
Democracy Agenda for the 47th Parliament of Australia

Options for Reform



The 43rd Parliament of Australia, which was the first minority parliament since 1940, was a time of renewed interest in parliamentary reform to enhance our democratic accountability and processes.

With the potential for the 2022 federal election to grow the crossbench or result in another hung parliament, what further reforms could be on the horizon?

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Options for reform

Discussion paper

Bill Browne

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Summary

This paper identifies over 40 possible democratic reforms for the 47th Parliament to consider after it is elected this year. The reforms are across seven areas:

- **Parliamentary business:** How the two chambers (the House of Representatives and the Senate) conduct themselves and set the agenda for sitting weeks.
- **Working conditions in Parliament:** The conditions under which parliamentary staffers work and the day-to-day operation of Parliament.
- **Use of parliamentary powers:** Existing powers that the Parliament could exercise to ensure the better operation of Australia's Government.
- **Restraints on government:** Reforms that would limit the Government's power or reveal more information about decisions it has made and the reasons behind those decisions.
- **Accountability:** How existing accountability institutions could be resourced and protected from undue influence, to better scrutinise the government; and new institutions that could provide further scrutiny.
- **Elections:** Reforms to electoral law that would make elections operate more fairly and smoothly.
- **Constitutional reform:** Two amendments to the Australian Constitution that would make double dissolution elections fairer and address the inappropriate and vague limitations in section 44 on who can serve as a parliamentarian.

A final section identifies other possibilities for democratic reforms, in less detail.

Introduction

The 2010–2013 hung parliament (the 43rd Parliament) was a time of renewed interest in democratic reform, particularly parliamentary reform. Two enduring reforms from the period are the Parliamentary Budget Office and the reservation of “Question Six” for a crossbencher in each House of Representatives Question Time.

And while commentary at the time often spoke of the hung parliament as if it were unprecedented, in fact minority government has been part of the Australian experience since Federation. Adviser on seniors issues Everald Compton wrote at the close of the 43rd Parliament:

For all of the first 15 years after Federation in 1901, Australians elected Minority Governments. Nevertheless, the Parliament passed much of the essential legislation that created the fabric of Australian society today. The Age Pension is a prime example of this.¹

With the potential for the 2022 federal election to swell the crossbench or even result in another hung parliament, what further reforms could be on the horizon?

This paper outlines reforms for consideration by parliamentarians and the Australian Government. Some are well developed and long promised, and require only the political will to implement. Others still require careful consideration and development. Many would have accumulative effects, with reforms in one area making reforms in other areas more viable.

¹ Compton (2013) *Minority governments provide the best form of democracy*, <https://www.onlineopinion.com.au/view.asp?article=14964>

Parliamentary business

Parliamentary reform is often a priority of crossbenchers. As well as being a focus of the 2010 negotiations that led to the Gillard minority government, they have been a priority for crossbenchers at the state level when they have held the balance of power.²

INDIGENOUS VOICE TO PARLIAMENT

Five years on from the Uluru Statement from the Heart, the Indigenous Voice to Parliament has not been legislated. The Government released its final proposal in December 2021, which would also include Local and Regional Voices. Labor has called for a referendum to enshrine the Voice in the Constitution, as called for in the Uluru Statement.³

Australia Institute polling in 2018 found more Australians supported enshrining a First Nations' Voice in the Constitution than opposed (46% and 29% respectively).⁴

An Indigenous Voice to Parliament should be implemented during the term of the 47th Parliament, either through legislation or, preferably, constitutional amendment.

INCREASING THE NUMBER OF PARLIAMENTARIANS

The Australia Institute has repeatedly pressed the case for an increase in the number of parliamentarians.⁵ The Institute of Public Affairs has also called for more parliamentarians, including contemplating the creation of more states.⁶

² For example, the Charter of Reform in NSW (1991–1995) and the Charter of Good Governance in Victoria (1999–2001): Costar & Hayward (2010) *Victoria's unexpected minority*, <https://insidestory.org.au/victorias-unexpected-minority/>; Griffith (2010) *Minority governments in Australia 1989-2009: accords, charters and agreements*, <https://www.parliament.nsw.gov.au/researchpapers/Pages/minority-governments-in-australia-1989-2009-acco.aspx>

³ National Indigenous Australians Agency (2021) *Indigenous Voice co-design process: final report*, <https://voice.niaa.gov.au/final-report>; Wellington & Wellauer (2021) *Indigenous Voice to Parliament plan revealed after years of lobbying, but Labor gives it a "fail,"* <https://www.abc.net.au/news/2021-12-17/indigenous-voice-to-parliament/100708186>

⁴ The Australia Institute (2018) *Majority of Australians support Uluru Statement*, <https://australiainstitute.org.au/post/majority-of-australians-support-uluru-statement/>

⁵ Browne (2018) *It's time ... for more politicians*, <https://australiainstitute.org.au/report/its-time-for-more-politicians/>; (2020) *Comes with the territory: ensuring fair political representation for Northern Territorians - and all Australians*, <https://australiainstitute.org.au/report/comes-with-the-territory-ensuring-fair-political-representation-for-northern-territorians-and-all-australians/>

⁶ Bushnell (2021) *It reeks of blasphemy, but might more MPs give us better service?*, <https://ipa.org.au/publications-ipa/it-reeks-of-blasphemy-but-might-more-mps-give-us-better-service>

There have never been so many people per electorate as there are today. An increase of 50% in the number of parliamentarians would restore representation to what it was in the 1980s, reverse the trend towards geographically larger electorates, make the House of Representatives “one vote, one value” for the first time in history and allow for fairer representation of the territories.⁷

DISCLOSURES FOR PARLIAMENTARIANS

Members and senators are responsible for providing a statement of their registrable pecuniary and other interests, such as “assets and liabilities, interests in trusts and partnerships, directorships, gifts, sponsored travel and hospitality, and certain relationships with organisations.”⁸ The registries are separate for each change, and overseen by different committees: the House Standing Committee of Privileges and Members’ Interests and the Senate Standing Committee of Senators’ Interests.

Clarification of rules

Current interests disclosure requirements for parliamentarians are not always clear.

The use of a “blind trust” by former Attorney-General Christian Porter to avoid revealing who was (in part) paying his legal fees in his defamation suit against the ABC attracted controversy. The House of Representatives defeated a motion to refer the issue to its privileges committee, but the committee is considering a complaint about the issue from Shadow Attorney-General Mark Dreyfus.⁹ The committee is also considering the general principle.¹⁰

⁷ Browne (2018) *It’s time ... for more politicians*; (2020) *Comes with the territory: ensuring fair political representation for Northern Territorians - and all Australians*

⁸ From Senate Standing Committee of Senators’ Interests (2019) *Registration of Senators’ interests - a handbook for senators*, p. 2, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/Guidelines_and_Resolutions; guidance for members of the House of Representatives is substantially similar.

⁹ Karp (2021) *Christian Porter to be formally asked to explain declaration that ‘blind trust’ helped pay his legal fees*, <https://www.theguardian.com/australia-news/2021/nov/01/christian-porter-to-be-formally-asked-to-explain-declaration-that-blind-trust-helped-pay-his-legal-fees>

¹⁰ Karp (2021) *Christian Porter still faces scrutiny over donations declaration despite government blocking Labor bid for inquiry*, <https://www.theguardian.com/australia-news/2021/oct/21/christian-porter-still-faces-scrutiny-over-donations-declaration-despite-government-blocking-labor-bid-for-inquiry>

Minister for Employment Stuart Robert has used a blind trust to conceal his assets, which is of particular concern because of his connection to companies that are linked to the National Disability Insurance Scheme (NDIS).¹¹

The Greens have proposed a statutory basis for the chambers' registers, which may address ambiguity on these issues.¹²

Registers of interests should be subject to clear rules with comprehensive and useful disclosures.

Digitising the registers of members' and senators' interests

Members' and senators' interests are currently reported in the form of PDF documents. Every parliamentarian makes an initial statement of interest for each parliamentary term. As a parliamentarian's interests change, their initial statement is appended with notifications of alterations of interests.

Taking the form of 151 and 76 PDFs respectively, the House and Senate registers are difficult to consider as a whole. Patterns across parliamentarians can only be identified through a manual check of all 227 PDFs, and a complete picture of a parliamentarian's interests requires the reader to manually incorporate alterations of interests into the initial statement.

These problems would be addressed by digitising the registers and making them searchable.

