

# Fortifying Australian democracy

## Submission to the inquiry into the 2022 election

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*Australia is a thriving, inventive democracy – but in  
the face of global democratic decline we should  
strengthen and protect our political institutions  
with measured reforms.*

Submission to the Joint Standing Committee on Electoral Matters

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# Summary and recommendations

Australia Institute research touches on most of the terms of reference for the Joint Standing Committee on Electoral Matters (JSCEM) inquiry into the 2022 federal election, and we hope to make a contribution in this submission and to future discussion of these important issues.

## Reforms to donation laws

Both real-time disclosures and a lower cap on disclosable political contributions would improve the transparency and function of our political system and give the public important information about influences on government's exercise of power.

While donation and expenditure caps can limit the influence of 'big money' in politics, unless implemented carefully they can lead to perverse outcomes, like benefiting incumbents at the expense of challengers and disproportionately harming some political actors.

The Australia Institute recommends:

1. 'Real-time' disclosure for political contributions (donations and other receipts), accompanied by administrative funding for parties and candidates.
2. More details provided as to the nature of each contribution.
3. Lowering the disclosure threshold to a fixed amount, somewhere between \$1,000 and \$2,500.
4. Closing the loophole that allows for multiple contributions each below the disclosure threshold.

## Truth in political advertising laws

With misleading advertising a serious and growing problem at recent elections, and momentum growing for reform modelled on the South Australian laws, it is time for Parliament to legislate for truth in political advertising.

This submission addresses concerns with truth in political advertising reforms and suggests ways to resolve complaints quickly, since slow and delayed resolution of complaints has emerged as a concern with the South Australian laws.

The Australia Institute recommends:

5. The Parliament adopt truth in political advertising laws, based on the South Australian model.
6. Election advertisements be required to be submitted to a publicly accessible archive.
7. The Committee consider whether to hold an inquiry into the impact of social media on democracy, expanding upon the Victorian Electoral Matters Committee's inquiry.

## Indigenous participation

Participation rates in electorates with significant Aboriginal and Torres Strait Islander populations tend to be lower than those seen nationally.

The Australia Institute recommends:

8. The Committee consider ways of increasing Indigenous enrolment and turnout, including:
  - a body like the Aboriginal and Torres Strait Islander Election Education and Information Service to provide electoral education
  - remote enrolment programs
  - improving government services, including more mobile teams for remote voting.

## Digital electoral rolls

While not discussed in this submission, in regards to term of reference (e) the Australia Institute has previously discussed how digital electoral rolls can address the minor issue of multiple voting.<sup>1</sup>

The Australia Institute recommends:

9. More widespread use of digital electoral rolls.

## Extending the franchise to permanent residents

Electoral participation among the resident voting age population has fallen from highs in the second half of the 20th century in part because a larger portion of Australia's

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<sup>1</sup> See Browne, Seth-Purdie, & Shields (2021) *Identifying the problem: Voter ID laws a solution in search of a problem*, <https://australiainstitute.org.au/report/identifying-the-problem/>

voting age population is not eligible to vote. Several other countries extend voting rights to permanent residents, seemingly without issue – New Zealand is one of them.

The Australia Institute recommends:

10. JSCEM consider whether voting rights could be extended to permanent residents generally, or otherwise:
11. Voting rights should be extended on a reciprocal basis to permanent residents who are citizens of countries that allow Australians to vote in their national elections.

## More parliamentarians

Australia has too few parliamentarians. Few Australians have interacted with their local members, who are thinly stretched (both in terms of the number of people they represent and, in regional and rural electorates, the geographical extent of the electorate). Increasing the number of parliamentarians would deepen the talent pool for ministerial appointments and committee work and reflect the dramatic increase in the volume of legislation and inquiries in recent years, as well as the increased size of the resident population.

Relative to smaller states, the Australian Capital Territory and Northern Territory are underrepresented in terms of the number of senators that they elect. Increasing the number of senators to four per territory would go some way to correcting this imbalance. It would also guarantee that both major parties are represented among each territory's cohort.

The Australia Institute recommends:

12. An increase in the number of parliamentarians by 50%, which would secure for the first time one vote, one value in the House of Representatives.
13. The Australian Capital Territory and Northern Territory should each receive four senators, elected at each federal election. This would reduce the disproportionality between the territories and the smallest state, Tasmania.

## Proportional representation in the House of Representatives

In the 2022 election, almost one-third of Australians cast a first preference vote for an independent or minor party candidate – but this is not reflected in the distribution of members elected to the House of Representatives. Major parties would also benefit from proportional representation, by avoiding electoral 'wipeouts', being able to

preselect quality candidates wherever they live and having party rooms that better reflected the geographical distribution of the party's voters.

The Australia Institute recommends:

14. JSCEM consider the issue of proportional representation in voting for the House of Representatives, particularly the possibility for multi-member divisions like those used to elect the Tasmanian House of Assembly.

## Increasing the fine for not voting

Because it has not changed since the 1980s, the federal fine for not voting is losing its deterrent effect. The maxim that 'If you don't vote, you don't count' suggests that the disadvantaged and disengaged suffer most when turnout is low.

The Australia Institute recommends:

15. JSCEM revisit penalties for not voting, and consider increasing them.

## Democracy Agenda reforms

In the last days of the 46<sup>th</sup> Parliament, the Australia Institute launched the *Democracy Agenda for the 47<sup>th</sup> Parliament*. Some of the Democracy Agenda recommendations are relevant to this inquiry, including the proposal to use Robson Rotation, the fairer 'recount' method for assigning Senate seats after a double dissolution, fixed three-year terms and the abolition or reform of section 44 of the Constitution.

The Australia Institute recommends:

16. JSCEM consider electoral reforms in the Australia Institute's *Democracy Agenda for the 47<sup>th</sup> Parliament*.<sup>2</sup>

## Party Registration Integrity Act

The *Party Registration Integrity Act* is unnecessarily onerous in two respects. Requiring each registered party to have 1,500 members is unreasonable for parties limited to smaller states and territories. Stopping new parties from using words found in existing party names (without permission) can prevent parties from accurately describing themselves.

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<sup>2</sup> Browne (2022) *Democracy Agenda for the 47th Parliament of Australia*,  
<https://australiainstitute.org.au/report/democracy-agenda-for-the-47th-parliament-of-australia/>



The Australia Institute recommends:

17. JSCEM reconsider the *Party Registration Integrity Act*.

## **Pride in Australia's electoral system**

Australians can be justifiably proud of the electoral innovations that Australians have invented or fine-tuned, including the secret ballot, preferential voting, independent electoral administrations, expanding the franchise and electoral education.

Australians should be better educated in how and why our electoral system works, which would increase political engagement.

The Australia Institute recommends:

18. JSCEM consider how pride in and knowledge of Australia's long history of electoral innovation can be encouraged.
19. JSCEM consider how civics education could be improved and expanded, and whether a model of 'lifelong learning' would help address low levels of understanding about the Senate in particular.

# Introduction

The Australia Institute welcomes the opportunity to make a submission to the Joint Standing Committee on Electoral Matters' inquiry into the 2022 election.

The Australia Institute's Democracy & Accountability Program was founded in 2021 to improve the quality of Australian governance and heighten public trust in politics and democracy. Although the program is new, the Australia Institute has written about democracy and accountability issues since it was founded in 1994.

Democracy around the world is receding. There are fewer liberal democratic countries today than there were in 1996. The number of people living in liberal democracies has declined by 120 million since 2012, and almost twice as many countries are 'autocratising' as are 'democratising'.<sup>3</sup>

In the face of global democratic decline, Australian democracy remains strong – but by no means perfect. Freedom of expression is under threat<sup>4</sup> and voter turnout at this year's election was the lowest since compulsory voting was introduced in 1925.<sup>5</sup>

The Australia Institute's submission makes practical but ambitious recommendations for how Australia can strengthen, cultivate and protect its democratic institutions and norms in the face of global decline.

A priority of our submission is truth in political advertising, because democracy depends on a shared understanding of the world and agreement on facts. Effective truth in political advertising legislation would strengthen democracy.

Other reforms are needed. To increase representativeness, we recommend proportional voting. To ensure every voice is heard and thereby increase satisfaction we recommend reviewing the penalties for not voting and focus on the need to increase Indigenous voting. To make our democracy a stronger part of our shared Australian story we recommend increased education about the many electoral innovations that Australia invented or quickly adopted.

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<sup>3</sup> Herre (2022) *The world has recently become less democratic*, <https://ourworldindata.org/less-democratic>

<sup>4</sup> Browne (2021) *Free speech in the lucky country*, <https://australiainstitute.org.au/report/free-speech-in-the-lucky-country/>

<sup>5</sup> AEC (2022) *Voter turnout – previous events*, [https://www.aec.gov.au/Elections/federal\\_elections/voter-turnout.htm](https://www.aec.gov.au/Elections/federal_elections/voter-turnout.htm)

# Political contribution disclosures

## REAL-TIME DISCLOSURE

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The Australia Institute supports real-time disclosure of political contributions (not just donations), although we recommend monthly or quarterly disclosures outside of an election period (and weekly disclosures during).

Real-time disclosure should be accompanied by administrative funding for parties and candidates to implement the disclosures.

Outside of an election period, weekly disclosures may be too onerous. Consider a small party with a volunteer executive. Allowing some time to consider a donation (for example, they may want to reject it) and process it, accounting for a period of leave or sickness for the accountant, seems reasonable. Of course, expectations are different during an election.

More details should also be given as to the nature of 'other receipts'. It is often hard to distinguish between a dividend paid to a party for a shareholding (for example) and a contribution deliberately made by a company.

## DONATION THRESHOLD

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A donation threshold of somewhere between \$1,000 and \$2,500, as contemplated in the terms of reference, seems reasonable.

The threshold should be defined so donors cannot avoid it by splitting donations over time or between branches of a party.

The argument in favour of a \$1,000 threshold is that the threshold is an easy amount to remember, it represents a significant share of most Australians' discretionary income and most Australians do not donate to political parties at all or donate such large sums to any cause. Most Australians do not claim a tax deduction for donating to charity, and of those who do the average deduction is \$933.<sup>6</sup> A person giving \$1,000 to any cause is already out of the ordinary, particularly when that cause is a political party or candidate.

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<sup>6</sup> Australian Institute of Health and Welfare (2021) *Philanthropy and charitable giving*, <https://www.aihw.gov.au/reports/australias-welfare/philanthropy-and-charitable-giving>

The argument against a \$1,000 threshold is that the onerousness of compliance is too great given the negligible political influence that such a donation would give the donor. There are also privacy concerns with a relatively ordinary person's political affiliation being made public.

Consider a person who makes a monthly donation of \$100 to a political party or candidate. Their donation will (after 10 months) be captured, requiring 12 disclosures for the year. However, this donor is unlikely to wield outsized influence on the party/candidate and there does not seem to be any reason why their name and address should be public. While a cap of \$2,500 does not totally remove these concerns, it would likely substantially limit the number of people affected.

# Potential unintended consequences of campaign finance reform

The Australia Institute does not yet have a position on whether to implement donation and expenditure caps, and, if so, the level at which they should be set, but we have identified risks of unintended consequences from laws if they are poorly drafted.

**Difficult for emerging parties and candidates to establish themselves:** There are fixed costs to establishing a party or candidate and getting public recognition, which means that new parties and candidates may need to spend more money to get to the same level of public awareness as established parties.

Similarly, while public funding of parties and candidates based on their share of the vote works for established parties, it paradoxically leaves new parties and candidates without the funding they need to win votes until they win votes.

A related issue is that sitting parliamentarians already receive substantial financial benefits from incumbency, including their printing allowance, travel allowance, salary, staff and office space. A challenger must spend considerably more than the incumbent just to 'catch up' to the incumbent's publicly-funded benefits.

**Different demographics of donors may favour one side of politics:** Caps on donations and expenditure by organisations are complicated by the fact that organisations can be of any size and represent any number of people. For example, should five unions with 10,000 members each be able to, in aggregate, donate five times as much as they would if they amalgamated into one union with 50,000 members? Similarly, should five corporations that employ 500 people each be able to, in aggregate, donate five times as much as one corporation that employs 2,500 people?

The problem is exacerbated if the disparity in potential donor numbers is across groups. For example, there are many times more corporations than there are unions.

**Different treatment of donations and other receipts:** It would be perverse to limit donations without also limiting other contributions to parties, like membership fees. These can be worse than donations for our democratic integrity, since they are more likely to constitute payment for access than a donation.

**Treatment of third parties:** If there are donation or expenditure caps, extending those caps to third parties like associated entities makes sense because otherwise parties and third parties could coordinate to receive and spend money beyond the caps for candidates and parties. However, caps on third parties becomes fraught when they are not coordinating with parties and candidates. For example, a Labor candidate could get ‘crowded out’ by the spending of an affiliated union that the candidate neither wanted nor benefited from.

Similarly, attention would have to be given to how an ‘anyone but X’ campaign would count in relation to party or candidate expenditure. It might benefit the ‘anyone else’s’ at different rates or, in some cases, not at all. But if ‘anyone but X’ campaigns did not count against party or candidate expenditure, it would leave X in the position of not being able to fund a defence of the same magnitude without running up against a cap.

**Some parties and candidates benefit from flow-on effects of spending:** Party candidates benefit from state-wide or national advertising, and advertising in adjacent electorates. Independents and minor candidates need to focus on individual seats, making them more likely to run into localised expenditure caps.

**Aggregated expenditure caps unfairly favour major parties:** Some expenditure cap models give parties a budget based on all electorates they are running in. Major parties run in most or all seats, but concentrate their spending on priority seats. Under aggregated expenditure caps, major parties could outspend independents running in only one seat and micro parties that run mostly in priority seats, making up the difference with low expenditure in unwinnable or unlosable seats.

**Federated structures:** The federated structure of major political parties can allow for multiple donations across different branches, under different reporting regimens and caps (state/territory vs federal). However, the influence of a donation is not necessarily limited to the jurisdiction in which it takes place or the purpose for which it was made.

Similarly, the Liberal and National parties might be allowed to operate under separate caps – but as they govern together under the Coalition agreement, a donor could contribute twice as much to parties in a Coalition government as they could to the one party in a Labor government. On the other hand, any cap that was aggregated across parties in a coalition could unfairly disadvantage those parties, especially when they run against one another.

# Truth in political advertising laws

If handled with good judgement and appropriate levels of respect for the importance of free speech in a democracy, [truth in political advertising] legislation would be a useful addition to Australia's already long list of democracy enhancing electoral innovations. It would also be a valuable tool in defending democracy from the more general crises of faith and trust it currently faces.<sup>7</sup>

Australia is built on democracy and free and fair elections. Even if disinformation does not change an election result, it can still undermine public confidence and trust.

Successful elections depend on free speech as well as restraint. Truth in political advertising legislation can be implemented that successfully navigates the tension, as it does in South Australia.

Below we discuss the growing momentum for political advertising laws and address concerns with proposed reforms, especially how misleading advertising can be addressed quickly during an election campaign.

## TRUTH IN POLITICAL ADVERTISING LAWS

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### South Australia

South Australia has had truth in political advertising laws since 1985, taking their current form in 1995 following an amendment to the *Electoral Act 1985*.<sup>8</sup> In *Cameron v Becker*, also in 1995, the Supreme Court of South Australia found that truth in political advertising laws are constitutional under the *Australian Constitution's* implied freedom of political communication.

Under the laws, it is an offence to issue an advertisement containing electoral matter if it contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent. The maximum penalties are relatively small (\$5,000 for a person, \$25,000 for a body corporate).

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<sup>7</sup> Hill, Douglass, & Baltutis (2022) *How and why to regulate false political advertising in Australia*, p. 149, <https://link.springer.com/10.1007/978-981-19-2123-0>

<sup>8</sup> *Electoral Act 1985* (SA), sec.107(5), 113, <https://www.legislation.sa.gov.au/lz>

The Electoral Commissioner may request a misleading ad is withdrawn from further publication and/or a retraction published and can apply to the Supreme Court to require an advertiser to do so if they fail to comply with the Commissioner's request. The Electoral Commissioner will only investigate if they receive a formal complaint.

If misleading advertising affected the result of an election, the election may be declared void by the Court of Disputed Returns. This would apply only to the electorate(s) in which the misleading advertising affected (on the balance of probabilities) the election.

No election has yet been declared void on the grounds of misleading advertising. Criminal prosecutions are also rare; valid complaints are usually resolved by the advertiser complying with the Electoral Commissioner's request.

The provisions in the ACT laws are substantially similar, except that misleading advertising is not explicitly identified among the matters that will lead to the validity of an election being in dispute.<sup>9</sup>

## Implementation

The Electoral Commission of South Australia (ECSA) outlines how the truth in political advertising laws operate in practice:<sup>10</sup>

- ECSA 'aims to resolve most issues within 5 days', though this may stretch to two weeks where there is conflicting evidence. 'The majority' of complaints do not include all the relevant information, requiring the Commission to seek further information from complainants.
- ECSA seeks the advice of the Crown Solicitor's Office for complex or sensitive complaints, which will, if asked, advise whether an electoral offence appears to have been committed and what legal remedies should be sought.
- When an advertisement is misleading, the Commissioner usually requires both a withdrawal and a retraction, and dictates the wording required in the retraction.
- The Commissioner did not refer any matters from the 2018 state election for prosecution, but did refer a number of matters from the 2018 local government elections.

