

## **Submission**

on the

## **2013 Federal Election**

to the

## **Joint Standing Committee on Electoral Matters**

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## 1. Introduction

On 5 December 2013 the Special Minister of State, Senator the Hon Michael Ronaldson, asked the Joint Standing Committee on Electoral Matters to inquire into and report on all aspects of the conduct of the 2013 Federal Election and matters related thereto.

The Committee has invited interested submissions to be received by Friday, 7 March 2014.

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

## 2. Democratic principles and the conduct of elections

The conduct of elections is an integral element of a democratic system of government. The way in which elections are conducted is of critical importance to the integrity of the electoral process and the strength of parliamentary democracy as a whole. Electoral law and procedure should facilitate the kind of representative democracy cherished by the Australian people.

### 2.1 Individual freedom

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

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

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

### 2.2 Freedom of association

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

In a political context this involves:

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

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

### **2.3 Civil society**

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

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

The links between civil society and democracy were explored by Alexis de Tocqueville and developed by 20th century theorists like Gabriel Almond and Sidney Verba, who identified civil society as having a vital role in a democratic order.<sup>5</sup> They argued that many civil society organisations facilitate better awareness and a more informed citizenry, who make better voting choices, participate in politics, and hold government more accountable as a result. Such organisations also accustom participants to the processes of democratic decision making.

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

### **2.4 Representative democracy**

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

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

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

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

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

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

## 2.5 Limitation of abuse

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

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

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

## 3. Membership of political parties

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

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

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

Crikey reported in July 2013 the following figures for political party membership:

- Australian Labor Party – 44,000
- Liberal Party (including the Liberal National Party in Queensland) – 40-50,000
- National Party (excluding the Liberal National Party in Queensland) – “tens of thousands”
- Greens – 9,500
- One Nation – more than 5,000
- Australian Sex Party – 5,583
- Katter's Australia Party – 1,500
- Palmer United Party – “several thousands”
- Australian Democrats – “just over 1,000”
- Pirate Party – 750 members.<sup>9</sup>

Taken together and allowing for parties not mentioned the likely total membership of political parties is less than 150,000 or approximately 1 per cent of the nearly 15 million strong electorate.<sup>10</sup>

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

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

***Recommendation 1:***

***The Committee should support the continuation of tax deductibility for political party membership dues.***

## **4. Political contributions and gifts**

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

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

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

However, in February 2010 the Parliament passed the *Tax Laws Amendment (Political Contributions and Gifts) Bill 2008*. As introduced by the Rudd government the Bill would have entirely removed tax deductibility for donations to political parties. It was amended in the Senate to retain tax deductibility for individuals while removing it for businesses.

This discrimination seems unjustified. Why shouldn't those engaged in business enterprises be encouraged, like other citizens, to participate in the political process through tax deductibility for reasonably modest donations of \$1500? This measure particularly impacts on small business owners whose income is derived entirely from their business.

Public funding of political parties is sometimes proposed as a desirable approach. However, this would provide a conduit for funding that bypasses civil society and thereby weakens the representative nature of Australian democracy. Public funding increases the likelihood of celebrity candidates, who are disconnected from civil society, being elected.

***Recommendation 2:***

***All contributions and gifts to political parties and to independent candidates and independent members for amounts up to \$1,500 in each income year should be tax deductible. Tax deductibility for such donations by businesses should be restored.***

## **5. Disclosure of contributions and gifts**

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

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



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

The disclosure threshold applying for the 2013-14 financial year is \$12,400.<sup>11</sup>

Factors supporting the higher threshold for disclosure include:

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

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

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

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

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

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

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

*In supporting an increase in thresholds, the Committee is convinced that, since under the present rules 88% of the value of disclosed donations to the major parties is greater than \$10,000, even if the disclosure threshold were increased to that amount, disclosed donations would continue to be a very high proportion of all donations. Nevertheless, higher thresholds would encourage more individuals to make donations to all candidates and parties.*<sup>12</sup>

This approach has been challenged by Young and Tham<sup>13</sup> who point out that this percentage refers only to receipts classified as “donations”, whereas if the total receipts were used instead then only an average of 64.1% of total receipts would have been disclosed from 1998/99-2004/05 with a threshold of \$10,000. The earlier threshold of \$1500 would have resulted in an average disclosure of 74.7% of all receipts.

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

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

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

***Recommendation 3:***

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

## **6. Representation and voting systems**

### **6.1 Current system**

The House of Representatives, like all lower houses in Australia except for Tasmania’s, is composed of members elected from single-member electorates. This system favours large political parties and generally results in a party or coalition having a clear majority in the lower house, thereby enabling the formation of a strong, stable government. This is a desirable outcome.

