

# A Blueprint for Australian Democracy:

This Moment and the Renewal of Parliament,  
Government and Elections

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## **To Members of the House of Representatives and the Senate,**

Please find enclosed a report from people from across the country with both practical experience and academic careers dedicated to improving parliamentary process, governance and democracy. We recognise that this moment presents a unique opportunity to reconsider and reform the way our Government works in Australia.

The following proposals are based on past practice and practice internationally. While we each have a different opinion on next steps, in the spirit of collaboration, we have found a set of ideas we believe could help our nation get the Parliament and governance it deserves.

We urge you to give them your full consideration and to commit to implementing these changes to keep Australian democracy open, vibrant and strong.

### **Yours Sincerely**

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## ACKNOWLEDGEMENTS

The authors of this report would like to acknowledge that this report was drafted and written on aboriginal land and we pay our respects to their elders past and present.

This report was contributed to by all of its signatories in the generation of ideas, the drafting and final editing. We would like to particularly thank Ian Marsh for driving this project and the **newdemocracy** foundation for their support, inspiration and passion.

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putting **people** back into politics

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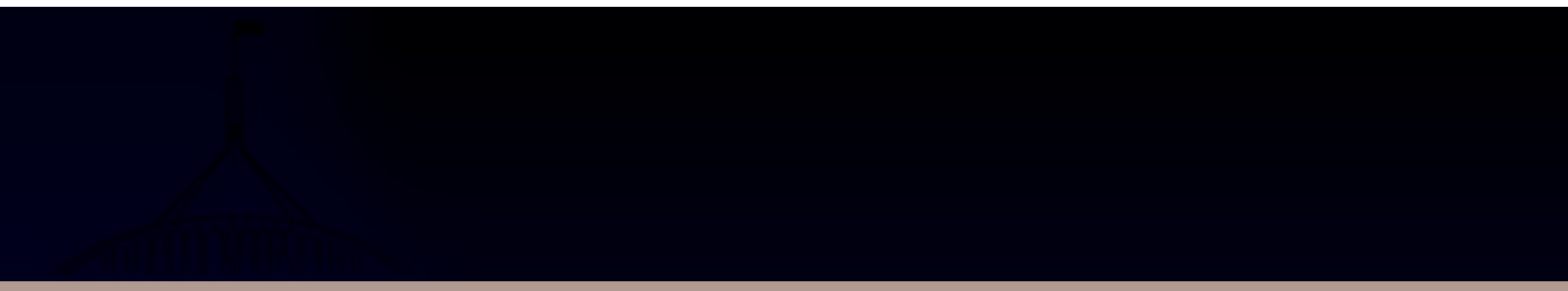
<b>Recommendation</b>	<b>Detail</b>	<b>Rationale</b>	<b>Contingencies</b>	<b>Page</b>
Set time for private members' business.	Dedicated time in the parliamentary calendar for debate of private members' bills and support for the drafting of those bills.	Without set-time for private members' bills the executive determines the agenda of the parliament, excluding non-government voices particularly.	May require a Agenda Committee to manage time and ensure it is provided. Also may require more sitting days.	p. 8
Access to public service advice for members.	Access of elected parliamentarians to the capacities of the public service should be enhanced. To save resources, this should be limited to analysis of policy proposals generated by members seeking to amend draft legislation.	Improves the capacity of all members to generate legislation.		p. 8
Minimum 80 sitting days a year.	Guaranteed number of days for parliament to sit.	More time is required to allow for private members' bills, debates on broader issues and debates on committee reports.		p. 8
Establishment of an Agenda Committee.	Equal representation from the Government, the Opposition and the cross-bench and chaired by the independent Speaker to schedule the business of the House.	Necessary to prevent Government control of house business and to resolve other procedural requirements relating to new parliamentary procedures.	Requires an independent speaker to be most effective.	p. 8
Recommendations for 'free votes'	The Agenda Committee should make recommendations about issues on which the party whips do not need to enforce the party line.	More 'free-votes' ensures that the parliament is reflective of its members' true perspectives and values and those of their constituents.	Agenda Committee to make such recommendations.	p.8
'Take note' debates	Debates on emerging issues or on reports that do not require approval or disapproval – to be scheduled by the Agenda Committee.	Allowing early and open debate on issues and recommendations exposes the public to greater information and ensures that members apply appropriate scrutiny to issues. All committee reports should be the subject of take-note debates.	Agenda committee.	p. 8
Parliamentary Budget and Economic Office	An independent body to provide modelling and budgeting advice to members.	Allows for private members to cost proposals and amendments as they do not have access to treasury modelling.		p.9
Independent Speaker	A speaker that is not a member of the Government or Opposition.	The management of business within the House requires an independent umpire to ensure that private members' issues can be raised and to also raise the standards of Question Time.		p. 9

Questions must be for information.	Questions in Question Time must ask for government information, not opinion, comment or make unfounded accusations	Focus Question Time on Government actions and on accountability.	Independent Speaker (to be most effective)	p. 9
Answers restricted to four minutes.	Answers in Question Time to be restricted to 4 minutes.	To focus answers on the questions asked and prevent extraneous political point-scoring.	Independent Speaker	p.9
One Question Time per week solely for non-Government members.		To focus question time on Government accountability and to limit the number of 'Dorothy Dixers.'		p. 9
Supplementary questions.	Allow supplementary questions by the original questioner and other members (three supplementary in total). Time limits on both answers and questions.	Accountability and debate require responses to be further queried by members.	Independent Speaker (to be most effective)	p. 9
Debate on replies to questions.	Should an answer provide important new information to the house, a short debate on that answer should be allowed under the standing orders.	Improves accountability and the relevance of questions.	Independent Speaker (to be most effective)	p. 9
Empower Committees to initiate their own enquiries.	Currently parliament as a whole directs the work of committees. This results in their work being directed in the interest of the executive.	Allows for emerging issues to be considered by parliament. Improves the substance of work undertaken by committees.		p. 10
Share Committee chairs.	Share Committee chairs equally between Government, Opposition and cross bench members.	Provides a further democratic check by allowing non-Government members to initiate enquiries.		p. 10
Remove immunity of Ministerial staff and 'executive privilege'	Remove the present claimed immunity of Ministerial staff from appearances at parliamentary committees and 'executive privilege' as a ground to decline to produce documents.	To hold the executive accountable it is imperative that their staff are required to give evidence before committees.	More relevant if committees can initiate their own enquiries.	p. 10
Focus committees on emerging issues.	Focus Committees on emerging issues (like Climate Change and the Henry Tax Review) or on pre-legislative hearings.	Provides a forum for issues to be debated and considered before legislation is drafted.	Agenda Committee could facilitate this.	p. 10
Executive to respond to reports within 30 days.	Oblige the Executive to respond to committee reports within 30 calendar days.	Provides a further avenue for accountability as well as direction to the executive.	Committees to initiate their own enquiries.	p. 10

