

THE HENRY PARKES ORATION 2013

The State of the Federation

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I came to politics some forty years ago having no previous involvement with political parties or organisations. I had worked as an architect for 20 years mostly on hospitals and public housing. I didn't have any burning desire to change the world – just a few simple principles like the workings of government should be open to public scrutiny. That elected representatives should enable people to not only participate in all decisions that affect them but ultimately find ways to have people make decisions for themselves. That the very basis of democracy is that a decision taken by the public as a whole will be right more often than decisions taken by an elite group no matter how wise that group. That people entrusted with the public purse should honour that trust and treat public money as they would want other people to treat their money. These ideas of course created an inevitable collision with the operations of political parties and most bureaucracies.

In any case over the next 20 odd years I was given the unique experience of having an independent inside view of 14 years in local government, seven in state government and six in federal government. This didn't happen because the electors of North Sydney were carbon monoxide affected or because I had discovered some magic secret of electoral success. It happened because people saw the benefits of three fundamental principles – open government, decentralised decision-making and financial probity demonstrated in North Sydney Council for some eight years.

My comments today will cover the state of our political system, some of the causes of the problems and to suggest possible directions for reform.

In 1992 the former secretary to the Office of Governor-General, Sir David Smith, wrote: There is much that is wrong with the way this nation is governed and administered: never before have we had so many Royal Commissions and other inquiries; never before have we had so many office-holders and other figures in, or facing the prospect of prison; never before have the electors registered their dissatisfaction with the political process by returning so many independent and minor party candidates to Parliament.

In the Mackay Report of July 2001, social researcher Hugh Mackay stated: Australia's contempt for federal politics and its leaders has plumbed new depths. If it (the Mackay Report) was a family newspaper, we would scarcely be able to print the things Australian's are saying about their politicians ... In the 22 year history of the Mackay Report political attitudes have never been quite as negative as this.

On 16 June 2013 in *The Australian* newspaper Tony Fitzgerald QC (who chaired the 1987 Queensland Royal Commission) wrote an article *The Body Politic is Rotten*. He stated: *There are about 800 politicians in Australia's parliaments. According to their assessments of each other, that quite small group includes role models for lying, cheating, deceiving, "rotting",*

bullying, rumour-mongering, back-stabbing, slander, "leaking", dog whistling, nepotism and corruption.

He states in effect, that the dominance of the major parties by little known and unimpressive faction leaders who have effective control of Australia's democracy and destiny... might be tolerable if the major parties acted with integrity but they do not. Their constant battles for power are venal, vicious and vulgar

Over the last 30 years there has been a plethora of minor and major scandals, misuse of most forms of parliamentary allowances, interstate travel, overseas travel, telephone allowances, comcars, taxis, air charters and stamp allowances in addition to the revelations of major Royal Commissions. It seems that almost anything can and has been rorted. The number of resignations of ministers of state and federal parliaments shows that something is wrong with the selection process or the talent pool. One problem is that the ability to become a cabinet minister has often nothing to do with ability to be a minister.

In 1984 there was the *Costigan Royal Commission* revealing extensive criminal activities, tax fraud and the notorious "bottom-of-the-harbour schemes". Cost 13.9 million dollars.

1987 saw the *Fitzgerald Inquiry* in Queensland initiated, leading to the Premier being deposed, three former ministers and the Police Commissioner going to gaol – cost 90 million dollars.

In 1991 we had *WA Inc* revealing enormous corruption in politics and business in that state. Both Liberal and Labor Premiers went to gaol. Cost 30.5 million dollars.

In 1994 NSW had the *Wood Royal Commission* into the Police. This resulted in resignations and dismissals of the Police Commissioner and some 92 officers. Cost 70 million dollars.

Yet after all this the public watched in disgust at the collapse of the NSW – Iemma – Rees – Kenneally – governments in 2007-11 exposing the worst level of government corruption in Australian history.

The 2010-13 Federal Parliament saw the major parties virtually eliminate any real form of democratic debate substituting little but character assassination of opponents. It was a three-year election campaign of personal abuse and fear mongering. It was debased even further with aggressive bullying by the media and special interests at unprecedented levels.

The same period saw both state and federal governments pandering to special interests allowing massive increases in the promotion of gambling and alcohol. Pandering to the development and mining industries and the seemingly endless privatisation of public assets often creating private monopolies, continued irrespective of public opinion.

