

**Joint Standing Committee on Electoral Matters
Committee Inquiry into the Conduct of the 2010 Federal Election**

Submission by Andrew Murray¹ January 2011

Index		Page
1	Note	1
2	Embrace the terms of reference	1
3	Big changes needed	2
4	This submission	2
5	Addressing supply issues	3
6	Funding and expenditure	4
7	Strengthening Australia's democracy	6

1 Note

This is a personal submission by Andrew Murray and does not represent the views of any other individual or entity.

2 Embrace the terms of reference

The terms of reference for the Joint Standing Committee on Electoral Matters (JSCEM) Committee Inquiry into the Conduct of the 2010 Federal Election are the same as those that follow every election: *to inquire into and report on all aspects of the 2010 Federal Election and matters related thereto.*

These terms of reference have never required JSCEM to confine its election reports to the technical mechanics and administration of the latest federal election, although that is a legitimate interest. The terms of reference have never encouraged timidity or indicated that legislative or administrative tinkering is all that is required. They do allow for bigger thinking.

It is useful to look back over JSCEM's past federal election reports to see whether and when JSCEM has ever tried to fully meet these terms of reference. The terms of reference could not be broader or less restrictive. JSCEM should embrace them in this inquiry. Widespread and marked concern within our democracy requires it.

Further, JSCEM inquiries have usually been open-ended, without a reporting date. This is a mistake. JSCEM should report as early as practicable, and decide on and make public a date by which it will report, and so allow parliament and government time to debate and legislate well before the next election.

¹ Andrew Murray BA Hons (Rhodes) MA (Oxf) was a Senator for Western Australia 1996-2008 and a Member of the Joint Standing Committee on Electoral Matters Committee 1996-2008. He is best known in politics for his work on finance, economic, business, industrial relations and tax issues; on accountability and electoral reform; and for his work on institutionalised children.

3 Big changes needed

I have been campaigning for significant reform to our democracy for two decades. I have not been an orphan on this front. A number of senior state and federal politicians from all parties, and academics and thinkers in the field, have spoken out for major constitutional political parliamentary and electoral reform. While (apart from the referendum on the Republic) the federal parliament has been largely quiescent on these fronts since 1983/84, some state parliaments have even legislated significant change.

Most of the issues that were live concerns two decades ago are still live concerns today. Consequently I have no hesitation in repeating some material previously advocated.

While it would be gratifying if JSCEM were to agree with at least some of my arguments, what is more important is whether JSCEM are prepared to tackle these bigger issues themselves, and come up with proposed reforms that will persuade this 2010-2013 federal parliament to advance Australia's democracy.

I would expect the parliamentarians on JSCEM are alive to or are apprised of community academic media and political concerns. My view is that tinkering with the status quo does not suffice. JSCEM should give those concerns the respect they deserve and propose meaningful remedies to deficiencies in our political and democratic system.

JSCEM should be cognisant that reform leadership could have the benefit of flowing onto the states and territory systems.

The starting point is to revisit and reflect on the circumstances and purpose of an election.

In our liberal democratic system an election is meant to be a fair honest open affordable contest engaging as many eligible voters as possible and giving them an informed choice on the best candidates to represent them, either independents or sourced from well-run political parties. Voters are meant to have ready access to understandable but carefully-considered and (preferably) costed policies offered to advance the interests of Australians.

Candidate quality is meant to be ensured by pre-selection standards, with able candidates on offer because they are attracted by the honour of public service, the vital role of politicians in a liberal democracy, and the very nature of the political profession.

Well, are elections in Australia like that? Did the 2010 federal election do that?

4 This submission

Overall, administratively the AEC ran the election well, as usual. While improvements are always possible, the real issues relate to the need to strengthen our democracy. I do not propose to provide a comprehensive submission on the 2010 federal election. I propose to focus on three areas:

- Addressing candidate supply issues – remuneration and governance
- Addressing reputational and affordability issues - funding and expenditure
- Strengthening Australia's democracy

5 Addressing supply issues

Remuneration

The proposition is simple – attracting quality candidates for elections will be assisted by making politics a more attractive occupation. In part, that requires reforming the salary package and entitlements of parliamentarians.

From that perspective, JSCEM should take a lead in this matter.

In September 2009 the federal government announced a review of the parliamentary entitlements framework. Such a review was welcomed as long overdue. The Belcher Review, as it is known, reported in April 2010. Shamefully, at the time of writing, the government had still not released its report.

Attached is a copy of my November 2009 submission to that review.