FIXED THREE-YEAR TERMS

There is intermittent debate over whether the Australian Parliament should adopt fixed four-year terms, like those found in most states and territories.¹³

Fixed terms give certainty around election dates, make some forms of brinkmanship more difficult (such as the upper house blocking supply) and remove the ability of a prime

¹¹ Hardaker (2021) *The minister, his blind trust and the NDIS entrepreneur*, <https://www.crikey.com.au/2021/11/15/stuart-robert-blind-trust-part-1/>

¹² Whyte (2020) *New integrity commission push after MP code of conduct rejected by major parties*, <https://www.canberratimes.com.au/story/6876529/new-integrity-commission-push-after-mp-code-of-conduct-rejected-by-major-parties/>

¹³ See for example Bennett (2000) *Four-year terms for the House of Representatives*, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0001/01RP04; Harper (2019) *Australia needs fixed four-year parliamentary terms*, <https://electionwatch.unimelb.edu.au/articles/australia-needs-fixed-four-year-parliamentary-terms>; Sydney Morning Herald (2017) *Four-year fixed terms for Federal Parliament are overdue*, <https://www.smh.com.au/national/four-year-fixed-terms-for-federal-parliament-are-overdue-20170726-gxiw89.html>

minister or premier to call an election at the exact point that is most politically advantageous.¹⁴

Without fixed terms, the periods between federal elections have been closer to two and a half years than three years.¹⁵

While changing to four-year terms would require a constitutional amendment, a voluntary agreement between government and opposition for a fixed three-year term would not.¹⁶ A three-year term also has the benefit of putting parliamentarians before the people they represent more often, and keeping Senate terms at six years instead of a more unwieldy eight years.

Crossbenchers at the state level have negotiated fixed terms, including in Tasmania (the Liberal–Green Alliance) and NSW (the “Fabulous 50th Parliament”).¹⁷

Australia Institute polling in Queensland, South Australia and the electorate of New England found that most support fixed terms for federal elections.¹⁸ Scott Bennett has twice considered this issue on behalf of the Parliamentary Library.¹⁹

The Government and Opposition should make a voluntary agreement for the 47th Parliament to run its course in a full three-year term, as a trial of a longer-term arrangement for fixed three-year parliamentary terms.

¹⁴ Hamer (2004) *Can responsible government survive in Australia?*, pp. 102–110, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/~link.aspx?_id=E546DECDB0B04E0C9EF20803027FCB32&_z=z

¹⁵ Grattan (2016) *Four-year federal terms are too hard, but what about making the three-year term fixed?*, <http://theconversation.com/four-year-federal-terms-are-too-hard-but-what-about-making-the-three-year-term-fixed-57278>

¹⁶ Grattan (2016) *Four-year federal terms are too hard, but what about making the three-year term fixed?*

¹⁷ Griffith (2010) *Minority governments in Australia 1989–2009: accords, charters and agreements*, pp. 12, 15

¹⁸ Grattan (2016) *Four-year federal terms are too hard, but what about making the three-year term fixed?*

¹⁹ Bennett (2000) *Four-year terms for the House of Representatives*; (2008) *House of Representatives fixed terms: the barriers to implementation*, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0809/09rp15

CODE OF CONDUCT FOR PARLIAMENTARIANS

Many have called for a code of conduct for parliamentarians over the years. The question was considered by both House and Senate committees after a code of conduct appeared in government agreements with independents and the Greens.²⁰ Independent MP Helen Haines and Greens Senator Larissa Waters have included codes of conduct as part of their (separate) integrity commission proposals.²¹ The Jenkins review (*Set the Standard*) has recommended the establishment of a joint standing committee to draft codes of conduct for parliamentarians and their staff.²²

A code of conduct, including an independent investigator, is part of the recommendations made by the Commonwealth Parliamentary Association, a body of Commonwealth legislatures.²³ In 2020 a Senate committee considered Waters' Bill, substantially similar to Haines', and did not recommend passing it.²⁴

Parliamentary standards commissioner

Necessary to realise a parliamentary code of conduct is to have a parliamentary standards commissioner who would investigate suspected breaches. The commissioner could also be responsible for investigating suspected breaches of the ministerial code of conduct and the registers of members' and senators' interests. The commissioner could also play an educational and advisory role.

As an independent officer of the Parliament, the commissioner would be answerable to the Parliament rather than the government.

²⁰ House Standing Committee of Privileges and Members' Interests (2011) *Draft code of conduct for Members of Parliament: discussion paper*, Parliament of Australia; Senate Standing Committee of Senators' Interests (2012) *Code of conduct inquiry*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Senators_Interests/reports/022012/index

²¹ Haines (2019) *Parliament's integrity and conduct*, <https://www.helenhaines.org/media/parliamentary-integrity-and-conduct/>; Whyte (2020) *New integrity commission push after MP code of conduct rejected by major parties*

²² Australian Human Rights Commission (2021) *Set the standard: report on the Independent Review into Commonwealth Parliamentary Workplaces (2021)*, p. 25, <https://humanrights.gov.au/set-standard-2021>

²³ Commonwealth Parliamentary Association (2016) *Recommended benchmarks for codes of conduct applying to Members of Parliament*, <https://www.cpahq.org/media/3wqhbbad/codes-of-conduct-for-parliamentarians-updated-2016-7.pdf>

²⁴ Senate Standing Committees on Finance and Public Administration (2020) *National Integrity (Parliamentary Standards) Bill 2019*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/ParlStandards2019/Report

The UK and Canada have analogous codes of conduct and responsible officers.²⁵

A code of conduct for parliamentarians, supported and enforced by a parliamentary standards commissioner, would help restore public confidence in politicians and government.

QUESTION TIME REFORMS

While Question Time in the Senate can be acrimonious, the public focus is on Question Time in the House of Representatives.

The House of Representatives Procedure Committee conducted an inquiry into practices and procedures relating to Question Time. The report, released in 2021, makes a number of recommendations, including:

- limiting the number of “Dorothy Dixers” to five each day
- a provision for one supplementary question from one non-government member per day
- a ban on asking about “alternative approaches” (which allows the minister to criticise the opposition)
- trial restriction on the use of mobile phones.²⁶

Supplementary questions are used well in the Senate, and were a feature of House of Representatives Question Time during the 2010–2013 hung parliament.

Question Time, more so than any other parliamentary institution, attracts public attention – but the “bear pit” cut and thrust is rarely edifying. Reforms that would make Question Time a more constructive, admirable part of the parliamentary agenda would improve public trust in politicians like few other measures could.

²⁵ Senate Standing Committees on Finance and Public Administration (2020) *National Integrity (Parliamentary Standards) Bill 2019*

²⁶ Procedure Committee (2021) *A window on the House: practices and procedures relating to Question Time*, pp. xvii–xix, https://www.aph.gov.au/Parliamentary_Business/Committees/House/Procedure/Questiontime/Report

TIME LIMIT FOR COMMITTEE INQUIRIES

There are concerns that government-dominated committees sometimes postpone the completion of inquiries that could embarrass the government until after an upcoming election. When parliament is prorogued, committees and their inquiries lapse and committee inquiries – like the committees themselves – have to be reconstituted. Delaying an inquiry until an election is called at the very least deprives voters of the information in the committee’s report, and may even result in the loss of the work done by the committee and those contributing to it if the inquiry is not reconstituted.

A maximum time limit beyond which committees cannot delay the release of reports would prevent committees from delaying reports for political purposes.

HOUSE OF REPRESENTATIVES REFORMS

Private member’s motions and Bills always scheduled for a vote

Under standing orders, after a private member’s motion or Bill is introduced, it is placed on the notice paper (for a motion) or adjourned to a “future sitting” (for a Bill). In the case of a Bill, it is then up to the Selection Committee to schedule the remainder of the second reading debate – which it often does not do, particularly if neither the Government nor the Opposition wish to vote on the Bill. Members cannot force a vote, except through suspension of standing orders (see below for problems with requiring a suspension of standing orders for a vote).²⁷

If the House of Representatives instead required the second reading debate for a private member’s Bill to be scheduled when the Bill was introduced, private member’s Bills would be debated and voted on instead of ignored.

²⁷ Elder & Fowler (2018) *House of Representatives practice (7th edition)*, chap. 16, https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7

Suspension of standing orders to not require absolute majority

By and large, the government controls the business of the House of Representatives. Overriding the government's control requires an absolute majority to vote for the suspension of standing orders, which is 76 votes when the House has 150 or 151 seats.²⁸

The first problem with this rule is that it can prevent legislation from passing even when supported by a majority of MPs eligible to vote. Imagine a 150-seat House in which 75 MPs support and 74 oppose a piece of legislation. The Speaker, who only votes in the case of a tie, would not be entitled to a casting vote – and yet their abstention can stop the legislation from coming to a vote.²⁹

The problem becomes more acute when MPs are required to be absent from the chamber, most notably during the COVID pandemic when many fewer than the 151 MPs have been able to attend Parliament (see also remote voting below). A private member's motion or Bill with the support of a majority of MPs, even an absolute majority, can go undebated because some of its supporters are unable to attend and pairing arrangements are irrelevant in the case of an absolute majority requirement.

The third problem is that the requirement of an absolute majority may be unconstitutional, a concern that has existed since the standing orders were introduced in the first years after Federation.³⁰

The Senate also requires an absolute majority to suspend standing orders without notice, but measures exist to overcome the absolute majority requirement.³¹

A requirement that a majority, not an absolute majority, can suspend standing orders in the House of Representatives would address these problems. More limited alternatives to the absolute majority rule, as provided for in the Senate, may also address the problem.

