

Dissenting Report

Senator Andrew Murray

Introduction

1.1 The Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 proposes significant changes to the Australian electoral system. These have far-reaching implications, particularly for voters, and need to be considered carefully.

1.2 Whilst I agree with some of the statements and views expressed by the majority, I will use my dissenting report as an opportunity to identify and discuss those that I do not support, or wish to qualify my support for.

1.3 I make no apology for repeating some of the arguments and observations I have made on previous occasions, including those made recently to the Joint Standing Committee on Electoral Matters' (JSCEM) inquiry into the 2004 federal election.¹ I reiterate these here because the issues, particularly political donations and disclosure, political governance and enrolment, remain problems. Despite several previous inquiries by the JSCEM, the majority has failed to recommend appropriate reforms in these areas. The issues that I raise are fundamental and of great concern to the Australian Democrats, and to voters at large.

Closure of the electoral roll²

1.4 Section 155 of the Electoral Act provides for the rolls to close seven days after the election writ is issued. The bill will result in new enrolments and re-enrolments closing on the day the writ is issued, apart from some minor exceptions. Currently enrolled voters will have to update their details by the third working day after the issue of the writ.

1.5 The Democrats would only support the proposal to close the rolls earlier than at present if federal elections were based on fixed terms. Fixed terms enable voters to know the election date in advance, and thereby the cut-off date for finalisation of their enrolment details. In the absence of fixed terms, I maintain that the rolls should remain open as at present, for seven days after the issue of the election writ.³

1 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005.

2 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 385.

3 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 385.

1.6 Another reason to oppose the change is that it introduces a different regime to the States and Territories. Differing rules for the closure of the rolls is bound to cause confusion.⁴

1.7 It was argued in 2005 by the then Minister of State, Senator the Hon. Eric Abetz, that the close of rolls period is the most vulnerable time for electoral fraud, due to the perceived inability of the AEC to check the legitimacy of new enrolments and changes to enrolments.⁵ I fear that the proposal to bring forward the close of roll period to 8.00pm on the day the writ is issued (I note the bill provides some exceptions) would result in registered voters being removed from the roll before they are able to add or amend their details.

1.8 Based on long experience as a JSCEM member taking evidence on allegations of or the possibility of electoral fraud, I argue that the main problem with the accuracy of the electoral roll is one of perception, rather than reality. The Liberal Party and the Festival of Light implied in their submissions that some inherent fraud, although minimal, exists in our electoral system.⁶ The Liberal Party argued that the flood of new enrolments in the current seven day period, at a time, it is said, when they cannot be properly checked, 'are to the detriment of the integrity of the roll'.⁷

1.9 Based on detailed evidence to a number of JSCEM inquiries, I do not accept this argument is credible, nor do I believe that the exceptions provided in the legislation adequately protect people's democratic right to vote. I agree with Professor Colin Hughes who argued that it was implausible to suggest that the roll is any more susceptible to fraud in the seven day period than it is in the weeks or months before an election.⁸ The changes in the bill will not only ultimately make it more difficult for new voters to register to vote, but will disenfranchise existing voters.

1.10 The changes would be justified only if it could be shown that the current system for enrolment and re-enrolment allowed opportunities for electoral fraud on any measurable scale. In my opinion, no persuasive evidence exists to suggest that the current system has failed to provide adequate protection against fraud on the roll.⁹

4 The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 3; Professor Colin Hughes, *Submission 73*, Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 2.

5 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

6 Liberal Party of Australia, *JSCEM Submission 95*, p. 4; Festival of Light Australia, *Submission 5*, p. 2.

7 Liberal Party of Australia, *JSCEM Submission 95*, p. 4.

8 Professor Colin Hughes, *Submission 21*, p. 2 (Attachment A).

9 The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 2; Australian Labor Party, *Submission 10*, p. 4; Australian Privacy Foundation, *Submission 42*, p. 2.

1.11 As large numbers of voters do not attach great importance to keeping their details up-to-date on the electoral roll outside of an election, the calling of an election often acts as a catalyst for the notification of changes to the roll and new enrolments. Closing the roll earlier would mean that voters could be disenfranchised.¹⁰ The Labor Party notes:

These provisions are in place because it is recognised that many people do not focus on an election until the media scrutiny and commentary surrounding the calling of an election begins.¹¹

1.12 Therefore, the proposal defies reality and human nature since hundreds of thousands of voters only update their details when an election is called.

