An electoral system is a device for translating the votes won by candidates in elections into an authoritative outcome, such as seats in a Parliament. Free, fair and frequent elections are essential conditions for any functioning democracy. Determining the best way of translating votes into an election outcome is an exercise fraught with difficulty. Notwithstanding widespread agreement that elections should be free, fair and frequent, there can be disagreement over what fairness means and over other fundamental goals. Should, for example, the prime consideration in an electoral system be achieving an outcome that mirrors the opinion of voters? Or is putting into place a stable and ‘strong’ government of greater importance?

Votes are not natural phenomena. They are convenient contrivances which try to simplify the complex political attitudes and preferences held by people into a series of marks on a ballot paper. Different ways of doing this—i.e. different ways of organising elections, setting up ballots and counting the votes—may produce different outcomes. For example, in political systems such as Australia’s, governments are formed according to the number of seats won in the lower house of Parliament rather than according to the sum total of votes obtained. This highlights the critical role of the electoral system that happens to be in place for determining the winning candidates in these House of Representative seats.

Different electoral systems can be explained and defended by recourse to different conceptions of democracy. Advocates of majoritarian democracy, a conception which gives a high priority to producing clear
election winners and producing governments which can enjoy clear-cut parliamentary dominance, are inclined to favour the single-member electoral systems which (for reasons that this chapter explains later) tend to produce that outcome. However, advocates of consociational democracy, a conception which envisages democracy as a form of power-sharing among groups, generally endorse proportional representation methods (Hague & Harrop 1987: 50–2). As it happens, Australia uses both of these electoral systems and hence both of these varieties of democracy: Australians elect their House of Representatives using the (majoritarian) single-member system and elect their Senate using (consociational) proportional representation.

When the new Commonwealth of Australia legislated its electoral procedures in 1902 (the first 1901 election having been conducted on rules drawn up by the six colonies), they mirrored the British and American procedures in two major respects. First, voting and enrolment were voluntary. Second, the electoral system was based on a simple plurality system where the candidate in each electorate who won the most votes (even if not a majority of all votes cast) was declared the winner of that seat.

Over the next quarter of a century, the Commonwealth Parliament legislated changes that have made Australia’s electoral system unique in the world. The first major change was the 1911 requirement that compelled eligible electors to enrol to vote, extended in 1924 to a compulsory vote. In 1918 the plurality system was replaced by the preferential method. It is the combination of these two practices in elections for the House of Representatives which continues to make Australia’s electoral system unique.

Who votes?

An inclusive franchise encompassing all adult citizens is widely regarded as a necessary condition for representative democracy. Yet most of the countries recognised as Western democracies have fulfilled this important condition only relatively recently. Great Britain, for example, did not achieve universal adult male suffrage until 1918, denied full voting rights to women until 1928, and retained forms of ‘plural voting’ (more than one vote per citizen) until 1948. By contrast Australia, together with New Zealand, was a world leader in extending the right to vote beyond the narrow confines of male property owners. The enfranchisement of women was first achieved in South Australia in 1894, and was implemented for national elections by the first Commonwealth Parliament in 1902. By 1907, all the impediments to a full adult franchise had been expunged from Australia’s seven lower house voting systems in the six States and at the Commonwealth level (Butler 1981: 12-19; Crisp 1984: 137).

Compared with the other democracies this was an impressive achievement, tainted by two deficiencies. The first deficiency was that Indigenous Australians
were largely excluded. ‘Aboriginal natives’, except for those already entitled to vote in State elections, were excluded from the franchise, were only granted the right to enrol to vote in 1962, and it was not until 1983 that the same electoral provisions applied to Indigenous as to non-Indigenous Australians (Summers 2000: 5–8). The second deficiency was that pre-democratic practices, typically a property-based franchise, were retained for some State upper house and local government elections, and the instillation of full representative democracy in these arenas was not achieved until many decades later.

Today’s Electoral Act provides that all persons who are entered on the appropriate electoral roll are entitled to vote. The restrictions pertaining to enrolment are that a person must be an Australian citizen and have attained the age of 18 years (reduced from 21 in 1973), must be ‘of sound mind’, must not be ‘convicted of unpardoned treason’, must not be serving a prison sentence of three years or longer, and must have lived for at least one month at his or her current residence. While about 94 per cent of all those enrolled on the electoral roll actually vote in any given election, we can be less certain about how close the level of enrolment is to the goal of universal enrolment. The Australian Electoral Commission (AEC) estimates that about 600 000 eligible citizens were not enrolled prior to the 2001 election (Australian 6 October 2004).