That submission is better read in full, but among my remarks in that submission were these:

- The starting point has to be at the apex, the Prime Minister, where the salary is ludicrously low for the office, and where the consequence is a knock-on effect of compressing the salaries of those holding office and of parliamentarians.
- If significantly different new salary scales were to be recommended they could apply to Senators and Members from the 2016 election. This would prevent any perception of a conflict of interest from the Prime Minister, the Executive and the Parliament in agreeing to new salary scales.
- Pre-2004 parliamentarians are better off than post-2004 parliamentarians; post-2004 parliamentarians have no in-built superannuation compensation for low salaries and (for many) insecure tenure in marginal seats. Some parliamentarians find securing reasonable employment hard after leaving parliament, because of the low regard for the profession and (often unfounded) employer concerns about attitudes skills and history. The travel and work-related demands on a parliamentarian mean that some spouses or partners must forgo work opportunities of their own to look after the family. These aspects need to be recognised and compensated for in parliamentarians' salary structures.

Governance

The Australian National University's Faculty of Economics and Commerce publishes *Agenda: A Journal of Policy Analysis and Reform*. In Volume 16 Issue 3 (2009) my article was *Can Better Political Governance Give Australia an Improved Political Class?* The JSCEM secretariat will no doubt provide the Committee with a copy of that article.

Among the points made in that article were these:

- Australians are demanding higher standards and better performance from their governments and politicians. Better political governance will help.
- 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 conflicts of interest, its ethical culture and its level of transparency and accountability.

- Governance through law, regulation and process makes power subject to performance and accountability and leads to better outcomes and conduct; which is why so much effort was put into better governance in the bureaucratic union and corporate sectors, with great improvements resulting.
- The laws for corporations and unions provide models for organisational regulation. The *Commonwealth Electoral Act* should be amended to require standard items be set out in a political party's constitution to gain registration.
- Increased regulation of political parties is not inconsistent with protecting the essential freedoms of expression and from unjustified state interference, influence or control.
- Greater regulation offers political parties protection from internal malpractice and corruption, and the public better protection from its consequences.
- Improved political governance will over time lift the overall calibre and accountability of the political class.

6 Funding and expenditure

In a welcome and long-overdue initiative, in December 2008 the Australian Government issued its Electoral Reform Green Paper on *Donations Funding and Expenditure*. In February 2009 I submitted a response, as did many others. Shamefully, at the time of writing, the Government has still not reported on its findings or final proposals.

My submission is attached. In a lengthy submission, among many other matters I argued that:

Political disclosure must be relevant

Politics is a subset of the sector comprising not-for-profit, non-government, voluntary, and intermediary organisations. Treasury should be consulted as to the accounting and reporting standards considered appropriate for the sector overall, which should by extension apply to political entities. Additional disclosure for the politics sector over and above that required for the not-for-profit sector must be justified by three measures: that such disclosure provides

- relevant information that assists Australians in making an informed voting choice
- information that indicates any financial or contractual relationship that might be perceived as capable of influencing the conduct or policy of a candidate or political party
- the accountability and transparency that is the consequence of taxpayer funding and of being a registered party, or of being an accepted candidate nomination

Reducing regulatory overlap

Australia has overlapping electoral systems, regulating three different levels of government, creating uncertainty and confusion and creating inefficiency, waste, opacity and complexity.

The regulatory burden is severe for small political entities heavily dependent on volunteers who have to deal with nine different sets of electoral laws (and local government laws) and with multiple regulators.

The best way to eliminate (or at least drastically reduce) these negatives is to have just one law, one administrator and one regulator. Electoral matters, whether federal state territory or local divide fairly neatly into four main parts or categories:

- Electoral systems (federal, state, territory, local)
- The conduct of elections (federal, state, territory, local and organisational)
- The regulation of political participants (parties, associated entities, candidates, third parties)
- Funding and expenditure

In a federal system electoral systems should remain separately legislated by the Commonwealth, the States and the Territories.

For the other three main categories of electoral matters, there is no reason why the conduct of elections; the regulation of political participants; and funding and expenditure could not be under one electoral commission and one national set of laws.

Public funding

Public funding of the political sector in Australia takes four forms: funding for elections (six out of the nine jurisdictions)²; annual funding (NSW); funding of incumbents (all jurisdictions) and government advertising (all jurisdictions).

The aims of introducing a public funding scheme were to provide a greater equality in the opportunity to present policies to the electorate and to reduce the risk of corruption and undue influence. Corruption and undue influence arise from private funding not public funding.

Reducing the reliance of political participants on private funding has not occurred to any significant degree. If there is to be no change to the present system, public funding for elections should be ended. There is simply no point in taxpayer money being given to the political sector as an extra funding source over and above unrestricted private funding. Public funding of the political sector should only be supported if full transparency and accountability is introduced, and if meaningful caps or bans on private funding are introduced.

Any parliamentarian holding a seat has a natural advantage over any challenger who seeks to win office. The counters to incumbency abuse are parties and parliaments committed to high political standards, proper processes, and transparent audited fully reported grants and entitlements.

