

Australia's Electoral Management Bodies – Degrees of Independence

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abstract

Australia is at the forefront of professional and independent electoral administration, especially when assessed in international comparative studies. However, while there is often debate about the levels of fairness provided by the various electoral systems in use throughout Australia, less scrutiny has been applied to the electoral management bodies charged with administering these systems. Although there are many similarities in the way electoral administration has developed in Australia's nine jurisdictions (one federal, six state and two territory), there are also significant differences in their structure and operation. Since the 1980s, a major shift has occurred – away from electoral 'offices' which were contained within government departments – to independent statutory commissions.

While these changes are generally hailed as improving the independence of electoral administration, the degree to which these commissions are able to operate independently of political influence can vary significantly. This paper provides insight into the degrees of independence the eight commissions (and one remaining office) actually provide, with an emphasis on appointments, budgeting, and relationships between commissioners, ministers and parliaments. The paper draws on personal interviews with current commissioners, and relevant members of parliament, as well as analysis of legislative reforms and the use of parliamentary oversight committees.

Australia's electoral management bodies have an international reputation for their professional, non-partisan and independent performance. However, how strongly entrenched is that integrity and independence, and therefore, how secure is Australia's reputation in this area? Australian commissions are relatively similar in terms of structure and responsibility; however they hold varying degrees of power, dependent on their enacting legislation and the level of parliamentary and ministerial oversight that they are subject to. This paper, which forms part of a broader research project assessing equity and access issues in Australian electoral systems, examines the independence of Australia's nine electoral administrations – that is, the federal, six states, and two territories' management bodies¹, using criteria recognised in international comparative studies. In addition to an analysis of the relevant legislation, material is drawn from personal interviews with the nine current full-time commissioners around Australia, as well as with relevant ministers,

¹ Norfolk Island is not included – even though it has its own legislative assembly, its political system is quite foreign to the rest of Australia – there is a lack of political parties, no separate electoral body, and a rare voting system of first-past-the-post multiple voting.

shadow ministers, and in those jurisdictions with a parliamentary committee with a specific remit for electoral matters (Commonwealth, NSW, and Queensland), members of those committees. The interview subjects were assured confidentiality in the way their transcripts were to be used, to encourage more open and frank responses, and therefore direct quotes used in this paper are not attributed.

One aspect of electoral fairness is whether elections are governed by an independent and non-partisan electoral administration. Australia has a long history of professional electoral management bodies that administer elections in a relatively fair and non-partisan manner. Currently all Australian jurisdictions, except South Australia, have electoral commissions. South Australia has an electoral ‘Office’, but is expected to move to the commission model in the next year. While these bodies are empowered by the relevant legislation in each jurisdiction², the same legislation can also place limitations on their ability to act independently and to provide a level playing field for participants in elections.

A commissioner’s previous experience in electoral administration prior to appointment can have an impact on their ability to act in an independent manner, and generally Australian commissioners have established a lengthy professional career based on the application of non-partisan principles of fair elections (see Table 1). Of the nine current commissioners, only one, Ian Campbell, came into the position with no previous electoral experience. Mr Campbell’s professional background lies in senior public service administration, including time as a departmental deputy secretary and deputy president of the Repatriation Commission.

-- Table 1 about here --

In the literature on electoral system management, it is widely accepted that, to ensure free and fair elections, electoral management bodies should be independent of the government of the day and of any political partisan connections. Orr, Mercurio and Williams identify electoral authority

² Commonwealth – *Commonwealth Electoral Act 1918*; NSW – *Parliamentary Electorates and Elections Act 1912*; Victoria – *Electoral Act 2002*; Queensland – *Electoral Act 1992*; Western Australia – *Electoral Act 1907*; South Australia – *Electoral Act 1985*; Tasmania – *Electoral Act 2004*; ACT – *Electoral Act 1992*; Northern Territory – *Electoral Act 2004*.

independence as being the singularly most important factor in ensuring free elections (Orr, et al, 2003:399). Mofazzar and Schedler argue that in established western democracies, independence can be achieved through the state utilising a neutral bureaucracy to administer elections. In such democracies, ruling and opposition parties use ‘structures of mutual constraint’, either by balancing commissions with political appointments from both sides, or by the delegation of power to a non-partisan body (Mofazzar and Schedler, 2002:16).

