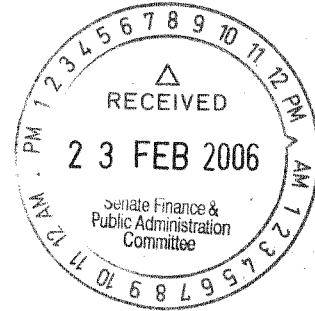


Submission

on the



**Electoral and Referendum Amendment
(Electoral Integrity and Other Measures) Bill 2005**

to the

Senate Finance and Public Administration Committee

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1. Introduction

Patrick McMahon Glynn, a South Australian delegate to the Australasian Federal Convention in 1897, viewed the prospect of an Australian nation with enthusiastic anticipation:

“Never was the birth of a nation blessed by the conjunction of such auspicious stars, never did the opening of a national life give such promise of endurance and strength, as mark the coming of Australia.... The foundations of our national edifice are being laid in times of peace; the invisible hand of Providence is in the tracing of our plans.”¹

Australians should never forget that unlike the Americans who fought a war to create their nation, our nation was created peacefully, by a free and democratic election. Australia is currently one of the oldest constitutional democracies in the world,² but a democratic nation cannot function without an efficient and robust electoral system.

This submission to the Senate Finance and Public Administration Committee concerns the Inquiry into the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (the Bill) initiated by the Senate on 8 February 2006.³

2. Proposed amendments

The Bill is a welcome response addressing many of the deficiencies of the current Australian electoral system. However some of the proposed changes would benefit from further refinement as recommended below.

2.1 Disclosure thresholds

Political parties are currently required to reveal the details of donors who give to political parties monetary or property amounts over \$1,500. The Bill proposes to raise the disclosure threshold from \$1,500 to \$10,000.⁴

The disclosure threshold should be set to achieve an appropriate balance between: (a) encouraging citizens to participate in the democratic process by financially supporting political parties and (b) public accountability to limit the opportunity for inappropriate influence over parties.

Factors supporting an increase in the threshold include: (a) preserving the privacy of citizens (or businesses) making political donations and (b) limiting the compliance costs of political parties in reporting donations. The disclosure threshold should be high enough to allow political parties to attract numerous private donations without the administrative burden of disclosure.

The major factor opposing an increase in the threshold is public interest: 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 may have significant influence over candidates who are elected to positions of responsibility and authority. The disclosure threshold should be set at a level where the size of the donation may attract significant influence.

Recommendation

The disclosure threshold for donations to political parties should be raised to \$5000.

2.2 Close of electoral rolls

For persons not already on the electoral roll, the Bill would cause the roll to close on the day that the writs are issued for an election. Electors who are already on the roll would be permitted to modify their details until 8:00pm on the third day after the writs for the election have been issued, and a limited class of new electors can be added to the Roll during the same period. That class includes people who are 17 and will turn 18 after the issue of writs and prior to polling day, and immigrants whose citizenship ceremonies will occur in the same period of time.

The integrity of the electoral roll is essential to the maintenance of our democratic system, and the proposed measures reduce the capacity to perpetrate fraud on the roll.

Recommendation

The proposal for early closure of the electoral roll should be enacted.

2.3 Proof of identity for enrolment

The Bill would require a person who is either enrolling or updating their enrolment to provide their driver's licence number on their application. A person who lacks a driver's licence can use a prescribed identity document, and if a person lacks a document in that class then they can be attested by two voters who are unrelated to the person in question and are able to provide their driver's licence number.

This proposal is an important improvement in the security of the roll.

Recommendation

The proposed requirement for proof of identity for persons enrolling or updating their enrolment on the electoral roll should be enacted.

2.4 Proof of identity for voting

The Bill would require any elector, other than a silent elector, who wishes to cast a provisional vote on polling day to show a driver's licence or some similar form of identification. While this proposal would strengthen confidence in the identity of provisional voters, the requirement for proof of identity should be applied more widely.

An individual would still be free to vote several times under their neighbour's name in their own electorate so long as they did not vote at the same polling booth as their neighbour. Furthermore when multiple voting was detected after the election, the person's innocent neighbour who would be the one investigated.

The most practical means of preventing multiple voting would be to assign each elector a single polling place and allow the elector to vote without identification only at that polling place. Voting at any other polling place should require the same proof of identity required of provisional voters.