Increase funding for committee work.	Resources for the Australian parliament should at least match the staffing and resource levels of the UK House of Commons Committees.	For committees to be able to instigate proper investigation into emerging issues or to hold the executive to account they need sufficient resources.		p.10
Exposure drafts available.	Model the ACT approach in requiring exposure drafts of all major pieces of legislation. These should be available for community and stakeholder comment.	More transparency and more advance discussion of proposed measures are critical to achieve more effective government.		p.10
'Macklin' cut off rule	The House and Senate should (re)adopt the 'Macklin cut-off rule', which forces the executive to give the Senate and the House advance notice of bills and empowers them to decline to consider any bills brought forward without early notice, for example legislation rushed at the end of a parliamentary session.	Allows for proper scrutiny of bills and for sufficient notice to the public of proposed legislative changes.	Agenda Committee could facilitate.	p.10
Only individuals can donate to parties.	Only natural persons can make donations to political parties or candidates.	When corporations and other organisations donate large sums to political parties it undermines public confidence in the integrity of those parties and candidates and can lead to perceived conflicts of interest, if not conflicts themselves.		p. 11
Donors above \$500 must declare employment.	Individual donors who give more than a certain threshold (we propose \$500) would have to disclose the name of their employer to the AEC as a part of their donation requirements.	We need to increase transparency of individual donations to make sure corporate money isn't being funnelled through individual donations instead.	Prohibition on corporate donations.	p. 11
Immediate public listing of donations.	All donations above \$500 per year should be listed publicly and immediately (although not their employer publicly) – with the information updating continually.	The public has a right to know who has donated to which campaigns before they vote for candidates.		p. 11
Donations to candidates capped at \$1000 per year.	Individual donations should be capped at \$1,000 a year.	To prevent any one person or organisation having disproportionate influence in our electoral system.		p. 11

Associate membership fees to parties' capped.	Associate members, such as trade unions, corporations or any other association should have their fees limited at \$25 000 per year and should be publicly recorded. Such funds should be kept to funding the administration of political parties only, with audits conducted by a properly funded investigative branch of the AEC.	To prevent organisations donating to parties via membership without public knowledge.		p. 11
All Political organisations to have donation caps (third party reform).	Donations to such organizations should be capped in the year of an election and be allowed to come from organizations and individuals. There are options for determining which organisations are to be covered.	Any organisation that participates in public debate should be transparent about its funding so that citizens can assess its claims with reference to its funding sources.		p. 11
Public funding based on a pool per electorate.	Each seat should have a set pool of funds for distribution to candidates that receive above 4% for the vote. This pool of funds may differ based on an independent assessment of the costs of campaigning. Each candidate should receive their proportional share. Parties should not be allowed to transfer public funding accrued through the contest of one seat to another candidate in another area.	This reaffirms the local nature of representation and prevents parties harvesting money in safe seats and re-directing it to marginal seats.		p. 12
Public funding premium connected to donations raised.	Candidate should receive a small premium connected to the amount of small donations that they generate. These cannot be claimed by parties but only by individual candidates (who may be members of parties).	This would encourage candidates to engage the public and to build local movements rather than simply rely on the public purse alone to raise money.		p. 12
Government advertising restrictions	Principles relating to the use of government funds for public advertising must be codified and legislated.	To stop incumbent advantage and the misuse of public monies.		p. 13
Electorate material subject to similar restrictions.	All material distributed by members of parliament should be subject to scrutiny by an appointed officer to ensure they meet the standards that apply to government advertising as a whole.	To stop incumbent advantage and the misuse of public monies.		p. 13

Prohibition on access to electoral allowances during campaigns.	From the day the writs are issued, members of parliament should have no access to printing allowances or any other entitlements (such as postage, travel, and telephones)	To stop incumbent advantage and the misuse of public monies.		p. 13
Apply Trade Practices Act standard to political ads.	Political parties, candidates and other organizations should not “engage in conduct that is misleading <b>or</b> deceptive <b>or</b> is <i>likely</i> to mislead <b>or</b> deceive.”	To ensure that there is truth in political advertising.		p. 13
Automatic Enrolment.	Automatically add citizens to the electoral roll through the Continuous Roll Update system.	Many young Australians believe that, since voting is compulsory, they go on to the electoral roll automatically once they turn eighteen – this would be easy to apply and is happening in NSW and Victoria.		p. 14
House Committee for ongoing review of democratic reforms.	The committee would need to be able to call on independent analytic support. It is also important that the agency charged with support enjoys the confidence not just of MPs but also of the wider community. One possibility would be for the Committee to be served by the Productivity Commission whose staff could be augmented for this purpose.	The immediate changes that the independents are able to win in the lower House are important, but the longer term vitality of the system, how public trust is revitalized and strengthened, is paramount. To make our government work better for us we need an ongoing and sustained review of our democracy		p. 14



## INTRODUCTION

Saturday's political earthquake demonstrates Australians do not like the way their political system is working. This is a critical message. Community distrust and cynicism are bad for the major parties and bad for public policy. Australia faces many big challenges – a three speed economy, a second round of the resources boom, skills shortages, infrastructure deficits, climate change, refugees, indigenous recognition, to name only a few. But the past election campaign did nothing to crystallise choices or to build an informed public opinion on any of these issues.

As has happened in Britain, Canada and New Zealand, a political system that was designed in the early twentieth century must now adapt to the very different conditions of the twenty-first century.

The formal political and policy process – covering the workings of parliament, the legislative and budget process, and the general effectiveness of parliament as an arena for communicating national choices to the wider Australian community – is the single greatest influence on the wellbeing of all Australians. Circumstances create contexts. But the political and policy process determines how clearly these choices are understood - and how informed are the community's responses.

Most do not recognise that there is an instructive precedent for the present moment. In the 1901-1909 period, three groups – Protectionists, Labor and Free Traders – vied for power. The result was perhaps the most fertile and creative period of policy development in Australia's political history. In that time, before the emergence of the two party system in 1909, the foundations of modern Australia were established.

That time, along with more recent thinking about fair electoral processes, suggests how both policy making and electoral regimes can be re-configured to engage Australians much more effectively in politics and policy making. The world that spawned the 'strong' two party system – an Australian society that broadly split along binary lines – has past. Our Australian community is now more differentiated and regionalised, with gender, sexuality, ethnicity, the environment and a host of other cross cutting issues now dividing and pluralising public attitudes and aspirations.

In this context parliamentary and electoral processes need to be progressively re-cast. There is an immediate agenda. But, as experience accumulates, broader longer term changes also need to be introduced. After all, the political and policy making system is our single most important piece of politico-economic infrastructure through it public choices are crystallised and support for action is mobilised. The following blueprint will allow its relevance and effectiveness to be renewed and our democracy strengthened.

## PART ONE: A TRUE PARLIAMENT OF THE PEOPLE

### Strengthen the role of private members.

Our parliament is the meeting place of 150 representatives of the people, not merely the tool of parties, or of governments and oppositions. The role of our representatives needs to be strengthened. At the moment parliament is dominated by Ministers and by the parties' agendas. A truly democratic parliament would give individual members more opportunities to promote legislative ideas and amendments.

To achieve this, the parliamentary standing orders should be amended to provide for:

- The parliament to sit sufficient days to allow adequate time for both the government's legislative program and consideration of private member's legislation, at least 80 days. Fast, professional assistance in the drafting of legislation should be equally available to all members from the Office of Parliamentary Counsel.
- Access of elected parliamentarians to the capacities of the public service should be enhanced. To save resources, this should be limited to analysis of policy proposals generated by members seeking to amend draft legislation. Public servants should be available to provide:
  - analysis of economic and fiscal costs of proposals;
  - warnings of unintended consequences;
  - warnings of administrative complexities.

These functions do not constitute "advice" in the Westminster sense. Rather, they are protections against poorly developed legislation. There is no reason why such a function should be incompatible with serving the government of the day – which, in dealing with independents and minority parties, will want to protect itself against poorly-devised amendments to bills.

- The establishment of an 'Agenda Committee' with a membership reflecting the political make-up of the Parliament, and with a non-government member as chair, which will determine the business program and the allocation of time in such a way that no business is artificially blocked. It should also be incumbent on members of the Agenda Committee to prevent the misuse of 'no-confidence motions' and to manage votes in the house when one member is sick or unavailable.
- The Agenda Committee to recommend free vote debates, that is where party-whips do not give a direction to their members.
- The Agenda Committee to schedule 'take note' debates where the matter concerns an emerging issue or a report (such as Garnaut or Henry) on which the government has yet to make a decision. The subsequent vote would be only of a 'take note' form and not indicate approval or disapproval.