Using offices or entitlements for political party purposes should be universally prohibited, and any abuse subject to appropriate penalty.

There are many federal, state and territory instances where governments have put out party political propaganda under the guise of legitimate government advertising. COAG should agree principles and protocols and agree to audits of government advertising at least once an electoral cycle; and agree to maximise transparent and whole-of-government reporting.

² South Australia, Tasmania and the Northern Territory do not provide public funding.

Donations regulation

Australian regulation of donations funding and expenditure in all jurisdictions has been weak, not just in the content and nature of regulation, but particularly in resourcing enforcement and in applying meaningful penalties.

It is essential that Australia has a comprehensive regulatory regime that legally requires the publication of explicit details of the true sources of donations to political parties. This is required to prevent, or at least discourage, corrupt, illegal or improper conduct in electing representatives, in the formulation or execution of public policy, and helping protect politicians from the undue influence of donors.

The practice of companies making political donations without shareholder approval and the practice of unions making political donations without member approval must end. The practice of some companies and unions affiliating to or becoming members of political parties without shareholder or member approval must end. The United Kingdom has attended to both corporations and unions along these lines.

7 Strengthening Australia's Democracy

In a welcome and long-overdue initiative, in September 2009 the Australian Government issued its Electoral Reform Green Paper on *Strengthening Australia's Democracy*. In November 2009 I submitted a response, as did many others. Shamefully, at the time of writing, the Government has still not reported on its findings or final proposals.

My submission is attached. Among many other matters argued at length were:

The constitution

Constitutional reform is necessary. To make progress on constitutional reform, divide proposed reforms into two types: those that have all-party parliamentary support, which will include minor and technical matters needing to be attended to; and those that are contentious. The former category should be put to a referendum first and at lowest cost, that is, coincident with a general election.

For the rest, the Australian Constitution needs holistic review. A standing elected constitutional convention should review the Australian constitution, be in place for a number of years, be serviced by a permanent secretariat, and have sufficient resources to allow for full engagement and dialogue with the Australian people.

Fixed terms can be implemented legislatively and would align Australia with dozens of other progressive democratic countries and states and territories in Australia. Four-year terms require constitutional change. Seven of Australia's nine lower houses have four-year terms. JSCEM has given support to four-year terms for the House of Representatives in its reports on the 1996, 1998, 2001 and 2004 elections.

The will of the people is thwarted when a half-Senate election does not result in Senate personnel changing until the following 1 July. There should be simultaneous Senate/House of Representatives commencement and termination dates; coupled with the ending of the

prorogation power. If the Constitution were to be amended to have both houses dissolved, it should be amended so that the terms of members of *both* Houses end on the day before the day on which the terms of their successors begin, as is currently the case with senators, including the territory senators who go out whenever the House of Representatives is dissolved.

The franchise

More than 10% of those eligible to vote (over one million adults) do not exercise their voting right. More efficient effective and automatic administrative systems are needed. Experience has shown that harmonisation can mean agreement now but differences later; so with respect to the franchise what is needed is a single national franchise law. A genuinely democratic right to vote requires free fair and regular elections under a universal and equal suffrage, with minimal limited but valid exclusions based on a qualifying age and citizenship.

The right to vote is an inalienable right attached to citizenship. There are enough non-Australian citizens voting in Australian elections to account for two House of Representatives constituencies. Non-citizens should not have the right to vote in Australia. Australian citizens living abroad should not lose their entitlement to vote, even if dual citizens and even if abroad for lengthy periods. Compulsory enrolment and compulsory attendance at the polls is impractical in the case of overseas voters, so voluntary enrolment and voluntary voting overseas is the only sensible course.

Whilst prisoners are deprived of their liberty while in detention, they are not deprived of their citizenship. Australia imposes an extra-judicial penalty on top of that judged appropriate by the court. A convicted person's right to vote should only be removed by the determination of a court, as part of the sentencing regime.

The Green Paper anticipates a growing problem with increased numbers of aged Australians. To avoid unnecessary and costly administrative procedures to remove the vote from persons with disability due to diminished capacity from ageing, it would be much simpler to make enrolment and attending the polls voluntary after a certain age (say 80 years of age). The age chosen for voluntary voting should be selected with professional medical advice.

Representative systems

While I am not opposed on principle to proportional representation in the House of Representatives, there is no real evidence that the House of Representatives is significantly unrepresentative, or that there is significant concern in Australia over its method of election.

Proportional representation in the lower house is not necessary in a bicameral system where preferential voting applies in the lower house, where lower house constituencies are broadly equal in voter numbers and where redistribution revisions are periodically conducted by a genuinely independent authority; *and*, where the upper house is elected on a proportional and preferential voting basis, where the constituencies are either state-wide or sufficiently large as to ensure a plural outcome under a meaningful quota.

