

# TheParliamentarian



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## PLUS ►

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the Commonwealth  
Secretary-General

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Terrorism in Nigeria

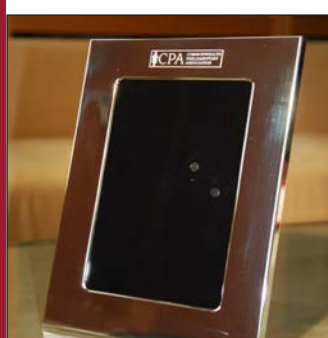
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## STATEMENT OF PURPOSE

The Commonwealth Parliamentary Association (CPA) exists to connect, develop, promote and support Parliamentarians and their staff to identify benchmarks of good governance and implement the enduring values of the Commonwealth.

## Calendar of Forthcoming Events

Confirmed at 24 August 2015

### 2015

#### September

- |                      |   |
|----------------------|---|
| 2-5 September        | CPA and State University of New York (SUNY) Workshop for Constituency Development Funds – London, UK                        |
| 9-12 September       | Asia Regional Association of Public Accounts Committees (ARAPAC) Annual Meeting - Kathmandu, Nepal                          |
| 14-16 September      | Annual Forum of the CTO/ICTs and The Parliamentarian - Nairobi, Kenya   |
| 28 Sept to 3 October | West Africa Association of Public Accounts Committees (WAAPAC) Annual Meeting and Community of Clerks Training - Lomé, Togo |
| 30 Sept to 5 October | CPA International Executive Committee Meetings - London, UK   |

#### October

- |               |   |
|---------------|---|
| 26-28 October | CPA and United Nations Environment Programme (UNEP) Legislators' Experts Meeting on Climate Change - London, UK |
|---------------|---|

#### November

- |                |  |
|----------------|--|
| 1-5 November   | 7 <sup>th</sup> Commonwealth Youth Parliament - Darwin, Northern Territory, Australia              |
| 23-24 November | CHOGM Women's Forum 2015 – Valetta, Malta  |
| 24-26 November | 33 <sup>rd</sup> Australia and Pacific Regional Conference - Darwin, Northern Territory, Australia |
| 27-29 November | Commonwealth Heads of Government Meeting (CHOGM) 2015 – Valetta, Malta                             |

The publication of a Calendar of Commonwealth Parliamentary Association (CPA) events is a service intended to foster the exchange of events and activities between Regions and Branches and the encouragement of new ideas and participation. Further information may be obtained from the Branches concerned or the CPA Secretariat. Branch Secretaries are requested to send notice of events and conferences to [hq.sec@cpahq.org](mailto:hq.sec@cpahq.org) in advance of the publication deadline to ensure the Calendar is accurate.

Further information can also be found at [www.cpahq.org](http://www.cpahq.org) or by emailing [hq.sec@cpahq.org](mailto:hq.sec@cpahq.org).





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#### Disclaimer

Opinions and comments expressed in articles and reviews published in *The Parliamentarian* are those of the individual contributors and should not be attributed to the Secretariat of the Association.

#### Contributors

Thank you to all contributors for this issue.





# ELECTIONS AND VOTING REFORM ACROSS THE COMMONWEALTH

## The Editor's Note

It was the American writer and politician, Benjamin Franklin who said that *"In this world nothing can be said to be certain, except death and taxes."*

For the experienced Parliamentarian in any democratic system across the Commonwealth, the certainty of *elections* can be added to that list.

Elections are an essential part of the democratic process and allow people to express their democratic rights and have their say in who they want to represent them. The right to vote is a hard fought principle and throughout history, different groups in society have battled to gain the right to participate in elections.

This issue of *The Parliamentarian* focuses on elections and the different reforms to electoral systems and voting rights that have been applied or are being negotiated in the Parliaments and Legislatures across the Commonwealth. It also examines how Parliamentarians are working to engage with voters to encourage activity participation in elections.

**"Elections are an essential part of the democratic process and allow people to express their democratic rights and have their say in who they want to represent them. The right to vote is a hard fought principle and throughout history, different groups in society have battled to gain the right to participate in elections."**



**Jeffrey Hyland, Editor**  
*The Parliamentarian*

The Commonwealth Secretary-General, His Excellency Kamalesh Sharma has written about the Commonwealth Electoral Network (CEN) and speaks of his desire that it establishes a *"gold standard"* in elections management.

Elections and Voting Reforms are examined in several different contexts in this issue: **Hon. Raphael Mhone MP** (Malawi) outlines the proposed reforms for his country; **Robert McDowall** (Alderney) observes the challenges of election reform from one of the smallest branches of the CPA; **Hon. Sebastien Pillay, MNA** (Seychelles) looks at what is required to reform elections in this island nation; and Speaker **Hon. Steve Rodan SHK**

(Isle of Man) looks at 150 years of electoral reform the world's oldest parliament. **Hon. Jordan Brown, MLA** (Prince Edward Island, Canada) outlines how a new *Committee on Democratic Renewal* will help to shape elections for the future.

Corruption in the context of elections are scrutinized by **Shri Satya Narayana Sahu** (India). The financial aspects of elections are also analyzed: **Senator David Smith** (Canada) looks at Canadian electoral finance in the 21<sup>st</sup> century; **Hon. Phillip Paulwell, MP** (Jamaica) reviews the advances in Political Party financing in Jamaica; and **Hon. Trevor Khan MLC** (New South Wales, Australia) outlines the '*price in politics*' through political donations and lobbying.

The extension of the voting franchise to include more young people in elections is a key election reform in many places across the Commonwealth. **Professor Sarah Birch** (University of Glasgow) provides an analysis of how different electorates have extended the franchise for parliamentary elections while **Anne McTaggart MSP** (Scotland) reports on how a music project is encouraging youth engagement in elections in Scotland.

Voter engagement in elections is essential to maintain the democratic process and **Electoral Commissioner David Kerslake** (Western Australia) looks at the challenges of conducting an election





across the vast area of a continent and how internet voting could help to ensure high levels of turnout.

Engaging voters in a referendum as a demonstration of self-determination and democracy in action is reviewed by **Hon. Dr Barry Elsby, MLA** and **Hon. Michael Poole, MLA** (Falkland Islands) who examine the historic Falkland Islands referendum in 2013.

We look at other topics in this issue of *The Parliamentary*. **Hon. Daniel Reyenieju** (Nigeria) reviews the challenges of dealing with Boko Haram for the government in Nigeria.

**Hon Dr Godfrey Farrugia MP** (Malta) looks ahead to the Commonwealth Heads of Government Meeting (CHOGM) 2015 being held in Malta later this year.

Commonwealth Parliamentarians are asked to add their voices to a campaign to fight the global epidemic of TB by **Hon. Nick Herbert MP** (UK) as he outlines the work of the Global TB Caucus.

This issue of *The Parliamentary* also includes a report on the Commonwealth Women Parliamentarians (CWP) outreach activities from both the Pacific and Australia Regions. The *Parliamentary Report* includes parliamentary and legislative news from Sri Lanka, Canada, British Columbia, Quebec, India, UK, New Zealand and Australia as well as a report about the Commonwealth Serjeants at Arms 2015 Conference held as part of the celebrations to mark the 600<sup>th</sup> anniversary of the first Serjeant at Arms.

I look forward to hearing your feedback and comments on the publication and if you would like to suggest any future themes or contributions to *The Parliamentary* then do please get in contact.

**Jeffrey Hyland**  
**Editor, *The Parliamentary***  
 editor@cpahq.org







# PARLIAMENTS AND ELECTIONS

## View from the Acting Secretary- General & Director of Finance and Administration

For Parliamentarians across the Commonwealth, elections are an essential part of the democratic process. With recent elections in the United Kingdom, Pakistan, Sri Lanka and Nigeria to name just a few examples, and with an election having been called for the autumn in Canada, election issues and how to engage with voters are constantly at the forefront of the minds of the Commonwealth Parliamentary community.

Commonwealth Parliaments and Legislatures can learn from each other in the provision of a wide range of matters relating to elections from voter registration to party political funding; from the running of a successful referendum to engaging young people in voting; from the legislation required to ensure elections are undertaken within a legal framework to the use of online voting in large jurisdictions.

The Commonwealth Secretariat has led the way on the principle of ‘*free and fair*’ elections with the establishment of the Commonwealth Electoral Network (CEN) which aims to ensure elections around the 53 nation Commonwealth community are fair, credible and transparent, by helping electoral management bodies to share, and implement, best practices.

We are delighted that the Commonwealth Secretary-General, His Excellency Kamalesh Sharma, who was instrumental in conceptualising the Commonwealth Electoral Network (CEN) and has spoken of his desire that it establishes a “*gold standard*” in elections management, has written about the CEN for this issue of *The Parliamentarian* (see page 150).

For the Commonwealth Parliamentary Association, the Post-Election Seminar is one of our core programmes. For over 20 years, the Association has conducted numerous Post-Election Seminars for Parliaments that have a high intake of new Parliamentarians, are entering a new political system or era or are emerging from a period of conflict. Post-Election Seminars are aimed at building the capacity of newly elected Members of Parliament so they function efficiently and effectively in the performance of their democratic duties and serve as refresher courses for returning MPs.

This longstanding programme introduces Members to different



**Mr Joe Omorodion**  
**Acting Secretary-General**  
**& Director of Finance**  
**and Administration of**  
**the Commonwealth**  
**Parliamentary Association**

parliamentary systems and methods of working. They usually take place a few months after a general election and are delivered by senior, highly experienced Parliamentarians and parliamentary officials from throughout the Commonwealth.

The objectives are two-fold: to disseminate information on diverse good practices in Commonwealth Parliaments, and to promote an understanding of the way parliamentary procedures and practices can embed good governance into a system. Recently, the CPA has held Post-Election Seminars in Malawi, Swaziland, the Bahamas and Pakistan with further seminars planned in 2015/16.

On occasion, the CPA has also undertaken Pre-Election Seminars at the specific request of a Member of the CPA to prepare parliamentarians and parliamentary staff for a forthcoming election and to provide expert advice on the processes that are required to ensure an efficient and well planned election.

Goal 16 of the Sustainable Development Goals (SDGs) of the United Nations, which will build upon the Millennium Development Goals (MDGs) and converges with the post-2015 development agenda, states that the goal is to “*promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.*”

This is detailed further by stating that the Sustainable Development Goal will “*ensure responsive, inclusive, participatory and representative decision-making at all levels*” (16.7), “*develop effective, accountable and transparent institutions at all levels*” (16.6) and “*substantially reduce corruption and bribery in all its forms*” (16.5).<sup>1</sup>

The provision of ‘*free and fair*’ elections across the Commonwealth will help to meet these goals of achieving accountable and effective institutions, ensuring that all sections of society are represented and that corruption has no place in any democratic electoral process.

### References

<sup>1</sup> United Nations Sustainable Development Goals (SDGs) <https://sustainabledevelopment.un.org/>



### **NORFOLK ISLAND**

From 17 June 2015, the Norfolk Island Legislative Assembly ceased to exist as a member of the Commonwealth Parliamentary Association (CPA), following legislative changes by the Commonwealth of Australia. The Norfolk Island CPA Branch was established in 1979 when the CPA International General Assembly taking place in New Zealand passed a resolution to admit Norfolk Island to the family of the Commonwealth Parliamentary Association. We would like to thank the Members of the Legislative Assembly of Norfolk Island for their regular contributions to *The Parliamentarian* and other CPA publications over the years and to the Members who have served on the CPA International Executive Committee and attended the CPA Annual Conference. We wish them well in their future endeavors.





# ELECTION REFORM AND WOMEN

## View from the Commonwealth Women Parliamentarians (CWP) Chairperson

Dear Readers of *The Parliamentarian*,

I welcome you to yet another issue of *The Parliamentarian*. However, the theme of this issue is quite unique in that elections and voting reforms is a very critical matter in democratic governance.

Every citizen has a responsibility to vote on Election Day. But it is the government's responsibility to make sure the system works efficiently for those who exercise this responsibility. Those who take the time to participate in democracy are owed at least that much.

If democracy has anything to do with self-determination – and *self-determination with dependability* – then the electoral system might well be the very heart of democracy. If this seems like an exaggeration, then let me try and sketch briefly what the electoral system should include.

It verifies who can or should be allowed to vote. When should electoral rolls be prepared, revised and how? The formation and functioning (including funding, etc.) of political parties is also an integral part of the electoral system. This also includes the basic question of who can contest an election.

This is followed by the actual conduct of the election which is what



**Rt Hon. Rebecca Kadaga, MP  
Chairperson of the  
Commonwealth Women  
Parliamentarians and Speaker  
of the Parliament of Uganda**

is most associated with the electoral system. On what basis the winner of the election is decided is another key element of the electoral system. These are some of the pre-election activities and those that take place during an election.

There are a whole range of post-election activities during which the outcome of the electoral process are managed, such as post-election disputes, election petitions, the formation of the government and the subsequent functioning of the government (including issues such as defections).

This illustrates the critical role of the electoral system in ensuring an effective and functioning democracy and hence enhances the importance of electoral reforms.

Electoral reforms should be aimed at among other things, improving the responsiveness of electoral processes to public desires and expectations. However, not all electoral change can be considered electoral reform. Electoral change

can only be referred to as 'reform' if its primary goal is to improve electoral processes, for example, by fostering enhanced impartiality, inclusiveness, transparency, integrity or accuracy. However, this distinction is not always clear in practice: some changes may be characterized as desirable or even necessary 'reforms' by their proponents, but as improper 'manipulation' by their opponents. Random and/or frequent electoral change, while it may be reformist, can also be confusing to voters, and thus defeat its purpose.

Elections and voting reforms are vital issues to consider in nation building for a number of reasons.

In theory, electoral systems and reform have become rather a 'hot topic' with the surfacing of new democracies in many parts of the world. A recent drift towards electoral reform has also emerged in several countries. In reality the electoral system is important as it defines how the political system will function. It is a device to choose viable governments and give them legitimacy. It is also aimed at reflecting the wishes of the voters, to produce strong stable governments and elect qualified representatives.







I have already highlighted some of the attributes of good electoral reforms but the component of all-inclusiveness is one of the most outstanding. This is of particular interest to us as the Commonwealth Women Parliamentarians (CWP). Good elections and voting reforms should strongly uphold and cater for the full participation of all groups of people in a given society including women. The strategies to overcome the obstacles to political participation of women should be at the core of elections and voting systems throughout the Commonwealth. As the CWP, we believe that is not only tenable but also attainable.

Let me use the Ugandan experience in further elucidating the importance of elections and voting reforms. Uganda has had five general elections since independence in 1962.

Each of the elections has been a learning experience, revealing areas that require strengthening in Uganda's electoral system. Budgeting and funding of election activities; voter and civic education; party registration and financing; electoral disputes resolution; electoral boundary demarcation; and election management body institutional strengthening have consistently come out as key areas that call for review in light of the electoral dynamics, not just in Uganda but in many other democratic nations.

The adoption of a new constitution in 1995 promised a new beginning for Uganda. After more than three decades of political instability, widespread human rights abuses and a nearly collapsed economy, the 1995 constitution promised a new beginning on the horizon. Among other things, the constitution sought to establish the critical foundations for a new political dispensation rooted in the principle of democracy, separation of powers, respect for fundamental human rights and freedoms, and the rule of law.

Most recently, the Uganda Parliament has been debating and considering constitutional amendments with a view to producing electoral reforms. All these are visible steps towards achieving a transparent electoral and voting system.

It is no secret that the consequences of bad elections can be dire to say the least. We have witnessed all across the world what happens in the aftermath of badly organized or fraudulent elections. Bloodshed, civil strife and in some cases genocide have been some of the consequences of bad elections.

The example of Kenya is quite an intriguing one but one that clearly comes to mind in this case. Widespread controversy over the legitimacy of the 2007 election results produced the boiling point in which a cauldron of historical tensions unleashed its insidious rage, resulting in up to 2,000 people killed, over 300,000 people displaced and an estimated US\$1.5 billion in losses to the economy.

However I was so enthralled by the huge steps that Kenya took to avoid a repeat of such state of affairs. The new Constitution was passed by referendum in August 2010 with two thirds of the popular vote. Indeed, Kenyans have reason for optimism given the broad



checks and balances enshrined in terms of devolution of power, human rights, gender parity, powers of the executive, an independent judiciary, a two-tiered parliament and many oversight bodies to ensure transparency and accountability.

In some countries, real electoral competition has historically been impossible and election-specific violence is unnecessary to ensure a favorable election outcome. No opposition candidates ever appear on the ballot, so the risk of losing an election is non-existent. In other places, the government may face an electoral threat but does not respond with violence because leaders are more likely to be held accountable. When judiciaries become more independent of the executive office or when other checks on government power develop, election violence becomes less likely even when a leader or party's position in power is seriously threatened.

As we head towards an electoral year for many countries in the Commonwealth, let us embrace and support electoral and voting reforms. By doing this, we are promoting democracy and the rule of law for the peace and prosperity of our countries and for the generations to come. We, at the CWP, support electoral and voting reforms that favour the participation of women in elections.

