Minority Report—Senator the Hon John Faulkner, Mr Michael Danby MP & Mr Laurie Ferguson MP (ALP)

In this Minority Report, Opposition members of the Joint Standing Committee on Electoral Matters (JSCEM) identify nine recommendations of the Committee, in its *Report of the Inquiry into the Conduct of the 1998 Federal Election and Matters Related Thereto*, that the Opposition does not support.

The majority report also contains argumentation not supported by the Opposition. Constraints placed upon JSCEM members in relation to the timing of the tabling of the Committee's report have limited this minority report to addressing only those majority recommendations that, in our view, clearly compromise the effectiveness, fairness and integrity of the *Commonwealth Electoral Act (1918).*

Recommendation 3

That section 155 of the *Commonwealth Electoral Act 1918* be amended to provide that for new enrolments, the rolls for an election close on the day the writ is issued, and for existing electors updating address details, the rolls for an election close at 6.00pm on the third day after the issue of the writ.

Opposition Committee members oppose this Recommendation.

The Government has previously proposed similar provisions to those contained in Recommendation 3. They were rejected by the Senate. The Senate was concerned with the potential for disenfranchising thousands of voters at each election by early closure of the rolls. Opposition Committee members' concerns have not been allayed on this issue.

Closing the rolls as soon as an election is called will potentially disenfranchise about 80,000 new enrollees at each election, mostly young Australians and new Australian citizens. Further, evidence given by the Australian Electoral

Commission to the Committee shows that a majority of the 320,000 people who notified a change of address did so at the last available opportunity. The restriction on enrolment recommended by the Committee would massively distort the electoral rolls, leading to a totally unacceptable situation where more than 200,000 voters were enrolled at a non-current address.

Recommendation 11

Subject to the JSCEM acceptance of matters raised in the AEC's internet issue paper, that the publicly available Commonwealth Electoral Roll be provided on the AEC internet site for name and address/locality search purposes, and that the Roll be provided in CD-Rom format with the same search facility to public libraries without internet access. Both the internet and CD-Rom Roll should be updated monthly subject to search capacity being limited to individual names and addresses on the Roll.

The AEC recently reported to a Senate Estimates hearing that it was reviewing the operation of Part VI of the Commonwealth Electoral Act (Sections 81 - 92). These Sections govern the production, distribution and use of the Electoral Roll.

The recent controversy surrounding the illegal release of electoral roll information by the AEC to the Tax Office and the proposed illegal use of that information by the Tax Office to mail out a Prime Ministerial letter and accompanying GST propaganda is of great concern to Opposition Committee members.

We believe that Recommendation 11 should be deferred until the AEC reports on Part VI of the Act and the issues arising from the recent illegal release of electoral roll information. The Opposition will be closely examining privacy implications arising from the AEC internet issue paper.

Recommendation 17

That s331 of the *Commonwealth Electoral Act 1918* and s124 of the *Referendum (Machinery Provisions) Act 1984* be amended to reflect that only electoral advertising in journals needs to be labelled as advertising.

Opposition Committee members oppose this Recommendation.

Opposition Committee members oppose any weakening in the accountability for, and transparency of election advertising material.

Recommendation 27

That paragraph 7 of Schedule 3 of the *Commonwealth Electoral Act 1918* and paragraph 7 of Schedule 4 of the *Referendum (Machinery Provisions) Act 1984* concerning the postmarking of postal vote envelopes be amended, so that the date of the witness's signature is instead used to determine if a postal vote was cast before the close of polling if there is no post mark or if the post mark is illegible. The witnessing portion of the postal vote envelope should specify all the elector's details being attested to, and should make clear that it is an offence for a witness to make a false declaration.

Opposition Committee members oppose this Recommendation.

Opposition Committee members believe that a post mark is a reliable and neutral reference for determining the time at which a postal vote was cast.

Opposition Committee members are concerned that allowing other means for determining the date a postal vote was cast may open the postal voting system to manipulation.

Recommendation 36

That the *Commonwealth Electoral Act 1918* be amended to explicitly prevent scrutineers from providing assisted votes.

Opposition Committee members oppose this Recommendation.

Currently, the Electoral Act provides that in the case of an elector's sight being impaired, or if they are incapacitated or illiterate, that elector can appoint a person to assist them to vote. Currently, the elector decides who will assist them. This is a very practical way of handling assisted voting – it is fair, and it preserves the secrecy of an individual's vote. It does not compromise an elector's rights, nor does it in any way compromise the proper functioning of polling booths or the integrity of the electoral process.

The Australian Electoral Commission's submission stated:

> The AEC is of the view that the current federal legislation relating to assisted voting is operating properly, as the parliament intended, and should be left unamended.

Opposition Committee members agree with the AEC's assessment.

The *Commonwealth Electoral Act* allows an individual elector the say about who is to assist them. Appropriately, the elector is free to choose someone that they trust. Opposition Committee members believe that individual electors should not be limited in choosing who may assist them to cast a formal vote.

Many of the polling places where assisted voting occurs are in small, relatively isolated communities where presiding officers or polling officials in the booth are known to electors. The advantage of a 'voter's friend' is that an elector has someone *they* nominate and *they* are comfortable with assisting them to vote. If an elector wants a scrutineer to assist them to vote formally, then Opposition Committee members believe such a request is certainly no impediment to the democratic process.

Recommendation 38

That the nexus between provisional voting and reinstatement be broken by deleting ss 105(4) and 105(5) of the *Commonwealth Electoral Act 1918*.

Opposition Committee members oppose this Recommendation as we are concerned that this measure may lead to disenfranchisement. We support the principle set out in Paragraph 3.81 of the Report, and are not convinced that the above Recommendation will have no effect on the franchise.

Recommendation 44

That the disclosable sum received from a person or organisation during a financial year be increased from $1,500 to $3,000.