1.13 The point is that earlier closure could mean that many of the 423,000 people who either enrolled for the first time or changed their enrolment details in the seven day period before the close of the rolls prior to the 2004 federal election might not be able to vote.¹² Of this 423,000, almost 79,000 people enrolled for the first time.¹³ If this early closure arises from a concern that the AEC cannot check applications properly, that is only a danger for new enrolments. Persons already on the roll are validly on the roll, although their address details may need updating.

1.14 The measure is a poor approach to democracy. The government and political parties all know that there are very few examples of fraud on the electoral roll, yet the government is proposing to enact legislation that could disenfranchise hundreds of thousands of voters.¹⁴ This is inconsistent with the aim of improving the integrity of the roll, and of improving citizen participation in elections.

1.15 If there is no plausible policy reason for this amendment, then the only alternative must be a political motive – that being that the Coalition must expect that the class of voters affected are more inclined to vote Labor, because they include the young and disadvantaged. The electoral system should be encouraging groups with traditionally low participation rates (for example, young people, people in rural and remote communities and people from disadvantaged backgrounds) to vote, not

10 Human Rights Law Resource Centre Ltd, *Submission 3*, p. 15.

11 Australian Labor Party, *Submission 10*, p. 3.

12 Mr Ian Campbell, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 7 March 2006, p. 2.

13 Mr Ian Campbell, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 7 March 2006, p. 2.

14 Australian Labor Party, *Submission 10*, p. 3.

discouraging them as these proposals would have us do.¹⁵ The proposals are anti-democratic as the effect will be to reduce participation.

1.16 The electoral roll is of fundamental importance to democracy. This measure does nothing to enhance its integrity, but acts to exclude some voters from participating in elections.

Proof of identity requirements

1.17 The other significant enrolment 'reform' is the requirement to show proof of identity at the time of enrolment and when casting a provisional vote. The government claims that these changes will improve the integrity of the roll and minimise opportunities for electoral fraud.

1.18 In my supplementary remarks in the 2004 JSCEM Report, I qualified my support for more stringent proof of identity requirements on enrolment – my position remains unchanged. It is essential that agreement from the States and Territories be obtained to measures such as these to ensure that the Joint Roll arrangements remain operative and integrated. If the States and Territories oppose the changes, further consultation should occur.

1.19 My arguments here apply equally to the increased identity requirements for provisional voting.

Disclosure of political donations¹⁶

1.20 The Australian Democrats have a long history of activism for greater accountability, transparency and disclosure in political finances. These issues have not been dealt with as extensively as they should have been in the JSCEM's Reports on federal elections since 1996, but my own Supplementary remarks in those Reports have examined these matters in some detail. As few changes to funding and disclosure laws have been made in this time, I will repeat many of the issues I have persistently pushed before.

1.21 I have made this statement many times: the aims of a comprehensive disclosure regime are to prevent, or at least discourage, corrupt, illegal or improper conduct; to stop politicians being, or being perceived to be, beholden to wealthy and powerful organisations, interest groups or individuals; and, to protect politicians from pressure being bought to bear on them by 'secret' donors.

15 Dr Brian Costar, *Submission 2*, p. 1; Australian Labor Party, *Submission 10*, p. 3; The Greens NSW, *Submission 14*, p. 2; The Hon. Linda Lavarch MP, Queensland Attorney-General and Minister for Justice, *Submission 17*, p. 3; Human Rights and Equal Opportunity Commission, *Submission 50*, p. 9.

16 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, pp 412-419; Australian Democrats Issue Sheet, *Electoral Matters and Public Administration, Disclosure of Political Donations*, 2004.

1.22 The Democrats strongly oppose the proposal in the bill that increases the disclosure threshold for political donations to candidates, political parties and associated entities to amounts over \$10,000. This increase would allow even larger amounts of money to flow, without scrutiny, from donors to political parties. The Liberal Party supports the increase on the basis that it better reflects contemporary economic reality.¹⁷

1.23 The current threshold amount of \$1,500 is an already generous sum and should remain. On this issue, we agree with the Labor Party's claim that the current amount provides 'a fair balance between optimum disclosure and practicability'.¹⁸

1.24 Professor George Williams also argued that no increase to the threshold could be justified, let alone such a major one.

The change would have a harmful effect on our democracy. Reform should instead be aimed at the more effective and more frequent disclosure of political donations.¹⁹

1.25 In addition, we also oppose the proposal to index the disclosure threshold to the Consumer Price Index. This would mean that the threshold could increase by approximately 2-3 per cent annually.²⁰ Not only does the proposal represent a move away from the existence of a static figure, but a figure that changes annually could cause confusion for donors and recipients alike.

