

**Mr. Daryl Melham, M. P.  
Chair,  
Joint Standing Committee on Electoral Matters,  
Australian Government.**

**Dear Daryl,**

I am submitting the proposals below as an individual long concerned with the electoral system and archaic constitution of Australia, at your suggestion.

As one who has stood for the seat of Richmond for the **ALP** on two occasions (1984 & 1987), in the Senate election for the **PLP** on two occasions (2001, 2004) and in the Senate for *Beyond Federation*, a community group, I have some practical experience with the problems of the electoral system. I am not addressing myself to the funding aspect here. That has already been the subject of a Green Paper. The Senate problems, of a different nature, are now reportedly a principal concern of the Minister of State, John Faulkner and I have expressed a view on this to him directly. What he is suggesting doesn't go far enough. It is piecemeal tinkering. The ALP Government can and needs to do much more. My submission is in two parts:

**1. The need for Australia to change to proportional representation as the only electoral system - preferably the party list system of PR**

**2. The issue of constitutional reform in order to replace the federal system of government.**

**1. The need for Australia to move to proportional representation - party list system**

Problems with the current dominant system.

The electoral system in Australia, based on the single-member district, is biased in favour of only two parties and makes the formation of effective new parties virtually impossible. This is also directly responsible for the dysfunctional factional system in the major parties. What a great opportunity for the ALP to boldly propose Proportional Representation as the solution. Thus far, we've heard nothing of the kind!

Proportional Representation (PR) is a highly democratic representative system, based on multi-member constituencies. It overcomes the many serious problems of the single-member district system, even of the preferential vote variety as used in Australia. At present nearly half of the people in any one district are not represented by the party of their choice. The present system necessitates frequent boundary changes, threatens gerrymandering, is productive of extensive pork barreling, fosters economic development concentrating on marginal seats only, produces the problem of safe seats (thus neglect) and by-elections. It also stops the endless, grotesque overrepresentation of the major parties by the media.

Why are "minor parties" minor parties?

Minor parties in the current system are basically condemned to remain minor parties, they dutifully come and go, the Australian Democrats being the latest example. The major parties have avoided PR as it is not in their short-term interest, but they still like the idea

of minor parties because they enhance the myth of (multi-party) parliamentary democracy. Anthony Albanese defended the existing system once as follows. "Well, we have PR in the Senate so that variety of interests is represented there". Not true Anthony. The entire system is dominated by the outcomes in the lower houses. Results in the Senate fall frequently short of being proportional. Seen in that light the Senate is (1) disadvantaged on that score (2) on top of that presented as "swill" or something like it, an obstructing body that should be done away with. Renewal of the electoral system is thus frustrated from several angles.

Any political system needs fresh ideas to reinvent and revive itself. This is not happening in Australia, except to a very small extent in the Senate, Tasmania, the ACT and the NSW Legislative Council (all of which have PR), with the result that we have many incompetent, ossified two-party Parliaments which have clearly lost the respect of a public that is essentially forced to vote for the least offensive of the two options on offer.

The Howard Government attempted to reduce the diversity of Parliaments even further when it tried to reduce the power of the Senate in 2004, but withdrew when the voters showed no interest. This followed the successful reduction in diversity in Tasmania by the attacks on the PR system there, which adversely affected the Greens. The NSW Parliamentary Elections Act Amendment (1999) has made it much more difficult for minor parties to contest Upper House elections in future. This trend reduces diversity of representation and encourages even less transparency and more dishonesty in preferencing. The secret horse trading in Senate elections is a case in point.

Glorification of the advantages of the two-party system is common practice by newspaper editors and populist radio reporters (who see themselves at gatekeepers of the status quo apparently), who warn the public of the instability which PR would bring about by pointing to the minority examples of Italy and Israel. The Australian media also rubbished the introduction of PR in NZ, which initially was even deplored by such experienced election commentators as Malcolm Mackerras. It remains unsaid that the great majority of European countries - **over 25** - have proportional representation often enshrined in their constitutions. These are stable democracies for whom the PR system causes no problems. In Italy, some four years ago PR was abolished in order to counter the considerable instability there. The instability continued proving that Italy's political instability has a different cause as many commentators actually argued prior to its abolition.

