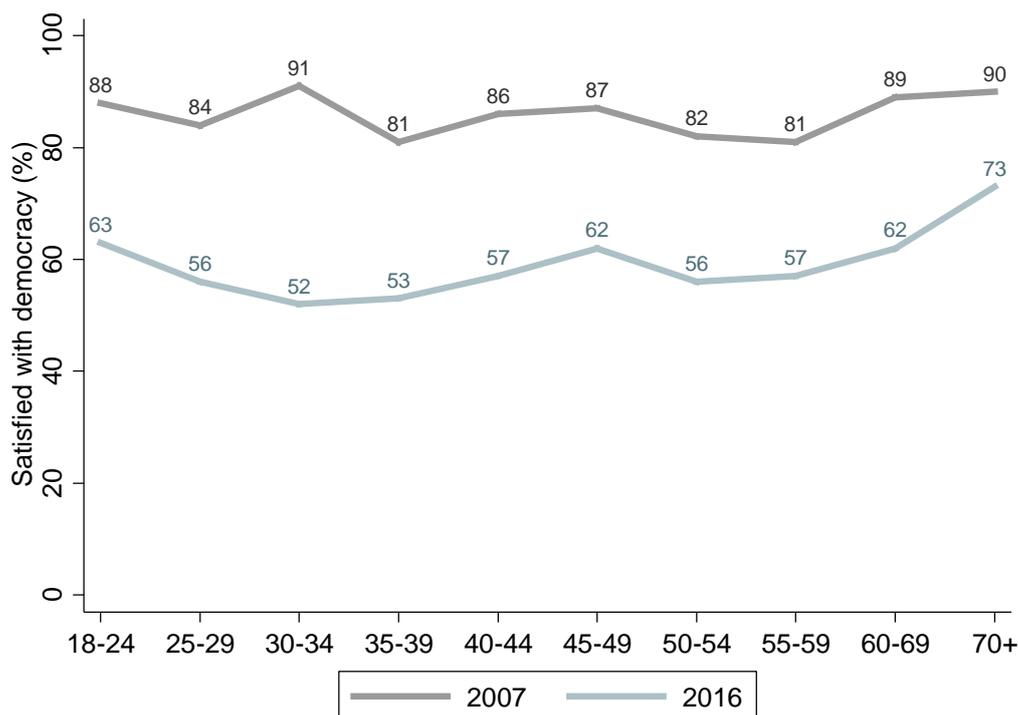
Political parties

In addition to declining trust in the political system, the Australian Election Study highlights significant changes in how voters view and engage with political parties. The survey has asked a number of questions on voters' assessments of the parties— across these measures we see evidence that political partisanship is at its lowest level since the questions were first asked, in some cases going back as far as the 1960s. The data shows that:

- voters like the major parties a good deal less than they have done in the past
- partisanship for the major parties has reached record lows
- fewer voters than ever are using the how-to-vote cards in determining their vote
- the proportion of voters that consistently cast their vote for the same party has declined to its lowest level to date.

A number of charts demonstrate these dynamics over time.

Figure 5 shows the trends in how much voters like the parties on a scale from zero to 10, measured by the question:

We would like to know what you think about each of our political parties. Please rate each party on a scale from 0 to 10, where 0 means you strongly dislike that party and 10 means that you strongly like that party. If you are neutral about a particular party or don't know much about them, you should give them a rating of 5.

The results demonstrate that the popularity of the two major parties have, in recent years, reached their lowest levels since the question was first asked in the early 1990s. Until 2007 the relative popularity of the two major parties fluctuated, however since 2010 there has been a considerable decline across both parties. In the most recent election, for the first time, evaluations of both major parties fell below the halfway point on the scale (Labor: 4.9/10, Liberal: 4.8/10). In particular, the popularity of the Labor Party steeply declined during the years of Labor government from when Kevin Rudd won the election in 2007 to when he lost to Tony Abbott in 2013—amidst the Rudd–Gillard leadership changes and the Labor minority government. The popularity of the Greens has declined over the same period of time, particularly since Bob Brown stepped down as leader in 2012.