²⁸ Elder & Fowler (2018) *House of Representatives practice (7th edition)*, pp. 264–265

²⁹ For a real-world example, see Twomey (2019) *Can standing orders prevent a simple majority of the House of Representatives from passing a Bill against the government's wishes?*, <https://www.auspublaw.org/blog/2019/02/can-standing-orders-prevent-a-simple-majority>

³⁰ Elder & Fowler (2018) *House of Representatives practice (7th edition)*, pp. 340–341

³¹ For more, see Laing (2016) *Odgers' Australian Senate practice*, pp. 220–224, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice

Remote voting permitted

Both the House of Representatives and Senate have failed to implement remote voting provisions, beyond unsatisfactory and limited “pairing” arrangements.

Pairing arrangements allow for parliamentarians who are absent to be “paired” with a parliamentarian from the other side of politics. Neither vote, preserving the relative strength of the “Aye” and “No” votes. These arrangements are informal, and in the House of Representatives are limited to the major parties.³² The Senate’s pairing arrangements incorporate crossbenchers, and all current House of Representatives crossbenchers have called for the Senate’s arrangements to be replicated in the House.³³

Numerous other jurisdictions have managed to provide for remote voting.³⁴ The 47th Parliament should do so as well, though strictly limited to cases where an absence is unavoidable.

Cut-off for introduction of legislation

The Senate “cut-off” puts a deadline on when Bills can be received if they are to be passed in the same sitting period. This allows Bills to be properly considered and debated:

If a bill is received from the House of Representatives more than two-thirds of the way through a sitting period, it is automatically adjourned until the next period of sittings. Similarly, bills are automatically adjourned until the next period of sittings if they are introduced in the Senate, or if they are introduced in the House and sent to the Senate within the same sitting period (standing order 111(5)). With the agreement of the Senate, bills can be exempted from the cut-off, allowing them to be moved, considered and passed in the same period of sittings.³⁵

The same provision for the House of Representatives would ensure that Bills can be considered in good time, not rushed through by the government.

³² Knaus (2021) *Australian parliament’s remote arrangements causing voting disadvantages for minor parties, report says*, <https://www.theguardian.com/australia-news/2021/sep/01/australian-parliaments-remote-arrangements-causing-voting-disadvantages-for-minor-parties-report-says>

³³ Sharkie (2021) *Crossbench calls for pairing arrangements due to COVID-19 restrictions*, https://www.rebekhasharkie.com.au/pairing_covid

³⁴ Centre for Public Integrity (2021) *Online Parliamentary voting*, <https://publicintegrity.org.au/parliamentary-democracy-at-risk-from-covid-borders/>

³⁵ Parliament of Australia (n.d.) *Glossary of Senate terms*, https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/Glossary_of_Senate_terms

An alternative, more limited, option is to amend the standing orders to require a division to introduce and vote on a Bill in the House of Representatives on the same day.

WORKING CONDITIONS IN PARLIAMENT

The long demanding hours, stressful and irregular working conditions and power imbalances that come with working as a political staffer have been discussed at length.³⁶ Unsafe working conditions should be addressed firstly because every worker is entitled to a safe workplace and a life outside of work and secondly because the quality of decision making when people are tired, isolated and demoralised is poor.

Implement the Jenkins review recommendations

The *Set the Standard* Jenkins review makes 28 recommendations to improve Parliament House culture, not all of which are the responsibility of Parliament (for example, there are recommendations to political parties and to the Government).

Many of the recommendations would clarify and expand the rights of staffers, for example around termination, and make human resources and workplace support available to them where it is not already. It also recommends a code of conduct for parliamentarians and whistleblower protections for staffers, also discussed elsewhere in this paper.

The Government has already implemented some of the review's recommendations and says it is working with other parties in Parliament on the other recommendations.³⁷ The 47th Parliament should ensure that the recommendations are faithfully implemented.

Shorter sitting days, but more sitting days

One step towards making working conditions in Parliament safer would be for Parliament to sit for fewer hours a day, in exchange for sitting for more weeks of the year.³⁸

The trend since Federation has been for fewer sitting weeks in a year, compensated for with an increase in the average length of a sitting day. Whereas the average length of a sitting

³⁶ See for example Behm, Bennett, O'Sullivan, & Oquist (2021) *Submission to Australian Human Rights Commission's Independent Review into Commonwealth Parliamentary Workplaces*, <https://australiainstitute.org.au/report/submission-to-australian-human-rights-commissions-independent-review-into-commonwealth-parliamentary-workplaces/>

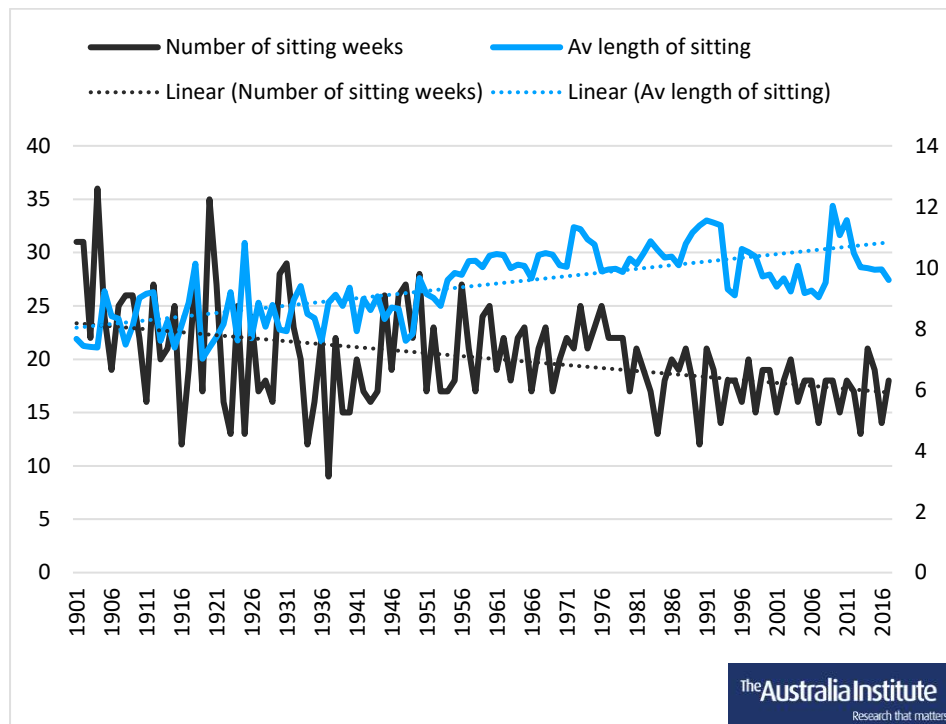
³⁷ Hitch (2022) *"She had the courage to speak": PM apologises to Brittany Higgins for her "terrible" experience*, <https://www.abc.net.au/news/2022-02-08/parliament-formal-apology-harassment-bullying-brittany-higgins/100813046>; Murphy (2022) *Government poised to act on findings of landmark Jenkins review*, <https://www.theguardian.com/australia-news/2022/feb/04/government-poised-to-act-on-findings-of-landmark-jenkins-review>

³⁸ Note that a review of the order/routine of business is also recommended in the Jenkins review.

day was just over eight hours in the first decade of Federation, it was almost 10 and a half hours in the ten years from 2008 to 2017. The standard adjournment time is currently 8pm Monday to Wednesday and 5pm Thursday.³⁹ As Liberal backbenchers Katie Allen and Senator Sarah Henderson note, it could be earlier.⁴⁰

If Parliament sat for 26 weeks a year, as it did from 1901 to 1910, instead of the modern average of 17 weeks a year, there could be a commensurate drop in the length of each sitting day.

Figure 1: Number of sitting weeks (LHS) and average length of a sitting day (RHS)



Source: Elder & Fowler (2018) *House of Representatives practice (7th edition)*, https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7

Fewer sitting weeks may be a product of the declining number of parliamentarians relative to Australia’s population. Political scientists theorise that representatives must balance coordinating among themselves and communicating with their constituency.⁴¹

³⁹ Parliament of Australia (n.d.) *Infosheet 2 - a typical sitting day*, https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_2_-_A_typical_sitting_day

⁴⁰ Gooley (2021) *Liberal MP calls for alcohol to be banned from Parliament House*, <https://www.abc.net.au/news/2021-03-28/liberal-backbenchers-urge-drug-alcohol-testing-parliament-house/100034140>

⁴¹ For details of this theory, and its implications for the size of elected parliaments, see Taagepera (1972) *The size of national assemblies*, <https://escholarship.org/uc/item/45g370k4>

The ACT enterprise agreement might be a starting point for reformers. The ACT Legislative Assembly is required by its Enterprise Bargaining Agreement with departmental staff to schedule dinners and otherwise compensate or adjust for long working hours.⁴² The Commonwealth agreements could include similar provisions if they do not already.

Fundamentally, however, the problem of unreasonably long sitting days should be addressed by scheduling more sitting weeks, and reducing the length of each sitting day.

