2. Australia’s Electoral Administration

The institutional structure of an electoral system provides the environment in which electoral laws are administered and amended. An understanding of this environment is necessary to evaluate the fairness of a system, in terms of both democratic behaviour and electoral outcomes. Australia’s electoral management bodies have an international reputation for their professional, non-partisan and independent performance. Yet how strongly entrenched are that integrity and independence? Is the reputation deserved? Australian electoral administrations are relatively similar in terms of structure and responsibility; however, their powers vary depending on their enacting legislation. In most cases the legislation also limits the ability of commissions to act independently in the interests of best electoral practice and in providing a level playing field for election participants. In addition to their regular interactions with the government of the day, as in negotiating budgets and liaising with the responsible minister, electoral commissions are subject to different levels of parliamentary oversight, in terms of inquiries into the conduct of elections and other electoral matters.

Australian electoral management bodies

The origins of Australia’s professionalised and independent electoral administration lie in nineteenth-century colonial society, with a lack of strong local authorities or precedent, which enabled professional, efficient and non-partisan electoral systems to develop. As Marian Sawer describes, administration was initially the responsibility of public servants working in a government department, with greater independence later being achieved through the use of statutory bodies, or ‘offices’, and finally with the removal of ministerial direction and the establishment of commissions.¹

At the federal level, the Australian Electoral Commission (AEC) was established in 1984 by Section 4 of the Commonwealth Electoral Legislation Amendment Act 1983. The AEC replaced the Australian Electoral Office, a statutory authority founded in 1973. As former electoral commissioner Colin Hughes notes, although the 1983 legislation effectively removed the minister from the principal Act for all matters except the tabling of reports in parliament, the government retained control over budgetary and legislative matters.² At the State and Territory levels, all electoral administrations are commissions.

There are strong relationships between electoral administrations at the federal, State and Territory levels, and innovations in the management of electoral systems are regularly disseminated between the jurisdictions. The commissions regularly assist each other in the conduct of elections by, for example, providing pre-polling facilities and specialist staff, and exchanging information on technological advances, such as electronic voting. The names of the nine Australian administrations, and the years the administrations were established as commissions, are provided in Table 2.1

Table 2.1 Australia’s Electoral Management Bodies

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Electoral management body</th>
<th>Commission established</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth</td>
<td>Australian Electoral Commission (AEC)</td>
<td>1984</td>
</tr>
<tr>
<td>New South Wales</td>
<td>New South Wales Electoral Commission (NSWEC)</td>
<td>2006</td>
</tr>
<tr>
<td>Victoria</td>
<td>Victorian Electoral Commission (VEC)</td>
<td>1995</td>
</tr>
<tr>
<td>Queensland</td>
<td>Electoral Commission of Queensland (ECQ)</td>
<td>1992</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Western Australian Electoral Commission (WAEC)</td>
<td>1987</td>
</tr>
<tr>
<td>South Australia</td>
<td>Electoral Commission of South Australia (ECSA)</td>
<td>2009</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Tasmanian Electoral Commission (TEC)</td>
<td>2005</td>
</tr>
<tr>
<td>Australian Capital</td>
<td>Australian Capital Territory Electoral Commission (ACTEC)</td>
<td>1992</td>
</tr>
<tr>
<td>Territory</td>
<td>Northern Territory Electoral Commission (NTEC)</td>
<td>2004</td>
</tr>
</tbody>
</table>

**NSW Election Funding Authority**

Typically, the commission is the sole institution with responsibility for the conduct and administration of elections in their jurisdiction (except for the drawing of electoral boundaries, which is determined by a separate statutory body administered by the commission); however, whereas other jurisdictions entrust their commissions with the task of administering party registration, public funding and other political finance matters such as financial disclosure, New South Wales in 1981 established a separate authority under the *Election Funding Act 1981* for these purposes. This is the three-member NSW Election Funding Authority. While the establishment of a separate agency for political finance purposes is not in itself a problem in terms of fairness, the membership of the authority is problematic.

