6. Registration of Political Parties

Political parties play a critical role in healthy democracies. One of their main functions is to provide an organised way of developing policy that represents societal cleavages. In addition, parties cultivate a democracy’s future leaders, they give a sense of order and stability to parliamentary organisation and debate, they bring together disparate groups and individuals into processes of democracy, they recruit political activists, and they provide defined choices in election campaigns.¹ In modern democracies, it would be hard to imagine an organised and stable political environment without some form of political party structure.

While there might be a tendency for parties to naturally form to embrace new or existing social views, the institutional design of electoral systems allows for a form of ‘political engineering’ to occur—either encouraging the formation of new parties (typically where a democracy’s party system is weak) or creating barriers to the continuation of existing parties or the formation of new parties. Barriers are typically erected in multi-party democracies where an excess of parties has created confusion for voters at elections or where there might be instability in government or parliament. Barriers can also be used as an anticompetitive measure in democracies where established parties seek to thwart potential new participants (or to deter non-genuine competition). A healthy democracy would normally provide a balance between encouragement and restriction in its party regulation regime.

Organised political parties and other political bodies have existed in Australia for more than 100 years, but it is only in the past 30 years that significant reforms have occurred to recognise parties in a formalised sense for electoral purposes. These purposes include ballot paper design, funding and disclosure requirements, and the distribution of voter preferences. In addition to influencing the capacity for citizens to coalesce into political groupings, such reforms impact on the ability of candidates to compete on a fair and equal basis. The favoured status given to registered political parties—for example, in accessing public funding and identification on ballot papers—also impacts on the ability of political organisations to deliver messages to voters during election campaigns. Such messages are essential to enable voters to make an informed choice.

Registration criteria

The formal registration of political parties in Australia commenced in New South Wales in 1981, and has generally been viewed as a necessary corollary to other reforms such as public funding, party identification on ballot papers and above-the-line ticket voting. All jurisdictions impose conditions concerning the name of a party. Consistent across all jurisdictions are requirements that

- party names are to have a maximum of six words
- obscene names are prohibited.
- In addition, in every jurisdiction, party names are not to resemble the name of another, unrelated party
- be likely to cause confusion with another party
- contain the word ‘independent’ or ‘independent party’.

Commonly, the following information is a condition of application for registration

- the name of a person to be the party’s registered officer (in Western Australia, the party secretary)
- an abbreviated form of the party name, for ballot paper purposes
- a copy of the party’s constitution (except Tasmania).

In Queensland, the constitutions of registered parties must include rules stipulating that preselection ballots are to be based on ‘principles of free and democratic elections’. In addition, four jurisdictions require a fee for registration: $500 for the Commonwealth, Victoria and the Northern Territory; and $2000 for New South Wales.

All Australian jurisdictions also require a minimum membership size before a party may be registered. The minimum number of members differs widely, especially when compared with the total number of people enrolled in the jurisdiction. As Table 6.1 illustrates, the variation currently extends by a multiple of approximately 47, from the Commonwealth’s one member per 28174 enrolled to the Northern Territory’s one member per 599 enrolled. Apart from these two outlier jurisdictions, however, the remaining seven jurisdictions are reasonably consistent, with a ratio of about 2400–7200 enrolled per party member. The capacity of citizens to form into political groupings is evident from Table 6.1. The Commonwealth, with a relatively low threshold, has the highest number of parties; conversely, the Northern Territory has the lowest number of parties contesting elections.
Table 6.1 Party Membership Requirements for Registration

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Minimum required members</th>
<th>Enrolled at most recent election (year)</th>
<th>Enrolled/required members</th>
<th>Parties contesting most recent election*</th>
</tr>
</thead>
<tbody>
<tr>
<td>New South Wales</td>
<td>750</td>
<td>4 635 810 (2011)</td>
<td>6181</td>
<td>14</td>
</tr>
<tr>
<td>Victoria</td>
<td>500</td>
<td>3 582 232 (2010)</td>
<td>7164</td>
<td>10</td>
</tr>
<tr>
<td>Queensland</td>
<td>500</td>
<td>2 660 940 (2009)</td>
<td>5322</td>
<td>6</td>
</tr>
<tr>
<td>Western Australia</td>
<td>500</td>
<td>1 330 399 (2008)</td>
<td>2661</td>
<td>10</td>
</tr>
<tr>
<td>South Australia</td>
<td>150</td>
<td>1 093 316 (2010)</td>
<td>7289</td>
<td>15</td>
</tr>
<tr>
<td>Tasmania</td>
<td>100</td>
<td>357 315 (2010)</td>
<td>3573</td>
<td>4</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>100</td>
<td>243 471 (2008)</td>
<td>2435</td>
<td>8</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>200</td>
<td>119 814 (2008)</td>
<td>599</td>
<td>3</td>
</tr>
</tbody>
</table>

* Separate divisions of a party (for example, Liberal NSW, Victoria; Labor, Country Labor, and so on) or cooperative alliances (for example, Australian Greens, Greens NSW) are counted as one party.