## A Parliamentary Budget and Economic Office (PBEO)

A PBEO would also strengthen the role of private members if it is properly constituted. The former Economic Planning Advisory Council (EPAC) provides a model of an agency of appropriate size, standing and resources. Whereas EPAC reported to the Executive, the proposed PBEO would report to the economic committees of both Houses which, for this oversight purpose only, could be constituted as a joint committee. On matters outside the capacities of the PBEO, this committee could also be empowered to request Productivity Commission reviews.

Following the EPAC model, the resources and standing of this Office would need to be its equal. Treasury and other officers might serve on secondment. It should also have the capacity to recruit independent staff and commission independent work. The PBEO should cover such functions as:

- the independent economic costing of legislation not proposed by the Government (i.e. that not modelled by the Treasury)
- the independent economic costing of amendments proposed during deliberation on bills, given that these amendments are more likely to occur as the parliament spends more time debating bills, as the power of independents and minor parties increases.
- Important emerging issues like the use of funds from a second resources boom or the implications of a three track economy or major infrastructure proposals should be within its ambit.

To ensure capability and impact, funding would need to be quarantined from executive reduction.

## An effective and informative Question Time:

Question Time should play an essential role in the transparency and accountability of our elected representatives. For too long it has been about 'political theatre' and Dorothy Dixers rather than informing the public. We need a Question Time where the focus is on seeking information relevant to issues of interest or concern to members.

To achieve this the Standing Orders should be amended to require Ministers to answer the substance of the question without digression. Current Standing Orders (SO 100, HofR, SO 73) give little guidance on how an answer should be given although it gives comprehensive advice on how question should or should not be asked.

### To achieve a more effective Question Time we must:

- Amend the procedural rules of Parliament to allow for the election of an independent Speaker. Some parliaments, for example the UK, elect a Speaker who by convention acts independently. This could not be achieved in Australia where the Speakership has invariably been a partisan position. An independent Speaker must be above party politics to achieve this goal.
- Amend standing orders to restrict questions to one minute in length and require them to ask

for government information, not opinion, comment or make unfounded accusations. Answers must be required to be direct, succinct and not switch to attacks on political opponents, and be restricted to four minutes.

- Reserve one question time each sitting week solely for non-government members
- Allow up to three supplementary questions, including by members other than the original questioner. Supplementary answers should be limited to two minutes.
- Amend standing orders to facilitate debate on replies to questions.

## **Strengthen the House Committee system**

The present committee system is dominated by ministers and the executive. It is a reactive system at best – enquiries are typically instigated by ministers and invariably set out to deliver results that are congenial to them. The Australian people need effective committees and effective committees need more independence.

For this to happen, parliament must:

- Amend standing orders to empower Committees to initiate, within their designated field, their own enquiries.
- Share Committee chairs equally between government and non-government members.
- Remove the present claimed immunity of Ministerial staff from appearances at parliamentary committees
- Reconstitute the present committee structure by establishing subject committees that would cover the full range of portfolios. Emerging issues such as the Henry Tax Review and major legislative initiatives would be referred to the appropriate subject committee.
- Oblige the Executive to respond to committee reports within 30 calendar days.
- Make Committee reports the subject of Take Note debates within 21 parliamentary sitting days of receipt of the executive's response.
- Expand funding for committee work – resources for the Australian parliament should at least match the staffing and resource levels of the UK House of Commons Committees.
- Deny public interest immunity (“executive privilege”) as a ground for declining to provide documents to parliamentary committees, save for the cases approved by the Agenda Committee due to another factor such as national security.

Standing orders should model the ACT approach in requiring exposure drafts of all major pieces of legislation. These should be available for community and stakeholder comment. More transparency and more advance discussion of proposed measures are critical to achieving more effective government.

The House and Senate should (re)adopt the ‘Macklin cut-off rule’, which forces the executive to give the Senate and the House advance notice of bills and empowers them to decline to consider any bills brought forward without early notice, for example legislation rushed at the end of a parliamentary session.

## PART TWO: FAIR, OPEN AND BETTER ELECTIONS

### Political Donations

*Reforming who donates and how*

In March this year the Joint Standing Committee on Electoral Matters of the New South Wales Parliament produced a comprehensive set of recommendations for campaign finance reform. These recommendations are produced in Appendix I and should be the starting point for discussion of political funding reform. The report is also an example of how cross-bench cooperation, working within an empowered committee environment, can inspire a new direction in public policy.

Building on those recommendations we suggest that:

- **Only Australian citizens should be allowed to donate to political parties**

Donating to parties and candidates is a great form of political expression – but it should be about that-- expression, not influence. When corporations and other organisations donate large sums to political parties it makes the rest of us feel that we can't trust our elected representatives – they know which side their bread is buttered on, and it is not the people's.

- **Increase transparency requirements**

We also need to increase transparency of individual donations to make sure corporate money isn't being funnelled through individual donations instead. This means individual donors who give more than a certain threshold (we propose \$500) would have to disclose the name of their employer to the AEC as a part of their donation requirements. All donations above \$500 per year should also be listed publicly and immediately (although not their employer publicly) – with the information updating continually so that we don't have to wait until after the election to discover who funded whose campaign.

- **Cap individual donations at a reasonable limit**

Donating is a legitimate means of political engagement – GetUp couldn't function without its members donating - but there should be reasonable limits. Individual donations should be capped at \$1,000 a year to prevent anyone having undue influence over our elected representatives. This should be adjusted for CPI.

Membership fees of natural persons should not be included within this limit but any associate members, such as trade unions, corporations or any other association should be limited at \$25 000 and should be publicly recorded. Such funds should be directed toward the administration of political parties only, with audits conducted by a properly funded investigative branch of the AEC.

- **Groups like GetUp should be covered too**

Any organization that engages in direct political activity should be covered by similar laws as those of the political parties. Donations to such organizations should be capped in the year of

an election and be allowed to come from organizations and individuals. While the 'buying of influence' is not as pertinent a problem, these organizations should be required to publicly list all donors over \$500 per financial year to gain the greatest transparency possible.

Options for determining what type of organisation meets this requirement include:

- a) an expenditure test (if over \$500 is spent per annum in political advertising)
- b) a self-identification test (if some tax advantage was also conferred on small donations to encourage groups to identify under this category)
- c) those organizations currently required by the AEC to make financial disclosures.

## **Public Funding**

*When should the public pay for parties and candidates?*

### **Public funding is necessary to keep the playing field open**

Public funding for candidates for political office reduces the risk that successful candidates are encumbered by undue influence. It is important to level the playing field so that new and minor political players, without significant financial backing can get involved.

Public funding must be based on a democratic metric

Not everyone should get paid to run in our elections – it's not viable and it's not fair. But anyone who raises enough public interest and support should be provided with a financial contribution for the costs of campaigning.

Each lower house seat, and Senate seat, should have a set pool of funds for distribution to candidates that receive above 4% for the vote. This pool of funds may differ based on an independent assessment of the costs of campaigning in a particular division of the House or state for the Senate, to be determined by the AEC. Each candidate should receive their proportional share after the final declaration of the ballot.

Candidates should also receive a small premium connected to the amount of small donations that they generate. These should not be claimed by parties but only by individual candidates (who may be members of parties). Candidates should receive 'top up' public funding with reference to the number of donations they receive. This would encourage candidates to engage the public and to build local movements rather than simply rely on the public purse alone to raise money. As parties grow, such funding could be slowly removed so as to help ween political parties off their addiction to private donations.

