

## **Australian Democrats**

### **Submission to Joint Select Committee Inquiry into 2003 NSW Election**

#### **Credibility in the Electoral System**

The current Australian disillusion with the system of Parliament and the consequent perception that all politicians are ‘crooks’ is very unfortunate for the working of democracy in Australia. It is part of a recognition, by the public, that people who can get to ministers get what they want and Parliament is largely a talkfest. The public recognises that the power is not in the Parliament, that the organs of power are not as they are said to be, and the power, which the people are supposed to have through parliament, is a fraud.

The Australian Democrats believe it is not possible to have a credible electoral system unless the Parliament truly represents the will of the people and the whole diversity of the population is represented as much as possible in the Parliaments of Australia. This means that there should be proportional representation. While this makes democracy more difficult and less predictable, it would give the Parliament credibility, because legislation would actually be negotiated within the framework of the Parliament. At present it suits major corporate interests to do deals with the executive government and in practice the lower house is merely a rubber stamp for the executive due to the fact that the executive dominates the caucus or party room. The modifications of the executive’s will in the upper house are generally minor. The result of this is that the executive has had increasing power over the Parliament and the credibility of democracy in Australia has suffered in consequence.

#### **The Bias of Single Member Electorates**

The parliaments of Australia have two inherent biases in:

1. The assumed superiority of their lower house and
2. The gerrymander created by single member electorates towards big parties that give the two major parties and Labor and the Liberal/Nationals, a much greater percentage of seats than they had of the votes.

Correspondingly, the constituents who vote for minor parties or independents constitute somewhere between 20 and 38% of the votes but have few parliamentary representatives. It can be argued that the upper house vote is where the true voting intention is, because in the lower house people do not vote for a minor party as they know that it is unlikely to get members elected. Evidence for this is that there are considerable differences in voting pattern in each house, showing that the voters do have different expectations and values.

#### **Recommendation 1.**

##### **The Need for Proportional Representation**

The Democrats submit that there should be proportional representation in the voting system either by a Hare-Clark system, so that there can be multiple members responsible for a geographical area, or a ‘list’ system so that the votes of minor parties are aggregated and their representatives elected in proportion to their support.

**Australian Democrats**  
**Submission to Joint Select Committee Inquiry into 2003 NSW Election**

**Recommendation 2.**

**The Need for a Formula for Election Validity**

Consistent with Recommendation 1, there must be both:

- a. A genuine and stated objective that the composition of Parliaments should reflect the percentage of votes cast to the greatest extent possible and
- b. A test for the validity of elections such that if the proportion of seats won by the parties varies too much from the percentage votes cast, the election must be declared invalid.

It is acknowledged that this is statistically difficult calculation, particularly when there are a lot of independent candidates, or where there are complex preference flows. Notwithstanding this, it is an area that needs to be recognised as a an area for study, so that there is a level of credibility of election results, and a statutory limit on the discrepancy.

**Optional Preferential Above the Line Voting**

The introduction of upper house ‘optional preferential above the line’ voting in the 2003 election resulted in a polarisation of the vote to the major parties at the expense of the minor parties. This was because the smaller parties votes exhausted, rather than carrying on as preferences to like-minded parties.

The major parties had run a strong campaign about the unrepresentative nature of the upper house small parties and had made a huge issue of the large ‘tablecloth’ ballot paper. In that many of the small parties were clearly engineered by a few people, it would have been a better option to tighten party registration and preselection procedures for all parties. The further distortion of the electoral system in favour of the big parties was not necessary.

**Recommendation 3**

**Federal and State voting procedures should be as consistent** as possible, with preferential voting and upper house tickets reintroduced in NSW.

**The SEO**

**Resources of the SEO to Educate Voters**

The closer the system is to ‘first past the post’ the greater is the ‘single member electorate’ gerrymander effect that favours the major parties. Hence ‘optional preferential’ disadvantages smaller parties as their preferences do not carry. This has always been a problem, but is worsened by the fact that both major parties have run ‘Just Vote 1’ campaigns as if this was the correct way to vote.

Voters appear to have a widespread belief that if they do not vote for either of the two major parties, that it is a wasted vote. This belief heavily undermines the virtues of the preferential voting system. The Australian Democrats would like to

**Australian Democrats**  
**Submission to Joint Select Committee Inquiry into 2003 NSW Election**

see more materials dedicated to explaining the preferential voting system as part of the SEO's public awareness expenditure.