NO FUNDRAISING EVENTS IN PARLIAMENT HOUSE

Political parties hold fundraisers at Australian Parliament House that can raise hundreds of thousands of dollars. After a pause due to COVID restrictions, two major Coalition fundraising events (in the Great Hall and the Mural Hall) were scheduled for 2022.⁴³

Post-Budget fundraisers have taken place in Parliament House under both Labor and Coalition governments. Great Hall tickets can come with the chance to sit with a senior minister.⁴⁴ Companies and groups have been offered package deals that come with tables at the Great Hall dinner.⁴⁵ Naming rights to the Great Hall dinner have been sold to PricewaterhouseCoopers.⁴⁶

Parliament House is the seat of Australian democracy and a world-significant architectural building.⁴⁷ It should not be the site of party-political fundraising events trading on its unique cachet and significance. A new policy could be modelled on the rules in place in the Parliament of South Australia, where party-political fundraising events are not permitted.

⁴² Fair Work Commission (2021) *Office of the Legislative Assembly enterprise agreement 2021-2022*, https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0012/1896186/ACT-Public-Sector-Office-of-the-Legislative-Assembly-Enterprise-Agreement-2021-2022-FINAL.pdf

⁴³ Towell & Hutchinson (2022) *CBD: Who's for tax cuts and a tipple?*, <https://www.smh.com.au/national/cbd-who-s-for-tax-cuts-and-a-tipple-20220328-p5a8p6.html>

⁴⁴ Massola (2014) *Federal budget fills coffers for Liberal Party*, <https://www.canberratimes.com.au/story/6142703/federal-budget-fills-coffers-for-liberal-party/>

⁴⁵ Kelly & Kitney (2015) *Budget 2015: Party hosts make the most of fundraiser table talk*, <https://www.theaustralian.com.au/nation/politics/budget-2015-party-hosts-make-the-most-of-fundraiser-table-talk/news-story/9097ac74f51241bceef22f4d2ddfc331>; Select Committee into the Political Influence of Donations (2018) *Political Influence of Donations*, p. 32, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Political_Influence_of_Donations/PoliticalDonations/Report_1

⁴⁶ Robin & Aston (2020) *Fundraising in the time of coronavirus*, <https://www.afr.com/rear-window/fundraising-in-the-time-of-coronavirus-20201006-p562hx>

⁴⁷ Senate Standing Committee on Finance and Public Administration (2012) *The performance of the Department of Parliamentary Services (DPS)*, p. 29, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2010-13/deptparliamentaryservices/index

Use of parliamentary powers

The two chambers of Parliament have extensive existing powers to censure ministers and public servants, demand the production of documents, conduct inquiries and amend, delay or block legislation. Significant reforms could be implemented simply by the chambers exercising their existing powers.

ORDERS FOR THE PRODUCTION OF DOCUMENTS

Ministers to give reasons for not producing documents

Where ministers fail to produce documents subject to an order for the production of documents, they should be required to front the chamber and explain why they did not meet the deadline.

This requirement has been an ad hoc remedy in the Senate since 2000, and increasingly commonplace since 2017. The consistent addition of this requirement to orders for the production of documents would help ensure they are complied with.⁴⁸

In 2020, the Senate contemplated, but ultimately decided against, a further penalty for non-compliance: for the Leader of the Government in the Senate to be barred from representing the Prime Minister during Question Time and in committees, and be prevented from sitting at the central table in the chamber.⁴⁹ Should the Government continue to refuse reasonable orders for the production of documents in the next parliament, this remedy should be revisited.

Production of consultants' reports

In a 2021 report, *Talk isn't cheap*, the Australia Institute discussed the Government's use and misuse of secret consultants' reports, paid for with public money. As a partial corrective, it is recommended the Senate make a standing order for the production of documents for consultants' reports. This would make public the advice given by consultants to government, and the terms on which it was commissioned.

⁴⁸ Laing (2021) *Odgers' Australian Senate practice - third supplement to the 14th edition*, p. 63, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice

⁴⁹ Laing (2021) *Odgers' Australian Senate practice - third supplement to the 14th edition*, p. 63

Polling by the Australia Institute in January 2022 found 71% of Australians agreed with the proposal to make private consultant reports for government public, compared to 12% who disagreed.

In October 2021, Senator Larissa Waters took up the idea and gave notice that she would move a motion to give effect to the recommendation. The motion was considered in February 2022 but did not pass.⁵⁰ The motion, or one like it, should be revisited in the next parliament.

HOUSE OF REPRESENTATIVES ESTIMATES HEARINGS

A jewel in the parliamentary calendar are Senate Estimates hearings, where senators question ministers and senior public servants. Ministers in the House of Representatives are represented by their counterparts in the Senate. The remit of Estimates is broad, and any senator can demand a supplementary session if they have more questions to ask than there is time allotted (senators can also provide written lists of questions to be answered on notice).⁵¹

In his survey of members and senators, academic Scott Brenton identified Senate Estimates as: “One of the most common areas of Senate envy amongst members [of the House of Representatives].”

This came through most strongly from parliamentarians who have served in both houses and also for most members in general this was the most dominant perception of the work activity of senators. Members, particularly shadow ministers revealed that they currently feed questions to their Senate colleagues during estimates hearings via laptops and mobile devices and would relish the opportunity to question public officials directly. Similarly, it is only ministers in the Senate that generally front the committees, even though there are far more ministers in the House.⁵²

He mentions previous attempts to replicate estimates committees in the House, but proposes instead:

⁵⁰ Parliament of Australia (2022) *Dynamic Red - 10 February 2022*, <https://parlwork.aph.gov.au/Senate/DynamicRed#17ca8b13-3d8a-ec11-b86f-005056b55c61>

⁵¹ Laing (2016) *Odgers' Australian Senate practice*, pp. 478–480

⁵² Brenton (2011) *Minority government: is the House of Representatives finally catching up with the Senate?*, p. 125, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/~/link.aspx?_id=1188F713C5B44C679E40642E38A93193&_z=z

... the same estimates process should involve all parliamentarians. There should be some parliamentary mechanism where all parliamentarians can question any member of the executive⁵³

Further consideration should be given to either replicating the Senate Estimates process in the House of Representatives or a joint estimates process for the two chambers.

SECURITY OVERSIGHT REFORM

The Parliamentary Joint Committee on Intelligence and Security (PJCIS) is responsible for oversight of Australian intelligence agencies. It is limited in the motions it can call and has only major party members.

The starkest limitation on the PJCIS is that it cannot review particular intelligence operations that have been undertaken, are being undertaken or may be undertaken. This limitation does not exist (or is far more narrow) for the equivalent parliamentary committees in the US, UK and Canada. The PJCIS can review the activities of agencies in general if the matter is referred to them.⁵⁴

The Australia Institute has followed opposition and crossbench parliamentarians in calling for significant PJCIS reform, including membership of non-major party MPs, the power to call own-motion inquiries (including inquiries into particular operations) and oversight over all bodies with intelligence functions rather than just the core intelligence agencies.⁵⁵

⁵³ Brenton (2011) *Minority government: is the House of Representatives finally catching up with the Senate?*, p. 125

⁵⁴ Browne (2020) *AUST-INTEL powers: Parliamentary oversight of intelligence agencies*, pp. 23–24, <https://australiainstitute.org.au/report/aust-intel-powers-parliamentary-oversight-of-intelligence-agencies/>

⁵⁵ Browne (2020) *AUST-INTEL powers: Parliamentary oversight of intelligence agencies*

Restraints on government

PARLIAMENTARY VOTE ON WAR

In the current term of Parliament, the Greens have proposed legislation that would require a parliamentary vote before Australians are deployed overseas.⁵⁶ As Australia Institute research shows, it is not unusual for the consent of a country's parliament to be required before a country can go to war. Many parliaments without this power still have some involvement in decision-making around war.⁵⁷

The consent of Australia's Parliament should be required before Australians are deployed overseas.

SCRUTINY OF GOVERNMENT ADVERTISING

Current framework for government advertising

Government advertising on both sides of politics and at both federal and state levels has been accused of being partisan. Government "campaign" advertising has been regulated by guidelines introduced in 2010 and updated from time to time since then.⁵⁸ An earlier framework, from 2008, included a more active role for the Auditor-General.⁵⁹ That government advertising continues to be the subject of reasonable criticism, including from the Australia Institute, demonstrates that the current framework is not sufficient.

Australia Institute polling shows that Australians support two fundamental principles: that public money should be spent only on advertising that informs and that government

⁵⁶ *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2020* (Cth),

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1281

⁵⁷ Behm & Browne (2021) *Submission: Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2020*, <https://australiainstitute.org.au/report/submission-defence-amendment-parliamentary-approval-of-overseas-service-bill-2020/>

⁵⁸ For discussion of the 1980s and 2008 guidelines, see Horne (2012) *The administration of Commonwealth Government advertising*,

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/GovernmentAdvertising; Orr (2006) *Government advertising: Parliament and political equality*, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~~/link.aspx?_id=53A7CFCC47014D138E5C10FAFD0299D6&_z=z

⁵⁹ Department of Finance and Deregulation (2008) *Guidelines on campaign advertising by Australian Government departments and agencies (archived)*,

https://web.archive.org/web/20090519101854/http://www.finance.gov.au/Advertising/docs/guidelines_on_campaign_advertising.pdf

advertising should be funded in proportion to the significance of a policy (not how controversial it is).⁶⁰

The 47th Parliament could turn its mind to how to improve oversight of government advertising. The Auditor-General should be involved, but the history of reform proposals proves that many models are possible. The Auditor-General could be one member of a larger committee overseeing government advertising; could review government advertising while the campaigns are running with the power to make orders regarding the campaigns; or could have their scrutiny role from the 2008 framework restored.