An interesting restriction relates to the voting rights of prisoners. The United States excludes from voting large numbers of people convicted of a felony, whether they are in prison or not. Perhaps reflective of our partial convict heritage, Australia has adopted more liberal policies. An attempt in the 1890s to insert a clause into the draft Constitution, which would have denied convicted felons of the right to vote for all time, was soundly defeated. Until 1983, only convicted criminals serving prison sentences of at least one year were liable to be removed from the electoral roll. In 1983, this was liberalised to require a sentence of five years or more. But recently the Federal Parliament has moved back in a more restrictive direction: in late 2004, it legislated to reduce the five-year disbarring sentence to three years and then, after the Coalition gained control of the Senate on 1 July 2005, it legislated to disenfranchise all convicted prisoners.

The strongest argument for denying criminals the vote, an argument that seems particularly persuasive in the USA, is that by their criminal behaviour they have broken their ‘contract’ with society and should be regarded as being ‘civilly dead’ (Costar 2003: 95). But societies like Australia—at least until its recent reversals of earlier liberalisation—have seemed more inclined to regard being sent to jail for relatively short sentences as punishment enough. Excluding shorter-term prisoners from the franchise seems to undermine the potential rehabilitative function of the penal system. It is also arguably dangerous, on the classic liberal grounds of holding governments accountable and in check, for the state to be exercising a power to disenfranchise a group of citizens who are likely
to be particularly dissatisfied with state actions. Because Australia’s rate of imprisonment is comparatively low, denying longer-term inmates the vote has had negligible electoral impact in practice, though it is hard to disagree with Orr’s argument that it is ‘unsupportable on political equality grounds’ (Orr 2004: 9).

Other democracies are far more protective of prisoners’ voting rights. The Canadian Supreme Court invalidated a prisoner exclusion law in 2001 and in March 2004 the European Court of Human Rights ruled that the British law which denies all prisoners voting rights is in breach of the European Convention on Human Rights (Costar 2004: 10).

Another interesting restriction on citizen access to voting rights is revealed by Parliament’s 2005 decision to close the electoral roll on the day the writs are issued for an election (i.e. the day that an election is officially announced). This change adversely affects a potentially substantial number of citizens. Previously, people had seven days after the issue of the writs to initiate an enrolment or to update their enrolment details. An average of 300 000 people have taken advantage of this period of grace at each election since 1983, about 80 000 of them being first-time young voters who had turned 18 since the previous election.

These amendments to the scope of and access to the franchise reveal that aspects of the right to vote are governed by parliamentary legislation rather than being fully and unequivocally enshrined in the Constitution. Most Australians would be surprised to learn this. Rubenstein is among the analysts who argue that it is not desirable to leave such democratic fundamentals to partisan parliamentary politics and that we instead need a constitutional Bill of Rights to secure them (Rubenstein 2003: 109).

Compulsory voting

While Australia’s long history of generally inclusive franchises has been applauded by liberal democrats, the decision to go one step further and compel eligible persons both to enrol and to vote has been more controversial. All Commonwealth and State elections now involve compulsory voting, and the practice is becoming increasingly prevalent at the local government level in some States.

Compulsory voting has its supporters and its detractors. One set of opponents argues that compulsion drives to the polls the apathetic and ill-informed, with consequent dangers for the quality of their decision. In response, it has been contended that the obligation to vote encourages the otherwise apathetic to take some interest in politics, thereby contributing to the health of the democracy. The empirical evidence has been sufficiently inconclusive on this point to allow both camps to hold their views with equal fervour. Another, more sophisticated, critique of compulsion is that it deprives the citizen of the political right
to abstain from voting as a positive protest against all parties or candidates or against ‘the system’ as a whole.

Perhaps the undoubted denial of political liberty associated with compulsion is compensated for by the high turnout of voters and the increased legitimacy thereby conferred on the elected government. There are also strong practical arguments sustaining compulsory voting. To be blunt, compulsion works. At the 1922 Senate election, the last conducted under voluntary provisions, the voter turnout was just under 58 per cent. This rose dramatically to 91.3 per cent in 1925 at the first election held under the compulsory provisions. The turnout at national elections now rarely falls below 94 per cent of the enrolled voters. Both major political parties in Australia have usually supported compulsion for practical rather than philosophical reasons, because it relieves them of the expensive and time-consuming task of encouraging their supporters to go to the polls. But there are periodic moves to abolish it. In 1994 a Bill abolishing compulsory voting sponsored by the Liberal government in South Australia passed its Legislative Assembly but was rejected by the Legislative Council.

According to opinion polls, most Australians are strongly supportive of compulsory voting. Two polls in early 2005 put the level of support at 74 per cent of respondents (Sydney Morning Herald 29 March 2005). But this did not discourage the Howard Coalition government from issuing a Discussion Paper in 2005 canvassing the virtues of voluntary voting but not voluntary enrolment.

