1. Introduction

A democracy’s electoral system is fundamental to its legitimacy. From the electoral system flow the form and style of representation, the relative strength of political parties, the formation of government and the development of policy positions. In a representative democracy, the structure of a state’s electoral system plays a critical role in determining the nature and form of political discourse and parliamentary representation. The electoral system establishes who may vote, how many representatives are to be chosen from which areas, who is in charge of the conduct of elections and how votes are counted. Because adjustment or manipulation of these elements can have severe positive or negative consequences for the viability of political parties, attempts to make changes are often fiercely debated. Electoral system reforms can also impact strongly on the ability of citizens to participate in a state’s general political discourse and democratic processes—as voters, candidates or as members of political parties. Beyond any formal barriers, the perceived fairness or unfairness of the electoral system can also affect citizens’ willingness to engage in democratic processes.

Australia has been at the forefront of electoral design and innovation over the past 150 years and, with nine legislative jurisdictions, there is ample opportunity for experimentation and diversity. Australia is one of the oldest continuing democracies in the world and the first to introduce the modern form of the secret ballot, the first country to vote itself into existence through popular referenda, and the first country in which women could both vote and stand for parliament. In the nineteenth century, Australian colonies introduced democratic innovations such as the use of government-printed ballot papers and written nominations for elections. By the late nineteenth century, Tasmania had pioneered the single-transferable-vote form of proportional representation for its lower house.

Since the 1980s, significant electoral reforms have continued at the national and sub-national levels; however, while nineteenth-century innovations such as the secret ballot, independent electoral officials and standardised ballot papers were seen as measures to improve the fairness of elections, reforms can often be viewed as providing a partisan advantage for the political parties in power. For example,

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1 In this book, the term ‘electoral system’ is used in a holistic sense to refer to all aspects of an electoral regime, including the voting system, electoral regulation, administration and management. The term ‘voting system’ is used to refer to the method of voting, such as proportional representation or majoritarian single-member electorates.

2 Norfolk Island is an external Australian Territory with a legislature smaller than many Australian local councils and does not operate on party political lines, so is not considered in this assessment.

3 Australian women (except Indigenous women in some States) were entitled to vote and stand for parliament from 1902. While New Zealand was the first country to give women the vote in 1893, women in that country were not entitled to stand for parliament until 1919.
political scientist David Elkins argues that recent electoral experimentation, while promoted as improving democratic outcomes, is primarily designed to provide partisan advantage.4

This book looks at Australian electoral reforms from a political science perspective; however, the author’s experience as a parliamentarian and party administrator provides further insight into how and why reforms occur. The author was a Member of the Western Australian Legislative Council from 1997 to 2001, representing the East Metropolitan Region for the Australian Democrats. During most of this term, the Democrats held the balance of power in the Council. After leaving parliament, he became a member of the party’s national executive, including a term as deputy national president.

Much of the information in the following chapters is derived from the author’s doctoral study, when, as part of his research, he interviewed ministers and shadow ministers, electoral commissioners and others from all Australian jurisdictions. The institutional structures of Australia’s electoral administration are considered and, in particular, an assessment is made of the independence of the nine electoral commissions around Australia. A case study approach is then taken to assess several areas of electoral law. Reforms over the past 30 years have generally served to tilt the electoral playing field in favour of one of the major parties or, at times, in favour of the major-party cartel against other players. Some areas that receive specific attention include entitlement to vote, closing of the electoral roll, political party registration regimes, public funding, malapportionment and postal voting.

**Background briefing**

Australia, with the rich diversity of electoral systems in its nine legislative jurisdictions (comprising the national federal—also referred to as Commonwealth—level, six States and two Territories), provides excellent material for comparative analysis. Most of these jurisdictions have long-established representative democracies of more than 100 years. Only the two Territories—the Northern Territory and the Australian Capital Territory (ACT)—have achieved self-government comparatively recently. Their first legislative elections under self-government were in 1980 and 1989, respectively. While there are many similarities between these nine jurisdictions, there is also significant diversity in their electoral systems, histories of reform and administrative procedures. This variation warrants detailed analysis. Australia is often held up as a shining example of electoral best practice, so it is worthwhile

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examining whether that remains the case. This can be done by comparing Australian systems with each other and assessing them against internationally accepted norms for electoral management and fair elections.

