

Submission

on the

Conduct of the 2007 Federal Election

to the

Joint Standing Committee on Electoral Matters

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1. Introduction

On 27 February 2008, the Special Minister of State requested the Joint Standing Committee on Electoral Matters to conduct an inquiry into and report on “the conduct of the 2007 election and matters related thereto.”

On 12 March 2008, the Senate resolved that the Committee inquire into “all aspects of the 2007 Federal election and matters related thereto, with particular reference to:

- a. the level of donations, income and expenditure received by political parties, associated entities and third parties at recent local, state and federal elections;
- b. the extent to which political fundraising and expenditure by third parties is conducted in concert with registered political parties;
- c. the take up, by whom and by what groups, of current provisions for tax deductibility for political donations as well as other groups with tax deductibility that involve themselves in the political process without disclosing that tax deductible funds are being used;
- d. the provisions of the Act that relate to disclosure and the activities of associated entities, and third parties not covered by the disclosure provisions;
- e. the appropriateness of current levels of public funding provided for political parties and candidates contesting federal elections;
- f. the availability and efficacy of ‘free time’ provided to political parties in relation to federal elections in print and electronic media at local, state and national levels;
- g. the public funding of candidates whose eligibility is questionable before, during and after an election with the view to ensuring public confidence in the public funding system;
- h. the relationship between public funding and campaign expenditure; and
- i. the harmonisation of state and federal laws that relate to political donations, gifts and expenditure.

The Committee has resolved to conduct one inquiry encompassing both references and has called for public submissions addressing the terms of reference to be received by Friday 16 May 2008.

Festival of Light Australia is a national organisation which, among other things, has a longstanding interest in democracy, the rule of law, constitutionalism and the separation of powers. It is independent of all political parties.

2. Democratic principles and electoral funding

The funding of political candidates and parties in elections is an integral element of a democratic system of government. The way in which elections are funded is of critical importance to the integrity of the electoral process and the strength of parliamentary democracy as a whole. Consequently, election funding law should facilitate the kind of representative democracy cherished by the Australian people.

2.1 Individual freedom

As Professor Lumb points out in his book *Australian Constitutionalism*, the roots of the modern Australian system of government lie in the debates and battles in earlier centuries over providing a system of effective constraints on government power.¹ The idea of the rule of law, or limited government, overturned the earlier doctrine of unlimited sovereignty under which people were subject to the arbitrary will of the ruler.

The core idea of the Australian system of government is recognition of the right of the citizen to freedom under the law. This fundamental freedom is expressed in many ways, including the right to stand for election and vote, and also through the right of a citizen to use his financial resources to further his political objectives. Any constraint on the freedom of a citizen to fund political candidates or parties needs to be fully justified.

Reasonable measures to encourage citizens who wish to fund political candidates or parties should be seen as a means to foster political freedom.

This recognition of individual freedom emerges from the Judaeo-Christian understanding of mankind being made in the image of God and therefore being entitled to respect and dignity.²

2.2 Freedom of association

Another central element of the dignity of mankind is the recognition that people are inherently relational and naturally join with others in groups of various kinds.

In a political context this involves “recognition of the fact that between the ruler and the mass of the citizenry there are a variety of groups to which the citizens belong. They may be occupational (guild, union, association), religious (church), educational (school, university), cultural and social. Certainly, in earlier periods, battles over authority and allegiance were often fought between an overweening State (Monarch) and the Church anxious to preserve the rights of its members but also at times encroaching on such rights. The concept of limited sovereignty recognises that claims to allegiance or obedience may arise from a number of groups...”³

Political parties are among the kinds of association which citizens should have the freedom to form or to join. Furthermore, political parties should have the freedom to raise funds and use them in political campaigns, subject only to constraints which have strong justification.

2.3 Civil society

Freedom of association provides the basis for civil society, which has been defined by the London School of Economics Centre for Civil Society as follows:

*Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women’s organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.*⁴

The links between civil society and democracy were explored by Alexis de Tocqueville and developed by 20th century theorists like Gabriel Almond and Sidney Verba, who identified civil society as

having a vital role in a democratic order.⁵ They argued that many civil society organisations facilitate better awareness and a more informed citizenry, who make better voting choices, participate in politics, and hold government more accountable as a result. Such organisations also accustom participants to the processes of democratic decision making.

Consequently, election funding arrangements should facilitate, not hinder, the organisations which constitute civil society, including political parties, trade unions, business associations and advocacy groups.

