

Regulating political parties

- 4.1 The focus of chapters 2 and 3 of this Report has been upon the question of how best to manage the Commonwealth Electoral Roll (the electoral roll) so as to lessen, or even eliminate, the possibility of fraudulent practices contaminating the roll. Thus chapter 2 looked at roll maintenance, while chapter 3 dealt with the question of fraud management. In short, the focus in these chapters was on managing the roll. In addition to managing the roll, the committee collected considerable evidence on the regulation of political parties as a mechanism for preventing enrolment fraud. The regulation of political parties was at the basis of many of the recent fraud investigations in Queensland.
- 4.2 Much of the discussion of the roll and fraudulent practices focussed upon party activities. This was seen most explicitly in Queensland, where the Australian Labor Party (ALP) preselection ballot procedures for selecting candidates for local, state, and federal elections require party voters to be on the roll.¹ An associated question, therefore, is whether there should be any effort by the Commonwealth Parliament to endeavour, by legislation, to control the behaviour of political parties. Is there a case for regulating the political parties?
- 4.3 Although Australian political parties have been firmly of the view that they are private bodies that run their own affairs, it is clear that this status has altered subtly in recent years. A number of legislative and legal factors have combined to suggest that the position of political parties within the Australian polity is altering. This has opened up the question of whether there should be a formalisation of their place in the political system.

1 Submissions p S458 (AEC); see also Queensland Criminal Justice Commission. April 2001. *The Shepherdson Inquiry: An investigation into electoral fraud*. p XIII.
www.cjc.qld.gov.au/shepinquiry/finalreport.pdf

- 4.4 The committee believes that recent events involving parties suggests that such a discussion is pertinent to this inquiry. This section therefore looks first at current practice, it then asks if controls should be extended, and finally, outlines some possible changes to the position of political parties within the Australian political system.

Regulation of parties—current practice

- 4.5 Apart from a temporary example during World War I,² Australian political parties were not given any statutory recognition until Senate casual vacancies amendment to the Constitution in 1977. The major references since have been the inclusion of registration requirements in the *Parliamentary Electorates and Elections Act 1912* (NSW) and the *Commonwealth Electoral Act 1918* (the Electoral Act), both necessitated by the introduction of public funding of election campaigns.
- 4.6 Part XI of the Act deals with the registration of eligible political parties, all of which are listed in the Register of Political Parties (section 125).
- 4.7 To be eligible for funding, a political party must:
- *either* have at least one member in either the Commonwealth Parliament or a parliament of a State or Territory, *or* have at least 500 members; and
 - be established on the basis of a written constitution that sets out the party's aims (section 123 (1)).
- 4.8 Members of political parties are defined as persons who are formal members of specific political parties (or related political parties). They must also be entitled to be enrolled under the Electoral Act (section 123 (3)).
- 4.9 An application for registration of a political party must give the name of the party, the preferred abbreviation of that name (if desired), give the details of the registered officer of the party, state whether or not the party wishes to receive public moneys, and include a copy of the party's constitution (section 126 (2)). The Australian Electoral Commission (AEC) has discretion to refuse an application for registration if the party's name is believed to infringe certain requirements. These include the number of words in the title (six), a belief that the name is obscene, or the similarity of the name to the name of another registered political party (section 129). It is open to people who oppose the registration of a political party to challenge its registration (section 132 (2)).

2 *Commonwealth Electoral (War-time) Act 1917.*

- 4.10 Parties can be deregistered voluntarily (section 135). A registered political party can also be deregistered if it has not endorsed an electoral candidate for more than four years, or if four years have elapsed since the last election for which the party endorsed a candidate. For a 'parliamentary' party, deregistration can occur when it has ceased to be a parliamentary party and the party has fewer than 500 members (section 136 (1)). Deregistration can also occur on other grounds, including amalgamation of the party with another, or if the original registration was obtained 'by fraud or misrepresentation' (section 137 (1)). The Register of Political Parties is open for public inspection.

Regulation of parties—a need for tighter control?