Briefly, one of the authority’s responsibilities is the administration of public funding to parties and candidates, including the provision of public funds for ‘electoral education’. New South Wales is unique in Australia in providing funds to the parties for the production and dissemination of information about policies and party-related work. This expenditure may be used exclusively for
providing services to party members, if the party chooses. Funding is calculated on the results at the previous general election, with six of the 16 parties that contested the 2007 election receiving funding based on their 2003 election results.

The electoral commissioner sits as the chair of the authority, with the other two members nominated by the premier and the leader of the opposition. The current members are Kirk McKenzie, a lawyer and Labor branch president who was nominated by the Labor government, and Ted Pickering, a former Liberal parliamentarian and minister nominated by the then Opposition Leader, Barry O’Farrell. The ability of the two major parties to nominate members of the authority makes New South Wales the only Australian jurisdiction in which appointments to an electoral management body are made on a partisan basis. This appointment process impacts on perceptions of the independence of the NSW Electoral Commissioner, who is required to preside over this authority and yet is outnumbered by political appointees.

The authority has the power to initiate legal proceedings against candidates who do not comply with the requirements of the Act. This places the authority’s two nominated members in a position of potentially starting action against their own party colleagues—a clear conflict of interest. It can be argued that having an independent chair holding the casting vote might prevent blatantly partisan decisions that favour one party over the other; however, there is also the capacity for the two party appointees to act in collusion, as a cartel operating against fairness principles and against the interests of other parties and election candidates. For example, the two party appointees could support each other to avoid actions against their party colleagues. The authority’s 2006–07 annual report lists (mostly local government) candidates against whom proceedings were initiated. Of 47 separate actions, 43 were against Independent candidates, with the remaining four candidates representing minor parties (the Unity Party and the Christian Democratic Party).³

The fact that no candidates from the appointees’ parties were subject to proceedings against them might simply indicate the report’s focus on the local government level, at which party campaigning is less overt, or that the parties’ candidates had all complied with the law. The perception of a lack of independence remains, however, due to the presence of political appointees. In 2008, the NSW Select Committee on Electoral and Political Party Funding (SCEPPF), which included Labor and Liberal party representatives, recommended that partisan appointments should cease, to remove any perception of bias.⁴

It would appear to be a simple exercise to incorporate the functions of the authority with those of the Electoral Commission, as in other jurisdictions. At an administrative level, this would be a seamless transition, as the authority is essentially subsumed by the commission in any case; the authority does not employ any staff, with the commission providing all staffing and administrative resources. The fact that the corporate plan for the commission and the authority is a joint document is another indicator of the symbiotic nature of the relationship. The closeness between the two institutions is highlighted by a comment from the Commissioner that ‘it was very unclear to me, when I came into the position of Electoral Commissioner, who was running and administering the Election Funding Authority provisions’. The Commissioner has, however, expressed opposition to the commission taking on the authority’s responsibilities, stating that ‘I do not think it would be in the public interest to have one person effectively dealing with all of this’.5

One official, however, stated in an interview that it would not be a major problem to integrate the authority’s functions with those of the commission, at the same time overcoming the commissioner’s concern about having one person responsible for funding and disclosure issues:

One of the things that in time might eventually happen is the Election Funding Authority would get subsumed into the actual commission, with probably some sort of similar model to what Queensland has, where you have an augmented commission when you’re dealing with the funding stuff. So you could have a nominee of the auditor-general and a nominee from somewhere else.

As the SCEPPF found, there is merit and support for removing partisan appointments, based on internationally accepted norms for electoral management and concepts of independence (discussed more fully in the next chapter). At present, neither the Labor nor the Liberal leadership has expressed a willingness to give up their right to nominate members of the authority. The possible integration of the authority with the commission is less contentious, because in its current form the authority is essentially administered by the commission. Despite the partisan appointments, no allegations of corruption or partisan bias have been made, but the concern remains that the principle of fairness is diminished by the perception of partisan behaviour.

Parliamentary oversight of electoral matters

Parliaments are made up of election winners. As the beneficiaries of the electoral system, parliamentarians have a clear vested interest in maintaining (or changing to their own further advantage) a system from which they have benefited. Therefore, their parliamentary activity requires close scrutiny to determine whether their actions are based on principles of fairness or on their own self-interest and partisan considerations.