The last decade has also seen a substantial escalation in the endless commonwealth-state "turf wars". This seems to bedevil almost all main areas of government activities such as health, education, transport, agriculture and water policy. This massive overlap of functions results in huge increases in bureaucracy. The expansion of government, particularly the costs of expanding political staff and salaries, seems to be in inverse proportion to the levels of public satisfaction.

Recent increases bring the basic salary of the Prime Minister to \$507,000 compared to the American President at \$400,000, and the English Prime Minister at 142,000 pounds. Salary packages for MPs have escalated at federal level with steady creation of new positions and extensions of fringe benefits. So much so that only a handful of backbench members of the government receive the lowest salary package. State governments have followed suit.

Salary packages for Federal government members now range from around \$325,000 to some \$475,000/annum for ministers. However extremely generous superannuation schemes can effectively double that depending on age at retirement. For example, recently retired after nine

years in the NSW Upper House, Eric Roozendaal aged 51 receives a pension of \$120,000. This is indexed to future politicians' salaries. Given his life expectancy, this works out at around \$500,000/year for his nine years of office. Together with his annual salary he was rewarded with almost \$1,000,000 for each year in parliament. This is for a job that the officials of political parties can bestow on people with no experience or qualification.

The ten ex-Prime Ministers and Governors-General each averaged around \$500,000 a year in public costs for 2010-11 or around \$10,000 per week in retirement but the annual appropriation available for the current Governor-Generals' office is approaching \$13 million.

Over the last 30 years politicians' staff has increased dramatically. At federal level there are now some 17 hundred personal staff to ministers and members. The states probably account for over two thousand more. Add to this the direct political infiltration of federal-state public services and quangos with hundreds more jobs for the boys and girls, there is now a well-established political class.

This has provided the political parties with a career path for members. In many cases it often produces skilled, partisan, "whatever it takes" warriors with a richly rewarded life through local state and federal governments to a well-funded retirement. Unfortunately while this career path, as Tony Fitzgerald states, does *include principled well-motivated people ... it also attracts professional politicians with little or no general life experience and unscrupulous opportunists, unburdened by ethics, who obsessively pursue power, money or both.*

Since the 1990s there have been endless calls by federal and state government for increased efficiency, no wage increases unless matched with productivity, for restructuring, downsizing and deregulation all in the name of increased competitiveness and facing the international community in the 21st century. Many thousands of jobs have disappeared particularly those in federal and state bureaucracies at middle and lower incomes and in the general workforce.

Now there is little doubt some restructuring of the country is necessary but it is strange that the political-administrative structure and the legal system are somehow excluded from any need for reform. Given both the massive costs and level of public dissatisfaction. It is surprising that while the media regularly exposes major and minor political misdemeanours, it rarely proposes any serious need for reform let alone suggests possible solutions.

Our many publicly funded schools of Government and Politics also seem to be largely silent on the need for political or constitutional reform with some individual honourable exceptions.

In an effort to increase public confidence in the political system a huge amount of legislation has been passed over recent years to ostensibly promote such things as open government, public participation and reduced reliance on private donations. Effectively the open government legislation has mainly meant freedom from information. Even this year the Labor government and the then opposition quietly combined to sneak through legislation that completely exempted the three government departments that supervise the running of the Federal Parliament from answering Freedom of Information requests.

As for public participation, virtually all government decisions are made in private by small groups of people who are in many cases not in parliament. Public funding of elections was first introduced into NSW in 1981 and federally in 1984 on the basis that it would reduce private donations. Neville Wran presented the Bill and concluded his speech by saying this Bill will *remove the risk of parties selling political favours and declares to the world that the great political parties of New South Wales are not up for sale.* Since then an escalating "arms war" of election spending has developed with public funding steadily increasing and private funding increasing even faster.

The taxpayer cost of federal elections has increased from \$38 million in 1984 to \$161 million in 2010. Of the latter \$53 million was public funding to parties and candidates. Currently, in spite

of massive increases, public funding is less than 20 per cent of about \$350 million total election spending. We are now effectively the second best democracy money can buy.