- 4.11 Most of the submissions made to the committee were concerned to discuss the roll—its centrality to Australian elections, the need to protect its integrity, and how best this might be done. With the focus so much upon the roll, relatively little was said about parties in the wider context of the political system.
- 4.12 The role of political parties in enrolment fraud was discussed in greater detail during the public hearing process, with evidence gathered from: Ms Karen Ehrmann; Mr Les Scott and Mrs Margaret Scott; Mr Brian Courtice; Mr Terry Gillman; Mr Tony Mooney; Mr Lee Bermingham; and Mr Nick Berman and Mr Steven Simat.³
- 4.13 In the wider community there has also been discussion of the future of the political parties. Implicit in these references has been the question posed in the research of former Labor MP, Mr Gary Johns:

...to what extent are the parties, and to what extent should the parties any longer be, the arbiters of their own destiny?⁴

Parties as private bodies

- 4.14 The ongoing problem of party preselection controversies opens up the question of whether there should be some type of legislative controls over the parties. If there is to be, it would signal a major change within the political system which only relatively recently has been even prepared to refer to parties by name in election reports. In 1996 the Western

3 Transcript pp 139-183 (K.Ehrmann), pp 185-213 (L.Scott and M.Scott), pp 241-283 (B.Courtice), pp 284-310 (T.Gillman), pp 311-336 (A.Mooney), pp 355-429 (L.Bermingham), and pp 430-462 (N.Berman and S.Simat).

4 Johns, Gary. Party democracy: An audit of Australian parties. *Australian Journal of Political Science*, vol. 35, no. 3, November 2000, p 405.

Australian Commission on Government stated that the question of whether political parties should be constrained by the Western Australian Constitution was contentious, and would require 'much debate and detailed analysis'. It made no recommendation to that end.⁵ Four years later, the Queensland Constitutional Review Commission's Issues Paper raised three seminal questions:

- Should the importance of political parties in the political process be recognised in the Queensland Constitution?
- If so, what form should that recognition take?
- Should there be some legislative regulation of the internal affairs of registered political parties to require:
 - ⇒ democratic election of the parties' office-holders and candidates to contest parliamentary and local government elections?
 - ⇒ greater transparency of party income and expenditure?
 - ⇒ other matters?⁶

4.15 In the event, the Commission took the view that the question of moving to achieve tighter legislative control over parties was one 'whose time has not yet come in Australia'.⁷

4.16 Parties in liberal democracies including Australia have tended to remain private organisations.⁸ In its 1955 defence of parties as private organisations, the ALP National Conference was probably also expressing sentiments held by both the Liberal and Country (National) Parties:

We emphasise that, with a few isolated exceptions, the history of our Party discloses that we have functioned on a basis of complete determination in accordance with our own rules and our own interpretation of them.

4.17 The Conference continued:

5 Commission on Government Western Australia. 1996. *Specified Matter 24: State Constitution*. Perth, Commission on Government, p 128.

6 Queensland Constitutional Review Commission. July 1999. *Issues paper for the possible reform of and changes to the acts and laws that relate to the Queensland Constitution*. Brisbane, The Commission, p 1107.

7 Queensland Constitutional Review Commission. February 2000. *Report on the possible reform of and changes to the acts and laws that relate to the Queensland Constitution*. Brisbane, The Commission, p 88.

8 Queensland Constitutional Review Commission. July 1999. *Issues paper for the possible reform of and changes to the acts and laws that relate to the Queensland Constitution*. Brisbane, The Commission, p 1104.

