SoD Summary

Australia: The State of Democracy

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One hundred years after Federation, Australian institutions are in need of democratic review and renewal. Despite an impressive democratic history, the assessment shows that public accountability and transparency have suffered from executive dominance; government resources are used for partisan benefit; and socio-economic, gender and racial inequalities persist in spite of a growing economy.

Key Recommendations

- Strengthen human rights protection of non-citizens, for example asylum seekers.
- Take further measures to recognize and reconcile Indigenous and non-Indigenous people.
- Enshrine more fully in domestic law the international human rights conventions ratified by Australia.
- Establish independent monitoring of anti-terrorist legislation.
- Take measures to increase youth engagement and enrolment, particularly through automatic enrolment.
- Adopt further measures to ensure representation of women and full diversity of the population in political and public office.

- Establish independent corruption commissions in those jurisdictions where they are still lacking.
- Address the misuse of public funds for party purposes and place limits on campaign expenditure and the corporate funding of political parties.
- Strengthen freedom of information and whistleblower protection laws.
- Increase efforts to meet the UN target for the volume of overseas aid.
- Address problems of transparency and accountability arising from intergovernmental decision making within Australia.

The 4 Pillars and the assessment

Citizenship, Law and Rights

Nationhood and citizenship

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Origins: Why perform a SoD assessment?

Despite the celebrated fact of being the first country to vote itself into existence, the authors considered that, after 100 years of the Federation, some of Australia's institutions are in need of evaluation and reform in order to renew their democratic credentials.

In particular, the researchers were motivated to assess the effects of the manifold institutional, political, economic and cultural changes produced during a decade of conservative government. Australia has a complex, multi-tiered system of governance and a multi-ethnic society that is both affluent and characterized by persistent socio-economic, ethnic and gender inequalities.

Despite broad commitment to equal citizenship, there are disputes over the meaning of the concept. Gender, race and ethnicity are important factors in determining experiences of citizenship, and there is a certain lack of representation of minorities. Planned and controlled immigration policies have contributed to relative social harmony and have been oriented towards permanent settlement. During the past few years, however, there has been a trend away from multiculturalism towards assimilationist policies based on so-called national values. Voting rights are restricted to Australian citizens at the parliamentary level, with the exception of British citizens who were on the electoral roll before 1984.

Rule of law and access to justice

In general terms, the rule of law is respected and there is widespread access to justice. The courts have also used their power and relative independence to effectively review administrative and executive actions. Yet asylum seekers have been denied access to the Australian legal system through off-shore detention and Indigenous people suffer disproportionate rates of imprisonment. There are issues over recognition of customary law, with different jurisdictions adopting different approaches. For example, in the Northern Territory customary law has long been taken into account in the courts, but without diminishing the right of Indigenous women to live free of violence.

Civil and political rights

These are extended to Australian citizens, but not necessarily to non-citizens. There is no enacted constitutional Bill of Rights and, even though Australia has ratified all the major UN human rights treaties, these are not always fully enshrined in domestic legislation. During the 1996-2007 period, Australia's human rights record came under critical scrutiny by UN treaty bodies; the government responded by dismissing such concerns as an intrusion on Australian sovereignty. Gender-based violence is a significant issue but Australian governments have implemented a wide range of policies

to deal with these matters. The death penalty has been abolished in Australia, and there is an independent body constituted in accordance with the Paris Principles, that oversees human rights protection. Freedom of movement, expression, association and assembly are guaranteed; yet, there are some limitations imposed on these by both industrial and anti-terrorism legislation.

Economic and social rights

Australia's federal system has well-established fiscal equalisation policies in order to ensure equal access in every State and Territory to basic social and economic rights. Yet, microeconomic reform to achieve a more flexible labour market has reduced the protection of social and economic equality via Australia's traditional system of compulsory arbitration. Recent industrial legislation has also hindered trade union activities. Despite economic growth, there are high rates of unemployment amongst young and Indigenous peoples, as well as a lack of universal paid maternity leave, a childcare system in disarray, and a persistent gender pay gap, despite equal opportunity legislation directed against gender-based discrimination. Social security and health provision are relatively widely available, though there is no universal dental-care service and access to income support and health care are by no means universal. Asylum seekers and refugees on temporary protection visas have been denied access to government services and support, while newly arrived immigrants have no access to social security for their first two years. People with disabilities and single parents have also been adversely affected by reforms to government pensions and benefits. While access to basic necessities of life is guaranteed, there are serious problems with overall living conditions of Indigenous Australians (there is a 17-year gap in life expectancy between Indigenous and non-Indigenous Australians). Nation-wide there has been a reduction in public housing stock and homelessness problems have become persistent. School education is free and compulsory, but access to post-secondary education is becoming increasingly expensive, despite the system of income-contingent loans whereby the repayment of tertiary education costs can be postponed until a threshold income is earned.