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<sup>9</sup> *Electoral Act 1992* (ACT), sec.256(2), 297A, <https://www.legislation.act.gov.au/a/1992-71/default.asp>

<sup>10</sup> Documents 5, 9 and 11 in the FOI request of 27 August 2021, [https://www.elections.act.gov.au/about\\_us/freedom\\_of\\_information](https://www.elections.act.gov.au/about_us/freedom_of_information)



- The Commissioner planned to use five or more staff to manage electoral complaints during the 2022 election period (noting that misleading advertising complaints make up less than half of all electoral complaints).

## GROWING MOMENTUM FOR REFORM

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The issue of truth in political advertising is a perennial one, but momentum behind legal reform has grown since July 2016, when Prime Minister Malcolm Turnbull promised to take ‘a very close look’ at such laws and *The Australian* editorialised in favour of such laws at the time. Senator Nick Xenophon called for truth in political advertising laws modelled on existing rules for trade and commerce. These political figures followed the Australian Democrats and Australian Greens, who have advocated for truth in political advertising laws for many years.<sup>11</sup>

### Truth in political advertising in recent years

**July 2016:** The Australia Institute’s exit poll after the 2016 federal election finds 88% of Australians considered the Senate should pass truth in political advertising legislation.<sup>12</sup>

**August 2019:** The Australia Institute’s landmark report, *We can handle the truth*, makes the case for truth in political advertising laws and forms the basis of our submission to the election inquiry by JSCEM. Polling finds 84% of Australians support truth in political advertising laws, including more details on which model Australians would prefer and what penalties they think are appropriate.<sup>13</sup>

**September 2019:** Independent MP Zali Steggall and Liberal MP Jason Falinski make a joint submission to JSCEM calling for truth in political advertising laws, drawing on Australia Institute polling and research. The Australian Greens also call for truth in political advertising laws in their submission to JSCEM’s inquiry.<sup>14</sup>

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<sup>11</sup> Sales (2016) *Interview: Prime Minister Malcolm Turnbull*, <https://www.abc.net.au/7.30/interview:-prime-minister-malcolm-turnbull/7639624>; The Australian (2016) *Truth-in-advertising laws needed*, <https://www.theaustralian.com.au/tablet-t3/tablet-t3/lifestyle/truthinadvertising-laws-needed-for-political-parties/news-story/91cacd76ec67062f4d8cfb3660de5ea1>

<sup>12</sup> The Australia Institute (2016) *Truth in political advertising*, <https://australiainstitute.org.au/post/truth-in-political-advertising/>

<sup>13</sup> Browne (2019) *We can handle the truth: opportunities for truth in political advertising*, <https://australiainstitute.org.au/report/we-can-handle-the-truth-opportunities-for-truth-in-political-advertising/>

<sup>14</sup> Australian Greens (2019) *Submission 112*, <https://www.aph.gov.au/DocumentStore.ashx?id=f454d75f-63d0-45de-950b->

ACT MLA Caroline Le Couteur proposes truth in political advertising amendments to ACT electoral law, following on from her unsuccessful attempt in 2016 to do the same.<sup>15</sup>

**November 2019:** The Craig Emerson and Jay Weatherill review of Labor’s 2019 election campaign calls for the party to support truth in political advertising legislation based on the South Australian model.<sup>16</sup>

**June 2020:** Bill Browne, author of *We can handle the truth*, appears as an expert witness at the JSCEM inquiry into the 2019 election.

The Australia Institute coordinates an open letter from 29 prominent Australians calling for truth in political advertising laws at the federal level before the next election.<sup>17</sup>

The ACT Government gives ‘in principle’ support to truth in political advertising laws.<sup>18</sup>

**July 2020:** The Australia Institute releases an open letter to ACT MLAs, calling on the Legislative Assembly to pass truth in political advertising laws. The open letter is launched at a press conference accompanied by a mobile billboard which drives around Canberra, including Parliament House.

**August 2020:** Australia Institute polling research finds almost 90% of Canberrans support truth in political advertising laws.<sup>19</sup>

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dca567aad1b5&subId=670810; Steggall & Falinski (2019) *Submission 123*,  
<https://www.aph.gov.au/DocumentStore.ashx?id=a8c3470a-24a0-4045-b738-d3875b47cd6a&subId=670947>

<sup>15</sup> Roberts (2019) *ACT Greens want truth in political advertising laws before 2020 election*, <https://the-riotact.com/act-greens-want-truth-in-political-advertising-laws-before-2020-election/326738>

<sup>16</sup> Emerson & Weatherill (2019) *Review of Labor’s 2019 federal election campaign*,  
<https://alp.org.au/media/2043/alp-campaign-review-2019.pdf>

<sup>17</sup> The Australia Institute (2020) *29 prominent Australians call for truth in political advertising laws by next election*, <https://australiainstitute.org.au/post/29-prominent-australians-call-for-truth-in-political-advertising-laws-by-next-election/>

<sup>18</sup> Knaus (2020) *ACT government backs push for truth in political advertising in lead-up to poll*,  
<https://www.theguardian.com/australia-news/2020/jun/30/act-government-backs-push-for-truth-in-political-advertising-in-lead-up-to-poll>

<sup>19</sup> Jervis-Bardy (2020) *“Should not be legal to lie”: Poll shows overwhelming support for political ad crackdown*, <https://www.canberratimes.com.au/story/6868925/overwhelming-support-for-political-ad-crackdown-in-act/>

The ACT Legislative Assembly unanimously passes truth in political advertising laws, to come into force July 2021.<sup>20</sup> It is the first time since 1985 that an Australian jurisdiction has passed truth in political advertising laws.

**October 2020:** The Queensland state election sees further complaints of disinformation. Most prominent is a ‘death tax’ advertising campaign from Clive Palmer’s United Australia Party (UAP), which academics at the Digital Media Research Centre at Queensland University of Technology (QUT) say could be considered ‘disinformation’. The UAP spends about \$160,000 on Facebook advertising in October that year.<sup>21</sup>

During the election campaign, the Labor Party writes to Facebook to complain about the UAP ‘death tax’ advertisements and to Twitter to complain about Clive Palmer’s tweets on the same topic.<sup>22</sup>

The Queensland election campaign features one of the country’s first political ‘deepfakes’: a ‘fake press conference from Pannastacia Alaszczuk’ from Advance Australia. A deepfake is an AI-generated simulation of a person doing or saying something they did not do or say. In this case, since the advertisement is clearly identified as a manipulation, it is not disinformation in itself – but it is worth noting since there are concerns that deepfake technology could be used to spread convincing disinformation in the future.<sup>23</sup>

**November 2020:** The Australia Institute makes a submission to the Victorian Electoral Matters Committee’s inquiry into the 2018 Victorian election, making the case for truth in political advertising laws and drawing out Victoria-specific results from our

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<sup>20</sup> Evans (2020) *ACT passes new political advertising laws to ensure voters are not “deceived on the way to the ballot box,”* <https://www.abc.net.au/news/2020-08-28/act-bans-false-political-advertising-new-laws/12604096>

<sup>21</sup> Dennien (2020) *How the Queensland election was run and won on social media,* <https://www.brisbanetimes.com.au/politics/queensland/how-the-queensland-election-was-run-and-won-on-social-media-20201104-p56bda.html>

<sup>22</sup> Pollard (2020) *“Outrageous lies”: Labor complains to Facebook and Twitter over Palmer party death tax claim,* <https://www.abc.net.au/news/2020-10-16/qld-election-2020-labor-complains-says-uap-death-tax-claim-a-lie/12774238>

<sup>23</sup> Advance Australia (2020) *BREAKING Watch this fake press conference from Pannastacia Alaszczuk now!*, <https://www.youtube.com/watch?v=JPiIrpCH5cE>; Dennien (2020) *How the Queensland election was run and won on social media*; Wilson (2020) *Australia’s first deepfake political ad is here and it’s extremely cursed,* <https://www.gizmodo.com.au/2020/11/australias-first-deepfake-political-ad-is-here-and-its-extremely-cursed/>

national polling. It also addresses concerns raised by the Victorian Electoral Commission about the implementation of truth in political advertising laws.<sup>24</sup>

**December 2020:** The Australia Institute releases new polling finding 87% of Queenslanders support truth in political advertising laws.<sup>25</sup>

South Australian academic Lisa Hill presents her research on the prevalence of disinformation and concludes Australia could 'provide a model for the world in regulating truth in election advertising'.<sup>26</sup>

JSCEM publishes its report on the 2019 federal election, including substantial extracts from *We can handle the truth*. While the JSCEM majority report does not recommend truth in political advertising laws, minority reports from the Greens and Labor call for an inquiry and legislation respectively.

**January 2021:** The Australia Institute makes a submission to the Select Committee on Foreign Interference through Social Media, summarising our research findings on truth in political advertising, social media issues in the 2019 election and evidence of coordinated promotion of conspiracy theories on social media.<sup>27</sup>

**March 2021:** The ALP Special Platform Conference commits a future Labor Government to introduce truth in political advertising laws.<sup>28</sup>

ANU Centre for International and Public Law visiting fellow Kieran Pender releases a seminar paper investigating the constitutionality of truth in political advertising laws. The paper opens:

Navigating the streets of Canberra in 2020, an observant driver might have spotted an advertisement from The Australia Institute, a progressive think-tank, on the side of a parked van. In bold font, it observed: 'It's perfectly legal to lie in

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<sup>24</sup> Browne (2020) *Impact of social media on elections and electoral administration: Submission*, <https://australiainstitute.org.au/report/impact-of-social-media-on-elections-and-electoral-administration-submission/>

<sup>25</sup> The Australia Institute (2020) *Polling – Truth in political advertising in Queensland*, <https://australiainstitute.org.au/report/polling-truth-in-political-advertising-in-queensland/>

<sup>26</sup> Hill, Baltutis, & Douglass (2021) *Towards a workable legal regime for truth in political advertising*, <https://law.unimelb.edu.au/centres/errn/about/past-events/towards-a-workable-legal-regime-for-truth-in-political-advertising>

<sup>27</sup> Browne (2021) *Foreign interference through social media: Submission*, <https://australiainstitute.org.au/report/foreign-interference-through-social-media-submission/>

<sup>28</sup> ALP (2021) *National Platform: As adopted at the 2021 Special Platform Conference*, p. 71, <https://www.alp.org.au/about/national-platform>

a political ad and it shouldn't be. Enough is enough.' The advertisement ended with a call for action: 'It's time for truth in political advertising laws.'<sup>29</sup>

**April 2021:** During the 2021 Tasmanian state election campaign the Tasmanian Greens announce a truth in political advertising law policy based on the South Australian model.<sup>30</sup>

Shadow Attorney-General Ella Haddad announces Labor's support for truth in political advertising laws at a candidates' forum hosted by the Australia Institute. At these forums, Greens candidates reiterate their support, and support is also voiced by independent, Shooters, Fishers and Farmers Party and Animal Justice Party candidates.<sup>31</sup>

**May 2021:** On an Australia Institute webinar, Senator Kristina Keneally commits to truth in political advertising laws – the most senior Labor figure to do so at that time.<sup>32</sup>

**May/June 2021:** After the ACT Standing Committee on Justice and Community Safety recommends a six-month delay before the ACT's truth in political advertising laws commence, the Australia Institute makes an urgent submission arguing against deferring commencement.<sup>33</sup>

**June 2021:** The Queensland Labor conference passes a resolution calling on the Palaszczuk Government to investigate truth in political advertising laws.<sup>34</sup>

**July 2021:** Truth in political advertising laws come into force in the ACT, on schedule.

**August 2021:** The Australia Institute sends a new briefing note, *Possible, practical, and popular*, to senators and members. The note includes exclusive new polling by the Australia Institute.

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<sup>29</sup> The paper is linked in the description text of this video: Pender (2021) *Regulating truth and lies in political advertising: Implied freedom considerations*,

<https://www.youtube.com/watch?v=Do8ISApkHIU>

<sup>30</sup> Tasmanian Greens (2021) *A Tasmanian Green New Deal*, <https://tasmps.greens.org.au/green-new-deal/truth-political-advertising>

<sup>31</sup> Tasmanian Times (2021) *Clark candidates forum at Hobart Town Hall*, <https://tasmaniantimes.com/2021/04/clark-candidates-forum-at-hobart-town-hall/>

<sup>32</sup> The Australia Institute (2021) *Ensuring accountability*, <https://australiainstitute.org.au/event/ensuring-accountability/>

<sup>33</sup> Standing Committee on Justice and Community Safety (2021) *Inquiry into the 2020 ACT Election and the Electoral Act*, <https://www.parliament.act.gov.au/parliamentary-business/in-committees/committees/jcs/inquiry-into-2020-act-election-and-the-electoral-act>

<sup>34</sup> Caldwell (2021) *Labor members call for ban on dishonest political ads*, <https://www.brisbanetimes.com.au/politics/queensland/labor-members-call-for-ban-on-dishonest-political-ads-20210609-p57zhj.html>

Independent MP Zali Steggall releases the text of her ‘Stop the Lies’ private member’s bill, to be formally tabled in October.<sup>35</sup>

**September 2021:** The Victorian Electoral Matters Committee recommends that Victoria adopt truth in political advertising laws, in a report that cites the Australia Institute’s research. The committee’s members are from the Labor and Liberal parties, the Animal Justice Party, the Liberal Democrats and the Greens. None of them voted against the report’s recommendations.<sup>36</sup>

In response to the release of Zali Steggall’s bill, Shadow Special Minister of State Don Farrell confirms Labor supports truth in political advertising laws.<sup>37</sup>

The Australia Institute and Human Rights Law Centre hold an independent roundtable on truth in political advertising for academics, former politicians and civil society, to discuss problems and solutions.

**October 2021:** Independent MP Zali Steggall tables her draft private member’s bill, the ‘Stop the Lies Bill’, which would implement truth in political advertising laws at the federal level.<sup>38</sup>

The Australia Institute releases an open letter from 39 prominent Australians calling for truth in political advertising laws.<sup>39</sup>

**November 2021:** The Tasmanian Greens introduce a private member’s bill that would implement truth in political advertising laws in that state.<sup>40</sup>

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<sup>35</sup> Steggall (2021) *MEDIA RELEASE: Zali Steggall MP to introduce Bill to stop the lies in political advertising*, [https://www.zalisteggall.com.au/media\\_release\\_zali\\_steggall\\_mp\\_to\\_introduce\\_bill\\_to\\_stop\\_the\\_lies\\_in\\_political\\_advertising](https://www.zalisteggall.com.au/media_release_zali_steggall_mp_to_introduce_bill_to_stop_the_lies_in_political_advertising)

<sup>36</sup> Electoral Matters Committee (2021) *Inquiry into the impacts of social media on elections and electoral administration*, <https://www.parliament.vic.gov.au/emc/article/4482>

<sup>37</sup> Jervis-Bardy (2021) *“Protect our democracy”: Labor, Greens back truth in political advertising laws*, <https://www.canberratimes.com.au/story/7409555/protect-our-democracy-labor-greens-back-truth-in-political-advertising-laws/>

<sup>38</sup> Steggall (2021) *MEDIA RELEASE: Zali Steggall MP to introduce Bill to stop the lies in political advertising*

<sup>39</sup> The Australia Institute (2021) *Open letter: 39 prominent Australians call for truth in political advertising laws*, <https://australiainstitute.org.au/post/open-letter-39-prominent-australians-call-for-truth-in-political-advertising-laws/>

<sup>40</sup> O’Connor (2021) *Electoral Amendment (Integrity of Elections) Bill 2021*, <https://tasmps.greens.org.au/parliament/electoral-amendment-integrity-elections>

**February 2022:** The Australia Institute conducts new polling finding that 82% of Victorians support truth in political advertising laws, and other key recommendations of the Victorian Electoral Matters Committee around misinformation.<sup>41</sup>

**March 2022:** The Victorian Government gives ‘in principle’ support to truth in political advertising laws.

The Australia Institute launches the *Democracy Agenda for the 47<sup>th</sup> Parliament* with independent MPs Helen Haines, Rebekha Sharkie and Zali Steggall. It includes a call for truth in political advertising.<sup>42</sup>

The Australia Institute’s Democracy & Accountability Program director Bill Browne appears on a panel organised by independent candidate Allegra Spender to discuss integrity, including truth in political advertising laws.