Opposition Committee members oppose this Recommendation.

Increasing the disclosure threshold has no policy merit and will only diminish the transparency of the disclosure laws and allow further donations to parties and candidates to go undisclosed. It is of concern that such a Recommendation is being supported by the Joint Standing Committee on Electoral Matters so soon after the tabling of the AEC's Funding and Disclosure Report from the 1998 Election.

The AEC's Report raised a number of specific concerns about the fundraising activities of the Liberal Party's associated entity *The Greenfields Foundation* and its exploitation of the disclosure rules.

The AEC recommended the closure of the loophole that allowed such bodies as *The Greenfields Foundation* to prosper, because there was no way to trace the real source of funds to political parties. The AEC report stated that:

> It is apparent that a person, or in certain circumstances a corporation, who wishes to avoid full and open disclosure could do so by a series of transactions based on the Greenfields model.

> The AEC believes that such potential circumvention of the intentions of the public disclosure provision in the Act should be addressed legislatively as a matter of priority.[1]

Directly relevant to this Recommendation, the AEC Report also noted that:

> The only practical deterrent to donation splitting is to maintain a low disclosure threshold.[2]

Opposition Committee members endorse the AEC's concerns and oppose any Recommendation that weakens the integrity of the disclosure provisions of the Commonwealth Electoral Act.

Recommendation 45

That the minimum donation before a donor is required to lodge a return be increased from $1,500 to $3,000.

Opposition Committee members oppose this Recommendation.

Increasing the threshold for returns has no policy merit and will only diminish the transparency of the disclosure laws and allow further political donations to go undisclosed.

Recommendation 50

That the definition of a member of a political party at section 123(3) of the *Commonwealth Electoral Act 1918* be expanded to include the requirements that a person must:

- **have been formally accepted as a member according to the party's rules;**
- **remain a valid member under party rules;**
- **not be a member of more than one registered political party unless the parties themselves have sanctioned it; and**
- **have paid an annual membership fee.**

Opposition Committee members oppose this Recommendation.

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1 Australian Electoral Commission. nd. *Funding and Disclosure Report following the Federal Election held on 3 October 1998.* Canberra, Union Offset Printers. p 18.

2 Australian Electoral Commission. nd. *Funding and Disclosure Report following the Federal Election held on 3 October 1998.* Canberra, Union Offset Printers. p 16.

We are concerned that this intrusion into the ability of parties to draft their own rules may not be appropriate, and that any such provisions may, unless they were very carefully drafted, have unintended consequences.

Senator the Hon John Faulkner

Mr Micheal Danby MP

Mr Laurie Ferguson MP

Minority Report—Senator Andrew Bartlett and Senator Andrew Murray

Prologue

This Minority Report has the following purposes: to further support and amplify some aspects of the Main Report; to qualify other aspects; to oppose some recommendations; and to provide some additional commentary on matters of relevance.

In the Democrats' Minority Report on the Joint Standing Committee on Electoral Matters (JSCEM) Report into the 1996 election, we drew attention to voter dissatisfaction with politics, politicians, and parliaments, expressed through polls and in the media. There appears to be little improvement regarding voter dissatisfaction since then, with no significant advance in parliamentary or political standards. While aspirations to higher standards may be idealistic, given the present political culture, nevertheless in our view such higher political standards remain worthy and necessary goals.

The JSCEM undoubtedly tries hard to play its part in improving democratic processes. By the nature of the Committee's processes however, its reform achievements tend to be incremental, and are often technical perforce. The Majority continue to ensure that big improvements that the Australian Democrats seek, for instance in recommendations on significant improvements in political governance, a more representative political system, truth in political advertising, and full disclosure of all types of political party income, remain out of reach. Nevertheless the Committee's work keeps a review and reformist focus on our electoral, political party, and political systems, which is very valuable.

Chapter One: Introduction

The 1998 federal election[1]

The 1998 election again demonstrated the weakness that democratically speaking, large numbers of voters who gave their primary vote to minor political parties are not directly represented in the House of Representatives (HoR).

In 1998 the two major parties secured 74.5% of the HoR vote. The Australian Labor Party secured a primary vote of 40.1%, and the Liberal party 34.2% (actually the Liberal Party and Country Liberal Party). Only one minor party, the National Party, gained representation in the HoR, with 5.3% of the vote. Of the minor parties not represented in the HoR, the most notable were One Nation 8.4%, the Democrats 5.1% and the Greens 2.6%, totalling 16.1%. One independent, Peter Andren, was elected to the HoR. Overall, 19.4% of voters were not represented in the HoR at all, having given their primary votes to parties and independents other than the Liberals, Labor or the Nationals.

One quarter of all Australian voters are not major party voters. This one-quarter of all Australian voters are reported as being referred to by the Business Council of Australia (BCA) as voting for parties "representing narrow sectoral interests"![2] David Buckingham, Executive Director of the Business Council of Australia. Such remarks say more about BCA values and their attitudes to millions of Australians who do not vote Labor or Liberal, than about participants in the political system.

Although six political parties are represented in the two Federal houses of Parliament, many commentators still focus on bipartisan not cross-party politics. Australia is instead a truly multi party system, but with real weaknesses in representation in the HoR.

With 61.5% of voters not voting for the Government in the HoR, (which conversely however, holds 54.1% of the HoR seats), the nearly proportional representation nature of the Senate provides a useful and desirable democratic counter to the distorted and inadequate nature of HoR representation.

The role of the Senate as a brake on the excesses of an unrepresentative HoR, continues to be the subject of attack. There are powerful organisations and individuals who still seek to make our parliamentary democracy less democratic, less accountable and less progressive, by making the Senate less proportionally representative and more subservient to the HoR. In our view, it is the HoR that deserves more examination for democratic weakness, since its parliamentary role has been subordinated to its role as the House of the Executive.

