

## **Getting elected as an Independent: Electoral laws and party favouritism**

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While it is true that government in Australia, both federally and in the States and Territories, almost always alternates between the Labor Party and the Liberal Party (the latter more often than not in coalition with the National Party), Independent members have been a feature of parliaments for many years, particularly at the State level.<sup>1</sup> Over the last decade or so Independents have often been key political players: for a time, they have held the balance of power in New South Wales, Victoria, Queensland, South Australia, Tasmania and the Australian Capital Territory. Since 1980 an unprecedented 56 Independents have served in Australian parliaments. In 2003, 25 of them were still there. New South Wales has been the most productive jurisdiction during that time, with fourteen independent members, and Tasmania the least, with only one. Size of State is not, however, of great significance. Six Independents have been elected in South Australia since 1980—twice as many as have come from Victoria. A geographical pattern is clearly evident in the fact that between 1980 and 2003, no fewer than 33 Independents won regional or rural constituencies. Now Australia is home to more non-party Independent parliamentarians than any other comparable Western country.

Such patterns might suggest that Australia's electoral system, although designed by and for major parties, is also open to representation by Independents. Certainly compulsory, preferential voting in single-member districts aids the cause of Independents. Those voters disillusioned with their traditional party of choice are compelled to vote; Labor and the Coalition are more likely to direct preferences to Independents than to each other;

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<sup>1</sup> Brian Costar and Jennifer Curtin (2004), *Rebels with a Cause. Independents in Australian Politics*, Sydney: UNSW Press. Thanks go to Giorgia Moar for her assistance in gathering additional material.

and, unlike some proportional systems, electorates are small enough to allow a candidate without the support of a party machine to assemble sufficient primary votes to win.<sup>2</sup>

Yet despite this (unintentional) outcome, the electoral procedures of the Commonwealth, States and Territories discriminate directly or indirectly against Independents in a number of ways. For example, in most cases Independent candidates are denied access to the electronic version of the electoral roll, and usually only have access to the printed roll. While this restriction does not apply to incumbent Independents, it does restrict the capacity of other Independents to produce campaign mail-outs including postal vote information with the same ease as political parties. Victoria and Western Australia are recent exceptions and now allow all candidates access to the electronic version of the roll.

Independents, like parties, have access to the post-election public funds that are distributed according to the number of primary votes received. However, there are other rules regarding fund-raising that discriminate against Independent candidates. For example, the tax treatment of donations varies for Independents and party-endorsed candidates. While individual donations made to party candidates over \$2 are tax deductible to a limit of \$100, donations made to Independents are not tax deductible. In addition, registered political parties can reclaim GST, whereas the GST paid by Independents as individuals is not. This means Independents pay 10 per cent more than party candidates on advertising, printing and other campaign services.<sup>3</sup>

Other funding and disclosure laws also impact negatively on Independent candidates. In most States, the upper limit for anonymous donations to Independents is much lower than that for parties. For example, in NSW candidates must declare all donations which exceed \$200 in contrast to parties which are not required to declare donations under \$1500. A similar distinction between candidates and parties is made at the Commonwealth level. In addition, in many cases Independent candidates are prohibited

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<sup>2</sup> Ibid.

<sup>3</sup>Peter Andren (2002), Submission to the Joint Standing Committee on Electoral Matters Inquiry into the Conduct of the 2001 Federal Election, Canberra, p. 2.

from running raffles to raise funds, as only organisations (such as parties) can gain a permit to conduct this kind of fundraising.