Parties should not, however, be allowed to transfer public funding accrued through the contest of one seat to another candidate in another area. To prevent this happening intra-party transfers of funds between campaign accounts should be considered 'donations' (and the only exception to the rule that only natural persons can donate.) This would mean that the A Party could only transfer \$1000 to their candidate in the seat of Z each financial year. Provisions would also need to be made to allow some transfer of election funding to the general administrative costs of parties.

## **Public funding must be transparent and not a trapping of office**

*Government Advertising must not be used for party purposes.*

Principles relating to the use of government funds for public advertising must be codified and legislated, to stop incumbent party advantage. Such principles include that public advertising campaigns on behalf of government must:

- Be directly relevant to Government responsibilities and functions;
- Only occur after government policy has been legislated for by parliament
- Provide objective, factual and explanatory information, free from partisan promotion of government policy
- If their budget is in excess of \$250,000, be examined by an independent Campaign Advertising Reviewer for a compliance review. The appointment of the Reviewer must be supported by at least two thirds of the members of the House of Representatives.
- The advertising budget of the Government must be capped for each year and not be allowed to fluctuate beyond a particular range from year to year, to prevent pre-election spending sprees.

## **Electorate Allowances should not be used to the advantage of incumbents**

All material distributed by members of parliament should be subject to scrutiny by an appointed officer of the Parliament such as the Auditor General or an Integrity Commissioner to ensure they meet the standards that apply to government advertising as a whole (listed above).

From the day the writs are issued, members of parliament should have no access to printing allowances or any other entitlements (such as postage, travel, and telephones) that provide them with an organizational advantage over another candidate for office.

## **Campaigns and campaign ads should be about the truth**

Currently Commonwealth electoral law provides that it is an offence to do ‘any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote.’ This provision is not specific enough and has thus not been a significant enough protection of truth in our political debates. The South Australian legislation, which is the strongest current model, still provides for the material needing to be ‘inaccurate and misleading’.

Instead the rule used in the Trade Practices Act, that applies to corporations in their advertising and conduct, should equally be used in politics. That is political parties, candidates and other organizations should not “engage in conduct that is misleading or deceptive or is likely to mislead or deceive.” The AEC should be supported to perform a similar function in monitoring such advertisements as it does in controlling all other unauthorised election material.

## **PART THREE – LOOKING TO THE LONG-TERM**

*The above proposals represent steps connected to parliamentary reform and campaign finance reform – but we need broader change if we want to bring Australian democracy into the 21st Century.*

### **Fixing our franchise so everyone can vote**

Currently, the AEC relies on newly eligible voters initiating action to join the electoral roll. Many young Australians believe that, since voting is compulsory, they go on to the electoral roll automatically once they turn eighteen – this is not the case - but it should be.

The AEC partially automates maintenance of the Electoral Roll by practicing a “Continuous Roll Update” (CRU) system. This integrates information from various Commonwealth, State and Territory databases. It then carries out “habitation checks” at addresses for which it believes it may have incorrect voter information. This practice makes the AEC more efficient at removing voters from the roll than adding voters to it. The current system is clearly the wrong way around. We need to make sure our democracy is focused on making sure everyone can have their say.

Automatic or direct enrolment is an idea whose time has come. It is already being implemented in New South Wales and Victoria. It has been extensively canvassed in the Electoral Reform Green Paper, and it is simple, easy to do, and will be incredibly effective at giving more Australians their birthright – that of a vote for our representatives.

### **The Effectiveness and Productivity of Parliament is Everybody’s Business**

To make our government work better for us we need an ongoing and sustained review of our democracy. A joint house Committee with a mandate to review the effectiveness of the democratic system and strengthen Australia’s Federal parliamentary institutions (including COAG arrangements) is imperative.

This Committee could be constituted from equal numbers of Government, Opposition and independent/minor party members drawn from both Houses, chaired by an Independent MHR or minor party member or Senator. It could be empowered to co-opt independent specialist members on an ad hoc basis.

The committee would need to be able to call on independent analytic support. It is also important that the agency charged with support enjoys the confidence not just of MPs but also of the wider community. One possibility would be for the Committee to be served by the Productivity Commission whose staff could be augmented for this purpose. The Commission would also draw on the views of the public and on the expertise on parliamentary processes that is available in the wider community. Another possibility would be to establish a staff constituted as a Democratic Commission to serve the committee. Whichever approach is adopted, adequate funds and resources should be available for its critical work.

This step is essential to learn from the experience of the immediate suite for reforms proposed for the business of the House of Representatives and to ensure informed debate about the broader workings of the wider political and policy making system whose effectiveness is critical for the wellbeing of all Australians.

The same committee should also review the AEC's conduct of the 2010 elections, complementary to the AEC's (presumed) review.

The resolution establishing the Committee should:  
*provide terms of reference requiring it to:*

- review the conduct of the 2010 elections and recommend reforms to the enrolment by all eligible citizens, participation in the electoral system including rates of voting by enrolled voters and informal voting and any other relevant matter, particularly measures related to Senate voting;
- investigate and recommend reforms to enhance the responsiveness of the democratic system to the wishes of the citizens and strengthen the democratic institutions and processes of the Commonwealth of Australia including but not limited to
- further reforms to the funding of and expenditure on campaigning by candidates, political parties and third parties
- reforms to the regulation of lobbying activity
- codes of conduct and/or codes of ethics for parliamentarians and members of the executive (e.g. ministers and parliamentary secretaries) and recommendations to the media
- the effectiveness of wider policy making and legislative processes from the perspective of reconciling public engagement and discussion with acceptable and actionable outcomes.
- the role of the Senate. Perhaps the most significant potential change to the whole governmental process would be to cease appointing ministers from the Senate and turn this Chamber into a wholly committee House.
- consider whether a transition to multi-member electorates would be more democratic and if so how that transition could occur.

and require

- the committee to provide for public participation to the maximum practical extent in each element of its inquiries;
- it to conduct public hearings in the capital city of every State and Territory and non-metropolitan locations in every State and the Northern Territory
- it to submit its final report not later than 21 August 2012; and
- that the final report include draft legislation (bills) for any recommended legislative reform
- that concurrent debate in the House of Representatives on that Report and bill take precedence over all other business on the first sitting day 30 calendar days after it is submitted.

A properly focussed parliamentary committee, with the support of the Productivity Commission, will be able to lay out a blue-print for a reform of our democracy to make a parliament of the

people, campaigns that are open and fair and a nation governed by bright ideas.

## **CONCLUSION: TAKING AUSTRALIA'S DEMOCRACY INTO THE TWENTY-FIRST CENTURY**

The ideas in this paper are designed to be implemented on a timeline of 1-3 years. But we need a process to lock in reforms for the long term and to keep working on further reforms. A new approach to the development of public policy, particularly to the way it intersects with the public debate, needs to be instituted. A new approach that is congruent with the formation of an informed public is an imperative. Public opinion develops serially, like a snowball, and political processes need to reflect this fact. Present legislative and policy making processes are residues from the strong two party era, which is coming to a close. They are unchanged in essentials since 1909.

The immediate changes that the independents are able to win in the lower House are important, but the longer term vitality of the system, how public trust is revitalized and strengthened, is paramount. Agenda setting, legislative, policy making and budgetary processes, need to be subject to continuing review and scrutiny. This will involve such matters as the role of committees, their resources, the legislature vis-à-vis the executive, inter-House relations and the role of the Senate.

The need for further and continuing review reflects the fundamental importance of the parliamentary political and policy making process. Since this is how Australians learn about national challenges and policy choices, this is single the most critical piece of national infrastructure - it is the most critical component of our whole politico-economic system. This report brings together the key ideas to lay out a blueprint for how we can bring this critical piece of national infrastructure into the 21<sup>st</sup> Century.