However, in the absence of a strong upper house, however, an unfettered government may become effectively an elected dictatorship.

A government having no effective checks on its power can become crudely “majoritarian” and ignore the views even of substantial minorities in the community. In contrast to majoritarianism, a healthy democracy, according to John Stuart Mill, includes a “willingness to compromise; a willingness to concede something to opponents, and to shape good measures so as to be as little offensive as possible to persons of opposite views”.<sup>14</sup>

For an upper house to provide an effective check on such majoritarian rule it is desirable that it is not usually controlled by any major party or coalition. Rather, the composition of the upper house should reflect a broader range of community opinion than the lower house. This is best achieved with multi-member electorates and proportional representation as the voting system.

Another positive contribution that upper houses can make to good government is stability. When the government formed in the lower house changes, a new and inexperienced government may make hasty decisions and introduce ill-conceived legislation. An upper house elected by rotation, with only half of the members facing re-election each time, provides greater continuity of experience and stability.

Governments formed in the lower house are rightly accountable to the people at elections every three years. However this can lead to short-term thinking and planning which may not be in the best interests of the nation. A longer term for upper house members has the advantage of encouraging a longer-term perspective when government legislation is reviewed. Even members of a major party are encouraged to think more independently when they don’t have to face an election so frequently.

The Australian Senate reflects these strengths of multi-member electorates, proportional representation and a rotation system of re-election.



***Recommendation 4:***

***The current electoral system for the House of Representatives and the Senate should, subject to the detailed recommendations below, be maintained.***

## **6.2 Compulsory voting**

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

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

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

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

***Recommendation 5:***

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

## **6.3 Preferential voting**

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

The main advantages of the preferential system are:

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

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

A major disadvantage of simple majority voting is that candidates can be included for the purpose of weakening an opponent’s support. Consider John who becomes a candidate for a House of Representatives electorate and campaigns for the building of a shopping centre in his electorate.

Suppose that Bill decides to oppose this development by becoming a candidate for the same electorate. John might enlist three other people as candidates for the same electorate who would agree with Bill. With simple majority voting, the total vote against John is split among four candidates and John may win easily. Under a preferential system, the vote is ultimately split between the two candidates who have the most preferred support and winner in a House of Representatives electorate always has more than half of the final preferred vote.

Optional preferential voting is used in some States and has been proposed by some advocates for the House of Representatives. Optional preferential voting effectively disenfranchises those voters who may not fully understand the consequences of not expressing an order of preference for all the parties or groups contesting the election. In particular, votes for minor parties or independents that fail to indicate a preference for either of the major party candidates would frequently be exhausted before the final determination of a ballot.

The current system of preferential voting for the House of Representatives ensures that the person elected is the preferred candidate of more than 50% of those who cast valid votes.

Under an optional preferential system a candidate who did not even attract a preference vote from more than 50% of those who cast valid votes could still win the election.

Full preferential voting is the appropriate way to determine which candidate should represent a single member electorate.

***Recommendation 6:***

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

## **7. Senate voting above the line**

The Committee has a submission from FamilyVoice Australia on the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013*.

In that submission the following recommendations are made with detailed reasons given for each recommendation.

***Recommendation 7.1***

***The current system of registered preference tickets for the Senate is undemocratic as it results in preferences being allocated by political parties and groups and treated as if these were the preferences of voters. Insofar as the Bill abolishes registered preference tickets it should be supported.***

***Recommendation 7.2***

***To the extent that the Bill would provide voters with an option for preferential voting for parties and groups above the line, it should be supported.***

***Recommendation 7.3***

***The Bill should be amended to replace its proposal for optional preferential voting above the line with compulsory preferential voting above the line. Compulsory preferential voting below the line should be retained as in the current Act.***

## **8. The campaign**

### **8.1 Truth in advertising**

Proposals for truth in advertising laws to apply to electoral campaigning have a superficial appeal. However, such laws would be likely to trespass on the implied right to freedom of political speech. The existing robust methods of democracy give ample opportunity for defeated political parties to expose inaccuracies or dishonest promises made by a successful political party in an election campaign. The next election is always just three years away!

#### ***Recommendation 7:***

***Truth in advertising laws for election campaigns are unworkable and undesirable and should not be pursued.***

### **8.2 Recommending candidates or parties**

Section 351 of the *Commonwealth Electoral Act 1918* makes it an offence for an organisation to recommend, even by implication, that electors vote for a particular candidate without having the express permission in writing of that candidate.

This provision, if fully enforced, would significantly hamper the democratic process during election campaigns.