1.26 In relation to the openness of elections, the Labor Party stated:

...elections should be conducted in the public realm, with all parties' expenditure and fundraising accounted for, disclosed and open to scrutiny.²¹

1.27 It is essential that Australia has a comprehensive regulatory system that legally requires the publication of explicit details of the true sources of donations to political parties, and the destinations of their expenditure.²² The objectives of such a regime are to prevent, or at least discourage, corrupt, illegal or improper conduct in electing representatives, in the formulation or execution of public policy, and helping politicians from the undue influence of donors. The measures proposed will further compound the lack of transparency provided by the existing disclosure laws. In fact,

17 Liberal Party, *Submission 95*, JSCEM, p. 2.

18 Australian Labor Party, *Submission 10*, p. 2.

19 Professor George Williams, *Submission 22*, p. 1.

20 Reserve Bank of Australia, *Measures of Consumer Price Inflation*, last updated on 25 January 2006, http://www.rba.gov.au/Statistics/measures_of_cpi.html (accessed 15 March 2006).

21 Australian Labor Party, *Submission 10*, p. 2.

22 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 416.

Mr Joo-Cheong Tham argued that the present law already 'is a leaky sieve that permits evasion of adequate disclosure'.²³

1.28 The Greens NSW also noted the following as a upshot of the bill becoming law:

...it will be easier for supporters to donate to political parties without any public awareness of who is buying access to those who make policy decisions affecting all citizens.²⁴

1.29 The then minister said in 2005 that lifting the threshold would 'protect individuals' and organisations' legitimate right to privacy' while still maintaining adequate transparency.²⁵ The Greens NSW argued that 'the real motive is not privacy, but secrecy'.²⁶ The Democrats have consistently argued that the privacy considerations of the donor must be subordinate to the wider public interest of transparency and accountability. Furthermore, we believe that if donors have no intention of buying political favours for their donations, they will not be dissuaded by an open and transparent scheme.

1.30 Currently, there is a concerning regulatory gap that allows the disclosure threshold to be applied separately to each registered political party. That is to say, where a political party has national, State and Territory branches it has the 'cumulative benefit of nine thresholds'.²⁷ Effectively the current threshold amount of \$1,500 allows donors to make nine donations totalling \$13,491 without disclosure. As Mr Tham points out, if enacted, the bill will mean that a donor can give a total of \$90,000 to a political party without the party having to disclose the identity of the donor.

Having such a high threshold in practice can only mean more secret donations.²⁸

1.31 A situation like this is unacceptable and further highlights that the disclosure threshold should not be raised. This loophole should be closed to prevent very large and secret donations. The value of funding disclosure rests on the premise of the availability of, and accessibility to, the release of information for public scrutiny.

1.32 The Democrats argue that new principles of disclosure should be included in electoral law. A national debate is needed on how political parties should be funded. In the mean time, the following are changes the Democrats would recommend as

23 Mr Joo-Cheong Tham, *Submission 4*, p. 5.

24 The Greens NSW, *Submission 14*, p. 1.

25 Senator the Hon. Eric Abetz, 'Electoral reform: making our democracy fairer for all', Address to the Sydney Institute, 4 October 2005.

26 The Greens NSW, *Submission 14*, p. 1.

27 Mr Joo-Cheong Tham, *Submission 4*, p. 13.

28 Mr Joo-Cheong Tham, *Submission 4*, p. 14.

going some of the way to establishing a comprehensive funding and disclosure scheme:

- strengthen the law in relation to donations from trusts, foundations and clubs to require that more information is provided about the arrangements for control, beneficiaries and associated entities;
- impose a cap or ceiling of \$100,000 on any donation made to parties, independents or candidates;
- disclose any donation to a political party of over \$10,000 to the Electoral Commission at least quarterly so that it can be made public straight away, and not left until an annual return;
- prohibit donations that have 'strings attached';
- ban outright donations from overseas individuals or entities unless received from Australian individuals living offshore;
- amend the Corporations Law and Workplace Relations laws so that shareholders and members of registered organisations such as trade unions are required to periodically approve donation policies; and
- where the AEC conducts elections for registered and other organisations, the same provisions governing disclosure of donations for political organisations apply.

1.33 The fundamental principle of Australian electoral funding law is that the AEC, and thereby the public, must be able to verify the nature and source of significant political donations. The Government must reconsider its whole attitude to funding and disclosure law.

Tax deductibility of contributions to political parties, members and independent candidates

1.34 At present, under section 30-15 of the *Income Tax Assessment Act 1997* (ITAA 1997) an individual who makes a contribution of \$2 or more to a registered political party in any one income year can deduct up to \$100 from their taxable income in that year. Companies or entities do not get this tax concession.