## APPENDIX I. NSW PARLIAMENT REPORT ON PUBLIC FUNDING OF ELECTION CAMPAIGNS - RECOMMENDATIONS<sup>1</sup>

RECOMMENDATION 1: While a national approach to electoral and political finance reform is preferred, the Committee recommends that the Premier introduce legislation to reform the electoral and political finance regime in New South Wales independent of action by the federal government, prior to the State elections 2011

RECOMMENDATION 2: The Committee recommends that the Joint Standing Committee on Electoral Matters consider the operation of the reforms as part of its review of the State Elections 2011.

RECOMMENDATION 3: The Committee recommends that the Premier include the principles outlined by the Electoral Commissioner in the object clause of legislation to reform the electoral and political finance regime.

RECOMMENDATION 4: The Committee recommends that the Premier incorporate in legislation to reform the electoral and political finance regime a cap on all donations from individuals, set at \$2,000 per political party, group or independent candidate per financial year, and all caps to be adjusted according to the CPI.

This cap should be subject to review by the Election Funding Authority after each New South Wales state election.

RECOMMENDATION 5: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime that political donations from individuals be limited to those individuals on the New South Wales electoral roll and/or the Australian electoral roll.

RECOMMENDATION 6: The Committee recommends that the Premier incorporate in legislation to reform the electoral and political finance regime a cap on all donations from entities, set at \$2,000 per political party, group or independent candidate per financial year, and all caps to be adjusted according to the CPI.

This cap should be subject to review by the Election Funding Authority after each New South Wales state election, subject to guidelines published by the Premier.

RECOMMENDATION 7: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime a requirement that those entities that are entitled to donate to a political party registered in New South Wales be limited to:

- (a) a company with an Australian Business Number;
  - (b) a registered trade union; and
  - (c) an incorporated association which carries out the majority of its activities in New South Wales.
- The Committee further recommends that the Premier require that an individual representative be nominated for each donation by an entity.

RECOMMENDATION 8: Given that the reforms to political donations recommended by the Committee address concerns about donations from developers, the Committee recommends that the Premier include in legislation to reform the electoral and political finance regime, the repeal of those provisions relating to a ban on developer donations.

RECOMMENDATION 9: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime a requirement for registered political parties and

<sup>1</sup> Adapted from: New South Wales. Parliament. Joint Standing Committee on Electoral Matters. Public funding of election campaigns [report] / Joint Standing Committee on Electoral Matters, Parliament NSW. [Sydney, NSW] : The Committee, 2010. 396 p. ; 30cm. (Report ; no.2/54). Available from [http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/82f12c9fc8e2dbdcca2576f200213db6/\\$FILE/report%202-54.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/82f12c9fc8e2dbdcca2576f200213db6/$FILE/report%202-54.pdf)

groups to:

- (a) maintain separate funds for state campaigns, federal campaigns and administrative funds; and
- (b) submit annual audited accounts of the separate funds to the Election Funding Authority.

RECOMMENDATION 10: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime:

- (a) an exemption for party membership fees and party compulsory levies on parliamentarians, from the cap on political donations, and
- (b) a cap on party membership fees, set at \$2,000 per member, per financial year.

RECOMMENDATION 11: The Committee recommends that in preparing legislation to reform the electoral and political finance regime, the Premier ensure that where registered political parties receive affiliation fees, those fees only be used for administrative purposes (as with party membership fees) and not be used to calculate a reduction of that party's Administration Fund allocation.

RECOMMENDATION 12: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime that intra-party transfers of funds to political parties, candidates and groups in New South Wales are classified as political donations, except where deposited in the Federal Campaign Account.

RECOMMENDATION 13: The Committee recommends that in preparing legislation to reform the electoral and political finance regime that the Premier give further consideration to the regulation of funds generated by 'held assets'.

Registered parties and their associated entities are prohibited from using any income from held funds or assets for electoral expenditure.

RECOMMENDATION 14: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime provisions to:

- (a) allow candidates to contribute to their own campaigns consistent with any expenditure cap that is adopted
- (b) require candidates to certify that they have not directly or indirectly received a gift which has enabled them to self-fund, or outline the nature and source of any gift that has enabled them to self-fund.

RECOMMENDATION 15: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime an exemption for bequests to political parties and candidates from the cap on donations.

RECOMMENDATION 16: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime provisions to:

- (a) retain the requirement that loans over \$1,000 from sources other than a financial institution or credit card transaction be recorded with the Election Funding Authority
- (b) include any uncharged interest on such loans as a donation, subject to the caps of \$2,000 per political party, group or independent candidate per financial year.

RECOMMENDATION 17: The Committee recommends that the Premier ensure that the existing reportable disclosure threshold amount of \$1,000 per donor, per financial year be retained in legislation to reform the electoral and political finance regime. .

RECOMMENDATION 18: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime provisions to:

- (a) set the reporting period for disclosure of donations at 12 months, the same as the disclosure period.

(b) align disclosure audits for donations to state campaigns with the Australian Electoral Commission's system for disclosures.

RECOMMENDATION 19: The Committee recommends that as part of comprehensive reform of the political finance system, the Premier introduce caps on expenditure for political parties, candidates and groups contesting state elections, to:

- (a) create separate expenditure caps for general campaign expenditure, Legislative Assembly campaign expenditure and Legislative Council campaign expenditure.
- (b) establish a cap for general campaign expenditure based on the number of seats contested.
- (c) set identical caps for endorsed and unendorsed candidates to the Legislative Assembly.
- (d) set consistent caps across all 93 seats for the Legislative Assembly.
- (e) link the cap for Legislative Council expenditure to any cap on third party expenditure.
- (f) resolve potential loopholes before caps are put in place.
- (g) link expenditure caps to inflation.
- (h) consider whether any proposed expenditure caps discriminate against independent candidates or new entrants

RECOMMENDATION 20: The Committee recommends that in developing legislation to reform the electoral and political finance regime, the Premier consider capping expenditure by political parties, candidates and groups from the beginning of the financial year in which the election is held.

FINDING 1: That in developing legislation for appropriate expenditure caps, the Premier consider factors including:

- (a) The impact of the definition on other aspects of the political finance scheme, such as: eligibility for reimbursement of campaign expenditure through public funding which third party activities are captured under any cap on expenditure and the review systems for government advertising
- (b) That the extent to which administrative and operational activities are included in the definition may affect the amount of public funding apportioned between campaign expenses and administrative and operational funds.
- (c) The need to capture all relevant campaigning activities such as telecommunication costs, to prevent circumvention of expenditure caps.
- (d) Definitions of 'electoral expenditure' and including in other jurisdictions.

RECOMMENDATION 21: The Committee recommends that the Premier, in introducing legislation to reform the electoral and political finance regime, ensure that if expenditure caps are placed on political parties and candidates, then advertising and communication by third parties is also regulated.

RECOMMENDATION 22: The Committee recommends that the Premier consult with a wide range of third party groups before introducing legislation to impose limits on third party advertising and communication.

FINDING 2: That in introducing any legislation regulating third parties, the Premier should give consideration to:

- (a) requiring all third parties to register with the Election Funding Authority
- (b) requiring third parties to be subject to the same auditing and disclosure requirements as political parties
- (c) adopting an expenditure cap that is significantly lower than that for political parties.
- (d) adopting both a state-wide expenditure cap and a maximum amount that can be spent in

each district

(e) synchronising the timing of third party expenditure caps with the timing of expenditure caps for political parties

(f) preventing third parties from accepting donations from political parties and candidates

RECOMMENDATION 23: The Committee recommends that the Presiding Officers of the NSW Parliament ensure that claims by Members for reimbursement in relation to the Electoral Mailout Account, which are made during the regulated period prior to an election, are subject to independent scrutiny and an approval process undertaken and managed by the Parliamentary administration.