**Figure 5: Feelings about political parties**
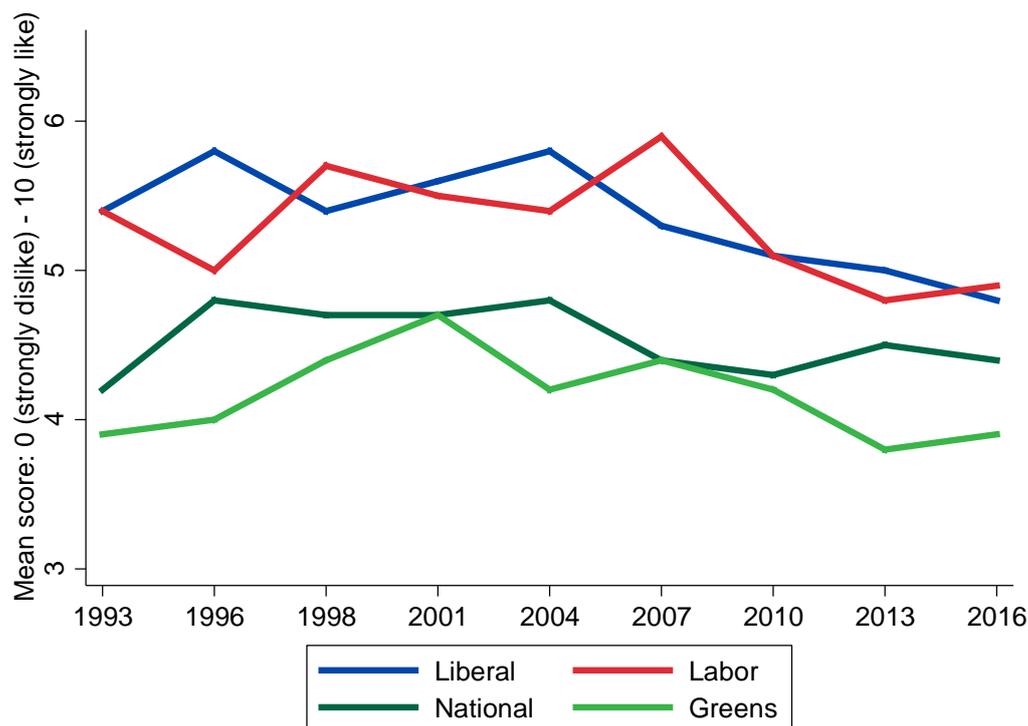
Note: Estimates are means. The scale runs from 0 (strongly dislike party) to 10 (strongly like party) with a designated midpoint of 5 (neither like nor dislike).

The trends in political partisanship over time are shown in Figure 6. The results are based on a question that asks—'Generally speaking, do you usually think of yourself as Liberal, Labor, National or what?' The data reveal a gradual long-term decline in partisanship. For both of the two major parties there are fewer partisans than at any other time in the last 50 years. Around one-third of voters identified with each of the two major parties in 2016 (33 per cent Liberal, 30 per cent Labor). The proportion of Greens' partisans has meanwhile risen over time to 9 per cent in 2016. There is also an increasing proportion of voters who do not align with any party at all (19 per cent in 2016). Overall, these findings indicate that the influence of the major parties is in decline as voters look for alternatives.

Figure 6: Direction of political partisanship
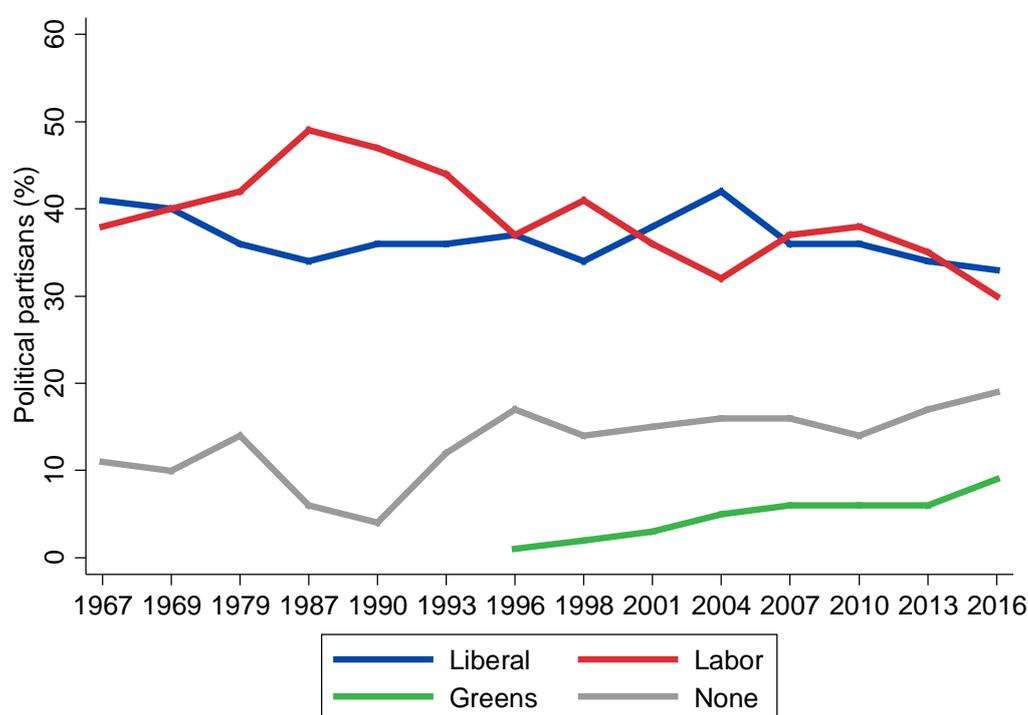
Further evidence of declining partisanship can be found in responses to a question on whether voters always vote for the same party—'Before this current Federal election for the House of Representatives, had you always voted for the same party, or had you sometimes voted for different parties?' In the 1960s, stable voters represented over 70 per cent of the electorate, but by 2016 this had declined to 40 per cent (see Figure 7). Over ten per cent of the decline took place over the last two election cycles. Meanwhile, the proportion of Australians who seriously considered voting for another party during the election campaign has risen over time to 34 per cent, indicating a greater degree of voter volatility.