In the midst of the 2022 South Australian election campaign, the Electoral Commission of SA (ECSA) finds that campaign group Advance Australia put out misleading material relating to independent candidate Heather Holmes-Ross, which it reportedly failed to take down.<sup>43</sup> A Labor advertisement claiming that ambulance ramping ‘is worse than ever’ is also found to be misleading, as the latest data showed a decline in ramping rates from an October 2021 peak.<sup>44</sup>

**April 2022:** Victorian Opposition Leader Matthew Guy praises truth in political advertising laws. The Victorian Greens re-iterate their support.<sup>45</sup>

**May 2022:** At the 2022 federal election, 16 crossbenchers are elected, including four Greens, one Centre Alliance and nine community independent MPs. Many community independent candidates made truth in political advertising a priority issue. Along with

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<sup>41</sup> The Australia Institute (2022) *Polling – Truth in politics and social media in Victoria*, <https://australiainstitute.org.au/report/polling-truth-in-politics-and-social-media-in-victoria/>

<sup>42</sup> The Australia Institute (2022) *Crossbench independents launch reform agenda for 47th Parliament*, <https://australiainstitute.org.au/post/crossbench-independents-launch-reform-agenda-for-47th-parliament/>

<sup>43</sup> Richardson (2022) *Bad Libs > Good Labor | Dogfight in Kavel | Hanson’s call to axe SA seats*, <https://indaily.com.au/news/politics/2022/03/17/bad-libs-good-labor-dogfight-in-kavel-hansons-call-to-axe-sa-seats/>; RMIT ABC Fact Check (2022) *We looked into the conservative lobby group taking on former rugby star David Pocock. Here’s what we found.*, <https://www.abc.net.au/news/2022-05-13/checkmate-advance-australia-david-pocock-zed-seselja/101061598>

<sup>44</sup> ABC News (2022) *“Misleading and inaccurate”: SA Labor told to drop ambulance ramping claim*, <https://www.abc.net.au/news/2022-03-18/sa-labor-told-to-drop-ramping-claim-in-election-ad/100919850>

<sup>45</sup> Sakkal (2022) *Labor, Liberals and Greens show support for political ‘truth’ laws*, <https://www.theage.com.au/politics/victoria/matthew-guy-andrews-government-support-to-political-truth-laws-20220329-p5a8yw.html>

the 77 Labor MPs, this represents a super-majority for integrity reforms like truth in political advertising laws.

**June 2022:** Australia Institute research finds three in four voters (73%) came across political advertisements that they knew to be misleading, with most seeing at least one such advertisement a week during the campaign. Nine in 10 (86%) Australians agree that truth in political advertising laws should be in place by the next election.<sup>46</sup>

**July 2022:** Special Minister of State Don Farrell confirms with *The Guardian's* Paul Karp that the Albanese Government will pursue truth in political advertising laws, guided by JSCEM's findings.<sup>47</sup>

## MISLEADING ADVERTISING IN THE 2022 ELECTION

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Accusations of misleading political advertising were rife during the election campaign:

- The Australian Electoral Commission (AEC) concluded that the right-wing campaign group Advance Australia had breached existing limited laws against misleading information with its 'Superman' advertisements suggesting independents Zali Steggall and David Pocock were secretly Greens.<sup>48</sup>
- Labor's 'scare campaign' on Medicare made a variety of claims, 'many' of which were 'misleading or lack[ing] important context'.<sup>49</sup>
- The United Australia Party 'incorrectly claimed' that a treaty supported by the major parties would allow the World Health Organization to control Australia's health system.<sup>50</sup> The claim was also circulated by Coalition MPs.<sup>51</sup>

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<sup>46</sup> Arya (2022) *Political advertising on social media platforms during the 2022 federal election*, <https://australiainstitute.org.au/report/political-advertising-on-social-media-platforms-during-the-2022-federal-election/>

<sup>47</sup> Karp (2022) *Labor aims to legislate spending caps and truth in advertising, says Don Farrell*, <https://www.theguardian.com/australia-news/2022/jul/10/labor-aims-to-legislate-spending-caps-and-truth-in-advertising-says-don-farrell>

<sup>48</sup> Travers (2022) *Placards depicting independent candidates as Greens breach Electoral Act, AEC finds*, <https://www.abc.net.au/news/2022-05-16/aec-finds-fake-david-pocock-zali-steggall-signs-breach-laws/101070252>

<sup>49</sup> RMIT ABC Fact Check (2022) *Labor says the Coalition has a plan to cut Medicare if re-elected. Is there any evidence?*, <https://www.abc.net.au/news/2022-05-19/fact-check-medicare-labor-election-scare-alert/101076352>

<sup>50</sup> Bonyhady & Visentin (2022) *United Australia Party launches last-minute blitz of misleading WHO ads*, <https://www.smh.com.au/politics/federal/united-australia-party-launches-last-minute-blitz-of-misleading-who-ads-20220520-p5an7a.html>

<sup>51</sup> Knaus (2022) *United Australia party and Coalition MPs denounced for 'totally misleading' claim about WHO*, <https://www.theguardian.com/australia-news/2022/may/19/united-australia-party-and-coalition-mps-denounced-for-totally-misleading-claim-about-who>



- The Liberal Party’s advertising campaign regarding Australia’s economic recovery purportedly contained data that ‘appear fabricated’, as well as claims about pandemic deaths, national debt and jobs that *Crikey* described as falsehoods, untrue or deceptive.<sup>52</sup>
- The Labor Party ran advertisements regarding pensioners being forced onto the cashless debit card, which the Coalition had ruled out.<sup>53</sup>
- The AEC raised concerns about the major parties’ postal vote campaigns being ‘potentially misleading’ if they had minimal party branding or could be mistaken for AEC branding.<sup>54</sup>

The AEC played an active role in combating online misinformation this election, although it was limited to correcting claims about how the electoral process works.<sup>55</sup> Social media companies are mostly cooperative in removing content identified by the AEC as in breach of Australian law.<sup>56</sup>

Academic Graeme Orr pushed back against the AEC’s blanket claim that electoral laws do not require the display of party branding on a candidate’s advertisements, pointing out that in cases where advertising is jointly approved by the party and the candidate it may be required – and the AEC is empowered to investigate whether this is the case.<sup>57</sup>

This case is identified as a warning that there is a danger of fact checking over-reach, although on the whole the AEC’s interventions seem to have been effective, fair-minded and constructive.

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<sup>52</sup> Austin (2022) *The Liberal Party wants us to “look at the facts”. But just whose facts?*, <https://www.crikey.com.au/2022/04/19/liberal-party-ad-facts-challenged/>

<sup>53</sup> Karp (2022) *Factcheck: is there any truth to scare campaigns about the cashless debit card and retiree tax?*, <https://www.theguardian.com/australia-news/2022/apr/18/factcheck-is-there-any-truth-to-scare-campaigns-about-the-cashless-debit-card-and-retiree-tax>

<sup>54</sup> Taylor & AAP (2022) *AEC warns Australian political parties over ‘misleading’ postal vote applications*, <https://www.theguardian.com/australia-news/2022/apr/16/aec-warns-australian-political-parties-over-misleading-postal-vote-applications>

<sup>55</sup> McIlroy (2022) *How the AEC faced the online trolls and won*, <https://www.afr.com/politics/federal/how-the-aec-faced-the-online-trolls-and-won-20220616-p5au4l>

<sup>56</sup> McIlroy (2022) *Facebook, Twitter remove false claims about vote tampering*, <https://www.afr.com/politics/federal/facebook-twitter-remove-rubbish-claims-about-vote-tampering-20220503-p5ai0f>

<sup>57</sup> Orr (2022) *@AusElectoralCom @samopic @FrauGosling @mkrosebay @simonahac They DO if the party authorised the material Act defines authorising as “approving” You can have 2 people/entities who approve something if they jointly have power over it May seem technical, but AEC was given power to investigate. Such material will be drafted with email trail*, [https://twitter.com/Graeme\\_Orr/status/1502049911168192513](https://twitter.com/Graeme_Orr/status/1502049911168192513)

## ADDRESSING CONCERNS WITH TRUTH IN POLITICAL ADVERTISING LAWS

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There are understandable reservations about implementing truth in political advertising laws. Those expressed by the Victorian Electoral Commission (VEC) when the issue was considered by the Victorian Electoral Matters Committee are a good example.<sup>58</sup> Each of the major concerns is addressed below.

### Limited scope

The VEC is correct that truth in political advertising laws are limited; they do not cover misinformation outside of advertising, advertising that is not misleading to a ‘material extent’, or ‘wrong’ opinions or failed predictions of the future.

There are good reasons to protect opinion and predictions, and to limit laws to advertising. Truth in political advertising laws are not intended to, by themselves, address all the problems with dishonesty in politics. They can still make a valuable contribution – as shown by the fact that, in most South Australian elections, ECSA requires some political advertisements to be withdrawn or retracted.

The ‘material extent’ element of truth in political advertising laws could be removed, as recommended by ECSA in 2009.<sup>59</sup> This would make the laws easier to enforce, but risk censoring political parties and candidates for minor errors of fact.

### Political controversy

The VEC says that ‘it is sometimes difficult for [ECSA] to perform its role without being involved in political controversy’ and that truth in political advertising provisions ‘can be manipulated by parties and candidates for electioneering purposes’.

It is not clear to the authors how South Australia’s provisions can be used for ‘electioneering’ since complaints are processed internally by ECSA.

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<sup>58</sup> Victorian Electoral Commission (2020) *Inquiry into the impact of social media on elections and electoral administration: Submission*, pp. 12–16, <https://www.parliament.vic.gov.au/emc/inquiries/article/4561>

<sup>59</sup> Renwick & Palese (2019) *Doing democracy better*, pp. 25–26, <https://www.ucl.ac.uk/constitution-unit/news/2019/mar/new-report-doing-democracy-better>

In terms of political controversy, case studies from South Australia show that ECSA's determinations are on the whole respected and acted on promptly, and ECSA's decisions are generally reported in a matter-of-fact way, not attracting criticism.<sup>60</sup>

## Arbiter of truth

The VEC says that it does not consider its role to be an arbiter of 'truth' and it is not an expert on all election issues.

If the Australian Parliament made the Australian Electoral Commission (AEC) responsible for misleading advertising complaints, the AEC could consult legal practitioners and political scientists, just as ECSA relies on legal advice from the Crown Solicitor's Office.

Electoral commissions are well-trusted by the public and independent from government. This makes them a good choice to regulate truth in political advertising. While ECSA has at times said it is reluctant to administer truth in political advertising laws, the reality is that it has done so well.

ECSA has acknowledged as much. Who is responsible for regulating truth in political advertising in SA is unlikely to change 'as ironically everyone thinks [ECSA] is doing such a great job at being the judge of truth!'<sup>61</sup>

## Resources required

The VEC correctly notes that timely resolution of complaints is needed, and reviewing complaints can be resource-intensive. Some suggestions for resolving complaints more quickly are included below.

In terms of resources required, ECSA planned to use five or more staff to manage electoral complaints during the 2022 election period (noting that misleading advertising complaints make up less than half of all electoral complaints).<sup>62</sup>

This is a minimal resourcing requirement compared to the 7,282 staff positions ECSA required to run the 2018 election.<sup>63</sup> With proper resourcing, there should be no

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<sup>60</sup> Browne (2019) *We can handle the truth: opportunities for truth in political advertising*, pp. 9–11

<sup>61</sup> As paraphrased by ACT Electoral Commissioner Damian Cantwell in Document 2 in the FOI request of 27 August 2021, [https://www.elections.act.gov.au/about\\_us/freedom\\_of\\_information](https://www.elections.act.gov.au/about_us/freedom_of_information)

<sup>62</sup> Documents 5, 9 and 11 in the FOI request of 27 August 2021, [https://www.elections.act.gov.au/about\\_us/freedom\\_of\\_information](https://www.elections.act.gov.au/about_us/freedom_of_information)

<sup>63</sup> Electoral Commission SA (2018) *2018 state election report*, p. 22, <https://ecsa.sa.gov.au/about-ecsa/publications/publications-state-election-and-by-election-reports>

circumstance in which complaints about misleading advertising ‘divert resources away from the delivery of an election’ as the VEC fears.

## Cooperation from publishers

The VEC says that truth in political advertising requires cooperation from online platforms to avoid ‘significant delays or outright failure’ when an advertiser refuses to take down material that is in breach of the law.

The failure of online platforms to respect Australian laws and regulators should be addressed by making online platforms obey the law – not by changing which laws are adopted to suit Facebook and Google.

That said, withdrawals and retractions are not the only remedies available under the South Australian law. Misleading political advertising is a criminal offence with a fine attached. The deterrent effect of a fine applies even if it will not be imposed until after an election has ended.

## RESOLVING COMPLAINTS QUICKLY

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While ECSA has not published data on how long the average complaint process takes, their commentary in the 2014 and 2018 election reports shows that timeliness is a concern: they identify obstacles to rapid resolution of alleged breaches,<sup>64</sup> explain how the blackout period makes retractions in the last days of a campaign difficult, and say criminal prosecution of offenders is not feasible given how long it takes relative to an election campaign.<sup>65</sup>

ECSA’s Complaints Protocol has details on their planned timeframes:

When a complaint is received in writing, the Electoral Commission SA will acknowledge the complaint as being received and aims to do this within 48 hours. All complaints regarding electoral offences are handled as expeditiously as possible. To ensure this, the Electoral Commissioner may provide deadlines for responses when seeking information from parties involved.

The Electoral Commission SA aims to resolve most issues within 3-4 days. In cases where conflicting evidence and counter submissions occur, matters may

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<sup>64</sup> Electoral Commission SA (2018) *2018 state election report*, p. 80

<sup>65</sup> Electoral Commission SA (2014) *2014 state election report*, pp. 56–57, <https://ecsa.sa.gov.au/about-ecsa/publications/publications-state-election-and-by-election-reports>

take some 1-2 weeks to resolve. Where there is the likelihood of prosecution action, this may extend the resolution for some months.<sup>66</sup>

There is one example in the 2018 election report, which appears to have been selected as a case study of the worst-case scenario, not the average scenario.<sup>67</sup>

In the example, the complaint turned out to be valid, but took 10 days to be resolved. The major delay was that the complainant only provided evidence substantiating the complaint on day 8. Two days after receiving the substantiation, ECSA had reviewed the evidence and referred it to the Crown Solicitor's Office, the Crown Solicitor's Office had given advice and ECSA had made a determination, written to the publisher requesting removal and published a media release.

There are several ways in which the truth in political advertising process could be sped up.

However, it is important to keep these problems in perspective. ECSA has time limits for processing complaints; it is complainants that cause most of the delays – which is inevitable when the public can make complaints. The courts can always apply financial penalties after the fact, since they are a deterrent rather than a corrective.

## Reducing the amount of back and forth

A major cause of delays appears to be the communication with the complainant or the subject of the complaint.

ECSA says that most complainants fail to fill in the complaints form correctly, either not providing sufficient information about the advertisement or not articulating exactly what they allege to be misleading.<sup>68</sup> Better form design might help; more leeway for those processing the complaint to investigate on their own initiative may help too.

It can be difficult to track down an advertisement, especially one on television or radio. Requiring electoral advertisements to be submitted to a publicly accessible archive could help complainants or the commission locate an advertisement more quickly.

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<sup>66</sup> Electoral Commission SA (n.d.) *Complaints protocol for state elections*, <https://ecsa.sa.gov.au/?view=article&id=435:complaints-protocol-for-state-elections>

<sup>67</sup> Electoral Commission SA (2018) *2018 state election report*, p. 80

<sup>68</sup> Electoral Commission SA (2018) *2018 state election report*, p. 80

## Prioritising the initial Electoral Commissioner decision

ECSA notes that Supreme Court injunctions and criminal prosecutions are too slow to be effective in an election.<sup>69</sup> In practice, the initial finding of misleading advertising by the commissioner and request for withdrawal/retraction is the most effective remedy available under the Act, partly because it is the quickest remedy.

## Greater resources

In 2014, ECSA identified that it needed more staff dedicated to complaints management, and that the staff it did have should have been engaged earlier. They recommended three full-time employees (for the duration needed)<sup>70</sup> and by 2022 were planning to use five full-time employees (noting that misleading advertising complaints make up less than half of all electoral complaints).<sup>71</sup>

Having a dedicated body for reviewing complaints, instead of leaving this to electoral commissions, could also address this concern.

## A solution for retractions close to election

The blackout period means that retractions for advertisements close to the election date cannot be published in a similar manner and form to how they originally appeared; even before the blackout period it can be difficult to book advertising space.<sup>72</sup>

In 2014, during the blackout, ECSA requested a political party publish a retraction on their website instead.

There could be an exception to the blackout introduced for retractions. Alternatively or as well, the commissioner could issue a public statement where an advertisement is found to be misleading, instead of being limited to correspondence with the offender and complainant. ECSA explains:

**This method has the potential to generate media coverage and reach a wider audience than any order for retraction and would counter the limitations imposed by the advertising blackout.<sup>73</sup>**

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<sup>69</sup> Electoral Commission SA (2014) *2014 state election report*, sec. 5.3

<sup>70</sup> Electoral Commission SA (2014) *2014 state election report*, sec. 5.3

<sup>71</sup> Documents 5, 9 and 11 in the FOI request of 27 August 2021, [https://www.elections.act.gov.au/about\\_us/freedom\\_of\\_information](https://www.elections.act.gov.au/about_us/freedom_of_information)

<sup>72</sup> Electoral Commission SA (2014) *2014 state election report*, sec. 5.3

<sup>73</sup> Electoral Commission SA (2014) *2014 state election report*, pp. 56–57

## Distributed responsibility

Although not mentioned in ECSA's election reports, another point is that digital platforms already engage in some fact checking. If these platforms were prepared to fact check political candidates and parties (as Twitter has started to do), then some misleading advertising may be addressed by the platforms involved.

## 'DEEPAKES'

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The existence and use of 'deepfakes' is concerning, particularly as the technology becomes convincing, widely accessible and affordable.

