



Ecological Sustainability - Social Justice - Peace and Non-violence - Grassroots Democracy

THE AUSTRALIAN GREENS

Submission to the Joint Standing Committee on Electoral Matters
Inquiry into the 2010 Federal Election

INTRODUCTION

The Australian Greens are the third major political party in Australian politics having attracted around 12 per cent of the national primary vote in the 2010 election. A key policy concern of the Greens is the reform of the electoral system to increase fairness, equity, transparency and accountability. This submission raises a number of issues in relation to the recent federal election which address these concerns. It also highlights the relevant matters in the Agreement made between the Australian Greens and the Australian Labor Party in September 2010 in the formation of the Gillard Government.

1. ELECTION FUNDING

1.1 Public Funding for elections

The Greens believe that undue influence and problems of corruption arise from unchecked private funding of election campaigns. To that end, the Greens call for the adoption of electoral funding similar to the Canadian system with a ban on corporate donations and a cap on individual donations and public funding for political parties which includes party administration and broadcasting.

In the 2010 election, with the growing public support for the policy platform of the party, the Australian Greens were, for the first time, successful in attracting a large donation from an individual. While this donation significantly increased our capacity for expensive television advertising, the party remains unable to compete with the old parties when it comes to campaign advertising funded through corporate and individual donations. We maintain our view that this system is unfair and counterproductive to the democratic process and believe that the Canadian system of electoral funding – that is primarily publicly funded elections, caps on campaign expenditure (including by third parties), capped individual donations and a ban on corporate donations - is the best and more democratically fair approach.

The Greens also support a rigorous regime for disclosure of electoral funding, believing that this is essential to ensure accountability and transparency in the system. The current system allows for substantial areas of funding to avoid proper scrutiny through the disclosure requirements of the Electoral Act.

The Greens support amendments to the Act to require all the component activities of private funding, including donations, fundraising activities, membership fees, investments and debt is properly disclosed. The Greens share the concerns about the misuse of public election funding that gave rise to the reimbursement model for election funding as proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill. However, it is worth noting that such a change from the current funding system will result in an increased reliance on external donations and

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corporate fundraising. In the Agreement between the Australian Greens and the Government signed in September 2010, it was agreed that "The Parties will work together with other parliamentarians to seek further reform of political parties and election campaigns by having a truly representative committee of the Parliament conduct a national inquiry into a range of options with the final report to be received no later than 1 October 2011, enabling any legislative reform to be dealt with in 2012." The Agreement further states that the Greens are predisposed to the Canadian system of full public funding of elections.

Recommendations

- 1.1 That a system of public electoral funding similar to the Canadian system be adopted.
- 1.2 That campaign expenditure by political parties is capped
- 1.3 That campaign expenditure by third parties is capped
- 1.4 That individual donations be capped at an annual amount of \$1,000.
- 1.5 That there is a ban on all political donations by corporations.
- 1.6 That full disclosure requirements are applied to all sources of private funding.

2. CONDUCT OF THE ELECTION

2.1 Fixed terms of Parliament

The benefits of fixed term elections are widely recognised. The Greens advocate for the adoption of fixed three-year terms for the federal parliament to improve the democratic objectives of the Australian electoral system. Under the current system, the Prime Minister has discretion on the timing of an election which accords considerable advantage to the incumbent government.

Minor parties, new parties and independents are significantly disadvantaged under this system as they have less capacity to plan, prepare and fund election campaigns with their limited resources. Furthermore, fixed term electoral cycles will facilitate the system of public electoral funding which is advocated in this submission.

The Greens support the adoption of fixed three-year terms federally as this important change does not require a referendum to change the Constitution but can be achieved through legislation.

In the Agreement between the Australian Greens and the Government signed in September 2010, it was agreed that "the Parties will work together with other parliamentarians to ... give greater certainty to the Australian people about the Parliament serving full three year terms."

Recommendation

- 2.1 That legislation is introduced to adopt fixed three year terms for the federal parliament.

2.2 Truth in Political Advertising

Elections are an opportunity for political accountability and it is critical that representations are accurate and honest. Under the current system, it is possible for advertising that contains misrepresentation and outright false statements to go unchallenged and without penalty. This can be particularly damaging in cases where the advertisements are presented by third parties, which under the current system are not required to identify themselves and therefore make known their own political or ideological position.

