How democratic is Australia? Is Australia's democracy, strong in underlying structure as it is, the best we can hope for? Is there not plain evidence of needed reform?

Hear Our Voice: The democracy Australians want examines what we mean by democracy, suggesting it must extend far beyond holding elections every three years. Democracy must provide 'responsive rule' between, and in addition to, elections. Evidence drawn from research, and argument, suggest democracy is more effective if it disperses political power, and provides opportunities for active, genuine participation by citizens. The book also reviews the operation of parliament, inter-governmental relations (local government, state, territory and federal) and other key aspects of Australian democracy, and examines proposals for reform. It concludes with suggestions to strengthen and extend democracy in the Australian Federation.

THE AUSTRALIAN COLLABORATION

A Consortium of National Community Organisations

HEAR OUR VOICE: The democracy Australians want

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Preface

Hear Our Voice: The Democracy Australians Want argues that democracy must extend far beyond holding elections every three years. Democracy must provide 'responsive rule' between, and in addition to, elections. The authors argue that democracy is more effective if it disperses political power and provides opportunities for active, genuine participation by citizens. The book also reviews the operation of parliament, inter-governmental relations (local government, state, territory and federal) and other key aspects of Australian democracy, and examines proposals for reform. It concludes with suggestions to strengthen and extend democracy in the Australian Federation.

Hear Our Voice: The Democracy Australians Want is part of a series of books published by the Australian Collaboration. The books are devoted to political, societal and environmental issues facing Australia (www.australiancollaboration.com.au).

The Australian Collaboration is an association of seven leading national community organisations: Australian Council of Social Service; Australian Conservation Foundation; Choice; Federation of Ethnic Communities' Councils of Australia; National Council of Churches in Australia; Council for the Humanities, Arts and Social Sciences; and Trust for Young Australians.

The views expressed in this book are those of the authors and do not necessarily reflect the views of the Australian Collaboration or its member organisations.

About the authors

Ken Coghill is the Director of the Monash Governance Research Unit, Co-Director of the Parliamentary Studies Centre, and teaches governance at Monash University. He is a founding member of the Accountability Round Table and former Victorian MP, Parliamentary Secretary of the Cabinet, and Speaker. Ken has conducted extensive research and published widely on governance and parliamentary issues.

Paula Wright holds a PhD from La Trobe University and is a researcher in public policy and social life. She has a special interest in the uses of quantitative data in public policy. She has worked in research and project management in the community, government, and academic sectors. She is a dedicated observer of Australian politics and has worked as a researcher on democratic reform for the Australian Collaboration.

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In search of Australian democracy

Flaws in Australia's national democracy put at risk the undoubted strengths of its underlying design. These flaws, some dating from the earliest days of Federation, leave our democracy less able to create innovative, effective responses to emerging problems facing the nation, whether they are domestic issues, national concerns or international matters. This is a worrying development for a country that prides itself as an exemplar of good governance in a period of history during which democracy has developed and spread to become the most idealised and desired form of government.

Australia is fortunate to possess a praiseworthy foundation for democracy, as seen in our constitution, our electoral system, our parliaments, our governments and judiciary, and the separation of powers between them. However, the strengths of our systems and institutions have been compromised by weaknesses in the effectiveness of our system in responding to the wishes of the public. There has been a series of shifts of power away from the legislature to the executive. There has been a strengthening of the larger, federal powers to the detriment of the smaller, more responsive lower levels of government. Citizen participation is discouraged by insincere consultations and galloping centralisation.

Despite the apology to Indigenous Australians by the Australian Parliament in 2008, their fundamental rights continue to be violated by the Northern Territory Intervention in a way no white Australian needs to fear; neither are the core values of Indigenous communities recognised in law or policy.[1]

Australia's once world-leading electoral system is compromised by the outdated methods used to update the electoral roll, by some features of ballot papers so complex that voters are encouraged to leave the selection of their second and subsequent preferences to a political party, and by the governing party's ability to manipulate election dates to gain electoral advantage.

The role of parliaments as houses of debate and review has been weakened, with key institutions such as question time functioning as a forum for assertions and attacks rather than debates. Ministers are no longer as strictly accountable to parliament.

Despite agreeing to the major international conventions against corruption, Australia still lacks an effective national anti-corruption body. Processes and procedures to ensure propriety in public appointments, post-ministerial employment, and lobbying and donation activity are weak or absent. Finally, the role of the media in balancing the asymmetry of information between the state and the public is under threat from an extraordinary concentration of media ownership.

These weaknesses in Australian democracy leave us, the public, vulnerable to entrenched power, vested interests and injustices, and it does no favours to the elected officials, under constant threat of being comprised by the system's flaws. This book reviews the problems and suggests reforms

that would address the democratic deficit in Australian democracy.

First, there should be negotiation between national, state and territory, and local government spheres, leading to two intergovernmental agreements:

- to adopt and implement the principle of subsidiarity, which provides that 'decisions must be taken at the most local level possible'.[2] Ideally, this principal should then be codified through an amendment entrenching it in the Australian Constitution. The benefits will flow from both the interactions it stimulates and its devolution.
- to distribute revenue-raising powers to meet the expenditure responsibilities of each sphere of government, preferably incorporating provision for adjustment to expenditure.

These two reforms would result in a much more democratic Australian federation.

What makes Australia democratic?

The Constitution of the Commonwealth of Australia sets the foundation for Australian democracy; the House of Representatives and the Senate are to be composed of members and senators chosen directly by the people. As John Stuart Mill said:[3]

> …(t)he meaning of representative government is, that the whole people, or some numerous portion of them, exercise through deputies periodically elected by themselves, the ultimate controlling power, which, in every constitution, must reside somewhere.[3]

This exercise of control by the people, through their representatives, is the core of Australian representative democracy.

Contrast Australia with Egyptian representative democracy, prior to Hosni Mubarak stepping down as President of Egypt in February of 2011, after weeks of protest by the Egyptian people. Mubarak has been described as a quasi-military leader[4] and a dictator,[5] but the system he led was a form of democracy. Mubarak had held elections, but there was no right in Egypt to free expression, a fair trial, press, or even to freedom of assembly. Some political parties were banned, and the elected parliament had little power. The result was an Egyptian democracy that Noor Khan[6] described as a game of musical chairs, with elections doing nothing

more than rotating the positions of those already in power. The calls from protesters, which forced Mubarak from power, were calls for a true democracy where the people were able to choose their representatives. Likewise, Syrian protesters demanded 'political pluralism and free elections'.[7] Syrian lawyer Ali al-Bayanouni argues that opposition groups and protesters aim to 'build a civil state committed to rule of law, governed by a new constitution that emerges from the will of the people through a transparent and free vote'.[8]

Australians are rightly proud of our democratic system, but the freedom to elect representatives of our choice does not lead to a fully democratic outcome. Representatives, once elected, must be responsive to citizens, and the systems that shape democracy, in practice, must also be responsive. Political parties acknowledge the importance of responsibility; in the lead up to the 2011 NSW state election, Liberal leader Barry O'Farrell successfully campaigned on a platform of an honest, accountable, and responsible government.[9]

The origins and basic features of democracy are attributed to the ancient Greek city-states, such as Athens in the fifth century BC. All Athenian citizens would gather regularly to discuss and vote on the business of governing Athens; pure democracy enacted through an assembly of equals, each having an equal part in decisions on matters of governance. This move from rule by violence to rule by agreement is the most significant invention in governance of humanity. The most significant shift in governance since then is the move from the assembly democracy practised by Athenians, to representative democracy. The power wielded by these Athenians was entirely their own; they governed their Athens in their own names and so no scrutiny was required which could not come from the assembly itself. The extension of citizenship to, and enfranchisement of, all men and women means that it is impractical

for citizens to represent themselves in the assembly; they must elect representatives to work on their behalf. We entrust another individual with the rights that we hold to participate in decision-making, and this move brings with it the requirement that we scrutinise the manner with which our right to participate is wielded by others.

On democracy

Without a strong government we are at constant risk of chaos. A strong and just social order preserves the rights of its citizens by regulating social processes, procedures and behaviour to protect the rights of individuals from encroachment by others. The state can ensure that the strong and weak are equally able to exercise their rights by restricting actions that impinge on citizens. In addition to restrictions, sanctions against those who disobey are required. Special powers must be reserved for the state in enforcing those sanctions (the state monopoly on the legitimate use of coercive power), including the right to imprison. This power to enforce social order can save us from a chaotic world, but the presence of sanctions introduces the possibility of tyranny. Rules and sanctions are made and used for the public good, but in an unrestrained government they may be used for the private good of those holding power. We find ourselves between the threat of chaos, and the threat of tyranny.[10] Neither is satisfactory, but neither is inevitable. The power held by rulers has, since the Magna Carta in our tradition, been restrained by rules designed to subject the rulers themselves to enforceable law, and to act in the interests of those subject to their authority, in accordance with their fiduciary duty and discharge of the public trust. Restrictions on the actions of representatives, and regulation of the systems by which they are empowered, can limit the risk of tyranny

and enforce the principle of governance *on behalf of* citizens rather than over them.

The essence of democracy is rule that is responsive to the felt interests of the people.[11] In practice, that responsiveness relies upon the certain knowledge of the rulers that the citizens have entrenched rights and opportunities to re-endorse or select different rulers through non-violent, regulated processes. Those rulers are entrusted through elections to govern in the public interest rather than their self-interest. Claims for government by those with superior knowledge are the most persuasive claims for alternatives (or modifications) to democracy. There will be those in the community with a better grasp of what is in the community interest than others. This argument was used against the United Kingdom and other democracies in the inter-war period, as Cowles reported after uncomfortably observing and reporting the Spanish Civil War and the emergence of the Second World War.[12] But, as Saward argues,[13] however true claims by authoritarian leaders of superior outcomes may be in particular instances, the risks of failure of undemocratic rule are all too clear for any convincing claim of advantages to authoritarian rule.

The knowledge required of matters of governance can be distinguished as two complementary types. There is a technical knowledge, which is task-oriented, and often reflects a technical understanding of an issue. This technical knowledge may be immensely complex, specialised, and difficult to acquire. It is likely to be found in some individuals and not others, and it is clear that some have superior knowledge; it is the knowledge of how to arrive at a given end. But the possession of superior knowledge of this sort is not sufficient claim to greater political power. This is because the task of governing requires a different sort of knowledge: the appropriateness of that end, and deciding on the moral priorities for community interests. There is

no superior knowledge of community interests, as citizens themselves must determine what their own interests are. In doing so, they must have regard to technical knowledge.