However, the same risks that arise with a deepfake are present with other kinds of fraud and deception. Simple video or audio manipulation can make a person appear to answer a different question to the one they were actually asked, slur their words or laugh at something inappropriate; or make a gesture look more aggressive. Simple photo manipulation has placed a presidential candidate at an anti-war rally he never attended. Fake news text and astroturfing social media posts do not require any audio or visual content, let alone manipulated content, to be convincing.<sup>74</sup>

A policy that is limited to AI-generated fakes will fail to capture most misleading content, including some of the most dangerous misinformation.<sup>75</sup>

Rather than focus on particular technologies or forms of fraud, Australia should address the broader issues of false and manipulated information and multimedia; a political culture that is too permissive of misleading and deceptive claims; and untruthful political advertising.

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<sup>74</sup> The examples in this paragraph are based on real incidents outlined in the following sources: Adjer, Patrini, Cavalli, & Cullen (2019) *The state of deepfakes*, <https://sensity.ai/mapping-the-deepfake-landscape/>; Brandom (2019) *Deepfake propaganda is not a real problem*, <https://www.theverge.com/2019/3/5/18251736/deepfake-propaganda-misinformation-troll-video-hoax>; Frum (2020) *The very real threat of Trump's deepfake*, <https://www.theatlantic.com/ideas/archive/2020/04/trumps-first-deepfake/610750/>; Light (2004) *Fonda, Kerry and photo fakery*, <https://www.washingtonpost.com/archive/opinions/2004/02/28/fonda-kerry-and-photo-fakery/15bdc6ed-c568-49fc-bddd-ac534c426865/>; Parkin (2019) *The rise of the deepfake and the threat to democracy*, <http://www.theguardian.com/technology/ng-interactive/2019/jun/22/the-rise-of-the-deepfake-and-the-threat-to-democracy>

<sup>75</sup> Sophos (2020) *Facebook bans deepfakes, but not cheapfakes or shallowfakes*, <https://nakedsecurity.sophos.com/2020/01/08/facebook-bans-deepfakes-but-not-cheapfakes-or-shallowfakes/>

## INNOVATIONS IN ZALI STEGGALL'S BILL

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Supporters of law reform in the truth in political advertising space should give serious consideration to Zali Steggall MP's private member's bill on the topic (the Commonwealth Electoral Amendment (Stop the Lies) Bill 2021).<sup>76</sup>

Elements of the Bill expand upon the South Australian model:

- Section 321K(2) covers material that is intended to mislead as to its origin or authoriser. This is an important extension to the SA model's requirement that the *contents* of electoral advertising not be misleading. In recent years, material that may give the false impression that it comes from an electoral commission has been observed in both federal and state elections, and it is important that it be addressed.
- Section 321N allows a complainant to make an application to the courts regarding misleading or deceptive content (not just the Electoral Commissioner). This allows for potentially wronged parties to pursue redress without depending on the Electoral Commissioner of the day.

## SOCIAL MEDIA'S IMPACT ON DEMOCRACY

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Social media has dramatically increased in importance in our lives. It offers considerable benefits for democracy. It also may pose great risk to democracy because of the increased polarisation and conflict it can create.

In 2021 the Victorian Electoral Matters Committee (EMC) concluded an inquiry into the impact of social media on Victorian elections and electoral administration.<sup>77</sup> Its report was well-considered and received bipartisan support. The Victorian Government has supported the inquiry's recommendations.

The Committee noted:

Many of the problems seen in social media are not new. A variety of problematic electoral practices that took place before social media have simply been adapted to the new media. However, social media have enabled some things to be done more easily, on a larger scale and less transparently than

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<sup>76</sup> *Commonwealth Electoral Amendment (Stop the Lies) Bill 2021 (Cth)*, [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6792](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6792)

<sup>77</sup> *Electoral Matters Committee (2021) Inquiry into the impacts of social media on elections and electoral administration*



previously. The rapid rise of social media also means that some people are still learning how to interpret what they see.<sup>78</sup>

Given the general relevance of the issue, it is appropriate that the Commonwealth conduct its own inquiry, one that can consider national solutions as well as state-level ones.

Rather than recreating the EMC's work, a Commonwealth inquiry could build on it and consider ways to regulate social media that might only be possible at the national level.

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<sup>78</sup> Electoral Matters Committee (2021) *Inquiry into the impacts of social media on elections and electoral administration*, p. xiv

# Indigenous electoral participation

As discussed below ('Pride in Australia's electoral system'), Australia has a strong history of electoral inclusion. The one significant blemish on that record has been the participation of Aboriginal and Torres Strait Islander voters. Indigenous participation continues to be significantly lower than participation of the rest of the population. In the 2022 federal election this has been dramatically highlighted in the seat of Lingiari, which had voter enrolment of between 75% and 80% and voter turnout of 67%.<sup>79</sup>

The lower participation rate in Lingiari has already generated considerable attention. Lingiari is not alone. Table 1 shows lower enrolment rate and lower turnout rate for other electorates which have a significant Indigenous population though Lingiari, which has the highest proportion of Indigenous voters, still stands out.

**Table 1: Electorates with significant Aboriginal and Torres Strait Islander population**

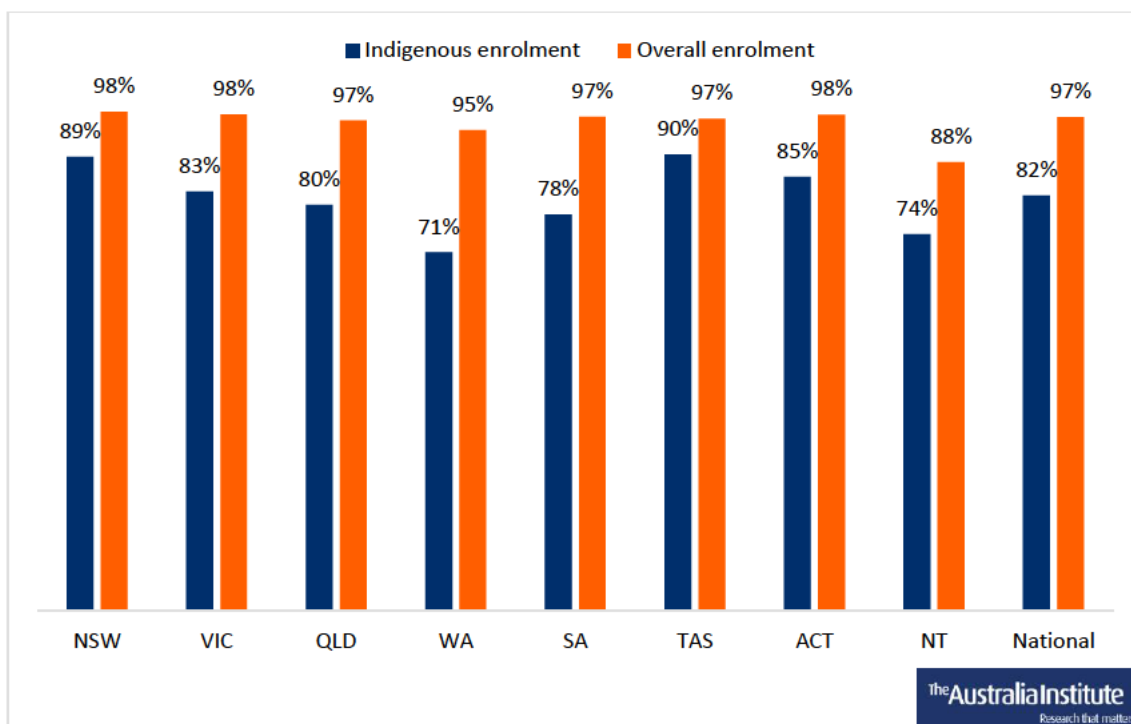
Electorate	ATSI population	Estimated enrolment rate	2022 turnout
Lingiari, NT	43%	75–80%	67%
Durack, WA	17%	80–85%	81%
Leichhardt, Qld	17%	90–95%	84%
Kennedy, Qld	14%	90–95%	85%
Solomon, NT	9%	95–98%	80%
Grey, SA	7%	90–95%	90%
O'Connor, WA	6%	90–95%	87%
Maranoa, Qld	6%	95–98%	88%
<b>Australia</b>	<b>3%</b>	<b>97%</b>	<b>90%</b>

Source: ABS (2022) *General Community Profiles 2016 Census Table G07*, <https://www.abs.gov.au/websitedbs/D3310114.nsf/Home/Census>; AEC (2022) *Enrolment rates by division March 2022*, [https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/rate-div/index.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/rate-div/index.htm); (2022) *Tally Room: 2022 Federal Election*, <https://results.aec.gov.au/27966/Website/HouseDefault-27966.htm>

As shown in Figure 1, the Indigenous enrolment rate across Australia on 30 June 2022 is estimated at 82%. Enrolment rates are lowest in Western Australia and the Northern Territory.

<sup>79</sup> AEC (2022) *Enrolment rates by division March 2022*, [https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/rate-div/index.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/rate-div/index.htm); (2022) *Tally Room, Lingiari NT*, <https://results.aec.gov.au/27966/Website/HouseDefault-27966.htm>

Figure 1: Enrolment rate as of 30 June 2022



Source: AEC (2022) *Indigenous enrolment rate*,  
[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/performance/indigenous-enrolment-rate.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/indigenous-enrolment-rate.htm), (2022) *Size of the electoral roll and enrolment rate 2022*,  
[https://www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats/national/2022.htm](https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/national/2022.htm)

Multiplying Lingiari’s estimated enrolment rate by its turnout rate results in a participation rate for Lingiari of 52% across the whole electorate.

In 2020 the NT Electoral Commissioner said that turnout rates in several remote Indigenous communities in the NT election were around 50% and as low as 24% in one community (Maningrida).<sup>80</sup> All the Northern Territory’s remote Indigenous communities are in Lingiari. Multiplying Lingiari’s voter enrolment rate of between 75% and 80% by a turnout rate of 50% indicates Indigenous electoral participation of just 39%.

As another point of reference, the AEC estimated national Indigenous turnout was just 60% and 52% in the 2013 and 2016 elections respectively.<sup>81</sup>

<sup>80</sup> James (2020) *Low Indigenous voter turnout at NT election threatening democracy, electoral commissioner says*, <https://www.abc.net.au/news/2020-08-21/poor-indigenous-voter-turnout-at-nt-election/12580688>

<sup>81</sup> AEC (2017) *Voter turnout – 2016 House of Representatives and Senate elections*, p. 15, [https://www.aec.gov.au/about\\_aec/research/files/voter-turnout-2016.pdf](https://www.aec.gov.au/about_aec/research/files/voter-turnout-2016.pdf)

Academics Francis Markham and Bhamie Williamson highlight there is latent political power in certain electorates in the significant numbers of Indigenous voters who are not enrolled or are enrolled but do not vote. Based on 2019 election results but 2022 electoral boundaries, they estimated the number of potential additional Indigenous voters in 15 electorates, finding that the number of potential additional Indigenous voters exceeds the winning vote margin in 10 electorates.<sup>82</sup>

Table 2 updates this work with the winning vote margin as of the 2022 election for five electorates where the estimated potential additional Indigenous voters exceeds 3,000. In three of these electorates, the estimated number of Indigenous Australians who were entitled to vote and did not exceeds the winning vote margin.

**Table 2: 2022 winning vote margin vs potential additional Indigenous voters**

Electorate	State	2022 winning vote margin 2CP	Estimated potential additional Indigenous voters
Lingiari	NT	866	18,382
Durack	WA	7,643	12,792
Leichardt	Qld	6,313	9,063
Kennedy	Qld	24,516	7,077
Solomon	NT	10,327	3,613

Source: AEC (2022) *Tally Room: 2022 Federal Election*; Markham & Williamson (2022) *Indigenous electoral power in the 2022 federal election: A geographic snapshot of latent potential*, <https://caepr.cass.anu.edu.au/research/publications/indigenous-electoral-power-2022-federal-election-geographic-snapshot-latent>

Of course, Indigenous people will not all vote in one bloc, but it still indicates significant electoral power. If politicians were aware of a large mobilisation of Indigenous voters, they would more actively promote policies to win that vote.

## INDIGENOUS VOTER ENGAGEMENT

Improving electoral education and doing more to engage with remote communities, including with better election-based services, could help lift Indigenous engagement.

### Federal Direct Enrolment and Update

Federal Direct Enrolment and Update (FDEU) is not used in remote communities where mail is sent to a single community address. This means people living in many remote

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<sup>82</sup> Markham & Williamson (2022) *Indigenous electoral power in the 2022 federal election: A geographic snapshot of latent potential*, p. 3, <https://caepr.cass.anu.edu.au/research/publications/indigenous-electoral-power-2022-federal-election-geographic-snapshot-latent>

communities are not automatically added to the electoral roll, unlike most of the rest of Australia. In 2021 the NT Electoral Commission stated:

The limits of the FDEU program particularly disadvantages Aboriginal electors in the Northern Territory. According to AEC figures, as at the 30 June 2020, of the estimated 52,847 voting age Aboriginal electors in the Territory, 16,527 were not enrolled to vote. The majority of Aboriginal Territorians live in regional and remote areas not covered by the FDEU program.

Data also indicates that remote Aboriginal Territorians do not enrol, face-to-face engagement remains the most effective manner to stimulate enrolment in remote areas.

The under representation of enrolment of remote Aboriginal Territorians not only impacts election results, it also affects electoral boundaries.<sup>83</sup>

Earlier the NT Electoral Commissioner had also said 'The gradual and eventual shutdown of remote enrolment programs has also served to disenfranchise remote voters.'<sup>84</sup>

A complaint has been lodged to the Human Rights Commission about the use of FDEU.<sup>85</sup> While FDEU has been effective elsewhere at increasing enrolment it is clear it cannot be the only tool in the AEC's box when attempting to increase Indigenous enrolment.

## Electoral education

Electoral education is crucial to make the connection between voting and people's lives clearer. There have been cuts to Indigenous voter education. In 1996 the Aboriginal and Torres Strait Islander Election Education and Information Service was abolished. Two studies point to this as a factor in declining Indigenous electoral education.<sup>86</sup>

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<sup>83</sup> NTEC (2021) *2020 territory election report*, p. 38, <https://ntec.nt.gov.au/publications-and-reports/election-reports>

<sup>84</sup> James (2020) *Low Indigenous voter turn out at NT election threatening democracy, electoral commissioner says*

<sup>85</sup> Fitzgerald (2021) *Indigenous voters lodge discrimination complaint against Australian Electoral Commission*, <https://www.abc.net.au/news/2021-06-19/nt-voters-racial-discrimination-human-rights-commission/100227762>

<sup>86</sup> Hill & Alport (2010) *Voting attitudes and behaviour among Aboriginal peoples: Reports from Anangu women*, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8497.2010.01552.x>; Kelly (2012)

While this cut occurred in 1996 it is still probably having an impact – Professor Lisa Hill notes that the cuts in voter education can take decades to work through.<sup>87</sup>

The AEC also cut its NT staffing base in 2017.<sup>88</sup>

## Services in remote Indigenous communities

Providing government services in remote Indigenous communities often costs many times more than providing similar services in urban areas. The same is true for running elections. Antony Green notes:

Most Indigenous votes are collected by remote mobile polling teams that travel around the electorate visiting communities for as little as one hour on a single day.

One of the key campaign jobs of candidates in Lingiari is making sure communities know when a mobile team is turning up and making sure community members are around to vote when it arrives. Many miss out.<sup>89</sup>

This year, ABC News highlighted several problems with the voting process in Lingiari in 2022, including a severe shortage of certified interpreters and helicopter problems causing residents in two homelands outside Gapuwiyak to be left unable to vote. They spoke to three community leaders, who are quoted below.<sup>90</sup>

The Northern Lands Council Chair Samuel Bush-Blanasi said:

[T]he short window for voting does not take into account daily life in remote communities where people have other commitments, including work, childcare, travel as rangers and so on, as well as important cultural obligations.

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*Directions in Australian electoral reform*, pp. 67–71, <https://press.anu.edu.au/publications/directions-australian-electoral-reform>

<sup>87</sup> Hill in Hill & Graycar (2020) *Compulsory voting - Research Tuesdays*, <https://www.youtube.com/watch?v=D7nGCzmNi44>

<sup>88</sup> Garrick (2022) *Northern Land Council accuses the Australian Electoral Commission of “failing” Aboriginal voters*, <https://www.abc.net.au/news/2022-04-13/nt-aboriginal-enrolment-remote-communities/100985178>

<sup>89</sup> Green (2021) *Why the NT seat of Lingiari keeps being mentioned in the VoterID debate*, <https://antonygreen.com.au/why-the-nt-seat-of-lingiari-keeps-being-mentioned-in-the-voterid-debate/>

<sup>90</sup> Fitzgerald & Trevaskis (2022) *Lack of interpreters and “unprecedented” challenges leave some remote NT voters in the lurch this election*, <https://www.abc.net.au/news/2022-05-21/aec-no-interpreters-small-time-window-aboriginal-vote-election/101083240>

The 2021 Senior Australian of the Year, Dr Miriam-Rose Ungunmerr Baumann, said her community in Daly Rivers had no access to interpreters when the remote polling team set up booths. She pointed to the government's failure to close the gap on issues like health and education as reasons why Aboriginal voters felt disengaged:

The majority of people were confused and wanted someone to sit with them to explain the system.