I wish you a happy reading of *The Parliamentarian*!

**“As we head towards an electoral year for many countries in the Commonwealth, let us embrace and support electoral and voting reforms. By doing this, we are promoting democracy and the rule of law for the peace and prosperity of our countries and for the generations to come.”**



# The Acting Secretary-General's Commonwealth Photo Gallery



Above left: Hon. Juan Watterson, Minister for Home Affairs & Chairman of CPA Isle of Man Branch meets Mr Joe Omorodion, Acting Secretary-General & Director of Finance and Administration on a visit to the CPA Secretariat.

Top and centre images: The 40<sup>th</sup> Conference of the Caribbean, Americas and Atlantic Region of the CPA took place in Tortola, British Virgin Islands. The conference was attended by the Acting Secretary-General and Director of Finance and Administration of the CPA, Mr Joe Omorodion as well as the Premier of the British Virgin Islands, Hon. Dr D. Orlando Smith (also pictured above centre); Madam Speaker, Hon. Ingrid A. Moses-Scatliffe and the Leader of the Opposition. During the conference, the Acting Secretary-General of the CPA met with the Governor of the British Virgin Islands, His Excellency Mr. John S. Duncan, OBE and the Deputy Governor, Madame V. Inez Archibald, CBE. (pictured above right).





Above and right: The 46<sup>th</sup> CPA Africa Regional Conference 2015 was officially opened by His Excellency Ukuu Kenyatta, President of the Republic of Kenya in Nairobi in the presence of the Chairperson of the CPA Executive Committee, Dr Shirin Sharmin Chaudhury MP and Mr Joe Omorodion, Acting Secretary-General and Director of Finance and Administration of the CPA. During the conference, amongst many meetings, the Acting Secretary-General and Director of Finance and Administration of the CPA, Mr Joe Omorodion met with the Speaker of the Senate of Kenya, Senator Ekwere Eithuro (above right).



Right: Delegates at the CPA Small Branches Committee Workshop held at the Tynwald Parliament on the Isle of Man and hosted by the CPA Isle of Man Branch. Pictured front centre are: the Speaker of the House of Keys, Hon. Steve Rodan; Mr Joe Omorodion, Acting Secretary-General and Director of Finance and Administration of the CPA; and Madam President of the Tynwald, Hon. Clare Christian.





# COMMONWEALTH ELECTORAL NETWORKS

The Commonwealth Secretary-General, His Excellency Kamalesh Sharma introduces the Commonwealth Electoral Networks and their work in setting the 'gold standard' in election management.



**Commonwealth Secretary-General Kamalesh Sharma** became Secretary-General in April 2008 having been appointed by Commonwealth Heads of Government in Uganda in November 2007. Mr Sharma joined the Indian Foreign Service in 1965 and served at ambassadorial level in five missions including India's High Commissioner to the United Kingdom, where he was closely involved in Commonwealth affairs. He was India's Ambassador and Permanent Representative to the United Nations in Geneva followed by the United Nations in New York where he chaired the Working Group which led to the Monterrey Consensus; he was also closely engaged in the process which led to the formulation and adoption of the Millennium Development Goals. Mr Sharma's special interests lie in the empowerment of young people, the advancement of women's rights, the challenge of poverty eradication and economic growth.

Democracy, development, and respect for diversity are at the heart of the Commonwealth's core values. The Commonwealth attaches the highest importance to the conduct of credible and peaceful elections as a means of giving citizens an opportunity to choose their leaders and to hold them accountable.

Parliaments, local government, and other forms of local representation are all integral to democratic and accountable governance. Our Commonwealth conviction is that governments, political parties and civil society share responsibility for upholding and promoting democratic culture and practices.

Although elections are not the singular mark of a democracy, the management and credibility of the process are the crucial index in assessing the health of a country's democracy. Elections can often be tense and fraught affairs, and the electoral period is a moment when the credibility of institutions and fundamental rights and freedoms, including freedom of expression and freedom of assembly, are tested.

As a result, election observation – be it international or domestic – has progressively become an important component of the process. The presence of observers can help to shine a light on shortcomings

and identify lapses in the process. It can also enhance accountability and transparency and thereby confidence in the process. But the mere presence of observers does not legitimise or make an election credible. Only an independent, capable and transparent electoral management body, supported by observers, can ensure the credibility of an election and increase public and political confidence in it.

Observing elections, and making recommendations as to how electoral processes can be improved, has long been a distinctive brand strength of the Commonwealth and is greatly valued by our membership. Current and former parliamentarians are actively sought as members of Commonwealth Observer Groups, and provide a valuable contribution to the team's overall assessment of the electoral process. This includes observing whether systems for electoral administration are neutral and robust, whether there is freedom of movement and expression with peaceful, open dialogue and a free flow of information, including through a free, vibrant and professional media, and whether public service broadcasters are independent.

It is with the goal of advancing adherence to the highest standards in the conduct



of elections through peer support that the Commonwealth Electoral Network was established. The Network brings together professionals from our electoral management bodies to share experiences, provide mutual solidarity, and promote good practice through knowledge and action in the field of election management.

When it was launched in 2010 in Ghana, the Network was welcomed by electoral management bodies as a forum for collaboration, practical support and knowledge-sharing and one which would collectively focus on key aspects of election management which would help them discharge their heavy national responsibility. It has indeed proved to be an effective means for strengthening their independence and promoting greater professionalisation. Its contribution can only grow with time.

My desire in launching it was that the Commonwealth Electoral Network should establish a 'gold standard' in elections management, ensuring that electoral management bodies in all our member countries are a source of national confidence and are seen to be upholding the highest electoral standards.

The quality of a country's election rests largely on its electoral management body. An independent, capable and transparent institution plays a critical role in winning the confidence of the public. Election officials in Commonwealth countries increasingly turn to the Network to improve their understanding of successful voter education initiatives and to keep abreast of rapid advances in the use of technology in elections, for voter registration, monitoring campaign financing and many other technical issues.

The Commonwealth

Electoral Network itself has been designed, delivered and managed using the advantages conferred by contemporary technologies. Contact is maintained and collaboration carried forward using our secure Commonwealth Connects web space, which also provides online facilities for storing and sharing knowledge. The Network's flagship activity is a biennial conference and to date this has been held in Ghana, Canada and Kenya. These gatherings bring together the most senior officials in our election management bodies for a series of in-depth discussions on international best practice tied to an overarching theme. The 2014 conference provided a forum for members to discuss issues around *Strengthening Institutional Capacity and Electoral Integrity*.

In addition, the Commonwealth Electoral Network has convened a series of working group meetings on topics including voter education and electoral participation, voter registration and managing the power of incumbency. These working groups have already proved instrumental in helping countries to adopt good practices. Officials working in one electoral management body often find that they are dealing with scenarios and challenges that are strikingly similar to their counterparts in other countries. The Network encourages peer-to-peer learning, promotes the development of best practice guides and helps to identify areas where targeted technical assistance is necessary.

Within the Network, a Commonwealth Junior Election Professionals (JEP) Initiative is training nearly a hundred young electoral professionals from over 40 different countries. Regional workshops have already been held in Asia, the Pacific and the Caribbean, and there will



be one later this year in Africa. Over time this direct assistance will be of benefit not only to the junior officials themselves, but will spread to other permanent employees and temporary election officials brought in to work at polling stations.

As the benefits and impact of Commonwealth collaboration extend ever more widely, each of our member countries are able to contribute and play an active part in upholding democracy, supporting development, and broadening respect for diversity. The broad range of Commonwealth membership enables it to serve as a template for the whole world, giving rich meaning to the theme adopted for the Commonwealth Heads of Government Meeting taking place in Malta this November: *'Adding Global Value'*.

The success of an initiative such as the Commonwealth Electoral Network shows the enduring value of the Commonwealth's convening power across our global membership and aims to uphold the rights of all to be included in

the decision-making processes that affect their livelihoods and welfare. In the words of our Charter, *'We recognise the inalienable right of individuals to participate in democratic processes, in particular through free and fair elections in shaping the society in which they live.'*

***"In the words of our Charter, 'We recognise the inalienable right of individuals to participate in democratic processes, in particular through free and fair elections in shaping the society in which they live.'"***



# ELECTORAL AND VOTING REFORMS IN MALAWI



**Hon. Raphael Joseph Mhone MP** is the Member for Nkhata Bay Central in the Malawi Parliament. Prior to election, he held various academic positions including Lecturer in Law at the University of Malawi (Polytechnic) and the Malawi College of Accountancy and as a Legal Consultant to the Malawi Parliament on Parliamentary Procedures and Practices. He is the Founding Member of the Commonwealth Corporate Governance Forum.

## **Introduction**

The 2014 Malawi Tri-Partite Elections were characterized by mistrust, a chaos that was unprecedented since the advent of multi-party elections in the country in 1994, and the non-acceptance of the results in principle to date. The Malawi Electoral Commission (MEC) is proposing a number of reforms in order to recoup its lost glory hopefully to be enacted by February next year.

## **The Proposed Electoral Reforms**

The electoral reforms are to address the '*mischiefs*' associated with problems in the process of constituency/ward demarcation, the electoral law, electoral systems, electoral administration and the management of campaigns, result determination and the announcement of results.

## **Presidential election**

Under section 80 of the Constitution, the president is directly elected by the people through a First Past The Post (FPTP) election system but the elections are conducted under the Parliamentary and Presidential Elections Act 1994 (PPEA).

The main proposals for reform is that an absolute majority of 50% plus one vote (50% + 1) will be required for a candidate to win the presidential election. If none of the candidates obtains enough votes in the election, a second election involving the top two candidates in the first round should be held.

## **Parliamentary elections**

Parliamentary elections also use the FPTP system which has a number of challenges; the most glaring of which is the disproportionality between the percentage of votes won by a party and the number of seats the party wins in the National Assembly resulting in over-representation or under-representation.

For example, in the 2014 general elections, with only 17% of votes cast in parliamentary elections, the Malawi Congress Party (MCP) got up to 26.4% of seats. Similarly, the People's Party (PP) which got 18.1% of votes cast in the same elections, they secured only 13.5% of the seats in the National Assembly. In the light of this, the Multi Member Constituency system is being proposed as a reform measure.

## **Local government elections**

These elections are governed by Section 147(5) of the Malawi Constitution, the Local Government Elections Act (LGEA) and also the Electoral Commission Act (ECA) under which councillors are elected using the FPTP electoral system. The key reform in this area will focus on the reserving of a number of seats for women, making up to 40% of the councillors to conform with the Gender Equality Act of 2013.

## **Coherence and Sufficiency of Electoral Laws**

This will be dealt with by:

*Consolidation of laws:* Historically, the Electoral Commission Act, the PPEA and LGEA used to be one Act of Parliament until they were split in 1996 but the LGEA is a duplicate of the PPEA and it is thus intended to consolidate the last two Acts into one Act now that the MEC is required to conduct tri-partite elections.

*Subsidiary legislation:* The Minister has the power to make subsidiary legislation under section 22 of the ECA and section 121 of the PPEA, on the recommendation of the Commission but section 104





Above: The Parliament Building in Malawi.

of the LGEA places the duty to do so on the Commission. To clarify the conflicting provisions, it is proposed to empower the Electoral Commission only to promulgate subsidiary legislation.

*Voter eligibility:* Section 77 (1) of the Constitution provides for eligibility for registration to all persons who are citizens or are resident in the country for at least seven years; have attained age 18; and are born in the country. This partly contradicts sections 15 and 6 of the PPEA and LGEA which state that every citizen of Malawi, those residing in Malawi and who, on or before the polling day, shall have attained the age of eighteen years shall be eligible to register as a voter in an election. The proposed reform entails amending S77 of the Constitution to allow voting age to be determined on the date of polling and not on registration in order to comply with international best practices.

*Candidates eligibility:* A candidate is required to get a number of signatures of registered voters that endorse the candidature of an interested person. The main observation is that the current required number (i.e. ten signatures) is rather too low and contributes to the increasing number of candidates and scales up the cost of elections. It is intended to increase the number of required signatures to one thousand for presidential candidates per constituency, two hundred and fifty signatures for MPs and fifty for councillors.

*Campaign:* Electoral laws also regulate the conduct of campaigns for parliamentary, presidential and local government elections by candidates and political parties. Though a section of the PPEA calls for fair coverage of all political parties by the National Public Broadcaster, in practice the ruling party dominates both radio and television coverage.

The intended reform is for an amendment to section 63 of the PPEA and for a new Communications Bill (2014) which will provide for the independence of the Malawi Broadcasting Corporation from Executive control in terms of its reporting and the appointment of the Director General befitting a public broadcaster.

*Vote buying:* The electoral laws say nothing on the use of hand-outs during a campaign thus creating a lacuna in terms of petitioning for undue returns. The use of hand-outs exacerbates the abuse and plunder of public resources by ruling parties and also entrenches the practices of patrimonial politics. Therefore, legislation banning political handouts in all its forms will be formulated with necessary sanctions by amending sections 66 and 115 of the PPEA. As a necessary development a new Bill, the Political Parties Bill 2015, has been presented to all

stakeholders including the Legal Affairs Committee of Parliament to replace the Political Parties (Rules and Regulations) Act. The new Bill makes it obligatory for all political parties to disclose the sources of their finances unlike under the current law where there is no such requirement.

*Determination of Results:* In Malawi, the practice has been that votes are counted right at the polling station. Under section 95, the results from polling centres are collated and verified by the Returning Officer but unfortunately he does not have the power to declare a winner for parliamentary or local government as he has to await the national result announcement by the Electoral Commission. It is intended to reform the law to empower Returning Officers as per international practice by:



**“The electoral reforms are to address the ‘mischief’ associated with problems in the process of constituency or ward demarcation, the electoral law, electoral systems, electoral administration and the management of campaigns, result determination and the announcement of results.”**

1) Amending section 96 of the PPEA to enable Returning Officers to determine results for parliamentary and local government and to certify the presidential count at the district level within a 48 hour timeframe.

2) Amending section 96 to clarify the powers of determination vis-a-vis the publication of results under section 99 of the PPEA.

*Results Announcement:* Under the current electoral laws, the announcement of official results is governed by section 99 with respect to parliamentary and presidential elections and section 83 in the case of local government elections.

According to these provisions, the national elections results must be published within eight days from the last polling day and in any event not later than forty-eight hours from the conclusion of the determination. In 2014 the Electoral systems for no

apparent reason broke down particularly for the Presidential Elections to the extent that it had to take the Judicial Court to make a determination on behalf of the Electoral Commission as to who should be declared the winner. It is now proposed to increase the number of days for making an electoral determination from eight to 10 days or to be staggered for Presidential, Parliamentary and Local Elections to 7, 14 and 21 days respectively.

This would require:

1) Amending section 99 of the PPEA to have a one off extension of the period when the results must be announced by the MEC not exceeding 72 hours.

2) Giving power to the MEC to order a re-run where glaring irregularities abound even before the announcement of the result as required by section 99 of the PPEA.

*Inauguration:* Since the advent of multi-party elections in Malawi, the speed at which the President-elect is sworn into office is noticeable. The misconception is that once a person has been sworn-in as President of this country, no electoral commission or court would undo his/her presidency. The proposed reform is to amend section 100 to the effect that inauguration should be done after settlement of all electoral petitions, if any, which must be adjudicated upon within 30 days.

The proposed reform law on handover is under the Presidential (Transition) Bill 2015 but unfortunately it does not deal with the issue of the date of inauguration or the swearing in of the President-elect pending resolution of electoral petitions. The Presidential (Transition) Bill would be best placed to deal with the matter by stating, in line







with the Constitution, that the inauguration takes place after 30 days from the announcement of the Presidential election result and the settlement of any electoral disputes.

*Dispute resolution:* One of the reform recommendations is that there must be an Alternative Dispute Resolution, as the ordinary courts are generally costly, slow and inaccessible to many people in Malawi. This recommendation however seems to overlook the fact that it is the Malawi Electoral Commission (MEC) that has the overall functions of dispute resolution under sections 113 and 114 of the PPEA.

Another critical reform to be made is to sections 97, 99, 100 and 114 of the PPEA which must allow a challenge to the results as soon as the returning officer at the district level has announced the winner rather than waiting for the national determination of the results. This amendment would assist with dealing with the vices of ballot removals from the districts by the MEC, the tampering with voting records and the 48 hour rule for bringing petitions as laid down in section 99 of the PPEA.

### Electoral Management

Since 1999 most Malawians have shown dissatisfaction with the MEC in terms of electoral management and administration and that dissatisfaction was finally vindicated in the fiasco of the 2014 tri-partite elections. It is thus proposed to reform the following:

*Institutional set up:* There is a need for clearly spelt out, distinct roles and responsibilities between the electoral commissioners, the returning officers and the secretariat. It is further required to raise the qualifications and competencies of a District Elections Officer to degree holders and providing the requisite resources for them to

be independent of the District Councils which are controlled by the Executive.