Why shouldn't an organisation, such as an environmental group, be able to recommend a vote for whichever candidate they think would best advance their policy concerns regardless of whether the candidate authorises them to do so?

Many community groups from across the political spectrum engage in making these kinds of recommendations to their supporters.

Examples given to justify this section usually involve the making of a false claim that a candidate's views are in line with those of the organisation recommending a vote for the candidate.

However, the provision does not only penalise false or misleading claims. It also prohibits truthful communications from organisations about the voting record or stated views of candidates. There is no justification for this draconian measure.

#### ***Recommendation 8:***

***Section 351 of the Commonwealth Electoral Act 1918, which wrongfully prohibits civic organisations from recommending a vote for a particular candidate or party, should be repealed.***

### **8.3 Media blackout**

The current provisions regarding a media blackout in the final period of an election campaign draw the appropriate balance between the freedom of political communication and the danger that a new matter detrimental to the success of a party or candidate could be raised in the mass media in the period immediately before or as an election is actually taking place with limited opportunity for the affected party or candidate to respond.

***Recommendation 9:***

***The current provisions for a media blackout in the final stage of an election campaign should be maintained.***

## **8.4 How-to-vote cards**

The familiar scene of several volunteers offering how-to-vote cards, each recommending a vote for a particular candidate or party, to electors as they approach the polling booth is a vibrant part of a robust democracy in action.

For many of these volunteers this is the only overt political activity they may engage in. The ability of parties and candidates to recruit volunteers for this purpose is a sign of a healthy democracy with a pleasing level of civic engagement.

Those who have engaged in this activity almost universally remark on the mutual respect exhibited towards volunteers handing out the how-to-vote cards of rival candidates and parties.

How-to-vote cards play a significant role in assisting voters complete their ballot papers in such a way as to ensure a formal vote by the numbering of all squares as well as by advising voters on the recommendations for preferences by the candidate or party who attracts their first preference vote.

Any proposal to curtail this process by banning the handing out of how-to-vote cards at polling booths is ill-conceived and unworthy of support.

It could be useful to have how-to-vote cards available on the Australian Electoral Commission website prior to the election but there is no need to make submission of a how-to-vote card compulsory.

***Recommendation 10:***

***The current provisions for handing out how-to-vote cards at polling booths should be maintained and no steps should be taken to curtail this democratic activity.***

## **9. Integrity of the Electoral Roll**

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

### **9.1 Automatic enrolment**

In its report on the 2010 Federal Election the Committee made a series of recommendations that the Australian Electoral Commission be authorised to add electors to the roll and amend their enrolment details using data from other agencies including the Australian Taxation Office.

These recommendations were not supported by the then Opposition members on the Committee.

The proposals for automatic enrolment and automatic amendment of enrolment details are objectionable because:

- The proposals would require the kind of data sharing between government agencies, including the Australian Taxation Office that tends towards the creation of a single government database of information on individual Australians that has been strongly

opposed by the majority of Australians, as it ought, by a free citizenry. Particular government agencies should only hold the data required to perform the particular service they are charged with. Data sharing should only be authorised by law where essential to the performance of a service;

- The proposals are patronising. They treat some Australians as incapable of exercising their privilege and duty to enrol to vote and to keep their enrolment details current; and
- The proposals could result in the automatic enrolment of persons ineligible to vote or the inappropriate changing of enrolment details without the participation or even knowledge of an enrolled elector.

***Recommendation 11:***

***Proposals for automatic enrolment or change of enrolment details by the Australian Electoral Commission being given access to data held by other agencies are objectionable and should not be supported.***

## **9.2 Proof of identity**

The changes made in 2006 to ensure better proof of identity seem to be working well and should be retained.

***Recommendation 12:***

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

## **9.3 Close of the electoral roll**

The seven day grace period between the issuing of the writs and the closure of the rolls which was abolished by the 2006 changes to the *Commonwealth Electoral Act 1918* was effectively reinstated by the order of the High Court issued on 6 August 2010 finding this provision to be unconstitutional.

It is unfortunate that the narrow majority in the this 4-3 decision of the High Court in *Rowe v Electoral Commission*<sup>16</sup> rejected the approach of the minority that considered that the question of timing of the closure of the rolls was essentially a political one and allowed that prophylactic measures to prevent possible fraud, as well as the stated goal of the reforms of encouraging those eligible to ensure they were enrolled correctly to vote at all times as required by law.

It is indeed odd that the behaviour of eligible voters who fail to comply with the law was held to make another aspect of that law invalid because it appeared to disadvantage them, when the remedy was in their own hands all along.

In any case, the *Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011* restored the seven day grace period by statute.