1 For figures used in this section see 'Federal Election Results 1949-1998' Research Paper No 8 1998-1999 Parliamentary Library Information and Research Services

2 Financial Review Thursday 8 June 2000 p.10.

It is the Senate, free of the dominance of the Executive, which preserves the essence of the separation of powers, not the HoR. It is the Senate which protects the sovereignty of the people, not the HoR, which is dominated by a minority of voters with a majority of seats.

In the 1998 election 95.3% of Australians were represented by their party of choice in the Senate. In contrast to the HoR's 19.4%, only 4.7% of Senate voters were absolutely unrepresented.

The Main Report has not addressed the issues of representation at all, which is a great pity, because those issues go to the heart of democratic needs – the right to be represented.

The House of Representatives does need to be made more representative. The Democrats have suggested changes along the lines of those advocated by last year's Jenkins Royal Commission in the United Kingdom, which proposes a new electoral system comprising a form of 'mixed member proportional voting', which provides a compromise between the competing principles of local representation and fair representation.

There have been moves towards proportional voting systems in recent years in unicameral parliaments such as New Zealand, and the new parliaments of Scotland and Wales. Australia's traditional bias towards a majoritarian HoR 'two-party' (Coalition / Labor) system is becoming less common in the democratic world. The Democrats believe that in an era where we are constantly being exhorted to adopt 'best practice', it is time the same applied to something as fundamental as the way we elect our parliaments, governments, and heads of state.

Chapter Two: Pre-election

Enrolment

The Australian Democrats wish to reserve their position on the Main Report's Recommendation 3.

Access to the Roll

During May 2000, as the Inquiry was drawing to a close, Senate Estimates Committee questioning brought into focus worrying questions concerning the end use of the electoral roll by parties other than the AEC. In this instance these third parties were government agencies. As a result of the matters exposed, the government has indicated that it may be necessary to amend section 91 of the Act, to better define how the roll may be used.

The Democrats opposed the successful amendment of the Act[3] to provide electors' gender, age and salutation details to members of parliament and registered political parties. There were 77 registered political parties for the 1998 election.[4]

The Democrats believe that the way in which the electoral roll is currently used needs reassessment, particularly from a security and privacy perspective. Accordingly we will examine ways in which section 91 can be amended.

Recommendation 3.1

That section 91 be amended to ensure that the end uses of the electoral roll are satisfactory from a privacy and security perspective.

Political campaigns

Caretaker conventions

The concern outlined in the Main Report about breaches of the caretaker conventions dealing with government advertising during election periods, have escalated since into a general debate about the propriety of government advertising practices.

The Democrats believe that this whole area needs legislative correction. A powerful and truly independent committee is needed to oversee government publicity and advertising. Principles[5] similar to these following should form the basis for determination of whether government publicity and advertising is genuine, or whether it has partisan and political content.

- Information campaigns should be directed at the provision of objective, factual and explanatory information. Information should be presented in an unbiased and equitable manner.
- Information should be based on accurate, verifiable facts, carefully and precisely expressed in conformity with those facts. No claim or statement should be made which cannot be substantiated.
- The recipient of the information should always be able to distinguish clearly and easily between the facts on the one hand, and comment, opinion and analysis on the other.

3 Consequent to Recommendation 52 of 'The 1996 Federal Election JSCEM Report'

4 AEC Funding and Disclosure Report Election 98 p.27.

5 These principles are largely drawn from 'Taxation Reform Community Education and Information Programmee' ANAO 1998

- When making a comparison, the material should not mislead the recipient about the situation with which the comparison is made and it should state explicitly the basis for the comparison.
- Information campaigns should not intentionally promote party-political interests, nor should they give rise to a reasonable perception that they promote any such interests. To this end:
  - ⇒ Material should be presented in unbiased and objective language, and in a manner free from partisan promotion of government policy and political argument.
  - ⇒ Material should not directly attack or scorn the views, policies or actions of others such as the policies and opinions of opposition parties or groups.
  - ⇒ Material should avoid party-political slogans or images.
- Campaigns should be supported by a statement of the campaign's objective. The Committee would be entitled to consider whether this objective is legitimate, and whether the campaign is adapted to achieving the stated objective. Campaigns, which have little chance of success, should not be pursued.

The Committee would need to be empowered to order a public authority to do one or more of the following things:

- To immediately stop the dissemination of any government publicity that is for political purposes and that does not comply with the principles.
- To modify the content, style or method of dissemination of any such government publicity so that it will comply with the principles.
- To stop expenditure on any such government publicity or to limit expenditure so that the publicity will comply with the principles.

Recommendation 3.2

That both the caretaker conventions for government advertising and general government advertising conventions be legislated.

How To Vote cards

How-to-vote provisions vary widely in the various electoral acts governing the elections for our nine parliaments. Political parties contesting elections at all levels of government would benefit significantly from consistent and common practices across the nine jurisdictions. There is certainly enough experience to form a final view in each political party who contest elections across Australia, which should provide a basis for negotiation for state, territory and federal practices to be made as consistent as possible. How-to-vote card regulation is an area badly in need of harmonisation and common practice.

In our Minority Report on the 1996 election we commented at some length on the need for better regulation of how-to-vote cards. The Democrats recommended the melding of the Tasmanian and New South Wales laws into Federal law. We moved amendments to that effect which were defeated in the Senate. We continue to urge the JCSEM and the Parliament to address the need for better regulation and harmonisation in this area.

Recommendation 3.3

That the JCSEM initiate a cooperative inter-state parliamentary committee to find ways to make how-to-vote laws and regulations as consistent as possible across all Australian parliamentary jurisdictions.