We insist we must continue to create our own procedures, taking care of our own business without the introduction of lawyers and law courts.⁹

- 4.18 This view had long been supported by the High Court case, *Cameron & Ors v Hogan* (1934), which said *inter alia*; that the principles of the law were 'against interference in the affairs of voluntary associations which do not confer upon members civil rights susceptible of private enjoyment'.¹⁰ The culture of Australia's political parties, therefore, has been what Antony Green has called that of 'self-governing fiefdoms'.¹¹ They have subscribed to the view expressed in Mr Alan Ware's analysis of parties in liberal democratic systems, that:

The idea that they should be controlled, or even influenced, by the state is contrary to the liberal idea of competition of ideas, leaders, and policies.¹²

Political parties in other liberal democracies

- 4.19 Australian parties have therefore been largely free to operate as they have wished. Not all political systems allow the same degree of freedom. Many see parties as public organisations that have not only a responsibility to their members, but also to the wider electorate. Various nations recognise this principle. As early as 1949 the Basic Law of the Federal Republic of Germany (Article 21 (1)) stated:

The political parties participate in the forming of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They have to publicly account for the sources and use of their funds and for their assets.¹³

- 4.20 In Norway, there is a requirement for party registration. An application for registration:

must be supported by the minute book of the constituting meeting, the names and signatures of those elected to the party's central

9 Submissions p S37 (R.Clarke).

10 Submissions p S39 (R.Clarke); see also *Cameron & Ors v Hogan* (1934), 51 CLR 378.

11 Green, Antony. There's just no accounting for party animals. *Sydney Morning Herald*, 30 November 2000.

12 Ware, Alan. 1987. *Citizens, parties and the state*. Cambridge, Polity Press, p 92.

13 http://www.uni-wuerzburg.de/law/gm00000_.html.

committee, and the signatures of at least 3,000 electors who declare they wish the organisation to be registered as a party.¹⁴

- 4.21 In New Zealand, section 71 of the *Electoral Acts 1989–1995* requires registered parties 'to follow democratic procedures in candidate selection'. Democratic procedures for candidate selection are defined in this Act as being: selection by current financial members of the party; or their elected delegates; or a combination of both.¹⁵
- 4.22 Mr Dan Avnon has looked at the characteristic features of legislation relating to parties in Austria, Finland, Germany, Israel, Poland, Spain and Venezuela, and has found the following characteristic features:
- a general declaration concerning the role of political parties, and an explicit recognition of the right of association in political parties;
 - a definition of a political party;
 - registration requirements;
 - the democratic character of association in political parties;
 - regulation of party finance; and
 - legal sanctions for the violation of laws.¹⁶

Changes in Australian society

The receipt of public money

- 4.23 One important alteration in the relationship of the political parties to the electorate came with the introduction of public electoral funding for the political parties. With this change, the private nature of parties was likely to become the focus of public concern. Would the receipt of public money mean that the recipient would be seen as having some type of public obligation, hitherto largely ignored?
- 4.24 Former Labor MP, Mr Les Scott, is one who claims that it does. Because parties receive public funding, Mr Scott believes that parties should be required to have 'rules and procedures that make them accountable' to the Australian public.¹⁷ South Australian Labor MLA, Mr Ralph Clarke,

14 Ware, Alan. 1987. *Citizens, parties and the state*. Cambridge, Polity Press, p 91.

15 www.rangi.knowledge-basket.co.nz/gpacts/actlists.html.

16 Avnon, Dan. Parties laws in democratic systems of government. *Journal of Legislative Studies*, 1, 2, Summer 1995, pp 283-300.

17 Submissions p S92 (L.Scott).

speaks of the need for 'a proper legislative framework governing our political parties'.¹⁸ He believes, for example, that the Electoral Act should state that the rules of parties that receive public funds should provide for 'their democratic control by their members'.¹⁹ The *Courier Mail* has attacked the 'ridiculous anachronism' that parties are not governed by any laws specifically designed to deal with them. The public has 'a real interest' in the organisation and practices of political parties, 'because taxes raised from the public are handed over to political parties to subsidise their electoral operations'.²⁰