Citizens express their preferences at elections as to who they wish to represent them. Voters make an important decision at the ballot box about candidates, based on some sense of the personalities and values of the candidates, along with the plans a candidate or party offers for the electoral term. Representatives may speak of a mandate, but it is clear that circumstances change between elections. A candidate who is more popular than others is not necessarily likely to hold personal views on every issue that accord with the views of the majority. The knowledge essential to good government is not only the technical expertise of governing, although this may be important, but also the knowledge of community interests. This remains with the community, but representatives can, and must, draw on these community interests to govern legitimately.

The transfer of power from the represented citizens to the elected representative is not confined to the moment of election. This power continues to be held by citizens during the term of office, and the transfer of power is continual. The continual transfer of power means that representatives must seek to understand the wishes of the citizens, and act to give effect to the felt wishes of the electorate, while participating in the assembly and in the business of government. In other words, regular elections are not enough. We must ensure that the few who represent the many are not only chosen by the many, but also that those few are responsive to the felt interests of the many.

The government holds the responsibility of making decisions based on community interests and priorities, but it does not follow that centralised decision-making will lead to

the best outcomes. It is important to recognise that these decisions are made on behalf of the citizen, but only when it is impractical for citizens to make these decisions themselves. This recognition is embodied in the principle of subsidiarity. This is a core principle of the European Union, but was first detailed in a papal encyclical by Pope Pius XI in 1931.[14] Subsidiarity was adopted as Article 5 of the Treaty on European Union. It aims to ensure that decisions are made at the level that is closest to the citizen as possible, and restricts action by the European Union to those actions that are more effectively taken at the EU level than at a national or local level. It provides citizens with the greatest and most immediate opportunity to be involved in decision-making. With subsidiarity, the autonomy of local groups can be preserved where possible — local units can respond more flexibly to individual and specialised needs.

Australia, like the European Union, is not a unitary state. The Australian Constitution gives specific powers to the Commonwealth, makes some powers concurrent, and leaves residual powers with the states. This division of responsibilities has been broadly described as assigning defence, immigration, and international and interstate trade to the Commonwealth, and peace, order and 'good government' to the states.[15] The states further devolve responsibility to local government, which deals with regulation and service delivery on the most local level. This local service delivery does involve significant responsibility and is widely considered an appropriate devolution, as the character of local areas varies widely. The focus of local government on street-level issues means that local councillors represent a small area, which they can understand intimately, along with the attendant concerns of their citizens. For example, larger cities must deal with traffic and mass entertainment issues, which are not found in rural areas. This

devolution of governance to the lowest practical level increases the perceived and actual responsiveness of government to its citizens.

However, there is a countervailing tendency to centralise power in Australia: for the federal government to use its financial powers and constitutional powers to regulate corporations to exert increasing influence over state and territory governments, and for the latter to likewise impose policies and policy implementation on local government.

Applying subsidiarity to Australia, the roles of the national parliament and government are important, but these roles should be to set 'rules of the game' principles and policy, that is, to define and regulate how detailed policy should be made and rights protected at subordinate levels of government. They should also to take on governance and coordination that the smaller groups cannot effectively carry out; for example, the administration of justice, provision of hospital services, and action on climate change. The state, territory or local government would provide citizens with the greatest and most immediate opportunity to be involved in decisions affecting the interpretation and application of national principles. This would be more responsive to local conditions and preferences.

Subsidiarity could apply between states or territories, and their local governments in similar manner. Devolution of local service delivery is widely considered to be appropriate, as the characteristics of local areas and services for people and property vary widely within every state and territory. Local councillors representing small populations are accessible for residents, and intimately understand and respond to the concerns and desires of citizens.

In some parts of Australia, local government does have considerable autonomy, but in others it seems 'micro-managed' by its state government bureaucracy, and denied the

potential to take a leading role in addressing national or state issues at the local level.

Subsidiarity is necessary, but not the only condition for improved outcomes. The greatest benefits come when there are active relationships between government institutions. International studies have found that through such inter-relationships 'integration is developed and realised in informal governance processes and dialogues'.[16] The formal interactions create the context for the informal interactions that are the key to better outcomes. For subsidiarity to be most effective, the government system should encourage and stimulate exchanges of ideas and innovation rather than merely devolving policy-making and administration to insular institutions.

The distribution of power within the context of a decision may also have profound effects on outcomes: the perceived interests of the affected citizens must be equally weighted if the outcomes are to be accepted as democratic.

Effective democracy can be enhanced by harnessing the expertise of the level of government that is closest to the issue of interest. When these issues are dealt with close to the local area, higher levels of government can confine their attention to dealing with broader policy and standards setting, thereby working more efficiently.

The risk of tyranny, which comes with the centralisation of power in government, puts the citizen in a difficult position. On the one hand, government must be free to create and enforce the rules of the state (by the application of coercive power in extreme circumstances). On the other hand, using the powers of the state in a manner that is not in the interest of the citizens is a misuse of those powers. There must be ways in which the operation of governments and the parliaments can be monitored to help direct representatives' actions towards the interests of the citizens. The existence of parliament itself is

one of these monitory means, of course, and the prominent place of the opposition is an important device.

Other means are necessary, though, and as Keane suggests, monitory groups and structures can enhance democracy through providing the views of the majority to representatives, and ensuring those views are taken into account.[17] Power-scrutinising institutions such as non-government organisations, human rights organisations, summits, and integrity commissions have crucial roles to play in monitoring the exercise of power. Some of these agencies confine their attention to one issue — consumer protection groups, for example — and some embrace multiple issues as they emerge, with monitoring as their central task, such as 'Get Up!'.[18] Monitory groups and structures may represent the interests of many citizens, and can use particular expertise to assess government action in particular arenas. They may perform a coordination role for citizens who would like to express a view on an issue. These groups can moderate the power imbalance between governments and the governed, and provide essential power monitoring functions. They recognise a new model of the citizen as a voter with many interests and voices on multiple issues, who may be represented by multiple groups at any one time. These groups are outside the traditional framework of the elector and the representative, but, as Keane notes, can 'enfranchise many more citizen voices' by their participation on behalf of their members, and citizens more generally.[19] Nonetheless, there must be some caution as techniques such as 'astro-turfing',[20] which is the 'action, process, or practice of falsely suggesting public or grass-roots support for a policy, product, movement, etc., through the use of an organised campaign which simulates such support'.[21] It can be used to create false and misleading impressions of the size, interests

and representativeness of individuals and groups claiming to perform monitory functions.

International Covenant on Civil and Political Rights

Australia ratified the International Covenant on Civil and Political Rights. The Covenant, in Article 25, gives Australians the right to:

> … take part in the conduct of public affairs, directly or through freely chosen representatives;
>
> to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
>
> to have access, on general terms of equality, to public service in his country.[22]

The rights to vote, and to be elected, are well established in Australia. Elections are administered by the Australian Electoral Commission (AEC), which is an agency independent of government, and recognised around the world for its expertise in electoral matters. However, the current Australian electoral system unnecessarily limits the opportunity for citizens to vote; Australia has not embraced measures which would ensure all young people and other newly enfranchised citizens have the opportunity vote at an election, and citizens who are disabled, imprisoned, or homeless experience additional barriers to voting.

Australian governments also owe citizens the opportunity to take part in the conduct of public affairs, either directly, or by a representative. These consultation processes and civil society organisations are essential, both to provide the opportunities to participate in public affairs to which citizens are entitled, and to provide the necessary monitoring of the processes of governments. The advantages that genuine consultation brings are compromised if consultation processes are insincere, that is, there is a formal structure of consultation, but the processes are so limited by terms of reference, or procedures, as to prevent any external review of government conduct of public affairs.

The Covenant also obliges governments to regulate employment in public agencies, including executive appointments, so that all citizens have equal access. Governments have, in the past, been accused of making appointments based on political affiliation. Furthermore, to comply with the obligation to provide equal opportunity, processes must be established to ensure appointment on merit.

An appointments commission should vet all appointments requiring prime ministerial, ministerial, cabinet or governor general-in-council approval. The appointments commission should be comprised of personnel with extensive experience in, or knowledge of, the public sector. Potential appointees to senior positions should be considered and reported on by the appointments commission before being brought to the cabinet by way of correspondence from the responsible minister to the prime minister. A recommendation to cabinet for a senior appointment should be accepted only if it has been scrutinised by an independent panel (including membership independent of the department filling the post), is authorised by the appointments commission, or is certified by the prime minister as an urgent appointment, giving the

reasons and qualifications for selection, published in the *Government Gazette*.[23] A similar system is well established in the United Kingdom, with the Commissioner for Public Appointments in England and Wales.[24]

There are two important elements of control required in a responsive democracy. Elected governments must be free to govern without the interference of external interests, and citizens must have true control, through free and fair elections, over the membership of these governments. Free and fair elections are crucial but not sufficient to ensure that citizens can monitor their representatives. During the electoral term, the political preferences of the electors will be expressed, and the government must be responsive to them.

Countries around the world grapple with these issues, and there is a range of ways in which governments cope with these obligations. The Democracy Barometer[25] aims to assess democratic practices in thirty countries. The Barometer includes 100 indicators that refer to three principles: freedom and control (and the balance between them), and equality. Australia rates fifteenth in the most recent index (2007) of thirty countries; higher than Hungary, Austria and the United Kingdom, but lower than all Scandinavian countries, Canada, the United States, and New Zealand.

Participation improves outcomes

Transparency and participation are key elements of equality; transparent political process, and the opportunity for participation, are essential for citizens to properly assess and participate in the political process. Transparent and participatory democratic rule produces better governance, but there are other benefits of an effective democracy. A democratic system that is inclusive and transparent, and is perceived by the citizens to be so, produces decisions that are better accepted by citizens.[26] Regardless of the end result of the democratic process, the process itself adds to the satisfaction of the individuals who participate. While it is obvious that a process in which individuals achieve their aims would make those individuals happier, there is evidence that just being part of the process makes participants happier.

Western Australia provides an excellent illustration. In 2001 the State Government was struggling with a decision on the site of a new freeway exit for the Reid Highway. Residents of the suburbs of both proposed sites objected to the proposal and began active protest campaigns. The minister responsible instituted a 'citizens' jury' process in the hope of resolving the issue. Members of the jury were selected at random from both the affected areas, and provided with resources to come to their decision, which included advice

from experts and representatives from a range of relevant areas. The jury agreed to aim for consensus and to prepare majority and minority reports in the event that they could not agree. The minister also agreed to conduct a pilot of the jury's decision, within budget limits. This agreement, according to Hartz-Karp, was highly influential, as the jury members felt substantial responsibility to come to the right decision.[27] The jury recommended the solution originally proposed by the government, but residents felt more satisfied with the decision.

