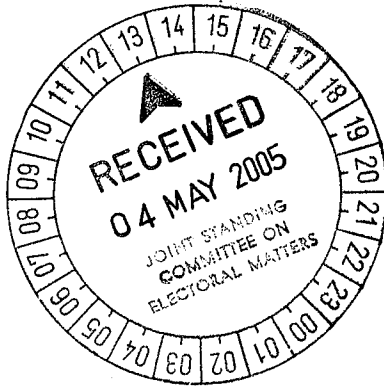


Joint Standing Committee on Electoral Matters
Submission No. <u>145</u>
Date Received <u>4-5-05</u>
Secretary <u>[Signature]</u>



4 May 2005

The Secretary
Joint Standing Committee on Electoral Matters
Parliament House
Canberra ACT 2600

Dear Secretary,

Please find attached my submission to the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto.

Yours sincerely

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Thank you for the opportunity to present a submission. This submission is based on, or drawn from, some of my recent and forthcoming publications,¹ There are five main areas I wish to address.

1. Incumbency resources

Power in a liberal democracy is maintained 'less through coercion than by restricting access to political communication channels'.²

In Australia, there are a number of ways access to political communication channels is restricted including through parliamentary entitlements, the public funding of election campaigns in a manner which disproportionately benefits the major parties, through unlimited political donations (which again benefit the major parties but particularly incumbents) and finally, through government advertising—now a massive 'special' advantage for incumbent governments. These factors not only limit competition and help to entrench incumbency, they also demonstrate how Australian politicians are no longer confining their election campaigning to the official election campaign period but are instead, stringing their campaigns throughout the election cycle and, increasingly, pushing the costs of this 'permanent' campaigning onto taxpayers.

Changes to printing entitlements and communications allowances to boost incumbency resources are two major elements of a pattern of changes which allow incumbents greater public spending on their local campaigns.

Incumbents already enjoy advantages such as name recognition, a history of past services to constituents, experience, and seniority in office. They also enjoy government benefits such as professional services, travel allowances, substantial funding for staff, office space, and generous salaries. All of these make it difficult for challengers to be effective against them. However, the single biggest problem facing challengers in a media-dependent system like ours, is to get sufficient financing to disseminate their messages through expensive advertising campaigns.

Now that incumbents can increasingly use their public entitlements to send unsolicited mail, newsletters and other types of promotional material, challengers are put at an extreme disadvantage. This is because direct mail has become one of the most valuable tools in an election campaign. It has experienced phenomenal growth in Australia in the last few years. Using publicly-funded mail, newsletters and other types of promotional material whilst in office (and particularly just prior to an election campaign) gives incumbents a massive advantage.

While increased parliamentary entitlements are available to all MPs obviously, because of the major parties' dominance of Parliament, they do better in this regard than minor parties or independents. Because of the formula used to calculate public funding of election campaigns, the major parties benefit the most and take over 80 per cent of the funding available. In the market for political donations, both major parties receive

millions in political donations although the incumbent government party is likely to receive more. But there is one other crucial avenue of political communication which is open only to governments—government advertising.

Government advertising has become, in the modern era, the single most significant benefit of incumbency. While I have discussed this generally in a 2004 submission to the Senate Inquiry into Government Advertising and Accountability,³ in relation to the 2004 election, there were some specific instances of the use of incumbency resources.

1. Government ads in the pre-election period

In 2004, there was an extensive 'warm up' period before the official election campaign began and, during this period, there was a very large increase in government advertising.

It is not unusual to see 'spikes' in government advertising spending just prior to an election, this has been occurring since the Keating government years.⁴ What was unusual in 2004 was the extent of blatant pre-election spending and the sheer variety of government ads that were run. The federal government spent somewhere between \$32 to \$40 million between May and June alone.⁵ This is double the amount that either party could afford to spend individually during the official campaign and undoubtedly gave the government a major advantage in getting its message out in the lead up to the campaign.