Sources: Electoral Commission election data.

The Commonwealth has a relatively low party membership requirement, given the size of the Australian electorate. Understandably, there have been suggestions that the threshold should be increased, possibly to 1000 members.\(^2\) Based on the ‘members to electors’ ratio, and given the number of parties contesting recent elections, this suggestion appears to be reasonable. It is not unusual, however, for parties to have a distinct geographical base. Indeed, for Commonwealth registration, the major parties register separate parties based on State and Territory divisions.

A 500-member requirement assists the formation of parties based on local or regional issues, an example being the Save the ADI Site Party (SAS) in the 2001 and 2004 elections. SAS was registered in October 2001 to campaign for the retention of government-owned bushland in Sydney’s western suburbs. The land had previously been used by Australian Defence Industries (ADI) and the government was proposing to sell it for residential development. In 2001, SAS fielded candidates in four House of Representatives seats, achieving a substantial vote of 3.29 per cent (in Chifley). In the 2004 election, SAS contested three lower house seats (receiving a strong vote of 2.67 per cent in Lindsay) and stood two candidates for the Senate. Once the ADI bushland was sold to developers, SAS’s reason for existence was eliminated, and the party was voluntarily deregistered.

in August 2005. An increased threshold for registration would limit local-issue groups having a democratic voice via mobilisation as a political party in this way.

**Parliamentary representative alternative for party registration**

As an alternative to meeting the membership requirement to register a party, four jurisdictions allow that a party may be registered if it has a parliamentary representative. South Australia adopts a relaxed approach with its parliamentary representative rule, requiring only that the representative be a member of a parliament or assembly of any of Australia’s nine jurisdictions (*Electoral Act 1985*, s. 36). The other three jurisdictions—the Commonwealth, Queensland and Western Australia—specify the parliamentary representative must be a member of that jurisdiction’s parliament.

In the case of Western Australia’s amending legislation in 2000, the Electoral Commissioner, Ken Evans, recommended that Queensland’s registration procedure be followed. This procedure included a provision that parties with current parliamentary registration did not have to satisfy the 500-member rule. As a preventative measure to preclude independent members of parliament from subsequently setting up their own separate party, the WA legislation (*Electoral Act 1907*, s. 62I) specifies that the ‘parliamentary representative’ rule applies only to pre-existing parties that had a parliamentary representative on 14 June 2000, when the legislation was introduced to parliament. At the time, there were five independent parliamentarians, of whom four were originally elected as either Labor or Liberal party representatives, and this provision was considered to be a measure with those members specifically in mind. The provision also allowed at least one party, the Australian Democrats, to contest the general election six months later as a registered party at a time when it would not have satisfied the 500-member rule.

The Commonwealth, Queensland and SA Acts do not contain any provisions to prevent a member of parliament from establishing his or her own party after being elected either as an Independent or as a representative of another party. At the Commonwealth level, this loophole was used by Senator Meg Lees to establish the Australian Progressive Alliance party after she resigned from the Australian Democrats in 2002.

---

Where the legislation provides two separate ways to qualify for party registration—by either membership level or parliamentary representation—there is a question of fairness based on equal opportunity. The membership-level criterion requires identified membership support within the community, while the parliamentary representation criterion is based on having sufficient voter support for an individual to be elected. When a party is registered because it has an existing parliamentary representative, there is no requirement to demonstrate any minimum level of party membership support. It could be argued that having a representative elected demonstrates that such parties have a significant level of electoral or community support; however, this argument does not hold where the representative was elected as a member of another party and later resigned (as in Meg Lees’ case).