Opportunities for participation in democratic processes benefit not only participants, but all those who are offered the opportunity to participate. A study of Swiss citizens in the late 1990s analysed the link between happiness and opportunity to participate in the democratic process.[28] Switzerland provides an excellent natural experiment on the influence of democratic participation, as the country is composed of a group of strong regional governments, and these governments offer varying institutions for democratic participation. A large, survey found that the opportunity to participate in direct democracy led to a sizeable and predictable increase in happiness for Swiss citizens. Not only were individuals happier, the greater the direct democracy opportunity, the greater the gain in increased happiness; for those with above average happiness, a one per cent increase in direct democracy was associated with a 2.8 per cent increase in happiness.[29]

This increase in happiness occurred for two reasons:

- The activities of the political representatives were better controlled in areas where there were stronger institutions facilitating direct democracy, leading to higher satisfaction with the representatives themselves.
- The opportunity to participate. This is illustrated by the perceptions by non-citizens, who are excluded from most

participation in the democratic process; their happiness was only marginally increased by living in an area that provides participation opportunity to citizens.

These findings are generalisable.

If democracy in the Australian Federation is rule that is responsive to the felt interests of the citizens, what are the implications for its operation as a federation?

The preoccupation of many observers with the operation of government at the national level belies the reality of Australia's complex democratic structure and functioning. Its constitutional features include:

- state parliaments that retain exclusive constitutional control over legislation affecting major areas of life within their borders (which include some offshore islands, such as Lord Howe Island, over 270 Torres Strait islands, King Island, other Bass Strait islands, and Macquarie Island). Areas of state power include land title, land use, education, health, the administration of justice, and local government.
- self-governing areas, such as the Australian Capital Territory, Northern Territory and Norfolk Island, their parliaments having state-like powers. However, they are subject to legislative control by the Commonwealth Parliament and their legislation can always be overridden by the Commonwealth.
- other territories with small permanent populations that are administered directly by the Commonwealth Government. They are: Christmas Island; the Jervis Bay Territory; the Cocos (Keeling) Islands; West, Middle and East Islands of the Ashmore Reef; Cartier Island; the Coral Sea Islands Territory; the Australian Antarctic Territory; Heard Island; and McDonald Island.

- that the Australian Parliament has exclusive powers in specified areas such as communications, foreign affairs and defence
- that the state and Australian parliaments have concurrent powers in some other areas.
- that local government operates under legislation created by each state and the Northern Territory. Typically, local government has responsibility for land-use planning, local road construction and maintenance, building construction approval and supervision, and waste collection. The local government structures, functions and operations, and the level of monitoring and control exercised by the relevant state/territory government, vary considerably.
- that taxation revenue and spending responsibilities are seriously out of balance between spheres of government (among the most extreme of any federation).

However, this formal distribution of powers tells only part of the story. Australia has become a centralising federation in which effective power has been pulled to the national level through a range of processes, including:

- use of national revenue to influence state, territory and local government
- the Australian Parliament's power to make laws concerning corporations (that is, most businesses and other legally incorporated organisations).

This has left the states, territories and local governments open to domination by the national government in most areas of policy, legislation and administration. In many areas there are excellent consultative or inter-governmental arrangements, especially between the national and state and territory spheres; nonetheless, while the national parliament holds the whip

hand, the national government can often dictate policy and practice.

Our democratic federation is thus a complex system rather than a simple hierarchy of constitutionally-defined relationships. It is characteristic of such complexity that it works best with a moderate level of devolution: rigid central control inhibits the creativity and innovation needed to address and resolve policy problems; total decentralisation leads to fragmentation, a lack of coordination, and concentrations of power at the expense of overall wellbeing.

The imbalance at the heart of the Australian federation undermines the basis of democracy — responsive rule. This imbalance has the effect of reducing the responsiveness of decision-making to local conditions and policy preferences, that is, people have less influence over decisions affecting their lives. The European Union addresses this danger through the constitutional principle of subsidiarity, as discussed previously.

In policy areas in which there are good inter-governmental working arrangements, the Australian federation does perform well. However, there are areas where the imbalance of effective powers (for example, due to revenue capacity or use of the corporations power) results in rule being less creative, less innovative and, as a consequence, less responsive to the needs and desires of Australians.

Participation enhances satisfaction with democracy. Citizens are better satisfied with both the individual decisions made by democratic governments, and with their lives generally, when there are visible and genuine opportunities to participate in representative democracy.

The principle of representativeness in Australian democracy is enshrined in the Constitution, but the form it takes is left to parliaments. Internationally, effective and representative democracies take varying forms, and it is the work of the

Federal Parliament of Australia to decide how this principle is expressed in Australia. This book now examines a series of requirements for democracy, and assesses how these requirements are fulfilled, or frustrated, in Australia. We offer examples drawn from other democracies for comparison and insight. Australia enjoys a world-class electoral system, but certain vulnerabilities in current practice leave the Australian public at risk of a significant deficit in democracy. We address citizen engagement activities, because they offer citizens a voice in representative democracy. Reform of the current parliamentary institutions is addressed, including strengthening the role of question time and of the Senate, as is strengthening accountability of ministers and of their advisors. We briefly discuss anti-corruption activity (for a more comprehensive treatment of this important issue, we refer readers to the Australian Collaboration essay, *Corruption: the abuse of entrusted power in Australia*, by Tim Smith). Finally, we discuss issues of rights, which are foundational to citizens' capacities to participate in democracy, and we focus on transparency, freedom of information and freedom of speech, as well as human rights more generally.

It is broken; fix it! Citizen participation

As well as holding elected officials accountable at the ballot box, good democratic systems must involve citizens in a broad range of democratic processes and practices.

Internationally and in Australia there are community consultation processes and non-government organisations that enable citizens' participation in the decision-making process. The result is better accepted decisions on contentious decisions, and increased citizen trust in government.

Germany, New Zealand and Sweden provide examples of consultative processes that engage citizens in development of the character and operation of government.

West Germany in the 1980s suffered a crisis of democracy. John Dryzek[30] describes the country as having an exclusive charter of corporatism, which allowed access to political decision-making only to business and labour organisations. The creation of a public 'space' for citizen deliberation, which operated outside the State, allowed the development of critiques that could influence public policy. The protests, and the research associated with this public deliberation, were able to weaken the corporatism of the State, which then allowed individuals a greater level of access.

The governments of New Zealand and Sweden provide frameworks for democratic engagement of citizens in their

governments. New Zealand legislation prescribes community participation in local government by prioritising community outcomes that are most important in the long term, and by measurement of progress.[31] The Swedish Constitution enshrines the responsibility of the Swedish government to support popular democracy. A Ministry of Democracy established a Commission on Swedish Democracy in 2000.[32] It found that, although there were no specific threats to democracy, participation in democratic practice was low among young people. The government responded to this with a broad public education and awareness campaign, increased accountability measures, and a review of internal governance checks.

Porto Alegre, Brazil, and Savannah, Georgia, USA, each use budgeting processes that rely on citizen participation, in identifying spending priorities. In Porto Alegre, the regional government practises 'participatory budgeting', which convenes neighbourhood, regional and city-wide assemblies. Participants identify spending priorities, with around 50,000 residents regularly participating.[33] Since the practice was established, a range of improvements in governance, wellbeing and citizen engagement have been achieved, with an increase from 75 per cent to 99 per cent of homes with running water, and the number of public schools almost tripling. The city council of Savannah, Georgia once used a process called 'Budgets for Outcomes'. Budgets were prepared by first identifying priority outcomes and then allocating available funds to achieve them.

In Australia, the Reid Highway consultation, as described earlier in this book, provides an excellent example of a consultation processes that benefited citizens and strengthened citizen confidence in their elected representatives and policy makers.

Community consultations are an important part of citizen participation, but some consultation processes are not truly

designed to influence decision-making. These are what Janette Hartz-Karp[34] describes as 'DEAD': Decide, Educate, Announce and Defend, that is, a decision-making institution makes a decision, initiates a process to inform ('educate') those affected, announces the decision and defends it, all without providing opportunities to influence the original decision. It is a false model of consultation, which often results in community anger and frustration at the tokenism of the consultation, and ultimately decreases community interest in consultation.

Public advocacy

Participation in Australia's democracy means more than just voting at election times. The modern operation of democracy means that policy is developed and reviewed throughout the electoral term. Consequently, an effective democracy needs to be, as political scientist Marian Sawer argues, both participatory and deliberative.[35] Sawer means we need mechanisms for citizens to participate in formal procedures, such as inquiries and committee hearings, and informal mechanisms, such as policy discussion in the media. We also need forms of deliberative democracy to help explain government policy proposals and their implications to concerned citizens, and to show citizens simple ways of participating in public debates. Online groups such as Get Up!, the internet-based campaigning organisation, are particularly successful in this respect. Advocacy bodies have resources, often unavailable to individuals, to meet these challenges on behalf of other citizens.

Many more Australians participate in civil society organisations than belong to political parties; the Australian Survey of Social Attitudes in 2003, for example, found that over 80 per cent of Australians are members of at least one voluntary association.[36] Sawer writes that Get Up! has far more members than the combined members of all the registered political parties in Australia.[37]

Advocacy bodies have a special role to play in representing those who cannot represent themselves. Australian advocacy

bodies address issues such as environmental degradation, good government, and human rights and dignity. Sawer points out that advocacy bodies can focus the attention of governments on valid but 'electorally unpopular' groups who may otherwise become the victims of wedge politics. Organisations representing these groups can mobilise research and policy arguments in a way individuals cannot. An effective organisation can make sure, as Edgar says, that 'marginalised people are not further marginalised by the inaccessibility of government'.[38]

Of all the developed countries, Australia is widely judged the most vulnerable to the environmental threats facing the world. Australia's environmental bodies have a critical role to play in ensuring that scientists' warnings reach a wide public, are fully understood, and taken into account by decision-makers. The wholesale changes required to achieve a sustainable future require public advocacy skills of a very high order.

Honesty, transparency and accountability in government and business are only achieved by constant vigilance. It is the citizen organisations that are devoted to the preservation of democratic practices that exert the pressure to alert the media and others to malpractice and injustice. It is especially civil society organisations (such as the Accountability Round Table, newDemocracy, the Public Interest Advocacy Centre and the Councils of Civil Liberties), in conjunction with university networks (such as the Democratic Audit of Australia), that maintain pressure on government to improve their democratic practices, and provide them with detailed and informed suggestions about effective ways to act.

Both the Australian Council for International Development (and the international aid agencies that fall under its umbrella) and the United Nations Association of Australia play crucial roles in keeping public attention focused on poverty, disease, and other human rights problems and abuses in the

poorest countries of the world. They monitor progress towards the United Nations Millennium Goals. They lobby the Australian government to increase its aid contribution and to focus the aid more sharply on the areas of greatest need.

Indigenous rights to democracy

If democracy in the Australian Federation is responsive rule to the felt interests of the citizens, what are the implications for our indigenous people?