Changes in the law

- 4.25 The provisions for public funding have meant the introduction of compulsory legislative arrangements for parties, and it can be argued that regulation of political parties has advanced a long way in the past few years and that few changes need to be made to areas already covered by the Electoral Act.
- 4.26 The 'protection' that parties believed they were given by the *Cameron* judgment seemed to disappear with the 1993 case of *Baldwin v Everingham*. In this case, it was stated that the decision of the Commonwealth Parliament in conferring legislative recognition of parties in the Electoral Act had 'taken them beyond the ambit of mere voluntary associations'.²¹ It seems that parties will find themselves increasingly required to defend themselves in court over matters once considered part of their private operations, and that they might find it increasingly difficult to withstand calls for greater accountability.
- 4.27 The latest example of the internal activities of political parties being subject to judicial scrutiny was that of Mr Ralph Clarke MP, Member for Ross Smith in South Australia. Mr Clarke took the South Australian Branch of the ALP to the Supreme Court of South Australia twice over that party's handling of an internal dispute relating to the 1999 preselection for the state seat of Ross Smith. In both instances the Court found in favour of Mr Clarke, and in so doing established that the rules of a political party were justiciable.²²

18 Submissions p S13 (R.Clarke).

19 Submissions p S14 (R.Clarke).

20 Editorial. Rules for party organisations. *Courier-Mail*, 19 August 2000.

21 Johns, Gary. Clarke v Australian Labor Party. *Australian Journal of Political Science*, vol. 35, no. 1, January 2000, p 137.

22 Submissions pp S10-S11 (R.Clarke), see also Johns, Gary. Clarke v Australian Labor Party. *Australian Journal of Political Science*, vol. 35, no. 1, January 2000, pp 139-140.

- 4.28 The committee believes that there are pressures building within the community for there to be some type of legislative oversight. If the parties seek to retain their independence, they will have to be seen to be putting in place changes that guarantee inner-party democracy and the rights of rank-and-file party members.
- 4.29 The parties can all point to the fact that their constitutional documents spell out democratic forms. If a constitution is to work, however, there must be a reasonably good fit between its provisions and the practices of the organisation involved. Too large a contrast between the provisions claimed in the constitution and actual practice 'can lead to cynicism and a crisis of authority at critical moments'.²³ Gary Johns has noted that the closed nature of electoral competition, combined with the public status of parties, implies that 'their internal affairs should be conducted democratically'²⁴.
- 4.30 Australian parties may well be facing a watershed. They have functioned as private bodies, but public demand may soon force them to be more directly accountable for their activities. The conundrum of just whether—and how—this might be done is not easily solved. Nearly forty years ago the dilemma was posed by the editors of the *Harvard Law Review*:
- ...it seems impossible to create procedural devices which would protect against abuse and yet permit the requisite degree of autonomy [of political parties].²⁵
- 4.31 Ten years ago, Canada's Royal Commission on Electoral Reform and Party Financing also faced the dilemma. The Royal Commission noted:
- that Canadian political parties were 'essentially' private organisations;
 - they should remain so 'for very good reasons';
 - citizens had 'the right to associate freely for political purposes'; and
 - any legislation to control parties must therefore 'be careful not to invade their internal affairs or jeopardise the right of individuals to associate freely'.²⁶
- 4.32 Having said that, though, the Royal Commission also said that:
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23 Royal Commission on Electoral Reform and Party Financing. 1991. *Final Report Volume 1: Reforming electoral democracy*. Ottawa, Canada Communications Group, p 237.

24 Johns, Gary. Party democracy: An audit of Australian parties. *Australian Journal of Political Science*, vol. 35, no. 3, November 2000, p 401.

25 The Editors. Judicial control of actions of private associations. *Harvard Law Review*, 1963, p 1060.

26 Royal Commission on Electoral Reform and Party Financing. 1991. *Final Report Volume 1: Reforming electoral democracy*. Ottawa, Canada Communications Group, pp 231–232.

- political parties are responsible for 'a number of critical functions in the electoral process'; and
- political parties therefore 'constitute an integral component of democratic governance'.²⁷

4.33 The conclusion drawn by the Royal Commission was that:

For certain purposes, then, parties deserve special acknowledgment in law and must be subject to some public regulations.²⁸

4.34 The committee believes that a similar situation is now facing Australian parties.

Regulation of parties—how might it be strengthened?