Table 2.2 Parliamentary Oversight Committees

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Committee established</th>
<th>Committee name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commonwealth</td>
<td>1983</td>
<td>Joint Standing Committee on Electoral Matters (JSCEM, formerly the Joint Select Committee on Electoral Reform, 1983–87)</td>
</tr>
<tr>
<td>New South Wales</td>
<td>2004</td>
<td>Joint Standing Committee on Electoral Matters (NSW JSCEM)</td>
</tr>
<tr>
<td>Victoria</td>
<td>2007</td>
<td>Electoral Matters Committee</td>
</tr>
<tr>
<td>Queensland</td>
<td>2011</td>
<td>Legal Affairs, Police, Corrective Services and Emergency Services Committee</td>
</tr>
<tr>
<td></td>
<td>2009</td>
<td>Law, Justice and Safety Committee</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>Legal, Constitutional and Administrative Review Committee (LCARC, formerly Parliamentary Committee for Electoral and Administrative Review)</td>
</tr>
</tbody>
</table>

Four Australian jurisdictions have parliamentary oversight committees with a distinct role in overseeing and inquiring into electoral systems and the conduct of elections (see Table 2.2). As the larger parliaments have more members to draw on for issue-specific committees, it is not surprising that the three largest jurisdictions (in terms of parliamentary size) have committees dedicated solely to electoral matters. These three jurisdictions are the Commonwealth, with 226 parliamentarians (150 MPs, 76 Senators); New South Wales, with 135 (93 MLAs, 42 MLCs); and Victoria, with 128 (88 MLAs, 40 MLCs). In Queensland (with a parliament of 89 members), currently the Legal Affairs, Police, Corrective Services and Emergency Services Committee (LAPCSESC) has responsibility for inquiring into electoral matters, among its many other portfolio responsibilities including justice and policing matters.

The remaining jurisdictions, with parliaments ranging from 17 (Australian Capital Territory) to 95 (Western Australia) members, tend to use their legislative or other committees to conduct inquiries into electoral matters. The issue in question often determines to which committee such matters are referred in these jurisdictions. For example, the Australian Capital Territory’s Standing Committee on Legal Affairs (SCLA) inquired into possible changes to the overall size of the
assembly and electorate magnitude in 2002, while in 2006–07, the Standing Committee on Education, Training and Young People (SCETYP) inquired into a proposal to lower the voting age. In Western Australia, the Standing Committee on Legislation inquired into the Gallop Labor Government’s ‘one vote, one value’ legislation in 2001. The larger jurisdictions also send certain electoral matters to other standing committees. The following sections explain the inquiry activity of these committees, with a focus on partisan influences at work. Four standing committees with specific references for electoral matters are examined, as well as two examples of other committees that have received electoral matter referrals (a Commonwealth Senate standing committee and a NSW upper house select committee).

**Commonwealth**

The oldest Australian electoral committee is the Commonwealth’s Joint Standing Committee on Electoral Matters (JSCEM), formerly the Joint Select Committee on Electoral Reform (JSCER). The Commonwealth committee has developed a substantial history of conducting inquiries, with a total of 37 reports published in the past 29 years (a list of the committee’s reports is provided in Appendix A). The committee’s main focus is inquiring into the conduct of each general election. Additionally, the committee conducts inquiries into specific electoral issues, such as levels of representation (1988 and 2003), the integrity of the electoral roll (2001 and 2002) and political finance issues (2006).

The depth of the committee’s election inquiries has grown in the 25 years since its inception. The growth in the number of submissions it receives after each election is evidence of this increasing depth, with 129 submissions for the 1987 election inquiry, increasing to 221 submissions following the 2004 election. As Colin Hughes notes, the JSCEM election inquiries, which include extensive public hearings after initial submissions have been received, is possibly the best existing form of scrutiny into the electoral system, adding transparency that is lacking elsewhere.6 Being a joint committee—that is, drawing on members from both houses of parliament—means that there is some representation available for minor parties, with the Australian Democrats having a member on the committee from the initial formation of JSCER in 1983 through to 2008. From July 2008, the Greens have provided the minor party/Independent representative. The membership of the committee is currently made up of five Labor, four Liberal and a Greens member; however, for the inquiry into the

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funding of political parties and election campaigns (current at late September 2011), the membership has been enlarged to accommodate a Nationals member and an Independent representative (Tony Windsor).