This latter method has typically been the situation in Australia, although the level of bi-partisanship in delegating control to a non-partisan public service bureaucracy has been influenced by the degree of control the ruling party wishes to maintain over the electoral legislation. One example of the level of detail that governing parties exert on electoral legislation can be seen in section 206 of the *Commonwealth Electoral Act 1918*, which stipulates that pencils, and not pens, are to be used in marking ballot papers. To change to the use of pens would require an Act of parliament!

Massicotte, Blais and Yoshinaka (2004) identify three approaches of establishing electoral authorities. Their analysis focuses on who is appointed as the responsible decision-making person for election administration (2004:83). In their model, they differentiate between: the appointment of multiple commissioners to represent a diversity of (usually political) views; allowing a government minister to be in charge of the electoral process; and the appointment of a single commissioner – again this final option being the favoured Australian approach (Massicotte et al, 2004:83).

-- Table 2 about here --

Wall et al (2006) identify three models of electoral authority for the International Institute for Democracy and Electoral Assistance (IDEA). These models incorporate a range of criteria including; institutional arrangements, accountability, powers, composition, security of tenure and budget control (Wall et al, 2006:9, see Table 2). Briefly, the three models are: Independent – being institutionally independent from the executive; Government – that is, within or under the direction of a minister and department; and Mixed – a combination of the first two models, with a degree of institutional independence, but still within the direction and control of the government of the day (Wall et al, 2006:9). While IDEA identifies the Australian system as an example of the independent

model (Wall et al, 2006:304), there is one critical criterion in which the Australian Electoral Commission, and other Australian commissions, do not meet the independent framework, this being the criterion of having the power to develop the electoral regulatory framework independently of the law (2006:9). In Australia, this power resides with the parliament and government of the day, and is critical in limiting the commissions' ability to operate independently. In this respect, Australian electoral authorities lie more within IDEA's Government or Mixed models. It can also be questioned whether Australian commissions meet the Independent criteria of having the ability to manage its budget without day-to-day government control.

The term 'independence' is often interchanged with 'neutrality', 'non-partisanship' and 'impartiality', however differences exist between these terms. An electoral authority may be established as an independent body, but exhibit bias through partisan actions. Conversely, an authority that is not independent, for example, one that is an office entirely within a government department, may operate in a non-partisan and impartial manner due to a lack of partisan direction from the responsible minister and the neutrality of its public service bureaucracy. Dacey (2005) argues that the Australian Electoral Commission was created with the intent of it being both independent – i.e. not influenced by others and thinking for itself (2005:2); and impartial – without allegiance or obligation to any political parties, candidates, or other political players (2005:3). However, it cannot be argued that the commission operates in a totally non-partisan manner, as it is constrained by the legislative environment in which it has to operate.

It is also generally agreed that electoral authorities should not only be independent and impartial, but that they should also not allow for any perception of dependence or partiality to occur (Dacey, 2005:4; Orr, et al, 2003:400). To this end, IDEA identifies five essential criteria for ethical electoral administration, being – respect for the law; non-partisanship and neutrality; transparency; accuracy; and service to voters (IDEA, 1999:9-15). Under the ethical principle of non-partisanship and neutrality, the perception of neutrality is seen as a critical factor in successful elections. IDEA argues that one way to maintain neutrality is for electoral administrators not to express a view on an issue that could be a political issue in an election (IDEA, 1999:12). However, when the electoral system, or a component of it, becomes an election issue, administrators can be caught between remaining silent on a matter which may give an advantage to one party, and expressing a view based on electoral fairness for voters, but which may be against government policy. The difficulty was expressed by one commissioner:

If something's come up that's already partisan, you've got to be very careful particularly as I said, my own personal view was, if I had to put a personal view I would've been supporting the [change in legislation], which is a bit odd I know, but I didn't think it was in anybody's interests on either side for me to say that.