2. Government ads during the caretaker period

Even more startling, was the government's reluctance to forgo government advertising even during the election campaign. The 'Help Protect Australia from Terrorism' campaign ran extensively on TV, radio and in newspapers during the election period. Under caretaker conventions, this campaign had to be approved by Labor.

According to media accounts, Labor begrudgingly agreed to allow the ads to be run (fearing that a refusal to allow the ads to be run would be represented as 'petty politicking' or, even worse, as endangering Australian lives) but conditions were negotiated. The ads were to use the authorisation tag of the Australian Federal Police instead of the 'Australian Government', and Mark Latham requested that they be run at a low intensity during the campaign to avoid politicising the issue. However, 'a Labor spokesman said the Government ignored Mr Latham's request', it spent up to \$4.5 million on the ads, and Labor's Senate leader, John Faulkner argued later that 'both the timing and the intensity of the ads [were] unreasonable'.⁶

Another separate challenge to caretaker convention was Centrelink's decision to continue, through the campaign, a mailout to families providing them with details of the \$600 family tax benefit.⁷

3. How-to-vote cards paid for by taxpayers

The boosting of incumbency resources has been a growing trend for a number of years.⁸ However, this year, Special Minister of State Eric Abetz announced three days after the Prime Minister called the election, that MPs were now allowed to use their printing entitlements to print and send how-to-vote cards and postal vote applications to

constituents.⁹ This was a major change in policy and further worrying evidence of the trend towards using parliamentary entitlements to advantage sitting members.

2. Costs and political finance

During the 2004 election campaign, the Labor Party and the Liberal-National Coalition spent around \$20 million each on advertising. It is significant however, that this figure is only an estimate because neither party has been required to disclose their spending habits since an amendment to the funding and disclosure provisions in 1998. This means we no longer know precisely how much political parties spend on ads during an election. This is of great concern and severely undermines the accountability aspects of the public funding system.¹⁰ The requirement for parties to disclose their election spending should be urgently reinstated.

At present, we instead have to rely on industry sources and media monitors which estimated that each major party spent, during the 2004 election campaign, about \$12 million on TV, \$1 million on radio, \$500,000 on newspaper ads and about \$6 million on direct mail and research.¹¹

By comparison, the Democrats' total campaign budget was so small that they were unable to afford any TV advertising in 2004. Instead, they produced radio and cinema ads and the party's website included banner advertising in which the Democrats branded themselves the 'lie detectors'. Following the election, the Democrats received only \$8066 in public funding. In terms of its ability to fund advertising and communications in the next election, this puts the party in a very precarious position as it closes off the more expensive communication channels open to the major parties and which are judged to be so crucial to modern election campaigns in Australia.

In theory, the public funding of election campaigns has a number of *possible* advantages. It can help to secure greater equality between citizens, promote freedom of speech by increasing the range of persons who have the opportunity to meaningfully exercise that freedom, relieve politicians from the burden of fundraising and prevent corruption.¹² However, there are some significant problems with the public funding system in Australia. The first has already been alluded to. Because the formula for allocating funding is based on past success, it favours the established major parties. New parties, minor parties and independents therefore do not have equitable access to political communication channels (such as expensive televised political advertising) and they therefore, start with a considerable handicap.

Another major problem is that although public funding legislation was originally established as a way of addressing the high costs of campaigning, it did nothing to limit those costs. For example, it set no legislative restrictions upon either the volume of political advertising or the amount that the parties could spend purchasing political advertising which is by far, their most expensive campaign activity.

Because there are no limits on the amount the parties may spend on their campaigns or on political advertising, the parties have no incentive to cap their spending. And, because public funding rates can be increased by legislation, it is possible (and probably likely) that Australian politicians may in future legislate again to increase the rate of public funding so that they may spend more.