The first implication is that for Indigenous communities, history matters in ways that are simply beyond the life experience of almost all immigrants and their descendants since the invasion and settlement began in 1788. For Indigenous people, their millennia of continuous culture are associated with a knowledge of and respect for the past, rare among immigrant peoples and their descendants. For example, Australians of Scottish or Irish descent are unlikely to know anything about the 1692 Glencoe Massacre in Scotland, or the 1690 Battle of the Boyne in Ireland.

Indigenous political and property rights were not so much rejected, as crudely dismissed as being of no concern to those wielding colonial power and the invading 'settlers'. Self-governance by Indigenous communities, developed over millennia, was disregarded as if it did not exist. Indigenous people were placed under the control of colonial officials or Christian missionaries and many were herded into centralised locations.

Indigenous communities were denied the extension of the franchise that occurred in waves of democratic reform, and did

not gain full political equality until after the 1967 referendum. Indigenous people still have to fight for recognition of rights that are taken for granted in most other circumstances; for example, rights over the land people legally occupy. The Northern Territory Intervention, in which the army was directed to invade and subjugate remote Indigenous communities, would have caused outrage if applied to non-Indigenous communities, or in major cities. Rather than support and empower Indigenous communities to address dysfunctional behaviour, the Intervention centralised power and stripped local communities of any remaining autonomy, respect and dignity. Democracy was denied.

Indigenous communities missed out on the democratic reforms pioneered (globally) by Australian colonies. They were denied any legal rights to the land on which they lived, until the Mabo High Court decision. Indigenous communities seeking to regain control over lands, which have been theirs for millennia, have to go to absurd lengths to 'prove' a legally defined association with those lands. The law operates to deny many Indigenous Australians rule that recognises and is responsive to their interests, and was violently cast aside by the colonial invasion.

Only recently have some policy-makers begun to realise that a commonsense approach would require Indigenous rights to be recognised unless discredited on sound grounds — somewhat perversely claimed to be a reverse onus of proof.

The second implication concerns the significance of the fundamental values of Indigenous communities, and how they differ from the values found in mainstream contemporary Australian culture. Most immigrants came to Australia hoping for some form of material 'progress' for themselves, or at least their children, although some come to escape war or persecution. The notion of progress almost always involves increased

levels of consumption of material goods and services, which in turn rely on the depletion of non-renewable resources and degradation of the environment. From the earliest days of the settlement, the non-Indigenous community has established and expanded an economy founded on this model, that pays no regard to sustainability. Indigenous culture is founded on a diametrically different world view and philosophy. Sustainability of the environment and living within the environment is fundamental to the culture; humanity's domination, exploitation and subservience of the environment for human purposes are an anathema. This culture has no recognition and no place in the operation of Australian democracy. Only now are some of us realising that domination, exploitation and subservience of the environment for human purposes threatens the existence of much of the human population.

Looking elsewhere, Canada's Department of the Environment suggests that the dominant culture could learn from indigenous cultures in order to move towards sustainable development. Indigenous ancestral beliefs are not scoffed at; they offer a value system that respects the environment, and upon which we could restructure our economic and production systems to 'live lightly on the earth'.[39]

Australia faces potentially dangerous challenges in which the stresses of moving to a sustainable, low carbon economy could bring about disharmony. Recognition of the potential of Indigenous values and culture to help the general community understand and accept the rationale for sustainability offers the opportunity for an invaluable Indigenous contribution to the operation of Australian democracy.

Australian democracy has been diminished by the marginalisation of Indigenous citizens. The whole community has lost as a result. Indigenous people have been denied rights and

benefits available to most other Australians, and we lack a strong Indigenous input into the relationship we have with the land. Democracy will be stronger if Indigenous values can be accepted into the discourse that shapes our future.

Electoral reform

Voting or other electoral systems are fundamental components of the administration of democracy, and the administration of these systems affects the quality of democracy. Australia's practice of compulsory voting means that citizens on the electoral roll are obliged to vote, but some citizens are absent from the roll. This means some who are entitled to vote cannot do so. The practices of updating the electoral roll affect who may vote, even within a compulsory voting system. When citizens do vote, the design of the ballot paper influences the expression of voter preferences. And because the frequency of Australian elections varies, and they are less predictable than in other democracies, we must ensure that election timing cannot be manipulated to suit those already in government.

A limited electoral roll that is not representative of the whole population is a significant deficit in democratic practice. According to research carried out by Brent and Jackman,[40] growth of the Australian Electoral Roll has slowed to well below the growth of the number of eligible voters in Australia. This under-enrolment of Australian citizens is made up of under-enrolment of new voters (mostly Australian citizens who turn 18), and of voters who are removed from the roll by the Australian Electoral Commission (AEC) when they change address but fail to re-enrol. Other advanced democracies limit this deficit between eligible voters and enrolled voters by

practicing automatic (or 'direct') enrolment both for new voters and for voters who have changed their address.

Currently, the AEC enrols voters or corrects information at the request of the voter. The AEC partially automates maintenance of the Electoral Roll by practising a 'Continuous Roll Update' (CRU) system. This integrates information from various Commonwealth, State and Territory databases. The AEC then carries out 'habitation checks' at addresses for which it believes it may have incorrect voter information. Brent and Jackman argue that this practice makes the AEC more efficient at removing voters from the roll than adding voters to it, since no action is necessary from voters before they are removed from the roll, but completion of a paper form is necessary to re-enrol at a new address.

In direct enrolment systems, electoral agencies are more active in their maintenance of electoral rolls. They do this by accessing information from other trusted agencies to change their records without direct action from the voter. Direct enrolment is practised in many democracies, such as Argentina, Austria, Belgium, Finland, France, Germany and Sweden.

In New South Wales, the SmartRoll project enrols voters when they turn 18, using information from government departments, including the Education Department. The NSW Electoral Commission contacts the new voter to advise that they have been added to the roll, but does not require a response. The Commission also receives information from organisations including the NSW Road Traffic Authority, and, unless voters object, updates the roll with this information. Voters who have missed direct enrolment, but come to vote on election day, are able to enrol on the day if they have sufficient identification. The NSW legislation was passed in 2009 with bipartisan support.

The most important benefit of direct enrolment is that it corrects a very serious deficiency in Australia's electoral system. In 2009 the AEC calculated that only 91.6% of eligible voters were on the rolls; 1.2 million eligible voters were unenrolled and therefore unable to vote.

With direct enrolment, a second benefit should be a simpler and cheaper electoral system, requiring less effort, work and resources to update the roll. Furthermore, direct enrolment is compatible with the Australian compulsory voting system. The AEC already uses information from other agencies, such as motor vehicle licensing agencies, to check when a voter has changed address. And Peter Brent claims that many young Australians believe that, since voting is compulsory, they go on to the electoral roll automatically once they turn 18 years of age.[41]

The AEC made a submission to the 2007 Joint Standing Committee on Electoral Matters suggesting a change to direct enrolment. The AEC noted that community expectations, especially of young people eligible to enrol for the first time, conflict with legislative requirements for joining the electoral roll. Direct enrolment is a practice that shifts the responsibility for maintaining electoral rolls from the individual to the agency.

The Howard Government passed the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*.[42] This had the effect of dramatically reducing the time available to enrol between calling of an election and closing of the electoral roll. New voters, or those who had been removed from the roll, or whose address has changed since the last election, were unlikely to have had time to amend their status before an election.

The activist group, GetUp! brought a High Court challenge to the amendments, and in August 2010, the Full

Bench found that certain parts of the *Electoral Act* were unconstitutional. This meant that the AEC was obliged to enrol the voters (up to 100,000) who missed the deadline, and to allow them to vote in the 2010 Federal Election. Neither the Coalition nor the ALP sought to overturn the decision. The AEC notified voters who had attempted to enrol between 19 July (when the rolls closed) and 26 July that they could cast a 'declaration vote' by producing a form of identification. *The Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011*, passed in May 2011, provides for the rolls to close seven days after the issue of the formal documents ('writs') authorising the elections.

This change in the time between the announcement of an election and close of the roll is necessary, but is a stopgap measure. A full change to direct enrolment is now required for Commonwealth elections, and for elections in states that do not already have direct enrolment.

In Senate elections where there are large numbers of candidates, there is a strong incentive to vote above the line for a party and its preferences, rather than numbering all the candidates' boxes in order of the voter's preference. Numbering each individual box is a very tedious task and comes with a high risk of making a mistake, thereby making an invalid vote.

Above-the-line voting on ballot papers was introduced for these reasons. Researchers and commentators have, however, expressed much concern with the current Senate above-the-line voting practice. They argue that it not only puts the voter in the hands of the chosen party, but also makes it very difficult for the voter to understand what the preference implications are of his or her vote. The virtual invisibility of preference flows may direct a vote in a way not intended by the voter. This is because political parties

increasingly negotiate preference deals not on issues of policy or principl, but on the basis of strategy and party self-interest.

In the 2004 Federal Election, Family First leader Steve Fielding won a Victorian Senate seat despite polling only about 0.13 per cent of a quota. Family First received 56,376 primary votes (the sixth highest primary vote count, and a fraction of the third highest, the Australian Greens with 263,481). Family First received the bulk of its votes during the distribution of preferences. Peter Brent notes that Mr Fielding needed the preferences from half the ALP votes to win the seat from the Australian Greens.[43] As it turned out, the unused votes from all the above-the-line ALP voters went to Family First. Brent points out that it is unlikely ALP voters intended to preference Family First over the Australian Greens since Greens scrutineers observed that 63 per cent of ALP voters who voted below the line, articulating their preferences rather than accepting party-negotiated deals, gave their preferences to the Greens over Family First candidates.

Election analyst Anthony Green writes that the price for a decrease in informal voting achieved by above-the-line ballot papers is that a 'democratic deficit has developed, with serious questions as to whether the results engineered by group ticket voting truly represent the will of the electorate'.[44]

Antony Green argues that unnecessarily high standards for validity are applied to Senate ballot papers. Ballots on which only some of the preferences marked below the line are complete should still be recognised as valid, he argues, and where there are clearly expressed first and early preferences, these should be counted, even if subsequent preferences might be incomplete and therefore invalid.[45]

A second option is to change the way parties lodge ticket votes to discourage micro-parties engaging in preference harvesting, and also to discourage larger parties from gambling

with their preferences. The easiest solution is optional preferential voting below the line, with voters only having to fill in as many preferences as there are vacancies to fill. An alternative is to adopt the new NSW Legislative Council system, where voters are allowed to fill in their own preferences for parties above the line, again ideally using optional preferences. Both of these options give voters a much more manageable way of voting against the predetermined party preferences. Another approach would be to put an upper limit on the number of parties included on a group ticket preference list. If a party could only give preferences to five other parties on the ballot paper, it would have two consequences: preference harvesting by micro-parties would be made much more difficult, and, with a limit on preferences, parties would be encouraged to list like-minded parties on their preference tickets, rather than gamble one of their precious preferences on a strategic deal.