Although such legislation was enacted briefly in Commonwealth law in 1983 -1984 it was repealed with the support of both the major parties. Opposition to such legislation relies on the argument that it infringes the right of free political communication. However truth in political advertising legislation introduced in South Australia in 1985 was found to be constitutionally valid by the High Court. South Australia's legislation doesn't ban all untruths in advertising, but rather relates to inaccurate statements of fact (not opinion) found to be untrue¹

¹ Senate Finance and Public Administration Legislation Committee, Commonwealth Parliament, *Report on the Charter of Political Honesty Bill 2000 [2002]; Electoral Amendment (Political Honesty) Bill 2000*

The Greens advocate an amendment to the Commonwealth Electoral Act to make 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, similar to legislation introduced in South Australia.

In the Agreement between the Australian Greens and the Government signed in September 2010, it was agreed that "The Parties will work together and with other parliamentarians to ... create a 'truth in advertising' offence in the Commonwealth Electoral Act".

Legislation to impose controls on political advertising and penalties for breaches would enforce higher standards, improve accountability and promote fairness in political campaigning and the political system generally.

The Greens will continue to move to amend the Commonwealth Electoral Act to make it an offence to publish or distribute an electoral advertisement, which is intended to affect voting in an election that contains a statement purporting to be fact that is inaccurate and misleading.

The current provisions in the Electoral Act only extend to statements which are intended to affect the casting of votes and these provisions have been interpreted very narrowly to apply only to how a voter marks their ballot paper.

The Greens amendments would have extended the truth in political advertising provisions to apply more broadly to all statements/advertisements which are intended or likely to affect voting in an election. The Electoral Commission, if satisfied that an electoral advertisement contains inaccurate or misleading materials, may request the advertiser to either withdraw the advertisement or publish a retraction.

Recommendation:

2.2 That effective legislation to ensure truth in political advertising is introduced.

2.3 Televised Leaders Debate which reflects the political reality

The media coverage of the election campaign is a powerful factor in determining the outcome of the election. As discussed previously, the capacity of political parties to purchase advertising to promote their policies is a key factor in the success of their campaign and the major parties have an uncompetitive advantage in attracting political donations over the smaller parties. The exclusion of the leader of the Australian Greens from the televised leaders' debate is an obvious example of the failure of the mainstream media to reflect the current political reality.

In the Agreement between the Australian Greens and the Government signed in September 2010, it was agreed that "the Parties will work together with other parliamentarians to establish a Leaders' Debate Commission" to determine a format for the debate which better reflects the political makeup of contemporary Australia.

Recommendation

2.3 That a Leaders' Debate Commission be established immediately.

2.4 Restricting the use of postal vote applications for party political purposes

The Australian Greens welcome the reforms in the Electoral and Referendum Amendment (How-to-vote Cards and Other Measures) Bill 2010 and the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010. However we believe that the legislation could have been further strengthened with particular regard to postal vote applications.

[2002]; *Provisions of Government Advertising (Objectivity, Fairness and Accountability) Bill 2000*; Auditor of Parliamentary Allowances and Entitlements Bill [No. 2], 2002, p. 83. Quoted in Electoral Reform Green Paper No.2 p.154

The draft of the Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010 intended to make changes to the material which is able to be attached to postal vote applications and requirements for returning postal votes to the AEC. However these worthwhile changes were opposed by the Coalition in the Senate debate and these changes were accepted by the Government.

In 2010, the Australian Greens prepared amendments in the Senate requiring any PVAs sent out by political parties to be returned directly to the AEC. We would further amend the Commonwealth Electoral Act to require that no written material can be attached to the postal voting application form sent to electors by persons or organisations, thereby preventing the distribution of election campaign material by political parties and politicians via this means.

Since 1996 there has been an increase in postal votes of approximately 123 per cent - rising from 383,264 in 1996 to 854,726 in 2010 (see Figure 1 below).