In interviews, members of the committee expressed the view that the regular election inquiries are very important to the overall administration and conduct of elections. One member noted:

You get a good spread of witnesses. You get good opportunities for scrutiny and debate around the circumstances of what’s occurred in an election. In respect of reports, you get issues pretty reasonably canvassed in the body of reports. The report normally gives you a pretty good account of what’s occurred, the points of differentiation.

Concerns were raised, however, that the committee operates on an extremely partisan basis that is largely unavoidable, as in this observation from a committee member:

People should have no doubt that it is the most political of committees, given the nature of what it’s looking at, and so its recommendations are invariably often political. Invariably you end up with dissenting reports, practically more than any other committee that I’m aware of. The government of the day has a significant influence on the outcome.

An electoral administrator commented on the partisan nature of the committee, noting the difference in approach when the Howard Government had a Senate majority from 2005 to 2007:

It’s in an environment where the government has a majority in the Senate and that changes the dynamics greatly because there is less need to come to a compromise, because the government members feel they’ve got their senior colleagues behind them. They can go for broke.

It is understandable that there would be a close relationship between an electoral matters committee and the elections administrator. The JSCEM holds regular (twice yearly) private hearings with the AEC. Although these hearings are recorded by Hansard, the transcripts are not released to the public; they are regarded as briefings and an opportunity to discuss the mechanics of electoral administration away from public scrutiny. The AEC also provides substantial submissions to JSCEM inquiries—for example, more than 1000 pages of information and comment were submitted following the 2004 and 2007 elections. Typically, the AEC’s submissions present data on the conduct of the election, as well as providing information and comment on specific electoral issues that have been raised through the media or might have been foreshadowed or requested by the committee.
The 2004 federal election inquiry: the Richmond result

One example of the partisan nature of the JSCEM is contained in the inquiry into the 2004 federal election. The issue was the outcome in the Richmond electorate, where the sitting member, Nationals Minister Larry Anthony, was defeated by the Labor candidate by 301 votes—a margin of 0.19 per cent. Significantly in such a close contest, the Liberals for Forests candidate received 1417 votes (1.8 per cent). The 10-member committee, with five government members, including the Liberal Party chair (who resolves any tied vote), decided to investigate this outcome in Richmond. The investigation was based on complaints from The Nationals and the Liberal Party on election day that the design of the Liberals for Forests’ how-to-vote cards, which gave preferences to Labor ahead of The Nationals, misled voters into thinking that Liberals for Forests were connected to the Coalition parties.\(^7\) The AEC provided advice to both Coalition parties on election day, based on legal advice from the government solicitor, that a breach had not occurred.

In July 2005 the committee held a public hearing in the electorate and used some of the evidence given to this hearing in its final report. There appeared to be a clear intention by Liberal members of the committee to gather evidence that the Liberals for Forests’ how-to-vote cards were deceptive. The leading nature of the questioning, and the subsequent report, is typified by the following exchanges at the hearing:

*Senator BRANDIS (Liberal):* In any event, there is no doubt in your mind that you are not alone in being misled—that there were a substantial number of other people misled in the same way as well.

*Bronwyn Smith:* That is right.

In reference to this exchange, the committee report stated that ‘Ms Smith characterised the number of people who were misled as “substantial”’.\(^8\) Although Ms Smith agreed with the comment, she did not use the word ‘substantial’; this was suggested by the Liberal senator.

*Senator BRANDIS (Liberal):* What was it? Tell us.

\(^7\) Section 329(1) of the Commonwealth Electoral Act 1918 states that ‘[a] person shall not, during the relevant period in relation to an election under this Act, print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote’.

Mrs Flower: It was a bogus party, set up to steer votes away from the National Party.