The effect of the major parties 'How to Vote' campaigns, as well as the tradition of the preferences being allocated by a ticket, in the Federal elections meant that the voters were not expecting to have to fill in preferences horizontally above the line. The effect of this ignorance was worsened by the major parties encouraging the voters to continue to 'Just Vote 1'. Given the large number of 'How to Vote' cards and booth workers giving messages to the public to continue to do this, the minimal SEO voter education was swamped. It also showed the farce of having political parties doing the voter education. The SEO has not had in any way comparable resources to educate voters. It is significant that the Labor government had the power to fund the SEO or arrange for the monies to go to the political parties, and chose the latter. It is arguable that they were rewarded with 2 extra seats that had been with the cross bench. While the cross bench after the 1999 election was diverse and some of the people elected had low primaries, the general principle that right wing parties preferred other right wing parties, and left wing parties preferred left wing parties was generally true; so the composition of the Upper House in terms of a left-right spectrum was probably reasonable in terms of it expressing the will of voters. In that some 'micro' parties had deceptive names there needed to be more transparency in party procedures and preselections to ensure credibility. Again, this should have been fixed by improving the requirements for party registration, rather than increasing the gerrymander for the major parties by having the preferences of minor parties exhausting.

The Political Education money in its current form is simply a rort for political parties, rather than a systematic education programme. The money for political education should go to the SEO, who should put together a systematic political education strategy that ties in with a 'civics' course in schools. The content of this would be up to transparent scrutiny and publicly discussed. If it is desired to give money to political parties to lessen the influence of electoral donors, this should be done separately from the function of political education.

**Recommendation 4**

**Political Education Should be Done by the SEO.** It should be part of a civics course in secondary education, with monies for broader education on significant changes, such as the new horizontal preferential system in the upper house in 2003.

**Electoral and Voting Fraud**

The SEO needs to have guidelines of how regularly the electoral rolls are checked, and report on these. If this is done by the AEC, the results need to be transparent and the frequency of checking needs to be clear. Voters should have to vote in one booth and any deviation from this should be an absentee vote. Voters should have to

**Australian Democrats**  
**Submission to Joint Select Committee Inquiry into 2003 NSW Election**

present some ID at their booths. There could and should be a central computer with an online database to prevent multiple voting. The actual ballots should remain paper should remain, rather than becoming electronic.

Counting of the final vote of the upper house election is a worry in that the computer counting gives inconsistent results if the computer programme is run a number of times. This casts doubt on the credibility of the result. Manual counting should be done to ensure credibility.

**Recommendation 5**  
**More Steps to Eliminate Electoral Fraud**

There should be regular checking of the rolls and the nature and frequency of these checks should be stated. Voters should be registered at one booth and have to show identification at the time of voting. Steps should be taken to prevent multiple voting.

**Governance of Political Parties**

Currently the political governance of political parties is much less than that applied to corporations and even unions. The political and administrative affairs of political parties should be far more transparent and subject to regulation. It is already subject to law, as has been seen in a number of high profile cases. Aspects such as branch stacking should come under governance, and people should not be able to rort the system, gaining preselection and thus political office by what amounts to fraud. Political parties which espouse a commitment to honest and open government should not be able to do the opposite in the privacy of their unexamined systems. If there had been a better regulation of party registration and processes of preselection, there would have been less of the tiny or bogus political parties. This would be a preferable way of dealing with the 1999 'tablecloth' ballot paper. Presumably it was not tried as the 'Optional Preferential above the line' system favours the major political parties by worsening the gerrymander inherent in preferences exhausting. Better governance would also open the major political parties to greater up to greater transparency and scrutiny.

To quote from the Federal 'Report of the Inquiry into the conduct of the 2001 Federal Election and matters related thereto', Supplementary Remarks by Senator Andrew Bartlett and Senator Andrew Murray

The Commonwealth Electoral act should be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitution of companies;

Party constitutions should be required to specify:

- The conditions and rules of membership of the party
- How office-bearers are preselected and elected
- How preselection of political candidates is to be conducted

## **Australian Democrats**

### **Submission to Joint Select Committee Inquiry into 2003 NSW Election**

- The processes that exist for resolution of disputes and conflicts of interest
- The processes that exist for changing the constitution
- The processes for administration and management

The Party would be free to determine the content under each heading, subject in some cases to certain minimum standards being met.

Political parties exercise public power, and the terms on which they do so must be open to public scrutiny. Party constitutions should be publicly available documents updated at least once every electoral cycle. (The JSCEM were once told by the AEC that a particular party constitution had not been updated in their records for 16 years!) The fact that most party constitutions are secret prevents proper public scrutiny of political parties;

The AEC should be empowered to oversee all important ballots within political parties to ensure that proper electoral practices are adhered to. At the very least the law should permit them to do so at the request of a registered political party. The law should be proactive and should also cater for the future possibility of an American Primary type system;

The AEC should be empowered to investigate any allegations of a serious breach of a party constitution, and apply an administrative penalty;

Simply put, all political parties must be obliged to meet minimum standards of accountability and internal democracy. Given the public funding, the immense power of political parties (at least of some parties), and their vital role in our government and our democracy, it is proper to insist that such standards be met.