Parliamentary reforms

The Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008 was introduced to the Senate by Senator Bob Brown in May 2008; following the 2010 elections, it was reintroduced in September 2010. The Bill would replace current above-the-line single box selection with nomination of preferences to parties by the voter. Senator Brown argues this forces the transparency of preferences, while voters may still number all candidates below the line if they choose. The Bill was referred to the Joint Standing Committee on Electoral Matters, which tabled its report in parliament in June 2009. The Committee declined to make recommendations on the Bill, but proposed further discussion. It cited concerns that the increased complexity of voting would decrease the proportion of valid votes.

As part of the ALP and Greens agreement in September 2010 in which the Greens agreed to support a Gillard minority government, the ALP agreed that the Greens would reintroduce Senator Brown's 2008 above-the-line voting amendments, and that the ALP would consider the Bill and work toward an agreement on reform. The 2010 Bill remains before the Senate.

Implicit in all of these proposed alternatives is recognition that the current system lacks transparency, distorts voters' intentions, and thus needs change.

Fixed electoral terms (fixed dates on which elections must be held), and the extension of current national electoral terms from three to four years, are often discussed as if they are inextricably linked. This is not the case. There is no reason, in principle, why the current three-year electoral term for members of the House of Representatives, and a six-year term for Senators, should not continue to apply, with fixed electoral terms; nor why four-year terms for both the Senate and the House of Representatives should not be introduced, together with a fixed date for elections; nor why other options should not be considered.

The current prerogative of an incumbent Australian Prime Minister and federal government to set election dates (within constitutional limitations) is an anomaly among Australian state and federal parliaments, and international democracies. Currently, New South Wales, Victoria, South Australia, Western Australia, the Northern Territory and the Australian Capital Territory parliaments operate with fixed terms, as do the United States, Canada (subject to certain provisions for early elections), and the European Parliament.

Four-year terms are standard practice in many other jurisdictions and enhance good government by allowing greater opportunity for the implementation of government policies. They also reduce the overall time devoted to campaigning. There are, however, arguments for and against a change to fixed-term and four-year parliaments. Drawing upon some of the points made by Sawer and Kelley,[46] the arguments may be summarised as follows. The two key benefits of fixed terms are, first, that they remove the opportunity for a sitting government to gain political advantage from the timing of an election and, second, that there is certainty about electoral terms for the government, other political parties, the private sector and the community. Fixed terms can also improve access to the

electoral roll for legitimate voters. Arguments against fixed terms include: they may lead to longer election campaigns (but they can also serve to limit the campaign period if they provide for a short period between dissolution of the parliament and election day); and they may restrict the ability of minority governments to call an election to establish a clear mandate, or solve a political crisis.

Four-year terms reduce the average annual cost of elections and of campaigns, and they facilitate better economic and policy planning for the private and public sectors. They give the government greater scope to concentrate on policy and program delivery without the distraction of imminent elections. The key argument against four-year terms is that they reduce voter control over governments because they give them the opportunity to vote every four, rather than three years. There is also concern that both fixed and four-year terms could lead to political instability, by prolonging an unstable government if the government loses its majority in the lower house. This could be dealt with by:

- introducing an explicit provision that the Governor-General should call an election if a government loses its majority in the House of Representatives
- retaining the opportunity for a double dissolution of the parliament if government bills are defeated twice.

The right to vote is at the very core of representative democracy. The integrity of the roll is crucial but currently lacking — it does not represent the entire population of eligible voters. Australia must embrace direct enrolment as practised in many advanced democracies to ensure all eligible voters are able to do so. Likewise, the current design of ballot papers means that votes may easily be allocated contrary to a voter's intentions; a redesign is required.

Finally, there are good arguments for a change to both fixed-term elections and four-year electoral terms for the Parliament of Australia, to match the practice of many other political jurisdictions in Australia and around the world. A change to fixed terms alone would be a very beneficial beginning, and could be made by statute, without recourse to a referendum. The change from three-year terms to four-year terms would be more difficult because it would require a constitutional referendum; given the difficulties commonly experienced in getting the necessary voter support for constitutional change, bipartisan support would almost certainly be necessary.

Central to Australian federal democracy are a number of structures and practices within the parliament to scrutinise the policies and actions of the Executive and hold it to account (as referred to earlier in this book as monitory democracy[47]).These monitory structures and practices have weaknesses, which demonstrate the potential for further monitoring of the Executive. This section addresses the areas of most urgent need for reform.

The most serious constitutional weakness of the parliament is that its Budget is controlled by those accountable to it: the Executive and government backbench MPs. The most symbolic and important reform to strengthen the parliament would be independent budgeting of parliament through a parliamentary commission (it would prepare parliamentary expenditure estimates for adoption by each House).[48] This would remove Executive potential to control parliament through the funding of each House, parliamentary committees, independent officers of the parliament (for example, the Auditor-General and the Parliamentary Budget Officer) and other parliamentary resources.

Resources, such as electorate offices, made available to parliamentarians to carry out their parliamentary duties, should not be under the administration of a government department, subject to the direction of a government minister. That offends the separation of legislative and executive powers; it is wrong in principle, and is open to manipulation for partisan purposes. All facilities provided for parliamentary purposes should be under the budget and administration of the parliament. Establishment of a Parliamentary Budget Office has been funded in the 2011–12 Budget, which will further expand parliament's capacity for effective monitory democracy.

Opportunities for public involvement in the legislative process are a relatively under-developed feature of the Australian Parliament, notwithstanding noteworthy progress in recent times, especially more frequent reference of bills to committees for investigation ahead of substantive debate in one or both Houses. Where the opportunities are well-developed (in New Zealand, for example), bills are routinely referred to a parliamentary committee related to the portfolio area, submissions are invited and public hearings conducted, before a report which may recommend amendments.

Public participation offers benefits to the parliament and to the community. For parliament, comment may come from interested members of the public, people and organisations directly affected, and experts with specialist knowledge. There is the potential for valuable suggestions to address oversights, unintended consequences, or other ways to improve the drafting of legislation. It creates opportunities for greater interaction between the government and its constituents, and submissions can build on each other's inputs as they seek to inform and influence the parliament. Such interactions were previously identified as a key to improved operation of a political system (p. 18). Also, as mentioned earlier in this book,

within the community there is better acceptance of decisions where people have had the opportunity to influence those decisions.

The Australian Parliament should adopt a standard practice of referring each bill to the appropriate policy or portfolio area parliamentary committee, inviting submissions, and conducting public hearings before issuing report recommending any amendments. The procedure would be automatic, being bypassed only where the House so determines due to the non-contentious, technical or genuinely urgent nature of a bill.

The most public monitory function is question time (each sitting day's period for asking ministers questions without notice). Its purpose is to make the government accountable for its actions. In Australia, question time has developed as a fundamental parliamentary institution in a form that is homegrown rather than inherited from Britain's Parliament at Westminster. Question time provides members of the House (of either the House of Representatives or the Senate) with the opportunity to seek information from ministers in that House, relevant to their responsibilities.

However, both the government and the opposition frequently subvert this purpose. Opposition leaders and shadow ministers regularly use question time to make newsworthy assertions and attacks on government personalities and policies, rather than seek information related to ministers' executive responsibilities. In their turn, prime ministers and ministers do the same in their replies, none of which are relevant to their executive responsibilities.

This perverted use of question time has its origins in the original 1901 Speaker's Ruling permitting questions without notice:

> There is no direct provision in our Standing Orders for the asking of questions without notice, but as there is no prohibition of the practice if a question is asked without notice and the Minister to whom it is addressed chooses to answer it I do not think I should object.[49]

This ruling allowed ministers to be questioned, but did not require them to answer. It established and entrenched a fundamental flaw that subverts accountability and frustrates oppositions.

Contests of ideas and leadership are a dramatic and inevitable feature of parliament; question time cannot and should not be reduced to polite, formal debate. Nevertheless, question time should not descend into an unedifying shouting match between government and opposition parliamentarians, damaging the legitimacy of the parliament and system of government.

In summary, the weaknesses of question time include:

- the failure to reply to the question
- waffle and obfuscation
- when government backbenchers ask prepared questions to which ministers give prepared answers, favourable to the government (otherwise known as 'Dorothy Dixers').

These misuses do not serve democracy well. Serious reform should require:

- a review of questions from government backbenchers
- greater use of written questions, on notice, to enable questions in the house to concentrate on more detailed probing of responses
- strict time limits for primary questions
- the use of supplementary questions, also subject to strict time limits

- effective enforcement of these rules by speakers and presidents.

In the case of written questions on notice, delays in replies to written answers beyond a reasonable specified time should be eliminated.

A restructured question time in the Senate with revised rules has applied since November 2009. The following rules apply:

- Questions are without notice (as before).
- Primary questions are limited to one minute and responses to two minutes.
- Two supplementary questions are allowed to each questioner, each limited to thirty seconds and the responses to one minute.
- Answers are to be directly relevant to each question.

Notwithstanding this reform, opposition senators still challenge answers as not being relevant.

Following the formation of the minority Gillard government after the 2010 elections, the government, Greens and independent MPs reached agreement on the following reforms of question time:

- Individual questions limited to forty-five seconds and answers to four minutes.
- A proportion of question time allocated for questions by independent and minor party members.
- Time made available for debating independent and minor party members' bills.

The ALP and the Greens agreed to immediately implement these reforms and corresponding amendments were made to Standing Orders:

Standing Order 104. Answers

(a) An answer must be directly relevant to the question.

(b) A point of order regarding relevance may be taken only once in respect of each answer.

(c) The duration of each answer is limited to 4 minutes.[50]

These reforms have been particularly strongly enforced by Speaker Slipper, although any change in the tone of question time excerpts, as reported in TV news broadcasts, has been difficult to discern.

More, far-reaching reforms were issued in the Victorian Legislative Assembly in 1992 by Ken Coghill (author of this book) when he was Speaker. They included:

- Questions and answers must relate to government administration or policy and should be directed to the minister most directly responsible, or answering on behalf of such minister in the other House.
- Questions to the premier (this would be prime minister in the House of Representatives or government leader in the Senate) may relate to matters within his or her portfolio and to general matters of government policy and administration, but questions concerning detail affecting another portfolio should be directed to the responsible minister.
- Questions should not seek an expression of opinion, seek a legal opinion or ask whether statements reported in the media are accurate or correct.
- Questions should not seek a solution to a hypothetical proposition, be trivial, vague or meaningless.
- Questions should not contain epithets or rhetorical, controversial, ironical, unbecoming or offensive expressions, or expressions of opinion, argument, inferences or imputations.