The large number of Senate candidates has meant that voters have almost universally moved to voting [1] on a lodged party ticket 'above the line'. This overwhelming voter choice legitimises any move to preferential voting above the line.

Because Senate lodged tickets violate the essential democratic principle that there should be no deception and voters must know who they are voting for – (despite lodged tickets being public documents, voters en masse do not know the preference flow the party has chosen for them) - preferential voting above the line should be introduced.

Dedicated electorates are a bad idea. There is a difference between a dedicated electorate for Australians (of any and every ethnicity, religion, or gender) that have no natural constituency, such as an Australia-at-large constituency for overseas Australians (which in any case is not necessary at present), and one which is exclusively for a specific demographic, defined for instance as property-based, ethnic or racial in type, language-based, based on religion, gender-based, sexuality-based or age-based.

Articles 2, 25 and 26 of the ICCPR quoted in the Green Paper all eschew this sort of discrimination, and rightly so.

Federal state and territory by-elections that do not result from the death of a member, or from ill-health, incapacity or other justifiable reason, are an annoyance to the community, as well as incurring a high and unnecessary cost. Resigning early without due cause is a breach of contract with the voters. In 1995 the Western Australia Commission on Government recommended that legislation should be introduced to impose a financial penalty on members of parliament who resign without due cause.

Electoral management bodies

The AEC does not have the characteristic independence markers of a statutory authority such as a body corporate with perpetual succession; an official seal; that it can acquire, hold and dispose of real and personal property, and may sue or be sued in its corporate name.

Two Australian precedents exist which could further enhance the independence of electoral commissioners: one is for the appointment of electoral commissioners to be confirmed by a majority of states as for the ACCC, so leading to a wider approval process; the other is for JSCEM to be consulted on both commissioner appointments and the AEC budget, as for the Audit Office. The Auditor-General is an independent officer of the Parliament appointed for a ten year term. The Minister's proposed recommendation for a new Auditor General must first be approved on behalf of the Parliament by the JCPAA. The JCPAA must also consider and make recommendations to the Parliament on the draft budget estimates of the ANAO.

There are dangers consequent to S44A (1) (a) of the *Financial Management and Accountability Act 1997* which should be addressed by making explicit the AEC's independence and its right to refuse to provide information that could afford the Minister or the Government of the day inappropriate political benefit.

Truth in political advertising

Legislation to impose penalties for failure to accurately represent the truth in political advertisements would advance political standards, promote fairness, improve accountability and help restore trust in politicians and the political system.

The private sector is already required by law not to engage in misleading or deceptive conduct by Section 52 of the *Trade Practices Act*.³ Why should politicians or political parties (whose ‘product’ on offer is political policies and personalities) be any different?

The *Commonwealth Electoral Act* should be amended to prohibit inaccurate or misleading statements of fact in political advertising, which are likely to deceive or mislead.

Political parties and postal votes

Having a particular party’s political material accompany a postal vote application form affects the independent and non-partisan perception of the AEC and should be prohibited.

When voters are invited by the political party to return the form to them rather than the AEC, for onward transmission, it subverts and perverts the independent process of the AEC; it gives partisan advantage to large parties; it can fatally interfere with the speedier AEC processing so resulting in lost votes; and, it is a breach of privacy. The practice should be prohibited. All postal vote applications should be required to be returned to the AEC.

Andrew JM Murray

Attachments

- 1 In September 2009 the Australian Government announced a review of the parliamentary entitlements framework. Attached is a copy of my November 2009 submission to that review (15 pages).
- 2 The Australian National University’s Faculty of Economics and Commerce publishes *Agenda: A Journal of Policy Analysis and Reform*. In Volume 16 Issue 3 (2009) my article was *Can Better Political Governance Give Australia an Improved Political Class?* The JSCEM secretariat will no doubt provide the Committee with a copy of that article.
- 3 In December 2008 the Australian Government issued its Electoral Reform Green Paper on *Donations Funding and Expenditure*. My submission of February 2009 is attached (25 pages).
- 4 In September 2009 the Australian Government issued its Electoral Reform Green Paper on *Strengthening Australia’s Democracy*. My submission of November 2009 is attached (53 pages).

SECRETARIAT NOTE

The listed material is available via the below links:

1. <http://www.finance.gov.au/parliamentary-services/submissions-received.html>
2. <http://epress.anu.edu.au/agenda/016/03/pdf/06.pdf>
3. http://www.dpmc.gov.au/consultation/elect_reform/submissions.cfm (Submission 5)
4. http://www.dpmc.gov.au/consultation/elect_reform/strengthening_democracy/submissions.cfm (Submission 24)

³ Under the Australian Consumer Law Reforms, the *Trade Practices Act 1974* is replaced by the *Competition and Consumer Act 2010* which came into effect on 1 January 2011.