Figure 7: Voting volatility
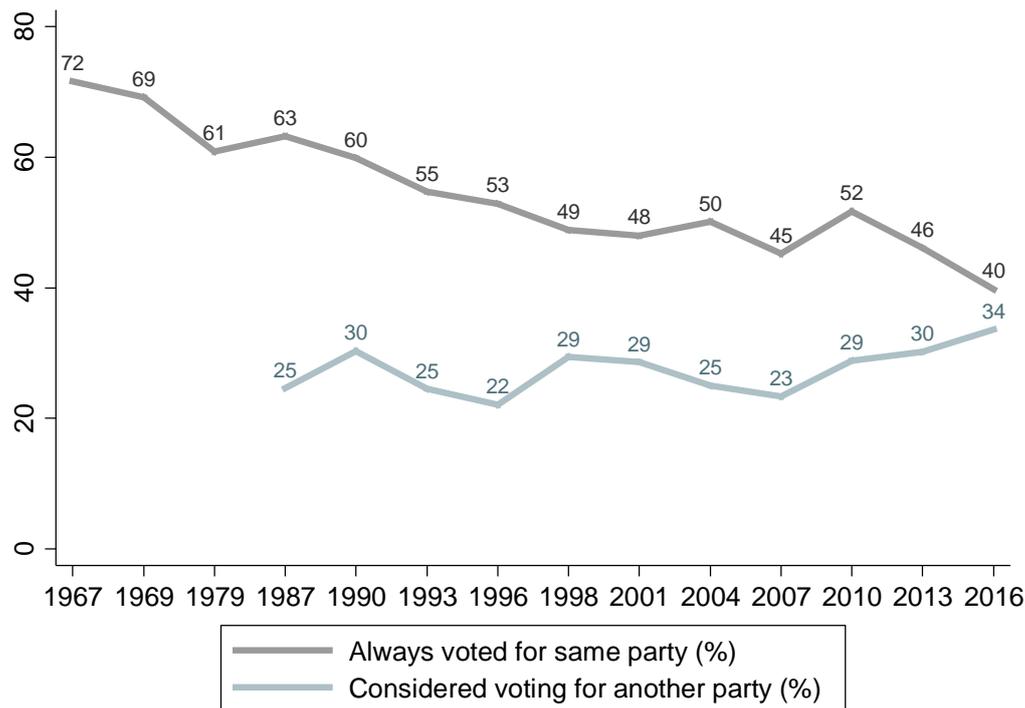
In summary, across a range of different measures voters are now less likely to align with one of the major parties. What we are seeing across these trends in partisanship is not so much a case of drastic change since the previous election in 2013, rather it is a case of gradual change over time with voters drifting away from the major parties.

There are a number of factors that explain this decline in partisanship. A major factor is generational change. Younger generations engage in politics differently—they are less likely to enrol to vote or join a political party, but more likely to engage in politics in other ways, through joining a protest, or engaging in online activism. Commentators sometimes lament young people's disengagement with politics, though there is a good degree of evidence that young people are not disengaged, they are just engaged differently.

Another factor is rising support for the Greens. While there are still fewer than 10 per cent of Australians who identify with the Greens, the emergence of the Greens has chipped away at support for the major parties. Negative perceptions of the parties also contribute to the decline in partisanship. Visible party infighting is associated with declining support—for example, the Labor Party lost a good deal support during the Rudd–Gillard years. Moreover, the election study data shows that voters have the impression that the government is run for 'a few big interests' rather than 'all the people', which could be expected to contribute to the distance between voters and the major parties.

Political leaders

Voter disaffection with politics is similarly evident in evaluations of Australia's political leaders. Although Australia has a parliamentary system, politics has become increasingly personalised over time. Governments are often referred to by the name of their leader and the media gives increasing attention to the political leaders. Leaders may not be the primary determinant of electoral outcomes, though they do influence votes.