*Independence and Accountability:* The independence of the Electoral Commission has been questioned in the way that the Commissioners are appointed by the President and are answerable to him for the overall fulfilment of their functions. This compromises the independence of the Electoral Commission and the unilateral closure of MEC in 2010 by the then President exposed its vulnerability and eroded its independence. To enhance independence and accountability of the Electoral Commission, it is proposed that the Electoral Commission should be reporting and accountable to the National Assembly; and that its finances be protected to ensure financial independence as well by amending section 15 of the ECA.

*Composition of the Electoral Commission:* The Electoral Commission as stipulated in section 75 (1) of the Constitution consists of a Chairman and at least than six commissioners. The membership is drawn from nominations from political parties represented in Parliament. It is proposed to choose one of the following reforms:

(a) *Non-partisan Gender Balanced Expert Commission* - made up of a politically non-aligned gender balanced team that is appointed on the basis of their professional skills, or

(b) *Combined/Mixed Gender Balanced Commission* - this is a mixed membership gender balanced Commission that is representative of society including members nominated by political parties, civil society representatives and politically non-aligned professional members.

*Chairmanship of the Electoral Commission:* The Constitution under section 75 (1) provides

that the Chairperson of the Electoral Commission shall be a Judge. The current view is that the position of the head of the Commission should not be the preserve of Judges and therefore it is proposed that the MEC should be headed by any competent Malawian from different professions with relevant expertise and leadership qualities including retired, but not serving, Judges.

*Procedures for the appointment of the Chair and Commissioners:* Currently the President appoints persons to be members of the Electoral Commission in consultation with the Leaders of political parties represented in the National Assembly under Section 4 of the Electoral Commission Act. This power has been abused in the past and it is proposed to reform the law as follows:

1) Provide for a maximum of seven Commissioners including the chairperson;

2) Appointment of Malawians of integrity possessing expertise in various fields with a minimum qualification of a Bachelor's Degree.

3) An open and transparent procedure through advertisement in national newspapers and asking interested persons to apply and political parties to nominate their intended interviewees who satisfy criteria (2) above.

4) The creation of an independent assessment panel for the recruitment of Electoral Commissioners.

*Tenure of Commissioners:* Under section 75 (3) of the Electoral Commissions Act, Commissioners are appointed to a term of four years with the possibility of being reappointed to another four year term. Practice has shown that re-appointments cannot be guaranteed. Thus the following reforms are proposed:

1) The tenure of Commissioners in the MEC should be a period of five years;

2) Creation of the office of Vice-Chairperson of the Commission; and

3) That three Commissioners should be re-appointed for the sake of institutional memory.

*Constituency and ward demarcations:* The Electoral Commission has powers to review existing constituencies under Section 76 (2) (b) of the Constitution and wards under section 8(1) (c) of the Electoral Commissions Act, at intervals of not more than five years and to alter them in accordance with the principles laid down in the same sections. However, the guidelines for demarcation of constituencies in the Constitution are not supported by provisions in the PPE Act and the LGE Acts. It is therefore intended to reform the laws by:

1) Repealing the relevant sections of the ECA Act and the Local Government Act made in 2010 in which the demarcation of wards were subordinated to Constituencies, to enable the Commission determine the appropriate number of wards.

2) Amending the Town and Country Planning Act to prevent overlapping of Town, District, Municipal and City boundaries.

### Conclusion

The electoral reforms are to address the problems associated with the process of constituency/ward demarcation, the electoral law, electoral systems, electoral administration and the management of campaigns, result determination and the announcement of results.



# 150 YEARS OF ELECTORAL REFORM

The Isle of Man: the world's oldest parliament  
and the world's youngest voters



**Hon. Steve Rodan SHK** is the Speaker of the House of Keys in the Tynwald, the parliament of the Isle of Man and the Joint President of the Commonwealth Parliamentary Association (CPA) Isle of Man Branch. He is Member for the constituency of Garff, to which he was elected in 1995. In his parliamentary career, he has served on many Committees and has served as a Minister of the Isle of Man Government. His political interests include constitutional matters, external relations and economic, social and environmental policy.

*The Speaker of the House of Keys explains the significance of the year 1866 in the constitutional history of the Isle of Man, and outlines developments since that date in the Island's electoral system.*

Readers of *The Parliamentary* will be well aware that Tynwald, the legislature of the Isle of Man, is the world's oldest parliament in continuous operation, having celebrated its millennium in 1979. The ceremonial sitting of the Manx parliament which is still held annually at Tynwald Hill in the centre of the Island follows a pattern which was first documented in detail in 1417 but which has its roots in Viking days.

What is perhaps less well known is the more recent history of Tynwald. Although the annual Tynwald Day ceremony remains the centre point of the parliamentary year, the composition of the legislature and its non-ceremonial procedures have gone through many changes. In 2015 and 2016, the Isle of Man commemorates the anniversaries of two significant milestones on Tynwald's journey from its Norse origins to the modern parliament we know today.

First, in 2015 we mark the 250<sup>th</sup> anniversary of the Revestment Act of 1765, the moment in Manx history where the Island became a Crown Dependency. Second, in 2016 we mark the 150<sup>th</sup> anniversary of the House of Keys Election Act 1866, the moment where the Island took its first steps towards being a truly representative parliamentary democracy.

Located as it is at the geographical centre of the British Isles roughly equidistant from England, Ireland, Scotland and Wales, the Isle of Man has always sought to take advantage of its location together with its constitutional right to make its own laws. In the seventeenth and eighteenth centuries, the Island did this through the 'running trade', sometimes referred to in the Island simply as 'the trade', but in the United Kingdom as smuggling.

In 1405 the ancient Kingship of Man had been given by Henry IV to Sir John Stanley. His heirs and successors continued to rule the Island for 360 years, first as 'Kings of Man' and from the early sixteenth century as 'Lords of Man'. By the 1760s the British government had decided that the only way to bring 'the trade' under control was for the British Crown to buy back the

sovereign rights of the Isle of Man from the descendants of Sir John Stanley.<sup>1</sup>

The Revestment Act enacted at Westminster in 1765 therefore returned the principal rights of the Island to the Crown (for which reason, to this day, the loyal toast in the Island is to 'Her Majesty the Queen, Lord of Man'). At the same time, the so-called 'Mischief Act' of 1765 gave the English customs authorities powers to search all ships in Manx harbours and waters.<sup>2</sup> The direct importation of all foreign goods was prohibited as was the export of goods likely to compete with British produce.<sup>3</sup>

From the point of view of the Island's autonomy the Revestment Act of 1765 was a low point. The Island's customs establishment was brought under the control of the UK parliament and its expenses were met by taxes paid by the Manx people at rates

**"To this day, the loyal toast in the Island is to 'Her Majesty the Queen, Lord of Man.' "**





determined at Westminster, not in Tynwald.<sup>4</sup> The cry of '*no taxation without representation*', made famous in North America in the same period, could have gone up with equal justification in the Isle of Man.<sup>5</sup> But although the Isle of Man was not a colony but a separate kingdom with its own ancient parliament, it was to be 100 years before the Island began to regain control of its own financial destiny.

If 1765 was a low point, 1866 was a turning point. In the middle of the 19<sup>th</sup> century the Manx economy was doing well. Shipbuilding was booming. The age of tourism had begun, with the Isle of Man Steam Packet Company bringing 50,000 visitors each year.<sup>6</sup> Mining was a major industry, as today's visitors are reminded by the Laxey Wheel, constructed in 1854 and now the world's largest working water wheel.

On the constitutional front, on the other hand, the Island was in a sorry state. As noted above, significant powers over the Island's revenues had been taken by the UK parliament. The Manx parliament, Tynwald, remained in existence but with a diminished role. Its lower branch, the House of Keys, was self-elected. Upon the death of a Member, a replacement was selected by the Governor from two nominees proposed by the remaining Members.

Economic prosperity brought with it demands for improvements to the Island's infrastructure and in particular to the port of Douglas which would soon become the Island's capital. However, funding for the Island's ports and harbours remained in the grip of the UK authorities. The Governor appointed in 1863, Henry Loch, realised that if the necessary

harbour works were to proceed, the Manx government would need to gain control of raising and allocating the necessary funds. He also saw that there was no chance of achieving that control so long as the Keys remained self-elected.<sup>7</sup>

In 1865 Loch submitted proposals to the UK Treasury that the Island's government be granted greater powers subject to the Keys becoming an elected body. After protracted negotiations a deal was reached. On 18 May 1866 the UK Parliament passed the Isle of Man Customs, Harbours and Public Purposes Act, by which Her Majesty's Customs would set aside an increased proportion of the Manx customs revenues to fund such works as Tynwald might determine. On 16 August 1866 Tynwald passed the House of Keys Election Act and the first election was held on 18 March 1867.

Voting in 1867 was not

**Above: The Laxey Wheel, built in 1854, towers over the village of Laxey in Speaker Steve Rodan's parliamentary constituency.**  
Image credit: Paul Dougherty, Tynwald Seneschal

universal. The franchise was restricted to males owning real estate worth at least £8, or tenants paying a rent of at least £12 per year. To that extent the reforms of 1866 did not put in place a truly representative democracy. But that year stands out in Manx history as the year when the principle of popular election to the House of Keys was established.

Over the ensuing 140 years the method of elections to the House of Keys went through a series of further changes. Perhaps the most celebrated of these was the granting of votes to women in 1881, a generation before the equivalent



development in the United Kingdom.

An Election Bill arrived in the Keys in 1880 proposing to give the vote to every male person of full age who was not subject to any legal incapacity, by removing the most onerous property owning qualifications. With the involvement of some reform-minded Members of the House of Keys and the Manchester National Society for Women's Suffrage, there soon followed a series of well-attended meetings to publicise '*Votes for Women*'. On 3 November 1880, as the Keys prepared to consider the Bill, the *Mona's Herald* published an editorial calling for the enfranchisement of women, the

chief argument advanced being that there should be no taxation without representation.

On 5 November 1880 the Election Bill went before the Keys but still with the words '*male persons*' in the text. In committee of the House, following comments by the Speaker, Sir John Stenhouse Goldie-Taubman, Mr Richard Sherwood MHK moved the crucial amendment which simply struck out the word '*male*', thereby entitling females to vote. The amendment was overwhelmingly carried by 16 votes to 3.

This was not the end of the matter, for the Keys, despite being a popularly elected chamber, did not yet have primacy over the other branch of Tynwald, the Legislative Council. A spirited contest between the branches ensued.

On 14 December 1880 the Legislative Council rejected the Bill, its Members professing to worry about the difficulty of

securing Royal Assent to so radical a piece of legislation. As a compromise the House of Keys prevailed upon the Legislative Council to consent to the enfranchisement only of unmarried women and widows who owned property. Royal Assent was duly given and as a result 700 women received the vote for the first time, comprising about 10% of the Manx electorate.

At the first election under the new regime 460 women turned out to cast their vote, representing a turnout of around 66%. In the 1880s polling took place in different constituencies on different days. The precise time of opening of polling stations was not recorded but the identity of each voter was noted sequentially in a Poll Book. The election began on 22 March 1881 when voting took place in Ayre, in the north of the Island. At three polling stations, women's names were the first to be recorded in the Poll

Book. We can conclude that the first woman to cast a vote in an election to a national parliament was Miss Eliza Jane Goldsmith of Ramsey, who voted at Lezayre; or Mrs Catherine Callow of Ballakillee, who voted at Bride; or Miss Esther Kee of Leodest, who voted at Andreas.<sup>8</sup>

In 1892 the franchise was extended to women tenants of property and in 1919 to all adult men and women who had lived in the Island for the whole of the preceding 12 months. Also in 1919 the House of Keys took an important step towards legislative primacy over the other branch of Tynwald when it became entitled for the first time to elect Members to the Legislative Council.

The reform of the Legislative Council continued in the 1960s and 1970s leading to today's system where, apart from the Bishop, all the voting members of the Legislative Council are '*hired and fired*' by the House of Keys. On that basis and taking

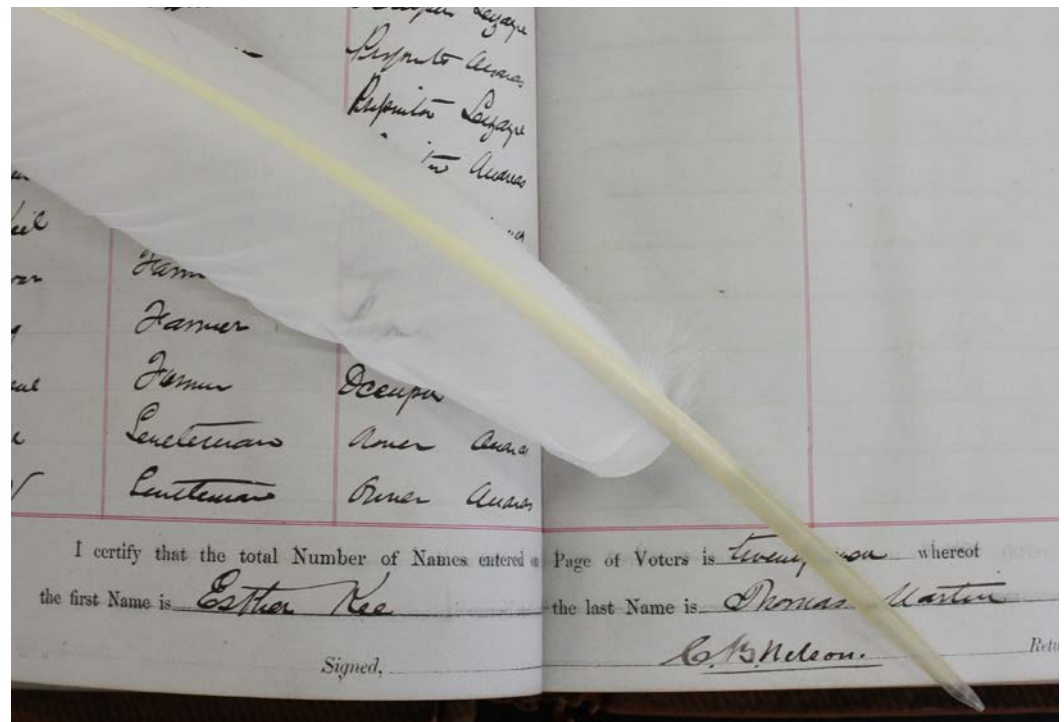
**Below: At the General Election to the House of Keys in 1881, a Poll Book was completed in each parish. It records each voter's name and the candidates for whom he or she voted. Image credit: Paul Dougherty, Tynwald Seneschal**







**“On the day itself there were reports of young people at the doors of Ramsey Town Hall and other polling stations before eight o’clock in the morning, desperate to be not only the first voters through the doors but ‘the youngest voters in the world.’ ”**



into account also the changes in the structure of the Island's executive government which were made in the 1980s and 1990s, the House of Keys has a more dominant role in Manx politics today than at any time in its 900-year history.<sup>9</sup>

Returning to the matter of electoral reform, the Act of 1919 was not the end of the story. In July 2006 the Island became the first jurisdiction in the British Isles – indeed one of the very few in the democratic world – to extend the right to vote in national elections to 16 and 17 year olds.

For the General Election on 23 November 2006, despite high levels of publicity, of some 2,000 residents of the relevant ages, only 689 joined the electoral register, a disappointing 35.0%. Turnout as a proportion of those who had registered came in at 60.2%, very close to the equivalent figure of 61.2% for the electorate as a whole.

To some this was proof of teenage apathy. In mitigation I would argue on the teenagers' behalf that the change in the law had come at a time when many were breaking up from school for

holidays. Support and assistance to help and encourage them to vote was not fully available until after the summer break. In these circumstances the fact that so many young people were sufficiently motivated to obtain the necessary forms for completion and delivery to the electoral Registrar before the closing date of 18 September 2006 was commendable. On the day itself there were reports of young people at the doors of Ramsey Town Hall and other polling stations before eight o'clock in the morning, desperate to be not only the first voters through the doors but 'the youngest voters in the world'.

Figures published in answer to a Tynwald Written Question in May 2014 showed that by 2011 it was a very different story. Turnout as a proportion of those registered fell slightly, both among 16- and 17-year-olds and among the electorate as a whole. However, on the plus side there was a sharp increase in the percentage registering to vote. Among the general population of voting age this figure rose from 79.5% to 86.9%, a promising recovery after the preceding

collapse from the levels above 90% which had prevailed in 2001 and before. Among 16- to 17-year-olds there was a dramatic rise from 34.4% to 60.1%, progress which has begun to make up for the poor start in 2006.

In 2015 we remember the Revestment Act 1765 (an Act of the UK Parliament) as a low point in the story of the Isle of Man's development as an autonomous nation. Its 250<sup>th</sup> anniversary has been marked quietly and thoughtfully, with a historical seminar by the Manx Antiquarian Society and an exhibition at the Tynwald Library. It has scarcely been a cause for celebration.

In 2016, on the other hand, we look forward to what will be very much a celebration as we commemorate the 150<sup>th</sup> anniversary of the House of Keys Election Act 1866 (an Act of Tynwald). That Act was not an end but a beginning. But with the further developments which have taken place in the meantime, the House of Keys can look forward with confidence to the next 150 years.