RECOMMENDATION 24: The Committee recommends that the Premier present legislation making provision for the pre-review of government advertising by an appropriate independent body to:

(a) ensure there is no 'partisan' or 'party political' content, for the regulated election period.

(b) the composition of the independent body should be a matter for consultation during the draft exposure phase of the legislation for the new scheme.

(c) include a workable definition of 'partisan' and 'party political' content to be used to regulate government advertising in the election period. The Committee notes that the definition should be consistent with the relevant principles contained in the current Department of Premier and Cabinet guidelines and bear in mind the existing definitions of 'electoral matter' and 'electoral material' within the Parliamentary Electorates and Elections Act.

(d) require government departments and agencies, in the regulated period, to submit advertisements to the independent body for assessment against the definition and guidelines, prior to the commencement of the 'peer review' approval process that will continue to govern all types of government advertising.

(e) provide for a seven day turnaround time for completion of the pre-approval assessment and for automatic approval of government advertisements in cases where the process is not finalised within the seven days.

(f) require that government advertisements during the regulated election period be identified as having been the subject of the pre-approval process.

RECOMMENDATION 25: The Committee recommends that:

(a) the independent body not be involved in the 'peer review' approval process that follows the pre-approval assessment in the regulated election period;

(b) certain categories of government advertising, for example, job notices, notifications, public health and natural disaster announcements, are not to be subject to the pre-approval assessment process undertaken by the independent body.

RECOMMENDATION 26: The Committee further recommends that the Premier consider the options for action to be taken by the independent body where government advertising is in breach of the definition of 'partisan' and 'party political' content contained in the Act and is not in keeping with the relevant guidelines. Possible options for amendments may include:

(a) the independent body reporting immediately to Parliament on the particular instance, including details of the advertisement and its cost;

(b) providing that it is a breach of the Act and an offence for a government department or agency to proceed with an advertisement where the independent body has determined that the advertisement is 'partisan' and 'party political' and that such a contravention of the Act should be subject to a penalty.

RECOMMENDATION 27: The Committee recommends that:

(a) the Auditor General conduct more regular reviews of government advertising outside of the regulated election period.

(b) the Premier report to Parliament in response to any recommendations arising from the Auditor General's reviews of government advertising.

RECOMMENDATION 28: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime an increase in the amount of public funding available to political parties, groups and candidates, in order to partly compensate for loss of income from donations.

RECOMMENDATION 29: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime a retention of the current eligibility threshold to receive public funding of 4% of primary votes, or a member elected.

FINDING 3: In legislating to reform public funding, the Premier should give consideration to:

(a) The strong arguments against a system premised on full public funding of election campaigns.

(b) The need to consider public funding in relation to any expenditure caps.

(c) The bicameral structure of the New South Wales Parliament, including that some parties contest both houses of Parliament, while others contest only one house.

(d) The current method of calculating public funding by reference to an amount per elector, apportioned according to first preference votes.

(e) Ensuring a fair and level playing field.

(f) Whether increased capacity for advanced payments is required.

RECOMMENDATION 30: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime provisions that any public funding model be based on reimbursement of electoral expenditure, rather than entitlement.

RECOMMENDATION 31: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime that the party or official agent be the recipient of public funding.

RECOMMENDATION 32: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime, provision be made for public funding of the operational and administrative costs of political parties with elected members and that the level of funding be determined according to a tiered model on the basis of Parliamentary representation.

RECOMMENDATION 33: The Committee recommends that the Premier consider including in legislation to reform the electoral and political finance regime provision for a 'policy development fund' to help those parties ineligible for operational and administrative funding.

RECOMMENDATION 34: The Committee recommends that, as a matter of priority, the Premier give consideration to bringing forward legislation as follows, in consultation with the Electoral Commissioner, to:

(a) amend those provisions in the Election Funding and Disclosures Act 1981 identified by the Election Funding Authority to be in need of clarification as a result of the amendments arising in the Election Funding Amendment (Political Donations and Expenditure) Act 2008, particularly in respect of definitional matters and the period for which obligations arising under the Act apply and expire. (The amendments are contained within Appendix 4 to the report); and

(b) amend s.96I of the Election Funding and Disclosures Act 1981 to remove the requirement to establish 'actual knowledge' of an offence at the time it is committed, in order to facilitate prosecution of offences captured by this general offence provision.

The Committee further recommends that any amendment to s.96I should make express provision for the availability of a defence of 'reasonable mistake', or any other relevant defence, for

offences covered by this section.

RECOMMENDATION 35: The Committee recommends that the Premier clarify with the Electoral Commissioner the necessity for amendments to the Election Funding and Disclosures Act 1981 in order to:

- (a) ensure audit certificates are provided in accordance with the requirements of the Act; and
- (b) provide for possible exemptions from the requirements, where considered necessary by the EFA, including where the cost to a small party, individual candidate or third party may be unreasonable.

RECOMMENDATION 36: The Committee recommends that:

- (a) the Premier consult with the Electoral Commissioner on the adequacy of the existing audit and inspection powers conferred on the Election Funding Authority to enable it to perform its functions under the Election Funding and Disclosures Act 1981; and
- (b) the Electoral Commissioner inform the Committee of the outcome of consultations with the Department of Premier and Cabinet to remedy any particular problems in relation to the extent and exercise of the EFA's powers under the Act as stands.

RECOMMENDATION 37: The Committee recommends that:

- (a) the Premier consider including in legislation to reform the electoral and political finance a tiered penalty scheme for certain breaches of the requirements of the proposed new scheme, along the lines suggested by the Electoral Commissioner; and
- (b) as part of the consultation process around the legislation for the new scheme, the Premier consult stakeholders on the specific amounts that should apply to the tiered monetary penalties

RECOMMENDATION 38: The Committee recommends that the Premier consider including in legislation to reform the electoral and political finance regime provisions so that a registered political party that fails to comply with the requirements of the proposed new scheme, be ineligible for public funding. The Committee notes that there will be an avenue through the courts to prosecute offences for non-compliance.

RECOMMENDATION 39: The Committee recommends that the Premier include in legislation to reform the electoral and political finance regime a requirement that parties, groups and individual candidates receiving public funding under the new scheme to furnish the Election Funding Authority with properly audited accounts of their financial dealings for review.

RECOMMENDATION 40: The Committee recommends that, where there are reasonable grounds for the Election Funding Authority to believe breaches and offences have occurred under a new scheme, the Election Funding Authority be empowered to:

- (a) compel the production of books, records and other information from any person or organisation;
- (b) question any person in relation to possible breaches under the Act;
- (c) engage the services of any person for the purpose of getting expert assistance, for the purpose of performing its functions

RECOMMENDATION 41: The Committee recommends that the Premier ensure the Election Funding Authority receives additional funds and resources to support the enhanced compliance and investigative role the Committee has recommended for the Authority.

RECOMMENDATION 42: The Committee recommends that the Premier consider amending the Parliamentary Electorates and Elections Act 1912 to include non-compliance with the legislative requirements under the new scheme, where this has affected the election result, as a specific ground for disputing that result through the Court of Disputed Returns.