At each election since 1987 the AES has asked voters to evaluate how much they like the party leaders on a scale from zero to 10. A response of zero means they strongly dislike the politician, a response of 10 means they strongly like the politician, and a response of five would indicate that they neither like nor dislike the leader. The average results from the 2016 survey are presented in Figure 8. In 2016 not one of Australia's party leaders' average ratings reached the midpoint of five on the scale. Malcolm Turnbull achieved the highest rating out of those leaders measured with a score of 4.9. Following the election, the Prime Minister was considerably more popular than the Leader of the Opposition, Bill Shorten, whose average evaluation was 4.2 out of 10. Barnaby Joyce and Richard Di Natale were each evaluated at 4.1 out of ten. At the time of the survey, former Prime Minister Tony Abbott was the least popular of these political leaders, with an average evaluation of 3.6 on the scale out of 10.
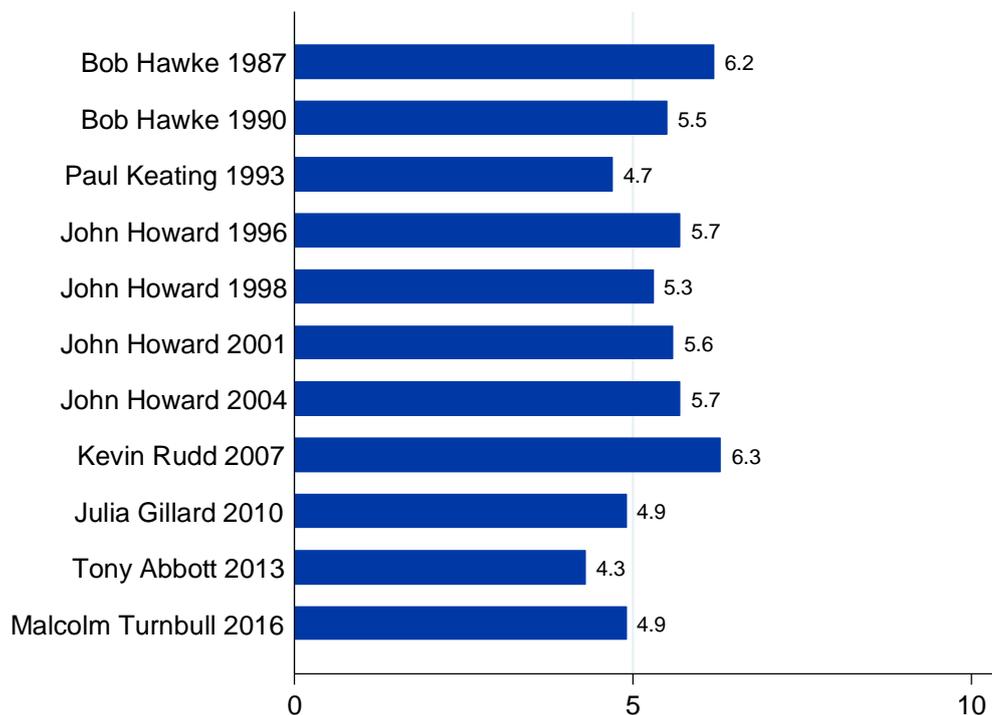
Figure 8: Leader evaluations 2016
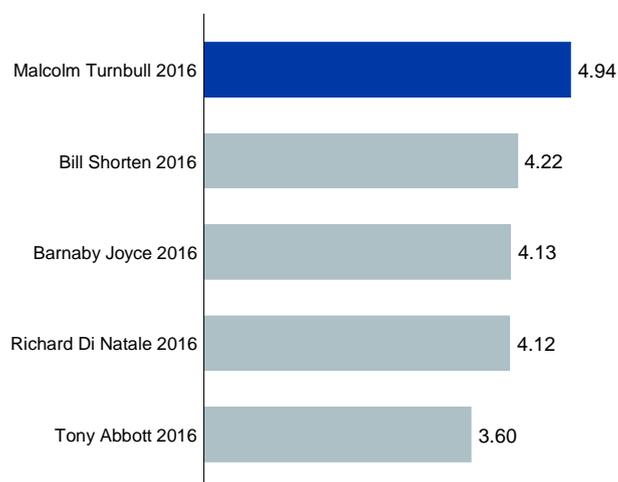
Note: Estimates are means. The scale runs from 0 (strongly dislike politician) to 10 (strongly like politician) with a designated midpoint of 5 (neither like nor dislike).

To put the 2016 leader ratings in perspective, Figure 9 shows evaluations for the election winners over a 30 year period, from 1987 through to the most recent election. The data over time demonstrates that prime ministers are a lot less popular than they used to be. Up until 2007, newly elected prime ministers generally enjoyed a high

degree of popularity and support. For the initial twenty years the question was asked (1987–2007), leaders were evaluated at an average of 5.6 out of ten on the scale. Since 2010, prime ministers have gained office despite low popularity—Julia Gillard, Tony Abbott and Malcolm Turnbull won elections and secured the prime minister's office with approval ratings that were below the halfway point on the ten point scale. The average evaluation for the newly elected prime minister over these past three elections is just 4.7 out of ten. The last popular prime minister was Kevin Rudd at the time he won the election in 2007.
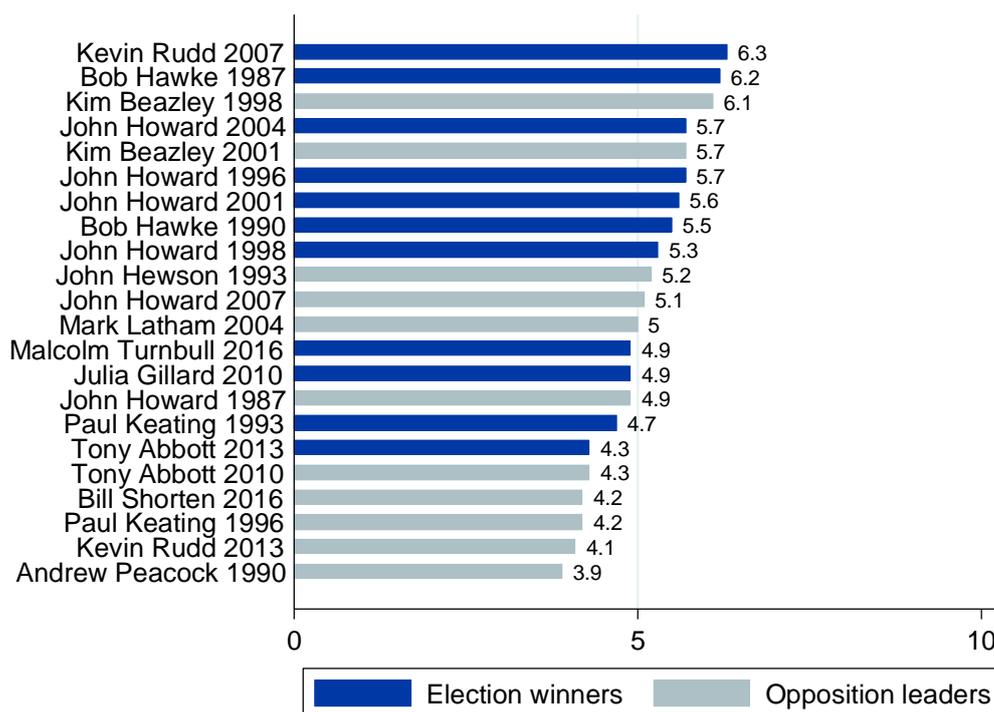
Figure 9: Election winner evaluations 1987–2016