**Above: A House of Keys Election Poll Book of 1881 shows that the first person to vote in the parish of Andreas was a woman, Miss Esther Kee. Image credit: Paul Dougherty, Tynwald Seneschal**

*The author gratefully acknowledges the assistance of Dr Jonathan King, Deputy Clerk of Tynwald, in the preparation of this article.*

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- <sup>3</sup> Gawne, op. cit., page 49
- <sup>4</sup> Grimson, op. cit., page 183
- <sup>5</sup> Cf Gawne, op. cit., page 56
- <sup>6</sup> Grimson, op. cit., page 125
- <sup>7</sup> Grimson, op. cit., pages 198-199
- <sup>8</sup> *Women's Suffrage Journal*, quoted in the *Isle of Man Examiner*, 2nd April 1881
- <sup>9</sup> Grimson (op. cit., page 135) places the origin of the Keys in Godred Crovan's time, i.e. the late eleventh century.



# CANADIAN ELECTORAL FINANCE IN THE 21ST CENTURY



**Senator David Smith** is a Senator in the Federal Parliament of Canada. He studied Political Science and Law and was called to the Bar in 1972. Throughout his legal career, he became a leading practitioner in municipal, administrative and regulatory law. In 1972, he was elected to Toronto City Council and was President of Toronto City Council and Deputy Mayor of Toronto. From 1980 to 1984, he sat in the House of Commons as an MP and also served in Prime Minister Trudeau's Cabinet.

Canada's next federal election, due to take place on 19 October 2015, will be the first in which political parties will no longer receive the per-vote subsidy that was introduced over a decade ago when corporate and union donations were restricted.

This change is the latest in a series of reforms that have significantly changed Canada's electoral finance regime. Indeed, over the last 15 years, this regime has shifted dramatically from simply limiting how much can be spent by candidates, to placing limits on spending, strengthening financial reporting rules and regulating individual contributions.

## **A Brief History of Electoral Financing in Canada: The Early Years**

In the years following Canadian Confederation in 1867, there were few rules governing the financing of electoral campaigns. Canada's earliest electoral statute, the Dominion Elections Act of 1874, was enacted in response to a high-profile political scandal in which railway promoters provided campaign contributions to the governing party in return for favours.

The Dominion Elections Act required candidates to disclose their spending, but did not set limits on the amounts that could be spent. Over the next century, there were some modest amendments, but electoral finance rules remained minimal. Political parties were not defined by legislation, and consequently their financial activities were essentially unregulated.

## **A modern regime**

In 1974, Parliament passed the Election Expenses Act which established the basic framework for regulating electoral financing that is still in use today. In response to the rapidly increasing cost of election campaigns, this legislation aimed to control electoral spending and level the playing field between candidates.

The new regime consisted of an election expenses reimbursement scheme tied to spending limits and a tax credit mechanism for those contributing to parties and candidates. The legislation also defined political parties for the first time.

In 2000, the first major overhaul of Canada's electoral finance laws occurred since the

modern regime was introduced. The new Canada Elections Act built on the previous electoral finance rules, but aimed to improve regulation of candidates' spending and increase transparency by providing for the publishing of donors' names and addresses. These changes represented a

**“Indeed, over the last 15 years, this regime has shifted dramatically from simply limiting how much can be spent by candidates, to placing limits on spending, strengthening financial reporting rules and regulating individual contributions.”**





significant shift from internal control of finances by political parties to increased oversight by Elections Canada - Canada's independent, non-partisan agency responsible for conducting federal elections and referendums.

The new legislation also introduced the first federal rules concerning third-party spending. Prior to 2000, third-party spending was neither regulated nor monitored, and was not defined in Canadian legislation. The new law defined third parties, placed limits on their spending and established reporting requirements.

### Taking 'Big Money' Out of the Equation

In 2004, further changes were introduced that focused on how political parties were

funded, namely by banning most corporate and union contributions. The amounts corporations and trade unions could contribute were restricted to a maximum of C\$1,000 in total to candidates and parties.

At the same time, a public funding regime was introduced to compensate for the limits on these donations. This featured an annual per-vote subsidy (also known as the quarterly allowance) to registered parties. They would receive C\$1.75 per vote received by the party in the previous general election, provided the party received either 2% of the valid votes cast nationally or 5% of the votes in the ridings where the party ran candidates. Additionally, the rates of reimbursements for registered political parties and candidates for election period

expenses were increased.

A change in government in 2006 led to another wave of changes. The newly elected government of Stephen Harper introduced the Federal Accountability Act. In addition to providing new measures to address accountability, transparency and oversight, the Act banned all corporate and union contributions. As a result, only individuals may contribute to political campaigns in Canada. This rule remains intact today and is key to Canada's electoral finance regime.

In 2008, the minority government of Stephen Harper tried to end the per-vote subsidy. This led to a political crisis when the opposition parties threatened to defeat the government. After Prime Minister Harper won a majority

*Above: Election campaigning underway in Canada.*

in 2011, the Canada Elections Act was amended to phase out the per-vote subsidy to political parties by January 2015.

At the subsidy programme's peak in 2011, Canada's five major parties received over C\$28M in public subsidies combined.<sup>1</sup> In 2014, the programme's final year, the five major parties received C\$9M combined.<sup>2</sup> Because of the changes, political parties have had to adjust their fundraising methods. These campaigns are conducted throughout the year, not only during electoral periods.

Further amendments in 2011 increased transparency and placed restrictions on political loans. Under these restrictions,



corporations and unions are prohibited from lending funds to political parties, electoral district associations and candidates.

Most recently, significant reforms were made in 2014 when Parliament passed the Fair Elections Act. In addition to making significant changes to voter identification rules, vouching procedures, and the role of Elections Canada, the Fair Elections Act amended electoral finance rules. Specifically, the reforms increased individual contribution limits from C\$1,000 to C\$1,500 annually, increased election spending limits for political parties, candidates and nomination contestants, imposed new financial penalties for candidates and political parties that exceed the election spending limit, imposed tighter

regulation of campaign loans, and placed new limits on loans by individuals.

### **Canadian Electoral Finance at a glance in 2015**

In Canada, federal electoral campaigns are financed through public funding and individual contributions.

Regarding individual contributions, as a result of the 2014 amendments to the Canada Elections Act, individuals may contribute C\$1,500 per calendar year to each registered political party, C\$1,500 in total to electoral district associations, nomination contestants and candidates, and C\$1,500 to each independent candidate.<sup>3</sup>

The most significant source of public funding for federal candidates and political parties

is the partial reimbursement of election expenses. Like individual contributions, such reimbursements are subject to limits. A candidate who receives at least 10% of the votes cast in his or her riding is entitled to a maximum of 60% reimbursement for election expenses. Registered political parties that received at least 2% of the votes cast nationally or 5% of the votes cast in the electoral district in which they have candidates are entitled to a reimbursement of up to 50% of election expenses.

For candidates, election expenses are defined broadly and are divided into three primary categories: election expenses (i.e. any expense reasonably incurred for property or service used during the

election period), the candidate's personal expenses (i.e. travel and living expenses or child care expenses) and other expenses.

Another way in which public funding helps finance electoral campaigns is through the Political Contribution Tax Credit. This is a tax credit for individual contributions to registered federal political parties or candidates. Depending on the amount of the contribution, individuals are entitled to a tax credit of between 50% and 75%. The amount this credit costs the public purse annually varies between election and non-election years. For example, in 2011, the year of Canada's last general election, tax credits worth C\$31 million in tax credits went to individuals for their contributions to political parties.







In 2014, a non-election year, the tax credit amounted to roughly C\$25 million.<sup>4</sup>

In addition to regulating contributions and election expenses reimbursement, the Canada Elections Act regulates how money is spent. Candidates and parties are subject to expense limits during the election period. Such limits vary from riding to riding, as they are calculated according to the number of electors in each electoral district. In Canada's last general election in 2011 for example, the election expenses limits for political parties varied from C\$62,702 to C\$21,025,793, depending on the number of electoral districts in which each party endorsed candidates. The limits for candidates ranged from C\$69,635 to C\$134,352.<sup>5</sup>

To ensure that limits are not exceeded, there are reporting requirements for parties, candidates and electoral district associations. Following an election, detailed returns must be filed with Elections Canada with audited statements of assets and liabilities, as well as the electoral expenses incurred. Failure to do so results in penalties in the form of reduced reimbursements for expenses.

### Conclusion

Any discussion of the state of democracy and the health of an electoral system necessarily involves a consideration of the nature of fundraising, including the limits placed on the amount or sources of fundraising and on election spending.

An interesting point to make on the current federal election campaign in Canada is that it will break spending records because of its length. The last two elections in Canada were both 37 days long, whereas this one will be 77 days long and will, without a doubt, exceed all the previous spending amounts.

With the dramatic changes the Canadian electoral landscape has undergone throughout the last 15 years, it will be truly fascinating to see where the next 15 lead us.

*With thanks to: Erin Virgint, Parliamentary Information and Research Service, Library of Parliament, Canada.*

### References

<sup>1</sup> Elections Canada, Quarterly Allowances to the Registered Political Parties (2011)

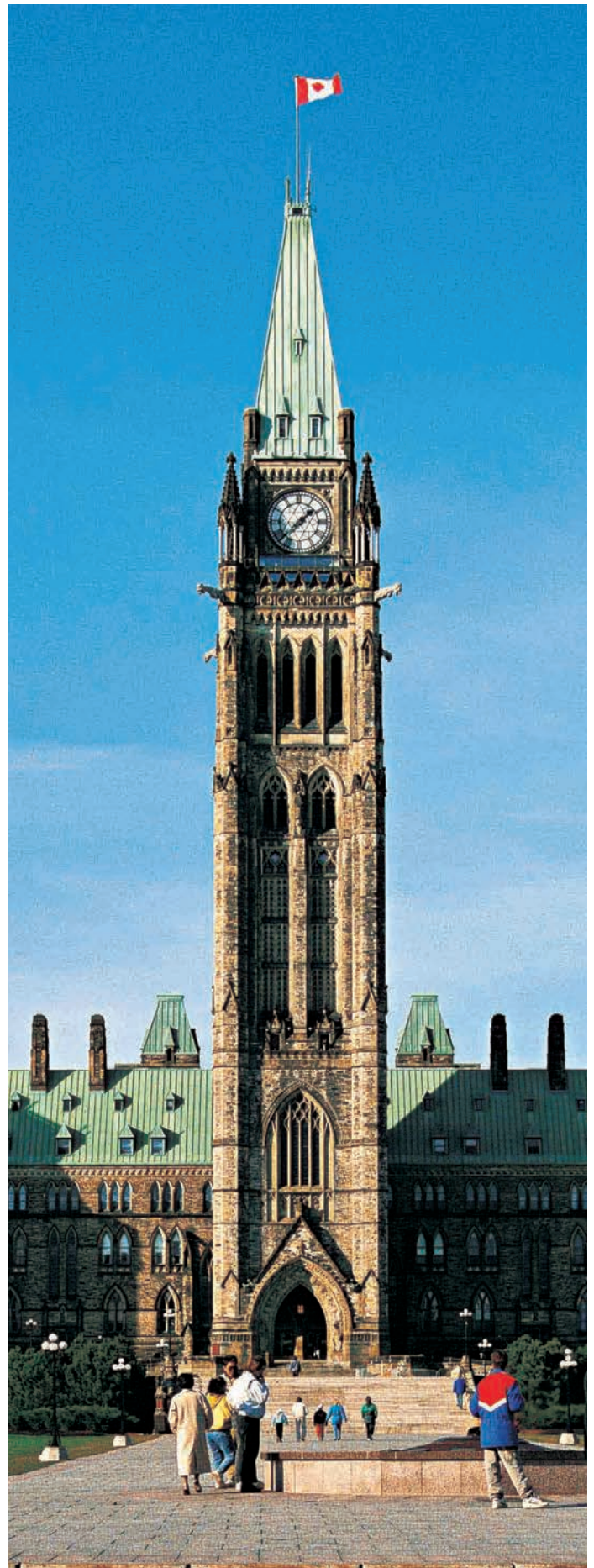
<sup>2</sup> Elections Canada, Quarterly Allowances to the Registered Political Parties (2014)

<sup>3</sup> Elections Canada, Contributions limits as of 1 January 2015.

<sup>4</sup> Department of Finance, Tax Expenditures and Evaluations 2014

<sup>5</sup> Elections Canada, The Electoral System of Canada—Political Financing.

**“Any discussion of the state of democracy and the health of an electoral system necessarily involves a consideration of the nature of fundraising, including the limits placed on the amount or sources of fundraising and on election spending.”**



# ADVANCES IN POLITICAL PARTY FINANCING IN JAMAICA



**Hon. Phillip Paulwell, MP** is a Cabinet Minister and Leader of the House in Jamaica, having been in Parliament for twenty years. Having served in the Senate from 1995 to 1997, he was elected to represent East Kingston and Port Royal in 1997. A lawyer by profession, he is currently Minister of Science, Technology, Energy and Mining, with additional responsibility for parliamentary affairs and electoral matters.

Jamaica's strong tradition of voluntarily chosen, representative government has been enhanced by the presence and activity of political parties, as the vast majority of persons who have contested elections over the years have done so under the banner of one of these organisations. Their integrity and operation is therefore an appropriate subject for scrutiny and legislation.

Jamaica's laws and conventions facilitate, promote and protect freedom of choice for electors and entry into representational politics by its citizens. This is reflected in an amendment made to the Representation of the People Act in 2014 immediately following the 70<sup>th</sup> anniversary of universal adult suffrage. The prime objective of this amendment is to improve the regulation and funding arrangements governing political parties.

The Representation of the People Act, passed in 1944 when universal adult suffrage took effect and updated repeatedly thereafter, provides the legislative framework for the nation's system of parliamentary democracy. It makes provision

concerning the registration of electors, electoral procedure, financial and administrative matters, electoral offences and other relevant subjects.

Additionally, Parliament has enacted the Electoral Commission (Interim) Act 2006, thereby establishing the Electoral Commission of Jamaica (ECJ) whose objects are *"to safeguard the democratic foundations of Jamaica by enabling eligible electors to elect, through free and fair elections, their representatives to govern Jamaica."*

Political party financing in particular is brought into the remit of the ECJ via subsection 6(1) of the legislation, in which the functions of the body are delineated. Paragraph 6(1)(g) empowers the ECJ to *"approve political parties eligible to receive state funding with respect to any or all aspects of the electoral process"* and paragraph (h) authorises it to *"administer electoral funding and financial disclosure requirements."*

In keeping with its mandate, the ECJ has submitted three reports to Parliament relating to the financing of political parties and election campaigns in recent times. Its report on

***"Jamaica's strong tradition of voluntarily chosen, representative government has been enhanced by the presence and activity of political parties, as the vast majority of persons who have contested elections over the years have done so under the banner of one of these organisations. Their integrity and operation is therefore an appropriate subject for scrutiny and legislation."***





Political Party Registration and Financing was tabled in 2010, while its recommendations on Campaign Financing were submitted in 2011 and revised recommendations on the latter subject presented in 2013. These reports have informed the latest amendment to the Representation of the People Act.

In Jamaica, the public purse has not been among the sources of financing conventionally available to political parties. However, the ECJ has identified state funding, monitoring and enforcement, and limits on contributions and expenditure as key areas for oversight in seeking to strengthen the regulation of campaign financing.<sup>2</sup>

Implicit in this stance is the view that the inflow of material

resources to political parties and the manner in which such resources are utilised ought to be duly regulated, and that it is fitting for the state to play a role in providing finances to these bodies.

Both positions are supported by the European Commission for Democracy through Law (the Venice Commission), which describes the regulation of political party funding as “essential to guarantee parties independence from undue influence...and to provide for transparency in political finance.”<sup>3</sup>

They state, moreover, that mechanisms for public funding have been designed and adopted throughout the globe and that such systems “are aimed at ensuring that all parties are able to compete for elections

*in accordance with the principle of equal opportunity, thus strengthening political pluralism and helping to ensure the proper functioning of democratic institutions.”<sup>4</sup>*

It is therefore apparent that the ECJ's vision for the regulation and funding of political parties has international support in principle and in practice.

The ECJ proposes that political parties recognised by them are to be financed from funds from the State; dues charged to their members; contributions from individuals, organisations and fundraising events; and income earned from legal sources.<sup>5</sup>

In recognising the appropriateness, and indeed the importance, of private funding, the ECJ makes the following assertions:

*“There are individuals and organisations that will contribute to the funding of political parties based on their agreement with the ideological principles of the party, the policies that they propose and personality and quality of the individuals proposed by the party to hold public office. The framework for funding of political parties must of necessity allow for funding to come from such sources.”<sup>6</sup>*

They are, however, seized of the potential pitfalls of such donations, noting that “the danger to be avoided is that no single individual or organisation ... should be able to contribute a sum that gives that individual or organisation sufficient voice and influence to disproportionately influence the decision-making of the party by virtue of the size of that contribution.”<sup>7</sup>





Similar sentiments are reflected in a recent Private Member's motion that has been referred to a joint select committee for consideration and report. The motion calls for legislation that will require civil society groups, special interest groups and lobby groups to protect Jamaica's democracy from becoming compromised on account of unknown or tainted sources of funding or input from persons with hidden agendas.