2.4 Representative democracy

Australia's system of representative democracy must be distinguished from direct democracy on the one hand and totalitarian democracy on the other.

Representative democracy is characterised by elected representatives who form a parliament charged with the responsibility of making decisions and acting in the public interest – without direct consultation with the electorate. This enables swift and resolute action in the face of changing circumstances.

Direct democracy involves decisions being made either by referendum or by delegates to a ruling body bound to vote in accordance with decisions made by a majority of their electors. Such a system is inherently slow and can be dominated by sectional interests.

In a totalitarian democracy, elected officials are bound to support an ideology independently of the views of the electorate. The ideology may be considered beyond the understanding of the electorate. The duty of the officials is to ensure that any inconsistent public or private activities are eliminated.⁶

Representative democracy works best when elected representatives maintain a close relationship with their constituents. While not being bound by their electorate, representatives are then able to take the views of the electorate into consideration when decisions are made in parliament.

Election funding arrangements should be designed to facilitate a close working relationship between representatives and their constituents.

2.5 Limitation of abuse

While civil society has a vitally important role in a healthy democracy, some elements of society nevertheless create the potential for corruption and abuse. Political donations may be used to purchase political favours, access to decision-makers, or consideration in policy formation. Such practices could distort the democratic process and undermine faith in government.

An important element of the Judaeo-Christian perspective on human society is an understanding of frailty or sinfulness of mankind. This notion is captured in Lord Acton's famous dictum: "Power tends to corrupt and absolute power corrupts absolutely."⁷

Consequently, some constraints on civil society and commercial institutions are necessary for the limitation of corruption and abuse.

2.6 Membership of political parties

While political parties in Australia are not obliged to release membership figures, and most have declined to do so in recent times, it is generally agreed that there has been a marked decline in membership numbers.

Researchers from the Australian National University examined the available evidence for the Democratic Audit of Australia. They concluded:

“In total, we estimate that membership of all Liberal, National, Labor and Democratic Labor Party in the 1960s and the Democrats since 1977 has declined, from 4 per cent of the electorate in the 1960s to less than 2 per cent in the late 1990s.”⁸

A halving of public participation in political parties over a thirty year period is not a positive development in a representative democracy.

Tax deductibility for political party membership dues is a useful and justifiable measure to encourage increased participation by individuals in the political party of their choice.

Recommendation 1:

The Committee should support tax deductibility for political party membership dues.

2.7 Political contributions and gifts

Since 22 June 2006, contributions and gifts to political parties and to independent candidates and independent members have been tax-deductible for amounts up to \$1,500 in each income year.

These are relatively modest amounts, not of a size likely to lead to concerns about undue influence on the political process. Rather donations of this size are a healthy measure of political participation.

An important effect of tax deductibility of donations generally is to strengthen the links between citizens and the associations and parties which make up civil society. In the case of political parties, tax deductibility of donations would facilitate the raising of private funds for campaign purposes and decrease reliance on public funding.

Public funding of political parties provides a conduit for funding which bypasses civil society and thereby weakens the representative nature of Australian democracy. Public funding increases the likelihood of celebrity candidates, who are disconnected from civil society, being elected.

Recommendation 2:

Contributions and gifts to political parties and to independent candidates and independent members for amounts up to \$1,500 in each income year should be tax deductible.

2.8 Disclosure of contributions and gifts

Mandatory public disclosure of financial contributions to political parties and candidates and their campaign expenditures is an important safeguard against inappropriate influence on the political system.

Disclosure thresholds should be set to achieve an appropriate balance between encouraging participation in the democratic process through financial support to political parties and candidates, and the public interest in knowing the source of political donations, especially larger donations.

Parliament increased the disclosure threshold from ‘amounts of \$1,500 or more’ to ‘amounts of more than \$10,000’ with effect from 8 December 2005. This \$10,000 threshold is indexed in July each year based on the All Groups Consumer Price index at 31 March.

The disclosure threshold applying for the 2006-07 financial year is \$10,300 and for the 2007-08 financial year it is \$10,500.

Factors supporting the higher threshold for disclosure include:

- (a) preserving the privacy of citizens (and their businesses) who choose to make political donations, and
- (b) limiting the compliance costs of political parties in reporting the sources of donations over the threshold.

The disclosure threshold should be high enough to allow political parties to attract adequate private donations without an undue administrative burden of disclosure.