Because compulsion has been part of the electoral landscape for so long, it is difficult to assess the partisan impact of a reversion to voluntarism. But it is generally accepted that levels of voluntary political participation tend to be correlate directly with socioeconomic status (Hague & Harrop 1987: 91ff). This implies that, if compulsion were removed, the non-voters would most likely be concentrated among the less well off. Over time the major parties might well be tempted to pitch their electoral messages only to the regular voters, disadvantaging those in the lower socioeconomic strata and the parties they currently support.

Preferential voting

In 1918, in response to the emergence of the Country Party which threatened to split the non-Labor vote to Labor’s advantage, the Nationalist government introduced preferential voting.

Under this system, voters are required to rank all candidates in order of preference. In order to be elected, a candidate must secure an absolute majority (i.e. more than 50 per cent) of all valid votes cast. If no candidate receives such a majority after the count of first preferences, then the candidate with the smallest number of first-preference votes is eliminated, and his or her ballots are distributed among the remaining candidates according to the second preference
indicated. This process of elimination and distribution of preferences continues until a candidate achieves an absolute majority.

The major advantage of preferential voting is that it minimises the possibility of a candidate being elected despite being disapproved of by a majority of voters. However, the compulsory requirement means that voters must express second and subsequent preferences in order to cast a valid vote even if they strongly support only one candidate and equally dislike all the rest. As Emy (1978: 599) has observed, the system thus makes some dubious assumptions about the ‘intensity of like and dislike which candidates arouse in electors’. There exists a nagging doubt about whether voters are expressing real political preferences or merely completing the ballot paper to ensure that they cast a valid vote for the candidate of their first choice. If the latter is the case, then it is possible that the preferential system at times manufactures majorities that may distort the real intention of voters.

These objections should not be lightly dismissed, and they may help to explain why Australia’s voting system remains unattractive to the rest of the world (a 1992 New Zealand plebiscite that canvassed several alternative voting methods saw only 6 per cent support it). But neither should the impact of the preferential method at the national level be exaggerated. Most House of Representative contests are decided without the need to distribute preferences to identify a winner, because one of the candidates wins an absolute majority on first-preference votes. Even when preferences need to be distributed in the other contests, their effect is usually to confirm as victor the candidate who led on the first count. At the 1987 federal election, preferences were distributed in 36 per cent of House seats but they overturned first-count leaders in only four seats. First-count leaders were defeated in 10 seats in 1990, in 12 in 1993, in seven in both 1996 and 1998, six in 2001 and eight (representing just 5.3 per cent of all seats) in 2004.

This is not to imply that the preferential system cannot have an impact on the outcome of elections. Victoria’s longest-serving Premier, Henry Bolte, won six consecutive State elections between 1959 and 1970 without his Liberal Party ever polling more than 39 per cent of the primary vote. The second preferences of the right-wing Democratic Labor Party’s (DLP) voters secured his victories.

An analysis of the 1998 Queensland and federal elections illustrates how preference allocation by parties can affect the capacity to translate votes into seats. In Queensland, Pauline Hanson’s One Nation party burst on to the State electoral scene in the June 1998 State election by winning 22.7 per cent of the primary vote and 11 of the 89 seats in the Queensland Parliament. One Nation also performed fairly well in the subsequent October 1998 federal election, winning 14.4 per cent of the vote in Queensland and 8.4 per cent of the vote nationally. But One Nation won no seats in the House of Representatives. The National Party, in contrast, won just 10 per cent of the vote in Queensland and
7.9 per cent nationally, and yet won five House of Representatives seats in Queensland and 16 seats nationally.

The different outcomes for One Nation at the Queensland State election and the federal election cannot be attributed wholly to its lower level of primary voting support. It is also partly explained by the fact that, at the State election, the Coalition parties recommended that their supporters direct preferences to One Nation, but they reversed this at the federal poll, in effect preferring the Labor Party to One Nation. Starved of preference votes, no One Nation candidate was able to achieve an absolute majority. Had a system of plurality voting been in place, Pauline Hanson would have retained the seat of Blair which she had won in 1996. The explanation for the National Party’s success, despite its overall lower level of voting support, is both that its vote was more concentrated in specific electorates and that it benefited from a consistent flow of Liberal Party preferences.

This example shows that preferential voting is not necessarily friendly to minor parties in terms of election outcomes, though it does give them a potential capacity to affect the outcome through negotiating conditions for recommending the distribution of the preference votes of their supporters.

A variant of preferential voting is optional preferential voting. Under this method, an elector is required to number only as many candidates as there are vacancies to be filled. Thus where the election is for a single member, such as for a House of Representatives seat, only one candidate needs to be supported. Voters may, if they wish, offer rankings for some, or all, of the other names on the ballot paper but they are not required to. In an optional preferential system, it is thus possible for a candidate to be elected without obtaining an absolute majority. The major arguments in favour of optional preferential voting are that it reduces the distortion of ‘real’ preferences by not requiring voters to distinguish between equally unwelcome candidates, and that it reduces the level of invalid (‘informal’) votes by minimising the number of correct numbers required on the ballot paper.