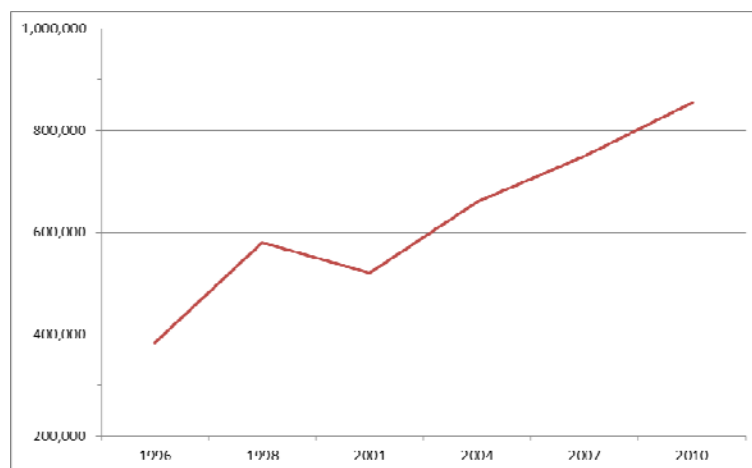


Figure 1 Increase in postal votes from 1996 – 2010

Source: Australian Electoral Commission (AEC)

The Greens believe there are no grounds from an administrative or participatory democracy perspective for postal vote applications supplied by parliamentarians to be returned to parliamentary offices prior to being forwarded to the AEC. This practice of double-handling presents the very real risk of postal vote applications not being processed as intended by electors. This practice is also being used by political parties to harvest voter information without their knowledge or consent. “Party” PVAs contain a return address to a local or state-based campaign postal address, where electors’ information is recorded before the information is passed on to the AEC. This diminishes, rather than enhances electors’ enfranchisement.

Recommendations

2.4.1 That all “party” postal voting applications (PVAs) that have been sent to voters by political parties or politicians are to be returned directly from the elector to the Australian Electoral Commission (AEC) rather than via the political party campaign office or the office of the politician.

2.4.2 That no written material can be attached to the postal voting application form sent to electors by persons or organisations, thereby preventing the distribution of election campaign material by political parties and politicians via this means.

2.5 Proportional representation in the House of Representatives

This is the single most important reform for achieving true democracy in Australia, replacing single member electorates with multi-member electoral districts. The number of seats won by each party would more accurately reflect the vote obtained by respective political parties, while maintaining an appropriate degree of local representation and community access to local politicians.

The Greens support a move to proportional representation in the House of Representatives: such a system is more likely to produce a ‘proportional’ vote, where politically significant parties would receive parliamentary membership in proportion to the number of votes cast in their favour.² Achieving gender equity in terms of political representation is also served by proportional representation models – the Electoral Reform Green Paper noted that such systems have proved to be more conducive to the election of women than majority systems. A study of 24 national legislatures showed women made up 27.49% of systems with proportional representation, compared to just 18.24% within majority systems³. It is reasonable to expect the same would be true for other societal groups currently under-represented in Parliament.

Proportional representation has been adopted throughout continental Europe, in the European Parliament, in Ireland and New Zealand. Like suffrage for women and the secret ballot, it is fundamental to achieving the modern democratic ideal of one person, one vote, one value.

By extrapolating the 2010 House of Representatives vote by working out the quota as if it was full proportional representation, and then allocating those quotas to each party, ie 100% of the vote, divided by 150 seats gives you a quota of 0.66% of the national vote to win a seat, it is possible to draw the conclusions set out in the table below. It demonstrates clearly how the current system advantages the major parties over the smaller parties.

Party	Percent of vote	Single member electorates	Proportional representation
Labor	38%	72	58
Coalition	43.7%	73	61
Greens	11.7%	1	18
Independents	2.5%	4	4
Family First	2.3%	0	3
Christian Democratic Party	0.7%	0	1

Source: <http://results.aec.gov.au/15508/Website/HouseStateFirstPrefsByParty-15508-NAT.htm>

Recommendation

2.5 That a proportional representation system for the House of Representatives is introduced within each state as provided for in the Constitution and guided by the principles of the single transferable vote in the Hare-Clark-Spence (HSC) system of voting.

2.6 Optional preferential voting above the line in Senate elections

Any electoral reforms should serve to make our electoral system more transparent, fairer and more democratic. Increasing the degree of control of expression for each elector’s vote is an important part of the progress towards an improved electoral system. By restoring to the elector the distribution of party preferences (rather than leaving it in the hands of party preference arrangements) is a means to do so.