A different view, at least in the Commonwealth environment, is given by Dacey, who argues that section 7 (1) of the *Commonwealth Electoral Act* places the commission at the centre of political debates on electoral matters, by requiring the commission to promote public awareness, provide advice to parliament, and conduct and publish research. To maintain independence, Dacey argues that the commission should comment from the viewpoint of improving the quality of the electoral process (Dacey, 2005:6).

The Size of Commissions

The number of commissioners to be appointed to commissions has not been a contentious issue in Australian electoral management. All jurisdictions operate with a single commissioner appointed in a full-time capacity as the chief executive officer of the organisation. In three jurisdictions, the Commonwealth, Tasmania, and the ACT, two other commissioners are appointed on a permanent part-time basis, and are tend to be drawn from the legal profession (i.e. a senior judge) and the senior public service (usually with expertise in statistics and demographics). In the remaining jurisdictions, additional commissioners are appointed when there is a need to conduct a redistribution of electoral boundaries.

Current commissioners have differing views on the merits of having a single commissioner, as against a multi-member board commission, with some preferring autonomous decision-making, while there was also support for collaborative and consultative management. The preference for the latter was expressed by one commissioner:

a Commission can stand as three people and as a body we've considered this and we've done it, and it's not like that you've personally had any biased personal opinion, that you can be labelled yourself. It's a body, it's not just me thinking this way because of any biases. This body of three people sat down and deliberated and decided this. What my personal views are, who knows. It gives it that air of independence that the body's doing it.

Political Affiliations

Two mechanisms exist in Australian legislation to guard against partisan appointments – one is to prevent members or previous members of political parties to be eligible for appointment; and the second is to require the government to consult with other political parties prior to appointments being made. Four jurisdictions (NSW, Victoria, Tasmania, and the ACT) prevent people who have been members of a political party within the previous five years from being eligible for appointment to a commissioner’s position, while Queensland limits the prohibition to existing members of political parties. In addition, four jurisdictions (Western Australia, Tasmania, ACT, and the Northern Territory) place restrictions on current or previous members of parliament. Such requirements generally have come about from one jurisdiction’s reform being adopted by others. For example, the Northern Territory’s *Electoral Act 2004* was heavily influenced by the ACT’s *Electoral Act 1992*. While such restrictions have merit in placing a check on overt partisan influence, if a partisan appointment were to be made, it is more likely that such an appointment would be of someone with less well-known or obvious political leanings. Partly to counter the potential for this, and to encourage cross-party support for commissioner appointments, modern electoral legislation often has a requirement for the government to consult with other political parties before deciding on a preferred candidate.

Commissioner selection and appointment processes

Four general methods of appointment processes exist in Australia, and these will be discussed briefly below. In order of increasing accountability, they are – firstly, appointment by the Governor or Governor General, on the recommendation of the government of the day. In this process, which exists for the Commonwealth, NSW and Victoria, the entire selection and appointment process remains within the government’s control and knowledge. Second, the remaining six jurisdictions require consultation with other political parties represented in parliament. Third, Queensland and South Australian legislation contains an additional requirement for consultation with a parliamentary committee prior to an appointment being ratified. Finally, the South Australian legislation also requires a resolution from both houses of parliament before the Governor can appoint.

Appointment by the government of the day, without any deference to other parties prior to the appointment, leaves such appointees open to claims of bias and partisanship. Typical was this independent observation:

I've read all the articles about [the Commissioner's] appointment and how that allegedly had the Prime Minister's tentacles all over it

This has been the case for both Labor and Coalition appointed commissioners. For example, from the Coalition perspective of a Labor appointed commissioner:

I went along to that review expecting a fair hearing, and I walked out and they said 'how do you think you've gone?' I said 'you don't need to ask. My appeal's going to be dismissed, absolutely'.

I said outside the hearing 'I've not had a fair hearing'. I know I was causing Hawke a lot of pain and angst, and I reckon he said to Young, 'get rid of [the MP]' and Young said 'the way to do that is change the boundaries'.