Optional preferential voting is employed in State elections in New South Wales, Queensland and the ACT. Despite being recommended by a 1983 Joint Select Committee on Electoral Reform, the federal Parliament has not adopted optional preferential voting for federal elections.

The preferential voting system is neither inherently anti-Labor nor anti-Coalition. Its partisan impact depends on the political persuasion of the minor parties and Independents whose preferences are distributed. Because the DLP was closer in its policy orientation to the Coalition parties than to the Labor Party, especially in its crucial foreign policy stance, the Coalition parties rather than Labor received the bulk of DLP voters’ second preferences. More recently, because the Democrats and Greens have been closer in their policy orientation to Labor, Labor has benefited more from preferential voting than the Coalition.
Independent candidates can sometimes benefit by attracting the second preferences of both the major parties.

Despite the differences between the plurality and preferential systems, they share one important feature: they operate on the basis of single-member, geographically delineated units called (variously) electorates, seats, constituencies, districts or divisions. Single-member systems determine an overall winner by simply adding up the number of seats that each party wins. They do not set out to allocate parliamentary seats in proportion to the overall total number of votes obtained by the parties across all the electorates.

In practice, these systems often produce an exaggerated overall majority in the legislature for the winning party or coalition compared with the actual proportion of overall votes won by that party or coalition. A quite small advantage in total votes can sometimes deliver a comfortable parliamentary majority to a party or coalition. For example, at the 2004 federal election the Coalition polled 52.7 per cent of the House of Representatives ‘two-party preferred’ vote (i.e. the effective vote for their two major party blocs—the Liberal–National Coalition and Labor—after the distribution of preferences from minor-party and Independent voters). But the Coalition won 58.0 per cent of the seats.

It is quite possible for a party or coalition with a minority of the overall two-party preferred vote to win a majority of seats. To illustrate how this can happen, it would be mathematically possible for a party to win an election with just over a quarter of the total overall vote—by winning just over half the votes in each of just over half the seats. Or, more realistically, if a party wins by narrow majorities in a majority of seats and another party wins the remaining seats by large majorities, then it is possible for the winning party to have less votes than the losing party. Something like this occurred in the federal elections of 1954, 1961, 1969, 1990 and 1998. The lack of symmetry between votes and seats in single-member electoral systems occurs because not all votes that go to make a party’s system-wide tally contribute to the election of winning candidates, and are thus ‘wasted’. There can (by definition) be only one winner in each single-member constituency contest. This means that some votes will be cast for the winner in excess of the bare majority needed for victory, while others will be cast for losing candidates.

The Senate and proportional representation

Australia has a bicameral legislature with the upper house, the Senate, virtually equal in power with the House of Representatives. Until 1948 the Senate’s electoral procedures mirrored those of the House: a plurality system operated from 1901 to 1918 and a preferential system from 1919 to 1948. These procedures generally resulted in the government (i.e. the party that won a majority in the House of Representatives) also controlling the Senate. The reasons why the Chifley Labor government chose in 1948 to implement a proportional system
are complex (Uhr 1999), but a desire to protect Labor’s large Senate majority at the 1949 election was prominent. Labor’s decision was to have important but unintended consequences for Australia’s system of government.

Because proportional representation (PR) utilises multi-member districts and does not require candidates to win a majority of the vote in order to win seats, it determines seats in much better overall proportion to votes won.

There are two main types of PR.

Under the list system, which was briefly used in the South Australian upper house in the 1970s, voters are restricted to endorsing lists of candidates put forward by the parties. Parties are then allocated seats in proportion to the vote obtained by their lists, with particular candidates being elected if they are ranked (by the party) sufficiently high on the list.

The single transferable vote (STV) method (sometimes termed quota preferential) has been used in Tasmanian House of Assembly elections since 1907 (where it is known as the Hare-Clark system) and for the Commonwealth Senate since 1949. A simplified explanation of the Senate voting procedure illustrates the main feature of the STV system. Each State constitutes one multi-member division (i.e. electing a number of Senators to represent the same geographical area). A quota is calculated by dividing the total number of valid votes by one more than the number (‘n’) of Senators to be elected and adding one vote. In percentage terms, the quota is this: 100 per cent divided by (n + 1), plus one vote. In Senate elections since 1984 (when the representation for each State was raised to 12), this formula produces a quota of about 7.7 per cent for a full Senate election (with 12 seats to fill) and about 14.3 per cent for a half-Senate poll (when there are six seats to fill). Each party’s candidates are grouped together on the ballot paper but, in contrast to the list system, voters must express preferences for all of them as in the preferential system. The Senate ballot paper now simplifies this task, by giving voters the option of voting ‘below the line’ to indicate their preferences for all candidates as in the preferential system or voting ‘above the line’ by simply indicating support for the one party’s registered distribution of preferences.