REMOVAL OF COPYRIGHT RESTRICTIONS AND ACCESS FEES

The recent purchase of the copyright of the Aboriginal flag for \$20 million has highlighted the copyright restrictions that limit the use of common resources, like government data and reports.⁶¹

While many departments and agencies use Creative Commons licences to reduce copyright restrictions, their use is haphazard: a variety of licences are used when a licence is used at all.⁶² The National Archives' website is under a Creative Commons Attribution licence, but its collection is not.⁶³ The ABC Pool project, established by the national broadcaster to encourage collaboration and make some of its archival footage free to use, is now defunct.⁶⁴

⁶⁰ Browne (2019) *We can handle the truth: opportunities for truth in political advertising*, pp. 35–36, <https://australiainstitute.org.au/report/we-can-handle-the-truth-opportunities-for-truth-in-political-advertising/>

⁶¹ Marozzi (2022) *Is \$20m for the copyright of the Aboriginal flag a fair deal?*, <https://www.abc.net.au/news/2022-01-26/aboriginal-flag-copyright-deal-the-best-we-could-hope-for/100781378>

⁶² For example, the Department of the House of Representatives' annual report uses Creative Commons Attribution-NonCommercial-NoDerivatives 3.0 while the Australian Bureau of Statistics uses Creative Commons Attribution: ABS (n.d.) *Attributing ABS material*, <https://www.abs.gov.au/websitedbs/d3310114.nsf/home/attributing+abs+material>; Department of the House of Representatives (2020) *Annual report 2019-20*, <https://www.transparency.gov.au/annual-reports/department-house-representatives/reporting-year/2019-20-2>

⁶³ National Archives of Australia (n.d.) *National Archives copyright*, <https://www.naa.gov.au/home/national-archives-copyright>

⁶⁴ Creative Commons Australia (2011) *ABC Pool*, <https://creativecommons.org.au/tag/abc-pool/>

Either a consistent, free and open Creative Commons licence should be applied to all Crown copyright works (but for a few special works, like flags),⁶⁵ or government works should be copyright-free across the board – as is the case in the United States without issue.⁶⁶

Nicholas Gruen has also suggested that Treasury’s econometric models be publicly released “[e]xcept in the rare cases where there are strong policy reasons against it”.⁶⁷ This should be the default for government models and datasets.

PARLIAMENTARY BUDGET OFFICE

Tracking delivery of election commitments

The Parliamentary Budget Office (PBO) currently publishes a list of election commitments for each major political party, following each federal election. Minor parties and independents can opt into the process.⁶⁸

The PBO’s remit could be expanded to include tracking the delivery of election commitments by whichever party/parties win government.

Budget costings

Ahead of the 2019 election, Labor proposed making the PBO responsible for budget forecasts and the inter-generational reports instead of Treasury. As a government department, Treasury is in danger of being excessively influenced by its minister. In the United States and United Kingdom, it is the parliamentary budget offices (the Congressional Budget Office and the Office for Budget Responsibility respectively) that are responsible for budget forecasts.⁶⁹

⁶⁵ The three “free and open” Creative Commons licences are “CC0” (public domain), Attribution and Attribution-ShareAlike.

⁶⁶ USA.gov (n.d.) *U.S. Government works*, <https://www.usa.gov/government-works>

⁶⁷ Gruen (2016) *What if the crowd forecast the economy for Treasury?*, <https://www.themandarin.com.au/62739-gruen-kamper-treasury-forecasting-models-open-source/>

⁶⁸ Parliamentary Budget Office (2022) *2022 general election*, https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/General_elections/Next_general_election

⁶⁹ Mulgan (2011) *Costing the promises: what is a Parliamentary Budget Office?*, <http://theconversation.com/costing-the-promises-what-is-a-parliamentary-budget-office-3061>; Office for Budget Responsibility (n.d.) *FAQs*, <https://obr.uk/faqs/>

While Labor has since dropped this policy,⁷⁰ there is no reason why crossbenchers might not take it up after the next election.

ABC APPOINTMENT PROCESS

Appointments to the ABC Board are made by the responsible minister (technically, by the Governor-General on the advice of the responsible minister). While there is a nomination process, the Government can override the nomination panel and install its own choice of board member or chair.⁷¹

The Australia Institute has made five recommendations that would strengthen the independence of the ABC Board:

1. The process of consultation on the appointment of the chair should be formalised and expanded to include genuine consultation with a cross-party committee, in addition to the Leader of the Opposition.
2. A cross-party committee should be given responsibility for overseeing the ABC Board appointment process, either replacing the current nomination panel, or overseeing it.
3. ABC audiences and the wider public should be more involved. Better publicity around upcoming vacancies and selection criteria should be provided.
4. Consideration should be given to selection of an “audience supported board member” [in addition to the member elected by ABC staff]. Candidates who wish to make their applications public could publish their profile, CV and interviews on the ABC website. Support from ABC audiences for these nominations could be assessed through online or written submissions.
5. The option for the minister to bypass the nomination process should be removed, or available only with genuine consultation with the shadow minister.⁷²

In January 2022, Australia Institute polling asked residents of two federal electorates, North Sydney and Wentworth, their position on making a cross-party committee responsible for ABC Board appointments. Seven in 10 (71%–73%) supported this change to the ABC Board’s nomination process.⁷³

⁷⁰ Greber (2021) *No political appetite for OECD’s budget office idea*, <https://www.afr.com/politics/federal/no-political-appetite-for-oecd-s-budget-office-idea-20210915-p58rwt>

⁷¹ Browne & Pitt (2018) *Depoliticising the ABC Board*, <https://australiainstitute.org.au/report/depoliticising-the-abc-board/>

⁷² Browne & Pitt (2018) *Depoliticising the ABC Board*

⁷³ The Australia Institute (2022) *Polling: vast majority of Wentworth & North Sydney voters want more funding for ABC*, <https://australiainstitute.org.au/post/polling-vast-majority-of-wentworth-north-sydney-voters-want-more-funding-for-abc/>

GRANTS ADMINISTRATION

Conflict of interest declaration for grant-making ministers

Currently, ministers who approve grants despite departmental advice to reject them must report this to the Finance Minister, who tables the details once per year.⁷⁴

Senator Katy Gallagher has introduced a private senator's Bill that would require the details to be tabled within 35 days of the grant approval, and expand the reporting requirements to include grants that are within their own electorates and grants that did not need any of the relevant selection criteria.⁷⁵

Faster and more detailed reporting on grants decisions would increase public pressure on ministers to allocate public money efficiently and fairly.

Senate Committee for the Scrutiny of Grants

Grants with ministerial discretion have been distributed with a distinct skew towards marginal and Coalition seats, as revealed by Australia Institute research in 2021.⁷⁶ Ministerial discretion should be limited to ensure that public money is not misused.

The United States has House and Senate Appropriations Committees responsible for reviewing government spending. However, the committees are more often the source of pork barrelling than a defence against it.⁷⁷

A more successful model is Australia's Senate scrutiny committees: the Standing Committee for the Scrutiny of Bills and the Standing Committee for the Scrutiny of Delegated Legislation. The Committee for the Scrutiny of Delegated Legislation, in particular, has proven to be a powerful check on executive misuse of power. The committee has recommended the disallowance of government regulations, including the controversial

⁷⁴ Baker (2021) *Ministers going against departmental advice in allocating millions in grants*, <https://www.abc.net.au/news/2021-05-27/federal-government-grants-ministers-dismissing-department-advice/100170278>

⁷⁵ *Public Governance, Performance and Accountability Amendment (Improved Grants Reporting) Bill 2021* (Cth), https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1311

⁷⁶ Melville-Rea & Browne (2021) *Grants with ministerial discretion*, <https://australiainstitute.org.au/report/grants-with-ministerial-discretion/>

⁷⁷ Riedl (2007) *House transparency rules reveal that pork projects tilt heavily toward appropriators*, <https://www.heritage.org/budget-and-spending/report/house-transparency-rules-reveal-pork-projects-tilt-heavily-toward>

“crackdown” on charities.⁷⁸ In 2019, the committee’s role expanded to include the constitutional validity of regulations.⁷⁹

A Senate Standing Committee for the Scrutiny of Grants would be able to apply a non-partisan analysis to government grants to ensure that they meet standards. Legislative changes would be required to appropriations Bills to allow for a house of parliament to disallow a grant. As with regulations, exceptions could be made for some types of grant – for example emergency funding.

PUBLICATION OF MINISTERIAL DIARIES

Ministers in Queensland and NSW are required to publish their diaries, containing all portfolio-related meetings and activities.⁸⁰ The same should be required of federal ministers.