We remain of the view that how-to-vote cards should be displayed in polling booths rather than handed out. We recognise that there is doubt as to the practical effects of such a system. The best way to find out is to trial the proposal. The advantages of the proposal are self evident, against the costs, aggravation and harassment of the present system. The greatest loss from changing current practices would probably be the motivational effect and camaraderie associated with turning out for your candidate and promoting his or her how-to-vote.

Recommendation 3.4

That the AEC take an early opportunity to trial, at a by-election, systems of displaying how-to-vote material inside polling booths.

Truth in political advertising

The Australian Democrats have actively campaigned to introduce 'truth in political advertising' legislation in Australia since the early 1980's. Our Minority Report on the 1996 election had an extensive section on this topic.

The Coalition parties, in their dissenting report to the JCSEM inquiry into the 1993 election supported the reinstatement of 'truth in political advertising'. In Government they have resiled from that view. The majority in the Main Report endorses the view of the AEC that controls on the content of political advertisements would be unworkable. We disagree. If it were true, such an argument could apply to the misleading and deceptive conduct provisions of the Trade Practices Act, which it patently does not do. If it is possible to force businesses to be honest in their advertising then why is it any more difficult with respect to political parties? Especially when there is a working and long standing precedent in South Australia.

Political advertising in Australia must be better controlled. Legislation should be enacted to impose penalties for failure to represent the truth in political advertisements. The enforcement of such legislation would advance political standards, promote fairness, improve accountability and restore trust in politicians and the political system.

The need for improved controls on political advertising in Australia is important because elections are one of the key accountability mechanisms in our system of government. Advertisements disseminated during an election campaign must be legally required to represent the truth. Advertisements purporting to represent 'facts' must be legally required to do so accurately. In this way politicians can be held accountable for election promises designed to win over the electorate.

Greater controls over political advertising will also help stem the public perception that politicians are not trustworthy. This perception is one of the most serious threats to the legitimacy and integrity of Australian democracy.

In 1983 the Commonwealth Parliament introduced laws regulating political advertising (Section 392(2) of the Act), but these were repealed again prior to the 1984 election.

In 1985 the South Australian Parliament enacted the *Electoral Act 1985 (SA).* Section 113 of the Act makes it an offence to authorise or publish an advertisement purporting to be a statement of fact, when the statement is inaccurate and misleading to a material extent. 'Electoral advertisement' is defined to mean an advertisement containing electoral matter. 'Electoral matters' are matters calculated to affect the result of an election

The legislation has been tested in the Supreme Court of South Australia, where it was held to be constitutionally valid. Further, it did not infringe the implied

'freedom of speech' found by the High Court to exist in the Commonwealth Constitution.

The Commonwealth Parliament has examined proposed legislation similar to the South Australian Act concerning truth in political advertising. In 1995 it considered amendments to the *Commonwealth Electoral Act 1918*. Provision was to be made prohibiting persons, during an election, from printing, publishing, or distributing any electoral advertisement containing a statement that was untrue, or misleading or deceptive. However with the dissolution of the Commonwealth Parliament for the 1996 election, the amendments lapsed.

Regulation of political advertising can take various forms, including:

- regulation through the advertising industry;
- regulation through guidelines; and
- regulation through legislation.

The reign of self-regulation as the preferable method of overseeing conduct has come to an end with the decline of the 1980s ideology of mass deregulation. Self-regulation has been demonstrably deficient in a number of areas in which it was introduced. Experience teaches that when the competitive interests of political parties are at stake, only force of law will ensure that reasonable standards on truthfulness are upheld.

Recommendation 3.5

The preferable method of regulation of political advertising is by legislation:

a) The *Commonwealth Electoral Act* should be amended to prohibit inaccurate or misleading statements of fact which are likely to deceive or mislead;

b) The above amendments should be modelled on the South Australian legislation, which has worked effectively since its introduction, is limited to election periods, and excludes election material other than advertisements.

Chapter Three: Election day

Voting on election day

Voting by prisoners

The Main Report appears to give in-principle support to the wider enfranchisement of prisoners than the current law permits. The Report backs away from recommending reform in this area, however, because the majority believe such a move would not receive wide community support. We are not convinced that there is sufficient research done to make such an assertion. Anyway many progressive reforms would not be achieved if wide community support were the main threshold criteria. Parliaments have sometimes had to give leadership and could do so in this instance too.

It is important to understand that, although prisoners are deprived of their liberty whilst in detention, they are not deprived of their citizenry of this nation. As part of their citizenship, convicted persons in detention should be entitled to vote. To deny them this is to impose an additional penalty on top of that judged appropriate by the court. There is no logical connection between the commission of an offence and the right to vote. For example, why should a journalist, who is imprisoned for refusing on principle to provide a Court with the name of a source, be denied the vote?

To complicate this further, there is no uniformity amongst the states or between the states and the Commonwealth as to what constitutes an offence punishable by imprisonment. In WA, for example, there is a scheme whereby fine defaulters lose their license rather than go to prison, yet this has not been introduced uniformly in Australia. So why should an Australian citizen in Western Australia who defaults on a fine but is not jailed, retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence lose the right to vote? This is inequitable and unacceptable.

Australia is a signatory to the International Covenant on Civil and Political Rights Article 25. Article 25, in combination with Article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status. The existing law discriminates against convicted persons in detention on the basis of their legal status. This clearly runs contrary to the letter and spirit of the Covenant.

A society should tread very carefully when it deals with the fundamental rights of its citizenry. All citizens of Australia should be entitled to vote. It is a right that attaches to citizenship of this country, and should not be removed.

Recommendation 4.1

The Commonwealth Electoral Act be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote.

Chapter Four: After the close of the poll

Compulsory voting

This topic was extensively discussed in the Report on the 1996 election, and the Majority recommended to end compulsory voting. The Democrats support compulsory voting, and gave detailed reasons for that position in our Minority Report on the 1996 election. We recommend our extensive remarks in that Report for a full exposition of the topic.