At the Australian national level, there have been two significant instances of electoral reform in the past 30 years. The first occasion followed the 1983 general election, when the incoming Hawke Labor Government initiated sweeping changes. These included the introduction of ticket voting for the Senate; party identification on ballot papers and ballot order decided by lot (replacing alphabetical listing); the adoption of a modified Gregory system for the Senate count; public funding; party registration; and the establishment of a statutory electoral management body—the Australian Electoral Commission (AEC)—which replaced the Australian Electoral Office.

The second major set of reforms occurred in 2006 under the Howard Liberal–Nationals\(^5\) Coalition Government, which was finally able to implement significant changes that it had pursued from the time it first won office in 1996. Having won a Senate majority at the 2004 election (taking effect from July 2005), the Howard Government enacted reforms in 2006 that impacted on many facets of electoral administration. These reforms included the disenfranchisement of all prisoners, the earlier closure of the electoral roll,\(^6\) more stringent proof-of-identity requirements, increases in donation disclosure thresholds and an increase in the level of tax-deductible donations.

Electoral systems at the sub-national level have similarly been subject to significant reform and amendment during this period. Queensland and Western Australia have moved to reduce malapportionment, Western Australia and Victoria have replaced legislative council single-member elections with regional proportional representation, Queensland and New South Wales have moved to optional preferential voting, and all jurisdictions have introduced and/or tightened party registration criteria. Tasmania has significantly reduced district magnitude in its house of assembly electorates—changing from seven-member to five-member seats. As a result, the assembly has been reduced in size from 35 to 25 members. Even in Australia’s newest legislative jurisdiction, the Australian Capital Territory, the modified d’Hondt voting system of a single Territory-wide electorate that was originally used has been subsequently replaced with a system based on three multi-member electorates using the Hare-Clark form of proportional representation. The Australian Capital Territory’s parliamentary terms have also been extended from three to four years.

\(^5\) The National Party, formerly known as the Country Party, changed its name to The Nationals in 2003.
\(^6\) The disenfranchisement of all prisoners and earlier closure of the electoral roll were subsequently found to be unconstitutional by the High Court.
It can be argued that in electoral democracies there is an ongoing tension between voting systems and political parties, with each attempting to exert dominance over the other. This tension is explained by Ken Benoit as the mechanical functioning of voting systems against the psychological behaviour of political parties. Benoit argues that voting systems place mechanical restrictions on how votes are distributed and seats are awarded, while political parties use psychology to shape campaign strategies and thereby maximise results within the voting system’s constraints.\(^7\) Arend Lijphart assesses the institutional consequences of this tension, arguing that proportional voting systems produce stronger electoral institutions due to the tendency towards non-majority governments in such systems.\(^8\)

The ongoing tension referred to by Lijphart and Benoit is described by Claus Offe as competing forces of institutional change and stability. Offe argues that there is an inherent institutional tendency to remain stable. Importantly, however, he also identifies the capacity for institutions to change from within, through legislated powers for institutions to alter their own lower-level operational and administrative mechanisms.\(^9\) This is pertinent for Australian electoral system design, where there can be tension between electoral commissions seeking to act independently in accordance with professional norms and governing political parties attempting to assert a preferred electoral regime for identified or perceived partisan advantage. Administrative changes that do not require legislative approval might have significant partisan impacts and the Australian experience has generally been that the governing political parties keep tight controls over this area of electoral regulation.