A major disadvantage of the adversarial two-party system, the product of Australia's electoral system, is often not recognised. It has greatly frustrated the constitutional amendment process. As the initiative to create proposals for constitutional amendment lies with the parliament (ONLY) the experience has been that unless the major parties are in support of such a proposal it has no chance of success. The latest disaster of this kind was in 1988 when four excellent proposals were knocked back. It is not surprising that very few proposals are now generated and that Australia, by all accounts, has an archaic federal constitution. Below this consequence will be detailed further in Section 2.

### Advantages of Proportional Representation

PR would allow a much greater variety of interests to be represented in Parliament, interests which don't have to ingratiate themselves with the powerful, generally conservative executives of the major parties, in factions or as struggling minor parties. It is simply a much more democratic system. It has proven to be particularly helpful for getting women into legislatures. There is no pork barreling, no frequent boundary changes and much less or no factional infighting.

PR may be introduced as a constitutional package or by separate referendum to adopt the Hare-Clark or other PR system based on multi-member electoral districts. This would provide scope for the representation of more parties and Independents - provided they had minimum support of, say, at least 3% or 4% in multi-member districts. The proportion of votes required for representation in a district should not be able to be raised without a national referendum or some other means of democratic consultation. This would ensure that major parties in a district could not simply vote together and raise the percentage without community consultation, in order to reduce the representation of smaller rival parties and independents.

For example: a system of 30 electoral districts, each returning nine members, would yield a 270-member legislature (House of Representatives). Add to this three Senators per district (possibly not belonging to any party) and a total of 360 MPs would represent the nation in Canberra. That would be less than half the present total number if the states were abolished. The Hare Clark system is well known in Australia as it is used in Tasmania, the ACT, and for the present Senate elections. In Australia it seems to be preferred over other PR systems, such as list PR systems and the NZ multi member district system of PR (based on the German system). The Dutch party list system of PR has superior elements. Just one tick is required by voters to indicate both the preference of the party as well as the particular candidate on the list. This is also used in all Scandinavian countries, Austria and Argentina. There is little doubt that is far superior to Hare-Clarke which is cumbersome and complex for voters, time-consuming for administrators, costly and often less transparent and above board. However, the important principles of PR are of course comparable. Representation is proportional to the votes cast for any party that qualifies. The present single-member district system is probably the least suitable of all for Australia given that 80% of our population is concentrated in metropolitan areas. This means that the interests of citizens in all rural areas and regions are permanently underrepresented.

In 2005 the problem of factionalism in the NSW Liberal opposition has shown up as another major problem of the two party tyranny. The youthful Opposition leader John Brogden, a small "l" Liberal, was forced to resign ostensibly as a result of misbehaving while being intoxicated, but in reality as a result of factional skullduggery. In February 2006 a new bout of factional war mongering broke out in Victoria in relation to pre-selection of candidates in the ALP. In the two party system varied public interests are compelled to seek expression within either party. This also means that a Government is rarely an expression of the democratic will. Rather it is an expression of the strongest faction of the governing Party! The unhealthy necessity to maintain an often-dubious front of unity and solidarity over a broad range of public policy areas, applicable to both major parties, can be avoided by introducing PR. This would transform the major party factions into independent political parties whose representatives would be transparent in the Parliament. It would also encourage new entrants. In the past the two-party system indicated a quite clear demarcation between two main classes in society. That demarcation has basically come to an end. More than 90% of Australian voters see themselves as "middle class". Even if the perception is erroneous it is an electoral reality. PR would permit much greater flexibility in the Parliament and end the backstabbing, branch stacking and internecine strife in the major parties. That would be progress in itself. These negative energies could be spent much more effectively. If we want reform of the major parties then we have to start with the electoral system. It is now obvious that is the only way. Electoral reform has many positive consequences. It is basically the very first step towards most other system reforms.

## 2. The issue of constitutional reform in order to replace federal government.

The federal structure of government should be abandoned. It is no longer appropriate. It is a big head-ache. Soon the fruitless blame-game will be back in town - after the few months of the ALP love-in. Many commentators would agree with that, even several senior major party politicians. However, some ALP State Premiers, and a number of conservative academics, argue that federalism still has much to offer and that the problems are rather imaginary and/or insignificant. Therefore, they claim, federalism can be 'repaired', 'saved', or 'rescued'. It's like hearing an old refrain, a gramophone record with the needle stuck in a groove. Australia needs to break this vicious circle of meliorist piecemeal tinkering. The very first step towards that end is to reform the electoral system.