4.35 If there were to be any increased parliamentary regulation of parties in regard to electoral matters how might this be achieved? A survey of evidence given to the committee, buttressed by data from the political science literature, suggests a number of possible approaches might be made to tackle this matter.

Tightening existing arrangements

4.36 The minimalist view, that seems to underline AEC attitudes to this issue, is that the existing system is essentially sound. If there are any problems they are small, and their eradication is simply a matter of modifying the existing arrangements so as to tighten the requirements. Such a view notes that recent proposals announced by the Liberal Party of Australia and ALP to introduce pre-selection reforms in Queensland 'suggest that it is not the federal electoral system that requires major reform'.²⁹ Such a view favours the parties being left largely to get their houses in order by their own, unaided, efforts.

4.37 This is not to suggest that a defender of the minimalist approach would see the present arrangements as without flaw. There are a number of areas where improvements could be made. For example, in a submission to the committee's inquiry into the 1998 federal election, the AEC noted that party constitutions tend to be scant, giving insufficient information on

27 Royal Commission on Electoral Reform and Party Financing. 1991. *Final Report Volume 1: Reforming electoral democracy*. Ottawa, Canada Communications Group, pp 231–232.

28 Royal Commission on Electoral Reform and Party Financing. 1991. *Final Report Volume 1: Reforming electoral democracy*. Ottawa, Canada Communications Group, pp 231–232.

29 Submissions p S878 (AEC).

the internal functioning of the political parties. Information on what constitutes a member, let alone the terms and conditions of membership, were felt to be generally inadequate. If there is to be any point in parties lodging such documents, it seems to follow that they should be more informative, both for party members and for the general community, represented in the Parliament.³⁰ The AEC has also noted that there is not even a requirement that the party constitution that must be lodged with a registration application be up to date.³¹

- 4.38 At the hearing on 15 November 2000, the AEC indicated that some registered party constitutions held by the AEC may date back to sometime after 1984³² As part of the 1998 federal election inquiry the committee recommended that the AEC be authorised to conduct reviews of the continuing eligibility of political parties to remain registered following each federal election. As part of these reviews, the committee recommended that the AEC be able to require parties to produce relevant documents, such as party constitutions.³³ This recommendation was supported in the government response to the 1998 federal election inquiry.
- 4.39 The AEC also believed that the Electoral Act should be amended to make political party membership status clearer. This is particularly important as party numbers are crucial to a political party's registration, but they are also important with regard to the power to deregister a party. The AEC therefore recommended the addition of further requirements:
- a person must be accepted as a member by the party's own rules;
 - a member must have joined a party (or renewed membership) within the previous twelve months; and
 - must have paid an annual membership fee of at least \$5.³⁴
- 4.40 The AEC also noted that under the Electoral Act the abbreviation of a registered party's name may be an alternative to the registered party name. The AEC recommended that the alternative name be 'restricted to an abbreviation of, or at least bear a meaningful connection to the

30 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election. Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, p 136.

31 Transcript pp 16–17 (AEC).

32 Transcript pp 16–17 (AEC).

33 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election. Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, p 140.

34 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election. Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, p 135.

registered party name'.³⁵ This was supported by the committee in its report on the 1998 Federal election,³⁶ and has been supported by the Government in its response to the report.³⁷

- 4.41 Another AEC suggestion as part of the 1998 Federal Election Inquiry was that a \$500 fee be levied for the registration of political parties. The AEC pointed out that such a move would be in line with many other official applications, such as the fee required for the lodgment of a trade mark application with the Trade Marks Office. Such a fee would help cover AEC advertising costs and might also discourage frivolous applications. In the 1998 Federal Election Inquiry Report, the committee agreed with the principle, but has suggested that it should be in line with what a registration really costs the AEC, suggesting a 'more realistic' figure might be \$5,000.³⁸ This recommendation was supported in principle by the Government, and a registration fee of \$500 was introduced as part of the *Commonwealth Electoral Amendment Act (No. 1) 2000*.³⁹
- 4.42 On balance, then, this approach sees a need only for small changes. Other voices have called for other, rather more significant alterations to Commonwealth regulation of parties.