Note that, while the system is designed to produce an outcome proportional to the overall pattern of votes for each party, it is not mathematically precise. This is due both to the elimination of low-scoring candidates as part of the process of counting votes until all the quotas are filled (which has the effect of inflating the support for the remaining candidates), and to the final nationwide Senate result being obtained by adding together of the separate outcomes from each of the eight State and Territory electorates. At the 2004 election, for example, the Coalition polled 45.1 per cent of the Senate vote but received 52.5 per cent of the Senate places. In order to get closer to ‘perfect’ proportionality, all of the 76 Senators would have to be chosen from a single, nationwide electorate. This is not allowed under the Constitution.
PR is not without its detractors. A major criticism is that it can encourage a proliferation of political parties and consequently, because this can make it more difficult for a single party to win a majority, encourage instability of government. PR certainly gives minor parties a greater chance of winning seats, and minor parties such as the Democratic Labor Party, the Australian Democrats, the Greens and, recently, Family First have taken advantage of it to be elected to the Senate. It is also true that a probable effect of extending PR to the House of Representatives would be to greatly increase the likelihood of producing a Parliament in which neither of the two major party groups hold an absolute majority of seats, leaving members of minor political parties and/or Independents holding the so-called ‘balance of power’. It would be thus possible for more than 90 per cent of the electorate to vote for one of the two major parties yet for the composition of any parliamentary majority effectively to be ‘controlled’ by a group supported by less than 10 per cent of the voters. Thus, proportionality of representation at the electoral level may be translated into disproportionate legislative influence.

On the other hand, political systems are influenced by factors other than voting methods. Tasmania, for example, despite having adopted PR as long ago as 1907, has not experienced any serious or prolonged splintering of the party system and has generally been characterised by governmental stability. The election of ‘Green’ Independent candidates at the 1989 State election was aided by the PR voting method, but their emergence was the result of political factors unrelated to the electoral system.

Many PR proponents assert that elections should be ‘for the benefit of electors, not political parties’ (Lakeman 1970: 354). But this claim is open to question: it assumes that the ultimate goal is to achieve the broadest possible representation of political opinion in Parliament, without an overriding concern for the nature of the government that such a Parliament might produce. It could be argued, to the contrary, that elections in liberal democracies should produce a government capable of implementing and being judged on its declared program, unencumbered by the need to strike compromising deals with other, often minority, parties. If this is the primary objective, then a PR system has significant drawbacks.

Ultimately, the controversy (Wright 1980; Ray 1982; Lijphart & Grofman 1984) reduces to a choice between a system that provides for a wide representation of political opinion but which probably gives undue legislative influence to minorities, or a system that under-represents minority opinions in favour of clear-cut majorities of seats to one or other of the major party groupings.

Australia’s federal electoral procedures are a constructive compromise. They consist of a single-member preferential system in the House of Representatives, from which the government is drawn, and a PR system for the Senate.

Neither of the major parties had a majority in the Senate between June 1981
and July 2005. Major-party frustration with the increasing activism of (some-
times) unpredictable minor parties and Independent Senators during that period
brought forth a number of proposals to change the electoral system to make it
more difficult for minor parties to win Senate seats. In 1994 the Keating Labor
government floated the idea of dividing each State into 12 single-member elec-
torates with each choosing a Senator by the preferential method, but did not
proceed with the proposal. A more complex, but equally contentious, proposal
was advanced by Liberal Senator Helen Coonan in 1999: it would require Senate
candidates to achieve a minimum threshold of primary votes to proceed to the
next stage of the count (Costar 2000). Again the suggestion has not been acted
on. But it remains possible that the major party pikes will ‘gang up’ on the
political minnows (as happened in Tasmania prior to the 1998 State election).

A largely unanticipated result of the 2004 election was that the Coalition
won a majority of Senate places, the first time a party had achieved this since the
election of December 1977. The reason for the victory was the unusually high
Coalition primary vote, and a fall in the Democrats’ vote, which snared the
Coalition three places in five States and four in Queensland.

The result in the 2004 election produced new criticism of the Senate voting
procedures. As noted above, the Senate employs the single-transferable vote
method of PR which theoretically gives the power to the voter to choose among
the candidates. However, since the introduction of ‘above the line’ voting in
1983, about 95 per cent of voters choose that option because of its convenience
and because it reduces the chance of recording an accidental informal vote. Yet
it also effectively converts the STV PR system into a de-facto closed list system.
This is because the political parties register their how-to-vote cards containing
their preference allocations with the Australian Electoral Commission (AEC)
and, when an elector chooses to vote above the line, she accepts her party’s
registered preference allocation as her own without necessarily being aware of
its detail. For example, the recently formed Family First Party, despite begin-
ning the vote count with only 1.88 per cent of the primary vote, won the final
Senate place in Victoria in the 2004 election because it was the major recipient of
other parties’ registered preference allocations.