Former NT Labor politician Lynne Walker said:

[F]or the years that I've worked on Federal and Territory campaigns around Northeast Arnhem, it's probably been one of the most disrupted remote area polling schedules that I've seen.<sup>91</sup>

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<sup>91</sup> Fitzgerald & Trevaskis (2022) *Lack of interpreters and "unprecedented" challenges leave some remote NT voters in the lurch this election*

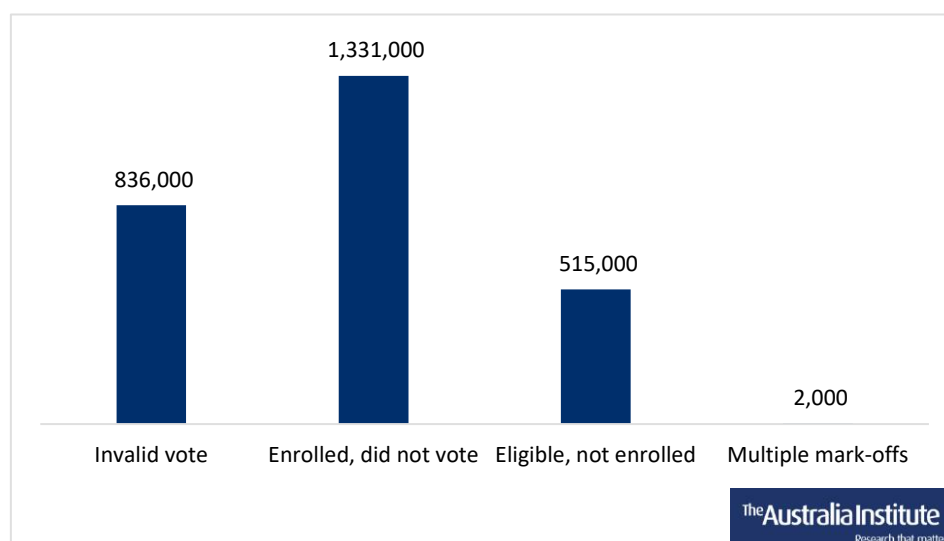
# Measures of growing voter disengagement

In response to the Morrison Government’s voter ID bill, which subsequently failed to pass, the Australia Institute prepared a briefing note finding that the number of people entitled to vote who do not vote or who vote but whose votes are not counted exceeds the number of people who vote multiple times 1,000 times over.

At the 2019 federal election, 836,000 Australians voted informally (many by accident), 1.3 million Australians on the electoral roll did not vote and 515,000 Australians eligible to vote were not enrolled. Taken together, 2.7 million Australians did not have their votes counted.<sup>92</sup>

Compared to 2.7 million Australians uncounted, the incidence of multiple voting pales into insignificance. Election analyst Antony Green reports that there were about 2,000 ‘multiple mark-offs’ in the 2019 federal election.<sup>93</sup> Many of these would be clerical errors, rather than deliberate multiple voting attempts.

**Figure 2: The scale of votes uncast or uncounted compared to multiple mark-offs (2019 election)**



Sources: Compiled in Browne, Seth-Purdie, & Shields (2021) *Identifying the problem: Voter ID laws a solution in search of a problem*, <https://australiainstitute.org.au/report/identifying-the-problem/> from AEC (2020) *Size of the electoral roll and enrolment rate 2019*,

<sup>92</sup> Browne et al. (2021) *Identifying the problem: Voter ID laws a solution in search of a problem*

<sup>93</sup> Green (2021) *Government introduces Bill requiring voters to show ID to vote*, <https://antonygreen.com.au/government-introduces-law-requiring-voters-to-show-id-to-vote/>



[https://www.aec.gov.au/enrolling\\_to\\_vote/enrolment\\_stats/national/2019.htm](https://www.aec.gov.au/enrolling_to_vote/enrolment_stats/national/2019.htm); Green (2021) *Government introduces Bill requiring voters to show ID to vote*, <https://antonygreen.com.au/government-introduces-law-requiring-voters-to-show-id-to-vote/>; International IDEA (2019) *Australia*, <https://www.idea.int/data-tools/country-view/54/40>

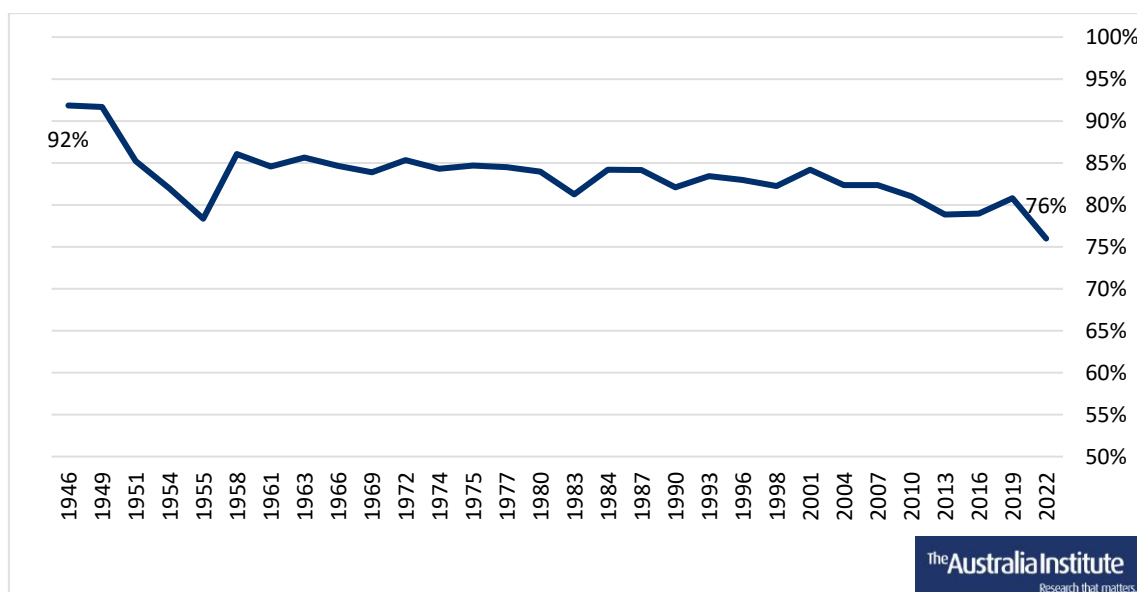
As of the 2019 election, there were a further 1.7 million residents of Australia of voting age who were not eligible to vote.

Between 1946 and 2019:

- enrolled voters as a share of the voting age population declined from 98% to 88%
- total votes as a share of enrolled voters declined from 94% to 92%
- valid votes as a share of total votes declined from 98% to 94%.

In total, this means that valid votes as a share of the voting age population declined from 90% to 76% between 1949 and 2019. In other words, adults living in Australia whose votes were not counted at the election have gone from 1 in 10 to 1 in 4.

**Figure 3: Valid votes as a share of voting age population**



Sources: International IDEA (n.d.) *Australia*, <https://www.idea.int/data-tools/country-view/54/40>

It should be noted that 1946 and 1949, the first two elections in the AEC's time series, may have been outliers in terms of enrolled voters as a share of the voting age population (perhaps because post-war immigration was yet to pick up). Nonetheless, the broader trend can be observed from the 1960s onwards.

Serious consideration should be given to extending the franchise to permanent residents. New Zealand, Uruguay, the United Kingdom and several smaller countries in

the Commonwealth of Nations allow permanent residents or Commonwealth citizens (which Australians are) to vote in national elections.<sup>94</sup> Many others allow permanent residents to vote in local or state/provincial/regional elections.

If legislators were reluctant to allow all permanent residents to vote, one option would be to make it a reciprocal arrangement: all permanent residents who are citizens of a country that allows Australian permanent residents to vote in its national elections would be permitted to vote in Australian elections.

There is already precedent for allowing non-citizens to vote. Five of six states in Australia allow property owners to vote in local council elections separate to the right of residents; in some cases giving them multiple votes.<sup>95</sup> Permanent residents have a better claim to participate in our democracy than do property owners.

## REVIEWING THE PENALTY FOR NOT VOTING

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‘If you don’t vote, you don’t count’

Vernon Dahmer, Civil Rights Movement leader

The fine for not voting at federal elections is \$20, as it has been since 1984. Inflation and wage increases have made it less effective as an incentive for Australians to vote. Although Australia’s voter turnout is high compared to the OECD average of 69%,<sup>96</sup> it has fallen since 2007 (Figure 4). At the 2022 election it fell to 90%, its lowest level ever since voting was made compulsory in 1925.

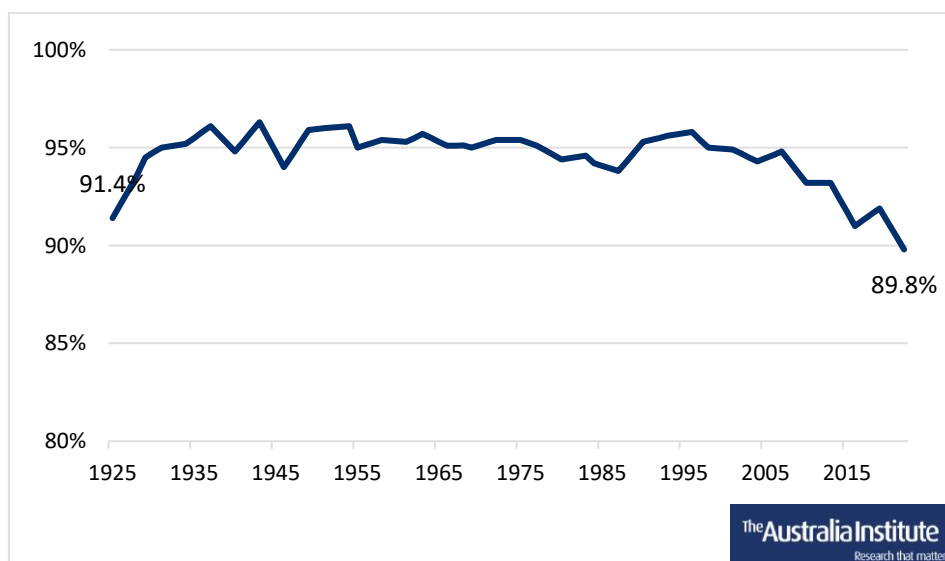
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<sup>94</sup> Johnston (2022) *Who can vote in UK elections?*, <https://commonslibrary.parliament.uk/research-briefings/cbp-8985/>; NZ Electoral Commission (n.d.) *Are you eligible to enrol and vote?*, <https://vote.nz/enrolling/get-ready-to-enrol/are-you-eligible-to-enrol-and-vote/>

<sup>95</sup> Goss (2017) *Votes for corporations and extra votes for property owners: why local council elections are undemocratic*, <http://theconversation.com/votes-for-corporations-and-extra-votes-for-property-owners-why-local-council-elections-are-undemocratic-83791>

<sup>96</sup> OECD (2018) *Better Life Index*, <http://www.oecdbetterlifeindex.org/topics/civic-engagement/>

**Figure 4: Voter turnout, 1925–2022 House of Representatives**



Source: AEC (2022) *Voter turnout – previous events*,  
[https://www.aec.gov.au/Elections/federal\\_elections/voter-turnout.htm](https://www.aec.gov.au/Elections/federal_elections/voter-turnout.htm)

When voting is optional, those with lower education and lower income are less likely to vote.<sup>97</sup> This makes government less representative and the nation less cohesive. In contrast, compulsory voting brings us closer to the ideal of ‘Government of the people, by the people, for the people’.

Examples that illustrate that ‘if you don’t vote, you don’t count’ are:

- When compulsory voting was introduced in the 1925 federal election, the conservative Nationalist Party changed from opposing the old age pension to supporting it.<sup>98</sup>
- After US women got the vote, there was large, sudden increases in public health spending to reduce child mortality.<sup>99</sup>

<sup>97</sup> Flinders (2014) *Low voter turnout is clearly a problem, but a much greater worry is the growing inequality of that turnout*, <https://blogs.lse.ac.uk/politicsandpolicy/look-beneath-the-vote/>; OECD (2011) *Society at a glance 2011: OECD social indicators*, p. 97, [https://www.oecd-ilibrary.org/social-issues-migration-health/society-at-a-glance-2011\\_soc\\_glance-2011-en](https://www.oecd-ilibrary.org/social-issues-migration-health/society-at-a-glance-2011_soc_glance-2011-en)

<sup>98</sup> Fowler (2011) *Electoral and policy consequences of voter turnout: Evidence from compulsory voting in Australia*, [https://projects.iq.harvard.edu/files/westminster\\_model\\_democracy/files/fowler\\_compulsoryvoting.pdf](https://projects.iq.harvard.edu/files/westminster_model_democracy/files/fowler_compulsoryvoting.pdf)

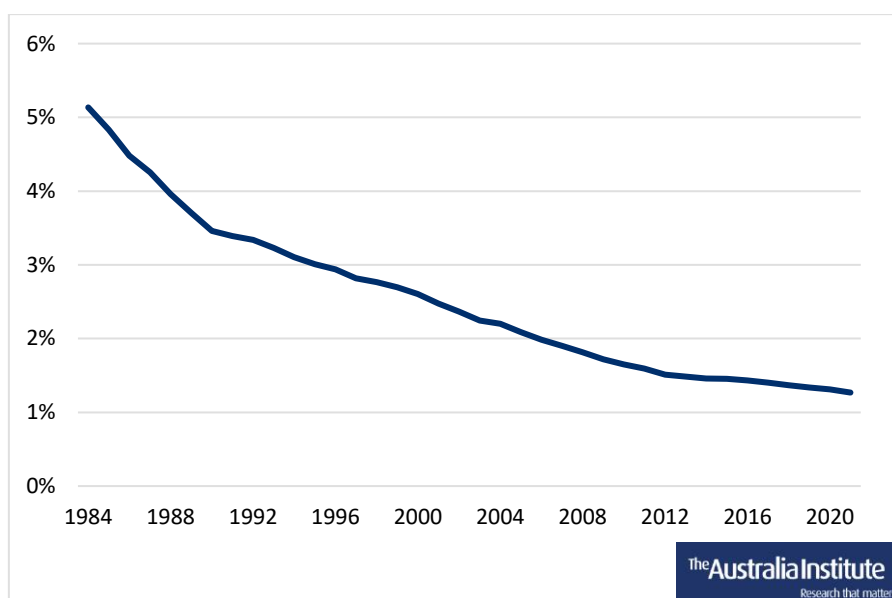
<sup>99</sup> Miller (2008) *Women’s suffrage, political responsiveness, and child survival in American history*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3046394/>

- After the US *Voting Rights Act* (1965) fully extended the right to vote to African Americans, their communities got better public services, such as fire stations, recreational facilities, paved streets, and garbage collection.<sup>100</sup>

If people are required to vote, it encourages the government to put more effort into making voting inclusive and cost free as well as making sure the electoral process has integrity, so that it is both easy and worthwhile to vote. Compulsory voting makes the government more legitimate, more representative and less influenced by elite power.<sup>101</sup>

The deterrence value of the fine for not voting has declined as it has fallen over time from the equivalent of 5.1% of Male Total Average Weekly Earnings (MTAWE) in 1984 to 1.3% currently (Figure 5).

**Figure 5: Fine for not voting as a % of Male Total Average Weekly Earnings**



Source: ABS (2022) *Average weekly earnings, Australia, May 2022*, <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/average-weekly-earnings-australia/latest-release>

Increasing the fine to the equivalent of the MTAWE in 1984 real terms would lift the fine to \$78 today. This is still much less in real terms in 1924 when compulsory voting was introduced, and the fine was £2 – around half of the average weekly male wage for factory workers.<sup>102</sup>

<sup>100</sup> Hill in Brennan & Hill (2014) *Compulsory voting*, p. 137, Cambridge University Press

<sup>101</sup> Hill in Hill & Graycar (2020) *Compulsory voting - Research Tuesdays*

<sup>102</sup> Brett (2019) *From secret ballot to democracy sausage: How Australia got compulsory voting*, p. 3, Text Publishing; Laughton (1924) *Victorian year-book 1923–1924*, p. 569,

The \$20 fine for not voting in the federal election is with the ACT and WA the lowest in the country.<sup>103</sup>

The JSCEM Inquiry into the 2016 federal election chaired by Senator James McGrath regarded 'compulsory voting as a corner-stone of Australia's democratic system' and recommended that the penalty for not voting be reviewed. Senator Larissa Waters was concerned about increasing the penalty for not voting, instead stating that more education programs were needed.<sup>104</sup>

While such programs have merit, a well-run compulsory voting system is:

... the most efficient and effective means for raising and maintaining high and socially even turnout. In fact, it is the only institutional mechanism that can achieve turnout rates of 90 per cent and above on its own.<sup>105</sup>

We also note the importance of the fine for not voting being enforced 'consistently but without zealotry', and think the AEC has a good record of abiding by this principle.<sup>106</sup>

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[http://www.ausstats.abs.gov.au/ausstats/free.nsf/0/ED49EB72FDF04362CA257FA20014CEAD/\\$File/10\\_13012%20-Vic%20YrBook1923-24\\_Preface\\_Contents.pdf](http://www.ausstats.abs.gov.au/ausstats/free.nsf/0/ED49EB72FDF04362CA257FA20014CEAD/$File/10_13012%20-Vic%20YrBook1923-24_Preface_Contents.pdf)

<sup>103</sup> The Australia Institute (2019) *Compulsory voting: Ensuring government of the people, by the people, for the people*, <https://australiainstitute.org.au/report/compulsory-voting-ensuring-government-of-the-people-by-the-people-for-the-people/>

<sup>104</sup> JSCEM (2018) *Report on the conduct of the 2016 federal election and matters related thereto*, [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024085/toc\\_pdf/Reportontheco nductofthe2016federalectionandmattersrelatedthereto.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024085/toc_pdf/Reportontheco nductofthe2016federalectionandmattersrelatedthereto.pdf;fileType=application%2Fpdf)

<sup>105</sup> Hill in Brennan & Hill (2014) *Compulsory voting*, p. 119

<sup>106</sup> Hill & Graycar (2020) *Compulsory voting - Research Tuesdays*

## More parliamentarians

The Australia Institute has been making the case for more parliamentarians since 2018.<sup>107</sup> The Institute's 2020 submission defending the Northern Territory's second seat serves as the most detailed exploration of why an increase in parliamentarians by 50% makes sense:

- It would increase representation of the territories, with a guaranteed two seats for the Northern Territory and the possibility of three. The ACT would have four seats, an increase of one.
- For the first time since Federation, it would provide for one vote, one value: every state would have the number of MPs which its population entitles it to.
- It would return the number of people per MP to around what it was following the 1984 Hawke Government reforms, allowing for more responsive and locally-focused MPs.
- It would increase the talent pool from which ministers can be drawn. The number of ministers has tripled since 1901, or more than quadrupled if parliamentary secretaries are included, while the parliament has only about doubled in size.
- It would reverse the growing geographical size of rural and regional electorates.<sup>108</sup>

One vote, one value is reportedly a priority of new Prime Minister Anthony Albanese,<sup>109</sup> and an increase of 50% in the number of parliamentarians would achieve it in the House of Representatives.