Australia's public funding system ensures that following an election campaign, each of the two major Australian political parties receive millions of dollars to reimburse them for their campaign costs. But the generous public funding system in Australia does not preclude candidates from also raising funding from private sources. Australian parties can still raise unlimited amounts through political donations. So although public funding may in theory, mean the major parties are less beholden to private donors, in practice, the nexus with wealthy donors remains crucial to them. The two major Australian political parties currently receive up to \$60 million each year from private sources including through the advent of their own business enterprises.¹³ They also receive significant donations from private donors.

There is a desperate need to clean up the fundraising activities of all parties. At the moment, disclosure does not mean real disclosure at all. Aside from tightening up loopholes which hide donor's identities, we also need to have rolling updates of who is donating rather than having to wait 12 to 18 months after donations are made. Rolling updates would help citizens to judge for themselves whether there are any links between large donations and public policy decisions.

We should also be more stringent in what we expect from the parties in return for their receipt of public funding. In Ireland, for example, political parties are only able to use public funding for 'general administration of the party; research, education and training; policy formulation; and coordination of the activities of branches and members of the party'—not for advertising.¹⁴

A more significant change we need to make is to remedy our embarrassing status as the only major democratic nation that does not make any attempt to limit campaign spending. This is one way to curb the parties' spending on ads and it is done in most other liberal democracies including Britain, Canada and New Zealand.

Policing spending limits may be difficult but at the moment Australian political parties are in a situation which is remarkable by international standards. They get the best of all possible worlds—they have a trifecta of public funding plus unlimited private donations plus no spending limits. This is a system that is full of rorts and wide open to corruption.

Broadly, the notion of public funding is based on a sound principle of fairness. It can be an effective way to minimise the advantage of wealth and encourage new entrants into politics. The problem is getting it to work so that it meets those goals and this depends upon how the funding is allocated and administered. At present, it is a failed piece of legislation that needs to be overhauled.

3. Political advertising

Cost

In Australia, political parties appear to pay up to 50 per cent more 'for advertising time than do private companies'.¹⁵ This is because political advertisers do not know precise election dates until they are called so they are unable to book in advance. Once they do know the election date, they want advertising time urgently and are willing to pay for dearly for it. For all of these reasons, they are often charged a very expensive rate.

By contrast, in the US, the amended *Federal Communication Act* of 1934 requires that broadcasters must sell advertising time to election candidates at the 'lowest rate it has charged other commercial advertisers during the preceding 45 days, even if that rate is part of a discounted package rate'.¹⁶ The Act also requires that if advertising space is offered to one candidate it is offered to all. These are important principles which help to prevent those with the biggest campaign war chests becoming inordinately advantaged and these principles have been imitated in political advertising regulations worldwide—but not in Australia.

The lack of a requirement to sell airtime to political candidates at a reasonable rate is ultimately costing Australian taxpayers through the public funding system and contributing to pushing up the increasingly high costs of election campaigning.

Truth in political advertising

The Liberal Party's 2004 election advertising on interest rates was controversial because, like any effective scare campaign, it was misleading and based on speculation, exaggeration and fear.

One of the major strands of the advertising was a claim that interest rates would rise under a Latham Labor government. This claim was made in TV ads which showed the level of interest rates under previous Labor governments (going back thirty years). The ads finished on a graphic which showed Latham's face above interest rates of 10.38%, 17%, 12% and a question mark. This graphic was speculative, misleading and perhaps would not have been allowed to air if political ads were still scrutinised for accuracy and truth by the Federation of Australian Commercial Television Stations (FACTS) (now called Free TV Australia) however, FACTS withdrew from this checking role in 2002 after legal advice and political pressure (Young 2004a, 198).

We now know that, during the campaign, the Reserve Bank complained to the Australian Electoral Commission about Liberal Party pamphlets that linked the Labor Party to high interest rates and attributed the Reserve Bank as the source. The brochure said: "Under Labor, you may need to find an extra \$962.34 every month just to keep your home."

The Reserve Bank was concerned that the pamphlet gave the impression that the Bank was endorsing anti-Labor material rather than just being the source of statistics. (The Liberal Party has since blamed a missing asterisk for the error.)