The archaic, sometimes undemocratic and often inflexible nature for Australia's Constitution has been described by law professors Cheryl Saunders, Helen Irving and George Williams, amongst others. As Saunders argued there are real limitations to the capacity of today's High Court judges to creatively interpret what the Founding Fathers may have implied in certain sections. There is also a limit to ingeniously circumvent or ignore the Constitution. Just how archaic the Constitution is has been demonstrated again at the start of the Iraqi invasion. The decision to commit Australian troops to Iraq was taken by the PM, without an electoral mandate, plebiscite, referendum, and vote in Parliament, a discussion in Parliament and in the face of massive popular opposition. This dictatorial behaviour was entirely constitutional apparently even though the PM is not even mentioned in the Constitution. Who is mentioned, as the Commander in Chief, is the Governor-General but his/her role is in reality symbolic.

Apparently the association of the people with the general legislature in the Australian Constitution's amending procedure (Section 128) was borrowed from the Swiss constitution. On the face of it this is a democratic way of amending a federal constitution but the success rate of amending the Swiss Constitution as compared to the Australian Constitution has been significantly higher. There could be at least two reasons for this: In Switzerland 50,000 voters can initiate an amendment proposal and, probably even more significant, Switzerland has proportional representation as its national electoral regime. As a consequence it has a multi-party system, which is quite different from the two-party systems produced generally by the single-member district electoral regimes used in many Commonwealth countries, except Ireland, New Zealand, South Africa and Malta. It provides a different political culture as compared to the adversarial Westminster system.

There is a direct connection between Australia's two-party system and its abysmal record of constitutional amendment. It is the two-party hegemony and the adversarial nature of Australia's system that usually torpedoes a constitutional amendment referendum. The four proposals of 1988 were put after a two-year study by the high-powered Australian Constitutional Commission only to **update** the Constitution. Three of the proposals were initially supported by the Coalition, then in Opposition, but eventually they opposed them all and energetically campaigned against them.

Proportional representation would create a greater diversity of parties that requires coalitions to be formed to create government. The adversarial culture would disappear. The aim of larger parties would be to form alliances with smaller parties in the Parliament - resulting in cooperation rather than the adversarial interaction common now aimed at finding fault with "the other side".

The fusion of the political executive and the legislature in the Westminster system, a major identifying feature of that system, surely is undesirable. It reinforces polarisation and downgrades the functions of the legislature. It is also productive of functional amateurism amongst Ministers.

A new electoral system doesn't require constitutional amendment. It requires an amendment to the 1918 Commonwealth Electoral Act, perhaps its repeal and replacement. Any Government that proposes this change would be greeted with joy by most people who understand the importance of PR.

The second step would be to add to Section 128 a provision that will give citizens the right to initiate constitutional amendment referendums. That is one amendment that would very likely get majority support in a majority of the states. If introduced other constitutional amendments can be tackled with more success. The entire political culture would change. A proposal for this change has been formulated in legal detail as an addition to Section 128 by one of *Beyond Federation* constituent groups the *Foundation for National Renewal* based in Queensland

There is a further measure that could clean up the sterile domination by the major parties of the Parliament: the introduction of an extra-parliamentary, collegiate style political executive. Treatises about political executives (in the English language) usually distinguish between parliamentary and presidential executives, in practice between the Westminster system and the US presidential system. The French system is then presented as a 'hybrid'. This categorisation is quite inadequate though. Parliamentary executives of most European systems are *extra parliamentary* but unlike the US system are based on a collegiate political executive (Cabinet). This separation between the Government and the legislature is not always specifically provided for in the constitution but one does find references such as that 'the Ministers are entitled to attend sittings of the legislature'. This implies that they are not normally part of it and don't have a vote as members of it. In some exceptional cases, such as Iceland and Denmark, Ministers can be either MPs or not. If they are selected from the Parliament they don't have to resign but they can if they wish to. In Norway and the Netherlands they would have to resign. In most cases there simply is the stipulation that a Minister, once appointed, cannot have any other occupation (which rules him or her out as an MP because such a person is a paid representative of the people and a full time legislator). In contrast, the Westminster system **requires** the Minister to be an MP who then has two functions. As such an MP, who represents a particular electoral district, as is the case in Australia, will have to divide his or her time to two full time occupations. This applies to about one quarter of the governing party's MPs in Australia.

The following are some examples of countries (14) with an extra parliamentary collegiate political executive: Austria, Belgium, Czech Republic, Denmark, Finland, Hungary, Germany, Italy, The Netherlands, Iceland, Norway, Romania, Sweden, and France. Further detail about this can be found in my 2006 book *How about OUR Republic?*

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