The major factor that should limit the threshold is the public interest of enabling the public to be aware of the major supporters of political parties. A robust democracy requires openness and accountability in the contributions to political parties, since those contributing large amounts could have significant influence over candidates who are elected to positions of responsibility and authority. The disclosure threshold should be set at a level that will allow the public knowledge of the source of the larger donations to political parties and candidates.

The three criteria for determining an appropriate threshold are: preserving donor privacy, limiting compliance costs, and safeguarding the public interest.

One approach to determining the threshold would be by reference to a fixed proportion of the total donation income raised. This would:

- (a) safeguard the public interest by ensuring that a fixed proportion of the donation income raised is subject to public disclosure; and
- (b) adjust the threshold to compensate for changes in donor generosity affected by changing salaries, living costs and other economic factors.

In its report on the conduct of the 2004 Federal election an earlier committee argued⁹ that:

“In supporting an increase in thresholds, the Committee is convinced that, since under the present rules 88% of the value of disclosed donations to the major parties is greater than \$10,000, even if the disclosure threshold were increased to that amount, disclosed donations would continue to be a very high proportion of all donations. Nevertheless, higher thresholds would encourage more individuals to make donations to all candidates and parties.”

This approach has been challenged by Young and Tham¹⁰ who point out that this percentage refers only to receipts classified as “donations”, whereas if the total receipts were used instead then only an average of 64.1% of total receipts would have been disclosed from 1998/99-2004/05 with a threshold of \$10,000. The earlier threshold of \$1500 would have resulted in an average disclosure of 74.7% of all receipts.

However, if there is a problem with donations being improperly classified as other income then this should be remedied for other reasons as this could mean individual receipts of large amounts were not being declared as donations. As long as disclosure rules apply to donations then it makes sense to use the total of donations as the denominator in a percentage calculation.

Another complication mentioned by Young and Tham is the existence of separately registered state branches of most political parties, so that the current arrangements allow a donor to give \$10,000 to each of nine associated “parties” without disclosure being required. As long as the electoral law permits the registration of state based parties they are entitled to be treated as separate entities for disclosure purposes.

In order to balance all these factors it could be appropriate to use a fairly high percentage of total annual donations – somewhere between 90 and 95% - to determine the monetary threshold required to ensure disclosure of this percentage of donations.

Recommendation 3:

The annual threshold for disclosure of political donations should be set based on the previous year's returns so as to ensure that a fixed percentage, between 90 and 95%, of total donation are disclosed.

3. Integrity of the Electoral Roll

Central to the conduct of a free and fair election is the integrity of the electoral roll. The integrity of the electoral roll must not be compromised and all Australians should have confidence in the accuracy of the roll.

3.1 Close of the electoral roll

Following changes to the electoral law the electoral roll was closed to new enrolments from 8pm on the day the writs were issued.

The change was recommended by the Joint Standing Committee on Electoral Matters in its report on the 2004 federal election.

Concerns were raised that this change would result in a significant under enrolment of 18 year olds. For example, Labor MP Mr Michael Danby wrote¹¹:

Last year, according to the AEC, only 126,000 of Australia's 260,000 18-year-olds, or 48%, were enrolled to vote. That is, 134,000 18-year-olds would not have been enrolled to vote if we had had a federal election last year.

This is part of a larger problem of under-enrolment in Australia. Despite compulsory enrolment, and despite strong population growth, we have 50,000 fewer enrolments in April 2006 than we had in April 2005. This is because the AEC has been more aggressively removing people from the roll when they change address and fail to re-enrol at their new address.

This problem will become acute when we reach the election. Not only has the Howard government made it more difficult to enrol, it has also reduced the ability of voters to enrol once an election is announced. The "period of grace" for enrolment of five working days after the issuing of the writs has been cut to one day.

Tens of thousands of people will find themselves not on the roll when the election is called – and of course under our system of non-fixed terms, the Prime Minister can call an election any time he likes.

It is useful to compare the percentage of 18 year olds enrolled to vote for the 2004 election with those enrolled to vote for the 2007 election.

The Australian Bureau of Statistics gives¹² the estimated population aged 18 years as at June 30 as 279,637 for 2004 and 287,924 for 2007. The Australian Election Commission (AEC) gives the number of 18 year olds enrolled to vote at the close of rolls for the 2004 election as 186,409¹³ and for the 2007 election as 205,645¹⁴. This represents an increase from 66.66% in 2004 to 71.42% in 2007.

It appears as if the advertising campaign conducted by the AEC, as well as the publicity about the closure of the rolls on the day the writs were issued generated by community groups, including those opposed to this change, resulted in a more successful enrolment of 18 year olds than the old system with its seven day grace period for enrolments after the writs were issued.