The AEC and party preselections

- 4.43 Some House of Representatives and Senate seats are considered safe for either the Coalition or the ALP. The preselection of the candidate for the party likely to win a particular seat is therefore a crucial ballot. One obvious focus of public concern with political parties lies with the way in which party preselections are conducted. Scott Emerson and Stefanie Balogh, writing in *The Australian*, have suggested that the step from fraudulent enrolments for influencing party pre-selections to

35 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election. Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, p 138.

36 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election. Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, p 138.

37 Government Response to Joint Standing Committee on Electoral Matters Report: The 1998 Federal Election. p 20.

38 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election. Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, p 137.

39 Government Response to Joint Standing Committee on Electoral Matters Report: The 1998 Federal Election. p 20.

fraudulent enrolments for influencing Commonwealth or State elections is a small one.⁴⁰

- 4.44 The Hon Tom Shepherdson QC argued in the report of the Shepherdson Inquiry that:

What seems to me to be important is that the preselection process within a political party is such that it is transparent and transparently exercised free of any taint of electoral fraud or coercion, and one in which party voters at plebiscites and voters at general elections can know with confidence that fair means produced a candidate.⁴¹

- 4.45 In building up a case for what former South Australian Premier and Commonwealth MP, Steele Hall, has described as 'an ethical system of candidate selection',⁴² some have focussed on the possibility of using the AEC as an independent arbiter in the administration of party pre-selections.

- 4.46 In particular, the proposal has been made that the AEC should actually run party preselections. If the AEC can handle industrial elections, the argument runs, surely they can handle political party internal ballots?⁴³ Senator Andrew Murray proposed this in 1998, stating his belief that this could not only 'help secure an authentic ballot', but also bring about public assurance that the preselection process 'was not some private, corrupt, dishonest, and rigged intra-party affair, and that the successful candidate got up fairly'.⁴⁴ In its submission to the 1998 federal election inquiry, the Australian Democrats called for:

All important ballot procedures within political parties to be overseen by the AEC to ensure proper electoral practices are adhered to.⁴⁵

- 4.47 Senator Murray's approach was supported by the report of the Shepherdson Inquiry, which suggested that :

...it may be thought that the time has come for Governments, both State and Federal, to consider imposing a suitable system and

40 Emerson, Scott and Balogh, Stefanie. Mayor denies a role in theft, rorts. *The Australian*, 7 October 2000.

41 Queensland Criminal Justice Commission. April 2001. *The Shepherdson Inquiry: An investigation into electoral fraud*. p 170. www.cjc.qld.gov.au/shepinquiry/finalreport.pdf

42 Hall, Steele. Making members count. *Advertiser*, 24 October 2000.

43 Transcript p 229 (C.Hughes).

44 Senator Andrew Murray. June 1998. *Submission to Finance and Public Administration Legislation Committee, consideration of Electoral and Referendum Amendment Bill (No. 2)*. pp 9–10.

45 Australian Democrats. 1999. *Submission to the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. p S1614.

procedure for conducting (where necessary) preselections of persons to represent political parties at an election. Whether there should be such imposition will depend on balancing the need for transparency and independent and proper monitoring with a party's right to conduct and to determine the manner of conducting its own internal preselection process.⁴⁶