RECOMMENDATION 43: The Committee recommends that:

(a) the Election Funding Authority undertake educational initiatives targeting parties, candidates, third parties and the voting public about their responsibilities and obligations under the legislation; and

(b) the Authority be adequately resourced to do so

RECOMMENDATION 44: The Committee recommends that the issues of compliance with the scheme, proposed offences and penalties, and the enforcement system be included by the Premier as areas requiring specific attention in the consultations with relevant stakeholders on any draft legislation arising from the recommendations contained in this report, in particular:

(a) the extent of the investigatory powers to be conferred on the Election Funding Authority;

(b) the guidelines and criteria to apply in the exercise of the new investigatory powers, particularly in relation to areas of discretion.

RECOMMENDATION 45: The Committee recommends that in the drafting of any legislation brought forward to give effect to a new scheme for the regulation of electoral expenditure and political party funding, consistent with the recommendations contained in this report, the Premier consult closely with the Electoral Commissioner and the Election Funding Authority in formulating proposed amendments.

FINDING 4: The Committee finds that, while the enforcement system recommended as part of the new scheme for public funding of election campaigns is an important feature of the integrated package of reforms that comprise the scheme, particularly in terms of its deterrent value, the ultimate success of the scheme will turn on the extent to which the reforms achieve cultural change.

The Committee's goal in proposing the amendments contained in these recommendations is to improve the level of compliance under the existing legislation and the capacity to prosecute offences under the legislation as it stands, as well as making provision for an appropriate system of enforcement on the introduction of a new public funding scheme for election campaigns. The Committee further finds that the extent to which implementation of a new enforcement system assists in achieving these goals is also dependent upon policy and other educational initiatives targeting parties, candidates, and the voting public about their responsibilities and obligations under the legislation.

RECOMMENDATION 46: The Committee recommends that the EFA report publicly on the use of its proposed powers by including statistical information and cases in its annual reports.

RECOMMENDATION 47: The Committee recommends that the referral from the Premier to the Committee of the inquiry into the State election 2011 encompass as a specific area for examination the operation of the enforcement system and the use of the EFA's investigatory powers, as implemented in the new public funding scheme.

RECOMMENDATION 48: The Committee recommends that the Premier implement the Committee's public funding model through new legislation and the Election Funding and Disclosures Act 1981 be repealed.

RECOMMENDATION 49: The Committee recommends that the public funding legislation be drafted to reflect the principles and objects recommended by the Committee, with an exposure draft of the bill being released for public consultation and comment.

RECOMMENDATION 50: That the Premier include in legislation to reform the electoral and political finance regime an amendment to the composition of the Election Funding Authority to include a retired Supreme Court judge as Chairperson, the Electoral Commissioner and another independent office holder.

RECOMMENDATION 51: The Committee recommends that public funding for local government

elections be considered as a separate Committee inquiry process.

That the issue of public funding for local government be re-visited after the new public funding system has been introduced and tested at the state level.

## **APPENDIX II - 11 August 1992, Victorian House of Assembly, GUIDELINES ON THE CONDUCT OF QUESTION TIME**

It is important that question time is conducted in a manner which both ensures that it fulfils its intended purpose and is consistent with the status and proper dignity of Parliament.

The following are the guidelines based on Standing Orders, Speakers' rulings and May<sup>2</sup> which apply to the conduct of question time:

- a member or a Minister must not read a question or an answer. Such questions and answers may be ruled out of order by the Chair;
- questions and answers must relate to government administration or policy and should be directed to the Minister most directly responsible or answering on behalf of such Minister in another place;
- questions to the Premier may relate to matters within the Premier's portfolio responsibilities and to general matters of government policy and administration, but questions concerning detail affecting another portfolio should be directed to the responsible Minister;
- questions should not seek an expression of opinion, seek a legal opinion or ask whether statements reported in the media are accurate or correct;
- questions should not seek a solution to a hypothetical proposition, be trivial, vague or meaningless;
- questions should not contain epithets or rhetorical, controversial, ironical, unbecoming or offensive expressions, or expressions of opinion, argument, inferences or imputations;
- questions should not raise matters which are sub judice or anticipate debate on an Order of the Day;
- where a question relates to an allegation, assertion, claim, imputation or similar matter, the member is responsible for the accuracy of the facts. Where the facts are of sufficient moment the member may be required to provide prima facie proof to the Speaker before the question is admitted;
- questions cannot reflect on the character or conduct of members of either House and certain other persons in official or public positions which are defined in May. Attention is also drawn to the provisions of the Australian House of Representatives Standing Orders which restrict questions critical of the character or conduct of other persons to questions on notice;
- where a question seeks information which is too lengthy to be dealt with in an answer to a question or otherwise invites a Ministerial statement, the Chair may disallow it and suggest that the Minister to whom it is directed consider making a Ministerial statement on the matter following question time. It should be noted that such action is not constrained by the practice of issuing copies of Ministerial statements, which is a courtesy only, or by the relatively recent practice of Ministerial statements being followed by debate on the question that the Ministerial statement be noted ;

- questions which breach the guidelines are out of order and there is no right to immediately rephrase or re-ask questions which have been disallowed;
- answers must comply with the same rules and practices as apply to the asking of questions;
- answers must be directly responsive, relevant, succinct, limited to the subject matter of the question, may provide statements of policy or the intentions of the government, including information on examinations of policy options and other actions which the Minister has had undertaken but must not debate the matter. (Answers to questions should be limited to 2 minutes usually and an absolute maximum of 5 minutes actual speaking time);
- an answer may be refused on the grounds of public policy, for example, that answering may jeopardise criminal investigations or for some other particular reason may be against the public interest
- that the information is not available to the Minister, in which case it may be requested that it be placed on notice
- that the Minister intends to make a Ministerial statement on the subject matter in the near future.

The conduct and effectiveness of question time is in the hands of members. It will assist if:

- personal conversation is limited as it is discourteous and adds to the background sound which creates difficulty in clearly hearing questions and answers;
- a member or a Minister speaking pauses whenever audible conversation, interjection or other disorderly behaviour occurs;
- a member or a Minister who is unable to control his/her disorderly conduct leaves the Chamber for the remainder of question time rather than risk being named. The Chair may exercise its absolute discretion concerning the call by not giving the call to a member or a Minister whose conduct has been disorderly, including interjections.

A member or Minister who has been consistently warned as a result of disorderly conduct in question time may be named without further warning as a result of further disorderly conduct during any part of proceedings on that day or a future day during the current sittings period.

<sup>2</sup>C. J. Boulton (Ed.), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* . London: Butterworths.

**Appendix III – From: I Marsh and D Yencken, Into the Future: The Neglect of the Long Term in Australian Politics (Melbourne: Black Inc. 2004) and ultimately based on Chapter 10, ‘Governments and Parliament’, in I. Marsh, *Beyond the Two Party System: Political Representation, Economic Competitiveness and Australian Politics*, Cambridge University Press, Melbourne, 1995 **The Period 1901 to 1909 as an Example of the Possibilities for Developing Parliament’s Role****

The first decade after Federation could be considered the most creative in Australian political development. It has many lessons for us today and on that account warrants this brief digression.<sup>3</sup>

In the period from 1901 to 1909, the longer-term political strategy that guided Australia’s subsequent socio-economic development was determined. The policy frameworks then established, which have since been described as ‘the Australian settlement’, lasted broadly until 1983. They introduced that distinctive pattern of fairness, which has hitherto characterised social relations in Australia. Frank Castles, a distinguished analyst of welfare states, has described this as Australia’s ‘wage earner welfare state’.<sup>4</sup> This reflected the ideology of social liberalism that was potent in the late nineteenth century and continues as an important element in Australia’s political tradition. The ‘wage earner welfare state’ was also consistent with Australia’s international trading environment, a condition that lasted from the early years of the twentieth century until roughly the 1960s. It was based on manufacturing jobs for male breadwinners with wages determined not only by what markets would pay, but also by what was judged necessary for a family to live a decent life. From the late 1960s, international economic developments and changing domestic social norms made this strategy increasingly dysfunctional but it served Australia well for many years.