The lack of equity in the registration of parties is compounded in the three jurisdictions that allow parliamentarians to form new parties after they have been elected. In those cases, the representative does not have to show that there is any level of support for the party, in terms of either membership or public support. The Northern Territory’s Minter Ellison report did not recommend a parliamentary representative criterion due to the inequitable effects of such a provision:

It is arguable that a political party that only has one member does not fall within the meaning of ‘political party’, which is usually taken to denote a collection of people sharing some common political principles or goals.4

**SA registration regime**

South Australia has difficulties with its party registration regime, which was introduced as part of the State’s 1985 electoral reforms. Parties are able to lodge a voting ticket for the direction of preferences for both legislative council and house of assembly elections. This provides an incentive, as has occurred in New South Wales, for multiple parties to register and to then trade preferences for the ‘harvesting’ of votes. This incentive also appears to have driven the growth in registered parties in South Australia since 1985.

---

Table 6.2 South Australia: Registered Parties

<table>
<thead>
<tr>
<th>Election</th>
<th>Registered parties</th>
<th>Parties standing candidates</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Council</td>
</tr>
<tr>
<td>1985</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>1989</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>1993</td>
<td>14</td>
<td>10</td>
</tr>
<tr>
<td>1997</td>
<td>24</td>
<td>12</td>
</tr>
<tr>
<td>2002</td>
<td>30</td>
<td>19</td>
</tr>
<tr>
<td>2006</td>
<td>28</td>
<td>10</td>
</tr>
<tr>
<td>2010</td>
<td>34</td>
<td>15</td>
</tr>
</tbody>
</table>


As Table 6.2 illustrates, a larger number of parties compete in council elections, where preference flows are especially important due to the proportional representation voting system. The incentive of directing preferences was described well by one legislator:

> Once again, the rules are written for one regime, but someone gets smart about it, and I think what happened [is] a large number of parties were registered when someone was going for an upper house seat.

> Someone twigged that if they could set up enough parties, there’d be enough people who would vote for each named party that by the time those preferences flowed on—because someone with a bit of political nous figured out that I might pick up about 1 per cent if I called a party this, and half a per cent for this, and I might actually get over the line simply because of the preferences of those particular groups.

In South Australia, the legislation also enables a person to be counted as a member of more than one party, for the purpose of meeting the registration requirement. This provision underpins the groupings of parties that occur. The Australian Labor Party (which has also registered the New Labor Party and Country Labor Party) and the Nationals Party (and its Young Nationals Party) probably have a sufficiently high membership to have distinct members for each party. The most extreme overuse of this provision, however, is the Over-Taxed Motorists, Drinkers, Smokers Association, which registered five other parties (four of which were registered on the same day): the Smokers Rights Association, the Over-Taxed Smokers Association, the Over-Taxed Drinkers Association, the Over-Taxed Motorists Association and the Over-Taxed Pokies Party. Despite repeated calls by the Electoral Commission for reform, the ability to use the same individuals to register multiple parties remains unchanged. As one administrator explained:
From time to time electoral commissioners have made recommendations—1997 election, 2002 election, and now the 2006 election. There was a recommendation made that the same voters should not be used in reaching the membership thresholds of more than one party, and that’s perfectly sensible.

Similarly, the commission has called for a restriction on the use of frivolous party names—again, without success.\(^5\) This recommendation appears to be directed at parties such as the Stormy Summers Reform Party and Albert Bensimon’s No Hoo Haa Party.

Three other jurisdictions—Queensland, Tasmania and the Australian Capital Territory—also allow the same members to be used to register more than one party. In these jurisdictions, however, the incentive to use multiple parties to direct preference flows is absent. In Queensland (six parties at the past election), the system of single-member electorates and optional preferential voting removes this incentive, while in Tasmania (four parties) and the Australian Capital Territory (10 parties, including two ‘Independent’ groupings) the Hare-Clark voting system precludes ticket voting. It is therefore more likely in these jurisdictions, compared with South Australia, that electoral outcomes will more accurately reflect voters’ wishes.

**Determining the Northern Territory’s party registration regime**

Prior to reforms in 2004, political parties were not recognised in the Northern Territory’s *Electoral Act*. Reasons for this included the lack of a public funding scheme and the fact that party names were not shown on ballot papers prior to the 2005 election (candidates’ photographs were shown; see Figure 6.1).

