11. Conclusion

It should be clear, and unsurprising, that political parties will endeavour to adjust the electoral rules to their own advantage. Political parties are not altruistic entities; they compete in a highly contested arena, and it is natural that they will seek whatever advantage they can get. Parties in control of a legislature, either in their own right or by acting as a cartel, have benefited from having control over Australia’s electoral systems, as these chapters have shown.

The institutional structure for electoral administration in Australia—primarily the relationships between parliaments, political parties and commissions—allows governing parties to control the electoral system to their own benefit. This power to control arises from the ability to legislate, and from having majorities on committees inquiring into electoral matters. Legislation is typically heavily prescriptive, providing commissions with little scope to independently adopt reforms based on non-partisan ideals of fairness and equity.

The analysis of the independence of electoral management bodies demonstrates that Australian electoral commissions are non-partisan, or neutral, rather than being truly independent in the internationally accepted meaning of the concept. While Australian electoral commissions have a good degree of autonomy in carrying out their functions of enrolling voters, registering parties and conducting elections, they lack the true independence that would enable them to structure the regulatory framework in accordance with international standards for fair elections and independent electoral management.

A frequently occurring theme in interviews conducted with commissioners was that they lacked the power to publicly criticise weaknesses in their governing legislation. This was largely due to the ongoing need to carry out the functions of their commissions as dictated by parliament. Electoral commissions are, therefore, only able to make suggestions for reform, rather than being advocates for specific changes to occur. Accordingly, the commissions are servants of their political masters—administering the laws they are given—rather than being truly independent and ensuring the electoral system is regulated on the basis of fairness principles.

The emerging body of inquiry by parliamentary committees is important in providing a forum for public debate of electoral matters issues; however, the value of the committees’ work is severely limited by the partisan approach that is often taken by committee members, particularly at the Commonwealth level. This is evident in the approach the JSCEM has consistently taken on postal
voting processes, despite the protestations of the AEC. Although not as extreme as the Commonwealth example, evidence of partisan behaviour on committee inquiries was also found at the State and Territory levels.

The findings of this research provide evidence of party cartelisation. While the Labor/Coalition cartel is the dominant relationship, formation of other cartels occurs when it is in the interests of the participants to collude. Evidence of the dominant cartel is apparent in JSCEM’s approach to postal voting, and the lack of action from both Labor and the Coalition to address the concerns of the AEC. These findings support the Australian party cartelisation theory, as promoted by Ian Marsh, Ian Ward, Sally Young and others, that Labor and the Coalition collude to prevent other parties and candidates from being able to compete on equal terms. At the State level, Labor/Liberal cartel behaviour was clearly apparent in reducing the size of the Tasmanian Parliament in an attempt to limit growth of the Greens party.

Interestingly, however, the Australian party cartel does not involve only Labor and the Coalition. The Australian party cartel is more fluid, with members joining and leaving the cartel on an issue-by-issue basis. For example, the National Party joined with Labor to further its own interests by agreeing to the increase in seats for the Federal House of Representatives in 1983. Also, while the Democrats have opposed electoral reforms such as party involvement in postal voting, they combined with Labor to support the introduction of public funding, against opposition from both Coalition parties. It is understandable that the Democrats would oppose the former measure, which it could not participate in equally due to a lack of resources, while supporting the latter, which would provide resources to the party.

Is this cartelisation at work or is it better described as shifting ‘marriages of convenience’, with partisan self-interest acting as the primary driver of temporary coalescence? The evidence over the past 30 years suggests that, where possible, parties will act alone in instigating reform in their own interests. An example is Labor’s treatment of party registration in the Northern Territory, where it increased the membership threshold from the recommended 20 to its preferred 200, to limit electoral competition. The Coalition’s reform agenda at the federal level, which was supported by JSCEM’s acquiescence and passed in 2006, provides another example of parties acting in their own self-interest.