In defence of the use of public funds to support political parties the ECJ presents the argument cited below:

*"State funding for political*

*parties is premised on the thesis that political parties in a small, growing democracy perform important public services in representing general and specific interests of people. These demands extend beyond the resources available from membership dues and contributions from like-minded individuals and organisations... State funding is a justified and justifiable means of helping to offset this deficit between available resources and the demands and needs of representation."*<sup>18</sup>

The potential for controversy that is inherent in this position is manifested in comments made by some parliamentarians in the debate on a bill to amend the Representation of the People Act to make provision for the registration of political parties,

require them to record and report on their finances, and enable them to receive state funding.

The Bill reflects the ECJ's recommendations in their aforementioned report on Political Party Registration and Financing (2010), but excludes the proposals regarding campaign financing from the two later reports, as the clause that prescribes the purposes for which the funds allocated to a registered political party shall be used *"solely and exclusively"* does not mention campaign activities.

The permissible uses are in fact limited to the development of the political party; the offsetting of its operating expenses; party recruitment and civic education; research and policy development; education and training of members; and

other reasonable logistical and operating expenses to strengthen the political party as a democratic institution (the proposed section 52AH as contained in clause 3 of the Bill).

Nevertheless, the ECJ reports and the amendments to the law are the groundwork for a new system of state funding into which campaign financing is to be incorporated in the future.<sup>9</sup>

Furthermore, the views expressed in the debate give insight into prevailing perceptions regarding the principle and practice of state funding of election campaigns. Detractors reveal concerns in relation to competing uses of tax dollars, with some persons favouring social spending over monetary support to the democratic process, given Jamaica's economic situation.

**Below: The Caribbean cruise port of Falmouth in Jamaica.**







**“Concerning campaign spending limits, the ECJ posits that ‘allowing unfettered campaign spending enables well-financed candidates to drown out the voices of their opponents, reducing the overall quality and diversity of debate.’ ”**

The resulting compromise is the insertion of a provision to enable the effective date of certain sections of the bill to be deferred.<sup>10</sup>

Concerning campaign spending limits, the ECJ posits that *“allowing unfettered campaign spending enables well-financed candidates to drown out the voices of their opponents, reducing the overall quality and diversity of debate.”*<sup>11</sup>

Prior recognition of this principle is evident in section 55 of the Representation of the People Act, which prescribes the total amount of expenditure that may be incurred in relation to the candidature of any person at any election. This represents another area in which local laws and their underlying principles accord with international norms, as the United Nations Human Rights Committee in General Comment No. 25 (27) on Article 25 of the International Covenant on Civil and Political Rights acknowledges that *“reasonable limitations on*



*campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.”*

The measures and achievements outlined above demonstrate Jamaica's commitment to justice and fair play in the practice of parliamentary democracy and in relation to the electoral process in particular. The mechanisms established to preserve the system have led to gradual but significant improvement in the climate surrounding the conduct of elections and increased faith

in their integrity and results. With heightened regulation in respect of political party financing, there will be even greater confidence that there is equity in the distribution and use of funds in the preparatory phase leading up to elections and that no political party has been placed at a disadvantage solely on account of economic factors.

## References

- <sup>1</sup> The Electoral Commission (Interim) Act, 2006, section 5
- <sup>2</sup> Electoral Commission of Jamaica (2013) *Report to Parliament on Campaign Financing – Revised Recommendations*, pp. 8-9
- <sup>3</sup> OSCE/ODIHR and Venice Commission (2010) *Guidelines on*

*Political Party Regulation*, p.35

<sup>4</sup> Ibid, p.38

<sup>5</sup> Electoral Commission of Jamaica (2010) *Report to Parliament on Political Party Registration and Financing*, p.8

<sup>6</sup> Ibid, p.9

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Electoral Commission of Jamaica (2013) *Report to Parliament on Campaign Financing – Revised Recommendations*, p.2

<sup>10</sup> The Representation of the People Act, 2014, section 1(2)

<sup>11</sup> Electoral Commission of Jamaica (2013) *Report to Parliament on Campaign Financing – Revised Recommendations*, p.14



# THE PRICE IN POLITICS: THE NEW SOUTH WALES EXPERIENCE



**Hon. Trevor Khan**  
**MLC** is the Deputy President and Chair of Committees of the New South Wales Legislative Council in Australia. Trevor, now in his second term, was elected to the Parliament in 2007, having practiced as a solicitor prior to entering Parliament.

## Introduction

While governments throughout the world find themselves facing issues relating to political donations, the New South Wales experience may provide insights into how this problem should be approached. The challenges faced by all are fundamentally the same; the ultimate goal is to have a regulatory system in place that is just, fair and equitable and maintains the confidence of the voters.

## Politicians for sale?

It is not often that the Treasurer of a nation is the plaintiff in proceedings before a court. Indeed, it is unsettling for the Minister and the electorate when the matter concerns a headline suggesting that a senior political figure can be 'bought'.

The case of *Hockey v Fairfax Media Publications Pty Ltd* was before Justice White of the Federal Court of Australia in early 2015.

On 5 May 2014, The Sydney Morning Herald and associated Fairfax Media news outlets published an article that led to Australia's Treasurer, Joe Hockey, making a claim for damages. The headline 'Treasurer for sale' became

the subject of a year-long argument, played out in court and the national press, ultimately resulting in a judgement in Mr Hockey's favour. His Honour found that the Treasurer had been defamed.

The specifics of the 122 page judgement are not of particular concern, however, the dispute is raised for its symbolism. Political donations have become a polarising topic in Australia, one that has found itself front and centre of the public discourse on politicians and our democratic institutions generally.

The influence of donations on political parties and governments in Australia, and particularly in New South Wales, is one that is capable of undermining the trust of the electorate, not just in individual politicians, but in the democratic institutions as a whole.

Payments or donations are seen as a sign of shadiness. Money in politics is seen as a clear sign of corruption. No longer are donations perceived as legitimate acts of support for a candidate of political party, rather, all too often they are seen as an attempt to buy favour and influence.

The problem is one of balance. To limit or impede an individual's or an organisation's right to political expression is perhaps the most egregious contravention of liberty, however, there are no justifiable grounds on which anyone can allow the political system to be corrupted by money.

It is essential that individual electors feel they have equal access to their politicians as large corporations. If that faith is lost, if the cynicism of individual electors is allowed to fester then the risk arises that voters will lose faith in their democratic institutions.

## A legislative response

In New South Wales, there has, without doubt, been a climate where representative democracy was and is under stress. Several surveys in the last five years from leading public policy institutes have consistently found that the trust Australians and the New South Welsh have in their elected officials is poor at best.

The NSW Independent Commission Against Corruption (ICAC) has featured prominently in our 24/7 news cycle. It is unarguable that while its





purpose is to identify serious and systemic corruption, the frequency with which the Commission and the people who come before it find themselves in the headlines further aggravates the already poor state of affairs in our State.

The potency of the

**“The challenges faced by all are fundamentally the same; the ultimate goal is to have a regulatory system in place that is just, fair and equitable and maintains the confidence of the voters.”**

Commission, both as a statutory body, and as a character in the public narrative, has exposed several dishonest politicians and public officials.

The impact of its power is perhaps best demonstrated by the memory lapse on the part of our former Premier, Barry O'Farrell. Having forgotten he was a gifted a bottle of Penfolds Grange, the ICAC was able to call into serious question his credibility, not just as a witness in its hearings, but also in the minds of the public. This resulted in his resignation as Premier and untimely exit from politics. *What options therefore do Governments, political parties, individual Members of Parliament and their constituents have to ensure a fair, equitable, and honest interplay between the represented and government?* Upon the election of O'Farrell's Coalition government in 2011,

a Five Point Action Plan was announced to address corrupt dealings. Among the reforms were:

- A strengthening of the ICAC laws,
- Improved whistleblower protections,
- election campaign finance laws reforms, and
- an increased regulatory framework for lobbyists.

In this article, I choose to only look at two areas of legislative reform, namely election campaign finance and the regulation of lobbyists.

#### **Electoral Campaign Finance Reforms**

Under the previous Labor Government in New South Wales, reforms of the political donations laws had begun with bans being imposed upon donations by discrete classes of donors. Tobacco industry

**Above: The New South Wales Parliament Building in Sydney, Australia.**

businesses, liquor and gambling organisations and property developers were all sanctioned classes.

The rationale for these reforms was the perceived propensity of these groups to seek to gain a commercial advantage from government through political donations.

These organisations also have significant pools of funds that could be used to sway the decision making process. Accordingly, it was deemed fair that controls be put in place to limit their potential influence.

Additionally in 2010, further reforms were introduced by the then Labor Government that imposed individual donations caps and a limit on election campaign expenditure of



A\$100,000 per candidate, and for parties allowed them to only spend a further A\$50,000 in seats they contested.

The reforms introduced by the O'Farrell Government went further than those previously introduced. These key reforms introduced by Premier O'Farrell included making it unlawful for a political donation to a party, candidate or third-party campaigner to be accepted unless the donor was an individual who was enrolled to vote.

A further reform aggregated election expenditure for the purposes of the caps on electoral expenditure between related parties and their affiliated organisations. This measure effectively aggregated the expenditure of the Australian Labor Party and its affiliated unions. The High

Court subsequently ruled that this reform was invalid as it infringed the implied freedom of political communication in the Commonwealth Constitution.

Whilst further reforms to electoral laws are likely to occur during the current term of Parliament by the Baird Government, those who have been the subject of restrictions have not been entirely quiescent.

As has already been referred to, the High Court has already considered one challenge to the legislation when Unions NSW challenged the aggregation provisions of the legislation.

Now a further challenge is in full swing with a property developer, pursuing the matter before the High Court. By way of background, Mr Jeff McCloy, a NSW property developer, gave donations totaling \$31,500 to fund the election campaigns of

Liberal candidates ahead of the 2011 state election. This matter was investigated by the ICAC and Mr McCloy, who was also the Mayor of Newcastle, resigned amid the revelations of the illicit donations. He is now challenging the NSW Government's political donation laws, arguing that they limit the right to free political communication and expression.

Lawyers for Mr McCloy argued that property developers who donate to political parties to access politicians are no different to citizens who are not prohibited. They argued that the banning of donations by property developers unduly distorts the free flow of communication. Mr McCloy has also challenged the cap on individuals, who may only donate \$5,800 per annum to political parties, as the result of the cap has the same outcome.

The Court's decision has

been reserved with a decision expected within weeks.

In reality, the decision of the High Court is likely to shape the further reforms to donations laws, not just in New South Wales, but also the other States and possibly also the Commonwealth.

### **The Role of Lobbyists**

The Lobbying of Government Officials Act 2011 was introduced to combat perceived problems with lobbying in New South Wales.

Put simply, the capacity of lobbyists to gain access to politicians and senior public servants is demonstrative of one of the problems besetting modern politics.

The role of political lobbyists in New South Wales is the quintessential conundrum that is posed by the question of how







## “Put simply, the capacity of lobbyists to gain access to politicians and senior public servants is demonstrative of one of the problems besetting modern politics.”

we ensure a fair, equitable, and honest interplay between the represented and the government. Lobbyists, through their access to powerful people, have power and influence, or at least the perception of it.

There is a perception and demonstrated circumstances in which their activities have significantly affected the business of government, whether it is to the greater benefit of the people, or conversely, the private benefit of the people whom the lobbyists represent.

Amongst the reforms introduced by the Lobbying of Government Officials Act 2011 were the banning of success fees for lobbyists and former ministers and parliamentary secretaries were prohibited from engaging in lobbying activities for 18 months after their exit from parliament.

The issue of success fees was of particular concern because, depending on the degree to which a lobbyist was willing to be unethical, their ends could be achieved and would be remunerated based on the extent to which they delved into the depths of dishonesty. The penalties in place for success fees reveal the preoccupation this issue has in NSW public life; corporations can be fined up to A\$55,000 and individuals A\$22,000.

Lobbyists have faced further

regulation since the introduction of this Act. Mike Baird, who succeeded Barry O’Farrell, retained lobbying regulation as a focus of his government’s plan.

Under the Baird reforms, our Electoral Commission was empowered as the independent regulator of lobbyists in NSW. Ethical standards were applied to third-party lobbyists and the regulator now has the power to investigate alleged breaches and impose sanctions which could result in firms being removed from the Lobbyists Register.

Ministers are required to publish quarterly diary summaries of meetings with external organisations on portfolio related activities and the Ministerial Code of Conduct is enforceable by the watchdog, the ICAC.

Additionally, the provisions of the Ministerial Code of Conduct have been strengthened, such that a substantial breach of the Code will now constitute corrupt conduct for the purposes of the ICAC Act.

These further standards and requirements, legislated in 2014 have placed increased pressure on Ministers and the lobbyists.

It is not only lobbyists that come under scrutiny. The other classes of people and organisations are those who are able to exert influence directly

through donations to political parties. Governments are inherently linked to their political base, and therein, financial support for a party that is in government can easily lead to an unwanted causal link; donors, through money alone, could influence the decision-making process.

### Conclusion

All these examples demonstrate the complexity of the issue; balance is difficult to achieve when the assertion that money offers power is not baseless; rather, it has the real potential to sway the decision making of governments and to influence policies in ways that provide benefits to certain groups that can concurrently be detrimental

to others.

None of us are in a position to furnish anyone with a framework and say that it solves the problem. The nature of government, politics and political parties are fluid and must be able to hear and respond to all people, regardless of their power or lack thereof.

The dilemma in our context, and the way in which our government has approached it shows that a solution cannot be found overnight.

The polices are evolving, and with due process, there is great potential in eventually having a system in place that is fair to all constituents, but also one that ensures electors retain their faith in the democratic institutions.





# ELECTIONS AND VOTING REFORM ON ALDERNEY



**Robert McDowall** is an elected member of the States of Alderney, one of the Channel Islands within the Bailiwick of Guernsey, where he serves as Chairman of the Finance Committee and Deputy Chairman of the Policy Committee. Outside politics, Robert is an adviser to a number of businesses and a consultant to financial services think tank, Zyen.com. Robert has recently completed his three year term as President of the Folklore Society, an Academic Charity, of which he is also a Trustee, based at the Warburg Institute in London.

*This article examines the Electoral System in the Island of Alderney where I am an elected Member of the Legislature ("The States"). Alderney is a small Island within the Bailiwick of Guernsey but retains its own Legislature. The States meets 10 times each year to debate and pass legislation submitted for consideration.*

## Introduction

Alderney is a self-governing, democratic territory and one of the principal Islands of the Bailiwick of Guernsey. The Island is outside the European Community and is also a British off-shore finance centre to the larger islands. The United Kingdom looks after the Channel Islands in the fields of Foreign Affairs, Defence and the Islands' association with the European Union (EU).

In many senses the States of Alderney is 'a Parish Council posing as a jurisdiction.' It has to address a wide range and scale of issues ranging from jurisdictional ratification of international treaties and agreements to minor regulatory matters such as licences, traffic and window designs!

## The current legislative structure

The States of Alderney (the

Legislature) consists of a President and ten States Members. The President chairs the monthly States Meetings and stands for election every four years.

The States Members hold office for a period of four years and in alternate years, there is an 'Ordinary Election' at which five of the sitting members may offer themselves for re-election. Thus, continuity at all levels is maintained and represents a stable, experienced parliamentary body. In addition, two States of Alderney Representatives are full members of the Guernsey States of Deliberation and take part in the Government of the Bailiwick with full voting rights. Under a temporary arrangement established in 2007, but yet to be reviewed formally, they are elected by plebiscite some 14 days after the States of Alderney Election for a period of two years. By custom the States of Alderney has ratified its support of that election outcome. Prior to 2007, the States of Alderney alone nominated the Alderney Representatives to the States of Guernsey.

In terms of metrics, resident population of the Island according to an electronic census in 2014 is approximately

2,000 people. The electoral role consists of about 1,380 electors. Turnout in the last two elections has been 69% and 73% respectively, while the turnout in the subsequent plebiscite has been just under 50%. In the past two States of Alderney Elections, 12 candidates have contested 5 seats. In the plebiscite for representation in the States of Guernsey, three and four candidates respectively have contested.

A number of local services on Alderney are provided by the States of Guernsey. These 'transferred' services, which include health, policing and education, are provided in return for the collection of income and other taxes from the people of Alderney. The States of Alderney delivers most of the public services for Alderney, while States of Guernsey staff deliver transferred services.

## Current voting procedures

*"In accordance with The Government of Alderney Law 2004, the States of Alderney shall hold elections every two years or appoint a day, not earlier than the 14 November and not later than the 14 December in that year (or such other dates as the States may appoint by Ordinance) on which an*





*Ordinary Election shall be held for the purpose of electing members of the States in place of the members whose terms of office expire in that year. If a casual vacancy occurs among the members, the States shall appoint a day not later than 3 months after the vacancy occurs on which there shall be held a By-Election, unless the vacancy occurs on or after the 1 July in the final year of office of the member whose office has become vacant, in which case the vacancy shall remain unfilled until the next Ordinary Election."*

Residents that are registered on the Electoral Roll but will be absent from the Island on Election Day, have two alternatives open to them:-

(1) *Postal Vote* - Application forms can be obtained from the Office of the Chief Executive but voting slips cannot be posted until they have been printed

following the closure of the nomination process.