1.35 The bill proposes to raise the deductible amount from \$100 to \$1,500 and extend deductibility to companies. The Liberal Party argued that the threshold over which tax deductibility ceases is too low and needs to be altered to reflect community standards and expectations.²⁹ I am not sure what community standards and expectations are referred to – I hardly think there is a clamour for this change.

29 Mr Brian Loughnane, Federal Director, Liberal Party of Australia, Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, *Committee Hansard*, 8 August 2005, p. 27.

1.36 The Democrats believe that the proposal to extend the tax deductibility arrangements from \$100 to \$1,500 is questionable on three counts. Firstly there is no evidence that this tax concession increase is needed, and its net effect is just a loss of general revenue to the Government. The second count is whether as a matter of principle political parties should be able to access the same tax concession regime as charities. The third count is that this tax concession to political parties is not available to many other deserving community organisations.

1.37 If it is to be a matter of tax policy and principle that not-for-profit (NFP) community organisations, as a whole, are to be given a standard special status for tax deductibility concessions, then that is a matter for parliament and the community to consider against the usual principles of equity efficiency and simplicity. However, that is not what is intended. This tax deductibility concession is not part of a coherent overall tax regime, and is just opportunistic.

1.38 I have previously argued that tax deductibility concessions should apply on a common basis to donations to NFP community organisations as a whole, amongst which political parties could be said to number. The NFP sector is made up of charitable, religious, public benevolent institutions and community service providers.³⁰

1.39 Division 30 of the ITAA 1997 sets out the conditions for tax deductibility of donations of \$2 or more made to certain organisations, including prescribed funds. Unlike political parties, tax deductibility to these organisations is not capped. These organisations or funds are generally referred to as deductible gift recipients (DGRs). A deduction is generally not available unless the DGR is:

- endorsed by the Tax Office;
- listed by name in the Division 30 of the ITAA 1997;
- on the register of environmental organisations maintained under Subdivision 30-E;
- on the register of harm prevention charities maintained under Subdivision 30-EA;
- on the register of cultural organisations maintained under Subdivision 30-F;
- on the register of the National Estate kept pursuant to the *Australian Heritage Commission Act 1975*; or
- a political party registered under Part XI of the *Commonwealth Electoral Act 1918* to which item 3 in the table in section 30-15 of the ITAA 1997 applies.

1.40 Subdivision 30-B sets out tables of recipients for deductible gifts. The Table of Sections in Subdivision 30-B refers to the different categories of recipients. There are more than 30 general DGR categories. Examples are: public hospitals, health

30 Inquiry into the Definition of Charities and Related Organisations, 30 June 2001, p. ii.

promotion charities, public universities, school building funds, public benevolent institutions, necessitous circumstances funds, overseas aid funds, public libraries, museums and art galleries and ancillary funds.

1.41 The DGR table on pages 12-19 in the Australian Taxation Office publication *GiftPack – for deductible gift recipients & donors* lists the general DGR categories. For each category; it sets out: the description of the category; the item number; the other conditions relating to endorsement, and the types of deductible gifts that can be received. A deduction is also available for an amount covered by a conservation covenant over land that a person owns subject to certain conditions under Division 31 of the ITAA 1997. Charities can receive tax deductible gifts provided the organisation is endorsed by the Tax Commissioner as a DGR. Some charities are not endorsed as DGRs and therefore cannot received gifts which are tax deductible to the donor.

1.42 I have detailed this at length firstly to indicate what sort of entities do get this concession, but also to emphasise that many community organisations do not fall into this regime and do not get the tax concession.

1.43 It is also important that political parties recognise that material obligations flow from being the beneficiary of tax concessions. This means that transparency, accountability to donors and to society, and regular formal comprehensive reporting utilising key indicators, so that those giving to political parties can do so in a fully informed way, and so that public funding is properly accounted for. Political parties do not provide formal annual reports for the public, which they should as beneficiaries of taxpayer funds and concessions.

1.44 In its Report on the 2004 federal election, the JSCEM majority supported the proposition that a higher tax deductibility level would encourage more people to participate in the democratic process.³¹ I agree that tax relief can encourage people to play a role through the making of contributions, but, as a rule, tax concessions should operate to general principles, not just for special interests.

Political governance and the definition of 'associated entity'³²

1.45 The bill proposes to broaden the definition of 'associated entity' so that it applies to entities with financial membership, and entities with voting rights, in political parties. The definition will also extend to those whose financial membership or voting rights are held on their behalf by others. The change will impose annual reporting obligations on affected organisations.

31 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, p. 339.