The 1998 Report accepts that there is broad public and political support for compulsory voting and deals with this matter much more cursorily, briefly in the introduction to Chapter 1, and in two pages in Chapter 4. However, the Main Report still paints compulsory voting as something of a democratic oddity, supported "by very few countries".

The facts say otherwise. The research available is limited but the tables below indicate the factual situation. According to *Freedom in the world: the annual survey of political rights and civil liberties 1998-1999* there are 141 countries broadly classified as democracies, even although many of them can only be considered 'partly free', and some are considered 'not free'. These countries represent 66.4% of the world's population, or 3 925 million people. 24 countries (17% of all democracies) and 606 million people (15% of all democracies) are in partly or fully compulsory voting democracies.

While still in a democratic minority, compulsory voting is hardly a democratic oddity.

Countries with compulsory voting

Country	Status*	Population *	Constitutional or legal authority/comments/Penalty
Argentina	Free	36 100 000	Constitution. Article 37. Introduced 1912 by "Saénz Peña Law". Enshrined in Constitution in 1994. Some exceptions – health, distance. Various penalties: Fine. Not entitled to hold public office for 3 years.
Australia	Free	18 700 000	Introduced 1924. *Commonwealth Electoral Act 1918,* section 245. Fine of $20.
Austria	Free	8 100 000	Compulsory in 2 provinces, Tyrol and Vorarlberg, for provincial and presidential elections. Fine 1000 schillings for failure to vote without valid reason.
Belgium	Free	10 200 000	Constitution. Article 48. Adopted 1831. Revised 1920. Persons unable to vote personally may give power of attorney to family member. Penalties are official reprimands or fines.
Bolivia	Free	8 000 000	Constitution. Title 9. Electoral regime, Chapter 1. Suffrage. Article 219. 'Suffrage constitutes the foundation of the representative democratic regime and it is based on the universal, direct and equal, individual and secret, free and obligatory vote; on a public counting of votes, and on a system of proportional representation.' Electoral Code. Chapter 2. Suffrage. Article 6. 'obligatory, because it constitutes a responsibility which cannot be renounced.'
Brazil	Partly free	162 100 000	Constitution. Article 14. Compulsory for citizens 18 years and over. Optional for illiterates and those over 70, and for those between 16 and 18 years. Fine
Chile	Free	14 800 000	Constitution. Article 15. "in popular voting, vote shall be personal, egalitarian and secret. In addition, for citizens it shall be compulsory."
Cyprus	Free	700 000	Electoral Bill. Voting is compulsory and failure to vote constitutes a criminal offence. Fine of up to CY 200. Chapter 8, article 6 of Bill for the Registration of Electors and the Registrar of Electors makes registration compulsory. Failure to register: imprisonment of up to one month or fine of up to CY75 or both. Provisions applicable for unjustifiable failure to vote or register.
Ecuador	Free	12 200 000	Introduced in 1905. Constitution and National Law of Elections. Optional for illiterates or for over 65. Penalty: deprivation of civil rights
Egypt	Not free	65 500 000	Constitution. Article 62. ' Participation in public life is a national duty.'
Fiji Islands	Partly free	800 000	1998 Constitution. (Suspended 2000). Chapter 6, part 2, sections 54-57. $20 fine for failure to vote, $50 for failure to register

Country	Status*	Population *	Constitutional or legal authority/comments/Penalty
Greece	Free	10 500 000	Constitution of the Hellenic Republic, 1975, revised 1986. Article 51, Paragraph 3. 'The members of Parliament shall be elected through direct, universal and secret ballot by citizens who have the right to vote, as specified by law. The law cannot abridge the right to vote except in cases where minimum voting age has not been attained or in cases of illegal incapacity or as a result of irrevocable criminal conviction for certain felonies. Paragraph 5. 'Exercise of the right to vote shall be compulsory. Exceptions and penalties shall be specified each time by law.' Presidential Act No 92/9-5-94. Article 6. Paragraph 2. "exercise of the right to vote is compulsory.' Law No 2623/25.6.98 provides voting is not compulsory for citizens over 70, or for electors overseas on national or European election days.
Italy	Free	57 700 000	Constitution. Article 48.2 'the vote is personal and equal, free and confidential. Voting is a civic duty'. Failure to vote may be noted on official papers.
Liechtenstein	Free	30 000	Voting is compulsory, but no penalty applies for failure to vote.
Luxembourg	Free	400 000	CIA Factbook.: Parline. Fine
Nauru	Free	10 000	Compulsory for Nauruans aged over 20.
Paraguay	Partly free	5 200 000	Constitution. Article 118. Suffrage is a right, a duty, and a public function of a voter. It is the basis of a representative democracy. It is based on universal, free, direct, equal and secret voting, as well as on a publicly supervised vote count and a proportional representation system. Ley
Peru	Partly free	26 100 000	Constitution. Article 31. 'Voting is individual, equal, free, secret and obligatory up to the age of 70. It is optional after that age.'
Singapore	Partly free	3 900 000	Parliamentary Elections Act 1959. $5.00 penalty.
Switzerland	Free	7 100 000	The small canton of Schaffhausen has compulsory voting on all cantonal matters and in referenda.
Thailand	Free	61 100 000	Constitution 1997. Chapter IV, Section 68. 'Every person shall have a duty to exercise his or her right to vote at an election. The person who fails to vote without notifying the appropriate cause of the inability to attend the election shall lose his or her right to vote as provided by law. The notification of the inability to attend the election and the provision of facilities for the attendance thereat shall be in accordance with the provisions of law.'
Turkey	Partly free	64 800 000	AEC. See also 'Elections round up: Turkey' in *Representation*, Vol.36, No.2, Summer 1999:188.