There exists a large disparity in the capacity to contest elections, which is determined by access to incumbency benefits. The disparity between incumbents and contestants without access to incumbency benefits has developed in recent decades. Incumbency benefits include parliamentarians’ travel, staffing, printing and communication entitlements, media coverage (such as involvement in televised debates), publicity resources (including access to public service resources) and voter databases. There is a hierarchy of incumbency advantages (depicted in Figure 1.1), ranging from those enjoyed by the party in government and those enjoyed by parliamentary parties, by parliamentarians without party status and by parties without parliamentary representation to the relatively limited benefits available to Independents. While this skewing of the electoral playing field through incumbency advantages is mostly separate from Australian electoral system design, it is important to acknowledge the impact it has on the fairness of Australian elections.

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Figure 1.1 Hierarchy of Incumbency
The fact that the current two-party system has now been in place for more than a century suggests an entrenchment of the perception of the voting public that there are only two parties to choose from. This perception is reinforced by the two parties’ control of the political agenda, campaign funds and the electoral system itself, despite the occasional opportunities that arise for smaller parties, as previously mentioned. Minor parties can win more support at the expense of the two major parties where proportional representation exists.

Table 1.1 Support at Federal Elections: House of Representatives versus Senate (per cent)

<table>
<thead>
<tr>
<th>Election</th>
<th>Labor HoR</th>
<th>Labor Senate</th>
<th>Coalition HoR</th>
<th>Coalition Senate</th>
<th>Democrats HoR</th>
<th>Democrats Senate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>49.5</td>
<td>45.5</td>
<td>43.6</td>
<td>40.0</td>
<td>5.0</td>
<td>9.6</td>
</tr>
<tr>
<td>1984</td>
<td>47.6</td>
<td>42.2</td>
<td>45.0</td>
<td>39.5</td>
<td>5.5</td>
<td>7.6</td>
</tr>
<tr>
<td>1987</td>
<td>45.8</td>
<td>42.8</td>
<td>46.1</td>
<td>42.0</td>
<td>6.0</td>
<td>8.5</td>
</tr>
<tr>
<td>1990</td>
<td>39.4</td>
<td>38.4</td>
<td>43.5</td>
<td>41.9</td>
<td>11.3</td>
<td>12.6</td>
</tr>
<tr>
<td>1993</td>
<td>44.9</td>
<td>43.5</td>
<td>44.3</td>
<td>43.0</td>
<td>3.8</td>
<td>5.3</td>
</tr>
<tr>
<td>1996</td>
<td>38.8</td>
<td>36.2</td>
<td>47.3</td>
<td>44.0</td>
<td>6.8</td>
<td>10.8</td>
</tr>
<tr>
<td>1998</td>
<td>40.1</td>
<td>37.3</td>
<td>39.5</td>
<td>37.7</td>
<td>5.1</td>
<td>8.5</td>
</tr>
<tr>
<td>2001</td>
<td>37.8</td>
<td>34.3</td>
<td>43.0</td>
<td>41.8</td>
<td>5.4</td>
<td>7.3</td>
</tr>
<tr>
<td>2004</td>
<td>37.6</td>
<td>35.0</td>
<td>46.7</td>
<td>45.1</td>
<td>1.2</td>
<td>2.1</td>
</tr>
<tr>
<td>2007</td>
<td>43.4</td>
<td>40.3</td>
<td>42.1</td>
<td>39.9</td>
<td>0.7</td>
<td>1.3</td>
</tr>
<tr>
<td>2010</td>
<td>38.0</td>
<td>35.1</td>
<td>43.6</td>
<td>38.6</td>
<td>0.2</td>
<td>0.6</td>
</tr>
</tbody>
</table>

Source: Australian Electoral Commission.