Current controversies

For many decades the most controversial federal electoral issue was malappor-
tionment, whereby some electorates (usually rural) contained significantly fewer
enrolled voters than others (usually urban). The alleged party bias inherent in
this system was much debated, but the issue was finally laid to rest by electoral
reforms in 1983. The Commonwealth and all States bar Western Australia now
operate systems that require a reasonable equality of enrolment across
constituencies. In terms of efficiency and effectiveness, and adherence to modern
democratic principles, the Australian electoral procedures approach world's best practice, but this is not to say that contentious issues do not remain.

MONEY

Electoral law specialist Graeme Orr (2004: vii) has observed that ‘the single greatest issue confronting elections in the developed world is the influence of private money’. In Australia the Commonwealth implemented a method of public funding in 1983 whereby parties and candidates who obtained a required threshold of the primary vote (4 per cent) receive an indexed payment for every vote won (currently $3.92 per elector). Three of the States (New South Wales, Victoria, Queensland) and the Northern Territory also publicly fund election campaigns.

When the idea of public funding was debated in the early 1980s, one of its anticipated benefits was to lessen the parties’ reliance on private donations. This has not happened: as well as receiving $40 million from the public purse for the 2004 federal election the parties received a further $80 million in private donations in the year 2003–04. Over the three years 2000–03, the ALP received $132 million in funding of which only 18.8 per cent came from public sources; the figures for the Liberal Party over the same period were $120 million and 17.5 per cent (Jaensch, Brent & Bowden 2004: 32). There are laws which require the public disclosure of the source of private donations but their transparency is limited by the money often reaching the party coffers via so-called ‘associated entities’ (such as Canberra Labor Club Ltd and Cormack Foundation Pty Ltd), no fewer than 81 of which submitted returns to the AEC in early 2005.

Public funding is often defended as lubricating the democratic process by allowing a multitude of voices to be heard. In reality the current system aids the major parties because, by definition, they receive most of the funds. These funds are then typically transferred to commercial media networks and public relations firms to pay for the ever-increasing costs of political advertising.

Two other issues involving political money involve the blurring of public and private interests.

The first involves the fine line between, on the one hand, a government legitimately spending funds to advertise the existence and availability of services to citizens and, on the other hand, illegitimately using public money to boost the electoral stocks of the political party which happens to be the government. In the last six months of 2004 (and note that an election was held, in the midst of this period, on 9 October), the federal government spent $95 million on official advertising. The figure for the first half of 2005 (with no election imminent) is estimated to be less than $12 million (The Age 24 March 2005).

A second problem is the increasing practice of ‘buying time with a minister’ (Van Onselen & Errington 2004: 4). This involves government ministers making
themselves available—at formal breakfasts, dinners and even when jogging—to those able to afford fees of often thousands of dollars which then go into the minister’s party’s coffers to be used for electoral campaigns. The bait is the opportunity to lobby the minister. As Van Onselen and Errington (2004: 6) ask: ‘Is it legal? Technically. Is it ethical and proper? Absolutely not’.

The lack of regulation of political money is the most serious shortcoming of Australia’s electoral procedure. Few would disagree that reform of the electoral funding regime is ‘long overdue’ (Mercurio & Williams 2004: 31), but why should the parties want to tamper with a system that so favours them?

**ELECTORAL FRAUD**

A regular feature of testimony before inquiries by the Australian Parliament’s Joint Standing Committee on Electoral Matters (JSCEM) into the conduct of elections are complaints of widespread fraudulent enrolment and multiple voting (Copeman & McGrath 1997). As the Electoral Act requires compulsory enrolment of eligible voters, few impediments are placed in the path of those wishing to enrol. For example, minimal formal identification is required to enrol. While it is an offence to do so and is liable to be prosecuted, it is possible to vote more than once in an electoral division with little chance of detection on polling day and for the multiple votes to be undetectable during the vote count.

While critics are loud in their claims that the system is open to fraud, this is quite different from showing that the system is actually defrauded to such an extent as to undermine its integrity and/or to alter actual results. While the notorious 1990 enrolment of Curacao Fischer Catt—a feline whose occupation was listed as ‘pest exterminator’ (*Sydney Morning Herald* 16 November 2000)—has entered electoral folklore, former Electoral Commissioner Colin Hughes (1998) has taken to task those who, for apparent political purposes, make extravagant allegations of corruption based on flimsy evidence. To take but one example: the JSCEM review of the 1987 federal election noted that the AEC had identified 11,525 instances of apparent multiple voting across Australia. Checking of the electoral roll identified only 266 electors who admitted to having voted more than once, of whom just 45—out of the 9.7 million Australians who voted in the election—were referred for prosecution (JSCEM 1989: 80).