There is an overwhelming need to reduce overall election spending. The United States democracy has been largely destroyed by the huge amount of money dedicated to this purpose and Australia is accelerating down the same tollway. Maximum spending limits must be applied to all elections. At present freedom of speech is only effectively available to the rich and those using other people's money. The Electoral Commission should produce booklets setting out candidates' biographies and policies as was done for the 1999 Constitutional Convention elections with all advertising banned.

Organisations have been set up to monitor government's administration. Ombudsmen of various varieties, Royal Commissions, anti-corruption bodies, competition commissions, auditors, the Remuneration Commission, the Electoral Commission, the Competition Commission, ASIC and many others. To an extent these so-called independent bodies have not been as successful as originally hoped for and only operate at a fearful cost. Codes of ethics are a favourite device as are claims of independent speakers often made by incoming governments to address behaviour of members. History shows that codes of ethics and fair speakers never last - the code is soon buried and the fair speakers are sacked.

Political parties as they have developed over the last century seem like two mafia families seeking control of the public purse for distribution to themselves, supporters, the special interests who fund them and for buying votes at the next election. Political parties are not mentioned in the Constitution. They are effectively unregulated private organisations but they now control government treasuries.

When they unite with common interests, for example funding themselves, the public are mostly powerless except on the rare occasions when public outrage is too great. For example the attempted 60 million dollar virtually secret increase in public funding for the parties earlier this year.

Both parties have rightly suffered huge reductions in membership over the last few years almost in direct proportion to the centralisation of power in their organisations. Public election funding and huge allowances have reduced the party's need for workers for elections. Candidates now can rely on direct mail, general advertising and paid help.

By centralising power as Tony Fitzgerald puts it: The public interest is subordinated to the pursuit of power, party objectives and personal ambitions, sometimes including the corrupt acquisition of financial benefit. Branch stacking has become endemic and as Fitzgerald says "The parties gift electorates to family connections, malleable party hacks and mediocre apparatchiks".

The views of people like retired judge Tony Fitzgerald QC, Hugh Mackay, possibly Australia's leading social researcher and Sir David Smith, Official Secretary to five Governor-Generals, should be taken seriously. They have a long and rare experience of government in Australia. Their views are considered and well founded. They demand examination of the many problems of our system of government in order to establish directions for reform.

The Australian Constitution could only be based on conditions existing in the late 19th century. As Professor Helen Irving states in her recent book *Five things to know about the Australian Constitution*. ... it does not mean what it says ... it does not say what it means ... it says some things without actually saying them ... it fails to say things which might be important ... it says things that might be important. Today it is not only obsolete but is an expensive handicap to the wellbeing of Australian society. In essence it was a parochial compromise between the States based on an amalgamation of the British system and the American Constitution. We followed English parliamentary practice but without accepting English traditional restraints. For example

in Westminster the Speaker is fair, in Australia fair Speakers are quickly dispensed with. The Government must always win. This is why Question Time in Australia often descends to a schoolboy rabble. We have a system where the opposition almost always loses and has virtually no role in legislation. This forces members to extremes – to magnify differences – often reaching levels of mindless partisanship only seen at football matches.

The two-party system of government and opposition where the “winner-takes-all” has inevitably resulted in mutual denigration with little or no sensible parliamentary debate. Frankly, in Australian parliaments opposition is a form of political death. The thought of it colours all decision-making. It entrenches the philosophy of “whatever it takes”. It even means less salary for the members of the opposition – shock, horror.

The election of governments by parliamentary members in the absence of fixed terms, means a rigid parliamentary discipline must be enforced to achieve stability. Extreme partisanship takes over and the public interest is irrelevant. Parliament can never be a check on executive government except in rare situations. The domination of parliament by Executive Government effectively means it is an “elected dictatorship”, except in the rare cases of hung parliaments.

The two-party system stifles ideas, debate and decision-making within the parties. The faction system often ensures minority views triumph within both party rooms. In the case of the government, the minority view will then be taken into parliament and become an even greater minority law. Hence the shocking derailing of democratic government in NSW in 2007-11. Voting within parties is often based on what faction members belong to, who wants to become or stay a minister or who wants to be party leader. What the electors think is at best a secondary consideration. Party members almost always follow the party line and are often voting against what they really believe or what their electorates would want.