In 2008 Senator Bob Brown introduced a private member’s bill into the Senate which provides the legislative means for optional preferential voting above the line in Senate elections. As Senator

² S Bennett, *Winning and Losing: Australian National Elections*, Melbourne University Press, Carlton South, 1996, p. 25. Quoted in Electoral Reform Green Paper No.2, p.55

³ J Ballington and A Karam, *Women in Parliament: Beyond Numbers*. Revised Edn, International IDEA, Stockholm, 2005, p. 100. Quoted in Electoral Reform Green Paper No.2, p.55

Brown noted in his second reading speech for the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill (2008)*:

“Above-the-line voting for the Senate was introduced in 1984 to address the problem of increasing informal votes. While this was an easier alternative for voters, the cost has been that the decision on preferences was removed from the voter and given to the party which the voter first selects.

The *Commonwealth Electoral Act* requires each party or group contesting elections to provide the Australian Electoral Commission with a paper indicating how preferences will flow if a voter chooses that party or group by voting for it above the line.

This bill removes that requirement from the party or group and returns to the voter the sole obligation to allocate preferences. The voter is advantaged because she or he decides the flow of preferences and directly chooses who is next elected if her or his vote is not used, in full, to elect the party or group of first choice.”

This would remove the scope for competition, inducement and cross-dealings by parties and other groups over preferences. It would forestall any public opprobrium in relation to preference ‘deals’. These amendments provide a straightforward way to enhance democracy and enable voters to have full control of the destiny of their vote, and consequently, the make-up of the Senate.

In the Agreement between the Australian Greens and the Government signed in September 2010, it was agreed that "the Parties note that Senator Bob Brown will reintroduce as a Private Members Bill the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill (2008)*. The ALP will consider the Bill and work with the Greens to reach reforms satisfactory to the Parties."

Recommendation

2.6 The immediate adoption of Senator Bob Brown's bill, the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill (2008)* which amends the Commonwealth Electoral Act to give voters the right to allocate their vote according to their own preferences.

2.7 Allowing public citizens and dual citizens to stand as candidates in federal elections

Candidate nominations are governed by Part XIV of the Electoral Act. A person who has reached the age of 18 years, is an Australian citizen, and is either ‘an elector entitled to vote at a House of Representatives election’ or eligible to become such an elector, is qualified to be elected to the Commonwealth Parliament⁴.

Section 44 of the Constitution sets out particular persons who are disqualified from being chosen or sitting as a member or Senator, including persons who hold any office of profit under the Crown, or those who hold dual citizenship (“allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or citizen of a foreign power”⁵).

This provision compels public servants to resign their employment for the duration of the election campaign. This is discriminatory and impedes the democratic right of some Australian citizens to participate in the election process. The exclusion of dual citizens is equally discriminatory.

The Australian Greens will introduce a private Senator’s Bill, *the Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) Bill* to alter the Constitution with respect to the qualification and disqualification of members of the Parliament and Parliamentary candidates.

⁴ *Electoral Act*, Section 63

⁵ Commonwealth Of Australia Constitution Act Section 44, accessed 17 November 2009
<http://www.aph.gov.au/Senate/general/Constitution/par4cha1.htm>

Recommendations

2.7.1 That section 44 of the Australian Constitution be amended to allow any public servant who has no conflict of interest to stand for election to federal parliament.

2.7.2 That section 44 of the Australian Constitution be amended to allow Australian citizens with dual citizenship to stand for election to federal parliament.

3. SUMMARY OF RECOMMENDATIONS

1.1 That a system of public electoral funding similar to the Canadian system be adopted.

1.2 That campaign expenditure by political parties is capped

1.3 That campaign expenditure by third parties is capped

1.4 That individual donations be capped at an annual amount of \$1,000.

1.5 That there is a ban on all political donations by corporations.

1.6 That full disclosure requirements are applied to all sources of private funding.

2.1 That legislation is introduced to adopt fixed three year terms for the federal parliament.

2.2 That effective legislation to ensure truth in political advertising is introduced.

2.3 That a Leaders' Debate Commission be established immediately.

2.4.1 That all "party" postal voting applications (PVAs) that have been sent to voters by political parties or politicians are to be returned directly from the elector to the Australian Electoral Commission (AEC) rather than via the political party campaign office or the office of the politician.

2.4.2 That no written material can be attached to the postal voting application form sent to electors by persons or organisations, thereby preventing the distribution of election campaign material by political parties and politicians via this means.

2.5 That a proportional representation system for the House of Representatives is introduced within each state as provided for in the Constitution and, guided by the principles of the single transferable vote in the Hare-Clark-Spence (HSC) system of voting.

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2.7.1 That section 44 of the Australian Constitution be amended to allow any public servant who has no conflict of interest to stand for election to federal parliament.

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