And two Labor perspectives of Coalition appointed Commissioners:

we were very concerned with [the Commissioner] when he was appointed, and as to how he would perform

he was seen to be partisan, being a particularly good mate of [the Minister]

A clear majority of comments from politicians however emphasised the importance of maintaining a perception, as well as the reality, of non-partisanship. Commissioners were seen, almost universally, as honest and incorruptible, but concerns were consistently raised that if appointments were made without consultation, subsequent decisions of those commissioners could provide arguments that the appointment was partisan in nature. This was particularly the case where the commissioner's decision resulted in a measurable partisan advantage or detriment.

The requirement to consult

The requirement for consultation to occur with other parties in some form means that there is less likelihood of a person with perceived partisan views being appointed. However, while there is a requirement in six jurisdictions for consultation of some form to take place, there is no requirement, except in South Australia, and to a lesser degree in the ACT, for the government to take notice of the views of other parties.

As one Minister stated:

it was something that [the Premier] is alleged to have done, he said to the other parties – ‘we’re going to appoint so-and-so, you have now been consulted’

However, in the case of the ACT, commissioner appointments are disallowable instruments, meaning that a government without a majority in the Legislative Assembly could be exposed to the possibility of its appointment being rejected in a very public manner. It also means that an opposition that does have concerns with an appointment, has to decide whether such concerns warrant moving a disallowance motion. Although the ability to disallow an appointment is theoretically a safeguard mechanism that allows non-government parties a voice in the appointment process, it is a blunt instrument that would be unlikely to be used in practice. It would only work when opposition parties had the numbers in parliament, and irrespective of the outcome, moving such a motion in itself would cast an aspersion on the office of commissioner. If a motion was successful, it would remove the commissioner from office, damaging the public image of the office and labelling that person as partisan, and without that person having a right to defend him/herself. If a disallowance motion was unsuccessful, it would place the commissioner in a very difficult, or even untenable, situation. As one commissioner argued:

The other problem with that is if you have a disallowance motion is it can be lost if the government has the numbers in the house, and you get a poor lame duck electoral commissioner who says the other side don’t want me.

How can I maintain any credibility if they don’t want me? So to try to engage them all at some stage in the process and bring the other sides of politics on board in the first place is a much better way than people jumping up and down afterwards.

Instead of taking the negative and post-appointment approach that a disallowance motion entails, South Australia requires the positive and pre-appointment method of an affirmation resolution by both houses of parliament, following a multi-party committee process outlined below. In 2006, the Victorian Public Accounts and Estimates Committee recommended that the South Australian model be followed, whereby future appointments would be made by a resolution of both houses of parliament, following a recommendation from an appropriate parliamentary committee (PAEC, 2006:69).

The use of a parliamentary committee in the selection process currently occurs in two jurisdictions. In Queensland’s case, the requirement is to consult with the Legal, Constitutional and Administrative Review Committee (LCARC), which has a remit to also inquire into broader electoral matters. When this requirement was activated for the appointment of the current

commissioner in 2005, the Chair (Lesley Clark, Labor) and Deputy Chair (Fiona Simpson, Nationals) of LCARC both sat on the selection panel (as did the Labor Attorney General, Linda Lavarch). Although the Act does not require committee representation on the actual selection panel, the involvement of government and opposition parliamentarians also assisted the additional requirement to consult with other parties. As one parliamentarian stated:

my experience of interviewing for the information commissioner where it was just me, really reinforced the need for – where you have got the external accountability-type office holders – it's really important that you have bipartisan support in that early stage. Not just in the parliament, that's really after the event.

As mentioned above, South Australia arguably has the most thorough and publicly accountable consultation process, requiring that the Governor can only appoint a commissioner based on a recommendation made by both houses of parliament. In reality, when this requirement was first used in 2005, the matter was first considered by the Statutory Officers Committee (SOC), a joint house parliamentary committee which has been established for the purpose of electoral commissioner and ombudsman appointments. The committee is made up of six members, with government, opposition and minor party or independent representatives. Following national advertising for the position, an interview panel, made up of an electoral commissioner from another jurisdiction and senior public servants, interviewed a short-list of applicants that had been drawn up by a personnel agency. This panel then provided its recommendations to the SOC, which then interviewed the recommended applicants.