A classic example of this was the 1999 Republic Referendum where opinion polls showed that seventy percent of the public wanted the right to vote for any future President but only three out of 225 members of federal parliament supported that position. A few years of regularly voting and speaking against what they believe in, I suspect some cease to believe in anything and take refuge in extreme partisanship following whatever is the party executives’ position.

After 112 years the functions of commonwealth and state governments as well as the financial arrangements are in chaos. It has resulted in endless dispute, waste and inefficiency between state and federal governments and their bureaucracies. A century of debate and confusion over these issues shows that these problems are impossible to resolve without a rewrite of the constitution.

Our founding fathers at the conventions of the 1890s must have been blinded by the magnificence of the British Empire at the zenith of its power to adopt the worst feature of the constitution, that is, the single-member electorate system. Electing parliaments by voting for single members then have the elected members elect a government is a democratic travesty kept alive by politicians, academia and the press. There was little excuse for the founding fathers let alone today’s political establishment. John Stuart Mill, known as *the most influential English-speaking philosopher of the nineteenth century*, set out the principles of democratic voting in 1861.

He clearly showed that the single-member electorate system results in only accidental relationship between seats won and the total actual votes. This occurs because it is possible to win 100 per cent of the seats with around 43 per cent of the vote. For example, the 2012 election in Queensland produced the bizarre result that the state government won 88 per cent of seats with 49.7 per cent of the vote. The other 50.3 per cent of voters were rewarded with 12 per cent of the seats.

This system also largely eliminates minorities unless their vote is concentrated in particular electorates. That is why such parties as the Australian Democrats and Greens get almost no lower

house seats with often twice the vote of the National Party, while the latter generally receives around ten members and three or four ministers and Deputy Prime Minister.

It is fundamental to liberal democracy that while the majority should rule, minorities should be represented in proportion to their support. Even more essential is that the electoral system should represent the will of the people – the single-member electorate system does neither and in addition results in a maximum not minimum wastage of votes.

Since the Second World War federal elections have resulted in five governments elected with a minority of two-party preferred votes. Yet the fundamental rule of democracy is majority rule. Conversely only three governments out of 26 achieved over fifty percent of the primary vote, as did one opposition. No wonder most governments are unpopular soon after the euphoria of an election fades.

So why do we keep the single-member electorate system – because only the major parties can change it. But why should they? It helps preserve the two-party duopoly. It largely prevents the election of third party candidates. An incumbent lower house federal candidate today has effectively \$400,000 worth of facilities and money to ward off challengers. Major parties can transfer a million or so extra dollars from safe seats if they really want to stop an outsider. It also enables the government parties to “pork barrel” specific seats. It is hardly an equal opportunity for challengers whether they are individuals or new parties.

There have been many changes to electoral systems over the last century and almost all have been made for partisan reasons.

The Senate is also fundamentally flawed as a democratic organisation. In each election 42.3 per cent of the vote will elect 50 per cent of senators in each state for a start. Then there is the voting system that allows parties to transfer preferences effectively without the voters’ knowledge. This system led to the infamous 1999 “tablecloth” election in the NSW Upper House with dozens of new political parties created to take advantage of this undemocratic system. In that election a candidate was elected to the NSW Upper House with a primary vote of 0.2% receiving preferences from most of the previously unknown parties. This is known as the “harvesting of preferences” and certainly distorted the result. Even the NSW Labor Government that some would say was the epitome of political evil, reformed this system 14 years ago by ensuring that only the voter could transfer preferences. Yet similar distortions have been obvious at federal level at the 2004 and 2010 elections, yet here we are in 2013 with the same rort. We now have some five senators with no democratic legitimacy all because the major parties are so venal and are prepared to treat voters as mushrooms to obtain power. It is to Australia’s shame that at least 99 per cent of voters at the recent elections had no idea where their Senate vote really went.

Certainly the electoral reforms of the Senate for the wrong reasons in 1949 providing for proportional representation does not make the Senate more reflective of the Australian voter than the Lower House. However the unequal state and arbitrary territory representation is fundamentally undemocratic. It cannot be democratically acceptable to have for example, one Hobart vote to be equal to 14 Tenterfield votes or one Darwin vote worth almost three Bendigo votes when voting on issues that affect all Australians equally.

Australia’s electoral systems at federal and state level, excluding the ACT and Tasmania, are in my view clearly in breach of Article 25 of the International Covenant on Civil and Political Rights to which Australia is a signatory and has ratified. They do not guarantee *the free expression of the will of the electors* and federal elections are not by *equal suffrage* and candidates are not *freely chosen*.