CHAIR (Liberal): To deceive people.

Mrs Flower: To deceive them. Although someone in the room has another theory.

The report printed the majority of this exchange, except for the final sentence referring to another theory. The committee’s report found that ‘Ms Elliot [the Labor candidate] was elected as a result of preferences on the basis of deceptions by Liberals for Forests’. The Labor members of the committee, however, included a minority report, attacking the majority report for its ‘inflammatory allegations’, concluding that ‘the allegations made in the Majority Report are nothing more than a political stunt on behalf of the Coalition’. The regular insertion of minority reports in the JSCEM reports indicates the political nature of the committee. The report was subsequently referred to in parliamentary debates on the Howard Government’s 2006 electoral reforms, which included the deregistration of parties such as the Liberals for Forests. The investigation into the Richmond result demonstrates inherent partisan biases in the inquiry process and committee reporting.

**NSW Joint Standing Committee on Electoral Matters**

The NSW Joint Standing Committee is a seven-member committee that was established in 2004. Its terms of reference require it to have a majority of government members. The current membership is made up of four government members (two Liberal, two Nationals), two Labor members and one Shooters and Fishers Party member. Like its federal counterpart, the committee is developing a practice of inquiring into general elections, having conducted inquiries into the 2003 and 2007 elections. It has also inquired into voter enrolment issues (partly in response to reforms at the federal level). Unlike its federal counterpart, however, the NSW committee has not developed a partisan culture of majority and minority reports. Nor does it appear to have a comparable level of public interest in its inquiries, with only 14 submissions received for its 2003 election inquiry, and 19 in 2007. Two days of hearings were held for each inquiry.
Victorian Electoral Matters Committee

Victoria’s Electoral Matters Committee was formed in mid-2007 and completed an inquiry into the State’s November 2006 general election. The inquiry received 28 submissions and held two days of hearings. Between 2008 and 2010 it also conducted four other inquiries—into: political donations and disclosure; voter participation and informal voting; misleading or deceptive electoral content; and the administration of voting centres. The committee is currently inquiring into the 2010 general election, for which it has received 19 submissions. The five-member committee has a government majority, with three Liberal and two Labor members. The other parties in parliament, The Nationals and Greens, do not have representation.

Although it is difficult at this early stage of the committee’s work to determine a particular culture of reporting, its first report is encouraging. The 269-page report provides an extensive analysis of various aspects of the 2006 election, including enrolment procedures, party registration, electronic voting and ballot paper design. It is interesting to note the absence of dissenting (minority) reports and the fact that, of the report’s 72 recommendations, 56 are directed to the Victorian Electoral Commission, with only 11 recommending legislative action. Two later inquiry reports included relatively minor dissenting reports. This might indicate an emphasis on administrative detail rather than electoral system reform, but could also allude to the greater powers that the Victorian Electoral Commissioner holds in comparison with his Commonwealth counterpart.

Queensland’s various electoral-related committees

Queensland has a history of including electoral matters inquiries in the ambit of a committee with other justice-related portfolios. About 1990, the Parliamentary Committee for Electoral and Administrative Review (PCEAR) was created, in response to the recommendations of the Fitzgerald Inquiry. PCEAR quickly became the Legal, Constitutional and Administrative Review Committee (LCARC), which was in place for almost two decades, before evolving into the Law, Justice and Safety Committee in 2009, and, from 2011, the Legal Affairs, Police, Corrective Services and Emergency Services Committee (LAPCSESC). These committees examine electoral matters as part of their remit to inquire into broader issues of a legal and constitutional nature, not all of which are related

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to the electoral system. This wider focus is likely a reflection of the smaller size of the Queensland Parliament compared with the above three examples, rather than a lack of interest in electoral matters. As LCARC is easily the longest-formed of these committees, the following paragraphs concentrate on its performance.