Likewise, postal voters should be required to provide proof of identity.

Recommendation

The proposed requirement for proof of identity for voters should be strengthened to require such proof in all cases except when voting at a nominated polling place.

2.5 Broadcasters and publishers returns

Sections 310 and 311 of the Electoral Act require publishers and broadcasters to provide returns to the AEC with details about electoral advertisements broadcast or published during an election period. The Bill would abolish this requirement.

Television and radio broadcasters have privileged access to the radio spectrum and should be publicly accountable for their use of this privilege. In relation to political advertising, the current requirement for broadcasters to provide returns to the AEC on electoral advertisements broadcast an election period is a suitable form of public accountability. A similar principle applies to publishers of major newspapers and magazines.

Recommendation

The current requirement for broadcasters and publishers to provide returns to the AEC on electoral advertisements broadcast or published during an election period should be retained.

2.6 Electoral advertising on the internet

The Bill would require that paid electoral advertising on the internet be authorised in the same manner as printed electoral advertisements.⁵ The internet is increasingly becoming a place of business and recreation, which means that advertising, including political advertising, was bound to follow.

Political advertising on the internet performs the same function as printed advertising and should be subject to the same conditions. These proposals should be enacted.

Recommendation

The proposal for political advertising on the internet to have the same authorisation rules as printed advertising should be enacted.

2.7 Third party disclosure returns

Currently the Electoral Act requires 'third parties' (people other than registered political parties, candidates and associated entities) to lodge disclosure returns only for election periods. The Bill would require third parties to complete annual disclosure returns if they incurred expenditure for a political purpose or received gifts which enabled them to incur expenditure for a political purpose during a financial year.

The primary purpose of electoral disclosure returns is to preserve the integrity of the electoral process. Political activity at other times is part of the normal democratic process of public debate and does not require such scrutiny. Indeed, such scrutiny could be viewed as an unwarranted intrusion of freedom of political expression.

Recommendation

The proposal to require 'third parties' to complete annual disclosure returns for political expenditure should be removed from the Bill.

2.8 Nomination deposits

A candidate for a seat in the House of Representatives is currently required to deposit \$350 with the AEC and a Senate candidate is required to deposit \$700.⁶ If a candidate does not receive 4% of the primary vote

the deposit is forfeited.⁷ The intention is to discourage candidates who are not seriously running in the election.

The requirement of a deposit is an effective method of excluding marginal candidates, since those with significant community support should be able to raise the necessary funds. Since senators have a term of office that is twice that of members of the House of Representatives and since they are elected by the entire state not just from one electorate, it is appropriate that the deposit for an aspiring senator be double that of an aspiring member of the House of Representatives. However the amount of the deposit is currently ineffective.

The Bill would increase nomination deposits for election candidates to \$500 for candidates for the House of Representatives and \$1,000 for Senate candidates with the threshold for returning the nomination deposit remaining at four percent. These amounts would be an increased deterrent for unrealistic candidates but attainable by those who have significant community support.

Recommendation

The proposed increases in the deposits required from candidates for the House of Representatives to \$500 and for the Senate to \$1000 are justified and should be enacted.

2.9 Access to electoral roll

Currently, financial institutions are required to verify the identity of signatories to accounts and thereby minimise the risk of accounts being used for criminal purposes. The standard verification procedure, known as the '100 point test', provides that signatories to accounts may have their identity verified using a range of identifying documentation. One of the sources for identity verification is the electoral roll (worth 25 points). Recent amendments to the Electoral Act, which removed the electoral roll from sale, have created difficulties for financial institutions attempting to satisfy their obligations under the FTR Act.

The Bill would allow electoral roll information to be used by prescribed persons or organisations for the purpose of verifying the identity of persons by exempting them from the prohibition on commercial use of electoral roll information. This is a desirable change to facilitate identity verification by financial institutions.

Recommendation

The proposed changes to facilitate identity verification by financial institutions should be enacted.

2.10 Location of divisional offices

Currently, some divisional offices are co-located with other divisional offices. Since a divisional office can be physically located in only one division, another co-located divisional office is therefore located outside its divisional boundaries.

The Bill would ensure that any divisional offices established or re-located after the commencement of the new scheme will be located within the divisional boundaries unless otherwise authorised by the Minister. This arrangement should facilitate local divisional officers being able to apply local knowledge to assuring the integrity of the electoral roll.