As things stand Australian democracy consists of voting in a rigged system every few years to elect others to make decisions for us. The voters mostly know little or nothing about most candidates after the “faceless men” and “branch stackers” have had their way. We are rarely permitted to have any say on policies. Cabinet ministers, premiers and prime ministers come and

go without reference to us. We go to war and sign treaties without even our parliament having a say let alone the public. When the major parties agree, as they do when funding themselves, and their mutual friends, we have no say whatsoever. It is a pretty minimalist democracy and a long way from Abraham Lincoln's *Government of the people, BY the people, for the people*. We seem to have achieved "Government of the people by the powerbrokers, for the mates".

Most people today believe they should have a right to have their say in all decisions that affect them. Yet the usual position of politicians is to say "we were elected to make the decisions and if you don't like it vote against us at the next election". This view is totally unsatisfactory. It is the decision people are interested in, not revenge some time later. In addition general elections provide only a mandate to govern – they do not provide a mandate for all or any future decisions except in rare circumstances.

Still there are only about 30 or so countries you could call partial democracies but only Switzerland that fulfils Lincoln's definition of democracy. This is not surprising considering democracy, while enjoying a brief starburst in Greece 2,500 years ago, really only took modern form in the 18th century after the French and American revolutions. Unfortunately writing constitutions has inherent problems – they can only reflect the values of their time, they are doomed to obsolescence and usually difficult to change. Bills of rights have the same problems in addition to politicising the judiciary and weakening democracy.

Constitutional problems have been obvious for many years and there have been many attempts at reform with little result. One of the virtues of the Australian Constitution is that the founding fathers gave the right to change it exclusively to the public by way of referenda. Unfortunately they gave the right to ask the question for public consideration exclusively to the government. Government however has generally only asked to be given more power.

Many party -oriented people decry the ignorance of the voter for the high failure rate of referenda. The real lesson of a century of mostly failed constitutional referenda is that generally any suggestion of centralised power will be rejected. This view is reinforced by the fact that 12 out of 16 referenda in NSW have been carried as they were about specific issues rather than centralisation of power to the government.

The fundamental problems of our system of government have not seriously ever been addressed since Federation. These problems can be summarised as the level of over-government. The obsolescence of the constitutional relationships between the three levels of government. The two party "winner-take-all" executive domination of parliament and the associated corrupted voting systems. The domination of the political system and public service by the two private unregulated political parties and their largely self regulated access to the public treasury. Almost a total absence in the school system and for new citizens of any education concerning the three levels of government, their function and voting systems.

In recent years there have been calls for the abolition of the states in response to the frustration of commonwealth-state relations. This is understandable but misguided. As with other large countries, such as the United States, Russia, India and Germany, all are federal, being too large to have acceptable unitary democratic arrangements.

In such countries and others for particular reasons, there are national, regional and local issues and all should be represented. Australia's problem is no clarity in our constitution as to what each level should do. Ideally each level should spend and raise its own finance. Deciding what functions each level should do is vital as it appears that historically the tendency is to centralise. Both Australia and the USA are suffering with bloated federal bureaucracies. Functions are best performed at the lowest practical level and here again Switzerland shows the way.

In Australia the states are the level of government most over-represented with their 598 members of parliament. Their Westminster systems are wasteful and inefficient and should be replaced

with single chambers with a generally increased number of voters per member with a minimum of say, 15 members.

There is also a good case for creating more states or regions than draftsmen in the British Foreign Office decided in the middle of the 19th century. One of the reasons decentralisation has never really worked in Australia is that all power resides in the six capital cities. New South Wales' boundaries with all three adjoining states are now inappropriate and it could well be broken into six or seven states. Queensland and Victoria lend themselves into about four states each. Logically Northern Territory and the Kimberly should be one state.

As to the basic structure of parliament there are only two broad systems in use that are generally regarded as democracies. The first developed in England substantially in the 18th century is the one we have – parliaments elected using single-member electorates. The second is those elected by proportional representation developed in the 19th century – with usually five to 10 political parties. This not only allows more representative views to be aired, it also has more eyes watching the system, tending to reduce corruption.