(2) *Proxy Vote* - Application forms can be obtained from the Office of the Chief Executive. These allow a relative or friend, who is registered on the electoral roll, to be nominated to cast a vote on their behalf on Election Day.

Applications for both postal and proxy voting must be registered with the Chief Executive at least two days prior to the election. Vote counting is a curiously elaborate, laborious and antiquated procedure. Immediately after the end of polling hours, the votes are counted in the Anne French Room, Island Hall.

It should be noted that according to the States of Alderney Election Procedure Ordinance 1987 only the Returning Officer, who is the Chief Executive and head of the

Civil Service and his staff, the Jurats (Magistrates) carrying out the count and each candidate (or his representative) may be present during the count. Anyone wishing to attend should seek the consent of the Returning Officer prior to Election Day. Unauthorised persons are not admitted. The electoral count takes some 3 to 4 hours. The vote(s) on each ballot paper is read out by the Returning Officer and independently recorded by the Jurats who periodically cross check the votes for each candidate every time they record an additional five votes for that candidate. This open outcry process of counting the votes is a curious anachronism, which reflects a small and closed community where it was important to try to dispel the perception of personal influences set the outcome of the election.

**Above: The scenic coastline of Alderney. Image: [www.visitalderney.com](http://www.visitalderney.com)**

*What reforms in terms of design and management of elections might be considered?* They are inevitably limited given the small electorate.

### Political parties

The major challenge is the absence of political parties. There is a received wisdom in the Channel Islands that the absence of political parties is the essential strength of the localism which is essential to the historic democracy and the established form of governance adopted by the various islands.

A closer inspection of the effects this relatively unusual arrangement has on the ability of the islands to govern themselves soon proves that such a view is extremely misguided; the lack



of political parties is, in fact, a fundamental weakness which actively and obviously is a barrier to good governance.

In most parliamentary systems, the political party structure gives shape and discipline to the governance of the State; this politicisation of the functions of the State brings with it many advantages, including strong leadership, discipline, and a holistic and principled approach to policy-making, continuity and accountability to the electorate for the conduct of government.

The election of ten independent and non-aligned individuals, as in the case of Alderney, brings none of these advantages and, indeed, might be said to bring about the very opposite characteristics to those offered by the party system.

It is difficult for one individual to assert him or herself as a *'leader'*; it often proves difficult for independent members who have been elected on what they see as their *'personal mandate'* to accept the authority of one of their number who has simply been similarly elected - the

concept of *'first amongst equals'* is difficult to impose, where there is no rules-based structure in place for the absolute determination of who is to be *'first'*.

Similarly, any potential leader of the group of ten equals does not find it easy to forge a consensus around what might well be ten opposing or disparate views. In practice, therefore, whilst in Alderney we have seen many attempts at the assertion of leadership by one individual or another, these *'de facto governments'* are almost always short-lived because of a refusal of the majority of the group to voluntarily recognise that particular leader's authority; his or her authority is inevitably undermined by the ease with which it can be *'removed'*.

An *'agreed programme for government'* - which would naturally result from a conventional political party based election - simply does not materialise in a new assembly of ten independent members. The States can only develop policies in an ad-hoc, unstructured and haphazard way; most importantly,

there is no guiding principle or philosophy which shapes and forms policy-making to produce a consistent, coherent and holistic *'joined-up'* programme of government. Policy-making becomes, almost by default, entirely personality based, lurching from one *'issue'* to another, each in its own silo and is subject to the vagaries of populist mood-swings (by which, as it happens, independent and non-aligned representatives seem to have an unfortunate tendency to be greatly influenced).

Perhaps, most obviously, the ten independent representatives are not, in any meaningful way, really accountable to the electorate for poor governance. A political party, if it is granted power, will stand or fall by its record in office and its ability to deliver upon its published manifesto; it is granted a mandate to deliver the policies which the electorate deemed the most attractive of those on offer and is fully accountable to the electorate as a result. Any one independent representative in a government of ten similarly

elected representatives has no such responsibility since he or she is but one of ten who are equally accountable for, but can just as easily abdicate personal responsibility for, whatever the failures of the government of the day.

*'What could I do? I was but one loan voice'* is a very easy response on the doorstep when faced with a disillusioned voter when seeking re-election.

The absence of political parties in Government may seem to those who have not experienced it, an attractive proposition. Too many who have experienced it, however, as we in Alderney do, it is anything but. The political party system remains as relevant and essential to effective democratic government today as it was 300 years ago when Edmond Burke became its first notable advocate.

The Channel Islands electorates would do well to adopt, albeit somewhat belatedly, a more Burkean approach to representative government; on Alderney at least, it would be the key to unlocking the hitherto hidden economic potential of the Island.

### Election spending

There is no limitation on expenses spending by individuals in elections. In practice, candidates confine themselves to modest stationery and postage costs to ensure their election manifestoes are widely distributed, though in truth the two local *'news sheets'*, The Alderney Journal and The Alderney Press (bi-weekly publications) print the candidates manifestoes. Establishment of political parties would clearly change this dynamic.

### Opinion Polls

Opinion polls play no part in the run up to the elections. However, there is always speculative







discussion about the prospective success of the candidates on in the run-up to elections and how accurate are they?

### **The Media and Elections**

The media profile the election candidates and their manifestoes. They add a little excitement and enthusiasm in the run-up to the election and its results. Unfortunately they provide very little analysis of the manifestoes, the majority of which tend to pay undying loyalty to the Island, its perceived charm and beauty.

The absence of political parties probably ensures that media presentation of the candidates and the elections is relatively unbiased and uninfluenced by segments of the population. Voters are influenced by a mix of tribal/family loyalties and personalities. Introduction of political parties would, undoubtedly, change the dynamics of media coverage and reporting.

### **Voter Registration**

The Voter Registration process and access to voting is firm, robust and secure. However, there is strong evidence of tactical voting. When faced with the opportunity of selecting 5 candidates, many voters confine themselves to voting for fewer than 5 or sometimes even to a single candidate.

### **Gender quotas**

The female to male ratio of the electors in Alderney is approximately 55%:45% with more female electors. Currently there is only one female Member of the States of Alderney, although 3 women stood in the most recent 2014 election.

There have been as many as three female Members of the States of Alderney at the same time historically. Gender quotas have never been discussed. I suspect that if the matter



were put to public consultation, the issues would not strike a resonant chord because the majority of the electorate is in excess of the age of 50 and women voters are not calling for such initiatives.

### **Application of technology to the voting process**

A simple interrogatory screen in a booth, where a menu displayed the candidates, constrained the number of votes and captured an audit trail would eliminate the open outcry method of count. It would need to be accompanied by some independent audit of the transaction trail and the figure count. However, the cost reduction would only be achieved over a number of elections as there would be some capital and programming cost of the system.

### **Education and Turnout**

The electorate is well briefed on Island issues but tends to ignore the macro-political and economic influences of the outside world in selecting the candidates for whom they wish to vote. If I quote my own manifesto in 2012: "*No Island is an Island, especially in 21st Century.*" The turnout of about 70% is satisfactory when compared with other

jurisdictions. The concern is that younger people tend not to vote or register, a reflection on the broad disillusion of younger people with politics in general in the Western Hemisphere.

### **Young People**

Engagement of young people is a critical issue in Alderney and in the Bailiwick of Guernsey as a whole. The demographics are alarming as the number of people over the age of 50 is in excess of 50% of the population in Alderney and approaching that figure in Guernsey. Only two members of the States of Alderney are aged under 60.

Inevitably many States Members tend to focus on the issues of aging, particularly health and social services, the highest areas of public expenditure in the Island and the Bailiwick of Guernsey. Electoral prospects tend to diminish for States Members who seek re-election if they advocate reform and reduction in these areas of public expenditure. Ultimately, the younger generation will have to assume the financial responsibility for what are generous health and social services, policies which cannot be sustained without new

**Above: The distinctive 'blue' post boxes are a feature of Alderney in contrast to the red post boxes elsewhere in the British Isles.**

and additional taxation.

The remuneration structure and organisation of Committee Meetings do not attract younger people. They have the primary responsibility of their families and a full time job. For those employed, where employers are willing to release them, and for the self-employed under retirement age, the remuneration issue could be addressed by paying those under retirement age the equivalent of what they forego through engagement in public service.

### **Conclusion**

In summary, Alderney and the Bailiwick of Guernsey have some very specific challenges in addressing electoral reform, the most notable being the absence of political parties, while other issues, principally demographic issues, are the same as in other jurisdictions but are seen in sharper relief in Alderney and the Bailiwick of Guernsey.



# EXTENDING THE VOTING FRANCHISE

An analysis of how different electorates have extended the franchise for parliamentary elections



**Professor Sarah Birch** is a Professor of Comparative Politics at the University of Glasgow in Scotland. She specialises in the comparative study of electoral institutions. She has written books on electoral systems, compulsory voting and electoral malpractice. The focus of her current research is electoral violence.

The franchise is the issue on which there has historically been more debate than any other in the electoral arena. The great struggles for electoral reform in eighteenth- and nineteenth-century Europe and Latin America revolved around removing restrictions on voting and the advent of full democracy in the modern world is held by political theorists and political scientists to coincide with the introduction of the universal adult franchise.

The question of who is allowed to vote is in some senses the defining question of democracy. But who is an 'adult' for electoral purposes?

There is no firm consensus on the age of electoral majority. That said, there has been a trend in recent years toward lower voting ages. Following the Second World War, most states had a voting age of 21; now 86% set the franchise at age 18. There are, however, notable exceptions. The age of electoral majority ranges from age 16 in Argentina, Austria, Brazil, Cuba, Ecuador, Guernsey, Jersey, the Isle of Man, Malta and Nicaragua to age 21 in the Central African

Republic, Cyprus, Kuwait, Lebanon, Malaysia, Oman, Samoa, Singapore and Tonga. Nine states have franchises in between these extremes, but other than age 18 (Bahrain: 20, Cameroon: 20, Indonesia: 17, Japan: 20, North Korea: 17, South Korea: 19, Nauru: 20, Taiwan: 20, East Timor: 17).<sup>1</sup>

Though less contentious than some other electoral institutions, the voting age is an issue that has been the topic of considerable debate in some states.

The most noteworthy recent development has been the move in Europe to reconsider the threshold of age 18 which has been the norm on this continent for several decades.

A 2011 report by the Parliamentary Assembly of the Council of Europe recommended a voting age of 16 for its 56 member states,<sup>2</sup> and a number of recent franchise revisions have taken place in Europe.

Over the past decade, the age threshold has been lowered from age 18 to 16 in Austria, Malta and several British dependencies, including

Guernsey, Jersey and the Isle of Man. The UK region of Scotland has also introduced voting at age 16 for the electoral events under its control, including the referendum on Scottish independence which was held in September 2014.

Other European countries such as Denmark, Germany, Norway and Switzerland have experimented with allowing under-18s to vote, though they have all stopped short of rolling out the measure in national elections. Some German Länder (regions) operate voting ages of 16.

Following the move to lower

**"The question of who is allowed to vote is in some senses the defining question of democracy. But who is an 'adult' for electoral purposes?"**





the voting age in Guernsey, Jersey, the Isle of Man and Scotland, a lively discussion ensued place in other parts of the United Kingdom. There have been non-binding votes in favour of such a measure in the regional assemblies of Northern Ireland and Wales and the age of electoral majority has been much discussed in the British media.

*Why has the franchise age suddenly received so much attention?* Many democracies have experienced declines in turnout in recent years and research has often noted that these declines are strongest among younger groups. Not only are the young generally less likely to vote than their older counterparts, but in many states successive generations

are less likely to vote than their predecessors and members of these younger generations often fail to acquire a taste for voting as they age.

Declining turnout has been associated with disengagement from and disaffection with politics. Increasing numbers of people, especially young people, feel that politics is not for them and that politicians don't listen to their opinions. Given that participation is key to democracy, this trend is a cause for considerable concern. If people do not stop and think about major public issues and voice their views at the ballot box, governments do not get a clear idea of what people want and representation suffers in consequence. It may not be necessary for everyone to take

part in elections, but those who do take part need to be sufficiently representative of the population as a whole if elected leaders are to have a clear idea of people's preferences. When large numbers of citizens from any one group fail to participate on a regular basis, democracy suffers. And when this group is the generation that will be longest affected by the policies enacted, there is serious reason to worry.

Lowering the voting age to 16 has been touted as a partial solution to this problem. There are several components to the arguments that have been put forward. Firstly, adding more young people to the electorate will increase their collective voice, which will in turn give politicians greater incentive

**Above: A 'Yes' campaign poster during the Scottish Independence Referendum in 2014 when 16 and 17 year olds were given the right to vote in a national poll for the first time.**

to pay attention to their views and needs. If politicians believe it is important to engage with younger electors, they will devote more energy to addressing their concerns. This will, so the argument goes, give younger people an enhanced sense of involvement with politics and will make more of them connect with democratic processes.

A second argument for the positive effects of a lower voting age centres on the long-term consequences of exercising the franchise when young. It is



argued that if people become involved in electoral processes at an early age, this will breed a habit of voting that will remain with them throughout their lives. When people are aged 16, many of them are still living with their parents and attending school; the institutions of family and school can play an important role in socialising people into voting and providing them the information they need about how and where to cast their ballot. Thus, it is argued, 16 is an excellent age at which to introduce people to the electoral process.

Eighteen-year-olds, by contrast, are often setting out on their own in the world and tend to be engrossed in establishing independent lives. Under these circumstances, politics plays a marginal role for many and voting may well be a lower priority. Once people are

into their 20s, they tend to have more stable lives and they are more likely to vote. American political scientist Mark Franklin has shown that the decreases in the voting age from 21 to 18 which occurred across much of the democratic world in the post-Second World War period resulted in turnout declines for precisely this reason.<sup>3</sup> Given the political infeasibility to raising the voting age back to 21, the next-best solution is to lower it to 16, argues Franklin.

*What is the evidence to support these claims?* In addition to Mark Franklin, several other political scientists have shown that these arguments are well-founded. There is evidence from studies in several countries that 16 and 17 year olds are more likely to turn out to vote than 18 year olds.<sup>4</sup>

There is also considerable evidence to support the

argument that voting is habit-forming and that if people vote in the first election for which they are eligible, they are more likely to continue to vote throughout their lives.<sup>5</sup> On the basis of this evidence, a proposal has even been put forward to make voting mandatory for first-time voters only, possibly at the same time as the voting age is lowered to 16.<sup>6</sup>

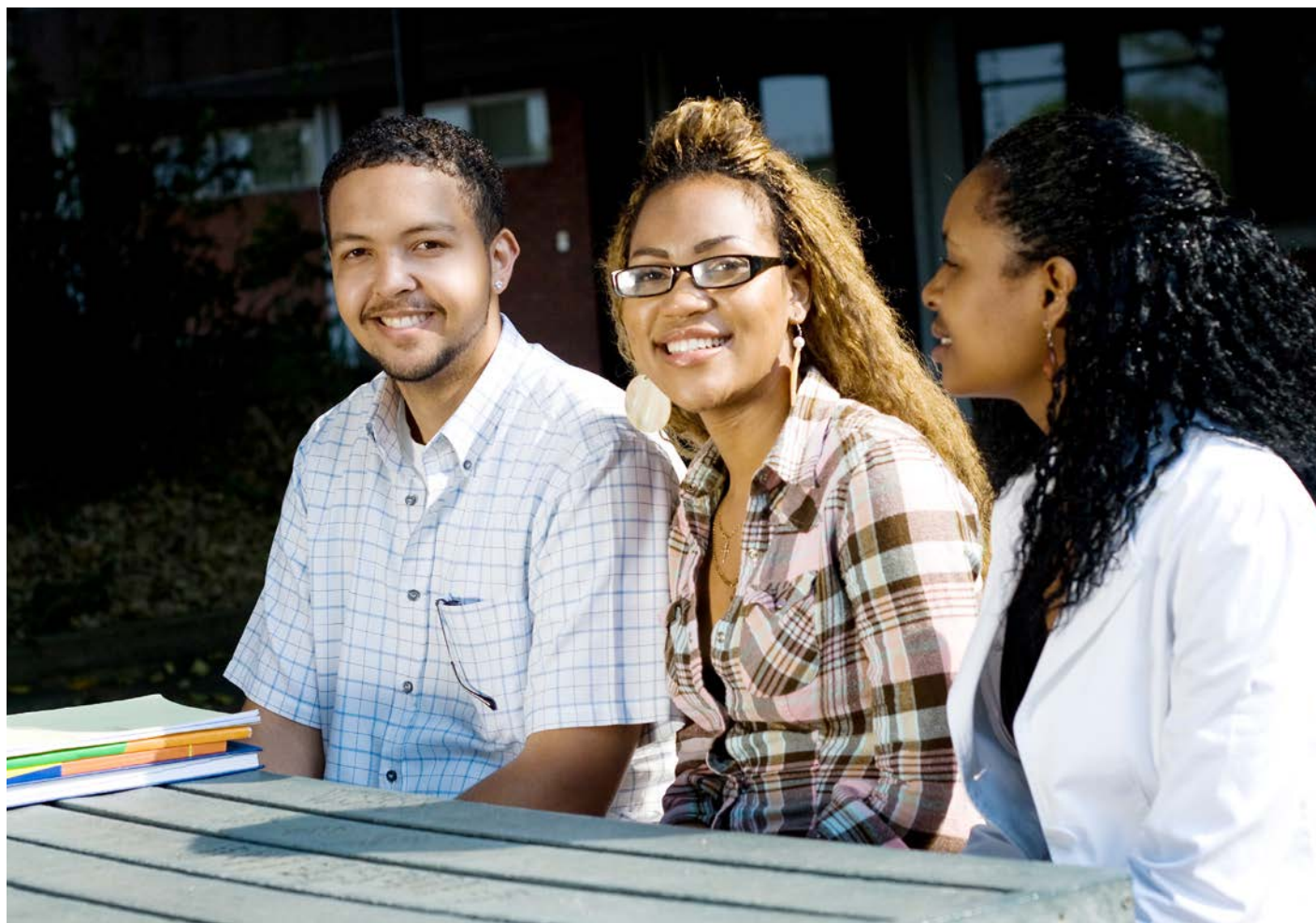
Given that the evidence clearly points toward the representative benefits of lowering the voting age to 16, the question then arises as to why such a move has not been universal among democracies.