Australian party cartelisation behaviour is comparable with what has been found in other countries. In their study of party cartelisation, looking primarily at European and North American democracies, Katz and Mair identified the

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‘emergence of a new model of party, the cartel party, in which colluding parties become agents of the state and employ the resources of the state (the party state) to ensure their own collective survival’.\(^2\) This definition fits neatly with the Australian scenario. After much debate in the academic community over their original findings, Katz and Mair went on to assert that while political parties ‘might be disinclined to rely heavily on overt deals with one another, their mutual awareness of shared interests [indicates] cartel-like behavior’.\(^3\)

Katz and Mair go on to identify that a country’s constitutional provisions can be a limiting factor in the ability of parties to form cartels. They cite the example of the Federal Constitutional Court of Germany expanding access to public funding of political parties. Instead of such funding being available only to parties that obtain more than 5 per cent of the vote, the court extended funding to parties achieving more than 0.5 per cent. Similarly, in Canada, the Supreme Court overturned legislation that would have restricted party registration (and therefore the benefits that come with registration) to major parties that could field at least 50 electorate candidates.\(^4\)

The examples of Germany and Canada stand in stark contrast to public funding and party registration in Australia, where such constitutional safeguards do not exist. In fact, the first mention of political parties in the Australian Constitution occurred only after an amendment was passed in 1977, in relation to Senate casual vacancies. With governing parties having firm control of the constitutional amending process (through parliament), the likelihood of constitutional amendments that enhance the rights of smaller parties and independent candidates is minimal.

With many of the reforms discussed in this book, the main difficulty is separating self-interest from genuine reform based on principles of fairness and international best practice. In Australia, fierce partisan divisions exist on a number of electoral issues, such as the timing of roll closures, donation disclosure and the prisoner franchise. The lack of an independent decision-making body with the power to implement reform means that such issues will continue to be fought on partisan lines, with fairness remaining a secondary consideration. In the context of democratic outcomes, partisan advantage has been shown to be a far stronger driver of reform than the desire to improve the fairness of elections. Any advantages to voters or non-governing parties tend to be an incidental, or even accidental, outcome of reform rather than a motivating

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consideration. While some reforms have benefited other (minor) parties, this has largely occurred in situations where governing parties have required minor-party support to pass legislation.

Voters are able to express their opinions about a government’s or a party’s policy direction at the ballot box; however, it is electoral law that determines how these citizens vote, and if they can vote at all. When governing parties have control over such laws, this raises concerns about the legitimacy of a democracy. In Australia, governing-party control highlights the need for greater independence in the management and conduct of Australian elections. Despite the growth of issue-specific parliamentary committees, these do not provide a sufficiently powerful policy process to bring about electoral reforms based on international norms for electoral management and fair elections. This problem is not specific to Australia. Many other countries that are considered to have independent electoral management, such as Canada, India, Indonesia and South Africa, still rely on their national parliaments to provide the legislative framework to conduct elections. Electoral commissions in these countries have an advocacy role (either overt or covert) when it comes to electoral reform.

An alternative approach would be to establish an agency independent of both government and parliament that has the power to regulate the manner and conduct of elections. Such a truly independent agency could only be achieved, however, if the governing parties were willing to cede their law-making powers. An example of the devolution of electoral law-making responsibilities can be found in the area of electoral boundary redistributions. Responsibility for this aspect of electoral law has generally been transferred in recent decades from parliaments (usually initiated by Labor governments) to independent boundary commissions (typically including an electoral administrator and government statistician, among others). While parliaments (and, by extension, political parties) retain the legislative power to change these arrangements, it would be a brave government that would run the gauntlet of public opprobrium to remove or reduce existing and established independent processes.

The evidence provided in this book indicates that voluntary relinquishment of further aspects of electoral law and administration is unlikely to occur. Indeed, such a proposal might not be viable in terms of principles of responsible government and accountability. A more achievable alternative might be to establish a public forum to inquire into the conduct of elections. Such a forum, referred to in Chapter 2, could include political parties, electoral administrators, academics and civil society organisations, and would replace the politically biased work of the various electoral-matters parliamentary committees. Parties and other political players would still have input (and representation), but the voices of non-political interests would have a stronger voice on how Australians’
views convert to political representation. With sufficient funding for research, and conducting inquiries and hearings, the forum could become the primary catalyst for electoral reforms.

Pressure external to the existing electoral institutional structure is required. Another source of such pressure is the media. There is evidence of growing media interest in party donations, incumbency benefits and the political finance system in recent times, and it might be that the media becomes a louder voice in broader areas of electoral reform.