Note: Estimates are means. The scale runs from 0 (strongly dislike politician) to 10 (strongly like politician) with a designated midpoint of 5 (neither like nor dislike).

In order to provide further context on these leadership evaluations, Figure 10 incorporates the popularity ratings of both election winners and opposition leaders, as measured in post-election surveys since 1987. The leaders are ranked based on their evaluations. Kevin Rudd in 2007 had the highest popularity rating, at 6.3 out of ten, however by the time he went for re-election in 2013, his evaluations had fallen by around one-third to 4.1.

In almost all cases the winner of the election was evaluated more favourably than the opposition candidate. Of the 11 elections covered by the AES, there are just three

exceptions. In 1993, Paul Keating won against a more popular John Hewson, and in the 1998 and 2001 elections, John Howard won against a more popular Kim Beazley. More often than not the party with the most popular leader wins the election, although these exceptions demonstrate that it is not necessary to be a popular leader to win. This is further demonstrated in recent elections. Tony Abbott did not become more popular between the 2010 and 2013 elections, the latter of which he won, rather he became more popular relative to the Labor party leaders, as Labor lost a good deal of support between the two elections.

Figure 10: Leader evaluations 1987–2016

Note: Estimates are means. The scale runs from 0 (strongly dislike politician) to 10 (strongly like politician) with a designated midpoint of 5 (neither like nor dislike).

The AES also asks Australians to evaluate how well various characteristics describe the party leaders, including intelligence, competence and trustworthiness. Figure 11 presents the 2016 evaluations for Malcolm Turnbull and Bill Shorten. The chart shows the percentage of respondents who thought each characteristic described the leader either 'quite well' or 'extremely well'.

Figure 11: Leader characteristics 2016
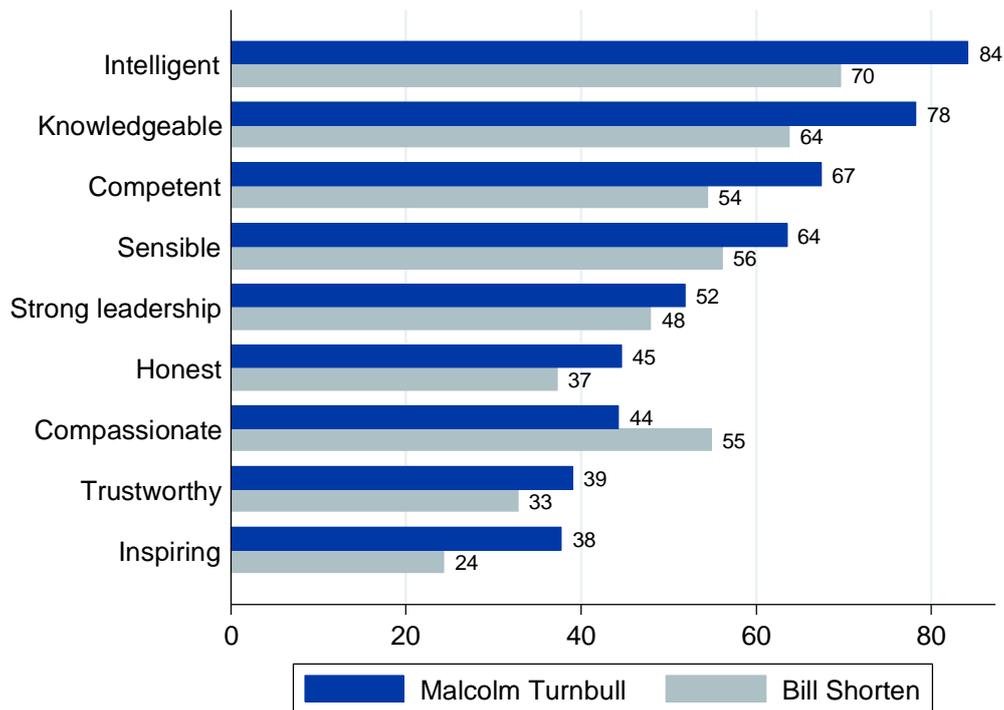
Note: Estimates are the per cent who responded 'extremely well' or 'quite well' in response to the following question—'Here is a list of words and phrases people use to describe party leaders. Thinking first about Bill Shorten, in your opinion, how well does each of these describe him - extremely well, quite well, not too well or not well at all? Now thinking about Malcolm Turnbull, in your opinion how well does each of these describe him - extremely well, quite well, not too well or not well at all?'