The policy decisions that composed ‘the Australian settlement’ emerged from a divided political environment. Between 1901 and 1909, three parties, Protectionists, Free Traders and Labor, competed for public support. No party won an outright parliamentary majority. Election results a variety of not immediately compatible aspirations, attitudes and purposes. Without a majority party in parliament, governments were created and unmade according to their ability to gather majority support for themselves and their measures in parliament. They were also required to obtain majorities in two chambers. This brought into focus the political mechanisms available for building backbench and inter-house support both for governments and for individual measures.

Governments were created either by explicit formal agreement between the parties or by tacit informal support with individual negotiations on particular measures. This left a band of unresolved issues. These, what might be termed ‘strategic’ issues, involved matters that entered the political agenda championed by one or more parties. But other parties needed to be convinced of their desirability. To manage these issues structures were needed to allow their investigation and resolution independently of the life of governments, the routines of a single

<sup>4</sup>F. Castles, *The Working Class and Welfare: Reflections on the Political Development of the Welfare State in Australia and New Zealand*, Allen & Unwin, Sydney, 1985.

House and the electoral cycle.

The resolution of these contested, strategic issues required an independent exercise in political inquiry and political persuasion. By such means, the political ground could be prepared. 'Support in return for concessions' was one means by which majorities were created, and the redefinition of an issue in more encompassing terms was another. In addition, interests beyond parliament had to be persuaded of the link between their concerns and those of other seemingly disparate interests. 'New Protection' was a classic example of such a manoeuvre. Manufacturers and trade unions initially seemed to be totally opposed. But Alfred Deakin, the primary author of the Australian settlement, linked protection for manufactures to the establishment of the arbitration system. Norms of justice and fairness were to be sought in a new context. Thus he created a win for both groups and ultimately for the whole Australian community. By such means, contingent majority coalitions were created to support particular measures.

In this more fluid political context, independent investigation of strategic issues was required. This offers perhaps the most vivid contrast between the pattern of policy making in the two-party period, and that in the more plural political world that preceded it. In the two-party period, the primary task of strategic political inquiry has been intellectual 'expert' investigation of a complex new issue to recommend what should be done. Examples are the Campbell Report on financial deregulation, or the previously mentioned McClure Report on the welfare system and the Hogan Report on nursing home financing. The government, which established these inquiries, assumed its prior electoral victory gave it sufficient authority to implement the findings, should it agree with them. The failure even to discuss in public the recommendations of the last of the cited inquiries points to problems raised in these pages.

The situation was different in the more pluralist world of 1901 to 1909. The diversity of the Australian community was then mirrored in the existence of three parties. Contested strategic issues were introduced to parliament before the parties had announced their firm policy stances. This allowed a process of intellectual analysis, political and public exchange and learning. It also involved the mobilisation of sufficient political authority to permit their resolution. Indeed, these two tasks overlapped. The outcome might involve dropping the issue or the identification of a positive solution. Parliamentary inquiries represented the key step in this process.

Over this nine-year period, seventeen select committees and royal commissions were established. MPs dominated most of these inquiries. Fourteen of the seventeen inquiries began as parliamentary select committees and were later converted to royal commissions. This was because the life of a select committee was limited to the parliamentary session in which it was established.

Of the fourteen parliamentary inquiries, eleven offer the remarkable spectacle of MPs engaged on major strategic investigations that went to the heart of policy making and administration. So far as strategic policy making is concerned, we see inquiries occurring at key stages from the point that an issue emerged on the political agenda to the determination of legislation. Seven of the eleven inquiries concerned issues at the frontier of the political agenda: the tariff, the desirability of nationalisation of the tobacco cartel, the need for Australian control of shipping services, federal old age pensions, access to press cable services, Papua, and the future of 'New Protection' following the High Court rejection of the arrangement proposed in

1907.

By far the most significant inquiry in scale, duration and impact was that into the tariff. This was first suggested by the radical Protectionist, Isaacs, in October 1904 and was established by the Free Trade prime minister George Reid in December 1904. The group of eight MPs consisted of three Free Traders, three Protectionists and two Labor members, with two representatives each from New South Wales and Victoria and one from each other state. The inquiry commenced in 1905 and concluded in the middle of 1907. At the outset, it surveyed virtually all significant Australian manufacturers and importers to identify tariff anomalies, local capacity, cost obstacles, special factors and so forth. This covered 2801 establishments. Evidence was gathered over the two years 1905 and 1906. The inquiry held sittings in all capital cities and major provincial centres. In total 211 sittings were held and 618 witnesses examined. Over 3000 pages of oral evidence were printed. The oral and written evidence offers a unique and comprehensive account of Australian industrial capacity and of the barriers and vicissitudes to which it was subject on account of the scale of domestic markets and the vigour of international competition. The commission produced forty-six individual reports on the various tariff heads. The significance of this inquiry lies not so much in the findings, perhaps predictable given the rival ideologies, but in the immense research, outreach and mobilisation effort that the inquiry represented.

Contested legislation was the second major area of strategic policy making to which parliamentary inquiries made a particular contribution. The Bonus for Manufactures bill was a Protectionist initiative resisted by a strong faction of their erstwhile Labor supporters on the grounds that local iron production would prohibitively boost upstream costs. By contrast, the Navigation bill sponsored by the Reid–McLean government stumbled on Labor insistence on Australian crews and special conditions for coastal trade. These were both extensive inquiries that produced divided reports. Neither issue was finally resolved before 1909. Parliamentary inquiries as a vehicle for investigating contested legislation represented a role for parliament and MPs that has only recently been revived (e.g. GST inquiries).

Finally, two inquiries involved oversight of major government activities: review of electoral administration in 1904 and the Post Office in 1908–1909. The Post Office review was almost on the scale of the tariff inquiry. It involved a comprehensive assessment of this key federal agency. A minority (Labor) report opposed the restriction of female occupations to typing, telegraphy and monitoring!

To discount these inquiries because their recommendations were not wholly bipartisan or not accepted by the government is to misperceive the role and contribution of parliamentary inquiries in a pluralised political environment. In a multi-party context, parliamentarians became the ultimate arbiters of issues. Their judgements were critical to the resolution of these issues. Parliamentary inquiries brought interested and expert opinion, including departmental opinion, before MPs and a wider public. The inquiries acted as a ‘forcing device’ engaging stakeholders in a process of advocacy and (reciprocal) social learning. At the outset, different groups might have perceived themselves to be winners or losers or just interested parties. Through a process of public inquiry, all participants gained understanding about other perspectives and concerns and the opportunity thus opened up to develop more encompassing approaches.

The fact that parliament was the setting for this process, that parliamentary opinion influenced the outcome and that votes on the floor of parliament counted, was vital for its impact on interest groups, departments and ministers. Further, parliamentary inquiries on strategic issues, matters that were more or less outside the immediate partisan contest, required MPs to seek common ground and, where this proved elusive, at least to isolate points of difference. The whole process occurred in the public domain with evidence sessions published and available for scrutiny and review. Particularly on strategic issues, such inquiries provided opportunities for departmental officers to be cross-examined in public and departmental opinion to be disclosed.

The structure of policy making in the period 1901 to 1909 was aligned to the society of the time. We don't need to return to a three-party system to put into practice the lessons that can be learnt from this period of Australian political history. The range and significance of the strategic inquiries conducted over that period points to the value of a 'strong' parliamentary committee system. The chapters that follow show how the parliament could once again become the forum for the nation's long-term strategic debates. Contemporary requirements for a renewal of a 'strong' committee system are considered in the final chapter.

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