FREEDOM OF INFORMATION AND OPEN GOVERNMENT

Quota for unreviewed freedom of information exceptions

Currently, freedom of information (FOI) officers have powerful incentives to conceal as much information as possible – to protect their department and minister from embarrassment and to deter future demanding FOI requests. Their incentives to release information are limited.

Departments could be given a quota of how many pages of FOI requests can be subject to exceptions before an external review of the decision is triggered. This would incentivise FOI officers to be circumspect with their use of exceptions.

⁷⁸ Knaus (2021) *Coalition’s planned crackdown on charities should be scrapped, Liberal-led committee finds*, <https://www.theguardian.com/australia-news/2021/sep/30/coalitions-planned-crackdown-on-charities-should-be-scrapped-liberal-led-committee-finds>

⁷⁹ Snape (2019) *Can the Commonwealth fund waterslides? Rogue Senate group gets new powers to ask those questions*, <https://www.abc.net.au/news/2019-11-28/delegated-legislation-committee-blowtorch-ministers-bureaucrats/11744768>

⁸⁰ Keane (2021) *Transparency, accountability and regulation: corruption body pushes for massive overhaul in lobbying*, <https://www.crikey.com.au/2021/06/23/transparency-accountability-regulation-corruption-body-overhaul-lobbying/>; Queensland Department of the Premier and Cabinet (2021) *The Queensland ministerial handbook*, p. 40, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/ministerial-handbook.aspx>

Whistleblower legislation reforms

The Moss independent review of whistleblower protections in the *Public Interest Disclosure Act (PID Act)* made recommendations for improving the Act in 2016, which are yet to be implemented.⁸¹ Mark Dreyfus, who was Attorney-General when the Act was legislated in 2013, has called for changes.⁸² Independent MP and former whistleblower Andrew Wilkie has also said the current legislation needs reform.⁸³

The Jenkins review has recommended that whistleblower protections in the *PID Act* should be extended to political staffers.⁸⁴

The Moss and Jenkins recommendations should be implemented.

Disclosure of Cabinet discussions

It is possible to keep cabinet confidentiality while radically increasing public access to cabinet documents. In New Zealand, the proactive release of cabinet material policy means most cabinet papers and minutes recording the decision are published within 30 business days of a final decision being taken.⁸⁵ This has not appeared to interfere with the ability of NZ cabinet ministers to robustly debate policy ahead of a decision being made.

Australia should trial the same arrangement for the term of the 47th Parliament.

⁸¹ Canales (2021) *Govt accused of sitting on crucial whistleblowing reforms*, <https://www.canberratimes.com.au/story/7311653/govt-accused-of-sitting-on-crucial-whistleblowing-reforms/>

⁸² Canales (2021) *"A great disappointment": Labor promises fix for whistleblowing laws*, <https://www.canberratimes.com.au/story/7460653/a-great-disappointment-labor-promises-fix-for-whistleblowing-laws/>

⁸³ Wilkie (2015) *HRW questionnaire*, p. 1, https://www.hrw.org/sites/default/files/supporting_resources/andrew_wilkie_response_to_hrw_questionnaire.pdf

⁸⁴ Australian Human Rights Commission (2021) *Set the standard: report on the Independent Review into Commonwealth Parliamentary Workplaces (2021)*

⁸⁵ NZ Department of the Prime Minister and Cabinet (2018) *Proactive release of Cabinet material*, <https://dpmc.govt.nz/publications/proactive-release-cabinet-material>

Documents to remain in possession of a minister

Under current laws, when there is a new minister the documents belonging to the previous minister may be transferred to the new minister, destroyed or transferred to the National Archives. In the latter two cases, the document is no longer accessible through FOI laws.⁸⁶

In practice, this allows ministers to escape scrutiny – particularly when portfolios are frequently shuffled. Documents should be required to be retained within the reach of FOI law where possible.

⁸⁶ OAIC (n.d.) *Requesting official documents held by a minister*, <https://www.oaic.gov.au/freedom-of-information/your-foi-rights/requesting-official-documents-held-by-a-minister>

Accountability institutions

ABC FUNDING

The ABC is a key part of Australia’s democratic infrastructure. Recent polling shows most Australians (61%) agree that a strong, independent ABC is critical to a healthy democracy, with 25% that strongly agree.⁸⁷

However, the ABC cannot do its vital work if it is starved of funds – and funding serves as a powerful lever of influence in the hands of governments.

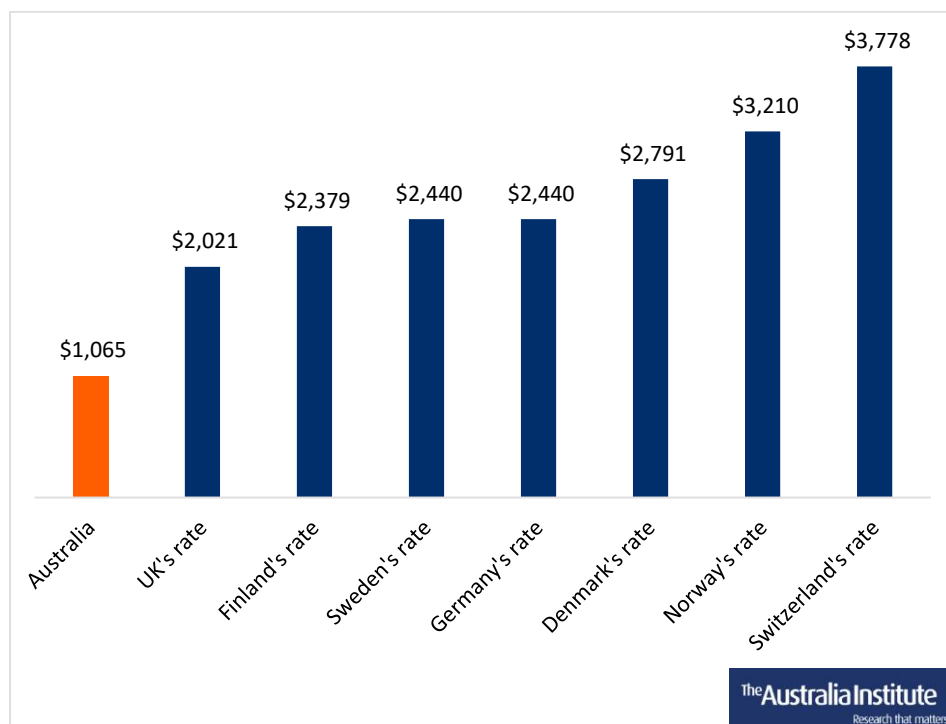
Australia Institute research finds that the ABC is also underfunded when compared to other public broadcasters in developed countries around the world. Research by consultants Nordicity for the Canadian Broadcasting Corporation found that in 2016 Australia placed 13th out of 18 Western countries for per capita public funding of public broadcasting. The British Broadcasting Corporation (BBC) receives almost twice as much public funding per Briton as the ABC and SBS receive per Australian – and Switzerland, Norway, Denmark, Germany, Sweden and Finland all have even higher per capita public funding than the United Kingdom.⁸⁸

Figure 2 shows what the ABC’s total funds from government would be if Australia’s public funding per capita were equal to that of the top six funders of public broadcasting: its funding would increase from \$1,065 million to \$2,021 million per year if Australia’s public funding per capita were equivalent to the UK and to \$3,778 million per year if equivalent to Switzerland.

⁸⁷ The Australia Institute (2022) *Polling – ABC funding, independence, and democracy*, <https://australiainstitute.org.au/report/polling-abc-funding-independence-and-democracy/>

⁸⁸ Nordicity (2018) *International comparison of public funding for public service broadcasting, 2016: final report*, <https://cbc.radio-canada.ca/en/vision/strategy/latest-studies>

Figure 2: ABC funding at different public broadcasting funding rates (millions of dollars)



Source: Authors' calculations from Infrastructure, Transport, Regional Development and Communications Portfolio (2020) *Portfolio budget statement, 2020-21*, pp. 125, 496, <https://budget.gov.au/2020-21/content/pbs/index.htm>; Nordicity (2018) *International comparison of public funding for public service broadcasting, 2016: final report*, pp. 21–22, <https://cbc.radio-canada.ca/en/vision/strategy/latest-studies>

The SBS's funding would also increase, from \$297 million in the last year to between \$564 million (at the UK's rate) and \$1,054 million (Switzerland's rate).

Changing from a three-year to a five-year cycle for funding would also help secure the ABC's independence.

INTEGRITY COMMISSION “WITH TEETH”

The Australia Institute has been making the case for a national integrity commission since January 2017, when 41 prominent Australians signed our national anti-corruption body open letter. All Australian states and territories now have integrity commissions, with NSW's Independent Commission Against Corruption (ICAC) the most well known (and among the most powerful, with a strong record of exposing corrupt conduct).