The 2003 Minter Ellison review of the electoral system recommended that, as with all other Australian jurisdictions, ballot papers should show party affiliations, and therefore a party registration regime should also be introduced. The review considered the question of a reasonable membership level, drawing on examples in other Australian jurisdictions. In its report, the review team recommended that the threshold be 20 members, noting that they had received evidence that a higher threshold requirement of 50 members could prevent

---

some of the larger parties from registering. While the figure of 20 members might appear to be very low, this was at a time when there were only about 112 000 registered voters in the Territory.

![Ballot Paper](image)

**Figure 6.1 NT Ballot Paper (from Katherine by-election, 2003)**

When the government introduced its legislation in November 2003, it stipulated a 50-member registration requirement. The day before debate on the legislation commenced in February 2004, the government lodged an amendment, changing the figure to 200 members—a tenfold increase on the original number recommended by Minter Ellison. The only explanation that the government gave for increasing the proposed threshold was the need to protect access to the electoral roll, which was available to registered parties but not to other parties or candidates (except by viewing at electoral offices). The late change resulted in party registration being the most hotly debated issue of the new electoral framework, as the following Hansard extracts attest:

---

[N]ow the Labor Party has come to power, the power has seduced so that, by the utilisation of this mechanism with 200 required to formulate an official party, it basically takes it out of the reach of community groups and puts it largely into only the domain of more established parties such as the ALP or CLP. (Terry Mills, CLP)

This is a deliberate attempt to obliterate opposition by the Labor government. (John Elferink, CLP)

This has been brought in to kill off political opposition. I just think this is a crying shame...This is anti-democratic...supporting this bill means that I will sign the death warrant for any small party that wants to start in the Northern Territory...This is putting politics ahead of principle. (Gerry Wood, Independent)

The high threshold required to register parties in the Northern Territory is reflected by the low number of registered parties, with only three—the Country Liberal Party (CLP), Labor and the Greens— contesting the 2005 and 2008 elections. It can be argued that this registration scheme restricts citizens from being able to organise into political groups to access the political process; however, statistics from the NT elections held prior to the party registration legislation being passed in 2004 do not support this (see Table 6.3). Before party registration, an average of 3.8 parties contested each general election from 1983—similar to the three parties contesting the two most recent elections. The number of candidates ranged from 63 to 85 during the earlier period, compared with 80 and 66 in 2005 and 2008 respectively. To date, the legislation has not resulted in any significant difference in terms of electoral competition by parties and candidates.⁷

<table>
<thead>
<tr>
<th>Election</th>
<th>Seats</th>
<th>Candidates</th>
<th>Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>25</td>
<td>66</td>
<td>3</td>
</tr>
<tr>
<td>1987</td>
<td>25</td>
<td>85</td>
<td>3</td>
</tr>
<tr>
<td>1990</td>
<td>25</td>
<td>80</td>
<td>4</td>
</tr>
<tr>
<td>1994</td>
<td>25</td>
<td>63</td>
<td>3</td>
</tr>
<tr>
<td>1997</td>
<td>25</td>
<td>66</td>
<td>4</td>
</tr>
<tr>
<td>2001</td>
<td>25</td>
<td>86</td>
<td>6</td>
</tr>
<tr>
<td>2005</td>
<td>25</td>
<td>80</td>
<td>3</td>
</tr>
<tr>
<td>2008</td>
<td>25</td>
<td>66</td>
<td>3</td>
</tr>
</tbody>
</table>

⁷ It is also interesting to note that two candidates were elected unopposed at the 2008 election (in the seats of Arnhem and MacDonnell)—a rarity in modern Australian elections.
With no evidence to the contrary—apart from Chief Minister Claire Martin’s claim regarding access to the electoral roll—it would appear that Labor’s move in 2003–04 to ignore the review’s 20-member recommendation and increase the threshold first to 50 members and then to 200 members was purely a manoeuvre to damage its major opponent: the CLP. This is borne out by the CLP’s strong criticism during debate on the legislation, and is supported by the comments of one electoral official:

It’s a bit subjective. There was some suggestion that even the CLP was struggling to get 200. If they were governing for 27 years, and they’ve only been out of power for a few years, you’d have to say if that was the case, you should probably err on the side of not being too demanding.