Based on this second round of interviews, the SOC reported its recommended appointment to parliament. The committee's recommendation was agreed to by both houses without debate. Although not all parties in parliament have representation on the SOC, the opportunity for consultation and discussion with other parties remains available through this parliamentary process.

Length of Tenure

The length of commissioners' tenure can have significant impacts on their independence and ability to act without fear or favour. If a commissioner lacks long-term security, then his/her actions may be, in a real or perceived sense, related to a desire for re-appointment. The timing of a potential re-appointment, irrespective of the length of appointment, can also have an impact, especially if this coincides with an election. As shown in Table 3, Australia's electoral commissioners generally have reasonable lengths of tenure, with eight jurisdictions providing for appointments from five to

ten years – however in seven of these jurisdictions, this is only a maximum length, with the relevant Acts stating ‘up to’ that term. The remaining jurisdiction, South Australia, has potentially longer security, with commissioner (and deputy commissioner) appointments being to the age of 65.

-- Table 3 about here --

The ‘up to’ provision provides governments with flexibility in determining the length an appointment should be for, and it has been argued by Ministers that appointing for a lesser term fits with standard practice for senior public service appointments. However, shorter-term appointments may expose a weakness in the independence that a commissioner exhibits, if he/she is seeking re-appointment. At the Commonwealth level, the first commissioner, Colin Hughes, was appointed for the maximum seven years (and served just less than six before resigning). Subsequently all commissioners have only served five year terms. Similarly in Western Australia, where appointments can be up to nine years, recent appointments have been for five years. The current commissioner, Warwick Gately, who had already served two years as acting commissioner, was appointed as commissioner for only three years, to make a total of a five year term taking into account his previous role. In the case of the current South Australian commissioner, her appointment to the age of 65 is effectively a 14 year term. Her deputy commissioner was appointed at a younger age, and therefore has an effective appointment in that position of 26 years.

During the interviews, Commissioners expressed a range of views on what they saw as an ideal length of appointment. An argument in favour of five year terms was:

Five years, if you're going to shake a show up, then if you haven't got everything accomplished that you want in five years, you're not going to get it, and if you go on about it, people are going to say 'he's still on about that'. So five years is your effective working life. Secondly if you were a dud, five years of coasting along, they will have a chance of replacing you.

Generally though, commissioners expressed support for a longer term. Typical of such a view were these comments:

having tenure in the appointment of more than five years is desirable from a perspective of long-term planning in electoral matters. I think you need to plan over two election cycles, so eight to ten years is about a good time in my view. Otherwise you just get short-term bites at the planning and no look above the horizon.

tenure's good for being absolutely seen and perceived as free and fair and impartial and having confidence that you can do your job properly without any perception of interference. If you're in a job around eight years, people are getting sick of you, you're getting sick of them, and it's good for the organization and for the Commissioner to do something else.

the Australian Electoral Commission tends to appoint people as their last job, as Commissioner, and they tend to serve five years, and my sense is that one of the things that misses out there is the longer term vision for electoral administration.

If you've gone through two elections, you've probably established more independence in the role, and perhaps a fairer decision can be made.

There was also support for appointments to the age of 65:

With the right person, the ideal is to the age of 65. I'd probably have preferred ten [years]. I think ten gives it a greater longevity, and there's more security for people coming into the job. There have been in some other jurisdictions questions over the commissioner being swapped every time a government swaps. I don't know how true that is, but it does raise the question in some cases.

A dominant view from these interviews was that commissioners should be in place for more than one election, and that five year appointments, combined with three- or four-year electoral cycles, often meant that a commissioner was only in the position for the one election, and therefore had less of an ability to oversee the implementation of administrative reforms based on previous experience in that jurisdiction. The timing of appointments, and whether the end of the term was close to an election, was also an issue of concern for some commissioners. It was expressed that if a possible re-appointment coincided with the conduct of an election, this may have an impact, either real or perceived, on the actions of the commissioner during the election period.

Security of Tenure

Once appointed, security of tenure can be enhanced or diminished by the conditions under which an appointment can be terminated. All jurisdictions provide for dismissal from office under specified circumstances, such as physical or mental incapacity, bankruptcy, and misconduct (see Table 4). However, for such a dismissal to take permanent effect, a resolution passed by each house of parliament is then required in seven of the nine jurisdictions, with the Commonwealth and Queensland being the only exceptions to this requirement. Although in these two exceptions a government still needs to substantiate its reasons for dismissal, the need for a parliamentary resolution provides an obviously greater safeguard against governments acting vexatiously.