Representative and Accountable Government

Free and fair elections

Australia has a positive record in matters of electoral administration, as a long history of non-partisan electoral management ensures fair processes. It is relatively easy to register candidates and parties, although there are some biases against independent candidates. Voter turnout is relatively high due to an efficiently managed system of compulsory voting and extensive efforts to make voting accessible, including mobile polling booths in remote areas. Yet there are at least a million citizens not on the electoral roll, and young people often appear to feel disengaged from formal politics. There have been repeated calls for the introduction of automatic enrolment; currently the Australian Electoral Commission must remove people from the roll if they are found to have moved from their last address, but cannot automatically enrol them at their new address. Both the federal parliament and five of the six State parliaments are bicameral, with one house elected on the basis of single-member electorates (through the alternative vote) and the other elected through proportional representation (PR). Having one house elected by PR means it is unlikely to have a government majority and is better able

to perform the functions of legislative review and executive scrutiny. The use of single-member electorates for most lower houses has been associated with the underrepresentation of women, Indigenous Australians, immigrants, and minorities, including Greens, whose presence is almost exclusively in the houses of parliament elected by PR.

Democratic role of political parties

It is relatively easy to form parties and have them registered, despite requirements for minimum membership. Only one jurisdiction (Queensland) requires parties to have a democratic constitution. Two-party competition has allowed relatively stable governments, and has been reinforced by strong internal cohesion and discipline of the major parties; but this stability is achieved at the expense of representativeness. Moreover, barely 1% of the Australian population are members of a political party; the online campaigning organization GetUp has more members than all the political parties put together. Non-governing and opposition parties face no major impediments to organize and exercise scrutiny over the government, although lack of resources and staff can be complicated for minor parties. Public financing tends to act more as a supplement to than a replacement for private financing: although public funding is distributed on an equitable basis, for example two dollars per vote attracted by the party, no such constraints apply to corporate donations. There are no significant limits to private donations or to campaign spending, and disclosure of donations becomes the main mechanism to control party financing. Unfortunately it tends to come too late to be really effective – at the federal level disclosure of donations only took place 16 months after the 2004 election.

Government effectiveness and accountability

Despite entering into several free trade agreements and bilateral arrangements, Australian governments maintain significant control over domestic agendas. Australians show high levels of pride and confidence in its democracy, despite a certain level of distrust regarding their governments, legal system, and politicians. There tends to be strong executive control of Parliament and legislation both at the national and State levels, and notwithstanding systematic scrutiny, parliamentary control over budget appropriations and expenditure is limited. There has been a trend to make the public service more responsive to ministers, which has been seen as a process of politicization. This process also involves an increased role for relatively unaccountable ministerial advisers and political appointments to public sector boards. Freedom of Information (FOI) legislation exists, but has yet to contribute to a culture of open and accountable government; departments and public sector agencies still try to resist its institutionalization and smooth application.

Civilian control of the military and police

Both military and police forces are under direct and effective civilian control. Police and security forces are subject to various mechanisms of civilian oversight, but there is lack of resources to perform effective oversight of intelligence-related and anti-terrorist security operations. Moreover, there has been extensive outsourcing of police and quasi-policing operations that has created a problem of accountability. In both the military and in police forces there are ongoing harassment issues, particularly affecting women, while a "bullying" culture and lack of ethnic diversity are still problems.

Minimizing corruption

By international standards, Australia has a good record in matters of corruption. Yet, at the national level and in some States there are no major mechanisms to prevent or seriously investigate allegations of political corruption and bribery. The under-developed framework

Funding and form

Between 2002 and 2008, assessors commissioned by the Democratic Audit of Australia performed 10 focused audits on the state of democracy. Some 200 Audit discussion papers were published in the same period.

The Australian Audit team decided to add two core values - namely **civil liberties and human rights**, and **quality of public debate and discussion** - to the two basic democratic principles proposed by the original methodology.

This was due to: a) the major impact on democracy, produced in the name of the will of the majority, by the internal security measures following 11 September 2001; and b) the growing emphasis on deliberative aspects in contemporary democratic theory.

The assessors used two forms of comparison in order to highlight specificities of the Australian case. First of all, they compared Australia with similar countries in terms of history, socio-economic composition, and political institutions (Canada, New Zealand, UK, and USA). Second, they followed a within-case strategy, taking advantage of the Australian federal structure, and compared the States and Territories between themselves and with the Federation.

contributes to the impression there is no clear line of demarcation between holding public office and pursuing personal business or party political interests: the widespread use of government electronic advertising for party campaigning purposes is an example of the latter. In another example of institutional corruption, governments have rewarded or punished commentary by the print media through placing or withdrawing government advertising. There exist codes of conduct and registers of interests for parliamentarians and ministers and requirements regarding post-Ministerial employment and lobbying activities; yet, these standards are not applied equally across all jurisdictions.

Civil Society and Popular Participation

The media in a democratic society

Press freedom operates generally by convention and common law in Australia, as there are no legal guarantees. Anti-terrorist and security laws enacted post 11 September 2001 threaten to curtail freedom of the press, something reinforced by the historical animosity between the press and the courts, and the difficulty of protecting the anonymity of sources and whistleblowers. The concentration of media ownership in Australia is almost unmatched in other democracies, although there are norms that ensure space for free, independent media and journalists, and there also is a strong public broadcasting tradition. Until recently defamation law has varied between Australian jurisdictions and has been a barrier to press freedom, as truth has not always been a sufficient defence. The costs and delays involved in requests under FOI legislation have also restricted scrutiny of government.