Recommendation

The proposed requirement for new or re-located divisional offices to be located within divisional boundaries should be enacted.

2.11 Registration of parties

The Bill would provide for the automatic de-registration of all currently registered political parties, except those with parliamentary representation. Any political party that is de-registered would be able to apply for re-registration but would need to comply with naming conventions and respond to AEC queries regarding the extent to which they have included candidates in elections.

The Bill would ensure that all political parties are on the same footing. It would allow the AEC to ensure that registered political parties are genuine. Since political parties receive privileges such as tax deductibility for donations, they should be subject to review to ensure they are actually applying any tax deductible income received to the purpose for which it was given.

Recommendation

The proposal for re-registration of political parties to comply with current requirements will ensure that all political parties are on the same footing and should be enacted.

2.12 Associated entities

Currently, “associated entity” is defined as an entity which is controlled or operates for the benefit of a registered political party. The Bill would expand this definition to include an entity that is a financial member or has voting rights in a registered political party. This expanded definition is consistent with the concept of an associated entity.

Recommendation

The proposed expanded definition of an “associated entity” should be enacted.

2.13 Voting entitlement provisions

Currently, a person who is serving a prison sentence of 3 years or longer for an offence against a Commonwealth, State or Territory law is not entitled to vote in a Commonwealth election.⁸ The Bill would remove the right to vote from all prisoners serving a sentence of full-time detention. Such prisoners may remain on the roll, or if un-enrolled apply for enrolment. Those serving alternative sentences such as periodic or home detention, or a non-custodial sentence or released on parole, would still be eligible to enrol and vote.

While the right to vote is a fundamental entitlement of citizens in a democratic society, that right entails an obligation to obey the laws of that society. Felons convicted of an offence serious enough to result in full-time imprisonment have breached their obligation to society and should forfeit not only their liberty but also the right to vote. Allowing felons to vote could result in an elected parliament or government feeling obliged to make decisions in the interests of criminals rather than the general public.

Recommendation

The proposal to remove the right to vote from all prisoners serving a sentence of full-time detention should be enacted.

2.14 AEC’s demand powers

The AEC currently has a demand power to obtain information from all Australian government and some state and territory government agencies for the purpose of preparing, maintaining or revising the rolls.⁹

The Bill would expand the demand power to include officers of state and territory governments. This would facilitate proof of identity checks for electoral enrolment and enable the AEC to verify driver's licence numbers provided on enrolment applications. It would also allow the AEC direct access to a range of relevant data to assist with roll maintenance activities.

Recommendation

The proposed expanded demand powers for the AEC would facilitate identity checks and should be enacted.

2.15 Tax-deductible contributions

Currently, individual taxpayers may make tax-deductible contributions of \$2 or more to political parties registered under the Commonwealth Electoral Act to a maximum of \$100 in an income year.

The Bill would extend provisions for tax-deductible political contributions in several ways:

- tax-deductions would be allowable for corporate as well as individual taxpayers;
- contributions could be made to parties registered under State and Territory legislation;
- contributions could be made to individuals as well as parties;
- the maximum amount of deductible contributions in a year would be increased to \$1500.

This proposed extension of provisions for tax-deductible political contributions would be a welcome encouragement for more citizens to become involved in the Australian democratic process.

Recommendation

The proposed extension of provisions for tax-deductible political contributions should be enacted.

3. Other matters

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.¹⁰

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

3.1 Senate voting above the line

In the *Inquiry into the 1998 Federal Election and Matters Related Thereto*, a number of submissions advocated the elimination of above the line voting for reasons such as ungrouped candidates not having a box above the line which gives them an unequal footing, and the capacity of parties to direct preferences in what is usually a blind vote.

Allowing political parties to lodge preference allocations which are generally unknown to the electorate opens the election process to manipulation by stooge parties and candidates. A genuine party can form

a stooge party with a catchy name in the hope of attracting additional votes for the stooge candidates and directing their preferences to the genuine party. However, the stooge party may deceive voters by appearing to stand for issues opposed by the party receiving the preferences.