For those who remain concerned at the difficulty of ensuring the integrity of the rolls with a closure now as few as 26 days before polling day it would be worth considering amending section 157 of the *Commonwealth Electoral Act 1918* to require a minimum of 40 days between the issue of the writ and polling day, thus allowing a minimum of 33 days between the closure of the rolls and polling day.

***Recommendation 13:***

***Given the decision of the High Court in Rowe v Electoral Commissioner which appears to have constitutionally entrenched the seven day grace period between the issue of the writ and the closure of the rolls that was supported by statute law from 1984-2006, the Commonwealth Electoral Act 1918 should be amended to extend the minimum period between the issue of the writ and polling day by seven days from 33 days to 40 days.***

## **10. Integrity of the Voting Process**

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

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

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

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

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

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

### **10.1 Voter identity**

The integrity of the voting system requires that a person vote only once, and as themselves. It is reasonable to require some personal identification, such as a driver's licence, rates notice, or electricity or gas account. Banks routinely require some personal identification when making over-the-counter withdrawals and it should be possible for a similar system to be applied by election officials.

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



***Recommendation 14:***

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

## **10.2 Voting locations**

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

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

***Recommendation 15:***

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

## **11. Electronically assisted voting**

Electronically assisted voting for those with particular disabilities that prevent them from exercising a secret and independent vote by writing on a ballot paper should be introduced on a trial basis using the best available technology. The right to vote, and to do so secretly, should not be limited by a person's physical disabilities.

Electronic voting has been used in Victoria for the State elections in 2006 and 2010. The system used is a modification of the voting system, "Pnyx", and was "provided by Sctyl (Spain) in partnership with Hewlett Packard (Australia)".<sup>17</sup>

In Victoria the system is used only at early voting centres. It was audited by BMM Compliance and found to be fit for use at the 2010 election.<sup>18</sup> The Electoral Matters Committee stated that it was:

*satisfied with the security of the system as it was used at the 2010 Victorian state election, and the VEC [Victorian Electoral Commissions]'s management of the electronic voting option. The Committee would like to see the VEC continue to investigate ways to strengthen voter verification processes.*<sup>19</sup>

Voter verification refers to the system producing a printout of the vote as recorded. This is held by some experts to help ensure the integrity of an electronic voting system.<sup>20</sup>

New South Wales used an electronic voting system, *iVote*, at the 2011 State election.

There has been some dispute about the flaws in this system, which unlike that used so far in Victoria allowed voting over the Internet as well as at voting centres. One bug, which only came to light after the election, resulted in 43 votes recording N instead of a number in the preference boxes making the votes invalid. This has subsequently been fixed. It was in part due to slow Internet connections.<sup>21</sup>

New South Wales is also enhancing their system to provide voter preference verification.<sup>22</sup>

Amendments to the *Commonwealth Electoral Act 1918* should allow for the flexible implementation of electronically assisted voting for the visually impaired and for other identified groups to be specified by regulation.

A measured and cautious approach is indicated which represents genuine development in ensuring technology is used to facilitate participation in democratic processes by all eligible Australian voters while ensuring system integrity.

The specific system or systems chosen and the procedures for their use need to be carefully audited both before implementation and after each election. Amendments to the Act should specifically require such audits.

***Recommendation 16:***

***The Commonwealth Electoral Act 1918 should be amended to facilitate the use of electronic voting for the visually impaired and for other identified groups to be specified by regulation***

***Any system used for electronically assisted voting and the associated procedures should be required by the Act to be thoroughly audited before implementation and after each election.***

## **12. Postal voting**

Schedule 2 of the *Commonwealth Electoral Act 1918* sets out the conditions on which an elector may apply for a postal vote.

In the 2103 federal election about 8.25% of votes were lodged as postal votes.<sup>23</sup>

Some jurisdictions have expanded or are moving to expand the categories of electors who are eligible for a postal vote, for example including all those aged over 70.

This trend to broaden the grounds on which a postal vote can be requested is not healthy.

Postal votes can be lodged well before polling day and therefore before the conclusion of the election campaign. Election campaigns are an important feature of a robust democracy in which those seeking election present their case to the voters. Broadening eligibility for postal votes could result in a significant proportion of the electorate voting before the campaigning is finished and without the full benefit of all the information and arguments being put by candidates for election. Some critical fact or policy announcement may come to light only in the last few days of the campaign when it will be too late for early postal voters to be affected by it.

***Recommendation 17:***

***Proposals to expand the categories of electors who are eligible for a postal vote, such as all those over a certain age, should not be supported.***

## **13. Conclusion**

Australia enjoys the stability of one of the world's oldest constitutional democracies, and has one of the best electoral systems in the world. However, Australians cannot afford to become complacent

about our electoral system, since some aspects are open to abuse and corruption. We should not wait until some of the weaknesses of the current system are corruptly exploited: rather we should further improve the system so that the integrity of the result can be assured.