In Tasmania, an expenditure limit of \$10,000 per candidate has been set for those contesting the Upper House (this increases by \$500 per year), thereby ensuring Independent candidates are not swamped by major party advertising. A similar restriction existed in the Tasmanian Lower House until 1985 and this is an initiative that Independent Peter Andren is pursuing at the federal level. By contrast, in New South Wales, Independents do not have access to the Political Education Fund, which between 1994 and 2003 allocated \$12.5 million to the Labor, Liberal and National parties. It is claimed that these funds are not used for ‘education’ purposes but ‘by parties to finance their administration’.<sup>4</sup> In a similar vein, Peter Andren has argued that incumbent party MPs are unfairly advantaged because they may (inappropriately) draw on their (substantial) parliamentary allowances to fund electioneering costs.<sup>5</sup>

There are also variations between States and the Commonwealth in terms of the nomination process. In most cases a party-endorsed candidate needs only to be nominated by the registered party officer, whereas an Independent requires their nomination form to be signed by a number of eligible voters (often from their district). In South Australia this number is only two; in Queensland, the Northern Territory and Victoria it is six; in Tasmania ten; NSW 15; ACT 20; and at the Commonwealth level the required number is 50 (although incumbent Independents only require one signature).

Once nominated, most jurisdictions allow candidates to nominate whether ‘Independent’ appears next to their name on the ballot paper, although this is prohibited in Queensland. Where proportional representation is the voting method used, Independents or ungrouped candidates usually appear on the far right of the ballot paper. This means that Independents are unlikely to benefit from the ‘donkey’ vote. In the Senate, only parties or groups can be placed above the line on the ballot paper, where 94 per cent of the

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<sup>4</sup> *Sydney Morning Herald* 25 May 2003.

<sup>5</sup> Andren, *op.cit.*, see also Peter Andren, ‘Level Democratic Playing Field – You must be Joking’, Democratic Audit of Australia (<http://democratic.audit.anu.edu.au>).

electorate cast its vote, unless they group themselves with other Independents or unless they are serving Senators. In the 2004 election, Pauline Hanson attempted to resurrect her political career by standing as an Independent Senate candidate in Queensland. Hanson admitted that she ran on a ticket with her sister so that voters could pick her group (listed only as a letter) from above the line, thereby improving her chances of success.<sup>6</sup> By contrast, South Australia not only allows independent Legislative Council candidates to list themselves as such, below and above the line, they may also follow the descriptor of ‘Independent’ with five additional words. At the last South Australian election, above-the-line descriptions included the following: ‘Independent You Can’t Beat a Woman’ (an anti domestic-violence campaign) and ‘Independent for Voluntary Euthanasia’ (Philip Nitschke).<sup>7</sup>

Once elected, Independents are not always entitled to the same conditions of work as other parliamentarians. For example, Independents are not automatically entitled to undertake committee work, but are dependent on one of the major parties releasing one of its places. Another point of difference is that Independent MPs in NSW are given an extra staff member (a research officer). This dates back to the 50<sup>th</sup> Parliament (1991) when Independents held the balance of power and negotiated this outcome in order to enable Independents to have sufficient resources to review legislation. However, in most jurisdictions, the fact that Independents do not have party status means their access to certain privileges is limited. For example, in the Commonwealth parliament, Independents are not allowed access to the Budget lock-up. Moreover, because the seating of our parliaments is designed for two-party, oppositional exchanges, Independents and others on the cross benches often feel isolated from the ‘main’ game of politics in the Chamber. Nor is it unusual for Independents to feel intimidated by the behaviour of MPs from the major parties.<sup>8</sup>

Independents have been a continual feature of Australian parliaments since Federation. They have often been better represented than minor parties in Australia’s lower houses.

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<sup>6</sup>Scott, L. (2004), *The Australian*, 17 September, p 9.

<sup>7</sup> See section 62 of the SA Electoral Act (1985). Thanks to Marian Sawyer for these examples.

<sup>8</sup> Costar and Curtin, op.cit.

While parties remain an important link between the people and the parliament, there is a sizeable minority of citizens who feel the major parties at least, no longer represent their best interests. However, history still shows that there have been very few successful Independents, and it remains very difficult for an Independent to get elected. Part of the reason is because the rules regarding political practice in most Australian jurisdictions have been designed in a way that favours parties over individuals. While such measures appear undemocratic, they are unlikely to change significantly without considerable public support or the political will of the major parties.