## LOW LEVELS OF ENGAGEMENT

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The Australia Institute conducted a national poll in July 2022 to assess levels of direct engagement between Australians and their parliamentarians. The results are described below and in the appendix.

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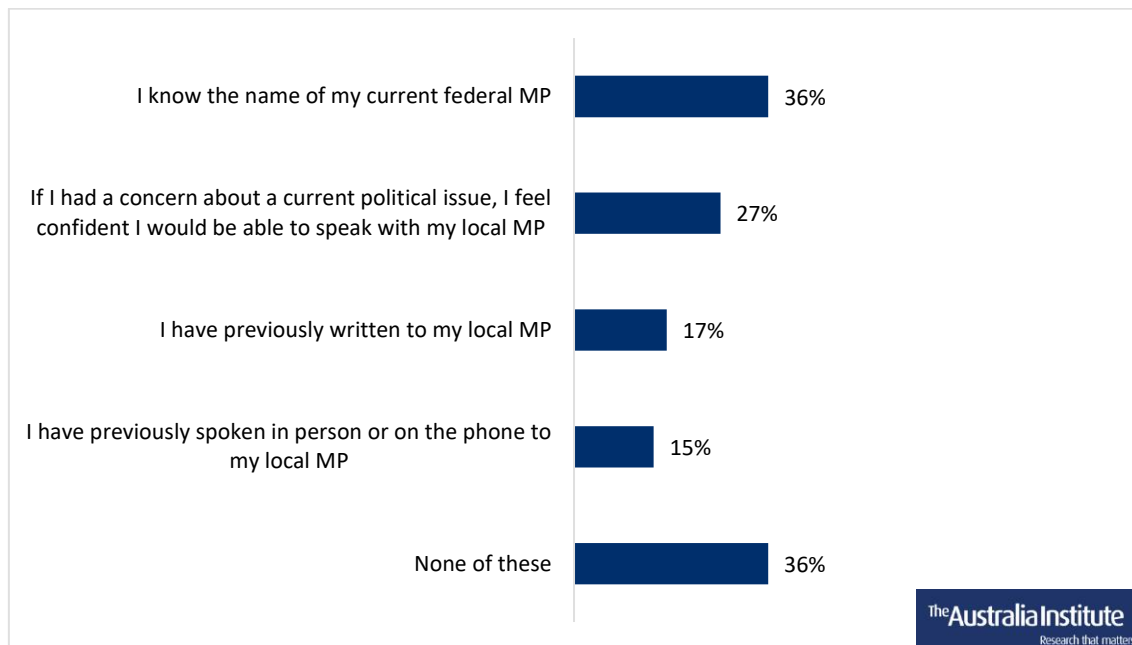
<sup>107</sup> Browne (2018) *It's time ... for more politicians*, <https://australiainstitute.org.au/report/its-time-for-more-politicians/>

<sup>108</sup> Browne (2020) *Comes with the territory: ensuring fair political representation for Northern Territorians - and all Australians*, <https://australiainstitute.org.au/report/comes-with-the-territory-ensuring-fair-political-representation-for-northern-territorians-and-all-australians/>

<sup>109</sup> Karp & Butler (2022) *Andrew Barr says doubling ACT representation in Senate may be 'appropriate' in light of census*, <https://www.theguardian.com/australia-news/2022/jun/29/andrew-barr-says-doubling-act-representation-in-senate-may-be-appropriate-in-light-of-census>

Few constituents consider their parliamentarians accessible and approachable, or have interacted with their representative in the past. Results are summarised in the figure below.

**Figure 6: Relationship with local MP**



Source: Australia Institute polling research

Only 15% of Australians have previously spoken to their MP (in person or on the phone), slightly less than the 17% that have written to their local MP.

About one in four Australians (27%) feel confident that if they had a concern about a current political issue, they would be able to speak with their local MP.

Only one in three Australians (36%) say they know the name of their federal MP. In other words, 64% of respondents did not know the name of their current federal MP. Note that knowledge was not tested here; it is possible that some who said they did know their MP's name are mistaken.

The 2022 federal election was held less than two months before this poll was conducted. Some respondents would have new MPs. While we would expect results to improve the later the poll is conducted compared to the election, the 2022 results are very similar to results from the same questions in a 2017 poll (conducted 9 to 10 months after the 2016 election).<sup>110</sup>

<sup>110</sup> See Browne (2018) *It's time ... for more politicians*

## MORE ACT SENATORS

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Regardless of whether there is a general increase in the number of parliamentarians, the number of senators for the territories should be increased.

Chief Minister of the ACT Andrew Barr has recommended increasing the ACT's senators from two to four. The ACT's two senators represented 454,499 people while Tasmania's 12 senators represent 557,571 people.<sup>111</sup> In other words, each ACT senator represents 227,000 people while each Tasmanian senator represents 46,000 people. If the ACT received senators in proportion to its population relative to Tasmania's, it would have 10 senators.

An additional two senators for the ACT would also ensure that both major parties are represented. At the moment, there is no federal parliamentarian representing the 75,000 Canberrans (27%) who voted for the Liberal Party.

New territory senators would not affect the number of MPs in the House of Representatives, which is based on the number of state senators.<sup>112</sup>

### Popular support

In July 2021, The Australia Institute surveyed a nationally representative sample of 1,004 Australians about their views on various restrictions on the rights and representation of the Australian Capital Territory (ACT).<sup>113</sup>

Respondents were asked about a potential increase to the number of senators representing the Northern Territory and ACT. Currently every state elects 12 senators to the Australian Senate, but the ACT and the Northern Territory only elect 2 each.

Respondents were asked whether they would support or oppose an increase in the number of senators each territory elects from 2 to 4.

- One in two (51%) Australians support increasing the number of senators elected by each territory from 2 to 4.
- One in five (21%) oppose increasing the number of senators each territory elects.

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<sup>111</sup> Karp & Butler (2022) *Andrew Barr says doubling ACT representation in Senate may be 'appropriate' in light of census*; Neale (2022) *Territory rights are Pocock's priority as census spurs call for more ACT senators*, <https://www.canberratimes.com.au/story/7800551/territory-rights-are-pococks-priority-as-census-spurs-call-for-more-act-senators/>

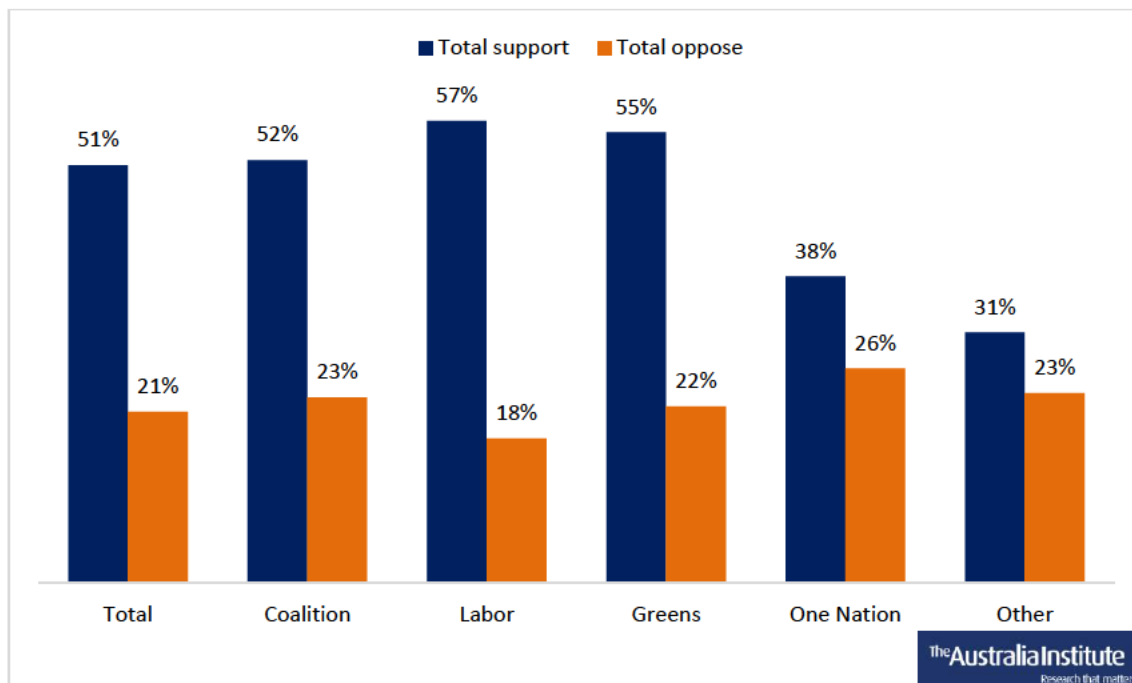
<sup>112</sup> *McKellar v The Commonwealth [1977]*

<sup>113</sup> The Australia Institute (2021) *Polling – Territory rights*, <https://australiainstitute.org.au/report/polling-territory-rights/>



- The majority of Coalition (52%), Labor (57%) and Greens (55%) voters support increasing the number of senators elected by each territory from 2 to 4.

**Figure 7: Support for increasing the number of territory senators from 2 each to 4, by voting intention**



Source: Australia Institute polling research

Australia Institute polling of ACT residents in August 2021 found 67% support an increase in the number of senators elected in each territory from 2 to 4.<sup>114</sup>

## THE SHRINKING MINISTERIAL TALENT POOL

As the Australia Institute wrote in 2020,<sup>115</sup> one justification for increasing the size of the Parliament is that it increases the talent pool from which ministers can be drawn. This argument was advanced by Robert Menzies in 1942,<sup>116</sup> at which time the size of Parliament had not increased since Federation.

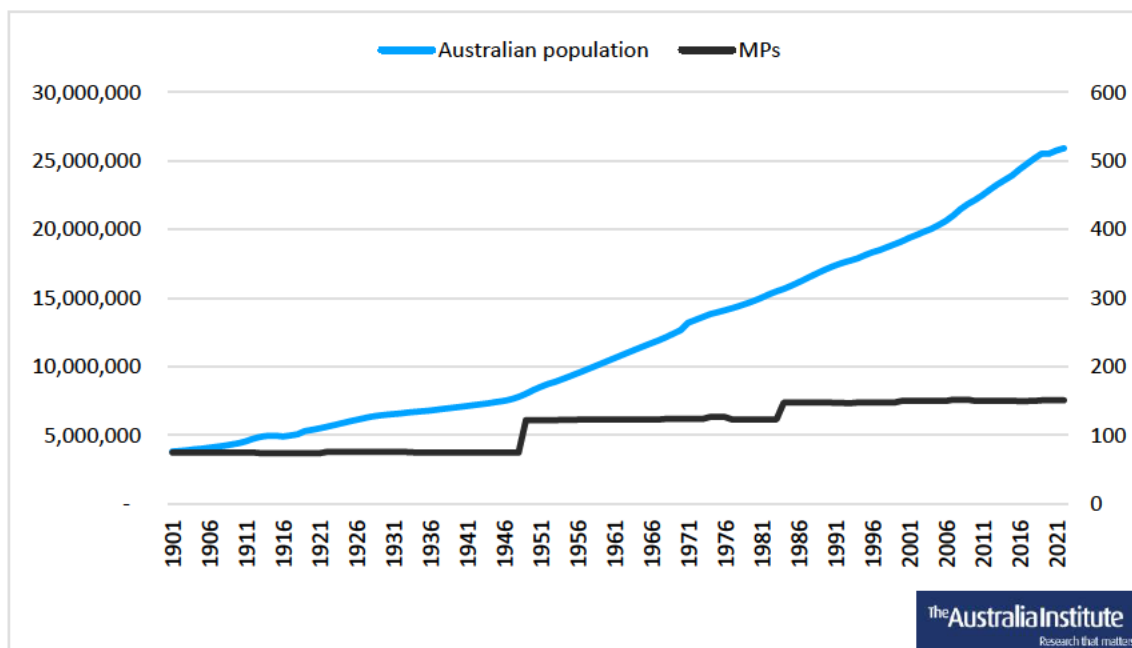
<sup>114</sup> The Australia Institute (2021) *Polling: ACT Research*, <https://australiainstitute.org.au/report/polling-act-research/>

<sup>115</sup> Browne (2020) *Comes with the territory: ensuring fair political representation for Northern Territorians - and all Australians*

<sup>116</sup> Gorman & Melleuish (2018) *The nexus clause: A peculiarly Australian obstacle*, <https://www.tandfonline.com/doi/abs/10.1080/23311983.2018.1517591>

In the first Australian Government, the Barton Ministry, had around 10 ministers; the Albanese Ministry has 30, plus 12 assistant ministers.<sup>117</sup> In this time, the size of Parliament has about doubled – but the number of roles to fill is about four times larger. The growth of the committee system also demands talented parliamentarians outside of the ministry and assistant ministers.

**Figure 8: Australia's population and its number of MPs**

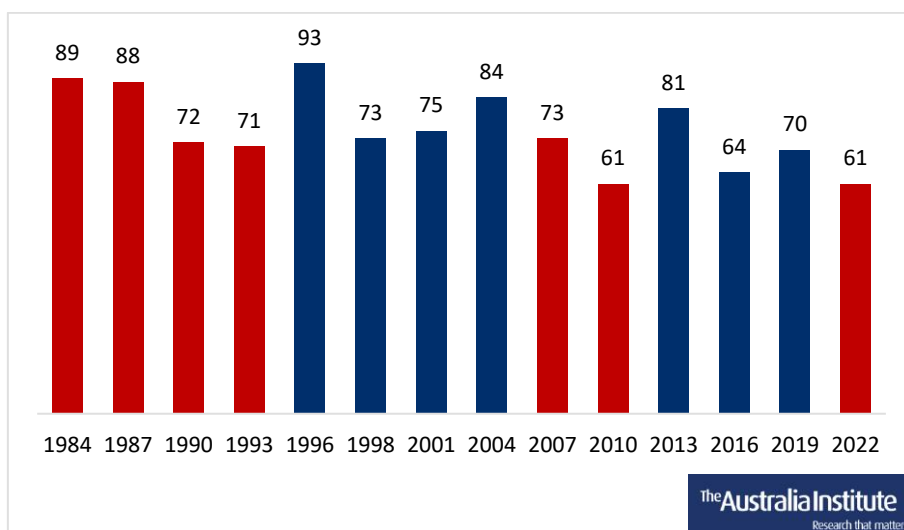


Source: Author's calculations, from ABS and AEC sources and original research.

The problem is particularly acute when elections are close, as they have been in recent years, and for the Labor Party because it has fewer senators than the Coalition.