But the Reserve Bank's inability to stop this brochure from being distributed reveals just how lax our political advertising laws are. The AEC could do nothing about the Bank's complaint because unlike commercial advertisers, who are required by law to be truthful in their advertising, Australian politicians are under no obligation to tell voters the truth.

Commercial advertisers come under the *Trade Practices Act 1974* which outlaws misleading or deceptive advertising. They can be prosecuted if they lie. But political advertising is not regulated for truth in Australia—with the exception of South Australia which has the toughest laws in the country.

In most other countries, political parties are not even permitted to run paid ads on television during elections – including in Belgium, the Netherlands, Norway, Denmark, the United Kingdom, France, Ireland, Switzerland, Turkey, Spain, Austria, France, Israel and Japan – let alone use them to distribute misleading or inaccurate information. In Australia, politicians have long exploited the lack of regulation of political ads.

We have the dubious honour of having the weakest regulation of political ads of any comparable democratic nation in the world and we also have double standards of epic proportions. If a company produced the sort of misleading advertising politicians do they would face thousands of dollars in fines and possible gaol sentences.

Factual claims in political ads can, and should, be assessed. Whether this is done by introducing truth in political advertising legislation as per the South Australian model, or whether it is done by the media instituting ad watches (as in the US),¹⁷ there needs to be a process which calls attention to false claims. This has become urgent now that FACTS/Free TV Australia has withdrawn from checking ads.

4. Lack of interactivity and participation in elections

Political advertising is a one-way communication method, *from* politician to citizen, with limited opportunity for the citizen to respond. Unlike more interactive forms of political communication such as public meetings, street corner meetings, rallies or door-knocking, political advertising is premised on the political parties having maximum control over both the message and the medium.

As the major parties are devoting so much of their resources to political advertising, there are fewer and fewer opportunities for citizens to interact with potential representatives or to engage in political discussion directly. The result of this appears to be increased public alienation from political life and, arguably, increased public cynicism about politics, politicians and their motives.

In theory, new media and technology—such as the Internet, email and SMS—could be used in a positive way: for communication and to break down the distance between citizens and their representatives. However, in 2004, as in other recent elections, although the Internet has great potential for interacting with citizens, Australian politicians are not choosing to use it in that way and they're squandering its 'greatest gift'.¹⁸

In their televised political advertising, the parties are increasingly focusing on shorter ads (15 seconds is quite standard now), as well as repetition, centralisation and a narrow target audience. This all works to prevent a wide-ranging debate. Televised political ads are certainly not books. Nor are they hour-long documentaries. They have never, and will never, be able to provide complete policy information. But it is regrettable that the parties are dealing with a very narrow set of topics in their ads, and none are covered in any great detail or depth. Policy detail is rarely given. None of this is conducive to an educated citizenry or an informed choice of candidates based on policy and a wide-ranging debate.

5. Informal voting, voter education and civic education

informal voting has gone up nationally in each of the past four elections. In 1983, across Australia, the percentage of informal votes cast was just 2.1 per cent. In 1984, this jumped up to 6.3 per cent. It settled back to 4.9 per cent in 1987, then slowly fell in 1990 (3.2 per cent) and 1993 (3.0 per cent). But informal voting started growing again in 1996 (3.2 per cent) and 1998 (3.8 per cent). By 2001, it was at 4.8 per cent – this was the fourth largest informal vote since federation.¹⁹ In 2004, it was up to 5.18%. This means 639,000 voters in Australia cast informal votes in 2004.²⁰

It is difficult to come by hard evidence of why people cast informal votes. There are some important studies,²¹ but there are also many assumptions. It is tempting to assume for example, that some of those who leave their ballot papers blank are deliberately exercising their right to not vote – casting a protest vote. But the meaning of blank ballots is largely speculative. It may just as likely have resulted from frustration at an inability to complete the ballot correctly as much as it may have from a conscious desire to lodge a protest vote.

In democratic terms, the most worrying type of informal vote is accidental informal voting - where people are trying to cast a valid vote but fail because they did not mark the ballot paper correctly.