Arend Lijphart, a world renowned political scientist, in his book *Patterns of Democracy*, analysing governments and their performance in 36 countries concludes that consensual political systems using proportional representation stimulate economic growth, control inflation, unemployment and limit budget deficits as well as countries using single-member electorate systems. However he also concludes that the consensual democracies clearly outperform single-member electorate systems on measures of political equality women's representation, citizens' participation and proximity between government policies and voter preferences. He also demonstrates that the more consensual a democracy the kinder and gentler it is when addressing such issues as welfare, environment, criminal justice and foreign aid.

The single-member electorate system is confined largely to the English-speaking world but overwhelmingly most democracies use proportional presentation. Our system as indicated earlier has major defects and is promoted by claiming that it is necessary for the stability of government. It relies on manufacturing a false majority and preserving the two-party system. It is no accident that both the American and British systems are currently experiencing major problems stemming from their single-member electorates.

There are far better ways of preserving stability of government without compromising the electoral system. There is the American method of separately electing executive government or, if you really want stability, consider Switzerland. Its seven-member executive federal government has never been renewed entirely at the same time over 175 years. It is elected by the parliament every four years and only four members have been voted out in over 150 years. Most members retire after two or three terms. Since 1990 Switzerland has had some 22 ministers in federal government. In the same time we have had a kaleidoscope of around 300 ministers. If that is not enough to scare our political parties, there is the amazing fact that there are only seven full-time paid federal politicians in the Swiss Executive and Lower House for their eight and a half million people compared to our 150.

The two-party system is essentially preserved by the single-member electorate system. In proportional representation countries there is an average of about five to ten parties allowing an increase in political ideas and a more democratic reflection of the voters. There are a number of variations of proportional representation methods used around the world but surprisingly the most democratic yet devised is the Hare-Clarke system used in Tasmania. This was initiated largely by Andrew Inglis Clarke around 1900 as the Attorney-General in the Tasmanian Parliament. He also penned the first draft of the Australian Constitution.

This voting system accurately reflects the will of the people. To obtain 50 per cent of the seats you must receive 50 per cent of the vote. It gives the electors the choice of party candidates. The voters can replace unsatisfactory members with another candidate from the same party. Wastage of votes is minimal as is the practice of branch stacking. Minorities are represented according to

their size. Donkey votes, how-to-vote cards and by-elections are eliminated. Ideally it uses seven- or nine-member electorates similar to the senate's six-member electorates and all preferences should be optional.

It also uses much larger electorates that if combined with electronic voting in parliament to adjust for population shifts, electorate boundaries could be drawn that really reflect community of interests and would rarely need to change. This would eliminate the current horrendous costs of constantly adjusting federal and state electorate boundaries and the confusion that is created.

Possibly the greatest problem with governments around the world is that of self-regulation. History clearly demonstrates that when politicians have free access to treasuries the results are always, to put it mildly, unsatisfactory. The present Australian system of effective self-regulation for wages and fringe benefits for politicians unlike the great majority of other employees, is totally unacceptable. This self-regulation produces a mutual waltz where the politicians tell senior public servants "you're worth more money" and the public servants return the favour. This flows through all political and public service positions of the Commonwealth and the states, the respective judiciaries and quangos. The politicians hide behind a carefully selected "Remuneration Committee" consisting of three persons drawn from the highest paid people in Australia.

A common problem is the confusion of the roles of representatives and government. Representatives' role is to represent the people. They do not require high management or technical skills and are unrepresentative if they are, as at present, among the top one per cent of wage earners. Government ministers however require a largely different and much greater set of skills. The failure rate of federal and state ministers is such that it is obviously being drawn from too small a pool. Ministers would be better if they could be drawn from the whole community, either appointed as in America or preferably elected as in Switzerland.

According to the *Sydney Morning Herald* of January 10, 2011, the best paid civil servant in New South Wales was the head of Energy Australia at \$774,799 plus perks, no doubt. *The Australian* newspaper of 27 September 2011 reported a number of federal public service heads were expected to rise from the current \$500,000 per annum to \$800,000 per annum plus perks or around \$56,000 per week. All this follows the pattern of private CEOs pay. Recently Melbourne University economist Mike Pottinger reported that in 1900 the BHP Chief Executive's salary was around 50 times average Australian wages. By the 1980s this ratio had dropped to only six or seven times as much. The ratio then rapidly increased to 200 times by 1998 touching 250 times by 2005. It has fallen back these days to about 160 times to only \$12.58 million per annum plus perks.