<sup>117</sup> Parliament of Australia (2022) *Current Ministry List*, [https://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/parliamentary\\_handbook/current\\_ministry\\_list](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/parliamentary_handbook/current_ministry_list)

**Figure 9: Government backbenchers**



Source: Australia Institute calculations from Barber (2017) *Federal election results 1901–2016*, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1617/FederalElectionResults](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1617/FederalElectionResults); *Ministers of State Act 1952* (Cth), sec.4

Note: These figures are necessarily simplified, because senators take their seats on a different schedule to House of Representatives MPs. Parliamentary secretaries were introduced after the 1990 election.<sup>118</sup>

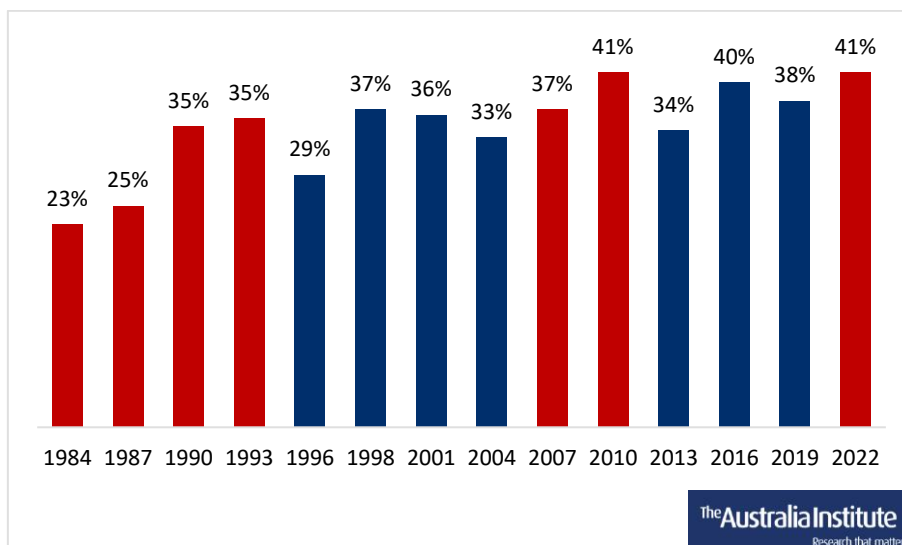
Red results represent Labor governments and blue ones Coalition governments.

As can be seen from the figures above, the 61 government backbenchers following the 2022 election is a historically low result (tied with 2010). The average between 1984 and 2022 was 75 government backbenchers.

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<sup>118</sup> Nethercote (1999) *Departmental Machinery of Government since 1987*, [https://www.aph.gov.au/about\\_parliament/parliamentary\\_departments/parliamentary\\_library/pubs/rp/rp9899/99rp24](https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/pubs/rp/rp9899/99rp24)

**Figure 10: Share of party room in ministry (including parliamentary secretaries)**



If the size of the parliament is not increased, governments should give serious consideration to including independent and minor party parliamentarians in the ministry – as is the case in the South Australian Labor Government (a majority government) and the ACT Labor–Greens Government (a coalition government).

This is not without precedent at the federal level. HB Higgins (a Protectionist) served as Attorney-General in the first labour government in the world, the Watson Ministry of 1903.<sup>119</sup>

Had the Albanese Ministry drawn on independent and minor party parliamentarians as well, the talent pool would have consisted of 137 parliamentarians rather than 103: a deeper pool than any other in the period examined.

<sup>119</sup> McMullin (2006) *First in the world: Australia's Watson Labor Government*, [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/pops/pop44/mc\\_mullin](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/pop44/mc_mullin)

# Proportional representation in the House of Representatives

It is time for the Australian Parliament to reconsider the question of proportional representation (PR) for the House of Representatives.

With the 2022 federal election revealing a minor party and independent voting bloc almost as large as the Labor and Coalition blocs on first preferences, it is untenable for one-third of the country to go significantly underrepresented in the house that forms government. While the two-party preferred vote shows that Labor was preferred for government to the Coalition, the low primary vote share for both major parties suggests that the election result – of a majority Labor government – was the first preference of just one in three voters.

Australia has a proud history of electoral innovation, with measures – from universal male franchise, the vote for women, compulsory voting, preferential voting – serving to increase the representativeness of our Parliament. Australia can claim PR as well.

The first significant jurisdiction in the world to use PR was the Adelaide City Council (in 1840); it was also the first public election in Australia. It was witnessed by a young Catherine Helen Spence, who wrote *A Plea for Pure Democracy* in 1861 and founded the Effective Voting League of South Australia in 1895. Her father, town clerk David Spence, conducted the election, under orders from London to use a quota system.<sup>120</sup> The procedures used were ‘both novel and complex’.<sup>121</sup>

Tasmania elected House and Senate representatives by proportional representation in 1901, as the *Commonwealth Electoral Act* did not yet exist to standardise federal elections.<sup>122</sup> Tasmania held its first proportional representative state election in 1896 and has used PR continuously since 1909.

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<sup>120</sup> Uhr (2004) *The power of one*,

[https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/pops/pop41/uhr](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/pop41/uhr)

<sup>121</sup> City of Adelaide (n.d.) *Election of the first city council 1840*,

<https://www.cityofadelaide.com.au/community/creativity-culture/city-archives/archives-collection/source-sheets-reference-guides/reference-guides/election-of-the-first-city-council-1840/>

<sup>122</sup> Parliament of Australia (2009) *The first federal election: Conducting the first federal election*,

[http://exhibitions.senate.gov.au/pogg/election/first\\_election.htm](http://exhibitions.senate.gov.au/pogg/election/first_election.htm); Simms (2001) *1901: the Forgotten Election*,

[https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/pops/pop37/simms](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/pop37/simms)

The introduction of proportional representation in the Senate in 1949 turned that chamber into the organ of accountability and popular representation that it is today.<sup>123</sup> Elections for the ACT Legislative Assembly have used the Hare-Clark voting system since 1992. All bicameral state legislatures have a proportionally elected chamber.<sup>124</sup>

What form proportional representation in the House of Representatives might take is open for debate. The Constitution already allows for multi-member electorates (including a single electorate for each state). Electorates that cross state lines (including treating the whole of Australia as a single electorate) are not permitted. Members must be directly chosen by the people, which would prohibit party-list systems.<sup>125</sup>

Ben Raue has calculated how federal elections might go under different PR models.<sup>126</sup> The Proportional Representation Society of Australia has described a ‘Gold Standard’ for proportional representation.<sup>127</sup>

While proportional representation is sometimes seen as a negative for established political parties, particularly large ones, it holds several benefits for political parties (described below). If proportional representation were introduced at the same time as an increase in the number of parliamentarians, major parties could also keep their absolute numbers in the Parliament even if their relative numbers were reduced.

## BENEFITS FOR PARTIES IN PR

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### Avoiding electoral ‘wipeouts’

While elections at the federal level have been relatively close in recent years, state legislatures have seen a number of landslide elections where one major party has been reduced to a rump:

- In the 2011 NSW state election, Labor was reduced to 20 seats of 93 (22%) despite winning 36% of the two-party preferred.

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<sup>123</sup> Browne & Oquist (2021) *Representative, still*, <https://australiainstitute.org.au/report/representative-still-the-role-of-the-senate-in-our-democracy/>

<sup>124</sup> Queensland has a single chamber, which is elected from single-member electorates.

<sup>125</sup> *Constitution of the Commonwealth of Australia* (Cth), secs.24, 29; see also Barwick CJ in *McKinlay v The Commonwealth* [1975], sec. 30

<sup>126</sup> Raue (2022) *How might an election have played out under PR?*, <https://www.tallyroom.com.au/47877>

<sup>127</sup> PRSA (n.d.) *Gold standard*, <https://represent.org.au/gold-standard/>

- In the 2012 Queensland state election, Labor was reduced to 7 seats of 89 (8%) despite winning 37% of the two-party preferred.
- In the 2021 WA state election, the Coalition was reduced to 6 seats of 59 (10%) despite winning 30% of the two-party preferred.

Proportional representation would keep the Opposition's numbers higher in the face of a landslide election result, helping to keep governments accountable and allowing the Opposition to serve as a credible alternative government.

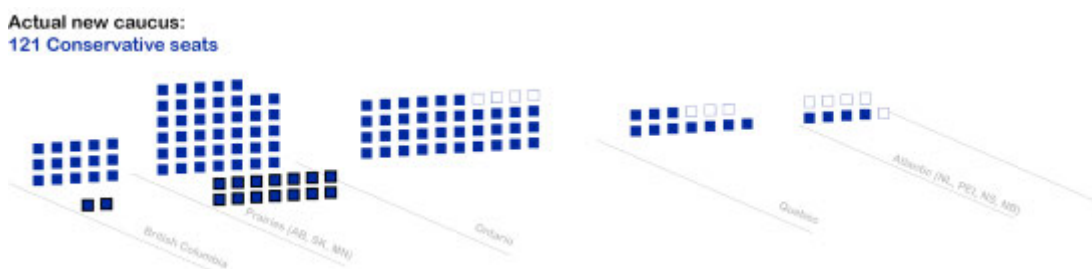
## Preselection of quality candidates wherever they live

Ben Raue has observed that multi-member electorates could solve a problem that political parties currently face: that quality candidates may live in electorates that will never elect them or that already have an entrenched local member. Andrew Charlton and Kristina Keneally are two examples of quality candidates who could not run in their local electorates. Multi-member electorates would allow for these candidates to be elected.<sup>128</sup>

## Party rooms more representative of voters

PR would also make party rooms more representative of party voters and party members across the country. Malcolm Baalman made this argument in reference to Canadian elections: it is not just that some parties are underrepresented, but also that some provinces are underrepresented in particular parties.

For example, according to its vote in the 2019 election, the Conservative Party of Canada 'should' have won 117 seats; it actually won 121. More significantly, Conservative voters in Ontario, Quebec and the Atlantic are under-represented in the Conservative caucus, and those in British Columbia and the Prairies over-represented.

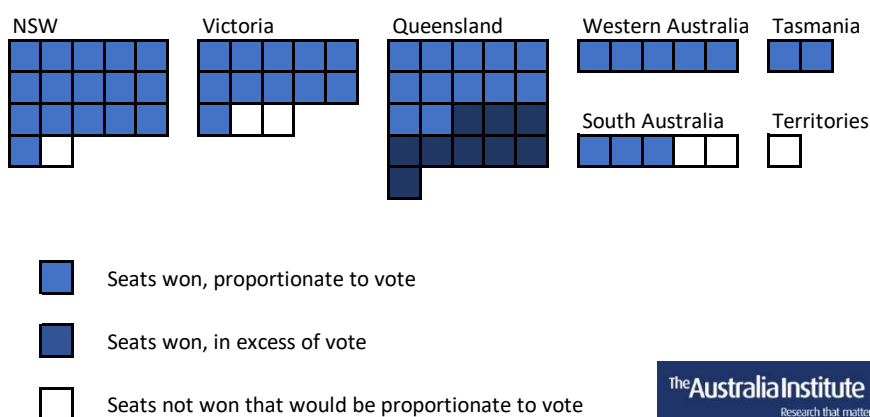


Source: Baalman (2019) *Canada's new parliamentary caucuses are all wrongly constituted*, <https://onelections.net/2019/11/07/canadas-new-parliamentary-caucuses-are-all-wrongly-constituted/>

<sup>128</sup> Raue (2022) *Don't let single-member electorates off the hook*, <https://www.tallyroom.com.au/45840>

The same analysis can be applied to the 2022 federal election in Australia. For example, the Coalition’s 58 seats (38% of the 151 seats) are roughly proportional to its share of the vote (36%), but the distribution of those seats is skewed. If the Coalition won seats in a state proportional to its vote share, it would have more NSW, Victorian, South Australian and ACT/NT MPs and fewer Queensland MPs.

**Figure 11: Coalition MPs after the 2022 election**



Source: Australia Institute calculations.

## POLLING

In January 2022, the Australia Institute polled Australians about their preferred model of representation for the House of Representatives.<sup>129</sup> Respondents were presented with two options:

- a party should win seats proportional to the overall number of votes that it receives or
- a party should win a seat for each electorate where it receives a majority of the vote (including preferences).

The latter is the status quo, although respondents were not told this when presented with the option in order to reduce status quo bias (of course, many respondents would have already known this).

One-third of Australians (34%) would prefer that a party win seats proportional to the overall number of votes that it receives for the House of Representatives and 44% of

<sup>129</sup> The Australia Institute (2022) *Polling: Majority want greater Senate scrutiny of secret contracts*, <https://australiainstitute.org.au/report/polling-majority-want-greater-senate-scrutiny-of-secret-contracts/>

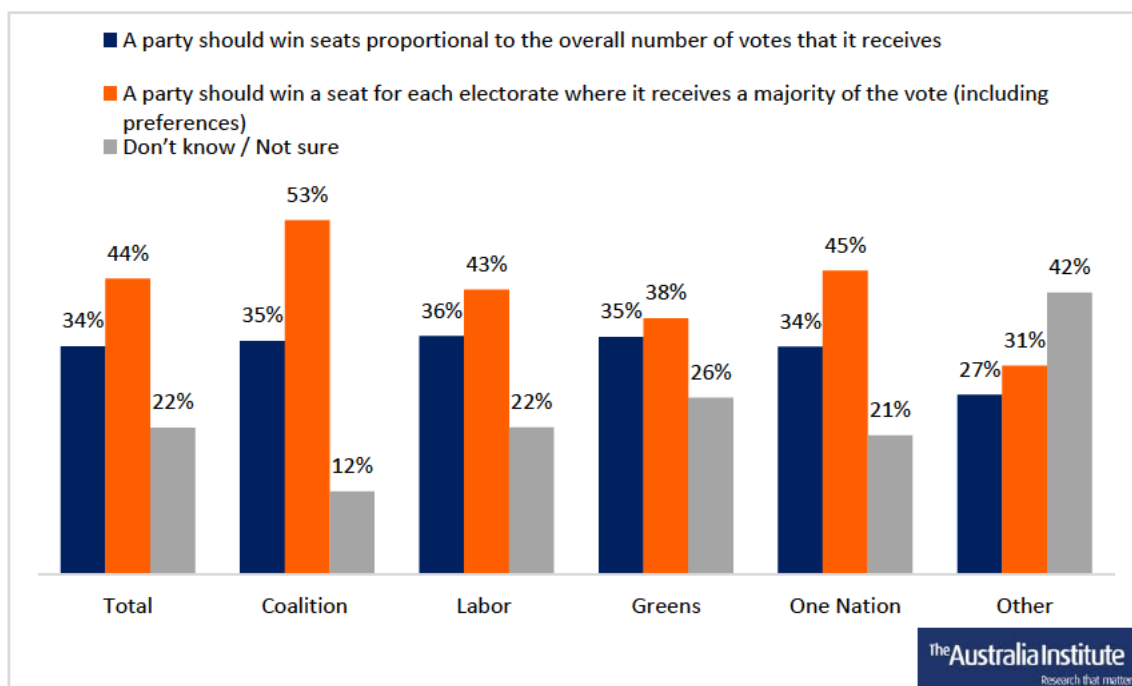


Australians would prefer that a party win a seat for each electorate where it receives a majority of the vote (including preferences).

- The status quo was preferred to proportional representation by all voting intentions, although the margin was greatest for Coalition voters (53% status quo, 35% proportional) and narrowest for Greens voters (38% status quo, 35% proportional).
- Among voting intentions, it was only Coalition voters where more than half preferred the status quo to proportional voting.

In the absence of a concerted push for PR in the lower house, these numbers are striking. On the face of it, one in three Australians prefer proportional representation to the status quo.

**Figure 12: Preference for House of Representatives elections, by voting intention**



Source: Australia Institute polling research

# Proposed electoral reforms in the Democracy Agenda

In 2022, the Australia Institute prepared the *Democracy Agenda for the 47<sup>th</sup> Parliament*.<sup>130</sup> It made several recommendations for reforms to Australia's electoral system not elsewhere discussed in this submission:

- Robson Rotation, as the ACT and Tasmania use in their Hare–Clarke elections. This would disrupt the order of candidates as dictated by parties thereby encouraging voters to choose their preferred candidates within parties as well as their preferred party. Senators could be emboldened to defy the party line once the position the party gives them on the ballot paper ceases to be definitive.<sup>131</sup>
- Making it standard practice to use the fairer 'recount' method for assigning Senate seats after a double dissolution election over the 'order of election' approach. As observed by Malcolm Mackerras, the defeat of Kristina Keneally in Fowler can ultimately be traced to the Coalition–Labor agreement in 2016 which assigned three of four Labor senators six-year terms, which meant one would be placed in an unwinnable position in two elections' time.<sup>132</sup>
- Fixed three-year terms, which would make blocking supply a 'much less attractive option', in the analysis of David Hamer of the fixed-term provisions in Victoria and South Australia.<sup>133</sup>
- The abolition or reform of section 44 of the *Constitution*, which requires the disqualification of candidates for election based on foreign citizenship, criminal convictions, bankruptcy and certain financial relationships with the Commonwealth.

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<sup>130</sup> Browne (2022) *Democracy Agenda for the 47th Parliament of Australia*

<sup>131</sup> The rare exception to the rule that senators are elected in the order they appear on the party list is Lisa Singh, albeit at a double dissolution where the threshold for election is much lower. Raue (2016) *How Lisa Singh and Richard Colbeck used personal appeal against party rankings*, <https://www.theguardian.com/australia-news/2016/jul/09/labor-lisa-singh-liberal-richard-colbeck-senate-voting-below-the-line-election-tasmania>

<sup>132</sup> Mackerras was writing before the election, but he describes the arrangement in 2016 that led to Keneally contesting Fowler. Mackerras (2021) *Kristina Keneally's candidacy for Fowler represents broader issue in Australian elections*, <https://www.malcolmmackerras.com/articles/2021/10/11/oct-8-kristina-keneallys-candidacy-for-fowler-represents-broader-issue-in-australian-elections>

<sup>133</sup> Hamer (2004) *Can responsible government survive in Australia?*, p. 109, [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/~/~/~link.aspx?\\_id=E546DEADB0B04E0C9EF20803027FCB32&\\_z=z](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/~/~link.aspx?_id=E546DEADB0B04E0C9EF20803027FCB32&_z=z)

# Party Registration Integrity Act

In 2021, Parliament passed the *Electoral Legislation Amendment (Party Registration Integrity) Act* with two onerous and poorly-defended changes to Australian electoral law: a requirement for each registered political party to have 1,500 members (up from 500) and limitations on party names. The new Parliament should revisit both changes.