One of the major flaws in the conspiracy theory of electoral rorting is that, in order to rig an election result, a very large number of fraudulent voters would need to be concentrated in those key seats which determined the result, and the conspirators would need to be able to predict in advance which those seats would be.
PARTY CORRUPTION

Australian political parties are essentially voluntary organisations, subject to very few external controls beyond certain minimal requirements to qualify for public funding. While this may be slowly changing—for example, the Queensland Electoral Act now requires standards on internal democracy as a precondition of party registration (Jaensch, Brent & Bowden 2004: 24)—parties are generally at liberty to conduct their own internal affairs, including how they preselect parliamentary candidates, as they please. Because political parties have relatively few members (less than 2 per cent of the electorate belongs to a political party), it can be relatively easy, where parties determine candidate preselection by means of a ballot of local branch members, to influence the outcome by engaging in the practice known as ‘branch stacking’. This involves the signing up of large numbers of new members into party branches with the sole intention of their voting for a particular candidate in an internal contest. These new ‘members’ typically have their membership fee paid for them by faction leaders, and most of them are inactive in the branch after casting their vote. As about 60 per cent of the House of Representatives seats are classified as ‘safe’ for one party or the other, winning the preselection ballot virtually guarantees a seat in Parliament. Hence, the unregulated informal party ballot effectively determines the outcome, later simply confirmed by the regulated formal electoral process.

Throughout 1999 and 2000 it was revealed that factional chieftains within the Queensland branch of the Labor Party were corrupting the Commonwealth electoral roll by deliberately falsifying the addresses of enrollees to permit them to vote in party preselection ballots for electorates in which they did not reside. This device remained undetected for a time because of the very small number of bogus voters involved, yet it is a serious offence against the Electoral Act and one offender was subsequently jailed for nine months. (It is important to distinguish this case from any suggestion of seeking to influence general election outcomes, as it appears that those fraudulently enrolled voted in internal party ballot but not at any general election.)

One suggestion for minimising the rorting of internal party ballots is to make it a condition of the receipt of public funding for parties to have their candidate selection ballots conducted by the Australian Electoral Commission, as has been the case for some time in relation to internal trade union elections. The AEC is not enthusiastic about the idea on resource grounds and because it might embroil it in perceived partisanship (AEC 2000).

DISQUALIFICATION OF MEMBERS

Largely because the Australian Constitution is not prescriptive about the details of voting procedures, the High Court has only intermittently determined cases
relevant to the electoral system. One function of the High Court, however, is to sit as a ‘court of disputed returns’ to adjudicate certain types of disputes arising from elections to the Commonwealth Parliament. It was in this capacity that the court delivered judgment in the case of Sykes v Cleary on 25 November 1992.

Phillip Cleary had won the House of Representatives seat of Wills as an Independent at a by-election on 11 April 1992. At the time of his election, Cleary was on leave without pay from his position as a teacher employed by the Victorian Ministry of Education. It was on this point that a defeated candidate petitioned the High Court to invalidate Cleary’s election on the grounds of section 44(iv) of the Constitution, which states *inter alia* that ‘any person who... holds any office of profit under the Crown... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives’. By a 6 to 1 majority, the High Court ruled that Cleary did hold such an ‘office of profit under the Crown’—because he had not actually resigned from being a Victorian public sector employee—and declared his election void.

The Court also ruled, by a 5 to 2 majority, that two other candidacies, those of Bill Kardimitsis (Labor) and John Delacretaz (Liberal), were also invalid, because section 44(i) disqualifies for election to Parliament any person who is ‘under any acknowledgement of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power’. Kardimitsis and Delacretaz had been born in Greece and Switzerland respectively and the Court ruled that, although they were naturalised Australian citizens, they had not taken ‘reasonable steps to divest’ themselves of their original citizenship ‘and the rights and privileges of such a citizen’. The entire by-election was thus voided and the electors of Wills were left without representation until the 13 March 1993 general election, when Cleary (having by then resigned his teaching position) again won the seat.

Not surprisingly the High Court’s decisions caused controversy, but they should have caused no surprise. Two earlier reports—a Senate committee report in 1981 (SSCCLA 1981) and a Constitutional Commission report in 1988 (Constitutional Commission 1988)—substantially anticipated the High Court ruling in Cleary’s case. But successive governments have chosen not to address the issues by way of seeking a constitutional amendment despite the conclusions of the House of Representatives committee report in July 1997 that parts of s. 44 were discriminatory (HRSCLCA 1997).

Those dual citizens at risk under the ‘foreign power’ clause may avoid disqualification by writing to the relevant authorities in their former homelands, clearly revoking their citizenship. This, under the High Court ruling, would suffice even for those nations which do not permit the revocation of their citizenship.