Both party leaders were perceived as being reasonably knowledgeable and intelligent, although fewer than half of voters evaluated the leaders as honest, trustworthy or inspiring. Comparing the two leaders, Malcolm Turnbull was evaluated more positively on all of the characteristics except for compassion. In terms of electoral outcomes, some of these characteristics are thought to matter more than others. Research in the US context has demonstrated that traits including competence and strong leadership are associated with positive electoral outcomes, whereas compassion, for instance, is not.

These evaluations can be put into context over time as the AES has asked the question on leader characteristics since the 1990s. Echoing the finding of unprecedented disaffection with politics and politicians, the data over time shows that the current party leaders receive some of the lowest evaluations to date. In particular, both leaders score poorly on trustworthiness, honesty and strong leadership in comparison to previous leaders.

The final aspect of Australia's political leaders we explore concerns the frequent leadership changes of recent years. Australia has had five prime ministers since 2010, including Kevin Rudd twice, and only one change of prime minister occurred as a

result of an election. Data from the AES and the ANUpoll has investigated voters' approval of the way the parties handled the leadership changes in 2010, 2013, and 2015, respectively. Citizens' approval of these changes is presented in Table 2. A large majority of voters disapproved of the way the Labor Party handled its leadership changes. In particular, when Julia Gillard replaced Kevin Rudd in 2010, three in four Australians did not approve. On the other hand, the electorate was divided in its evaluations of Malcolm Turnbull replacing Tony Abbott, with 49 per cent approving of the change.

Table 2: Approval of leadership changes, 2010–15

	2010 Gillard replaced Rudd	2013 Rudd replaced Gillard	2015 Turnbull replaced Abbott
Strongly approve (%)	4	12	13
Approve (%)	21	30	35
Disapprove (%)	37	25	33
Strongly disapprove (%)	37	34	18
Total (%)	100	100	100
(N)	(2046)	(1075)	(2658)

Note: Question wording as follows:
2010: Do you approve or disapprove of the way the Labor party handled the leadership change in June of this year, when Julia Gillard replaced Kevin Rudd? (percentage of respondents)

2013: Do you approve or disapprove of the way the Labor Party handled the leadership change in June of this year, when Kevin Rudd replaced Julia Gillard? (percentage of respondents)

2015: Do you approve or disapprove of the way the Liberal Party handled the leadership change in September of last year, when Malcolm Turnbull replaced Tony Abbott? (percentage of respondents)

What explains these differences in approval? First, leader popularity mattered. Kevin Rudd was a popular prime minister, so voters did not approve of the way he was replaced. On the other hand, when Malcolm Turnbull replaced Tony Abbott a majority of voters preferred Turnbull over Abbott so fewer disapproved of the change.

There has been discussion in the media as to whether public disapproval of Julia Gillard's replacement of Kevin Rudd in 2010 stemmed from gendered expectations. The AES data does show some gender differences in approval for the three leadership changes. Men were more approving of the leadership changes than women in all three cases. The gender gap was considerably greater when Kevin Rudd replaced Julia Gillard, where men approved of the change by 10 percentage points more than women. This finding would suggest that gender played a role, although it is by no means the only factor, as leader popularity was important.

To investigate the potential influence of these leadership changes on satisfaction with democracy, the relationship between the two is presented in Figure 12. The chart shows levels of satisfaction with democracy according to whether respondents approved of Malcolm Turnbull replacing Tony Abbott as prime minister in 2015. This demonstrates that those who strongly disapproved of the leadership change were less satisfied with democracy, while those who approved of the changes were more satisfied with democracy.

A similar trend can be observed for the leadership change between Kevin Rudd and Julia Gillard in 2010.[1] Moreover, using the measure of political trust instead of democratic satisfaction reveals a similar trend. Although the data presented in Figure 12 is correlational, this would suggest that the frequent leadership changes over 2010 to 2015 may have contributed to the dramatic declines in satisfaction with democracy and political trust observed over the same period of time.