The National Integrity Committee has outlined the principles required for a national integrity commission “with teeth”, that is, with the powers needed to expose corruption:

1. That the Commission is an independent statutory body that is provided with the required resourcing to enable it to promote integrity and accountability and to enable it to prevent, investigate and expose corruption
2. That the Commission has a broad jurisdiction, including the ability to investigate any conduct of any person that adversely affects or could adversely affect, directly or indirectly, the honest or impartial exercise of public administration, if the Commissioner deems the conduct to be serious or systemic.
3. That the Commission be granted the investigative powers of a Royal Commission to undertake its work, to be executed at the discretion of the Commissioner.
4. That the Commission may hold a public inquiry providing it is satisfied that opening the inquiry to the public will make the investigation to which the inquiry relates more effective, and would be in the public interest.
5. That the Commission be governed by one Chief Commissioner and two Deputy Commissioners, appointed by the Minister on recommendations from a bipartisan Parliamentary committee. The Chief Commissioner is to be appointed for fixed non-renewable 5 year terms, and must be a judge or a retired judge or be qualified for appointment as a judge.
6. That the Commission be empowered to make findings of fact, to be referred to a well-resourced and specialised unit within the DPP for consideration for prosecution.⁸⁹

In December 2018, the Coalition Government committed to implement a Commonwealth Integrity Commission following a period of consultation. The consultation process concluded in March 2021.⁹⁰ The Government's proposed model is deeply flawed, and the process has been repeatedly delayed and neglected.⁹¹ The most recent promise, that the Government would introduce legislation before the end of 2021, has been broken.⁹²

An anti-corruption watchdog with the necessary powers to investigate and deter corruption is likely to be a priority of the crossbench following the next federal election, as it has been in the past two terms of parliament.

⁸⁹ National Integrity Committee (2017) *Principles for designing a National Integrity Commission*, <https://australiainstitute.org.au/report/principles-for-designing-a-national-integrity-commission/>

⁹⁰ Attorney-General's Department (2021) *Commonwealth Integrity Commission consultation draft*, <https://www.ag.gov.au/integrity/consultations/commonwealth-integrity-commission-consultation-draft>

⁹¹ The Australia Institute (2020) *Every time the Attorney General said that a federal anti-corruption body was on its way*, <https://australiainstitute.medium.com/every-time-the-attorney-general-said-that-a-federal-anti-corruption-body-was-on-its-way-3acddd010672>

⁹² Murphy (2021) *Scott Morrison digs in over federal Icac – and tries to shift blame to Labor for slow progress*, <https://www.theguardian.com/australia-news/2021/nov/28/scott-morrison-digs-in-over-federal-icac-and-tries-to-shift-blame-to-labor-for-slow-progress>

FUNDING FOR OFFICERS OF THE PARLIAMENT

The Australian National Audit Office (ANAO) has had its funding cut, to the extent that it expects to conduct 40 performance audits this year – down from 55 in 2011–12. It will be 2024–25 before the ANAO has the funding to conduct 48 performance audits.⁹³

The Office of the Information Commissioner (OAIC) is similarly under resourced. The OAIC is projected to review 829 freedom of information decisions a year, but in 2020 received 1,066 requests for review. That number is expected to grow to 1,622 by 2023.⁹⁴ While the last budget contained funding for a dedicated Freedom of Information Commissioner, the lack of further funding means this growing problem has not been addressed.⁹⁵

Placing the funding of accountability institutions at the discretion of the Australian Government gives the government an inappropriate lever of influence over these institutions, and an incentive to limit their funding if their independent oversight threatens to embarrass the government.

An alternative model is the Victorian Electoral Commission, which has a special appropriation “to the necessary extent”, which means they are funded out of Consolidated Revenue to the extent required to do their job.⁹⁶

The ANAO, Office of the Australian Information Commissioner (OAIC) and Australian Electoral Commission could be given the same appropriation to guarantee they are properly funded and immune to government influence.⁹⁷

⁹³ Browne (2021) *Audit Office doing fewer performance audits than a decade ago*,

<https://australiainstitute.org.au/post/audit-office-doing-fewer-performance-audits-than-a-decade-ago/>

⁹⁴ Canales (2021) *“It will be difficult”: concerns over growing FOI caseload for watchdog*,

<https://www.canberratimes.com.au/story/7180487/it-will-be-difficult-concerns-over-growing-foi-caseload-for-watchdog/>

⁹⁵ Browne (2021) *Freedom of information gets more attention*, <https://australiainstitute.org.au/post/freedom-of-information-gets-more-attention/>

⁹⁶ See *Electoral Act 2002* (Vic), sec.181, <https://www.legislation.vic.gov.au/in-force/acts/electoral-act-2002/063>

⁹⁷ Note that “unlimited” appropriations do exist for parts of the work of the ANAO and AEC.

EVALUATOR-GENERAL

Economist and government advisor Nicholas Gruen has recommended the creation of a new officer of parliament, the Evaluator-General. With similar powers and responsibilities to the Auditor-General, the Evaluator-General would be responsible for monitoring and evaluating government programs. Whereas public servants are inclined towards “soft secrecy and euphemism”, and declaring almost every program a success, the Evaluator-General would have the independence and incentives to fairly evaluate programs.⁹⁸

The Centre for Independent Studies (CIS) has suggested Gruen’s proposal be given further consideration. CIS’s proposal for Regulatory Impact Statements to be “prepared independently of government” (through a new independent agency or by the Productivity Commission) is also worth consideration.⁹⁹

The creation of an Office of the Evaluator-General would add a valuable new accountability institution.

⁹⁸ Gruen (2016) *Why Australia needs an evaluator-general*, <https://www.themandarin.com.au/64566-nicholas-gruen-evaluator-general-part-two/>

⁹⁹ Potter (2016) *Submission to the Productivity Commission 5 year productivity review: Increasing Australia’s Future Prosperity*, p. 5, <https://www.cis.org.au/app/uploads/2017/06/PC-Productivity-review-submission-FINAL-front.pdf>

Elections

ROBSON ROTATION FOR BALLOTS

Under Robson Rotation, the order of candidates rotates so every candidate appears at the top of the ballot paper an equal number of times. In single-member electorates, this counteracts the effect of the “donkey vote” (voting based on the order candidates appear). In multi-member electorates, rotation has the added benefit of disrupting the order of candidates as dictated by parties thereby encouraging voters to choose their preferred candidates within parties as well as their preferred party.

The ACT and Tasmania both use Robson Rotation in their Hare–Clarke elections, and it would make sense for the Senate to do so as well.¹⁰⁰

Senator James McGrath has introduced a private senator’s Bill that would introduce Robson Rotation (and optional preferential voting) in the House of Representatives, but not the Senate.¹⁰¹

TRUTH IN POLITICAL ADVERTISING LAWS

Recent years have witnessed a growing number of complaints from both sides of politics that misinformation and misleading advertising are rampant in the lead-up to elections.

Truth in political advertising laws are extremely popular. Not only do they enjoy support from all sides of politics, they are also supported by nine in 10 Australians.¹⁰²

There are clear examples being set across Australia that the federal parliament can follow. In South Australia, truth in political advertising laws have existed since the 1980s. In 2020, at the behest of a crossbencher, the ACT Legislative Assembly unanimously passed truth in political advertising laws that came into effect in July 2021.¹⁰³

¹⁰⁰ Tasmania also uses it in Legislative Council and local government elections.

¹⁰¹ McGrath (2021) *Commonwealth Electoral Amendment (Ensuring Voter Choice Through Optional Preferential Voting and the Robson Rotation) Bill 2021*,

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1329

¹⁰² The Australia Institute (2021) *Open letter: 39 prominent Australians call for truth in political advertising laws*, <https://australiainstitute.org.au/post/open-letter-39-prominent-australians-call-for-truth-in-political-advertising-laws/>

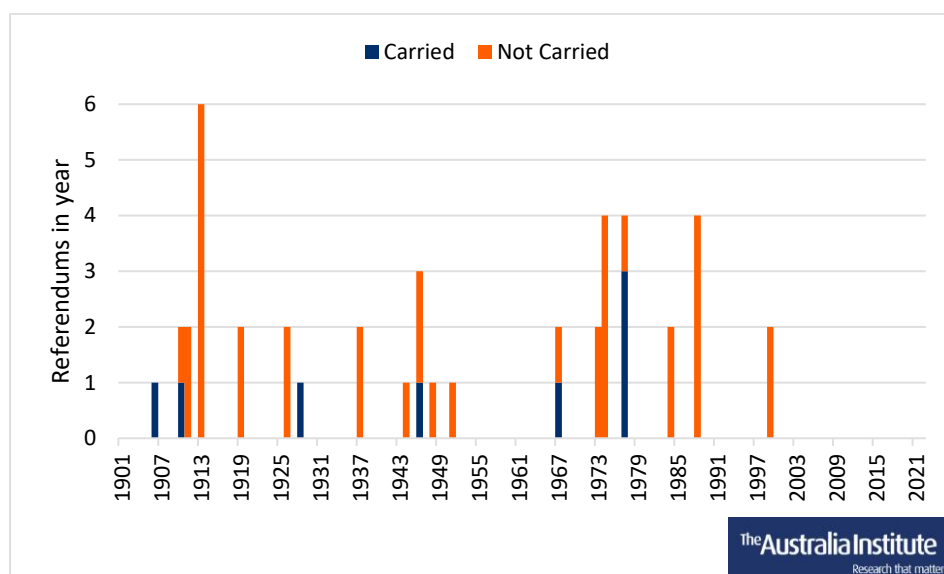
¹⁰³ Elections ACT (2021) *Changes to ACT Legislative Assembly campaign finance and truth in political advertising laws commence today, 1 July 2021*, <https://www.elections.act.gov.au/news/2021/changes-to-campaign-finance-and-truth-in-political-advertising-laws-to-commence-from-1-july-2021>

Independent MP Zali Steggall has proposed a Bill that would introduce South Australian-style laws at the federal level, which warrants further consideration and debate.