Queensland’s LCARC was a seven-member committee, with a government majority and representatives of the other parties in parliament. LAPCSESC has six members: three from the Labor Government, two Liberal National Party members and one Independent. The intention to hold regular election inquiries is clearly evident in the case of the three largest jurisdictions; however, the situation for Queensland is not as clear. LCARC’s remit was centred on reform, with four areas of responsibility: administrative review reform, constitutional reform, electoral reform and legal reform. Of the 66 reports published since 1996, only nine specifically dealt with electoral reform issues: truth in political advertising; electoral legislation; how-to-vote cards and appeal processes; electoral fraud; young people engaging with democracy; and Indigenous participation.

Because LCARC was concerned with issues beyond electoral matters, it was difficult to establish regular election inquiries, with only one report on the 1998 election (receiving 25 submissions). In August 2008, however, the committee announced an inquiry into ‘Certain Contemporary Electoral Matters’, with a focus on the 2004 and 2006 general elections. Unfortunately, this appears to have lapsed with the change in committee in 2009 and a revised focus on local government elections.

Among the Queensland committee members interviewed, there were different views on the merit of having an automatic reference to initiate an inquiry immediately following each general election. One position was that a regular inquiry was necessary and this was best done as soon as possible after an election while issues remained fresh. It was also stated that the committee should not necessarily wait for a request from the attorney-general before an inquiry commenced—that ‘an inquiry immediately after an election should be a standing order’. An alternative view was that, as the committee dealt with other issues as well as electoral matters, a regular election inquiry would take up too much time and resources. This committee member also supported the incorporation of electoral matters into constitutional and legal issues based on the broader concepts of democracy and representation.
Senate finance and public administration standing committees

The committees discussed above have an ongoing responsibility to inquire into electoral matters. Other committees receive inquiry referrals on a ‘case-by-case’ basis. For example, the Commonwealth Electoral and Referendum Legislation Amendment Bill 2006 was referred to the Senate Standing Committee on Finance and Public Administration in December 2006. The Bill was consequential to the major electoral reforms of the Howard Government, which had been passed earlier in 2006, and many of the amendments were considered to be ‘machinery’ in nature. The inquiry took just more than two months, received only three submissions (from the AEC, the Human Rights and Equal Opportunity Commission and the Department of Defence) and did not hold any public hearings. The eight-member committee delivered a unanimous 14-page report recommending that the Bill be supported in its entirety.

In contrast, earlier in 2006 the Senate Finance and Public Administration Legislation Committee considered the highly contentious major Howard Government reforms. The inquiry received 53 submissions, held a day of hearings and was completed within an intensive seven-week period. Despite numerous concerns being raised in submissions and hearings, the report essentially rubber-stamped the government legislation, making only one recommendation—that the legislation be passed without amendment. Almost half of the 92-page report consisted of dissenting reports written by the Labor and Democrats members of the committee. These two examples of committee work demonstrate the diversity that can exist in the inquiry process. The latter example indicates that where partisan interests are at stake, an inquiry will more readily split on party lines instead of seeking a common view consistent with fairness principles and accepted norms for electoral management.

NSW Select Committee on Electoral and Political Party Funding

Political imperatives obviously play a role in how parliaments choose to inquire into electoral matters. A good example of this occurred in the NSW Parliament in mid-2007. Despite New South Wales having a dedicated electoral matters committee, the legislative council established a select committee, the

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10 Due to a restructure of Senate committees in 2006—combining legislation and reference committees into one committee—the two committees referred to in this section have different names but are essentially the same committee.
Select Committee on Electoral and Political Party Funding (SCEPPF), to inquire into political finance and public funding issues. The political manoeuvring involved in establishing the committee, and later in determining the committee membership, is obvious from the Hansard transcripts.

The motion to establish the committee was debated on 27 June 2007, with the mover, Liberal Don Harwin, arguing that a select committee was a better option than the already established NSW JSCEM, as he envisaged ‘looking over the horizon and looking at policy issues…[not] getting bogged down in the administrative minutiae of particular elections, particular donations and particular items of expenditure’. Although the intention might have been genuine, the result was that by using an upper house committee the Labor government would not have a majority, as was the case on the NSW JSCEM. By winning support from other right-of-centre parties, the Liberal Party was also able to pass their motion to set up a committee ahead of another motion from the Greens, who sought to establish a similar (but joint house) inquiry.