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

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

## 14. Endnotes

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1. Lumb, RD: *Australian Constitutionalism*, Butterworths, 1983, Ch 1.
2. Genesis 1:27.
3. Lumb, *op cit*, p 5.
4. *What is civil society?* Centre for Civil Society, London School of Economics, 1 January 2004.
5. Almond, G & Verba, S; *The Civic Culture: Political Attitudes And Democracy In Five Nations*, Sage, 1989.
6. See the 1952 book *The Origins of Totalitarian Democracy* by Israeli historian J. L. Talmon.
7. "Letter to Mandell Creighton, 5 April 1887", in *The Life and Letters of Mandell Creighton*, 1904, p 372 available at <http://ia300215.us.archive.org/0/items/a566044401creiuoft/a566044401creiuoft.pdf> ; also "Letter to Mandell Creighton", 5 April 1887, in *Essays on Freedom and Power*, Gertrude Himmelfarb (ed.) (World Publishing, 1948), pp. 335-336.
8. Jaensch, D., Brent P. and Bowden B., *Australian political parties in the spotlight*, Australian National University, 2004, p 54.
9. Cathy Alexander, "The party's over: which clubs have the most members?", *Crikey*, 18 July 2013: <http://www.crikey.com.au/2013/07/18/the-partys-over-which-clubs-have-the-most-members>
10. 14,722,754 people were enrolled for the 2013 election according to the Australian Electoral Commission, *Election 2013: Virtual Tally Room: House of Representatives: First Preferences by Party*: <http://results.aec.gov.au/17496/Website/HouseStateFirstPrefsByParty-17496-NAT.htm>
11. [http://www.aec.gov.au/Parties\\_and\\_Representatives/public\\_funding/threshold.htm](http://www.aec.gov.au/Parties_and_Representatives/public_funding/threshold.htm)

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12. Joint Standing Committee on Electoral Matters (JSCEM), 2005, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*:  
<http://www.aph.gov.au/house/committee/em/elect04/report/chapter13.pdf> para. 13.71.
  13. Young, S. and Tham, J. C., *Political finance in Australia: A skewed and secret system*, Australian National University, 2006, p 20:  
[http://democratic.audit.anu.edu.au/papers/focussed\\_audits/20061121\\_youngthamfin.pdf](http://democratic.audit.anu.edu.au/papers/focussed_audits/20061121_youngthamfin.pdf)
  14. Mill, John Stuart *Considerations on Representative Government* cited in Uhr, John “Bicameralism and democratic deliberations”, chapter 2, *Restraining Elective Dictatorship*, *loc cit*, p 22.
  15. John Bruton, ‘A Report for the Joint Oireachtas Committee on European Affairs’ *The Irish Times*, 31 January 2002.
  16. *Rowe v Electoral Commissioner* [2010] HCA 46 (15 December 2010):  
<http://www.austlii.edu.au/au/cases/cth/HCA/2010/46.html>
  17. Electoral Matters Committee, *Inquiry into the conduct of the 2010 Victorian state election and matters related thereto: Report to Parliament*, May 2012, p 106:  
[http://www.parliament.vic.gov.au/images/stories/committees/emc/2010\\_Election/20120523\\_emc\\_finrep-electoralconduct.pdf](http://www.parliament.vic.gov.au/images/stories/committees/emc/2010_Election/20120523_emc_finrep-electoralconduct.pdf)
  18. *Ibid.*, p 108.
  19. *Ibid.*, p 110.
  20. Michael Clarkson et al., *Software Review and Security Analysis of Scytl Remote Voting Software*, 2008, p 41: <http://faculty.cs.gwu.edu/~clarkson/papers/scytl-odbp.pdf>
  21. Joint Standing Committee on Electoral Matters, Administration of the 2011 NSW election and related matters, 2012 , p 46-47:  
[http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/129dfc87035dd10eca257ad10013144d/\\$FILE/Report%202-55%20\(Administration%20of%20the%202011%20NSW%20Election\).pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/129dfc87035dd10eca257ad10013144d/$FILE/Report%202-55%20(Administration%20of%20the%202011%20NSW%20Election).pdf)
  22. *Ibid.*, p 52.
  23. Australian Electoral Commission, *Election 2013: Virtual Tally Room: House of Representatives: First preferences by vote type*:  
<http://results.aec.gov.au/17496/Website/HouseStateFirstPrefsByPartyByVoteType-17496-NAT.htm>