32 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, pp 387-394; Australian Democrats Issue Sheet, *Electoral Matters and Public Administration, Political Governance: The Regulation of Political Parties*, 2004.

1.46 Mr Tham discussed what he believed to be the key reason for the change:

The strongest argument for this change is perhaps one based on popular control over public-decision making. Such control requires informed voting which, in turn, implies that voters need to know who controls parties including their members and those who exercise voting rights. There are serious problems in this area. For instance, parties are not required to disclose the level of party membership and have generally shown no inclination to voluntarily disclose.³³

1.47 The bill's proposal is a step in the right direction and, though a small one, will go some of the way to improving the regulatory regime that oversees the operation of political parties and their associated entities.

1.48 Very few of the submissions received by the committee focussed on this issue.³⁴ Hence, my report briefly focuses on the arguments put forward by others. As the Democrats have had a long history of promoting changes in the areas of accountability and internal regulation of parties and related organisations, I will focus more heavily on presenting the Democrats' broader position on political governance.

1.49 Mr Tham argued that the measure is both over and under-inclusive in application.³⁵ Over-inclusive because it imposes annual reporting obligations on organisations that might not have significant influence over the affairs of a political party. For instance, a community group, whose politically focussed work may be incidental to its primary purpose, is a good example.³⁶ On the flipside, the measure is under-inclusive for two main reasons.

1.50 First, because influence over the affairs of a political party is not confined to financial membership and voting rights.³⁷ Influence can also be exerted much more informally. To illustrate this point, Mr Tham highlights that sponsorship of the Millennium Forum (which entitles a donor regular access to key Liberal Party officials) could allow donors to influence policy matters through informal affiliation.

1.51 Second, the measure is restricted in its application. Mr Tham claimed:

It also discriminates against trade unions, organisations that politically participate through formal affiliation to the Labor Party. At the same time, it exempts corporate donors – entities that have no claim to democratic representation – which tend to wield influence through less formal means.³⁸

33 Mr Joo-Cheong Tham, *Submission 4*, p. 17.

34 Mr Joo-Cheong Tham, *Submission 4*, pp 16-18; The Greens NSW, *Submission 14*, p. 2.

35 Mr Joo-Cheong Tham, *Submission 4*, p. 17.

36 The Greens NSW, *Submission 14*, p. 2.

37 Mr Joo-Cheong Tham, *Submission 4*, p. 17.

38 Mr Joo-Cheong Tham, *Submission 4*, p. 17.

Regulation

1.52 In the JSCEM Report on the 2004 federal election, the Democrats argued that it is vital that political parties are more open and accountable. The same applies to unions, corporations and other bodies because they also play an important role in the electoral system and their activities have flow on effects for the integrity of that system.

1.53 I have consistently argued in favour of reform to political governance arrangements more generally.

1.54 Political governance includes how a political party operates, how it is managed, its corporate and other structures, the provisions of its constitution, how it resolves disputes and conflicts of interest, its ethical culture, and how transparent and accountable it is.

1.55 Political parties wield enormous influence over the life of every Australian, yet the natural inclination of political parties is towards self-regulation. That natural inclination means that since political parties control the legislature, the regulation of political parties is relatively perfunctory, in marked contrast to the much stronger regulation for corporations or unions. True, the registration of political parties is well managed, as a necessary part of election mechanics, yet the conduct of political parties apart from election mechanics is often poor.

1.56 Political parties by their role, function, importance and access to public funding are not private bodies, but are of public concern. In particular, the public has a right to know the ways in which political parties receive and spend public funds. In addition, the public influence and purpose of political parties demands that they be open to scrutiny and be fully publicly accountable. For the same reason, political parties need the very proper and necessary safeguards and regulations that are there for corporations and unions.

1.57 The integrity of an organisation rests on solid and honest constitutional foundations. Corporations Law and Workplace Relations laws provide a model for organisational regulation. The successful functioning of a company or union is based on its constitution, which must conform to a legal code. Political parties do not operate on the same foundational constructs. What is surely indisputable is that the public interest has to be served. Political parties have to be more accountable because of the public funding and resources they enjoy, and because of their powerful public role.

1.58 The Democrats have argued for a set of reforms that would bring political parties under the type of regulatory regime that befits their role in our system of democracy and accountability.