The answer undoubtedly lies in the concerns some people have about the consequences of allowing 16 and 17 year olds to enter the franchise. Some people argue that at this age people are not yet cognitively and politically mature enough to vote, while others are concerned

that at 16 and 17 people do not have sufficient stake in society to warrant including them in formal decision-making processes.

There are few in-depth studies of public attitudes toward lowering the voting age to 16. A survey carried out in 2013 in the UK showed that opinion on this issue was not particularly strong. Supporters of voting at 16 tended on the whole to be aged 25-45, and they were more likely to be male and from lower income groups. The majority of those surveyed favoured leaving the voting age at 18, though the lack of strong views on this issue suggests that people might well adjust to the institution and accept it once adopted, as has happened in Scotland.<sup>7</sup>

In each state the franchise evokes different collective memories and attitudes toward the voting age can be expected to vary according to the role







**“Given that the evidence clearly points toward the representative benefits of lowering the voting age to 16, the question then arises as to why such a move has not been universal among democracies.”**

that elections have played in that country's history. Cultural factors may also shape views on the age of electoral majority, as will age-related restrictions on other activities such as working, driving, marrying and serving in the military. For this reason it is not possible to specify an ‘ideal’ age threshold for voting. Each democratic public must deliberate on the matter and make up its own mind.

At the same time, the recent move toward lowering the franchise suggests that it is a debate worth holding. When people have engaged with the issues and considered the arguments for and against different voting ages, they have historically tended to opt for lower thresholds. Whether lowering the voting age will truly lead to greater voter engagement remains to be seen; what is clear is that this is currently a ‘hot topic’ in the area of electoral reform.



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# YOUTH ENGAGEMENT IN ELECTIONS IN SCOTLAND

**The 'Holyrood Rocks' project in Scotland aims to engage young people in elections.**



**Anne McTaggart**  
**MSP** was elected in May 2011 to the Scottish Parliament to represent the Glasgow region. Prior to election, Anne worked in the creative industries before becoming an Elected Member of Glasgow City Council. As Shadow Minister for Europe and International Development, member of the European and External Relations Committee (EEC) and of the Cross Party Groups for Tibet and Poland, Anne's focus is on furthering partnerships with nations across the world to ensure Scotland is at the forefront of innovation in a globalised 21st century world.

Young people between the ages of 16 and 25 constitute a fifth of the world's population. We have seen recently that this age group are often involved in informal, politically relevant actions, such as activism or civic engagement.

However, young people do not feel formally represented and listened to in national political institutions such as Parliaments and many of them do not participate in elections. This has a profound effect on the quality of democratic governance.

The International Institute for Democracy and Electoral Assistance published a report in 2013 which said that among those young people they had interviewed, there was a general sense that traditional political parties, political institutions and political structures, including elections, fail to appeal to this crucial segment of the population due to the lack of engaging political programmes, manifestos and content that target specifically, and effectively, the younger generation. Indeed, data on youth voter turnout from various countries suggests that young voters tend to participate less in elections compared to older citizens.<sup>1</sup>

In the United Kingdom, a recent report on political engagement, prepared by the Hansard Society, also revealed that only 24% of the 18-to-24-year-old age group are interested in politics. Beyond

their lack of interest, the survey highlights a general lack of understanding among this age group about current politics and the work of Parliaments. An Australian Electoral Commission Youth Electoral Study Report also reports similar trends where disengagement is concerned. Some half a million (or one quarter) of 18-to-24-year-olds continue to abstain from enrolling to vote, even where this is legally compulsory in Australia.

Youth disengagement with politics is a widespread global issue. As a member of the Scottish Parliament, I have an obligation to make myself as accessible and as open as possible, in particular to those traditionally under-represented in our democracy, including young people. The Presiding Officer of the Scottish Parliament, Tricia Marwick MSP is committed to bringing the Scottish Parliament closer to our citizens and is constantly looking for ways to involve the general public in Parliamentary life. This is where Holyrood Rocks comes in.

Holyrood Rocks is an initiative organised between the Scottish Political & Cultural Partnership (SPCP) and the Scottish Parliament. By showcasing young musical talent whilst relaying the importance of democratic rights and the significance of the right to vote, Holyrood Rocks hopes to encourage voter engagement in Scotland and beyond.

It has a five point plan or

'manifesto' for its regional and national events, with the aim of increasing youth voter turnout in next year's Scottish Parliament elections in 2016:

- To encourage every 16–25 year old to vote in the upcoming elections.
- To promote young people's participation across the artistic spectrum.
- To raise awareness of the abundance of career opportunities available in Scotland across the creative industries.
- To emphasise the importance and value that the creative industries brings to Scotland's economy.
- To promote active citizenship, respect and tolerance amongst young people, irrespective of social, ethnic or economic background.

These regional and national events will reach thousands of people across Scotland, taking the message across the breadth of the country, and will celebrate Scotland's local communities, in addition to local spaces, hubs and venues, maximising use in those communities and encouraging local residents to take part in any way they can.

Holyrood Rocks has benefitted from support from all political parties in our Scottish Parliament including the First Minister of Scotland, Nicola Sturgeon MSP. Its premise





is clear. For too long, politics has been fed to people by institutions, politicians and Parliaments. Holyrood Rocks aims to turn this idea upside down. It is the first project of its kind in Scotland to take Parliament directly to the Scottish people, and in a way that is engaging, entertaining and creatively stimulating.

For our young people, it is a way of getting involved in politics without having to participate in a party political fashion or listen to dry speeches or boring policy debates. It lets them know that Parliament is there for them, that they have a voice and that they should use it, to improve our democratic governance and to improve our country. It also lets our politicians know the strength and ability of our young people, something too often forgotten when it comes to election time when older people are far more likely to cast their vote.

But this isn't a top-down, centralised project. For each of the regional events, local youth, community and racial equality groups are involved in delivering these events, in addition to those organisations who assist those who have additional support needs, but nonetheless have a passion for music. These are events organised by young people for young people, regardless of racial, social or economic background to encourage political engagement



across the spectrum.

This is a project that could easily be replicated around the Commonwealth, but its origins were devised after our inspiring Independence Referendum in September 2015. For that referendum, 16 and 17 year olds were granted the right to vote, a first for our democracy, and their response was overwhelming.

In a matter of months, conversations in schools across the country were all about Scottish politics. Those who would have perhaps struggled to name their Member of the Scottish Parliament prior to the Referendum were suddenly

engaged, informed and ready to debate the merits and the risks of Scottish Independence. It was a glimpse into a future where our young people use their voice to contribute to our Parliamentary democracy and it was inspiring to us all.

Holyrood Rocks seeks to create debate, not division. Irrespective of whether people voted yes or no, whether they will vote for the Scottish National Party (SNP) or Labour, the Conservatives, the Liberal Democrats or the Green Party in the upcoming Scottish elections, one thing is more vital and more important. Using their vote.

Across the Commonwealth, we all have a long way to go to convince our young people that politics speaks for them. Holyrood Rocks is the first in a series of initiatives designed to rectify this. The reaction from our youngest voters has been overwhelmingly positive and all signs point to an increased youth voter turnout at the next election. But, this is just the beginning.

Not all Commonwealth countries have the momentum

**Above: The 'Holyrood Rocks' project was launched by the First Minister of Scotland, Nicola Sturgeon MSP (centre) and the Presiding Officer of the Scottish Parliament and CPA Scotland Branch President, Tricia Marwick MSP (centre left).**

and energy gained from an Independence Referendum to assist them, but I would urge every Parliament across our nations to seriously consider projects of this kind. After all, who better to engage our young people than young people themselves?

*More information can be found about Holyrood Rocks at [www.scottish.parliament.uk/holyroodrocks](http://www.scottish.parliament.uk/holyroodrocks) or at [www.holyroodrocks.com](http://www.holyroodrocks.com). You can also follow @holyroodrocks and visit [www.facebook.com/holyroodrocks](http://www.facebook.com/holyroodrocks).*

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# THE ELECTORAL SYSTEM IN THE SEYCHELLES

What are the reforms in terms of design and management of elections that are required?



**Hon. Sebastien Pillay, MNA** is a proportionately elected Member of National Assembly of Seychelles. He is a member of the Standing Orders Committee, the Finance and Public Accounts Committee (FPAC) and is the Treasurer of the CPA Seychelles Branch. He started his career as a Mathematics Teacher and later moved into education research and lecturing at the University of Seychelles. In 2010 he joined the Office of the President where he held the post of Director General for Presidential Affairs and later that of Director General for Cabinet Affairs.

Electoral Systems have usually proven to be stable component of the democratic process. Wholesale and comprehensive reforms of the electoral system are rare and wherever it happens great care must be taken to avoid upsetting the democratic stability of a country. Yet in spite of the complexities of bringing about electoral reforms, we must agree that they have become a necessity and wherever it happens in the best possible way, it strengthens the democratic process and reinforces public confidence in the political process.

The choice of electoral system is based on the best design to bring about desired objectives and how this system functions has direct consequences, which reflect essentially, modern concepts of representative democracy. However from the outset we must make the point that there is no single 'best' system. Each country must explore different ways to make its system the most effective and encourage participation of the electorate.

This implies looking at how to approach the registration process, how to deal with the voting process and equally important how to reinforce the post-election process. These three issues overlap and much like concentric circles standing in the centre of one is to be standing at the centre of the others.

If the registration process is called into question then one

should also question the voting process and likewise the post-election process. Therefore reforms should touch on a number of issues that relates to both the design of elections and the subsequent management of elections. If you unpack these issues you will find that they include the participation of women in elections, engagement of the youth with the electoral process and voter education.

## The Design of Elections

Most countries have at one point or another considered the implications of reforms in the design of elections. Here we must make changes taking into consideration that there are no easy choices. The basis of reforms to the design of elections is that in spite of the inherent differences across jurisdictions the design should ensure the participation of each and every person eligible to vote. A core component of this is voter registration.

Voter registration should be compulsory and voter identification should also be an integral part of this. It's incumbent on every system to have an independent and autonomous body to manage elections that would ensure that registers are kept up to date. Now with the advent of technology we must also look at the possibility of registering online and having a digital system to check voter ID. This

implies incorporating biometric technology where the data can be used to check exactly who is voting. The issue here is to avoid people becoming disenfranchised.

When you move away from registration and look at the voting process it is apparent that here too electronic voting should be the way of the future. The key question here would be whether some countries would be able to afford such technology. With a digitalised system someone from one constituency can vote in another constituency and if the system can be designed to assign his vote to his constituency, it would make it more convenient for the person. These are things that are possible. Unique IDs would make it easier to tackle election fraud and makes the process more efficient. A unique ID can also allow voters to register on the same day. This can be very interesting.

## The Management of Elections

Elections should be managed by competent and autonomous elections bodies.

Some countries have set up electoral commissions and in these cases to avoid interference, they need to ensure the existence of this commission is enshrined in the constitution. Amongst other things this body should set up a code of conduct for all parties and candidates taking part in





elections. With clearly defined guidelines and regulations in place, parties can be held to account for their decisions and actions. The whole concept hinges on establishing a clear accountability framework.

Another important issue concerns whether polling day should be a public holiday. If there are qualms over voter turnout then this would be the best possible solution. Yet it would not yield the desired result if voter education is not reinforced.

#### **The growing debate: Majoritarian System versus Proportionate System (or possibly a mixed system)**

Reforms to the electoral system should consider the level of support all political parties receive so that it is reflective of the choice of the electorate.

In cases where the government has centralised systems the majoritarian system works best. Yet the electoral system should promote a

process of conciliation and consensus building within government. Parties reaching a certain threshold should be included in the legislature in proportion to their level of electoral support. Hence governments can therefore craft policies based on a consensus. This implies the composition of the legislature should reflect the main divisions in the composition of the electorate, so that all citizens have voices articulating their interests in the legislature.

In a majoritarian system some voices in the electorate are systematically excluded from representative bodies. Whilst no one system holds sway over the other perhaps having a mixed system could be a convenient compromise.

#### **The role of Election Assessment Missions**

Election Assessment Missions (EAM) play a key role in alerting jurisdictions of shortcomings and weaknesses that have to

be tackled. The main election body should ensure that credible organisations are promptly given access to the election process. EAMs provide some of the critical basis to drive key changes in the election system. The term '*free and fair*' has become the byword where everybody waiting on the EAM report wants to hear these words. The whole process hinges on the exchange that is possible by learning from different systems and taking what might be useful and adapt this in different contexts.

#### **The Way Forward**

In conclusion as we said earlier, there really are no best systems only best practices. Systems that adopt those best practices find that over time they become part and parcel of people's psyche. The process becomes second nature and everything comes down to mutual trust. Even though this takes time, it is worth the wait. We must be reminded

**Above: The clock tower of Victoria, also known as Little Big Ben, in The Seychelles.**

that the focus should never shift from the electoral process and the system it entails being what it is, the basis of democratic governance.

It is therefore incumbent on leaders to make changes or reform the electoral process on that basis alone. It is only by considering this that we truly achieve the dream of '*government of the people, for the people by the people*'.

Abraham Lincoln was right in saying this in his Gettysburg address and this should be the yardstick by which we reinvent the political process towards one that is predicated on trust. The choice is important and the manner in which the choice is made is equally important. What is crucial though is that both choice and choice making should happen freely and transparently.



# DEMOCRATIC RENEWAL ON PRINCE EDWARD ISLAND



**Hon. Jordan Brown, MLA** was elected to Prince Edward Island Legislature, Canada in May 2015 as the Member for District 13, Charlottetown, Brighton. He serves as Chair of the Special Committee on Democratic Renewal, Vice-Chair of the Standing Committee on Public Accounts and Member of the Standing Committee on Education & Economic Development.

The Government of Prince Edward Island recently indicated in its Speech from The Throne that it was committed to *"initiate and support a thorough and comprehensive examination of ways in which to strengthen our electoral system, our representation, and the role and function of the Legislative Assembly."*

The Government also prepared and disseminated the White Paper on Democratic Renewal (the *"White Paper"*), in the most recent sitting of the Legislature. As the title would imply, the White Paper is a discussion paper surrounding democratic reform on Prince Edward Island, relating, in particular, to our voting method; the number and distribution of seats in our Legislative Assembly; and opportunities to enhance election laws and representation in the Legislative Assembly.

On 9 July, the Legislative Assembly unanimously resolved that a five person Special Committee of the Legislative Assembly be created to guide public engagement and make recommendations in response to

the White Paper on Democratic Renewal. It is my privilege to have been named Chair of that Special Committee. In that capacity, I propose to provide context to the task at hand, particularly as it pertains to the manner in which we vote, and to delineate some of the issues and challenges faced by the Committee.

## Context

By virtue of a general election culminating on 4 May 2015, when 82.22% of eligible voters cast a ballot, Prince Edward Island's 27 Member Legislative Assembly was elected via a First Past the Post (FPTP) system to represent and govern the 146,000 constituents that comprise Canada's smallest province.

The Liberal members formed a majority government with 18 seats; the Progressive Conservatives were elected in 8 ridings; and for the first time in the Island's history, a Green Party member, their Leader, Dr. Peter Bevan-Baker was elected and his party given Official Party status.