Figure 12: Approval of Malcolm Turnbull replacing Tony Abbott in 2015 and democratic satisfaction
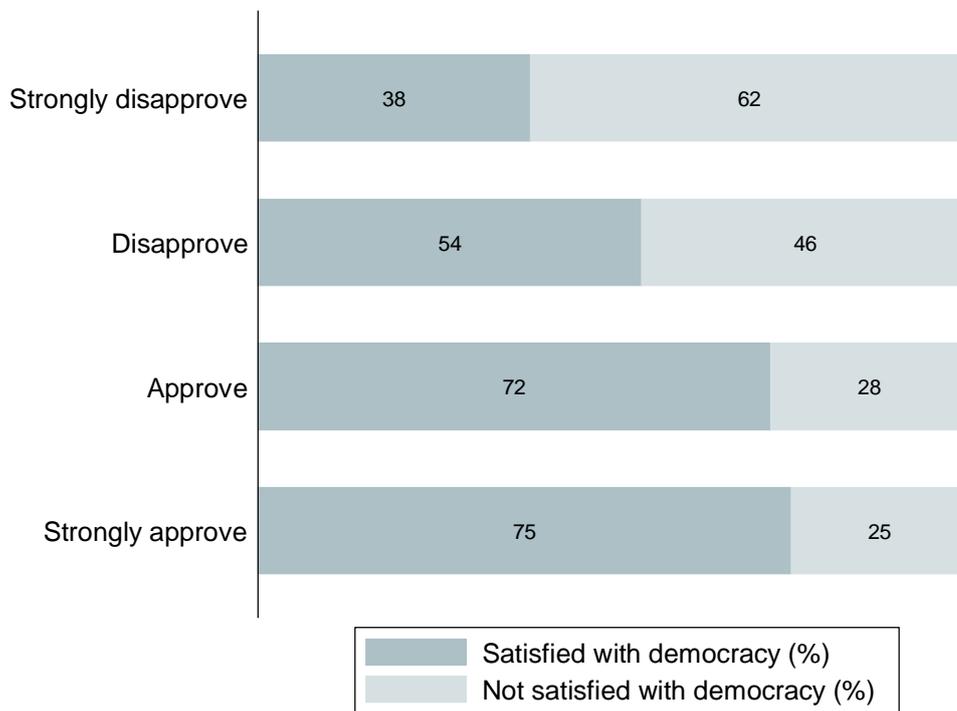
Note: Shows whether or not respondents were satisfied with democracy in 2016, broken down according to whether they approved or disapproved 'of the way the Liberal Party handled the leadership change…(in 2015) when Malcolm Turnbull replaced Tony Abbott'.

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[1]   The data is not available for 2013 when Kevin Rudd replaced Julia Gillard.

To conclude, a range of indicators are pointing to citizens' disaffection with politics in Australia. Satisfaction with democracy and trust in government have reached historic lows. The popularity of the major parties and their leaders has declined, and voters are more likely to consider alternatives rather than consistently vote for the same party. We are seeing less popular leaders win elections and have not had a popular leader since Kevin Rudd's win in 2007. Voters have largely disapproved of the frequent changes of prime minister that have taken place outside of the electoral cycle since 2010. Some of these dynamics are unique to Australia, such as the nature of the party system and the recent leadership changes, though declining satisfaction with democracy and government is also occurring in other advanced democracies for reasons including poor economic performance and generational change.

Re-engaging the public

The analyses presented here have suggested that there has been an unprecedented decline in satisfaction with democracy and increasingly negative views of parties and politics. While survey evidence always needs to be carefully evaluated, our findings—using the most comprehensive political surveys conducted in Australia and extending over an almost 50 years—do suggest that there has been an unprecedented change in public opinion over the last decade. This trend also fits with the international evidence from the United States and Europe. How can we reverse this trend and improve the health of Australian democracy?

There are a number of possible institutional changes, all of which have their advantages and disadvantages. We are concerned here primarily with possible reforms to political institutions, rather than what political parties could do (such as changing their candidate selection procedures) and what informal arrangements could be put in place (such as more use of citizens' juries). We have identified six possibilities.

Parliamentary terms
The current Commonwealth parliamentary term is three years. A 1988 referendum to increase the term to four years was defeated. The advantage of a four-year term is that it would provide governments with a better opportunity to implement a legislative program, and thereby give voters more information on whether to either 'reward or punish' the government at an election. This is in line with the theory of responsible party government.

Currently Australia is the only major democracy, apart from the United States and El Salvador, which does not have a parliamentary term of four or more years. The disadvantage to four-year terms is that it would provide less opportunity to vote out an unpopular or ineffective government. It would also complicate the terms of senators.

Senate reform

The Senate was designed to be the guardian of the interests of the states and territories. However, since the 1983 change to the Senate electoral system—allowing a vote 'above the line'—the electoral system has become in practice a party list system.

The 2016 change to the electoral rules has not changed this. Accordingly, election to the Senate has been more a matter for the parties, and an increasing number of career politicians and former party employees have gained election to the Senate. The partisan nature of the Senate would not matter for public policy, except that it is one of the four most powerful upper houses in the world, along with Germany, Switzerland and the United States. If the current electoral system is retained, then consideration should be given to what powers the Senate should possess.

Term limits

Term limits for elected politicians have been widely used in the United States for governors and other politicians, and they are widely used around the world for presidents and (occasionally) prime ministers. Currently, only one country, the Philippines, uses term limits for its legislators, in the form of a limit of three terms. Term limits could encourage more civic minded politicians to stand for election. The disadvantage would be that effective and skilled politicians would be forced to retire after their period in office.

Recall elections

These are again widely used in the United States at the state level, but they are also used in Canada, Switzerland, and Taiwan. The concept involves a proportion of an elected representative's constituents signing a petition to force the seat to become vacant and for a by-election to be held.