Of course CEOs and company directors effectively set their own salaries. Frankly there is no evidence that executives, both public and private, are so superior to their counterparts prior to the 1980s that could justify the massive salary increases since then.

As things stand politics in Australia is now the province of a political class that now offers a lifetime career path in federal and state parliaments, the public services and quangos. Entrance to this world often involves nepotism and cronyism. There can be few other legitimate jobs with salary packages over \$300,000 that can often be obtained with virtually no experience and qualifications and little restrictions on second jobs or holidays.

Equating integrity with paying more money, flies in the face of history. By paying politicians starting salary packages of over \$300,000, more people are attracted who could not get that salary level elsewhere. In fact people pursuing material gain should be discouraged from entering politics.

There is certainly no evidence that the massive increases of salary packages in recent years has increased benefits to the public or improved the quality of members or ministers compared to governments of the past. Far from paying peanuts and getting monkeys, paying more peanuts seems to attract gorillas.

Avenues for ambition, financial advancement, offers of prestigious government appointments, indeed all possible inducements that could colour a members' voting should be eliminated where possible. Limitation of office of say, three terms, should apply with only inflation-indexed salaries. Using any political or government office for personal financial gain over and above the official salary should result in dismissal. Attempting to influence a member's voting with financial or any form of fringe benefit should be a criminal offence. The politicisation of Australia's public services over the last 30 years has degraded many public organisations and reduced government's ability to implement policy even when they are acting in the public interest. The notorious self-regulated politicians' superannuation scheme should be abolished. They should obtain superannuation in the same manner as the rest of the community.

The problem of self-regulation was well put by the former Clerk of the Senate, Harry Evans. He pointed out that our present system was like a cricket match where the captain of the batting side was also the umpire. When ministers or members of the batting side played false shots they are rarely and reluctantly given out. There really needs to be an independent umpire to not only monitor ministers and members but to also appoint the Speaker of Parliament from outside parliament.

A fully independent Public Service Board needs to be reinstated for all government appointments particularly for bodies such as the Ombudsman, Corruption Commissions, Auditor-General, Police Integrity Commission, the Electoral Commission, and Remuneration Tribunal. Appointments must be based only on proven competence and integrity. The main reason many of these bodies at present fall short of public expectations is that the executives are appointed by, and their briefs are constrained by, government. Yet their role will often involve investigation of government.

In other words all those bodies that have no political functions but are there to ensure the integrity of the system should be independent of government. One feature of our original federal constitution that should be reinstated is a role for a directly-elected Governor-General to fully umpire the system in addition to the traditional role as head-of-state. He or she could also head a fourth arm of government known as the Integrity Branch. Such a role for the Governor-General would be spelt out in the Constitution as having no power in relation to political policy but only power to ensure integrity of government and to ensure the Constitution is upheld. The concept of a separate fourth branch of government has been canvassed in legal circles in recent years, particularly by James Spigelman in 2004, then Chief Justice of the New South Wales Supreme Court. It has been extensively examined in the October 2012 issue of the Australian Institute of Administrative Law Forum Magazine No 70. As James Spigelman pointed out in his two lectures, the concept of a separate integrity level of government is an ancient Chinese concept. In the last three decades we have informally created this fourth branch as a means of stemming various problems but with only limited success. Formalising its independence from government would certainly improve its performance.

Earlier I have made reference to various aspects of the Swiss Government from which we could learn. Its fundamental advantage over all other democratic systems is the use of direct democracy. In Switzerland the people are sovereign – they can overrule the government, the parliament and even the constitution at will. Referenda on the Constitution or policy can and are initiated by the people every three months. Government legislation can be cancelled or amended by the people. From 2000 to 2012 there have been some 104 referenda at federal level. That is an average of eight each year. There are many more at state and council levels. They have dealt with all sorts of issues that dominate our parliaments in angry, abusive debates. Swiss government seems to quietly get on with implementing public policy set by the public. This means that all government deliberations are mostly on a consensus basis. If it isn't, it generally means a referendum. There is also no formalised opposition.