The committee membership was determined three months later, with agreement that there would be two Labor government members, two Coalition opposition members and two crossbench members. In what was obviously further manoeuvring by the parties, however, the council had to vote to appoint two of the three crossbench members who nominated from the Shooters Party and the Christian Democratic Party (CDP), with the Greens candidate, Lee Rhiannon, losing out. As the Shooters Party and CDP are considered right-of-centre parties, this outcome could be perceived as being part of an agreement made to establish the committee. A positive aspect of the outcome, however, was that five parties were represented on the six-member committee, providing broader representation of minor parties compared with a joint house committee.

The committee carried out a nine-month inquiry, receiving 189 submissions and conducting five days of public hearings. When compared with the NSW JSCEM’s 2003 and 2007 election inquiries, the SCEPPF attracted far greater public interest and media attention. It tabled an extensive 276-page report on 19 June 2008, with 47 recommendations, including a $1000 limit on the size of donations, a cap on campaign expenditure and increasing the frequency of donation disclosures to every six months (currently every four years). There was general consensus on the recommendations, with only one brief dissenting report from the two Labor members, opposing one recommendation and suggesting a minor change to one other.

The inquiry was, however, overtaken by revelations from the Independent Commission Against Corruption that Labor Party members had been involved...
in corruption at the local government level, with political donations from developers a critical factor (the ‘Wollongong scandal’). This created a major crisis for the government. In February 2008, Premier Morris Iemma announced the government’s intention to reform political finance legislation. The government introduced a Bill the day before the SCEPPF tailed its report. Among other changes, the legislation introduced six-monthly donation disclosures, with a disclosure threshold of $1000. The Bill was passed the following week, progressing through both houses in less than 24 hours.

In terms of being an impetus for reform, the committee report, while substantial in its considerations and findings, was secondary to the media exposure of political finance issues and the willingness of the incumbent governing party to initiate reforms. The committee did not have a Labor majority, and the Iemma Labor Government chose to pursue a separate process of reforming electoral laws. There are, however, many issues raised by the SCEPPF inquiry that were not addressed by the government’s reform Bill, and the report remains useful as a potential driver of future reforms.

The conduct of regular parliamentary inquiries also provides opportunities and forums for other organisations to make submissions based on their constituent concerns. For example, there were at least four submissions to JSCEM’s 2004 federal election inquiry from organisations representing the interests of blind and vision-impaired citizens. All of these submissions advocated the use of electronic voting—an important advance when considering the secrecy of the ballot.12 The JSCEM’s report recommended an electronic voting trial at the 2007 election, which was then conducted by the AEC. The trial had limited success, with only 850 vision-impaired and blind voters choosing to vote this way, at an administrative cost of $2597 per vote. As the AEC has noted, however, consideration must be given to the value of all voters having a secret and independent vote, and it has recommended that the trial be extended at the next election.13

Religious groups also use the inquiry process to reaffirm their positions. A good example is contained in the submission from the Association of Australian Christadelphian Ecclesia to the 2004 federal election inquiry, which reasserts the group’s conscientious objection to voting.14 At a brief hearing in July 2005, the association expressed satisfaction that its members were able to formally express their conscientious objection to voting, in response to letters from the AEC asking to explain their failure to vote. Interestingly, one Liberal senator cited the situation of the group’s members as an argument for the reintroduction

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12 Submissions 54, 101, 135 and 138. Without electronic voting, blind and vision-impaired citizens must rely on other people to assist them to vote and therefore cannot exercise a secret ballot.
13 Submission 169.
of voluntary voting. Collectively, these contributions from civil society organisations are valuable instances of democratic engagement based on the principle of equal opportunity to participate. As previously discussed, however, the value of inquiries in this respect is tempered by the influence of partisan interests on inquiry outcomes.