In 1987, the AEC conducted an analysis of informal votes which showed that of the informal votes cast that year, 48 per cent were the result of 'defective numbering', 25 per cent used 'ticks or crosses' while 16 per cent left the paper blank and 10 per cent wrote or scribbled on the paper without recording valid preferences.²²

Making an assumption that the blank and scribbled on papers *could* be the result of deliberate choice, it is the 73 per cent who either got the numbering wrong or used ticks

or crosses that seem to warrant the most immediate concern because they show evidence of a voter consciously trying to record a valid vote but failing.

The biggest jump was in non sequential numbering in NSW between 1996 and 2001. In NSW, informal voting has been higher than the national average in recent elections and, in 2004, the top 14 electorates with the highest percentage of informal votes were all in NSW.

This seems to be strongly related to the fact that in NSW optional preferential voting *is* allowed in state elections for the Legislative Assembly so voters become accustomed to marking only '1' on the ballot paper as a valid vote. But when they follow this practice in voting for the House of Representatives at federal elections, it renders their vote invalid because different rules mean that all of the squares must be numbered. Confusion over different voting procedures at a state and federal level appears to play a significant role.²³

Ian McAllister has pointed out that Australia 'has one of the highest levels of spoiled or informal ballots among established democracies'.²⁴ Factors include compulsory voting, the use of different electoral systems at different levels of government and the frequency of elections.²⁵

There are also sociological factors. An Australian Electoral Commission (AEC) study by Rod Medew found that being a voter from a non-English speaking background is a major predictor of informal voting. Education level is another major factor with voters who left school at 15 years or younger more likely to cast informal votes.²⁶

All of these factors can help to explain why NSW has such a high incidence of informal voting in 2004. But there is one more factor which may allow more specific insight into why the electorate of Greenway was the seat with the highest level of informal voting at the 2004 election.

Studies have shown that the number of candidates on a ballot paper is also a major predictor of informal voting.²⁷ The more candidates there are, the more likely that there will be voters who do not complete their numbers in sequence. In Greenway, there were 14 candidates for the House of Representatives – an unusually high number.

Any rise in informal votes of the type that we have been seeing in Australia over the past few years is of concern and interest and, when 1 in 10 people in an electorate (Greenway) fails to have their vote counted, it is a worrying development indeed.

However, some critics of compulsory voting have interpreted the informal vote level in 2004 as evidence of a need to scrap compulsory voting. This is an extraordinary leap of logic as previous studies have shown that a significant number of those who have cast an informal vote will have been trying to cast a valid vote but failing due to a number of reasons including language difficulties, confusion over different electoral systems, literacy and education problems and poverty.

Although more detailed analysis of the 2004 informal vote will shortly be published by the AEC and this analysis may indeed show a rise in protest voting at last year's election, this does not mean that we should scrap compulsory voting anymore than a rise in people failing to submit their tax returns (or submitting them with errors) would suggest that we should scrap the requirement for people to submit tax returns.

When informal votes *are* protest votes this is evidence of democratic decision making and an active political choice at work. In fact, deliberate informal voting shows that a compulsory voter turnout system does not mean 'forcing' people to vote as voters can (and some are) choosing to return blank or deliberately spoiled ballots.

Rather than scrapping compulsory voting - one of the best features of the Australian political system - it seems instead that there is a need for the Electoral Commission to conduct education programs to reduce the incidence of accidental informal voting. For example, previously, the AEC has written to voters from non-English speaking backgrounds in their own languages to advise them on voting procedures with some success and this may need to be revived. Another option, proposed by Antony Green and others, is to adopt the use of optional preferential voting as a means by which to minimise informality.