- 4.48 In fact, the AEC has expressed itself 'not inclined' to support Senator Murray's call. Apart from its belief in the improbability of the Liberal or Labor parties welcoming such external regulation of their preselection ballots, the AEC's concern seems to be with the maintenance of its reputation. Its fear seems to be that no matter how carefully the Commission acted in such matters, there would be an ever-present danger of the AEC compromising its hard-earned political neutrality, even inadvertently.⁴⁷ Professor Hughes has modified the Australian Democrat call by suggesting that if a party preferred, the relevant State electoral body could run internal ballots, rather than the AEC.⁴⁸
- 4.49 Despite the AEC's caution on this, the committee believes the benefits for Australian society might outweigh the Commission's concern. Political party preselections are sometimes controversial. They sometimes produce a bad press for both the party concerned as well as the political system as a whole. Yet as Professor Hughes observed when giving evidence, this vital part of the electoral process ought to be as transparent and respectable as it can be.⁴⁹ The committee therefore thinks that the use of the AEC to conduct party ballots would have the potential to bring about significantly increased transparency to internal party processes, though the AEC's own doubts suggest that such a move should be carefully introduced.
- 4.50 If the AEC was to conduct party preselection ballots, the committee believes these should be conducted on a cost recovery basis. Sections 7A and 7B of the Electoral Act respectively allow the AEC to supply goods and services, and to extract a fee for the supply of goods and services. Using these sections, the AEC regularly conducts ballots on a commercial basis. The AEC's *Annual report 1999-2000* indicates the AEC conducted 40 such ballots during that financial year, including the NRMA's demutualisation ballot.⁵⁰ The committee is of the opinion that political

46 Queensland Criminal Justice Commission. April 2001. *The Shepherdson Inquiry: An investigation into electoral fraud*. pp 171-172. www.cjc.qld.gov.au/shepinquiry/finalreport.pdf

47 Submissions p S521 (AEC).

48 Submissions p S383 (C.Hughes).

49 Transcript p 216 (C.Hughes).

50 Australian Electoral Commission. 2000. *Annual report 1999-2000*. Canberra, AEC, p 155.

parties should be provided the option of using the AEC to conduct party preselection ballots on this commercial basis.

Recommendation 17

- 4.51 That the Australian Electoral Commission allow political parties to use its services to conduct internal party ballots. Such services should be provided on a cost recovery basis.**

External influence upon parties

4.52 Some observers see a change in the nature or use of a party's constitution as a way forward. There would seem to be two possible, and probably interrelated, approaches to this.

4.53 On the one hand, there could be more emphasis on requiring that party practices match the words of the party constitutions so as to ensure that public perceptions match party rhetoric. In Canada, for instance, the Royal Commission on Electoral Reform and Party Financing recommended that parties have constitutions:

...that promote democratic values and practices in their internal affairs and that are consistent with the spirit and intent of the *Canadian Charter of Rights and Freedoms*.⁵¹

4.54 The Australian Democrats has gone further, arguing that the AEC 'must refuse' a registration application if 'the constitution of the party does not sufficiently provide for the affairs of the party to be conducted in an open, democratic and accountable manner'.⁵²

4.55 Professor Hughes has gone further than this, making various recommendations that attempt to lock parties into the legal system in a more obvious fashion.⁵³

4.56 The Liberal Party is opposed to 'any further involvement by the Australian Electoral Commission in the affairs of political parties'.⁵⁴ Mr Lynton Crosby, the Federal Director of the Liberal Party, states that

51 Royal Commission on Electoral Reform and Party Financing. 1991. *Final Report Volume 1: Reforming electoral democracy*. Ottawa, Canada Communications Group, p 246.

52 Senator Andrew Murray. June 1998. *Submission to Finance and Public Administration Legislation Committee, consideration of Electoral and Referendum Amendment Bill (No. 2)*. Appendix A, p 2.

53 Submissions p S383 (C.Hughes).

54 Transcript p 533 (Liberal Party).

greater involvement by the AEC in the affairs of political parties would remove the AEC:

from an umpire position in the community interest into someone who can influence and participate in the affairs of a political party in the way that could have political outcomes.⁵⁵