While the Territory’s reform process appears to have been quite comprehensive and broadly consultative, it was restricted due to the powers that the Commonwealth retains over certain aspects of the Territory’s electoral system. Electoral issues beyond the scope of the Minter Ellison review included the manner of representation—the Commonwealth’s Northern Territory (Self-Government) Act 1978 stipulates that there are to be single-member electorates, each having no greater than a 20 per cent variance (higher or lower) from the average enrolment. In addition, it is not possible for the Territory to specify the extent of the franchise (Section 14 of the Commonwealth Act) or extend the period between elections (Section 17). In 2003, the Territory’s Solicitor-General was unable to give a definitive position on whether the Territory could legislate for fixed-date elections.\(^8\) Fixed-date elections were introduced, however, in an amendment to the Electoral Act in 2009. There also appears to have been a desire for the Minter Ellison review to satisfy the Labor government. As one review team participant noted:

[The government] ended up adopting pretty much everything that was recommended, but the consultant team from Minter Ellison was very keen to put up proposals that would be smiled upon, so whenever we met anything that was likely to be contentious, we said: ‘Here are the options; you choose.’

In the Northern Territory, the primary catalyst for electoral reform in the past 25 years was the 2001 change of government. Once Labor achieved government, it immediately set about reforming the system (and particularly the administration), which was viewed as being too close to the former Country Liberal Party. A year after the reform process was completed, Labor won the 2005 election with an increased majority. Whether the reforms serve to entrench Labor in power is

Too many parties: the 1999 NSW Legislative Council election

The March 1999 NSW Legislative Council election produced one of the largest ballot papers ever used in Australia (and possibly the world), with 81 groupings (including 78 parties) comprising 264 candidates. The ‘tablecloth’ ballot paper measured 102 cm by 72 cm. Its size created major logistical issues for the election, requiring the construction of wider voting booths and the use of larger planes for transporting papers. The election also produced some intriguing results, including the election of an Outdoor Recreation Party candidate, Malcolm Jones, who polled 0.19 per cent of the primary vote (a quota being 4.5 per cent). Jones was elected with the support of preferences from 21 other parties, including eight that had received a higher primary vote than the Outdoor Recreation Party. The problems associated with the 1999 legislative council election represented the culmination of a series of earlier reforms and provided the impetus for further reforms.

From the mid-1980s, reforms were introduced by both Coalition and Labor governments, initially by Liberal Premiers Nick Greiner and John Fahey, and later by Labor Premier Bob Carr. Some Coalition reforms also required approval by referendum, with successful referenda being held in conjunction with the 1991 and 1995 elections. Reforms affected many aspects of elections, including: the number of members to be elected and the length of terms; ballot paper design, including the use of above-the-line ticket voting (single vote and preferential) and group voting tickets; and party registration requirements.

Table 6.4 presents a summary of legislative council election results from 1984 to 2011, and highlights several issues relevant to democratic principles of equity and access. As the table shows, the increase in parties and candidates at the 1999 election is obvious; however, significant increases in both are apparent prior to this (in 1995). The success of A Better Future For Our Children candidate, Alan Corbett, in being elected in 1995 on a low 1.28 per cent primary vote and a favourable flow of preferences (requiring 4.5 per cent to achieve a quota) obviously encouraged the formation of many parties for the 1999 election. The electoral laws in place at the time facilitated the formation of new parties.

---

Although one of the party registration criteria was a requirement for 200 members, a person could be a member of more than one party for registration purposes and it appears that several parties used petition lists to meet their 200-member requirement.  

Table 6.4 NSW Legislative Council Election Results, 1984–2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Groups/parties¹</th>
<th>Candidates</th>
<th>Informal vote (%)</th>
<th>Gallagher’s Least Squares Index²</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984</td>
<td>8</td>
<td>43</td>
<td>6.66</td>
<td>3.77</td>
</tr>
<tr>
<td>1988</td>
<td>13</td>
<td>56</td>
<td>8.08</td>
<td>4.84</td>
</tr>
<tr>
<td>1991</td>
<td>12</td>
<td>54</td>
<td>5.67</td>
<td>4.68</td>
</tr>
<tr>
<td>1995</td>
<td>28</td>
<td>99</td>
<td>6.11</td>
<td>9.47</td>
</tr>
<tr>
<td>1999</td>
<td>81</td>
<td>264</td>
<td>7.17</td>
<td>8.69</td>
</tr>
<tr>
<td>2003</td>
<td>16</td>
<td>284</td>
<td>5.34</td>
<td>4.88</td>
</tr>
<tr>
<td>2007</td>
<td>20</td>
<td>333</td>
<td>6.11</td>
<td>5.47</td>
</tr>
<tr>
<td>2011</td>
<td>16</td>
<td>311</td>
<td>8.00</td>
<td>5.78</td>
</tr>
</tbody>
</table>

¹ Includes ‘Independent’ groupings and ‘Ungrouped’ column.