Country	Status*	Population *	Constitutional or legal authority/comments/Penalty
Uruguay	Free	3 200 000	Constitution. Article 77. 'Suffrage shall be exercised in the manner determined by law, but on the following bases: Compulsory inscription in the Civil Register. Secret and compulsory vote. The law, by an absolute majority of the full membership of each chamber, shall regulate the fulfilment of this obligation.' Fine
Venezuela	Free	23 300 000	Adopted 1961. Constitution states voting is a right and also a duty. No penalty for not voting, but voting is necessary for some public service appointments, eg diplomatic service.

*Freedom status and population statistics taken from *Freedom in the world: The annual survey of political rights and civil liberties 1998-1999*. Freedom House: New York, 1999.

Chapter 5: Other issues

Funding and disclosure

Disclosure

We dealt with funding and disclosure issues at length in our Minority Report on the 1996 election. These remarks are additional to much of those, but are continuous.

Even although tightened disclosure regulations were introduced under the 1984 *Commonwealth Electoral Legislation Amendment Act*, stricter measures have been required because of continuing concern about the unethical problems arising from ongoing disclosure avoidance. It sometimes seems as if reforms governing disclosure are only effective for the amount of time it takes for some accountants, some lawyers and some political parties to discover ways to circumvent or ignore them.

It is essential that we have a comprehensive regulatory system that legally requires the publication of explicit details of the true sources of donations to political parties, and the destinations of their expenditure. The recommendations in the Main Report do little to address this. The objectives of such a regime are to prevent, or at least discourage, corrupt, illegal or improper conduct in the formulation or execution of public policy. But the side benefits of such accountability are a revival of faith in the integrity of the political system amongst the wider public, and the protection of politicians from the undue influence of donors.

Some political parties, in seeking to preserve the secrecy surrounding some of their funding, claim that confidentiality is essential for donors who do not wish to be publicly identified with a particular party. But the privacy considerations for donors, although in some cases perhaps understandable, must be made subordinate to the wider public interest of an open and accountable system of government. Further, if donors have no intention of influencing policy directions of political parties, they would not be dissuaded by such a transparent scheme.

Recommendation 6.1

Additional disclosure requirements to apply to Political Parties and Candidates: Any donation of over $10000 to a political party should be disclosed within a short period to the Electoral Commission who should publish it on their website so that it can be made public straight away, rather than leaving it until an annual return.

One of the key screening devices for hiding the true source of donations is the use of Trusts. The AEC[6] has dealt with some of these matters in Recommendations 6-8 concerning associated entities. The Labor Party[7] has given in-principle support to some of the AEC's recommendations, which the Democrats welcome.

The Democrats continue to recommend strong disclosure provisions for trusts.

Recommendation 6.2

Additional disclosure requirements to apply to Donors: Political parties that receive donations from Trusts or Foundations should be obliged to return the money unless the following is fully disclosed:

- **a declaration of beneficial and ultimate control of the trust estate, including the trustees;**
- **a declaration of the identities of the beneficiaries of the trust estate, including in the case of individuals, their countries of residence and, in the case of beneficiaries who are not individuals, their countries of incorporation or registration, as the case may be;**
- **details of any relationships with other entities;**
- **the percentage distribution of income within the trust;**

6 AEC Funding and Disclosure Report Election 98

7 Media Release 2 June 2000

- **any changes during the donations year in relation to the information provided above.**

Another key screening device for hiding the true source of donations are certain 'clubs'. Such clubs are simply devices for aggregating large donations, so that the true identity of big donors is not disclosed to the public:

Recommendation 6.3

Political parties that receive donations from clubs (greater than those standard low amounts generally permitted as not needing disclosure) should be obliged to return these funds unless full disclosure of the true donor's identities are made.

One more contentious issue regarding arms-length donations is the question of political parties receiving large amounts of money from foreign-owned companies. A tight disclosure regime has the potential to promote the establishment of overseas holding companies to which donations could be made from Australia. These monies could then be donated by the overseas company back to Australia as a means of masking the actual Australian origins of its income.

Recommendation 6.4

That the JSCEM and the AEC give closer scrutiny to donations from overseas.

Section 17(2) of the Act results in invaluable reports being provided to the public by the AEC on funding and disclosure issues.[8] In 1996 and 1998 the AEC made 18 and 16 recommendations respectively. These offer considerable improvements to funding and disclosure.

Recommendation 6.5

As we did following the AEC's 1996 Funding and Disclosure Report, the Democrats will move amendments to the Act of those recommendations that are relevant to higher standards, if the Government's response to the AEC's recommendations proves inadequate.

8 Such as AEC Funding and Disclosure Reports Election 96 and 98.

Ultimately, to minimise the public perception of corruptibility associated with political donations, a good donations policy should forbid a political party from receiving inordinately large donations.

Recommendation 6.6

A ceiling should be placed on the amount of money any corporation or organisation can donate to a political party.

In most cases, donors appear to make donations to political parties for broadly altruistic purposes, in that the donor supports the party and its policies, and is willing to donate to ensure the party's candidates and policies are represented in parliament. Nevertheless, there is a perception (and probably a reality), that some donors specifically tie large donations to the pursuit of specific policies they want achieved in their self-interest. This is corruption.

Recommendation 6.7

The Act should specifically prohibit donations which have 'strings attached.'

In sum, although in any democracy some political parties will always have more money than others, money and the exercise of influence should not be inevitably connected in the public's perception.

Registration of political parties

Party constitutions

Political donations disclosure laws are not sufficient protection against potential corruption unless accompanied by political party regulation to materially improve political governance. Political governance needs to be focussed on as a reform priority. Political governance includes how a political party operates, how it is managed, its corporate and other structures, the provisions of its constitution, how it resolves disputes and ethical issues, its culture, and how transparent and accountable it is.

Political parties are absolutely integral to Australian society and economy. They wield enormous influence over the life of every Australian, yet they are largely ignored in our Constitution, and are the least regulated sector of Australian organisations. There are none of the very proper and necessary safeguards for political party regulation that are there for corporations under the Corporations Law for instance.