In the case of the ‘office of profit’ clause, what is required is that any prospective candidate holding such an office must resign from it prior to nominating for
election. This discriminates against certain groups of public-sector employees in two ways. First, not all public servants affected by section 44(iv) have statutory rights of automatic reinstatement to their job should they fail to be elected to Parliament. Second, with specific reference to Senate elections, Senators-elect (unlike successful House of Representatives candidates, who are paid from polling day) do not receive payment until 1 July of the relevant year in which their Senatorial term begins. Section 13 of the Constitution permits Senate elections to be held up to ‘one year before the places are to become vacant’, and it is not uncommon for Senate elections to be held some months in advance of when newly elected Senators may take their places. For example, new Senators elected on 9 October 2004 could not sit in the Senate until 1 July 2005. Public servants, but not private-sector employees, wishing to contest Senate elections must resign their jobs before nomination and may be rewarded for victory by prolonged unemployment until they actually take up their places. Three of the High Court judges in the Cleary case drew attention to the effect of section 44(iv) discouraging public servants from seeking parliamentary office, and commented that ‘there is force in the view that the field of potential candidates for election should be as wide as possible’ (Saunders 1992).

Despite the publicity that attended the Cleary case, several candidates since then have encountered similar problems. Elected at the March 1996 election as the member for the NSW House of Representatives seat of Lindsay, Liberal Jackie Kelly was deemed by the High Court to be ineligible to sit because she held an office of profit at the time of her nomination. She won the subsequent by-election on 19 October 1996. In anticipation of a similar challenge, newly elected Liberal Senator Jeannie Ferris from South Australia resigned from the Senate in July 1996 and was then appointed by the South Australian Parliament, under the terms of section 15 of the Constitution, to the casual vacancy so created. Later, Senator Heather Hill (Pauline Hanson’s One Nation party) was successfully challenged on the grounds that she was ineligible to contest the 1998 election because she held British as well as Australian citizenship. The High Court ruled that Britain is ‘a foreign power’ for the purposes of section 44.

EXPAND THE FRANCHISE?

As noted earlier, Australia has a comparatively open franchise, but should it be expanded to include, say, permanent residents of Australia who are not citizens? At first glance, the case looks weak, on the grounds that the right to vote should reasonably be the preserve only of citizens. Yet the word ‘citizen’ was consciously omitted when the Commonwealth Constitution was drafted in the 1890s and only became operational after the passage of the Citizenship Act 1949. Between 1902 and 1983 all ‘British subjects’ who fulfilled the residency requirements could be enrolled to vote.
A group of citizens which some claim is effectively excluded from the franchise are the one million members of the so-called ‘Australian diaspora’, i.e. Australian citizens living abroad. The current law provides that any person who leaves Australia with the intention of returning may remain on the electoral roll for six years, after which they are required to apply each year to retain the right to vote. It has been recently argued (Duncan et al. 2004: 45) that, in a globalised world, these provisions are anachronistic and inadequate and that citizens resident overseas should be accorded political representation via an ‘Australian International Senator’. This idea is yet to gain significant political support.

ELECTRONIC VOTING

Since the adoption of the ‘secret ballot’ in the 19th century, Australia has always employed paper ballots which electors are required to mark in pencil. The USA, by contrast, has long employed various types of voting machines, some of which are electronic. The different technologies have been produced by different electoral methods: the US conducts genuine general elections at which a multitude of contests (from national President down to, in some jurisdictions, local officials) appear on a single ballot paper making it very difficult to complete by hand. In contrast, the most complicated task an Australian federal elector currently faces is to rank order a number of House of Representatives candidates, place a single mark above the line on a Senate ballot paper and, occasionally, indicate YES or NO on a referendum paper.

Nevertheless, there has been some recent Australian interest in electronic voting. Two types of ‘electronic voting’ need to be distinguished: voting via the Internet and voting by way of electronic machines such as, for example, touch screens at polling places. Interest in Australia has centred on the latter option and a limited, successful trial of touch screens was conducted at the 2001 Australian Capital Territory Legislative Assembly (Elections ACT 2004). Supporters of electronic voting machines point out that they would speed up the counting of votes and protect the secrecy of the ballot for sight-impaired and other citizens with disabilities who currently have to reveal their voting intentions to third parties to cast a ballot. Problems with electronic machines are that some types do not leave a paper trail to allow ballot rechecking and that their initial installation would be expensive ($30 million according to one official estimate (Barry et al. 2001: 11)).

Conclusion

Fair electoral procedures are essential to the operation of modern representative democracy. This chapter has argued that there is no perfect electoral system, but
some procedures are clearly fairer than others. Electoral procedures remain
susceptible to manipulation and distortion. The independence of the Australian
Electoral Commission, supported by all political parties, is a significant protec-
tion in relation to the actual conduct of elections, but there remains a danger
that political parties will where possible attempt to design or reform the proce-
dures to their own competitive advantage. We therefore need to be constantly
vigilant in understanding the significance of electoral systems and in improving
them where appropriate in ways that preserve and advance the democratic
accountability of our parties and politicians.

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