² The smaller the index figure, the more proportional is the result. Data in Appendix C.

The Carr Labor Government responded quickly to the negative publicity received by the tablecloth ballot paper. The Parliamentary Electorates and Elections Amendment Act 1999 was passed in November 1999, driven by a desire to avoid the complexities and difficulties of the 1999 election. The Act’s amendments were targeted at ballot design and party registration, to reduce the number of parties contesting council elections. The main amendments were

- abolishing group ticket voting (removing the ability for parties to direct preferences)
- allowing voters to record preferences above the line
- increasing the membership requirement for party registration from 200 to 750
- removing the opportunity to register a party based on having a member of parliament (rather than having a minimum number of members)
- removing the capacity for a person’s membership to be used to meet the membership requirement of more than one party
- requiring a $2000 registration application fee
- parties to be registered one year ahead of an election for party identification on ballot papers
- increasing the powers of the electoral commissioner to investigate whether party membership is genuine.

The impacts of these reforms can be clearly seen in Table 6.4. There was a significant reduction in the number of parties contesting the 2003 election (16, down from 81); however, there was an increase in the number of candidates (284, up from 264). This was due to the combined effect of removing ticket voting, introducing optional preferential voting above the line, and the pre-existing requirement for a voter to indicate preferences from one to 15 in order for a vote to be counted as formal. That is, parties needed to field at least 15 candidates for a vote that is recorded as a ‘1’ or a tick for the party to be counted.

The final two columns of Table 6.4 provide evidence of other impacts that the system, and its reforms, has had. In regard to informal voting, it can be argued that reforms have had little impact, as the rate has remained consistently high throughout the study period. Reforms have, however, included the introduction of above-the-line ticket voting (from the 1988 election), being able to use a tick to record a formal vote (from 1995) and optional preferential voting (from 2003)—all innovations that would be expected to lower the informal rate. One of the reasons these interventions have not reduced the informal vote is that the size of the ballot paper, especially since the 1995 election, has been intimidating and confusing to voters. This might be especially so as voters are confronted with a vastly different (and smaller) ballot paper for legislative assembly elections, and have to deal with different above-the-line rules for federal Senate elections. In addition, the changes that have occurred throughout the period have potentially made it difficult for voters to become familiar with any one format, or for voter education programs to make a long-term impact.

Using Gallagher’s Least Squares Index (LSI), the impact of the reforms is evident for the 1995 and 1999 elections, with disproportionality in these polls at its worst out of the seven elections during the study period. Proportionality improved at the 2003, 2007 and 2011 elections, but remains at a level higher than pre 1995. This could, however, be due to the general increase in legitimate minor parties in more recent times. Another factor is the methodology in calculating the index, which accentuates the impact of very small parties being grouped together.  

In terms of fairness, the ultimate results of these reforms are positive for candidates and parties, with competition now more genuine. In addition, representation now more closely reflects voters’ choices, with an average proportionality index value of 5.38 for the three most recent elections, compared with an average of 9.08 for the 1995 and 1999 elections. While it might now be easier to make an informed choice, the continuing high level of informal voting remains a serious concern.

11 For these calculations, all parties receiving less than 1 per cent were grouped together under ‘Independents and Others’.
Party registration: achieving a balance

A well-constructed party registration regime could assist the conduct of fair elections by organising election candidates into clearly identifiable groupings, providing genuine competition and allowing voters to make informed choices. If the regime does not strike the right balance, it could unfairly restrict competition or allow excessive competition, as seen in the 1999 NSW election. Generally, however, when asked about their party registration procedures, electoral administrators were satisfied with existing provisions, particularly in regard to membership requirements. Responses included the following commissioners’ comments:

If they’ve got any worthwhile support, they can register quite easily. The reality is that after an election or two, if they don’t get many votes, they fade away. But it’s not that there’s a problem—it’s difficult enough so that you’re not going to get nutty parties too often.

If you’re serious about contesting then you should have…people who are prepared to say I support you publicly. I think if you can’t find…members, how are you going to win seats?