The common law has been of little assistance in providing the necessary safeguards. To date the Courts have been reluctant to imply common law provisions (such as on membership or pre-selections) into political party constitutions, although they have determined that disputes within political parties are justiciable.

The present *Commonwealth Electoral Act 1918* does not address the internal rules and procedures of political parties. The Main Report recommends (No.52) that political parties be required to lodge a constitution with the AEC that must contain certain minimal elements. Whilst we believe this recommendation is a significant one, we believe it does not go far enough.

The AEC deals with a number of these issues in Recommendations 13-16.[9] Recommendation 16 asks that the Act provide the AEC with the power to set standard, minimum rules which would apply to registered political parties where the parties own constitution is silent or unclear. This too is a significant recommendation, which should be given consideration.

Political parties are now publicly funded, so the public therefore has a right to know the ways in which political parties receive and spend public funds. Further, political parties are capable of exercising enormous power that affects all Australians. The public influence and purpose of political parties therefore demands that they be open to scrutiny and be fully publicly accountable.

The Australian Democrats believe that political parties and organisations should continue to operate under special financial disclosure regulations, to help create a corruption free and honest political system, and that such disclosure should be materially improved. Such financial disclosure should be accompanied by a strong emphasis on political governance reform.

Recommendation 6.8

The following initiatives would bring political parties under the type of accountability regime that should go with their place in our system of government:

a) The *Commonwealth Electoral Act* be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitutions of Companies;

b) Requiring registered parties to demonstrate after each federal election that they still retain the required number of members;

9 AEC Funding and Disclosure Report Election 98.

c) Only enabling a person's name and details to be put forward as a member of one political party (unless the political parties concerned themselves agree otherwise).

d) Broaden the scope for objection to proposed names and abbreviations to reduce the prospect for misleading or deceptive names being approved.

e) The key constitutional principles of political parties should include:

- **the conditions and rules of membership of a Party;**
- **how office-bearers are preselected and elected;**
- **how preselection of political candidates is to be conducted;**
- **the processes that exist for dispute resolution;**
- **the processes that exist for changing the constitution.**

f) The relationship between the party machine and the party membership requires better and more standard regulatory, constitutional and selection systems and procedures, which would enhance the relationship between the party hierarchy, office-bearers, employees, political representatives and the members. Specific regulatory oversight to include:

- **Scrutiny of the procedures for the preselection of candidates in the constitutions of parties to ensure they are democratic;**
- **All important ballot procedures within political parties to be overseen by the AEC to ensure proper electoral practices are adhered to.**

The party constitutions recommendation of ours may not go far enough in addressing the scourge of branch-stacking and pre-selection abuse which appears to occur in many political parties. Such practices pose great dangers for political standards.

A Member or Senator who has won their seat through branch stacking or pre-selection abuse can be seen as morally corrupt. That such parliamentarians can then rise to power in government or parliament is a concern.

Regrettably, no political party is safe from attempted branch stacking, the Australian Democrats included. However, it is the energy and determination with which branch stacking is dealt with, that distinguishes the standards of the political parties concerned.

Recommendation 6.9

That the JSCEM and the AEC give closer scrutiny to branch stacking and pre-selection abuses.

Since the 60's the Labor Party has been particularly strong about the principle of 'one vote one value', first introducing legislation in the Federal Parliament in 1972/3. In recent years the ALP have taken the matter to the High Court with respect to the West Australian electoral system. They should therefore be expected to support 'one vote one value' as a principle within political parties.

The democratic principle of 'one vote one value' is well established, and widely supported. During the 70's, 80's, and 90's the principle of 'one vote one value', with a practical and limited permissible variation, was introduced to all federal, state and territory electoral law in Australia, except Western Australia's. As far back as February 1964 the US Supreme Court gave specific support to the principle.

Some political parties in Australia have internal voting systems that give some members greater voting power than other members, resulting in gerrymandered elections for conventions, delegates and various ballot. If more powerful votes are also directly linked to consequent political donations and power over party policies, then the dangers are obvious.

If 'one vote one value' were translated into political parties, it would mean that no member's vote would count more than another's would, which would seem one way of doing away with undemocratic and manipulated pre-selections, delegate selections, or balloted matters.

Recommendation 6.10

That the *Commonwealth Electoral Act 1918* be amended to ensure the principle of 'one vote one value' be a prerequisite of political party processes.

Section 44 of the Constitution

Sections 44(i) and 44(iv)

Section 44(i) of the Constitution has provoked litigation in the past, the leading case being *Sykes v Cleary* (No.2) of 1992 concerning, *inter alia*, the validity of the candidacy of Mr Delacretaz and Mr Kardamitis who both held dual citizenships. It has most recently manifested itself in the disqualification of Heather Hill from the Senate.[10]

The section was drawn up at a time when there was no concept of Australian citizenship, when Australian residents were either British subjects or aliens. It was designed to ensure the Parliament was free of aliens as so defined at that time. The Democrats accept, however, that the sentiment of the section, that only Australians should be eligible to stand as representatives for the Federal Parliament, is a valid and continuing one. But this is not to say that section 44(i) of the Constitution as it currently stands is the most appropriate means to achieving that end.

Rather, it contains notions such as "any acknowledgment, of allegiance, obedience or adherence to a foreign power". Such reference to a foreign power brings the oath each Member or Senator takes upon assuming his or her seat into contradiction with the existing Constitutional provision. The oath requires Members to: "swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, Her heirs and successors according to law". On a strict reading some believe that may be an unequivocal declaration of "allegiance, obedience or adherence to a foreign power" as prohibited by section 44(i). However, the Clerk of the Senate maintains that you cannot violate one constitutional provision by following the requirement of another constitutional provision.[11] He also notes that the High Court has noted that in swearing allegiance to the queen of Australia, although she is also the Queen of the United Kingdom, is not swearing an oath to her in that second role.