-- Table 4 about here --

Budgetary Independence

Dundas (1994) and Wall et al (2006) identify budgetary independence of electoral management bodies as one of the primary guarantors of electoral commission independence, stating that the manner in which a commission is funded can affect its independent status. Dundas argues that the need for an electoral authority to negotiate its budget can subvert the authority from its primary role as an independent agency (1994:40). Wall et al state that the electoral administration should be provided with its own budget, and be free of day-to-day government interference in administering its budget (2006:9). All Australian administrations (except South Australia) have moved to the independent statutory commission model in the past 25 years, but remain reliant on governmental budget processes for their budgetary allocations. Because of this, it is possible for governments to maintain a significant degree of influence and control over the ‘independent’ commissions. Therefore it is important to understand the processes through which the commissions receive their financial allocations. The standard method for Australian commissions is to argue and negotiate funds through its parent department or with the relevant finance or treasury department, as part of the whole-of-government budgetary process. This process can diminish their independence, especially when compared to the practice of some other countries, such as Canada, where its electoral body has a portion of its budget guaranteed by law (Rose, 2000:7).

As an example, when the Howard government was first elected in March 1996, one of its first acts was to abolish the Aboriginal and Torres Strait Islander Election Education and Information Service, an arm of the AEC that had been instrumental in improving the rates of Indigenous enrolment and voting, especially in remote areas. This was the first time that the AEC had been given explicit instruction as to what it may or may not spend its budget on, and therefore raises the issue of whether such intervention is a challenge to the AEC’s independence.

Around Australia, commissioners expressed a range of views about the level of ministerial or departmental control over their ongoing and election budgets. Concerns included – being included as part of a departmental appropriation, rather than as a separate agency budget line; being susceptible to government-wide budget cuts; the potential for a government to interfere with an

upcoming election budget; and, having to argue with departmental officials, rather than the minister, for funding to be maintained for specific programmes within the electoral commission budget.

Typical of these concerns from commissioners were:

so there is a line item in the budget for electoral services, but the amount of money that's in electoral services is given to the department. They cream an amount that they decide from the top of that to use to fund their corporate things that they say are devoted to electoral services

because we fit for portfolio purposes, under that department, which is a very disparate group of individual organisations, they want to hold the purse strings and when the government says there's a seven per cent cut in the budget, well they say they want your seven per cent as well.

you can have your budget fiddled with. And I always thought that was dangerous particularly where the CEO's responsible to the Minister, and therefore there's a direct line with interfering with the election budget.

One minister provided a government's perspective of working through a department as part of the budget process, acknowledging the potential for departmental interference in a commission's budget:

[The Commissioner] puts forward all of his own proposals for funding. Now they are, for administrative reasons, brought in through the portfolio and then brought to Cabinet for the budget process. I want to see all the bids from the Commissioner and statutory officers, so that they're not filtered.

And that's a lot of the arguments about can a statutory officer like the Commissioner communicate fully to the Minister without it being filtered through the bureaucracy, and I think the answer to that is 'yes, he can'. If a Minister wasn't on the ball about that, and if a department wasn't playing by the rules, things could get filtered I guess, potentially. If the Minister let it happen and the department was of a mind to do that, but I think an appropriate understanding of the role of the department would mean that that wouldn't occur.

However, the majority of commissioners expressed a reasonable level of satisfaction with the budgets they receive. Personal relationships with departmental and treasury officials were often mentioned as being very important in ensuring a smooth budgetary process. Typical of these comments were:

As long as we're not looking like we've got the hand in the till, and it costs them three times as much as every other state for a similar event, Treasury will just make sure. It's really independent.

the truth of the matter is that the Victorian Electoral Commissioner has a bottomless pit to draw on to run a state election, but it's accountable as to how it's spent, after the election, and that's rightly so. But there is no real impediment. The Commissioner can't say 'there wasn't enough money available'. Because if the Commissioner believes the money has to be spent, then they'll just spend it and be accountable for it later.