Political participation

Although participation in political parties and trade unions is in decline, there is a wide array of not-for-profit social organizations in Australia and participation in them is high. There is a tradition of providing public funding for advocacy organizations ("peak bodies") representing sections of the community that would otherwise not have a voice in policy debate, such as new immigrant groups, sole parents or people with disabilities. While public funding can strengthen "weak voices", not all governments are comfortable with criticism coming from these organizations and public funding can make them vulnerable to political pressures and constraints. The same is true of non-government service providers dependent on government contracts. Looking at private sources of support, the ability to attract philanthropic funding may depend on charitable status and Australia does not yet have arms-length bodies to determine such status. Again this makes organizations critical of government vulnerable to decisions by a government agency (the tax office) to remove their charitable status.

While public office is open to all, the majority of positions have been filled by men from the dominant Anglo-Australian population. Australia has lagged behind comparable democracies such as New Zealand in terms of the representation of women in parliament and executive government, and although it has been ahead of Canada and the UK in terms of parliamentary representation it has had a smaller proportion of women in national

Cabinet.[1] The representation of Indigenous Australians and people with disabilities in the Australian Public Service has been dropping.

Government responsiveness

Australian governments use inputs provided by "peak bodies" (see above) in order to consult particular constituencies, and public consultation is built into policy development processes. Other mechanisms for demonstrating government responsiveness include community cabinets, petitions to the Parliament, and deliberative democracy processes; yet, the effect on government decisions of these processes are not always clear. Representatives are relatively accessible to their constituents; they are expected to live in their electorates and have their offices there to perform casework and attend functions. There is a high level of satisfaction with public service delivery and there are effective mechanisms to receive citizen feedback. Yet, Australians have reduced confidence in governments to solve problems. There are a range of possible explanations for this, from the ubiquity of negative advertising during election campaigns, perceptions of the role of corporate donations in influencing government decisions in favour of the 'big end of town' and the privatisation or contracting out of many of the services once provided by governments for their citizens.

Decentralization

Local government authorities have few resources and are dependent on State governments for their existence, since they have no recognition in the federal Constitution and no guarantee of a fixed share of federal revenue. They have been subject to increased financial pressures as additional functions have been devolved to them without additional resources. They have also been subject to amalgamations to achieve greater economies of scale, although this has been at the expense of democracy and local representation. Inquiries by independent corruption commissions have found flagrant examples of corruption in local government in the interests of property developers. Local Government Acts now have provisions for improved integrity mechanisms as well as requirements for community consultation on development proposals but the overall structural position of local government remains weak by international standards.

Democracy beyond the State

International dimensions of democracy

Australia has become increasingly open to international trade and financial flows, signing important FTAs and multilateral agreements. More effective mechanisms have been introduced for parliamentary oversight of treaty-making since 1996 but there is still a democratic deficit in this area. Treaty-making remains predominantly an executive function and neither parliament nor the broader community have much opportunity to contribute to negotiating positions or priorities. Australia has a long-standing involvement with, and commitment to, development assistance in its region, including electoral assistance and human rights institution-building, but this commitment has varied according to strategic interests. Since 2007 Australia's development assistance has been specifically directed toward

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[1] Since publication of *The State of Democracy* the election of the Cameron Government in the UK saw the proportion of women in Cabinet fall below Australian levels.

achieving the Millennium Development Goal No 3 regarding gender equality. However, while the volume of development assistance has increased under the Rudd Government, it is still only about half the UN target of 0.7 per cent of GNP. Australian governments have been slow in matters of incorporating signed conventions into domestic legislation, especially regarding human rights during the Howard government (1996-2007).

Federalism

Australia's federal system, combined with the Westminster system, has resulted in a set of tensions between the core values that sustain democracy. On the one hand, federal systems provide checks against powerful central governments and generate more opportunities for policy experimentation and popular participation; on the other hand, they also create multiple veto points and complicate matters of democratic accountability when decision-making is shared across governments. Arguments in defence of State's rights have historically been used to block the creation of a uniform system of civil and human rights, whereby all citizens would be guaranteed the same rights regardless of postcode. There has been an increasing tendency towards centralization within the Australian federal system, thanks to the financial power of the Commonwealth and legal interpretations by the High Court. The Senate was intended to act as the House of the States, but from the beginning was dominated by party rather than geographical divisions. It works as check and balance to the Executive domination of the lower house largely due to its electoral system and the holding of the balance of power by minor parties. States' effective representation occurs through intergovernmental bodies that involve Federal and State governments. Despite some efforts at reform, intergovernmental agreements are often presented to respective parliaments as a *fait accompli*, bypassing parliamentary deliberation and oversight. Such executive federalism lacks transparency and accountability.

Links

Federation Press website:
http://www.federationpress.com.au/bookstore/book.asp?isbn=9781862877252

Introduction to the book:
http://democraticaudit.org.au/wp-content/docs/Introduction-1.pdf

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