Recommendation 4:

The current provisions for the closing of the rolls should be maintained.

3.2 Proof of identity

The evidence cited above also indicates that concerns about 18 year olds failing to enrol due to new proof of identity requirements were unfounded.

Recommendation 5:

The current provisions for proof of identity when enrolling should be maintained.

4. The Voting System

Australia has been well served by a system of compulsory preferential voting. This system has contributed towards making Australia one of the most politically stable countries in the world.

4.1 Compulsory voting

Every Australian citizen who is above the age of 18 years on the date of a federal election is legally required to enrol and to vote. Compulsory voting, which was introduced for Australian federal elections in 1924 and first used in the 1925 elections, is relatively unusual among world countries.

While it could be argued theoretically that true democracy demands the right to refuse to vote, the practical reality is that compulsory voting produces a better indication of the opinion of the people than voluntary voting.

Other constitutional democracies which have voluntary voting, such as Britain and the United States of America, have much lower participation in elections than Australia. The United States of America spends huge sums of money on encouraging people to vote, regardless of which party they vote for. Voluntary voting also creates the possibility that some areas could be ignored in attempts to encourage voting if the residents seem likely to vote in the opposite manner to those organising the “encourage people to vote campaigns”. The number of UK votes cast to elect the European Parliament was reported to be less than the number of votes cast in the British version of the television show Big Brother.¹⁵

Recommendation 6:

Compulsory voting should be retained to ensure that Australian governments are determined by most of Australia’s adult population.

4.2 Preferential voting

Another important element of the Australian electoral system is preferential voting. Indeed, preferential voting is relatively exclusive to the Australian political system. Most similar political systems employ the simple majority (first-past-the-post) system.

The main advantages of the preferential system are:

- It ensures that only a candidate with the support of an absolute majority of the electorate can win, eliminating the possibility of minority winners; in other words, the winning candidate is the "most preferred" or "least disliked" candidate.
- It ensures that voters can support minor parties and independent candidates, knowing that their preferences may be used to decide the winner; thus, votes for minor parties and independents are not wasted.

In short, the primary benefit of preferential voting is that it most accurately represents the will of the voters.

A major disadvantage of simple majority voting is that candidates can be included for the purpose of weakening an opponent's support. Consider John who becomes a candidate for a House of Representatives electorate and campaigns for the building of a shopping centre in his electorate. Suppose that Bill decides to oppose this development by becoming a candidate for the same electorate. John might enlist three other people as candidates for the same electorate who would agree with Bill. With simple majority voting, the total vote against John is split among four candidates and John may win easily. Under a preferential system, the vote is ultimately split between the two candidates who have the most preferred support and winner in a House of Representatives electorate always has more than half of the final preferred vote.

Recommendation 7:

The current system of preferential voting for the House of Representatives should be retained.

4.3 Senate voting above the line

The current system provides for "above the line" voting for the Senate by voters putting a "1" in the box next to their party or group of choice. The effect of this vote is determined by a ticket (or tickets) lodged by the party or group with the AEC allocating preferences.

Although these tickets are available on the AEC website, at AEC offices and on display at polling booths, it seems apparent that most voters pay little if any attention to the tickets. This means, that unlike the House of Representatives where voters determine the preference flow of their vote, the preference flow of Senate votes is essentially determined by political parties.

The option of numbering each candidate "below the line" is, given the number of candidates, daunting to many voters.

This problem could be resolved by requiring voters to indicate their own preferences either for parties and groups above the line or for individuals below the line. Under this proposal, below the line voting would remain the same but, when voting above the line, the voter would be required to number all boxes in order of preference.

The privilege of a group being listed above the line should be restricted to registered parties. Independent candidates or groups of candidates from an unregistered party should be listed only below the line. The ballot paper would then list the parties above the line and the individual candidates below the line.

Preferences marked above the line would first flow to candidates within the party in the order they are printed on the ballot paper. The preference would then flow to candidates in other parties in the order indicated by the voter. Preferences marked above the line should not flow to candidates listed only below the line.

This system would suit voters who find allocating preference to some fifty candidates too daunting but who would have no trouble in allocating preferences to about seven party groups. This system would also eliminate the need for the AEC to collect, print and distribute preference tickets from all the parties taking part in the election. Wall charts or booklets showing preference allocations would not be needed.