The House of Representatives Standing Committee on Legal and Constitutional Affairs Report of July 1997 recommended that s44(i) be replaced by a provision requiring that all candidates be Australian citizens, and it went further to suggest the new provision empower the Parliament to enact legislation determining the grounds for disqualification of members in relation to foreign allegiance. That is, the Committee acknowledged that there are some situations, such as where a Prime Minister, for example, held dual citizenship, that may cause concern to the Australian people. A provision leaving the door open to Parliament to legislate to put some better-expressed requirements as to dual citizenship in place would seem a sensible compromise.

10 Sue v Hill

11 Letter to the JCSEM 5 June 2000

The Constitutional Commission, in its Final Report of 1988, recommended that s44(i) be deleted and that Australian citizenship instead be the requirement for candidacy, with the Parliament being empowered to make laws as to residency requirements.

Going further back, the Senate Standing Committee on Constitutional and Legal Affairs in its 1981 Report: *The Constitutional Qualifications of Members of Parliament*, recommended that Australian Citizenship be the constitutional qualification for parliamentary membership, with questions of the various grades of foreign allegiance being relegated to the legislative sphere.

It is therefore clear that, especially in view of the multicultural nature of Australian society, contemporary standards demand that Australian citizenship be the sole requirement for being chosen for Parliament under a new s44(i), with a residual legislative power being given to the Parliament to deal with unique cases that may arise from time to time.

s44(iv) has its origins in the Succession to the Crown Act 1707 (UK). Its purpose there was essentially to do with the separation of powers; the idea being to prevent undue control of the House of Commons by members being employed by the Crown.

Obviously times have changed, even though the ancient struggle between executive and parliament continues to this day. Whilst this provision may have been appropriate centuries ago, the growth of the machinery of government has meant that its contemporary effect is to prevent the many thousands of citizens employed in the public sector from standing for election without any real justification.

The Democrats in Western Australia, for example, with fourteen lower house seats to contest at the 1998 election, had seven potential Democrats candidates who would not nominate for pre-selection due to their unwillingness to resign from their public sector positions.

The Australian Democrats have a long history of trying to rectify this part of the Constitution. In February 1980, former Democrat Senator Colin Mason moved a motion which resulted in the inquiry referred to earlier by the Standing Committee on Constitutional and Legal Affairs into the Government's order that public servants resign before nomination for election. In 1985 and again in 1989 the Democrats introduced a Bill putting the recommendations of that Committee into effect. Then in 1992 we introduced a Bill following the Constitutional Commission's Report to implement those recommendations.

The House of Representatives Standing Committee on Legal and Constitutional Affairs Report of July 1997 recommended that s44(iv) be deleted and replaced by provisions preventing judicial officers from nominating without resigning their posts and other provisions empowering the Parliament to specify other offices

which would be declared vacant should the office-holder be elected to Parliament. The Democrats support this recommendation.

The last paragraph of s44 should be deleted in its entirety. Indeed, the Standing Committee on Legal and Constitutional Affairs Report of July 1997 noted that if its recommendations concerning ss44(i) & (iv) were accepted, the last paragraph of s44 should be deleted. We concur with that view.

The Main Report acknowledges the problems with s44, but its recommendation (No.57) needs to go further in solving these problems.

Recommendation 6.11

a) **That s44(i) of the Constitution be replaced by a requirement that all candidates be Australian citizens and meet any further requirements set by the Parliament.**

b) **That s44(iv) of the Constitution be replaced by provisions preventing judicial officers only from nominating without resigning their posts, and giving Parliament power to specify other offices to be declared vacant should an office-holder be elected.**

c) **That the last paragraph of s44 of the Constitution be deleted.**

Four year terms

The Main Report recommends four-year terms for the House of Representatives. The Democrats support that recommendation and advocated such a step in our Minority Report into the 1996 election. We go further however and advocate that elections should be held on a predetermined date – in other words, fixed terms.

Snap and early elections are called for personal and party advantage, arbitrarily, sometimes capriciously, and always on a partisan basis. If elections were held on a predetermined date it would allow for certainty, stability, and responsibility by both government and opposition, allow for sound party and independent preparation, and allow for fair political competition.

The present system leads to short-termism and wastes money. The Constitution presently sets a 3 year 3 month maximum cycle between elections, but in the last century the average Federal parliamentary term has been only 2 years 5 months. Depending on whether you use the 3 year term or 3 year 3 month maximum cycle, Australia should not have held more than 32 elections at the most last century. Instead they had 38, which represents a significant additional elections cost of between $800 and $I billion million in today's money.

Recommendation 6.12

That the dates of elections be fixed and preset by legislation.

Allow simultaneous elections

If four year terms were to become a reality, the HoR would join every state government in Australia bar Queensland, which also has a three year term. If fixed dates for elections were to also become a reality, it would open up the possibility for simultaneous elections as well, although these could eventuate anyway, if they were not prohibited by the act.

The Democrats are of the opinion that simultaneous elections should not be banned outright – they should at least be at the discretion of the governments concerned. The issue is simply one of cost and convenience. In the United States of America for example, simultaneous elections are a long-standing, regular and unexceptional feature of their election system. Australians are in frequent election mode, with nine governments holding Federal, State and Territory elections, hundreds of local government elections, as well as referenda and plebiscites at all three levels of government.

In 1922 the *Commonwealth Electoral Act 1918* was amended to prevent simultaneous Federal and State elections. The 1988 Constitutional commission recommended that this provision be repealed.

Recommendation 6.13

That subsection 394(1) of the *Commonwealth Electoral Act 1918* be repealed.

Senator Andrew Bartlett **Senator Andrew Murray**