Constitutional reform

Australian governments have regrettably neglected constitutional reform. Australia has gone 22 years without a referendum and 45 years without a successful referendum; in both cases, the longest gaps in Australian history. Because referendums have a low success rate, governments are reluctant to hold them – but this only reinforces the conventional wisdom that constitutional reform is prohibitively difficult.

Figure 3: Referendums since Federation



Constitutional reform will be difficult and is likely in the first instance to focus on Indigenous recognition in the Constitution and perhaps a constitutionally entrenched Voice to Parliament.

As well as these important reforms, opportunities are ripe for further constitutional amendments to improve Australia's democracy and parliamentary processes.

RECOUNT METHOD FOR SENATORS

After a double dissolution, the 12 newly elected senators for each state must be allocated long and short terms.

In the past, this has been done by “order of election”, gives the long terms (6 years) to the first six senators elected in the count, and the short terms (3 years) to the remaining six senators elected. This can lead to unbalanced outcomes where the distribution of senators receiving long terms bears little resemblance to the ratios of votes received.¹⁰⁴

The fairer “recount” allocation for assigning seats after a double dissolution election allocates the long terms to the six senators that would have been elected had the election been a half-Senate election. The remaining six senators receive short terms.¹⁰⁵

Section 282 of the *Commonwealth Electoral Act* provides for recount allocation. However, the Constitution gives the Senate the power to decide for itself how to assign long and short terms, even when legislation provides otherwise.¹⁰⁶

In the two most recent double dissolutions, those who would benefit from the order of election allocation (Labor and the Democrats in 1987; Labor and the Coalition in 2016) have had the numbers in the Senate to choose this method over the fairer recount allocation.¹⁰⁷

Only a referendum could bind future Senates to using the recount allocation.¹⁰⁸

SECTION 44 REFORM OR ABOLITION

The loss of several senators and members during the 2016–2019 Parliament to section 44(i) of the Constitution should raise concerns. The examples of those who were ineligible to hold office due to their citizenships included those who did not even know they had foreign citizenships and those who were at the mercy of foreign governments as to whether their citizenship was cancelled in time.

Other subsections of section 44 are also problematic, among them subsection 44(iii) banning those who are bankrupt or insolvent from serving and subsection 44(iv) banning

¹⁰⁴ Green (2016) *How long and short Senate terms are allocated after a double dissolution*, <https://www.abc.net.au/news/2016-04-25/how-long-and-short-senate-terms-are-allocated-after-a-double-dis/9388772>

¹⁰⁵ Green (2016) *How long and short Senate terms are allocated after a double dissolution*

¹⁰⁶ Green (2016) *How long and short Senate terms are allocated after a double dissolution*

¹⁰⁷ Green (2016) *How long and short Senate terms are allocated after a double dissolution*

¹⁰⁸ Green (2016) *How long and short Senate terms are allocated after a double dissolution*

those with an office of profit under the Crown. Past inquiries have proposed deleting or amending all five subsections of section 44.¹⁰⁹ The most recent inquiry concluded:

s. 44 imposes obligations on potentially half of all Australians which would prevent them from what should be their fundamental right in a democracy—nominating to stand for election.¹¹⁰

Section 44 should be revised by a non-partisan commission and a more limited, modern and clearly-drafted amendment should be put to voters at a referendum.

¹⁰⁹ Joint Standing Committee on Electoral Matters (2018) *Inquiry into matters relating to Section 44 of the Constitution*, pp. xix, 21,
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/Inquiry_into_matters_relating_to_Section_44_of_the_Constitution

¹¹⁰ Joint Standing Committee on Electoral Matters (2018) *Excluded*, pp. 2, 49–50,
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/Inquiry_into_matters_relating_to_Section_44_of_the_Constitution/Report_1

Other possibilities

FROM THE 2010 AGREEMENTS

The negotiations that followed the 2010 election resulted in the “Agreement for a better Parliament” between Labor, the Coalition and independent MPs Rob Oakeshott and Tony Windsor, as well as agreements between the Labor Government and Oakeshott and Windsor, Andrew Wilkie, and the Australian Greens (separately).¹¹¹

While some of the reforms were implemented, others were not. Reforms that could be taken up from these 2010 proposals include:

- House of Representative committees able to prioritise and/or launch own-motion inquiries
- where the government refuses to cooperate on issues of public interest disclosure (Estimates questions, questions on notice and orders for the production of documents), this would be referred to the Information Commissioner for adjudication
- dedicated time for private members’ Bills¹¹²
- House of Representatives to commit to debating and voting on private members’ Bills from the Senate
- a Parliamentary Integrity Commissioner to advise on entitlements, conduct investigations, uphold the Code of Conduct and maintain the lobbyists’ register
- Speaker and Deputy Speaker of the House of Representatives to be drawn from different parties, paired, and to abstain from party meetings.

¹¹¹ Griffith (2010) *Minority governments in Australia 1989-2009: accords, charters and agreements*; see also Rothwell & Dalla-Pozza (2010) *New political paradigm shows early signs of wear*, <https://www.smh.com.au/politics/federal/new-political-paradigm-shows-early-signs-of-wear-20100921-15k6k.html>

¹¹² Allowed for in the UK House of Commons, where opposition parties choose business for debate 20 days a year, and individual members a further 23 days a year.

OTHER PROPOSALS

- Petitions that reach a particular threshold of signatures must be debated in the House of Representatives, based on the model in the NSW Legislative Assembly
- Government to commit to the Nolan Principles, which are seven principles for public service that were introduced in the United Kingdom in 1995¹¹³
- Royal Commission into the handling of the COVID pandemic¹¹⁴
- stop contracting out of government services
- removing ministerial discretion over Australian Research Council grants, which currently gives the minister a veto over research grants¹¹⁵
- political advertisements stored in a publicly-available advertisements library¹¹⁶
- lifelong civics education.¹¹⁷

CONSTITUTIONAL REFORM

The House of Representatives Standing Committee on Social Policy and Legal Affairs has made a number of recommendations around facilitating referendums:

- expand the National Schools Constitutional Convention (NSCC) program
- Attorney-General's Department to "commission a study on the Australian people's awareness of the Constitution, referendums and constitutional matters"
- a public education campaign
- Parliament to establish a Joint Standing Committee on Constitutional Matters.¹¹⁸

¹¹³ Good Governance Institute (2020) *The Nolan Principles*, <https://www.good-governance.org.uk/publications/insights/the-nolan-principles>

¹¹⁴ As recommended by Michelle Grattan: Grattan (2022) *A royal commission into COVID's handling would serve us well for the future*, <http://theconversation.com/grattan-on-friday-a-royal-commission-into-covids-handling-would-serve-us-well-for-the-future-175845>

¹¹⁵ Currently the subject of a Senate committee inquiry: *Australian Research Council Amendment (Ensuring Research Independence) Bill 2018* (Faruqi), https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1150; with support from Universities Australia: Visentin (2022) *University lobby backs calls for minister's research veto power to be abolished*, <https://www.smh.com.au/politics/federal/university-lobby-backs-calls-for-minister-s-research-veto-power-to-be-abolished-20220228-p5a0f1.html>

¹¹⁶ For more detail, see Browne (2019) *We can handle the truth: opportunities for truth in political advertising*

¹¹⁷ See also Browne & Oquist (2021) *Representative, still*, <https://australiainstitute.org.au/report/representative-still-the-role-of-the-senate-in-our-democracy/>

¹¹⁸ Standing Committee on Social Policy and Legal Affairs (2021) *Inquiry into constitutional reform and referendums*, pp. ix–xiii, https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Constitutionalreform/Report

Labor members of the committee also recommended that the Australian Government “establish a process for regular constitutional conventions”.¹¹⁹

At least three proposed constitutional amendments are worthy of further consideration:

- recognition of local government in the Constitution
- right to freedom of expression or a broader Bill of Rights¹²⁰
- changes to allow for country-wide proportional representation.

¹¹⁹ Standing Committee on Social Policy and Legal Affairs (2021) *Inquiry into constitutional reform and referendums*, pp. 85–86

¹²⁰ At the time of writing, the subject of an ongoing inquiry: Senate Standing Committee on Legal and Constitutional Affairs (2022) *Constitution Alteration (Freedom of Expression and Freedom of the Press) 2019*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ConstitutionAlteration

Conclusion

Reform-minded parliamentarians can choose from a smorgasbord of measures that would make government more accountable, ensure public money is better spent and help Parliament operate more smoothly and justly. As the 2010–2013 hung parliament shows, these reforms can endure and make a lasting impact on the quality and nature of Australian democracy.

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