In 2006, the Victorian Public Accounts and Estimates Committee recommended that in future, the Electoral Matters Committee should review the electoral commission's budget, and report to parliament ahead of the appropriation being passed (PAEC 2006:82). Such a process would open the commission's budget to the scrutiny of non-government parties, and therefore may assist the independence of the commission. However, this proposal, which models the process already in place for the Victorian Auditor-General, is yet to be implemented.

Conclusion

So, what is the best model for an independent commission in the Australian context? In regard to the length of commissioner appointments, a statutory appointment of eight to ten years appears, without the option of shorter terms, appears to be the preferred option. Some flexibility should be allowed, so that the end of a term does not coincide with an expected election, however a term of at least eight years should be regarded as a minimum. This would also ensure commissioners are in place for at least two elections. While South Australia's appointments to 65 years appear to allow for strong independence, such a potentially long term could encourage a level of complacency, particularly as retirement approaches. It is also important that such long term appointments remain coupled with the need for a bi-partisan committee recommendation and parliamentary approval, prior to the appointment. Without such safeguards, like High Court appointments, a government could be tempted to make a partisan appointment that remains in place long after the government has been replaced.

Based on IDEA's criteria for independent management bodies, there are two primary aspects where Australian electoral administrations have their independence threatened. Firstly, they have virtually no independent ability to improve or amend the electoral systems they administer. Although many reforms may be purely administrative and minor, and have no partisan advantage, the commissions rely on the government to initiate legislative change, which is necessarily a partisan mechanism. Reforms that are considered to improve fairness and equity in the electoral system, but are considered to be electorally detrimental to the government, are far less likely to be successful to be

introduced. Conversely, commissions may be required to administer reforms that are distinctly partisan in nature, and that challenge the public perception of the commission's independence.

The second aspect where independence is threatened concerns financial independence.

Commissions rely on governments for their budget, and although there is little evidence of governments restricting the flow of money to achieve a specific electoral advantage, monetary restrictions can impact on how elections are conducted (for example, the ability to conduct mobile polling in remote areas, and nursing homes). While most commissioners were satisfied with their own budgetary arrangements, many expressed concerns about how the system could be abused, not so much for partisan advantage, but from the commissions being considered as another public service departmental agency, rather than as independent statutory agencies.

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Table 1: Electoral Experience of Current Australian Electoral Commissioners

Jurisdiction	Commissioner	Year First Appointed	Previous Electoral Experience	Previous Electoral Appointments
Commonwealth	Ian Campbell	2005	Nil	Nil
NSW	Colin Barry	2004	>8 years	Electoral Commissioner, Victoria
Victoria	Steve Tully	2005	17 years	Electoral Commissioner, South Australia (1997-2005)
Queensland	David Kerslake	2006	4 years	Assistant Commissioner, Industrial Elections, and Funding and Disclosure AEC
Western Australia	Warwick Gately	2006	3 years	Deputy Commissioner (8 months) Acting Commissioner (2 years)
South Australia	Kay Mousley	2006	+ 20 years	Various – finally Director of Operations, AEC (South Australia)
Tasmania	Bruce Taylor	2005	21 years	Director, Industrial Elections (AEC – Tasmania, 1984-93) Deputy and Chief Electoral Officer, Tasmania (1994-2005)
ACT	Phillip Green	1994	13 years	Australian Electoral Office (then AEC), from 1982
Northern Territory	Bill Shephard	2005	26 years	Western Australian Electoral Commission (7 years) Australian Electoral Office, then AEC (c. 17 years) Northern Territory Electoral Office

Table 2: IDEA’s Model of Independent Electoral Management Bodies

Source: Wall et al 2006:9.