1.59 The present Electoral Act does not address the internal rules and procedures of political parties.

- The Electoral Act should be amended to require standard items to be set out in a political party's constitution, in a similar manner to the Corporations Law requirements for the constitutions of companies.
- Party constitutions should be required to specify:
 - the conditions and rules of membership of the party;
 - how office-bearers are preselected and elected;
 - how preselection of political candidates is to be conducted;
 - the processes that exist for resolution of disputes and conflicts of interest;
 - the processes that exist for changing the constitution; and
 - the processes for administration and management.
- Party constitutions should provide for the rights of members in specified classes of membership.
- Party constitutions should be publicly available documents updated at least once every electoral cycle. The fact that most party constitutions are secret prevents proper public scrutiny of political parties.
- The AEC should be empowered to oversee all important ballots within political parties to ensure that proper electoral practices are adhered to.
- The AEC should be empowered to investigate any allegations of a serious breach of a party constitution, and apply an administrative penalty.

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

1.61 The following are other initiatives that the Democrats support.

- That the Electoral Act and the Workplace Relations laws be amended as appropriate to ensure democratic control remains vested in the members of political parties. Specifically with respect to registered organisations to:
 - require them to have secret ballot provisions in their rules;
 - prohibit the affiliation, or maintenance of affiliation, of a federally or State registered employee or employer organisation with a political party unless a secret ballot of members authorising the affiliation has been held at least once in a federal electoral cycle; and
 - require a simple majority of members voting to approve affiliation to a political party, subject to a quorum requirement being met.
- The relationship between the party machine and the party membership requires better and more standard regulatory constitutional and selection

procedures which would enhance the relationship between the party hierarchy, office-bearers, employees, political representatives and members.

- The JSCEM and the AEC should give closer scrutiny to branch stacking and preselection abuses in political parties. Regrettably, no party is safe from this abuse, however, it is the energy and determination with which branch stacking is dealt with, that distinguishes the standards of the political parties concerned.

One vote one value

1.62 'One vote one value' is a fundamental democratic principle recognised by Article 25 of the International Covenant on Civil and Political Rights (ICCPR). Since the 1960s, the Labor Party has been particularly strong about the principle of 'one vote one value', first introducing legislation in the Federal Parliament in 1972-73. In recent years the Labor Party has taken the matter to the High Court with respect to the Western Australian electoral system. They should therefore be expected to support 'one vote one value' as a principle within political parties.

1.63 The democratic principle of 'one vote one value' is well established, and widely supported. As far back as February 1964 the United States Supreme Court gave specific support to the principle.

1.64 During the 1970s, 1980s, and 1990s the principle of 'one vote one value', with a practical and limited permissible variation, was introduced to all federal, State and Territory electoral law in Australia, except Western Australia. That state finally ended the lower house gerrymander in 2005.

1.65 In my view it should be a precondition for the receipt of public funding that a registered political party comply with the 'one-vote one-value' principle in its internal rules.

1.66 At least one political party in Australia (the Labor Party) has internal voting systems that result in gerrymandered elections for conventions, preselections and various other ballots. This is largely as a result of the exaggerated factional voting and bloc power of union officials who are allowed to use the large numbers of union members, the great majority of whom are not party members, to achieve and exercise power within the political party.

1.67 If more powerful votes are also directly linked to consequent political donations and power over party policies, then the dangers of corrupting influences are obvious.

1.68 If 'one vote one value' were translated into political parties' rules, it would mean that no member's vote would count more than another's, which would seem one way of doing away with undemocratic and manipulated pre-selections, delegate selections, or balloted matters.

1.69 We made similar recommendations in our Minority Report on the JSCEM's Inquiry into the 1998 federal election and in my supplementary remarks in the JSCEM's 2004 Inquiry.

1.70 I and other Democrats have made a number of speeches in the Senate and elsewhere over the years concerned about the accountability and governance of political parties. Democrat Issue Sheets have reflected these views, and Democrat traditions and perspectives support these views.

Disclosure requirements 'third parties'

1.71 I support the strengthening of the disclosure provisions for third parties. Governance in both the private and public sector is an issue which has merited and received a great deal of attention in the last decade. My view is that the regulatory system for third parties should be brought into a more coherent and principled framework and also aligned with that which exists for other entities under the Electoral Act.

Prisoner voting entitlements³⁹

1.72 In my supplementary remarks in the 2004 JSCEM Report, and on previous occasions, I recommended that the Electoral Act be amended to give all persons in prison, except those convicted of treason or who are of unsound mind, the right to vote.⁴⁰

1.73 It is important to understand that, although prisoners are deprived of their liberty whilst imprisoned, they are not deprived of their citizenry of this nation. As part of their citizenship, convicted persons in prison should be entitled to vote. To deny them this is to impose an additional penalty on top of that judged appropriate by the court. Nonetheless, following the 2001 Federal Election existing restrictions on the rights of prisoners to vote were strengthened by increasing the disqualification criteria from individuals serving five years or more to individuals serving three years or more.⁴¹

1.74 To disenfranchise any citizen serving a jail sentence equates to an extra-judicial penalty. If it is considered necessary to add the removal of citizenship rights to the deprivation of liberty, then that too should be a matter for judicial determination.