## MEMBERSHIP REQUIREMENTS

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It is not unreasonable for parties with a national presence to demonstrate that they have broad popular support, including at least 1,500 members. However, Australia is a federation made up of small states and territories as well as large ones. Why should a party running only in the Northern Territory have the same *total* membership requirements to have their name on the Northern Territory ballots as a party running across the country? The Northern Territory party might have many times more NT members than the nationwide party, but still fall short of the 1,500 member threshold.

That parties with an elected representative bypass this requirement is also unfair.

The Coalition came close to being hoist by its own petard on this issue with the proposed deregistration of the Country Liberal Party following the defection of Senator Sam McMahon. That the Nationals could have used a contrivance (a senator from a state temporarily quitting their own party and ‘representing’ the CLP) to avoid deregistration further demonstrates how hollow and unfair the requirement is.<sup>134</sup>

A simple reform to address this unfairness, while still requiring genuine public support to receive the benefits of party registration, would be to require parties to show a particular number of members in a particular state or territory in order to run candidates under the party’s name in that state or territory in a federal election. Less populated states and territories would have a lower threshold than more populated ones.

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<sup>134</sup> Brown (2022) *ALP push to deregister Country Liberal Party*,  
<https://www.theaustralian.com.au/nation/politics/alp-push-to-deregister-country-liberal-party/news-story/5df9065b8ce09f3aaa460ade592d485b>

## PARTY NAMES

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The Australia Institute warned against the ban on using particular terms in party names when the Bill was introduced:

Words like ‘liberal’, ‘labour’ and ‘green’ describe ideologies and interests found across multiple parties, not just the parties that got there first.

Australia has a long history of splinter parties, like the Democratic Labor Party and the Liberal Movement, whose names represent their background and concerns.

It would be absurd if the existence of the Communist Party meant the Anti Communist Party could not be registered, or if the James Hird Party needed the James Joyce Party’s permission to exist.

The bills are a lawyers’ picnic waiting to happen, as parties fight over whether ‘Liberty’ is an ‘alternative form’ of the word ‘Liberal’.

Banning ‘frivolous’ party names may be insignificant compared to the other changes in the bill, but it is mean-spirited and not in keeping with Australia’s larrikin culture. Even joke political parties often have a serious point to make, or point their satire at deserving targets.<sup>135</sup>

The 2022 federal election also provides contrary evidence to that relied upon to justify the legislative change. Psephologist Kevin Bonham finds:

In the Liberal Democrats' narrowly failed High Court challenge to party names rules, much was made of the history of the party performing more strongly when it draws to the left of the Liberal ticket than to the right - such that every vote share the party had polled when drawing to the left was higher than every vote share polled when drawing to the right, with the minor exception of the 2014 WA re-run. At this election, probably assisted by having high-profile candidates in Queensland and Victoria, the LDP had a slightly higher average (2.34 vs 2.01) in the states where it drew on the right, its average when drawing on the right being more than twice its previous average when doing so.<sup>136</sup>

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<sup>135</sup> Browne (2021) *Party registration changes unfair to small parties, too restrictive*, <https://australiainstitute.org.au/post/party-registration-changes-unfair-to-small-parties-too-restrictive/>

<sup>136</sup> Bonham (2022) *Senate reform performance review and Senate notes 2022*, <https://kevinbonham.blogspot.com/2022/06/senate-reform-performance-review-and.html>

The legislation was also poorly drafted, since it allowed the Liberal Democrats to contest the election under their preferred name anyway.<sup>137</sup> At best, it can be described as constitutionally fraught since it survived a legal challenge in the High Court by the narrowest of margins.<sup>138</sup>

As Justice Stephen Gageler observed in that case, both the Australian Labor Party and the Democratic Labour Party were registered in 1984, the ALP ahead by less than two months.<sup>139</sup> The timing was of no consequence in 1984, but it now means the ALP can veto the DLP's name instead of the other way around. The nation's laws should not depend on coincidence.

The existing provisions that allowed the Australian Electoral Commission to reject party names that were likely to cause confusion were appropriate and adequate. The changes should be rolled back.

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<sup>137</sup> Green (n.d.) *Loophole allows Liberal Democrats to retain their party name*,

<https://antonygreen.com.au/loophole-allows-liberal-democrats-to-retain-party-name/>

<sup>138</sup> *Ruddick v Commonwealth of Australia [2022]*

<sup>139</sup> Obviously both parties existed long before 1984, but the registrations followed a change to the *Electoral Act: Ruddick v Commonwealth of Australia [2022]*, s 56 (Gageler J)

# Pride in the electoral system

The Ancient Greeks may have invented democracy, but it has been fine-tuned by Australians. These innovations have developed an inclusive democracy. As early as 1952, the American political scientist Louise Overacker observed: ‘No modern democracy has shown greater readiness to experiment with various electoral methods than Australia.’<sup>140</sup>

It should be noted that the long delay in extending the vote to Indigenous Australians is a stain on Australia’s electoral history.

Nonetheless, electoral innovations mean that, today, ensuring every Australian votes is a duty. Academics Graeme Orr, Bryan Mercurio and George Williams note of Australia’s compulsory voting:

[Compulsory voting] colours electoral authority activity in a positive way by encouraging electoral commissions to treat every vote as sacred and to expend considerable efforts in ensuring adequate access to the ballot.<sup>141</sup>

Marian Sawer highlights the extent of electoral experimentation in Australia:

New South Wales, for example, tried the second ballot from 1910, in the lower house, the single transferable vote 1918–1926, contingent voting 1926–1928, compulsory preferential 1929–1980 and optional preferential from 1981. In the upper house the single transferable vote was used from 1978.<sup>142</sup>

The result of these innovations is Australia’s unique relaxed and community atmosphere on election day. David Malouf wrote:

Voting for us is a family occasion, a duty fulfilled, as often as not, on the way to the beach, so that children early get a sense of it as an obligation, but a light one, a duty casually undertaken. [As] the guardian angel of our democracy, it seems more preferable, and might even be more reliable, than the three or four

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<sup>140</sup> Overacker (1952) *The Australian party system*, p. 15, Yale University Press quoted in Brett (2019) *From secret ballot to democracy sausage: How Australia got compulsory voting*

<sup>141</sup> Orr, Mercurio, & Williams (2003) *Australian electoral law: A stocktake*, p. 390, <https://www.liebertpub.com/doi/10.1089/153312903322146618>

<sup>142</sup> Sawer (2001) *Inventing the nation through the ballot box*, [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/pops/pop37/sawer](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/pops/pop37/sawer)

paratroopers who descend to protect the ballot boxes in even the smallest village in a place as politically sophisticated as Italy.<sup>143</sup>

Unfortunately, Australia Institute research shows our electoral and political systems are not well understood.<sup>144</sup> A greater knowledge of our electoral tradition is its best protection. A healthy respect for our political institutions would also place a greater obligation on our politicians to live up to that ideal.

**Table 3: Australian electoral innovations**

Innovation	Place and time	Notes
Proportional voting (PR)	1840, Adelaide City Council; 1896, Tas	The City Council method was unusual; Denmark had recognisable PR in 1855.
Removal of property ownership requirement for lower house elections	1856, SA 1858, Vic <sup>145</sup>	'Universal male suffrage', though it excluded Indigenous Australians and did not always apply to Legislative Council elections.
Secret ballot improvements: the voting booth, government-issued ballot, pens and ink (later pencils)	1850s, Vic, Tas, SA, NSW, Qld	The secret ballot became known as the 'Australian ballot'. Public voting was subject to intimidation and vote buying. Alcohol bribes led to riots.
Permanent independent electoral administration	1856, SA	Formerly returning officers were appointed for the election period by politicians.
Continuous electoral enrolment	William Boothby, SA electoral commissioner	Rather than waiting for an election to be called.
Compulsory enrolment	William Boothby	
Postal voting	1877, WA	
Saturday voting	1896, SA	Most countries vote on Sunday, but in the Anglosphere weekdays are typical – making voting difficult for workers.
Preferential voting	1892, Qld	Called the 'contingent vote'.
Female suffrage	1894, SA	After New Zealand in 1893.
Women eligible to stand for election	1894, SA	
Compulsory voting	1914, Qld	After Belgium, 1893.

Source: Brett (2019) *From secret ballot to democracy sausage: How Australia got compulsory voting*, Text Publishing

<sup>143</sup> Malouf (1998) *A spirit of play: The making of Australian consciousness*, pp. 111–112, Boyer Lectures

<sup>144</sup> See for example Browne & Oquist (2021) *Representative, still*; The Australia Institute (2022) *Polling - Senate voting and election awareness issues*, <https://australiainstitute.org.au/report/polling-senate-voting-and-election-awareness-issues/>

<sup>145</sup> AEC (2020) *Australian voting history in action*, [https://www.aec.gov.au/About\\_AEC/25/theme1-voting-history.htm](https://www.aec.gov.au/About_AEC/25/theme1-voting-history.htm)

## AUSTRALIA'S ONGOING CONTRIBUTION

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Australia's electoral system has been an inspiration and lesson for democratic reformers elsewhere in the world.

**Alternative vote (UK):** In 2011, the United Kingdom held a referendum to decide whether to change from a first-past-the-post system to 'alternative vote', what Australia calls optional preferential voting. Australian election analyst Antony Green reported on the campaign from the UK, where he had to rebuff fear campaigns and misinformation from critics of the alternative vote (AV).<sup>146</sup>

On the BBC, John Howard dismissed a particularly absurd argument from the 'no' camp: that countries like Fiji with preferential voting 'were trying to get rid of the damn thing'. The former prime minister replied:

Fiji? Yeah, well I don't think Fiji is a good role model at the moment. You've got a military dictator in charge.<sup>147</sup>

Evidence that preferential voting works well in Australia was a useful corrective to these scare campaigns.<sup>148</sup> The AV referendum did not pass, but a move to preferential and/or proportional voting in the UK remains a live issue.

**Democratic upper house (UK):** The UK House of Lords is a large, undemocratic and to some extent hereditary chamber. The slim, democratic and proportional Australian Senate is frequently presented as an alternative model for an upper house.<sup>149</sup>

**Independent redistribution of electorates:** As gerrymandering remains a tool for disproportionality and electoral manipulation in the United States, the fair redistribution of boundaries by Australia's independent electoral commission serves as evidence that another way is possible.<sup>150</sup>

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<sup>146</sup> Raue (2011) *UK to vote on preference voting*, <https://www.tallyroom.com.au/9389>

<sup>147</sup> BBC News (2011) *Ex-PM on Australian voting system*, <https://www.bbc.com/news/av/uk-politics-12974935>

<sup>148</sup> Green (2011) *Australian state elections show that if British voters adopt the Alternative Vote in the forthcoming referendum, it will typically change party outcomes only a little, but will have positive effects for the standing of MPs*, <https://blogs.lse.ac.uk/politicsandpolicy/australia-and-av/>

<sup>149</sup> See for example Russell (2000) *Reforming the House of Lords: Lessons from overseas*, Oxford University Press; Constitution Education Fund (2015) *A comparison: House of Lords and the Australian Senate*, <http://www.cefa.org.au/ccf/comparison-house-lords-and-australian-senate>

<sup>150</sup> For example Engstrom (2005) *Revising constituency boundaries in the United States and Australia: it couldn't be more different*, <https://apo.org.au/node/4160>



## Conclusion

Australia's democracy is strong by international standards, but we cannot afford to be complacent. The issues discussed and recommendations made in our submission would fortify our institutions and norms against coming shocks, conflicts and disruptions – domestic and global.

To trust in its government, the public needs to be confident that politicians are not being influenced by political contributions. Better and faster disclosures of political contributions would shine a light on the relationships between political parties and politicians and donors who may seek to influence them, ensuring that all such transactions are defensible and done for the public interest. However, campaign finance reform must be implemented carefully to ensure it does not unfairly benefit incumbents at the expense of challengers – or it will fail to improve public confidence.

Recent elections have been bedevilled by a race to the bottom on misinformation and false advertising. Truth in political advertising laws would address a major source of disinformation. South Australia's three-decade-old laws prove that reform is feasible and constructive, though they can of course be improved. While misinformation predates the Internet, social media and image and video editing tools, these technological innovations make it easier to create and distribute misinformation. Regulators must always adapt to changes in technology, and it is Parliament's duty to make sure that they do so.

Australians can be rightly proud of our country's long history of electoral innovation. Teaching Australians about how our system works and why it was designed the way it is would lead to better engagement with the political process and more informed voters. Australia Institute research finds a disturbing number of Australians are unfamiliar with how our Senate functions, despite its vital legislative and accountability functions.

While turnout in Australian elections is good by international standards – thanks in part to compulsory voting – it is at historic lows. Indigenous turnout is particularly poor, which better services and dedicated educational units could address.

Australia needs more parliamentarians to make local members more accessible to voters and deepen the talent pool for ministries and committee work. An increase in the number of parliamentarians by 50% would account for population growth since the last increase in the 1980s, and make the House of Representatives 'one vote, one value' for the first time since Federation.

A move towards proportional representation in the House of Representatives would help represent the one in three voters who did not cast a first preference vote for a major party. It would also have benefits for political parties, by protecting against electoral ‘wipe outs’, making party rooms more geographically representative and allowing parties to preselect quality candidates regardless of where they live.

To keep our democracy strong, Parliament should also correct past overreach. The *Party Registration Integrity Act’s* membership requirements for political parties are too onerous for smaller state and territory parties, and the rules on party names are unfair and disproportionate.

The Joint Standing Committee on Electoral Matters has an opportunity to fortify our democracy. Australians can be rightfully proud in our representative liberal democracy – but we cannot afford to be complacent. The reforms proposed in this submission would make our political system more responsive, fairer and more trusted, and serve as a positive example for a world that is getting less liberal and more autocratic.

# Appendix: Polling

## Method

Between 13 and 15 July 2022, The Australia Institute surveyed 1,001 adults living in Australia, online through Dynata's panel, with nationally representative samples by gender, age group and state/territory.

Voting crosstabs show voting intentions for the House of Representatives. Those who were undecided were asked which way they were leaning; these leanings are included in voting intention crosstabs.

The research is compliant with the Australian Polling Council Quality Mark standards. The long methodology disclosure statement follows.

### Long disclosure statement

The results were weighted by three variables (gender, age group and state or territory) based on Australian Bureau of Statistics 'National, state and territory population' data, using the raking method. This resulted in an effective sample size of 996.

The margin of error (95% confidence level) for the national results is 3%.

Results are shown only for larger states.

Voting intention questions appeared just after the initial demographic questions, before policy questions. Respondents who answered 'Don't know / Not sure' for voting intention were then asked a leaning question; these leanings are included in voting intention crosstabs. 'Coalition' includes separate responses for Liberal and National. 'Other' refers to Independent/Other, and minor parties in cases where they were included in the voting intention but represent too small a sample to be reported separately in the crosstabs.



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## Detailed results

No preceding questions in the poll are expected to have influenced the results of the questions published here.

Which of the following apply to you?

	<i>Total</i>	<i>Male</i>	<i>Female</i>	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>WA</i>
If I had a concern about a current political issue, I feel confident I would be able to speak with my local MP	27%	28%	26%	31%	22%	26%	28%
I have previously spoken in person or on the phone to my local MP	15%	16%	14%	12%	14%	17%	18%
I have previously written to my local MP	17%	19%	15%	17%	20%	11%	17%
I know the name of my current federal MP	36%	41%	31%	36%	37%	33%	38%
None of these	36%	31%	41%	35%	38%	40%	30%

	<i>Total</i>	<i>Coalition</i>	<i>Labor</i>	<i>Greens</i>	<i>One Nation</i>	<i>Other</i>
If I had a concern about a current political issue, I feel confident I would be able to speak with my local MP	27%	27%	27%	30%	21%	27%
I have previously spoken in person or on the phone to my local MP	15%	17%	11%	20%	16%	13%
I have previously written to my local MP	17%	17%	12%	28%	23%	21%
I know the name of my current federal MP	36%	38%	38%	30%	21%	35%
None of these	36%	32%	41%	32%	40%	35%

	<i>Total</i>	<b>18-29</b>	<b>30-39</b>	<b>40-49</b>	<b>50-59</b>	<b>60+</b>
<b>If I had a concern about a current political issue, I feel confident I would be able to speak with my local MP</b>	27%	25%	30%	24%	20%	33%
<b>I have previously spoken in person or on the phone to my local MP</b>	15%	23%	17%	13%	10%	10%
<b>I have previously written to my local MP</b>	17%	26%	20%	19%	9%	12%
<b>I know the name of my current federal MP</b>	36%	34%	29%	27%	28%	52%
<b>None of these</b>	36%	23%	35%	42%	53%	33%