Aspect	Independent Electoral Management Body
Institutional Arrangement	Is institutionally independent from the executive branch of government
Implementation	Exercises full responsibility for implementation
Formal Accountability	Does not report to executive branch of government but with very few exceptions is formally accountable to the legislature, judiciary or head of state
Powers	Has powers to develop the electoral regulatory framework independently under the law
Composition	Is composed of members who are outside the executive branch while in office
Term of Office	Offers security of tenure, but not necessarily fixed term of office
Budget	Has and manages its own budget independently of day-to-day governmental control

Table 3: Appointment Procedures for Australian Electoral Commissioners

Jurisdiction	Appointment Method	Appointment Length	Appointment of Party Members
Commonwealth	Governor-General appoints (s.21).	Up to 7 years. Eligible for re-appointment (s.8).	Act is silent on party members.
NSW	Governor appoints (s.21AA).	Up to 10 years. Eligible for re-appointment, for no more than one term of up to 10 years s.21AB(1)).	Members of political parties, or who has been a member of a political party in previous five years, are ineligible. (s.21AB(4)).
Victoria	Governor appoints (s.12).	10 years. Eligible for re-appointment up to 10 years (s.12).	Members of registered political parties, or who has been a member of a political party in previous five years, are ineligible. (s.12(3))
Queensland	Governor in Council appoints. Position advertised nationally, and consultation with all leaders of parliamentary parties and with parliamentary committee (s.23).	Up to 7 years (s.23(5)).	Members of political parties are ineligible. (s.23(4)).
Western Australia	Governor, on recommendation of the Premier. Premier to consult with parliamentary party leaders (s.5B).	Up to 9 years. Eligible for re-appointment. (s5B(4)).	Any person who is, or has been a member of a parliament or legislature anywhere in Australia, is ineligible (s.5B(10)).
South Australia	Governor appoints, on recommendation from both houses of parliament (s.5)	To age of 65 (s.7)	Act is silent.
Tasmania	Governor appoints. Consultation with leaders of all parties and President required (s.8).	Up to 7 years. Eligible for re-appointment (s.17).	Members of parliament or of political parties, or who have been a member of parliament or of a party in previous five years, anywhere in Australia, are ineligible. (s.8(3)).
ACT	Executive appoints. Consultation with leaders of all parties and independents required. Appointment is disallowable (s.22).	Up to 5 years. Eligible for re-appointment (s.25).	Any person who is, or has been a member of a parliament or legislature anywhere in Australia in the past 10 years, or any person who is, or has been a member of a political party in the past 5 years, is ineligible (s.12A).
Northern Territory	Administrator appoints. Consultation with all party leaders and independents required (s.314).	Up to 5 years. Eligible for re-appointment (s.320).	MLAs ineligible for appointment (s.327)

Table 4: Dismissal Procedures for Australian Electoral Commissioners

Jurisdiction	Dismissal - Reporting to Parliament
Commonwealth	Governor may terminate, for specified reasons (e.g. misbehaviour) (s.25).
NSW	Governor may suspend the Commissioner - a statement from the Minister explaining the suspension is to be provided to parliament within 7 sitting days. Commissioner can then be removed by the Governor if each house of parliament passes a resolution within 21 days of statement being tabled (s.21AB(3)).
Victoria	Governor may suspend the Commissioner - the Minister is then to notify the Speaker, President and leaders of (parliamentary) political parties within 2 hours (s.140). Commissioner can then be removed by resolution of both houses of parliament (s.12(4)(e)).
Queensland	Governor in Council may terminate (s.26).
Western Australia	Governor may suspend the Commissioner – a statement explaining the suspension to be provided to parliament within 7 sitting days. Commissioner removed on resolution of both houses of parliament within 30 sitting days (s.5C).
South Australia	Governor may suspend the Commissioner under specified circumstances - a statement explaining the suspension is to be provided to parliament within 3 sitting days. Commissioner may then be removed by resolution of both houses of parliament (s.7).
Tasmania	Governor may suspend the Commissioner under specified circumstances – a statement explaining the suspension is to be provided to parliament within 7 sitting days. Commissioner can then be removed by resolution of both houses of parliament (s.21).
ACT	Executive may suspend. Minister is to present a statement to the Assembly on next sitting day. Assembly resolution within 7 sitting days required for appointment to be ended. (s.29).
Northern Territory	By Administrator. Minister must present statement to Assembly within 3 sitting days - Assembly must pass a resolution for dismissal to take effect (s.323)