- Questions should not raise matters which are subfjudice or anticipate debate on a question or bill already listed for debate that day.
- Where a question relates to an allegation, assertion, claim, imputation or similar matter, the member is responsible for the accuracy of the facts. Where the facts are of sufficient moment the member may be required to provide prima facie proof to the speaker before the question is admitted.
- Questions cannot reflect on the character or conduct of members of either House and certain other persons in official or public positions.
- Where a question seeks information which is too lengthy to be dealt with in an answer, or otherwise invites a ministerial statement, the speaker may disallow it and suggest that the minister to whom it is directed consider making a ministerial statement (i.e. formal statement to the House, open to debate) following question time.
- Questions which breach the guidelines are out of order and there is no right to immediately rephrase or repeat questions which have been disallowed.
- Answers must comply with the same rules and practices as apply to the asking of questions.
- Answers must be directly responsive, relevant, succinct, and limited to the subject matter of the question.
- Answers may provide statements of policy or the intentions of the government, including information on examinations of policy options and other actions which the minister has had undertaken, but must not debate the matter. (Answers to questions should be limited to two minutes and an absolute maximum of five minutes actual speaking time.)

- An answer may be refused on the grounds of public policy, for example:
  - answering may jeopardise criminal investigations or for another reason may be against the public interest
  - the information is not available to the minister, in which case it may be requested that it be placed on notice
  - the minister intends to make a ministerial statement on the subject matter in the near future.[51]

Later speakers have not applied these reforms. If applied and enforced, such reforms could radically change and improve the conduct and effectiveness of question time. Similar reforms should be adopted and enforced in each House of the Australian Parliament.

The Senate has an important role in Australian democracy as a house of advice, review and consent, as the electoral system renders it uncommon for the government or opposition to have a Senate majority. As a result, it is difficult for either government or opposition parties to manipulate the Senate or its committees for partisan advantage. The role of the Senate has developed beyond the review of legislation to the in-depth consideration of policy issues and legislation. The Senate committee system provides that review, and the opportunity for the parliament to hear expert advice from individuals and organisations in a public arena. Senate committees can take a long-term view of policy debates and consider a wide range of issues.

The strength of the parliament, especially the committee system and public inquiries, could be greatly enhanced by three additional reforms:

- Increased funding, appropriated independently of the Executive, would allow a broader and longer-term scope for committees.
- A committee dedicated to reviewing the budget and economic strategy, complementing the new Parliamentary Budget Office, would be an ideal forum to harness bipartisan ideas and long-term planning. A strong committee covering these areas would raise the status of all committees.
- The introduction of a system for public inquiries into long-term issues with membership of Senators and external experts (similar to the UK Parliamentary Office of Science and Technology [POST][52] and German Bundestag Study Commissions[53]).

One of the most important monitory features of the Australian system of government is the ability of the parliament to scrutinise the Executive. As discussed, both question time and Senate committees are key tools in this endeavour, but their effectiveness is compromised by the use of question time for statements and attacks on political opponents, and by Executive control of the parliament's budget. Changes to the funding and committee models of parliament, including increased opportunities for public participation, are necessary, as is strengthening regulation of question time in both houses.

Greater accountability of the Executive

The actions of ministers are at the core of public administration in Australia. A fundamental tenet of the Australian Westminster-style system is that every action of a government is the responsibility of the relevant minister, who implements and administers policy through the departments and agencies for which she or he is assigned responsibility. Now, more than ever, the responsibilities of ministers are complex, and they operate under intense political pressures. Expectations and guidance must be clearly outlined not only for ministers, but also for the public; the public then knows what to expect from its elected representatives.

Westminster principles, particularly the principle of individual ministerial responsibility, are necessary to ensure that a minister is answerable to the parliament for every single government decision and action taken under her or his authority. Collective ministerial responsibility requires every minister (and now every parliamentary secretary) to share responsibility for government decisions taken under the authority of all fellow ministers and parliamentary secretaries, even where they took no part in the action. However, some, such as Dr John Uhr,[54] see the understanding and expectation of government accountability as changing. The idea that power is vested only in elected officials has been replaced with ideas of diffuse and

institutional power. Ministers are no longer thought to directly control the complex programs and communications in the same way they supposedly did. It is therefore important to review the principle and practice of ministerial responsibility and confirm the most appropriate set of contemporary standards.

According to British researcher Diana Woodhouse,[55] ministerial responsibility can be divided into causal and role responsibilities. By this she means that ministers have responsibility for their actions and inactions, but they also head up a ministry, and so have a more general responsibility for all actions and inactions occurring under that responsibility. Because ministers are responsible for both policy and its operation, they are accountable for failure even when their action or inaction might not have been directly responsible.

The parliament remains the central focus of accountability in the Australian constitutional system. Within parliament, question time is the time in which ministers are most accountable. Ministers' individual responsibility to account to the parliament may operate at several levels, defined by Woodhouse as: Redirectory Responsibility, Reporting or Informatory Responsibility, Explanatory Responsibility, Amendatory Responsibility, and Sacrificial Responsibility.[56] Sacrificial Responsibility, that is, resignation, is the most extreme sanction, not the only sanction.

The conception of ministerial accountability has varied in Australia. Prime Minister Howard published and revised a *Guide on Key Elements of Ministerial Responsibility*.[57,58] This guide restricted the kinds of failures for which a minister should be responsible. Prime Minister Howard was reported as saying:

> If you're directly responsible for a wrongdoing, or if there has been a total systemic failure in your administration, then you have to accept responsibility for that.[59]

That is, Mr Howard held that a minister should only accept responsibility if he or she was active in wrongdoing, or so negligent in monitoring his or her department that total failure ensued. This idea of ministerial responsibility weakens the duty of a minister to monitor the tasks assigned to him or her by the prime minister, and erodes the longstanding principle that ministers are ultimately responsible to parliament for the discharge of those duties. Contrary to popular misconceptions, dismissal (or resignation) has never been the only form of accountability for unsatisfactory ministerial performance. Others range from providing an adequate explanation to taking remedial action.

In 2008, Prime Minister Rudd revised chapter 5 of the *Guide on Key Elements of Ministerial Responsibility*. The new standards introduced:

- obligations in dealing with lobbyists
- investment disclosures
- a bar on some lobbying activity for a period of time after serving as a minister
- a ban on fundraising at the Lodge and Kirribilli House.

The revision did not, however, introduce any changes to the kinds of failure for which ministers should be accountable. It remains important to recognise the broader responsibility of a minister to monitor the actions of his or her department on behalf of the government and to be accountable for them to parliament.

Ministerial advisers are employed by ministers to assist them with political issues associated with their portfolios and with their roles in the parliament. While ministers are elected and therefore responsible to the parliament, their advisers are not. Marian Sawer and other commentators are concerned about an 'accountability gap'[60] between ministers and their

staff that could be used by ministers to avoid accountability for their actions. Dr John Uhr, giving evidence to the Senate 'Inquiry into a Certain Maritime Incident', suggested that reform is required concerning the responsibility of ministerial advisers.[61] He compared the situation in Australia to the model used in the United Kingdom, and recommended three actions for Australian jurisdictions, based on the UK model, to improve the monitoring and accountability of ministerial staff. These recommendations are:

> … there should be a public code linked to the Australian Public Service Code documenting the responsibilities of ministerial staff to make clear to the public, the public service and ministers and the advisers themselves what is expected from ministerial staff;
>
> ministerial advisers should be employed by the Cabinet Secretary rather than by individual ministers to make clear that their responsibilities are to the overall ministry rather than to the Minister her-or-himself;
>
> there should be a supervisory agency for ministerial advisers to provide a right of redress for public servants or others with grievances and for the ministerial staff themselves; and
>
> the public code should make it clear that ministerial advisers are required to appear before parliamentary committees and inquiries when requested to do so and that ministers do not have the right to direct their staff not to attend. Such an obligation is not intended to place accountability responsibility on ministerial staff unless they have acted beyond their designated roles or without the knowledge of the minister. It is rather a means of ensuring that ministers are fully accountable to the parliament and the electorate
>
> for ministers to be fully responsible to parliament for their actions, their personal and departmental staff must be available to provide evidence to parliamentary inquiries if called. Ministers must not attempt to bar any person from so doing.[62]

These recommendations are generally supported, except that it can be argued that the personal relationships between a minister and the staff of the minister's private office, including ministerial advisers, make it difficult to reconcile such staff being employed by, and therefore accountable to, the cabinet secretary or other central agency.

An effective and comprehensive code of conduct built on the *Guide on Key Elements of Ministerial Responsibility* is necessary for ministers, their advisors, and other staff. Agreed standards would outline what is required of ministers and their staff in the exercise of their duties, and act as a public statement of the minimum standards of behaviour to which ministers can be held by parliament, the media and the public.

It should regulate:

- employment by ministers of family members or other close associates (as a general principle, ministers should not employ anyone who they are constrained from dismissing)
- investments and other pecuniary interests held by ministers and their immediate families, and their disclosure (they should not exercise control over any assets which could be affected by an action taken under their authority)
- relationships between ministers and donors to their political parties (ministers should not deal with, and their departments should be instructed to ban contracts or other dealings with, any donors to their political parties; see also fundraising protocols below)
- gifts ministers may receive (ministers should not accept personal gifts or hospitality of more than token or specified low value; all other gifts should be declared and handed over to the minister's department)

- contact between ministers and lobbyists (regulated by a strict code)
- post-ministerial employment (see below)
- fundraising protocols (pending reform to ban corporate donations, a strict protocol should be in place which has regard to the possible application of the *Commonwealth Criminal Code Act* s.141, relating to bribery and to 'cash for access' fundraising)
- procedures for the use of cabinet documents, and the banning of the exclusion from release of documents from Freedom of Information (FOI) processes for political purposes.

The best method of consolidation and protection of these principles of accountability is to incorporate into legislation as many of the reforms as possible. While the reforms remain in the form of codes of conduct or administrative procedures without legislative backing they can be changed at the whim of the government of the day, out of public view, and without any involvement of the parliament. When embodied in legislation, it is much more difficult to make such changes. First, amendments to acts have to be publicly debated in the parliament, and if they are clearly not in the public interest they will attract attention from the media, non-government bodies and others. Second, if, as is likely, the government of the day does not have a majority in the Senate, it will be very difficult to get an amendment passed unless it is for strengthening rather than weakening of accountability measures.

Ministers are responsible for the implementation of legislation in their portfolios and for the management of policy. While the administration of portfolios is ideally a non-partisan task, ministers, and their advisers, are subject to political forces during their time in office. In the absence of accountability

reforms, when these administrative and political priorities clash there can be no clear instruction for ministers on how to deal with clashes, nor a set of sanctions when improper decisions are made. Mulgan and Uhr point out that a governance system in which responsibility is delegated relies on the continual confidence of all parties.*63* This means that accountability, and the consequences of failures, must be set out for all parliamentarians, including ministers, where there is delegated responsibility.