At federal level there is a seven-member government elected proportionally by parliament, with candidates drawn from the whole community. The effect of this is calm deliberation, none of our

daily chaos and accusations. The seven members of government take it in turn annually to be Prime Minister with no additional power or money. Apparently most people are unsure of who the Prime Minister is. There is no career path for federal members of parliament who are all part-time. No leadership fights, no minority government, no dramatic changes of governments, public policies or public servants after elections. Fundamentally the Swiss Government cannot enact any law without majority support. You can begin to see why the Swiss system has been kept secret for the last century.

It is informative that whereas many decry the difficulty of amending our Constitution because of the requirement for a referendum, the Swiss however have no trouble and have amended it constantly since 1848. The difference is the people ask the questions, not the politicians. It is government by the people.

It is very easy to sneer at the Swiss as most elitists do. It is often done with humour as in the movie *The Third Man* when Orson Wells said *In Italy for 30 years under the Borgias they had warfare, terror, murder and bloodshed, but they produced Michelangelo, Leonardo da Vinci and the Renaissance. In Switzerland they had brotherly love, five hundred years of democracy and peace and what did that produce? The cuckoo clock.* But that was only a movie. He did not say it was the leading democracy in the world, arguably the most successful multi-cultural society, among the highest per capita income and life expectancy. They have not had a war since the French Revolutionaries invaded them. It is a land almost without tennis courts or an ocean, yet produced Roger Federer and won the America's Cup. Still while not perfect, their first university was founded in 1460 and we can learn from them.

No serious observer of politics in Australia, except those with specific interests, can pretend that we do not have major problems with our system of government or that we are incapable of achieving any improvement after a century of experience. "Minimalism" in our approach to a new constitution would always be a mistake as outstanding constitutional experts have documented such as Helen Irving in her 2001 Barton Lecture, David Solomon in his book *Coming of Age, Charter for a New Australia* and Harry Evans, former Clerk of the Senate, arguably Australia's leading expert on constitutions and government.

There have been many new constitutions written since the Second World War. Most have been prepared in times of overwhelming crisis or the urgent aftermath of revolution or war. Fortunately we do not have this degree of urgency. In an analysis and survey of constitution making in the book *Democracy's Victory and Crisis 1997* Jon Elster formerly of the Universities of Chicago and Oslo and now Columbia University, has distilled some basic principles.

First, a democratic constitution is best formulated through a fully elected constitutional commission. Parliaments should not be allowed to be judges in their own cause. Serving politicians and bureaucrats will almost never have the public interest at heart when ceding or gaining "turf" as evidenced by the last century of attempts at reform. Second, the role of experts and lawyers should be advisory rather than in actual decision-making.

Third, constitutions should be evolved in calm, generally open, deliberate and measured conditions avoiding *grandstanding and rhetorical over bidding*. Secrecy should be minimised to avoid *partisan interests and log rolling coming to the forefront and threat based bargaining*.

Fourth, any constitution should not come into effect until some time after it has been adopted, so as to reduce the impact of short-term partisan motives.

Following these principles, a fully elected constitutional commission should be convened on the basis of one-vote-one-value on an Australia-wide proportional basis. It should be serviced by a technical secretariat and meet for short sessions over a substantial period of time. It should have the power to utilise polling and to put plebiscites to the people, ideally to coincide with elections to establish fundamental directions.

Eventually the commission should be authorised to institute a referendum on the basis that the new constitution will not come into effect for say, seven years.

Serious reform is of course perhaps many years into the future and the obstacles and enemies of democratic reform are many. The political parties and their partisan supporters' overwhelming interest is in gaining power and preserving the political duopoly.

Big business is implacably opposed to more democracy. It wants more centralisation of power. It currently employs more than 600 registered lobbyists in Canberra and spends millions of dollars to subvert democracy.

Big media is always constrained by its owners' interests. Since the Second World War there has been a growth of corporate propaganda to protect corporate power against democracy. Nevertheless given authoritarian government has been the norm for almost all of modern human's 200,000 year history and democracy seriously arrived just over 200 hundred years ago, it is making reasonable progress but there is a long way to go.

In conclusion I would like to thank the Henry Parkes Foundation for the opportunity of delivering the 2013 Oration. It is a major honour to help recognise his Tenterfield speech and pay homage to his pre-eminent career in Australian political history both in longevity and achievement.