39 Joint Standing Committee on Electoral Matters' Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto, pp 404-405; Australian Democrats Issue Sheet, *Electoral Matters and Public Administration, Voting Rights of Prisoners*, 2004.

40 Joint Standing Committee on Electoral Matters, *Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 405.

41 *Commonwealth Electoral Act*, subsection 93(8).

1.75 As I have consistently argued, there is no logical connection between the commission of an offence and the right to vote. For example, why should a journalist, who is imprisoned for refusing on principle to provide a Court with the name of a source, be denied the vote?

1.76 To complicate this further, there is no uniformity amongst the States or between the States and the Commonwealth as to what constitutes an offence punishable by imprisonment. In Western Australia, for example, there is a scheme whereby fine defaulters lose their driver's licence rather than go to prison, yet this has not been introduced uniformly in Australia. Why should an Australian citizen in Western Australia who defaults on a fine but is not jailed, retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence lose the right to vote? This is inequitable and unacceptable.

1.77 Australia is a signatory to Article 25 of the ICCPR. Article 25, in combination with Article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without distinction of any kind on the basis of race, sex or other status. The existing provisions in the Electoral Act discriminate against convicted persons in prison on the basis of their legal status. This clearly runs contrary to the letter and spirit of the ICCPR.⁴² There is a body of case law building up in Europe and Canada for instance that supports this view.⁴³

1.78 A society should tread very carefully when it deals with the fundamental rights of its citizenry. All citizens of Australia should be entitled to vote. It is a right that attaches to citizenship of this country, and should not be removed.

Abolition of broadcaster and publisher returns

1.79 The bill proposes to remove the requirement for publishers and broadcasters to lodge returns with the AEC that disclose details of federal election advertisements published or broadcast during the period from the issue of the writ to election day.

1.80 A previous, and I emphasise unsuccessful, attempt was made to repeal these requirements.⁴⁴ I can only assume that the rationale is the same this time around.

These provisions place an administrative burden on publishing and broadcasting businesses that is not required because expenditure on electoral advertising is already disclosed by individuals and organisations

42 A significant number of submissions raised this concern. See *Submissions 3, 6, 17, 23- 25, 31- 36, 39-41, 43-46, 47, 49-50*.

43 For example, *HIRST v [1] The United Kingdom*.

44 Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004.

that authorise the advertisements as required under other sections of the Electoral Act.⁴⁵

1.81 This measure runs contrary to the spirit of disclosure legislation – to increase transparency – and it will result in the sole onus of reporting donations and expenditure being on political parties and candidates. I recognise that although these returns do not make a major contribution to increasing transparency, the move to abolish them removes an important cross-check.

1.82 The figures in the returns provide an indicator of the truthfulness of the records of political parties and what they have been spending. In a recent radio interview, Professor Colin Hughes stated:

If the party says: we paid Station X so much, and the station says: we received three times so much, then you begin to wonder if it's not worth looking into it a bit more.⁴⁶

1.83 Arguments that the lodgement of publisher and broadcaster returns provides no material contribution to public disclosure are disappointing and miss the point.

1.84 As a result of this change, I recommend that the penalty provisions in the Electoral Act⁴⁷ be tightened to deter parties or candidates from ignoring their disclosure obligations. The current provisions, for example, specify a fine of a mere \$5,000⁴⁸ where a person, on behalf of a political party, fails to furnish a return on time or a fine of only \$1,000 for furnishing false or misleading material.⁴⁹ These amounts are clearly too low provide little disincentive against under-reporting.

1.85 I also recommend that the AEC be given broader powers under the Electoral Act to compel broadcasters and publishers when appropriate, in the absence of returns, to provide details of political advertising for an election period. At present, the AEC only has the power to request information if it is relevant to an investigation into whether a political party, associated entity or other entity has complied with the disclosure obligations.⁵⁰ For this to occur, the AEC needs to believe, on reasonable grounds, that the relevant party or entity could produce evidence relating to a possible contravention of Part XX of the Electoral Act.

45 Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004, *Explanatory Memorandum*, p. 18; Jerome Davidson, *Bills Digest – Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*, p. 8.

46 Professor Colin Hughes, ABC Radio, 'National Interest', 12 February 2006.

47 *Commonwealth Electoral Act*, section 315.

48 *Commonwealth Electoral Act*, paragraph 315(1)(a).