Anti-corruption

In governing on behalf of the public, governments are vested with the power to spend funds on behalf of the public, and to make decisions on the further vesting of power to the benefit of others. Corruption is the abuse of this power, exercised on behalf of the public, for personal or partisan gain.[64] When public funds are spent, or power is exercised in a manner that favours certain individuals or groups for the personal or political gain of an individual, this represents an extremely serious breach of the responsibility of governments and officeholders to act with the best interests of the public. In some cases, scarce public funds or other resources are diverted away from their intended purpose of creating a public benefit; in other cases, decisions are made (such as land rezoning) which massively benefit the few at a loss to the many. Corruption also injures democracy by damaging the trust citizens have in government, and in institutions. This damage to the faith in democracy affects those who are corrupt and those who are not.

Tim Smith argues that most Australian governments have neglected to take action against corruption, except to respond to scandal.[65] While responses such as the Fitzgerald Inquiry into corruption in Queensland reassure us that corruption can be addressed when it occurs, the lack of proper procedures and institutions to address corruption leaves it as an ongoing

threat. Appropriate procedures and institutions can prevent corruption taking hold and increase the trust citizens have in governments and institutions.

Four significant areas require urgent reform to strengthen Australia against corruption:

- appointments to public office
- post-ministerial appointments and lobbying
- political donations
- anti-corruption measures.

Individuals appointed to public office wield significant power and influence. It is essential that these individuals be appointed through an unbiased and politically neutral system, where positions are offered to those best qualified. Closed, secret, or private appointment procedures risk appointments based on loyalty, mutual benefit, or shared political ideology, or that appointments will be perceived as being made in that manner.

The federal government has taken steps toward developing an independent appointment procedure for positions on the boards of the ABC and SBS. The National Broadcasting Legislation Amendment Bill 2010 introduces a procedure in which vacancies are widely advertised, and an independent selection committee, according to published selection criteria, assesses applications. The independent selection committee provides a shortlist to the minister. The minister and prime minister may appoint an applicant not recommended by the selection committee, but such an appointment requires the approval of the Governor-General and an announcement to both houses of parliament. At the time of writing, the bill had passed the House of Representatives, been considered by the Senate Environment and Communications Legislation Committee and was pending passage by the Senate.

This procedure introduces a valuable model for public appointments that must be extended to other public offices. Many other democracies use formal measures to improve the quality and political neutrality of appointees to significant public offices. Under the so-called Nolan System in the United Kingdom, an independent Commissioner for Public Appointments regulates, monitors, reports and advises on appointments made by government to the boards of over 1,000 national and regional public bodies. Government departments are required to follow the commissioner's principles and code of practice when making these public appointments. In Canada, all appointments for chief executives, directors and chairs of Crown corporations are subject to a merit-based system. Ministers make recommendations that are then subject to review by a parliamentary committee prior to the final appointment. In Australia, appointment procedures should be administered by an independent commissioner and extended to other appointments, including to major boards, such as the Reserve Bank of Australia, as discussed above (p. 16).

Individuals formerly involved in governing are valued as consultants and lobbyists because of their experience and expertise in the decision-making processes relating to certain industries, and knowledge of the networks related to these. They are able to receive financial benefit, when they retire, from their experience gained at public expense.

A large and growing lobbying industry in Australia increasingly seeks to recruit former ministers and their staff. Lobbyists representing the fossil fuel industry have hired former staff of the minister responsible for resources, and a former advisor to the minister responsible for science and research became an advisor to a large pharmaceutical company. For example, in 2001 Michael Wooldridge resigned as Federal

Health Minister and, soon after, accepted a position as a paid consultant of the Royal Australian College of Practitioners.[66] As minister, he had awarded the Royal Australian College of General Practitioners a $5 million grant.

There is no suggestion that these connections themselves represent corruption, but they do come with the significant risk of corruption and risks of adverse public perceptions. The opportunity for these links between former and current people in government comes with a risk of corruption in government decision-making processes.

In Britain, the United States and Canada, members of parliament are bound by codes that restrict their post-parliamentary work in the private sector to increase public confidence in the system of government. Former public office holders in Canada are banned from using confidential information gained in their previous roles, and from acting on behalf of any organisation which is in negotiation or transaction with the government.[67] In the United States, former holders of elected positions are barred from lobbying for 12 months after they leave office, with penalties including imprisonment for breaches.[68] In the United Kingdom, for the period of two years after holding elected offices, former ministers must gain approval from the Advisory Committee on Business Appointments before taking up private sector employment. The committee will refuse permission if the former minister has, in his or her ministerial role, been in a position to access secret or sensitive information that would advantage the employer, or if the employment may give rise to public concern that the appointment is a reward for past favours.[69]

Currently the federal government has a Code of Ministerial Ethics that restricts former ministers from lobbying on matters in their former ministerial portfolio for 18 months after they cease in the ministry. This is short compared to the

international standard of two years. Moreover, restrictions in the code can be modified and enforced by a prime minister at any time. The position of the prime minister as arbiter of the behaviour of his or her former or current ministers places enforcement in the realm of politics. This role should be placed instead under the remit of an independent ethics commissioner.

A connection between donations to politicians or their political parties, and government decisions favouring the donors, was a feature of major corruption scandals in Australia in recent decades. The misconduct in Queensland exposed by the Fitzgerald Royal Commission was the most flagrant and was centred on the acceptance of confidential donations by police and politicians.[70] A culture of quid pro quo is a clear and obvious form of corruption; it must be prevented by:

- severely limiting political donations
- requiring immediate, continuous disclosure of donations and ultimate sources
- campaign expenditure limits and public funding of campaign expenses within those limits.

Prime Minister Gillard, in agreements with the Greens and with independent members, committed the government to reducing the disclosure threshold for political donations and to instituting a more frequent disclosure regime.

Currently donations received by parties may be reported as late as 16 weeks after the end of the financial year in which they were received. The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 currently before the Senate would reduce this delay by requiring reports twice yearly; but technology makes it simple to report continuously and within two working days. In New South Wales, political parties already require such systems in

order to comply with the state's regulation of political fundraising and campaign expenditure. In another example, the New York City Campaign Finance Board requires candidates to maintain an up-to-date list of donations. Its website updates automatically as candidates enter information using the board's software package.

There are current proposals to reform political funding, including lowering the threshold for disclosure (to $1,000) and banning corporate donations through the Electoral Amendment (Political Donations and Other Measures) Bill 2010. These provisions should be enacted.

Australia has committed to prosecute and prevent corruption by signing the United Nations Convention against Corruption (in force 14 December 2005) and the earlier Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials. The UN Convention includes as core strategies enhancing transparency of election finance and establishing anti-corruption bodies.

At present, New South Wales, Queensland and Western Australia have state anti-corruption bodies, but there is no federal body. This absence has been noticed by Transparency International, which found in its 2009 report that Australia made 'little or no effort' to enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The Gillard Government, in its 2010 agreements with key independents and with the Greens, agreed to establish a Parliamentary Integrity Commissioner who would deal with matters relating to members of parliament. In August 2011, Prime Minister Gillard indicated she planned to establish a 'clearing house' that would deal with these matters. It is essential that the office of the commissioner has the power to

enforce any legislation or codes of conduct, rather than merely distribute information (the usual role of a clearing house).

There is a need for attention to the broader range of possible corruption. Tim Smith points out that Australia has access to a well-considered model in the report of the National Integrity Systems Assessment (NISA) Final Report,[71] published by the Key Centre for Ethics Law Justice and Governance, Griffith University, and Transparency International. The key recommendation of this report was the establishment of a national anti-corruption body in Australia, with powers extending beyond the monitoring of corruption and bribery within law enforcement bodies. The establishment of such a body would decrease the risk of corruption occurring in Australia, and increase citizen trust in public officials.

Transparency and media

Effective democracy requires good political communication and broad public discourse. They facilitate the peaceful reconciliation of conflicting values and policy objectives, the generation of creative ideas, and the development of innovative policies to address political problems.

After several decades of experience with Freedom of Information (FOI) legislation, which enabled access to much government information, modern information technology now makes routine, online publication of government documents simple and economic. This development has transformed the approach to such access. The Solomon Report[72] established a new benchmark, legislated as the 'Right to Know' system in both Queensland and Tasmanian legislation. It acknowledges the community's right to information created by government and requires the publication of information held by government as the default option, placing the onus on the government to demonstrate that the public interest requires non-disclosure. It also removed certain other restrictions such as conclusive certificates. Right to Know principles should be adopted, passed into law, and practised by the Australian government.

The media in Australia play a crucial role in this, by providing the opportunity for comment and opinion to be shared. If the range of media available is narrow, or controlled by special interests, there is a risk that community attitudes

will not be communicated and reflected, which would undermine responsive rule.

Recent inquiries in the United Kingdom have revealed evidence of corrupt, entrenched, illegal practices in news-gathering, and in relations between high-level media executives and political leaders. The former has not been reported in Australia, but the latter appears similar in Australia.

The media play a crucial role in government accountability. It does this by reducing the asymmetry of access to information on government policy implementation and management, which naturally favours the government, and in mobilising citizens to defend their interests.[73] To do this effectively, journalists and media organisations must be free from political manipulation.

Most democratic countries encourage and enforce diversity in media ownership because it minimises the risk that the information citizens receive is adversely influenced by the interests of media organisations. Australia has some rules imposing media diversity by limiting concentration in broadcast media (radio and television) ownership and foreign ownership of media sources, but these are very mild by international comparisons. Australia is ranked 41st in the world for media diversity. For example, two media groups (News Limited and John Fairfax Holdings), account for over 86 per cent of the circulation of daily newspapers.[74] Local, weekly 'community' newspapers are largely owned by the same media organisations.