Voluntary voting

Political parties have two main functions—mobilisation and conversion. Mobilisation involves encouraging voters to turnout to vote (in a voluntary system), while conversion is the effort to persuade citizens to vote for the party. In a compulsory voting system, parties do not need to mobilise—this is carried out for them by the design of the electoral institutions.

As a result, the Australian political parties have some of the lowest mass memberships of any OECD country, with consequences for the pool of eligible election candidates and for the development of party policy generally. A move to voluntary voting could encourage parties to broaden their membership base and work harder to engage the wider public.

Reform of parliamentary procedures

Finally, there are a range of reforms to parliamentary procedures which could help to weaken the overly partisan nature of many debates, and the view of many voters that parliamentary debate simply involves squabbling politicians.

Among a wide range of possible measures is the election of an independent Speaker, as occurs in other systems. Another possibility is to limit prime minister's question time in the House of Representatives to a short period held on one or two days per week, as occurs in the British House of Commons.

Question — What are recall elections?

Ian McAllister — I bracketed term limits and recall elections together which are widely used in the United States. Recall elections are typically used in some of the Westminster democracies—Canada, Switzerland, I mentioned the United States, Taiwan. They all have different systems but typically what it involves is a certain proportion of voters in the constituency saying that they wish to have a by-election— that they consider the performance of their elected representative to be unsatisfactory and they want to elect somebody else or have the opportunity to elect somebody else.

Question — I believe a four-year parliamentary term is an obvious direction for Australia to go in, because surely the political parties in power would have more time to concentrate on good government rather than getting themselves re-elected, so it surprises me that 70 per cent or thereabouts have voted against that. Could you comment?

Ian McAllister — I thought four-year parliamentary terms were fairly obvious myself until I saw the ANUpoll results and it was fairly clear that most voters didn't support it. When we drill into that we find the reason they didn't support it is distrust of politicians. So they want to keep them on a tight leash. They don't want to give them four years. Now there is a chicken and egg situation there in the sense that if you have four-year parliamentary terms you might argue you'd get better people in, who were more responsive, made less promises and were more likely to commit themselves to doing what voters want. Voters are obviously not convinced that would be the case. Interestingly, when I have researched this, the only other country in the world that has less than four-year terms is El Salvador. So three-year terms are really odd internationally. Most countries have four years, that's the median, and then other

countries have five such as the United Kingdom and so on. The issue is how you would implement a four-year parliamentary term. It would really require a degree of bipartisan leadership that we haven't seen for some time to convince voters that this was the right thing to do and to get them to vote for it in a referendum.

Comment — Just a correction—the USA has two-year terms.

Ian McAllister — Yes, you are correct—two years for their lower house.

Question— I'm interested in the voting or the non-voting of young people. Do you have any evidence that eventually they enrol to vote or does it look like once they've decided to engage with the political system in a different way they continue to do that?

Sarah Cameron — Lower youth turnout is a combination of lifecycle changes and generational changes. In terms of life cycle changes, young people in Australia are generally less likely to enrol to vote, and internationally the literature shows that young people vote less. There has also been some generational change in terms of how the younger generation engages in politics. So not just younger people generally, but younger people today are more interested in protest and online activism than voting, relative to previous generations.

Ian McAllister — Compulsory voting is interesting because it requires people to vote and if we look at the figures in Australia—92, 93, 94 per cent of people have consistently voted since compulsory voting was introduced. In voluntary voting systems what we've seen is a collapse in turnout and when we go into that, it is younger people not turning out to vote. So in Australia we don't see that very obvious indication of younger peoples' disinterest in the conventional political process. Where we do see it is in younger people not enrolling. If we compare the younger voting age population with the actual proportion who are enrolled, we find that younger people are not enrolling. Once they get past the mid-twenties or so, generally they do go into the political process because they get homes, mortgages, families and things like that and they become much more integrated in the whole political process. When they are younger they tend not to have those assets and responsibilities and they move around a lot. So once they do enrol they generally tend to stay there.

Question —I have an administrative question. Is there a barrier to surveying more people? At the moment you've only got 18 people per electorate on average. To get greater accuracy can you survey more people?

Sarah Cameron — With a survey of this size we can draw inferences about the Australian population but you are quite right the sample size would be too small to draw detailed inferences at the electorate level. It is the same if you are looking at a very small sub-population—the sample size isn't necessarily large enough. But in terms of making inferences about the Australian population, there is certainly a large enough sample size to be able to do that.

Ian McAllister — If you want to give us some more money we'll certainly increase the sample size!

Question — Robert Putnam and others have identified what are perhaps parallel trends with people in western countries feeling dissatisfied with their community life and less secure in their families and communities. Do you have a sense of to what extent the dissatisfaction with democracy and the broader government sphere is related to those other dissatisfactions and social tends?

Sarah Cameron — Good question. There is an argument to be made in terms of economic performance having an effect on satisfaction with democracy and that is evident in the international data. Poor economic performance could also be expected to relate to citizen dissatisfaction in other areas of life. In Australia I think we've got an interesting context because we are subject to the same forces as other advanced democracies but we've also had some specific circumstances over the past seven years or so which could have undermined satisfaction with democracy, like the leadership changes that were discussed.