Recommendation 8:

The Senate voting system should be changed to require voters to indicate their own preference order, either:

- ***by parties above-the-line, or***
- ***by candidates below-the-line.***

Preferences given to parties above the line would flow to candidates below the line in the order printed on the voting form, and then to the candidates of the second preference party in order printed on the voting form, etc. Preferences given to parties above the line would not flow to candidates listed only below the line.

5. Integrity of the Voting Process

The process of voting can be considered to have integrity if two conditions are satisfied. Firstly, the identity of each voter should be correct, ie the person voting should be the elector whose name is marked as having voted. Secondly, each voter should vote only once.

Consider the federal electorate with 50 polling places. Suppose John knows the full name and address of Bill who also lives in this electorate and the polling booth at which Bill intends to vote.

Currently, John can go to the same polling place as Bill to cast his own vote, and then go to the other 49 polling booths and vote under Bill's name, thus voting 50 times in the election, in a marginal electorate. If several people did this, the extra votes could have a significant effect on the outcome of the election.

The current AEC processes will quickly identify that Bill has voted multiple times when the lists of voters at each polling booth are compared after voting closes. However that will only lead the AEC and the Australian Federal Police to Bill, who has done nothing wrong and is completely unaware of John's dishonest voting.

Although the number of extra votes could be identified, they could not be removed from the count because there is no way of knowing which candidate gained the invalid votes. If the number of extra votes were sufficient to change the result of the election, the best that the losing party could hope for is an appeal to the Court of Disputed Returns, which may or may not order another election. The process of having another election is time and resource consuming, and a hassle for everyone involved. The hassle may also affect the voting of the electorate, which may prejudice the party that sought another election.

In a close election such a disputed outcome could affect which party had the numbers to form a government. It is not prudent to wait until after this occurs to improve the integrity of the voting system.

5.1 Voter identity

The integrity of the voting system requires that a person vote only once, and as themselves. It is reasonable to require some personal identification, such as a driver's licence, rates notice, or electricity

or gas account. Banks routinely require some personal identification when making over-the-counter withdrawals and it should be possible for a similar system to be applied by election officials.

With such a requirement enforced, it would be very difficult for one person to claim to be someone else and vote as that person. With a requirement to show adequate personal identification in place, a person could only vote multiple times as themselves, and would be identified by existing AEC processes.

Recommendation 9:

To prevent a person from voting either multiple times or under another name, each person should be required to provide adequate personal identification to the AEC officials at polling booths prior to casting their vote.

5.2 Voting locations

An alternative solution to the problem of multiple voting is to limit each voter to one polling place, as advised by the AEC. The AEC, which already mails information regarding the election to each household, could include a card assigning the electors at that address to a designated polling place.

If a person were unable to attend that polling booth, they would still be able to use absentee voting, but their vote would not be counted immediately. The counting of those votes could then wait until there has been a comparison with other absentee votes and the electoral roll in the polling booth to ensure that a person has neither voted normally, nor tendered multiple absent votes.

Recommendation 10:

As an alternative to adequate personal identification of voters on the day of the election, to prevent a person from voting either multiple times or under another name, each person should be required to vote either at a polling booth assigned by the AEC or use an absentee vote.

6. Conclusion

Australia enjoys the stability of one of the world's oldest constitutional democracies, and has one of the best electoral systems in the world. However, Australians cannot afford to become complacent about our electoral system, since some aspects are open to abuse and corruption. We should not wait until some of the weaknesses of the current system are corruptly exploited, rather we should further improve the system so that the integrity of the result can be assured.

The changes to the timing of the closure of the rolls and to proof of identity requirements brought in prior to the 2007 federal election were a welcome step in the right direction. These changes should be retained and built on further.

The first priority for reform should be to modify the voting system of the Senate, so that voters are required to allocate preferences either to all groups above the line or all candidates below the line. This would give voters responsibility for allocating their own preferences, as they already do on House of Representatives ballot papers. The number of preferences for above-the-line voting would be much smaller than for below-the-line voting and should not be daunting to voters. Preference tickets currently lodged by parties with the AEC, which are unknown to most voters and hence effectively secret, could be eliminated since they would no longer be needed.

All of the recommendations in this submission are intended to enable the election system to guarantee the integrity of an election result by minimising opportunities for abuse. While there will always be weaknesses, the defence of the democratic principles which have served this nation so well requires an effort to ensure the electoral system is as robust as possible. All Australians have a duty to pass on our great nation to the next generation by maintaining and strengthening the democratic traditions of this country.

7. Endnotes

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