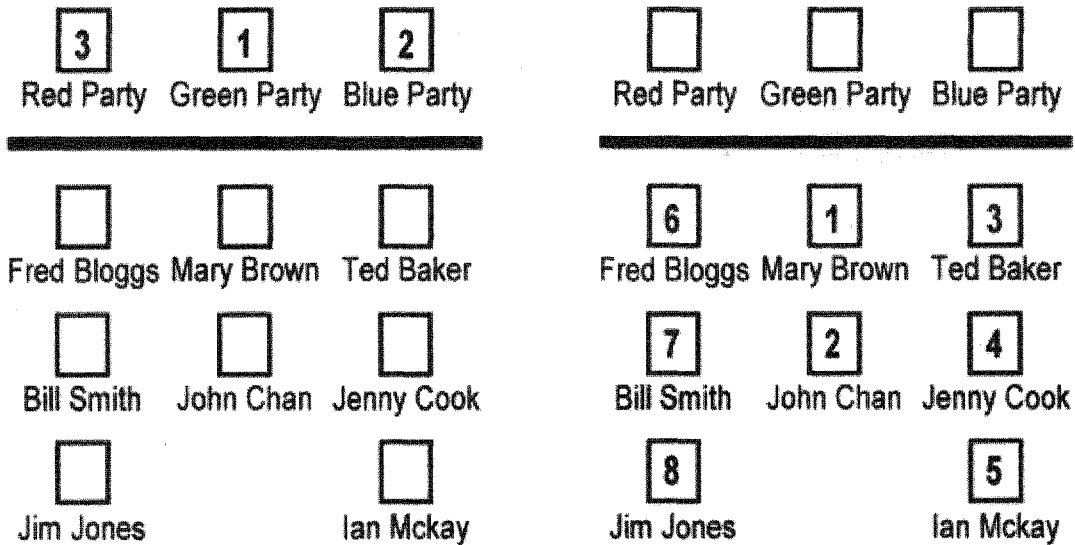
For example, suppose a "New Flag Party" is formed to work for the replacement of the Australian flag with a new design. The New Flag Party then forms the "Save the Flag Party" which claims to stand for keeping the present design. The Save the Flag Party can lodge a preference allocation directing preferences to the New Flag Party. The likely result is that voters would be deceived by this ruse.

Corruption of the Senate election process by stooge parties and candidates could be eliminated by removing preference tickets and requiring voters to indicate their own preferences. Voters are familiar with indicating their own preferences on the House of Representatives ballot paper and the only significant difficulty to voters is the large number of names on the Senate ballot paper. While the House of Representatives ballot paper for the 2004 federal election included an average of seven names, each Senate ballot paper included an average of fifty candidates.

This problem can be resolved by requiring voters to indicate their own preferences either for 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 candidate or 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. In the figure below, both votes are equivalent.



In this example of preferential voting above-the-line (left) and below-the-line (right), both votes are equivalent

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.

The proposed tightening of procedures for registration of political parties should go some way towards the elimination of stooge parties. However the system of ticket allocation of preferences is still open to abuse. Deals made between parties on preference tickets may not represent the wishes of voters. The wall charts or booklets produced by the AEC to explain preference tickets are too complicated for the average person to comprehend quickly. The consequence is that votes for Senate candidates become blind votes.

Recommendation

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 the order printed on the voting form, etc. Preferences given to parties above the line would not flow to candidates listed only below the line.

4. 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.

A high 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. The motivation to form stooge parties in an attempt to manipulate the result corruptly would also be removed.

The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 proposes welcome improvements to enable the election system to assure 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 vigilance to ensure the electoral system is as robust as possible.

5. References

1. Official Record of the Debates of the Australasian Federal Convention, Vol III, pp 1184-5.
2. Behind Canada, Sweden, Switzerland, the United Kingdom and the United States of America.
3. See www.aph.gov.au/Senate/committee/fapa_ctte/electoral_integrity/index.htm.

4. Electoral Referendum and Amendment (Electoral Integrity and Other Measures) Bill 2005, Sch 2, item 12.
5. Electoral Referendum and Amendment (Electoral Integrity and Other Measures) Bill 2005, Sch 1, item 129.
6. Commonwealth Electoral Act 1918 (Cth) s 170(3).
7. Commonwealth Electoral Act 1918 (Cth) s 173(1).
8. Commonwealth Electoral Act 1918, s. 93(8)(b).
9. Commonwealth Electoral Act 1918, s. 92(1).
10. See www.australianpolitics.com/voting/systems/preferential.shtml.