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¹ including *The Persuaders: Inside the Hidden Machine of Political Advertising*, Pluto Press, 2004; 'Political Advertising in 2004' in Simms, Marian and Warhurst, John (eds), *Mortgage Nation: The 2004 Election*, (in production, working titles given) and 'Wasted votes?: Informal voting and the 2004 election', the *Democratic Audit of Australia*, November 2004 [http://democratic.audit.anu.edu.au/Young-
InformalVoting2004.pdf](http://democratic.audit.anu.edu.au/Young-
InformalVoting2004.pdf) See also Sally Young, 'Killing Competition: Political Communication in Australia', *AQ: Journal of Contemporary Analysis*, vol.75, iss.3, May-June 2003, pp.9-15.

² Quoted in E. Åsard, *Democracy and the marketplace of ideas: Communication and government in Sweden and the United States*, Cambridge University Press, New York, 1997, p. 32.

³ http://www.aph.gov.au/senate/committee/fapa_ctte/govtadvertising/submissions/sublist.htm

⁴ R. Grant, *Federal government advertising: Research Note no.62 2003-04*, Parliamentary Library, Parliament of Australia, Canberra, 2004.

⁵ L. Tingle and N. Shoebridge, 'Nine the winner in government ad blitz', *Australian Financial Review*, 28 July 2004, p8.

⁶ P Walters and L Sinclair, 'Security hotline ad blitz is too intense for Labor', *Australian*, 5 October 2004, p7.

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- ⁸ S Young, 'Killing Political Competition: Restricting access to political communication channels in Australia', *AQ: Journal of Contemporary Analysis*, vol.75 (3) 2003, pp9-15.
- ⁹ M Stekete, 'Today's kind of gerrymander: postal votes and propaganda', *Australian*, 29 October 2004, p4.
- ¹⁰ S Young, *The Persuaders*, p.282.
- ¹¹ *Mercury*, 'Election ads cost \$20m', 8 October 2004.
- ¹² D. Tucker and S. Young, 'Public funding of election campaigns in Australia - A solution or a problem?' in *The big makeover: A new Australian Constitution*, G. Patmore (ed.) Pluto Press, Annandale, N.S.W, 2001, p. 61.
- ¹³ Australian Electoral Commission, '1999/2000 party disclosures', Consulted 4 May 2001, http://search.aec.gov.au/fandd_returns/home2000.htm.
- ¹⁴ S. Bennett, 'Research paper no. 21 2001-2002: Australia's political parties: More regulation?' Parliamentary Library, Parliament of Australia, Canberra, 2002.
- ¹⁵ Stephen Mills, *The New Machine Men*, pp.189-90.
- ¹⁶ L. L. Kaid and A. Johnston, *Videostyle in presidential campaigns: Style and content of televised political advertising*, Praeger series in political communication, Praeger, Westport, Connecticut, 2000, p. 7.
- ¹⁷ See Young, *The Persuaders*, pp.205-8.
- ¹⁸ Hurwitz quoted in Selnow, 'Internet ethics' p. 209. For an example of how it could be done see P. Botsman, 'Fresh politics of participation', *The Australian*, 30 October, 2003, p. 11. regarding Howard Dean's use of the internet for grass-roots campaigning and get-out-the-vote drives.
- ¹⁹ Medew, Rod, AEC, Research Report 1: Informal Vote Survey, House of Representatives – 2001 election,
- ²⁰ These figures were kindly provided by Rod Medew of the Australian Electoral Commission on 1 November 2004.
- ²¹ See Ian McAllister, Toni Makkai and Chris Patterson. 1992. *Explaining Informal Voting in the 1987 and 1990 Australian Federal Elections*. Canberra: Australian Government Publishing Service and Medew, 2001.
- ²² AEC 'Categories of Informal Voting', <http://www.australianpolitics.com/voting/informal/categories-1987.shtml>, accessed 30 October 2004.
- ²³ AEC, '2001 Election Informal Ballot Paper Survey: NEW SOUTH WALES: GREENWAY' <http://www.aec.gov.au/content/what/voting/survey/nsw/greenway.htm>
- ²⁴ Medew, 2001.
- ²⁵ See McAllister, Makkai and Patterson, 1992.
- ²⁶ *ibid.*
- ²⁷ *ibid.*