An argument supported by several administrators is that systems with single-member electorates create a disincentive for registration, as small parties do not see a great opportunity to win seats. This was particularly the case in Queensland and the Northern Territory, the two jurisdictions without any form of proportional representation. These jurisdictions had only seven (Queensland) and three (Northern Territory) parties contesting their most recent elections. This is consistent with research conducted by Duverger, Rae and others, who have argued that majoritarian systems support two-party systems.12

The 2004 NT parliamentary debate on party registration raised a further issue in relation to the benefits of registration: access to the electoral roll. It is common for members of parliament and registered parties to receive details of the electoral roll in electronic form. The main reasons cited for this are the need to promote their policies and to converse with the public. Access to the roll in this form is, however, denied to potential Independent candidates prior to an election being called, and this puts those candidates at a disadvantage, as they are not able to compete on an equal basis with party-nominated candidates.

6. Registration of Political Parties

Deregistration of the Liberals for Forests

The ability of a government to use legislation to structure electoral competition is evident in the case of the Liberals for Forests party. One component of the 2006 Howard Government’s reform package was deregistration of all parties that did not have existing or past parliamentary representation. This resulted in the deregistration of 19 parties in December 2006. It is believed that the key motivation for this aspect of legislation was to prevent the Liberals for Forests party from continuing to use ‘liberal’ in its name. The legislation was based on a recommendation by the JSCEM in its 2004 election inquiry report. The JSCEM recommendation reflected previous Liberal Party concerns about the use of ‘liberal’ and the Richmond electorate result in 2004.

The Liberals for Forests was originally registered in 2001, following an Administrative Appeals Tribunal of Australia (AATA) ruling against the AEC’s decision not to register the party (which was in part based on objections from the Liberal Party). In support of its decision, the AATA referred to words such as ‘liberal’, ‘labour’, ‘progressive’, ‘national’, ‘socialist’ and ‘democrat’ as being generic and therefore not owned by one particular entity.\(^{13}\) The Liberals for Forests had registered its name in the lower case, to identify its ideological position as ‘small-“l” liberals’ and to differentiate itself from the Liberal Party. The Howard Government legislated\(^ {14}\) to prevent the use of names that could be confused with existing parties, but could not apply this condition to parties already registered. A solution was to deregister all parties without parliamentary representation, requiring a reapplication under the new law. Of the 19 parties deregistered, eight have re-registered.\(^ {15}\) Possible reasons other parties have not re-registered include an inability to meet the 500-member test or a lack of ongoing activity.

While the Liberal Party has been successful in removing registration of the Liberals for Forests at the federal level, it has not had the same success at the State level. In Western Australia, Liberals for Forests was registered as a party from July 2001, and stood candidates in the 2005 state election. The process of deregistering the party at the Commonwealth level, however, raises two main concerns. First, it is through legislation that

\(^{13}\) See paragraph 40, Woollard and Australian Electoral Commission and Liberal Party of Australia (WA Division) Inc [2001] AATA 166.

\(^{14}\) Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004, Amending Section 129 of the Commonwealth Electoral Act 1918.

\(^{15}\) As of December 2008, the parties that had re-registered were the Christian Democratic Party (Fred Nile Group), Citizens Electoral Council of Australia, Non-Custodial Parents Party, One Nation Western Australia, Queensland Greens, Socialist Alliance, The Australian Shooters Party and The Fishing Party.
governing parties have enormous power to limit electoral competition. This reflects the importance of the institutional structure of Australian electoral administration—a key theme in this thesis.

Second, the AATA has raised the important question of whether existing parties should be able to control the use of names that are based on ideology or history, such as those mentioned above. The possibility of voter confusion is, however, a real concern. The AATA made its position clear: ‘It is unlikely that any elector, seeing the two names on a ballot paper, will draw the conclusion that “liberals for forests” is a political party related to the Liberal Party of Australia.’\(^{16}\) The only other debate on the issue has occurred in the highly partisan JSCEM inquiry. There does not appear to be any systematic assessment of whether voters are confused by subtle variations in names.

This analysis of party registration regimes has shown that partisan interests have heavily influenced the development of party law. Some reforms have been initiated by governing parties for the purpose of eliminating opponents, such as the Coalition’s actions in deregistering the Liberals for Forests and Labor’s high threshold for registration in the Northern Territory. Other developments in this area have resulted from party cartelisation, as in Western Australia’s 2000 reform. It can be seen from the examples discussed that the participation principle of fairness, under which citizens should have equal opportunities to form political parties, is diminished by the partisan behaviour of governing parties.