49 *Commonwealth Electoral Act*, subsection 315(3).

50 *Commonwealth Electoral Act*, subsection 316(3).

Access to the electoral roll and its use

1.86 The bill will enable persons and organisations to access the electoral roll to verify identity for the purposes of the *Financial Transactions Reports Act 1988* (FTR Act). The use of the roll will not be subject to the commercial use prohibition. Recent amendments, which have prevented the sale of the electoral roll, have created difficulties for financial institutions attempting to verify the identity of persons for the purposes of the FTR Act. I do not have a problem with this change.

1.87 When considering access to the electoral roll, two competing principles need to be balanced – openness and privacy. I argue that, in a democracy, the electoral roll needs to be an accessible document. On the other hand, I consider that the personal information that Australians compulsorily provide should be given the protection and security expected by them and required by the *Privacy Act 1988*.

1.88 I believe that most Australians have an expectation that the information they provide to the AEC will only be used for the purposes for which it was collected. Proposals to grant access to information contained on the roll therefore needs to be scrutinised and any release of information must outweigh the public interest in protecting the privacy of individuals. It should be borne in mind that the integrity of the electoral roll is of fundamental importance to our system of representative democracy. It would be disappointing to potentially discourage some electors from enrolling because of the thought that their personal information would be used for a wrongful purpose.

1.89 The Electoral Act allows roll and elector information to be given to registered political parties and Members of Parliament for constituency purposes.⁵¹ I recommend that the circumstances in which the information is provided be tightened. For example, the inclusion of 'end-use restrictions' on the data from the electoral roll would be a beneficial step to reducing opportunities for electoral fraud or misconduct.

Deregistration and re-registration of political parties

1.90 The bill introduces new rules for the registration of political parties. The bill provides that all currently registered political parties will be automatically deregistered and will need to reapply for registration, with exceptions for federal parliamentary parties and those with past representation in the federal parliament. As the majority report notes, the purpose of the changes is primarily to address the concern over misleading party names or, more specifically, the name of the party 'Liberals for forests'.⁵² More rigorous name registration requirements introduced prospectively after the registration of Liberals for forests will not apply to that party if it seeks to re-register.

51 *Commonwealth Electoral Act*, Part VI.

52 Jerome Davidson, *Bills Digest – Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*, p. 8.

1.91 The Government is concerned that a political party could deliberately and deceptively mislead voters into unintentionally voting for them on the basis of a similar or like name to an existing party. This behaviour is known in commercial law as 'passing off'. 'Passing off' has long been an issue in Australian political life, where one political party attempts to deceive voters that it is another party for which they might have voted. A number of political parties, including the Democrats, have been victims of such behaviour.

1.92 This change will almost certainly result in some presently-registered political parties losing party status.⁵³ The Democrats would have preferred the behaviour to be prohibited rather than a law change that could lead to loss of party status. Having said that, there is still undeniably a case for addressing 'passing off' in the political field.

Candidate nomination deposits

1.93 The bill proposes to increase nomination deposits for House of Representative candidates from \$350 to \$500, and for Senate candidates from \$700 to \$1,000. The deposits are refundable if four per cent or more of first preference votes for the relevant constituency is achieved.

1.94 The Democrats do not support any increase to nomination deposits for candidates in the House of Representatives and the Senate. In opposition to the measure, the Greens NSW argued that it would be prohibitive for small parties planning to contest many electorates.⁵⁴

If nomination deposits were increased...it would be a very significant increase in expense for a small party planning to contest many electorates. To run in all 150 lower house seats and have full Senate tickets of six in each state and two in each territory would cost a party \$115,000 in nomination fees alone. Democracy requires that nomination fees are small, otherwise access to contesting the elections becomes confined to those who are wealthy.⁵⁵

1.95 There is no evidence that the current figures are inappropriate or that they are too low to deter frivolous candidates, or so high as to deter serious candidates.

Conclusion

1.96 The Democrats have a longstanding commitment to improving electoral processes to ensure that the democratic rights of all Australians are protected and enhanced. The changes in the bill are significant for the Australian electoral system. Some are highly controversial, and I have sought to address these in this report. Although regrettably, the Democrats have to date remained largely unsuccessful in our

53 The Greens NSW, *Submission 14*, pp 2-3.

54 The Greens NSW, *Submission 14*, p. 3.

55 The Greens NSW, *Submission 14*, p. 3.

quest for improvements in many areas of electoral law, we will continue to campaign for better standards and to consistently seek to make a difference.

1.97 The Australian Democrats will move amendments to the bill to reflect the views expressed in this report.

Senator Andrew Murray