There is the potential for media owners to misuse their power to unduly influence reporting. Owners are claimed to have formed cosy relationships with political candidates and governments, and these relationships are believed have influenced election coverage and the legislation relating to media.[75] The concentration of media among a few owners increases the

likelihood of this occurring. Diversity of ownership of Australian media has long been limited in Australia via regulation of broadcast media ownership. Greater concentration was allowed when the Howard Government made changes to media law in 2006. These amendments lifted foreign and cross-ownership restrictions on media markets. The new 'two out of three' rule meant that companies were allowed to own up to two media outlets — television, radio and newspaper — in a single area such as a capital city. Mergers are now allowed if the transaction passes a media diversity test that ensures there are five remaining independent media groups in metropolitan markets, and four in regional markets, and are approved by the Australian Competition and Consumer Commission (ACCC). The Gillard Government set up two inquiries to review these matters: the Independent Inquiry Into the Media and Media Regulation and the Convergence Review. The inquiry, headed by retired judge Ray Finkelstein QC, would investigate:

- 'media codes of practice' in the context of the changing media business model, including the switch of advertising and content away from newspapers
- 'the independence and effectiveness of the Australian Press Council'
- the catch-all 'any related issues'.[76]

The Convergence Review would take 'a broad and considered approach to a range of regulatory issues across the broadcasting, telecommunications and radio-communications sectors'.[77]

The Report of the Independent Inquiry Into the Media and Media Regulation (the 'Finkelstein Report') recommended that a

> News Media Council be established to set journalistic standards for the news media in consultation with the

> industry, and handle complaints made by the public when those standards are breached. Those standards will likely be substantially the same as those that presently apply and which all profess to embrace … the News Media Council [should] have those roles in respect of news and current affairs coverage on all platforms, that is, print, online, radio and television.[78]

The council would be completely independent of government, except for funding.[79]

The Convergence Review highlighted the complex interrelationships between the various delivery platforms (e.g. print, radio, television and internet) of news, entertainment and other information. It recommended abandoning much of the current medium-specific regulation and replacing it with regulation of commercial 'content service enterprises'.[80] The review also supported the view that it is necessary for government to regulate media, including its effective control, both directly through ownership and indirectly through direction of editorial policy, to ensure the expression of a diversity of interests and opinion. Measures to achieve this include: maintaining independent, well-resourced public broadcasters; protection of journalists' confidential sources; and the creation of a body independent of government to police content standards. In the latter respect, the review diverges from the earlier proposal in the Finkelstein Report for a government body, albeit functioning independently.[81]

The Convergence Review offers a carefully considered, integrated bundle of proposals with the potential to ensure simpler, more effective regulation of the media in the public interest. At the time of writing (May 2012), the government had not announced its response to the Finkelstein Report or the Convergence Review.

The public broadcasters, the ABC and SBS, play crucial roles in Australian society, roles that are especially significant

due to the concentration of media ownership in Australia. Despite strong and consistent public support, funding levels have fallen dramatically over the past thirty years.

The public broadcasters provide daily, independent radio, television and online news content. This role is recognised and respected by a great majority of Australians. Opinion polls show that 70 per cent of Australians think the ABC is doing a good job, that 88 per cent of Australians continue to believe that the ABC provides a valuable service to the community, with 47 per cent of those believing it provides a 'very valuable service'. A large proportion of Australians (73 per cent) also believe the ABC is efficient and well managed.[82]

Funding for public broadcasting has increased somewhat under the Rudd and Gillard governments, with the addition of increased operational and project funds. However, ABC funding has also become increasingly fragmented. Friends of the ABC point out that when the ABC is funded for individual activities, that preference by government for certain broadcast activities itself compromises the ABC's independence from government.

SBS, the ABC's sister public broadcaster, also plays a vital role in Australia, bringing programs to Australia's ethnic minorities as well as broadcasting other high-quality material for general viewers. However, it is not a fully publicly funded broadcaster. To cover funding shortfalls, SBS broadcasts paid advertising; in 'natural program breaks' as well as between programs.

Public broadcasting has been attacked by one of the most powerful media personalities. In 2009, James Murdoch, then chairman of News International (the European arm of commercial media company News Corporation) attacked the BBC and public broadcasting generally. Murdoch claimed that government ownership of media organisations curbed

free speech, and that the BBC and other government-funded media organisations were unaccountable. He also claimed that the expansion of state-funded journalism was a threat to democracy. Media observers have interpreted these attacks as an attempt to neutralise a major competitor in the media market at a time when advertising revenues are decreasing. Mr Murdoch also claimed that it was essential to charge all consumers for news services if consumers are to value the service.

The Australian people and governments need to be alert to, and reject, the spurious and increasingly discredited arguments advanced by Mr Murdoch.[83] His views ignore the importance of alternative sources of news and public affairs information for the proper functioning of democracy. Moreover, public broadcasters are clearly more accountable and independent than their commercial counterparts when they have politically neutral and independent governance structures — as in Australia.

The credibility of News Corporation, its subsidiaries, and its senior personnel has since been severely dented during inquiries into News Corporation's involvement in illicit hacking of private telephone conversations, the publication of transcripts by News International, and corrupt payments to public officials for information.

There is a clear case for reduction in the concentration of ownership of media in Australia. With an eye on other major democracies, the limits on ownership should be set with regard to the effects of regulation on the communication of diverse interests and opinion. The nervousness about taking this step appears to be no more than another example of deference to the interests of the rich and powerful who currently dominate media ownership and editorial policy. The least courageous option is to put fear of offending those owners ahead of the

public interest by creating a ceiling limit; but allowing ownership which breaches that limit to be retained indefinitely. The desirable option is to require divestment of publications that breach limits.

There has recently been change for the better in the rights of journalists to protect their sources. *The Evidence Amendment (Journalists Privilege) Act 2010*[84] provides that a journalist may maintain the anonymity of an informant. A court may compel a journalist to disclose his or her source only if that disclosure outweighs the public interest in keeping sources confidential. The recognition that there is a public interest in the confidentiality of a journalist's sources is important, while the legislative protection is qualified by the ability of a court to override it in limited circumstances.

The communication of information and opinion is crucial to effective democracy. Implementation of the Right to Know principle is essential. The role of the media in facilitating good public discourse is a precarious one: domination of multiple media by one owner creates a severe risk that a diversity of opinion could be suppressed in favour of the interests or views of that owner. The participation of a well-resourced public broadcaster is essential, as is protection for those who provide information to journalists in the public interest. Australia now has a rare opportunity to take further steps toward protecting public discourse.

What would make Australia more democratic?

A more democratic Australia would be a country in which rule is more responsive to the felt interests of the people. These interests are necessarily the long-term interests of the public in general — the 'public interest' — rather than a rollercoaster ride following the latest opinion polling and focus group findings. Politicians of all parties and independent persuasions exercise a public trust in which each bears a fiduciary duty to act in the collective, national interest. The proper discharge of that duty would have a number of specific features identified in earlier parts of this book, discussed and summarised as follows.

Democratic federation: Citizen engagement

In many policy areas of the Australian Federation there are effective inter-governmental working arrangements, performing well. However, Australia continues to suffer from the centralising nature of our federalism, with imbalances of effective powers, due to the national government's disproportionate revenue-raising capacity, and the use of its corporations power in ways never envisaged when the Constitution was written. Concerning policy, the national government can force its will on the states, territories and local government, notwithstanding bouts of commitment to 'cooperative federalism' (and like terms). The effect is rule that is less creative and less innovative, and is consequently less responsive to the needs and desires of Australians. This democratic deficit could be addressed by two major reforms.

First, the principle of subsidiarity should be adopted by an inter-governmental agreement negotiated between national, state, territory and local government spheres, and implemented at all levels. It should then be codified through an amendment entrenching it in the Australian Constitution. The benefits will flow as much from the interactions which subsidiarity stimulates (in the form of creativity and policy innovation) as from devolution. The subsidiarity principle should also recognise the value of involving citizens in govern-

ment decisions, between elections, that affect their lives and their communities. As discussed earlier in this essay, the opportunity to influence decisions leads to both better acceptance of decisions, even when unpalatable, and improved decision-making — based on more information and better understanding of conditions in the locality, social group or industry.

Second, as already argued, the severe imbalance in the distribution of revenue-raising powers should be addressed through negotiation between national, state, territory, and local government spheres. Negotiations should aim for an inter-governmental agreement in which revenue-raising capacities approximate the expenditure responsibilities of each sphere of government. The agreement should incorporate provision for adjustment according to changing expenditure responsibilities.

These two reforms would result in a much more democratic Australian Federation.

The whole Australian community suffers from the lack of Indigenous input into the relationship we have with the land. By treating Indigenous people and their communities with dignity and respect, and representing their values through both designated seats in each parliamentary chamber and acceptance into the discourses that shape our nation's future, Australian democracy would be stronger.

Australian democracy would be fairer and stronger with fixed-term elections and four-year electoral terms for the Parliament of Australia — already the practice of many other political jurisdictions in Australia. A change to fixed terms would be a sensible way to begin, since such a change could be made by statute, without recourse to a referendum.

Strengthening the ability of the parliament to scrutinise the Executive is a key to the effective democracy that Australians want. Question time rules must be made more effective and

enforceable. Funding of the parliament — including independent officers of the parliament, and support services for MPs and senators — must be made independent of the Executive. Committee processes should be expanded to include enhanced opportunities for public participation.

Ministers must be held responsible for the implementation of legislation in their portfolios and for the management of policy. Accountability principles should be consolidated and protected through incorporation of the reforms into legislation wherever possible.

Members of the House of Representatives and Senators are remarkably poorly served by the professional development offered to them following election. Senators elected in 2010 had a three-day induction program, while members had a mere day and a half. The political parties provide very limited further induction. The parliament provides some lunchtime seminars during sitting weeks (e.g. on the budget process, shortly before the Budget is presented); however, overall the preparation and ongoing development of the specialised knowledge, skills and abilities is inadequate for the heavy responsibility that each has to contribute to the effective operation of Australian democracy.

To be effective, professional development for members and senators should have the guidance and encouragement of the leadership of the political parties, in particular the chief whips acting with the support of each party's leader. Members and senators should be required to participate in substantive induction and ongoing programs to develop their parliamentary knowledge, skills and abilities.

By ratifying the United Nations Convention against Corruption, Australia has committed to not only prosecute, but also prevent, corruption. The decision to establish a Parliamentary Integrity Commissioner to deal with matters

relating to members of parliament, as part of its 2010 agreements with independent MPs and the Greens, is a welcome step on the way. Australia should also establish a national anti-corruption body with powers extending beyond the monitoring of corruption and bribery within law enforcement bodies.

The principle of Right to Know should be fully implemented, to ensure that all government information is published online (except where it would be against the public interest). Greater media diversity should be enforced to ensure the presence of a variety of voices in discourse, and minimise the risk of unsavoury relationships between powerful media owners and governments. Ethical standards of journalism should be enforced effectively, as proposed by the 2012 Convergence Review. Other essential elements are: the presence of a strong public broadcaster, and improved protections for journalists who receive information from sources who provide information that is in the public interest.

The reforms proposed in this essay, including some foreshadowed by government or already being implemented, would enable Australia to be much closer to reaching the standards of democratic practice which we want and that are so often advocated. The reforms are all realistic and within reach. We must convince all those who operate our political system to accept the responsibility that they exercise a public trust in the form of Australians' shared public interest; accordingly, they must put their fiduciary duty ahead of a partisan lust for power. This will lead them to support and implement each element of this reform package.

Together, we can do better!

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Acknowledgement

Hear Our Voice: The Democracy Australians Want draws extensively on Australian Collaboration publications, particularly the many essays and short summary pieces listed under the heading of 'Democracy in Australia' on its website. They are grouped under four headings: Australia's political system; Characteristics of a democratic society; Strengthening democracy in Australia; and Democracy Issue Sheets.