

# Democratic Audit of Australia

Mr Daryl Melham MP  
Chair, Joint Standing Committee on Electoral Matters  
Parliament House  
Canberra ACT  
13 February 2011

Dear Mr Melham,

Please find below the **Democratic Audit of Australia's** submission to JSCEM's current inquiry into The Conduct of the 2007 Federal Election and Matters Related Thereto.

The Audit's submission concentrates of four important issues that were relevant to the 2010 election and beyond. They are:

1. The implementation status of the *Electoral Reform Green Papers* issued by the Australian Government in December 2008 and September 2009.
2. The disturbingly high number of electors who are 'missing' from the Electoral Roll
3. The inadequacy of the current laws and practices relating to the funding and disclosure regime of political campaign finances.
4. The undesirability of the growing divergence between the commonwealth's and some states' laws and procedures governing roll construction and the regulation of campaign finance.

Swinburne University of Technology, the host of the Democratic Audit, is in no way associated with the opinions contained in this report.

The Audit wishes the Committee well in its deliberations.

Yours sincerely,

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## Democratic Audit of Australia: Submission to JSCEM 13 February 2011

### 1. *The Electoral Reform Green Papers 2008 and 2009*

#### 1.1

The Audit holds the Australian electoral system in high esteem. This country (along with New Zealand) is the world's longest continuous representative democracy. It has been a celebrated electoral innovator and many of its settled procedures are the envy of those in democracies elsewhere. However, while democracy 'can grow of itself, it also needs nurturing, and it can be eroded' (Hughes & Costar, 2006, 7). The last, major renovation of the commonwealth electoral procedures occurred in 1983 and was largely the product of a highly bipartisan report by the forerunner of this committee—the then Joint Standing Committee on Electoral Reform (JSCER).

#### 1.2

However, that renovation is now over a quarter of a century in the past and since then there have been many innovations in democratic theory, temper and practice. It was timely, then, that the Australian Government issued an *Electoral Reform Green Paper: Donations, Funding and Expenditure* in December 2008 and another *Strengthening Australia's Democracy* in 2009. Both were detailed, deeply-researched and thoughtful documents and the Audit welcomed their publication. Unfortunately progress on their implementation has been slow and episodic. We note, for example, the passage of some sections of the *Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010*, but believe a more thoroughgoing renovation of the *Commonwealth Electoral Act 1918* (CEA) is now required to further enhance Australia's reputation as a leader in representative democracy. We would encourage the committee to recommend that the renovation of the electoral system canvassed in the two *Green Papers* be accorded a high priority in the current parliament.

## 2. 'Missing Electors'

### 2.1

In his 2009/10 *Annual Report* Electoral Commissioner, Ed Killesteyn, noted that 'By June 2010, an estimated 1.59 million eligible Australians were not on the electoral roll' (Killesteyn 2010, 2). In a country which has operated 'compulsory' enrolment for a century, this is a remarkable and alarming statistic.<sup>1</sup> It means, of course, that these otherwise eligible citizens are disenfranchised. Of equal concern is that this figure has risen steadily from 919 627 in 2001, to 1 203 888 in 2004, to 1 139 961 in 2007 and to 1 232 935 in 2009 (*Green Paper* 2009, 92, Figure 7.1). In February 2011 the figure has probably gone through the 1.6 million barrier and will continue to grow in the absence of legislative amendments to the enrolment and update provisions of Part VIII of the CEA.

### 2.2

The problem has long been identified and appropriate solutions are at hand. The problem, of course, lies in the current legislative restrictions placed on the capacity of the AEC to utilize data from trusted agencies to enroll or reinstate eligible electors in the same way that it can employ the same data to delete persons from the roll who have moved address. Put bluntly, it is a technical problem that admits a technical solution. The Audit has made many submissions on this subject in the past and, rather than repeat the detail of those submissions, attaches a paper commissioned by the Audit from Dr Peter Brent in 2008 and entitled *Time to introduce automatic enrolment in Australia*.

### 2.3

Since the publication of Dr Brent's paper the states of New South Wales (2009) and Victoria (2010) have both legislated for 'automatic enrolment' in their

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<sup>1</sup> The centenary of the passage of the *Commonwealth Electoral Act 1911* (No. 17 of 1911), which introduced compulsory enrolment, will occur on 6 October 2011.

respective jurisdictions, thereby providing case studies and guidance for the commonwealth.

## **2.4**

In advocating for such procedures, the Audit is unimpressed by 'libertarian' arguments that 'it is an encroachment on basic rights' (Keane 2010). Australia has operated a system of compulsory enrolment since 1911 and automatic enrolment merely adopts technological innovations that could not have been envisaged in the early 20<sup>th</sup> century to effectively operationalise that system in the changed environment of the 21<sup>st</sup> century. Those concerned about restrictions on the autonomy of the individual would need to direct their criticisms at the *principle* of compulsory enrolment rather than its mechanics. It is worth noting that while its corollary compulsory voting has at times been the centre of contention, no serious player has ever questioned the undoubted benefits of compulsory enrolment.

## **3. Campaign Funding and Disclosure.**

### **3.1**

Like the problem of 'missing' electors, donations, funding and disclosure of monies related to election campaigns is a major issue in Australian politics—as evidenced by the fact that the Australian Government in December 2008 devoted an entire *Green Paper* to it. However, as is well known, the problem is complex and many proffered 'solutions' are likely to be counter-productive. This complexity should not be used as an excuse for inaction, because Australia is anything but 'world's best practice' in this matter. As its submission to the current JSCEM Inquiry, the Audit submits its response to the *Green Paper* of 2008.

## **4. Uniformity of Laws**

### **4.1**

One advantage of a genuine federal system of government is that it permits policy diversity and innovation. Sometimes, however, uniformity of laws is to be preferred and the Audit submits that this is the case in relation to the electoral roll and the funding and disclosure regime. We have already noted that NSW and Victoria have departed from the commonwealth in introducing forms of automatic enrolment. Also, pursuant to the *Election Funding and Disclosures Amendment Act (NSW) 2010*, new limits on donations and campaign spending came into force in that state on 1 January which diverge from current commonwealth laws.

#### 4.2

Furthermore, the premier of Queensland has indicated that her state also intends to legislate on both issues in the near future. In relation to political donations she said:

The Commonwealth has committed to convening a working party to report by October 2011. While national uniformity is desirable, the Queensland Government is not prepared to wait (Bligh 2010, 5).

While the Audit supports the reform of both the enrolment process and the campaign donation laws, it believes that this would best be served by a high degree of commonality across all jurisdictions and that the commonwealth has a leadership role to play here.

#### References

- Bligh, A. *Reforming Queensland's electoral system*, Brisbane, Queensland Government, December 2010. [www.premiers.qld.gov.au](http://www.premiers.qld.gov.au)
- Brent, P. 'Time to introduce automatic enrolment in Australia', *Democratic Audit of Australia*, Discussion Paper 3/08, (February 2008).
- Electoral Reform Green Paper: Donations, Funding and Expenditure*, Canberra, Australian Government, December 2008.

*Electoral Reform Green Paper: Strengthening Australia's Democracy*, Australian Government, September 2009.

Colin A Hughes & Brian Costar. *Limiting Democracy: The Erosion of Electoral Rights in Australia*, Sydney, UNSW Press, 2006.

Keane, B. 'Greater compulsion isn't the answer to voter disengagement', *Crikey*, 30 September 2010. [www.crikey.com.au](http://www.crikey.com.au)

Killesteyn, E. *Australian Electoral Commission: Annual Report 2009-2010*, Canberra, 2010.