The value of parliamentary committees on electoral matters

Australia’s electoral institutional structure is strongly focused on parliamentary activity, both in legislating for the administrative and operational regimes in which the electoral commissions operate and in creating forums for public debate on electoral matters. The legislative focus is not surprising, given that Australian parliaments and governments use legislation to maintain a tight control on the form of electoral systems and administration of elections. In this environment, the parliamentary committee inquiry process is a critical element of the institutional structure of Australian electoral systems. In the absence of independent agencies with the powers to implement reforms, committee inquiries have become the primary forum for public debate on electoral matters. Inquiries provide a conduit through which electoral commissions and citizens can reach the electoral lawmakers. Because the submissions are made publicly available on committee web sites, a wealth of information is disseminated to interested groups, media attention is raised and the wider public becomes aware of electoral issues.

The governing party has a membership majority on all of the electoral matters committees, followed by representation from the opposition and typically one member representing minor-party interests. It is a concern, however, that the Victorian committee has only Labor and Liberal Party members, with no representation from the other three parliamentary parties. While the membership of these committees is generally representative of the composition of the respective parliaments, it does raise questions about the usefulness of the committee process and the outputs of the committees. By reflecting the make-up of the parliaments, the committees simply reinforce any disproportionality or bias that is created by election outcomes. In doing so, they create a significant incumbency advantage—primarily for the incumbent government over the opposition and minor parties, but also for parties with parliamentary representation over non-parliamentary parties (reinforcing the hierarchy of incumbency structure depicted in Chapter 1).

Governments’ dominance of these committees runs counter to the participation principle of fairness, which stresses equality of opportunity. While it is not feasible or necessarily ideal for all parties to have equal representation, an improvement on current structures consistent with the participation principle would be to have an equal number of government and non-government members on these committees. In regard to issues-specific committees, the establishment of the non-government-dominated SCEPPF in New South Wales is a good example of partisan interests at work. Although the SCEPPF membership was reflective of party numbers in that State’s upper house (albeit with minor parties over-represented), the debate over membership between parties is indicative of the importance that parties place on being involved in electoral matters that directly impact on their own future prospects.

Several committee members commented in the interviews that electoral matters committees are extremely partisan and are primarily a means for furthering parties’ interests rather than assessing the need for reform on the basis of fairness and equity consistent with international standards for electoral management and fair elections. It can be argued that much of the committees’ work is of limited value, as members are simply pursuing a predetermined policy agenda. This is particularly evident with the Commonwealth JSCEM, given its long history of reporting and with dissenting reports a common occurrence. While there are some encouraging signs of bipartisan cooperation occurring within State-based committees, it must be remembered that all of the parliamentary oversight committees are dominated by Labor and the Coalition parties. Cooperation can be a sign of party cartelisation rather than working towards democratic values of fairness and equity.

Benefits that flow from the advocacy of representative organisations, such as the trial of electronic voting, are indicative of the value of these consultative processes. There is also clear evidence, however, that submissions (and not only those from political parties) are used to seek partisan advantage. It is disappointing that all of these contributions, irrespective of motive, are often reduced to arguments for committee members to pursue their own partisan objectives in committee reports and dissenting statements.

The experiences suggest that, on principles of fairness, a more appropriate process for inquiry into electoral issues could be the creation of a forum outside parliament that involves a broader range of political parties, electoral administrators, civil society organisations and other electoral experts, with processes and reporting not under the control of government or other parliamentary parties. Such a forum could be influential as a driver for electoral reform. Given that parliaments have the power to regulate almost every aspect
of elections and electoral administration, the recommendations of such a forum would, however, ultimately be subject to the wishes of governing parties and party cartels.

With its partisan appointments, the NSW Election Funding Authority is an anomaly in the institutional structure of Australian electoral management. There appears to be no evidence of corruption or serious practical problems created by these appointments in the administration of funding, or in initiating proceedings against non-compliant candidates. With these political appointments in place, however, a perception of bias in the authority is created, and this could impact negatively in the future on the perceived independence of the NSW Electoral Commission and Commissioner. A simple solution would be to replace the partisan appointees with suitably qualified experts who have no party connections.

Despite the strong governing-party control of electoral legislation, commissions have been established in all Australian jurisdictions to administer the electoral system ‘independently’ of government. The next chapter examines to what degree commissions are able to exercise that independence.