The increased regulation of political parties is not inconsistent with protecting the essential freedom of expression and the essential freedom from unjustified state interference, influence or control.

Greater regulation would offer political parties better protection from internal malpractice and corruption, and the public better protection from its consequences, and it would reduce the opportunity for public funds being used for improper purposes.

#### **Recommendation 6**

##### **Better Governance of Political Parties**

The governance of political parties should be open to at least as close a scrutiny as corporations, and the SEO should meet the standards recommended by Senators Bartlett and Murray for the AEC in their submission to the Federal Electoral inquiry of 2001, and the NSW Electoral laws should meet the same standards as Commonwealth Electoral Laws.

##### **Voter Registration**

The State Electoral Office must be given a larger role in voter registration. The SEO should also be the agent for sending material to people entering an electorate. At present the incumbents or affluent parties give the enrolment forms to voters with a large amount of propaganda. This is huge advantage to incumbents or affluent political parties. The voter registration role should go to the SEO who should be funded for this. The current system is akin to the system before secret ballot, when beer and cheer was offered to voters as they 'came aboard' to vote for one party or another.

#### **Recommendation 7**

**New voter registration should be done by the SEO.**

**Australian Democrats**  
**Submission to Joint Select Committee Inquiry into 2003 NSW Election**

**Political Advertising**

Political advertising by the government has likewise increased at election times; indeed it rises with the proximity to election. It begs credibility to believe that this rise is unrelated to the government using incumbency to use public money to promote its virtues. The content of the government funded advertising in the pre-election year would also support the contention that governments are abusing incumbency for electoral advantage. All government funded advertising that is aimed at the general public should be watched either by:

1. A special committee of the SEO, with transparent processes, or
2. A parliamentary committee on which the government does not have a majority, so that political advertising can be seen to be necessary and not favouring any political party.

All advertising must have a clear statement of its objectives. Advertisements must be vetted so that they comply with the stated objectives of the campaign. The success of the campaign should be monitored and the results discussed.

Advertisements that merely stress what a good job the minister or government has done in giving a new benefit or article must not be made. If there is a new initiative it must be stressed that it is taxpayer funded.

**Truth in Political Advertising**

The Australian Democrats have actively campaigned to introduce Truth in Political Advertising legislation in Australia since the early 1980s. It is our belief that not only is it possible to legislate against false or misleading political advertising, but it is incumbent upon the legislature to do so if we are to help restore trust in politicians and the political system.

This belief has been vindicated in South Australia, where Truth in Political Advertising legislation has long been in place. The South Australian legislation has been tested in the Full Court of the Supreme Court of South Australia, where it was found not to impede the implied right of ‘freedom of speech’ and was therefore held to be constitutionally valid.

**Recommendation 8**

**Truth in Political Advertising Legislation must be introduced in NSW.**

**Political Donations**

The public demand for transparent and fully reported political party funding and disclosure is proper, insistent, and must be heeded. Public disquiet concerning perceived overt and covert links between donations to political parties, and their policies and actions, continues to be very high. For these reasons, and for those of the desirability of a sound and honest political system, we must be very wary of any

**Australian Democrats**  
**Submission to Joint Select Committee Inquiry into 2003 NSW Election**

changes to political disclosure provisions, which do not enhance the goal of transparent and full disclosure.

Political donations must be identified by their sources. Disclosure of political donations must be within 1 week of their being either promised or received. To do this they must be acknowledged online to the SEO, who must transfer them to a central website. Donations from corporations or unions must not occur without a plebiscite of members or shareholders.

It is also most desirable to remove any lingering doubts concerning Trusts. One of the roles they play in political donations is as a screening device, hiding the true source of donations. There are legislative precedents for requiring disclosure by such bodies. The hidden donations from trusts and foundations, sometimes with a foreign source, are of particular concern, and any loophole must be closed.

Trust or clubs that donate must be transparent as to the source of their donations, or if it is money raised by the club they must have a plebiscite of members as to both the amount and party to which the donation is to be given.

**Recommendation 9**

**All Political donations, in cash, in kind, or as promises must be reported to the SEO and made publicly available within 1 week of being received.** All donations must be transparent as to their sources, and donations from unions and corporations must have approval by plebiscite or their members or shareholders.

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