To illustrate this, on a national basis in the past 11 federal elections, Labor and the Coalition have always received a lower level of primary voting support in the Senate than in House of Representatives seats. In comparison, the Australian Democrats—successful at winning Senate seats from 1977 to 2001—have consistently received a higher vote when contesting more winnable positions in the Senate (see Table 1.1). Despite the growing success of the Australian Greens in recent elections, both in the Senate and, in 2010, in the House of Representatives, Labor and the Coalition continue to garner more than 80 per

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10 The development of a two-party system originates from 1909, when the Protectionist Party merged with the Anti-Socialist Party, creating the Commonwealth Liberal Party, also known as the Fusion. The party (not to be confused with the current Australian Liberal Party) opposed the Labor Party.
11 Percentages are national averages, therefore they under-represent Democrats support when the party did not stand candidates in all House of Representatives seats. An accurate example of increased voter support in the Senate can be seen in the 1998 figures, when the Democrats stood candidates in all House of Representatives seats.
12 This book sources its election data from official electoral commission publications and web sites, as well as the Australian Government and Politics Database (AGPD), based at the University of Western Australia. Due to the number of sources used, only the organisations are listed.
cent of the House of Representatives vote. The only time that the two major parties’ combined vote has dropped below the 80 per cent mark in the past 30 years was in 1998 (79.6 per cent), when Pauline Hanson’s One Nation was able to attract votes away from the Coalition, winning more than 8 per cent of the vote.

The history of Australian electoral institutions indicates that path dependency plays a critical role in electoral design and, as a consequence, impacts significantly on the representative nature of the democracy. For example, the Northern Territory’s self-governing legislation—the *Northern Territory (Self-Government) Act 1978*—stipulates single-member electorates for a unicameral assembly. As a result, there has been only one change of government in more than 35 years, with the government always having an assembly majority. While the NT Labor Government’s electoral reforms in 2004 were extensive, the Commonwealth legislation prevented it from considering changes to the single-member majoritarian voting system, demonstrating that electoral reform is restricted to a particular path.

In comparison, the Australian Capital Territory’s voting system, which was designed less than 15 years after the Northern Territory’s first election under self-government, is regulated by the Commonwealth’s *Australian Capital Territory (Electoral) Act 1988*. This Act specifies a proportional representation system for a unicameral assembly. In the 12 years from 1989 there were four changes of government (including two changes of government between elections). In addition, only one government has held an ACT Assembly majority since 1989 (the 2005–08 Stanhope Labor Government). When the Australian Capital Territory considered electoral reform in the early 1990s, a referendum was held to determine voters’ preferences for single-member electorates or proportional representation, with two-thirds of electors supporting the latter. The original Commonwealth legislation had set the Australian Capital Territory on a path of proportional representation. The reasons for such different approaches to the voting system design for the two Territories can be found in the timing of the legislation—for the NT legislation, the Fraser Coalition Government had control of the Senate. For the ACT legislation, in contrast, the Hawke Labor Government had a Senate minority, and therefore needed to negotiate with the Australian Democrats—a minor party that benefited from proportional representation. These brief examples are indicative of the importance of path dependency in the evolution of electoral systems.

The next two chapters look at the administrative structures for conducting Australian elections, including electoral commissions and parliamentary oversight committees, and the degrees of independence that Australian electoral commissions operate under. From Chapter 4 through to Chapter 10, a case study approach is taken in assessing reforms in several contentious areas of electoral law. Chapter 4 considers the voting franchise—for non-citizen permanent
residents (specifically, British subjects); and for prisoners. Chapter 5 assesses enrolment procedures, turnout and informal voting; combined, these three factors influence how many eligible Australians actually make a formal vote in elections. Chapter 6 looks at the various party registration regimes operating around Australia, and how these regimes impact on who contests elections.

Three specific political finance issues are addressed in Chapter 7: public funding, donation disclosure regimes and the tax deductibility of political donations. The issue of malapportionment (vote-weighting) is analysed in Chapter 8, using the recent history of Western Australia’s move to ‘one vote, one value’ as the main study. Chapter 9 illustrates the ways in which the major political parties have been intricately involved in postal voting processes, and finally in Chapter 10, issues relating to increasing the size of parliaments are discussed, using examples from the federal, Tasmanian and ACT jurisdictions.