- 4.57 The ALP has stated its concern that ‘any intrusion into the ability of political parties to draft their own rules may not be appropriate’, and could have unintended consequences.⁵⁶
- 4.58 Plans for improving the operations of both the ALP, and registered political parties more generally, were made by the Premier of Queensland, the Hon Peter Beattie MP on 21 January 2001 following the release of the Shepherdson Inquiry closing submission by Mr Hanson QC. Details of these proposals are set out in chapter 1.
- 4.59 In suggesting a different approach to the handling of the party constitutions, Gary Johns has suggested that a compromise between the need for parties to be more transparent, and their desire to retain their privacy, perhaps needs to be found. He wonders if there would be a way of using the party constitution as a public pledge of faith. What he calls a ‘reasonable compromise’ between the private nature and the public responsibilities of political parties would be, as part of the registration process, to make party constitutions available to the public:
- If the parties’ candidate selection rules were, as a condition of funding, to be made available to the public so that voters may judge for themselves the fairness of the processes, then the parties would, insofar as their formal practices are concerned, be more likely to comply with basic democratic standards.⁵⁷
- 4.60 One of the aspects of the enrolment fraud detected in Queensland was the extent to which the fraudulent enrolment problem was caused by the influence of an external organisation, in this case the Australian Workers Union (AWU) Queensland Branch, on a political party. Ms Karen Ehrmann, in her evidence before the committee on 14 December 2000, indicated that the enrolment fraud practices she was involved in were a tactic of the AWU faction of the Queensland ALP.⁵⁸

55 Transcript pp 533-544 (Liberal Party).

56 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election. Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, p 160.

57 Johns, Gary. Party democracy: An audit of Australian parties. *Australian Journal of Political Science*, vol. 35, no. 3, November 2000, p 423; see also Johns, Gary. Clarke v Australian Labor Party. *Australian Journal of Political Science*, vol. 35, no. 1, March 2000, p 141.

58 Transcript p 159 (K.Ehrmann).

4.61 Mr Brian Courtice, appearing on 29 January 2001 in Townsville, described the link between the AWU faction of the Queensland ALP, and the AWU:

The fact is that the AWU faction is the AWU union's faction and is there to maintain the political influence to protect the industrial power that the AWU has...⁵⁹

4.62 The committee was provided with a description of how the AWU faction operated by Mr Lee Bermingham, who had been an organiser for the AWU faction. Mr Bermingham indicated that the AWU faction dominated the decision making bodies of the Queensland ALP. He said the faction was run by an unelected executive that would meet privately to make decisions about the direction it wanted to take things in the ALP. Overall, the picture was of:

...an organisation that has such vast influence over both federal and state politics yet it is unanswerable to anybody. It is not audited, it is not expected to account for itself publicly or indeed to the party...⁶⁰

4.63 The debate about the influence of external organisation on the internal democratic practices of political parties has been discussed in a wider sense for some time. Dr Carmen Lawrence MP, Member for Fremantle, has noted of the ALP that:

While I do not intend to single out my own party for criticism, it is clear that unions—honourable contributors to Labor history and policy—exercise disproportionate influence through the 60:40 rule and through their affiliated membership, many of whom have no direct connection to the party. One vote, one value—the prime condition for a democracy—is not observed in the party's rules...⁶¹

4.64 One vote, one value as a principle within political parties was discussed by the Australian Democrats in its dissenting report to the 1998 federal election inquiry. The Australian Democrats indicated that when translated into political parties, one vote, one value would mean that no member's vote would count more than another's would, and would do away with undemocratic internal party ballots.⁶²

59 Transcript p 268 (B.Courtice).

60 Transcript p 371 (L.Bermingham).

61 Lawrence, Carmen. A democracy in crisis, *The Age*, 23 August 2000; see also Transcript p 161 - comment by Senator Murray referring to speech given by C Lawrence on 17 August 2000 at the Sydney Institute.

62 Joint Standing Committee on Electoral Matters. 2000. *The 1998 Federal Election. Report of the Inquiry into the conduct of the 1998 Federal Election and matters related thereto*. Canberra, CanPrint, Recommendation 6.9, p 179.

- 4.65 While it would not completely eliminate the prospect of enrolment fraud as a result of internal party ballots, a one vote, one value principle would at least end the use of enrolment fraud by organisations external to political parties as a mechanism for exerting influence within a political party.

Recommendation 18

- 4.66 That the *Commonwealth Electoral Act 1918* be amended to ensure that **the principle of one vote, one value for internal party ballots be a prerequisite for the registration of political parties.**

Christopher Pyne MP,
Chairman
25 May 2001