This breakdown of the

number of seats was achieved despite the Liberals having garnered 40.8%; Progressive Conservatives 37.4%; the New Democratic Party 11%; and the Green Party 10.8% of the popular vote respectively. Of this grouping only 5 of the 27 MLAs are female, 1 is Acadian

**"On 9 July, the Legislative Assembly unanimously resolved that a five person Special Committee of the Legislative Assembly be created to guide public engagement and make recommendations in response to the White Paper on Democratic Renewal."**





(a historically identifiable culture on Prince Edward Island) and there are no visible or cultural minorities represented amongst the elected members (despite there being a relatively large contingent of Aboriginal Islanders and relatively recent Immigrants).

Further three of the recently elected MLAs are aged in their mid-30s, with the balance ranging in age from their mid-40s to mid-60s.

The fact that 82.22% of the electorate voted in 2015 is testament to the high importance Islanders place in our provincial democracy. In part, I believe this is due to a general willingness to constantly examine our democratic processes and take action when it is deemed beneficial.

Pundits, politicians, and many of the people in the province

felt that although the 2015 election resulted in a strong opposition and arguably the most balanced Legislature the Province has seen in some time, the percentage breakdown of the popular vote was indicative of the need to consider other, more representative, methods of electing the Island's representatives.

Noting that of the 27 members elected, most did not receive a majority of support in their district; that at least three ridings were decided by a margin of 1% or less (mine having been one of them, with a difference of only 22 votes between the PC candidate and myself following a recount); with one district having been decided by a coin toss, following a tie, after a recount; and that all of the major parties made democratic reform a platform

issue, it is no surprise that the election result fueled further calls to consider democratic reform anew.

### **Recent History of Democratic Reform on Prince Edward Island**

I would be remiss not to mention that this is not the first time electoral reform has been considered on Prince Edward Island. In fact, in November 2005 a plebiscite was held asking Islanders *"Should Prince Edward Island change to the Mixed Member Proportional System as presented by the Commission on Prince Edward Island's Electoral Future?"*

Roughly one third of eligible voters voted in the plebiscite. Of those that voted 36.4% voted 'Yes' in favor of the proposed Mixed Member Proportional System and 63.6% voted 'No'.

**Above: Government House, often referred to as Fanningbank, is the official residence of the Lieutenant Governor of Prince Edward Island.**

There have been three subsequent elections, counting the May 2015 election. In 2007 the governing Progressive Conservative party was ousted by a Liberal government then led by Robert Ghiz. The Liberals won 23 of the 27 seats, with the remaining four going to the PCs. The Liberals took 52.9% of the popular vote and the PCs 41.4% with the Greens taking approximately 3% and the NDP approximately 2%.

In 2011 the governing Liberals lost one seat to the PCs, taking 51.4% and 40.2% of the decided vote respectively. The Green and NDP Parties each increased their share of the



popular vote by approximately one per cent. Perhaps the most notable statistic to Islanders was that voter turnout fell to 76.4%, which was the lowest voter turnout since Elections PEI began recording voter turnout in 1966.

Five of the last seven elections on Prince Edward Island have resulted in similarly lopsided breakdowns. Of these, 2 have resulted in a single member opposition.

Anecdotally, a number of voters, particularly in the youth demographic, are indicating they feel there is a perceived lack of choice suitable to them and therefore, that their vote doesn't matter.

For these reasons, amongst others, democratic reform has

**“The historical development of voting rights in Canada and the view taken of such rights in other democracies leads inexorably to the conclusion that relative equality of voting power is fundamental to the right to vote enshrined in section 3 of the Charter. In fact, it may be seen as the dominant principle underlining our system of representational democracy.”**

once again become an issue of relative importance to Islanders. It would be trite to say things have changed since the 2005 plebiscite. However, it wouldn't likely come as a surprise to note that many Islanders have questioned whether there is any real prospect of a renewed attempt at democratic reform resulting in a different outcome than did the 2005 effort.

### **Pre-Plebiscite History of Democratic Reform on Prince Edward Island**

It is useful to review Prince Edward Island's history of electoral reform, which is by many standards, extensive and hard fought.

Formal governance on the Island dates back to 1769 when the Island was declared a colony of British North America. By the mid 1770s the Island's legislature consisted of a Governor, appointed Executive and Legislative Councils and a popularly elected House of Representatives, later known as the House of Assembly. Initially only Protestant males were allowed to vote, until Catholics won the franchise in 1830.

In 1851, after a decade long fight by a group known as the reformers, responsible government was bestowed upon the Island, requiring the government to be accountable to the elected House of Assembly. In 1862 the Legislative Council became an elected body, though only those with at least £100 in freehold or leasehold property were permitted a vote.

Since joining Canada, as a Province, in 1873, a number of democratic and institutional reforms have occurred. Among the reforms were:

- The introduction of the secret ballot in 1877. Repealed in 1879, the secret ballot was permanently reinstituted in 1913;
- The merger of the two

houses of the Legislature in 1893 into a 30 member unicameral Legislative Assembly with each district electing a Councilor, using a property requirement for male electors and an Assemblyman elected by universal male suffrage. The dual-member riding system was unique and the property distinction between Councilor and Assemblyman introduced a perception of 'two-classes' of MLAs even though their powers as MLAs were equal;

- The extension of the franchise to women in 1922;
- The extension of the franchise to Aboriginal Islanders in 1963;
- The elimination of the property requirement for Councilor electors in 1964;
- Increasing the size of the Legislature to 32 by adding two seats in the Charlottetown area prior to the 1966 election; and,
- Reducing the voting age to 18 years prior to the 1970 election.

Despite the reforms that occurred after 1873, there was little alteration to the electoral districts themselves, aside from splitting the riding of Charlottetown into two separate ridings in the 1960s. Disparity in the number of electors per district resulted. In 1974, an Electoral Boundaries Committee and Sub Committee, of the Legislative Assembly were established. Recommendations flowing from the committee process, including a redistribution of electoral ridings, failed to be adopted.

In 1991 Donald MacKinnon, a resident of the Island, took matters into his own hands, filing an application in the Province's Supreme Court seeking a declaration that certain sections of the Elections Act should be repealed, as they were contrary

to section 3 of the *Canadian Charter of Rights and Freedoms*, which guarantees every Canadian Citizen the right to vote. The sections were alleged to permit a variance in the number of electors per district resulting in disproportionate representation, which the Electoral Boundaries Committee had previously recommended be addressed.

Mr. MacKinnon's application was based on the Supreme Court of British Columbia's decision in *Dixon v. British Columbia (Attorney General)*, (1989) 59 D.L.R. 4th 247., wherein Chief Justice Beverly McLachlin (who later became Chief Justice of the Supreme Court of Canada) stated:

*“The historical development of voting rights in Canada and the view taken of such rights in other democracies leads inexorably to the conclusion that relative equality of voting power is fundamental to the right to vote enshrined in section 3 of the Charter. In fact, it may be seen as the dominant principle underlining our system of representational democracy.*

*At the same time, absolute equality of voting power has never been required in Canada. It has been recognized since Confederation that some degree of deviation is permissible where other considerations so require.”*

She went on to say that it would be up to the legislature to determine the extent of the allowable deviation, within the confines of the principles inherent in the Charter.

Mr. MacKinnon's application was ultimately successful, prompting the institution of a further Electoral Boundaries Commission in 1994. The Commission recommended that the Island be represented by 27 single member districts. After much debate and amendment to the boundaries of the 27 districts, the recommendation





was enacted. This prompted a further court challenge by many of the Island's incorporated municipalities, who felt that the new system allowed for disproportionately large representation of the Island's rural constituents. Following appeal the application was denied hearing by the Supreme Court of Canada.

During the process the Electoral Boundaries Commission, received submissions on mixed member proportional representation. The

**Below: The Legislative Assembly of Prince Edward Island is located in Charlottetown, Canada.**

Commission went on to address them in their 1994 report, indicating, in essence, that the possibility required a great deal of further study before it could be addressed intelligently, particularly as the system had not been widely adopted.

By the time the next Electoral Boundaries Commission was engaged in 2000, the global landscape had changed. New Zealand, very publicly adopted a form of MMPR (Mixed-member proportional representation) in 1994 and Scotland and Wales adopted Additional Members Systems when they achieved devolution in the late 90s. The Commission went on to

recommend that the possibility of an MMPR system be studied in further detail.

This recommendation in turn led to the institution of the 2003 Electoral Reform Commission, and its report, prepared by former Chief Justice of the Province, Norman Carruthers. This report, which was delivered after seven public meetings and a number of submissions from the public and experts, recommended that a further commission be established to engage and educate the public with respect to the potential options, and to refine a question for a referendum. Justice Carruthers proposed that an MMPR system,

based on that of New Zealand, which would include 21 members elected by district, and 10 further members elected from lists to balance the result according to the proportional vote.

This resulted in the formation of the 2005 Commission on PEI's Electoral Future, which was comprised of eight nominated members of the Public. The Commission set out on a broad campaign of engagement, holding 12 public meetings across the Island, and participating in as many as 20 more. The Commission also undertook an extensive promotion and advertising campaign.

In the end, despite the fact that the plebiscite resulted in a 'No' vote, the Commission felt that the public had been much more engaged and educated on the

topic than when it began its work.

Recognizing the previous efforts of citizens, litigants, committees and commissions in respect of democratic reform, and the result of the most recent plebiscite, it is clear that our committee must appreciate that its most important jobs, are to educate its members as to the possibilities; educate Islanders as to the possibilities; engage and solicit input from Islanders in respect of the possibilities and their desire for change; and to be open minded and prepared to listen to what Islanders are saying to us. We will not know, at least until the process is commenced in earnest, whether Islanders voted 'No' in 2005 because they did not want change or perhaps because they did not favor the particular option presented. That said, there is great comfort drawn from high voter turnouts on the Island.

Taken in isolation from other factors, the willingness of Islanders to participate is an indication of a highly engaged population. In part, this may be due to their willingness to constantly re-examine their electoral system. The current examination of our electoral system is another phase in that democratic tradition.

Once again, it is likely that our current exercise will provoke a lively and constructive debate over the Island's democratic evolution. Recognizing that we are not starting from a blank slate, it is also my hope, and I believe the hope of our committee, that the progression through this process will be sufficiently educational, open, and engaging to allow for the preparation of a plebiscite question which may simultaneously gauge the appetite for and set the course of future democratic reform on Prince Edward Island.





# OUT WITH THE OLD, IN WITH THE NEW: THE CASE FOR INTERNET VOTING IN AUSTRALIA



**David Kerslake** is the Electoral Commissioner for Western Australia. David is an expert in the electoral field and has been Queensland Electoral Commissioner and Assistant Commissioner with the Australian Electoral Commission. In Queensland he was responsible for three State general elections and two state-wide Local Government elections. He was also Queensland's Local Government Change Commissioner, responsible for reviewing local government boundaries and electoral arrangements.

If the right to vote is the cornerstone of democracy, then a key indicator of the legitimacy and well-being of a democracy should be the proportion of eligible citizens who exercise that right. Australia has a proud record in that regard, with over 90% participation in federal and state parliamentary elections in past decades. Historically, the fact that voting is compulsory in parliamentary elections, federal and state, has obviously been a major contributor in that regard.

Despite compulsion, the picture in recent times has not been quite as rosy with a disturbing downward trend in participation especially among younger electors. Studies undertaken by the University of Sydney (Youth Electoral Study reports 2004, 2005, 2009) and the Whitlam Institute at the University of Western Sydney (2008, 2011, 2013) reveal that although younger Australian electors continue to have a strong interest in social and political issues and are seemingly happy to join in online blogs or Twitter feeds, they are becoming increasingly disinclined to actually vote and in many cases reluctant even to enrol in the first place. In the lead up to the 2013 Australian

federal election, the Australian Electoral Commission reported that an estimated 1.5 million Australian citizens were not enrolled to vote despite being eligible, many in the 18-39 age group never having been enrolled (AEC 2012). This is suggestive of a conscious decision, especially among younger citizens, to opt out of the electoral system altogether. Should there be a continuation of this downward trend (which is mirrored in many other nations), it could seriously weaken the strength of Australian democracy.

There are myriad factors - legislative, socio-economic, cultural, political - that can affect elector participation, such as the level of emphasis placed on civic education in schools, the perceived relevance of political policies and platforms, and how hotly contested particular elections happen to be.<sup>1</sup> As already mentioned, compulsion has also bolstered participation in Australia in the past. All these factors involve political or policy considerations that are arguably outside the remit of independent electoral management bodies, and will not be discussed here. One area that electoral administrators can influence,

however, if only through advice and recommendations to governments and parliaments, is the look and feel and (dare I say) convenience of election processes and procedures, especially the options available to electors to cast their vote. There is important international research to indicate that one such option, the introduction of internet voting, would be likely to increase turnout rates among younger electors.<sup>2</sup>

It is important to note at this point that legislation governing the conduct of parliamentary elections in Australian states and at federal level is generally

**“If the right to vote is the cornerstone of democracy, then a key indicator of the legitimacy and well-being of a democracy should be the proportion of eligible citizens who exercise that right.”**





very prescriptive, allowing electoral management bodies limited scope or discretion in their election operations. The introduction of an internet voting option is not something, therefore, that Australian electoral bodies could introduce of their own accord - governments and parliaments would need to be persuaded to go down this path. It is also fair to say that electoral laws as they currently exist are firmly rooted in the past. Most Australian electors are still required to attend a polling place to vote by putting pencil to paper. New South Wales is the only jurisdiction that allows internet voting, and then only in limited

circumstances.<sup>3</sup>

While some would argue that traditional paper based systems offer the highest level of ballot security and scrutiny, it is becoming increasingly difficult to convince younger generations, reared on a diet of cutting edge technology that they should have to vote in this way. There is a very strong likelihood that an Australian citizen turning 18 today (the age at which citizens become eligible to vote) was brought up online. Call it the digital age, the electronic age or the age of convenience, it is an age that is here to stay. 93% of Australian households with at least one occupant under the age of 15

already have internet access<sup>4</sup> and there are over 3 billion internet users world-wide.<sup>5</sup>

A strong argument can be made that if our electoral laws are not modernised, especially by providing a wider and more accessible range of voting options, younger electors will stop voting with stubby pencils and will vote with their feet instead!

Recent research makes it almost indisputable that if internet voting were made available as an option to Australian electors, many would choose it. For example a Queensland parliamentary inquiry conducted in 2005 (when community internet usage

**Above: Due to its vast size across the Outback, Australian voters could benefit from internet voting in some areas.**

was lower than it is today), surveyed a group of young people about their preferred method of voting. The typical response was that they favoured internet voting, some going even further by suggesting that they should be allowed to text their vote (Voices and Votes, 2005). Voter surveys conducted by the Western Australian Electoral Commission at that state's last three state general elections have also shown a steady increase in support for internet voting. In 2005, 44%



of respondents indicated that they would be likely or very likely to vote via the internet if a secure facility was available. This figure increased to 57% in 2008 and had reached 66% by the most recent election in 2013 (with around 10% of the 2013 respondents ambivalent at worst and only 22% actually reporting that they would be unlikely to vote in this way (WAEC report, 85).

These results beg the question, how long can Australian legislators hold out in the face of the steadily growing acceptance of and demand for internet voting?

Some would respond to this question by saying that the real issue is not voter demand, but the security of voting online. For example in his foreword to

a recent report by the federal parliament's Joint Standing Committee on Electoral Matters the committee chair had this to say:

*"After hearing from a range of experts, and surveying the international electoral landscapes it is clear to me that Australia is not in a position to introduce any large-scale system of electronic voting in the near future without catastrophically compromising our electoral integrity... While internet voting occurs in Estonia, it does not mean that system cannot be hacked. With all the internet security architecture available, the academic experts swear they can, and have proved they can, hack such systems."* (JSCEM 2014, v-vi)

Not being a computer specialist, I am not qualified to

debate the technical aspects of cyber security. There are three important points that I will make, however. Firstly, maintaining the security of the ballot is an obvious and valid consideration. Secondly, though, different experts appear to have quite different views on the security capability of internet voting.<sup>6</sup> Thirdly, any discussion of the security of internet voting is likely to offer up a distorted picture if it fails to take account of the risks inherent in the system of voting that we already have in place. It has to be said that in an Australian context, some of these risks are very difficult to guard against.

Let me elaborate. Unlike many other nations Australia does not have a national identity card. While a national card

the concerns expressed by the Federal Joint Standing Committee was that people voting online, using computers in their own homes, could be subjected to coercion by friends or family members. While arguably unlikely to occur to any significant degree, to the extent that it could occur the risk is clearly no greater than under the existing paper-based system in Australia, which permits significant numbers of electors to fill out postal votes in their own homes.

Computers used to receive and store votes in an internet voting system would also be no more, and arguably less likely to make mistakes than human beings responsible for handling and counting ballot material in a paper based system (note the loss of some 1,375 votes in the 2013 election for the Australian Senate requiring the Western Australian component of that election to be run again).<sup>8</sup>

Internet voting also offers the potential to ensure that a greater proportion of votes cast actually end up being admitted to the count. Rates of informal voting (spoilt papers) in Australian elections typically range from 2% to 6%, depending upon the complexity of the voting system and formality rules in each jurisdiction. Ballot paper surveys conducted by electoral management bodies indicate that the majority of such instances are accidental. Unlike a paper ballot, an internet voting system could at least alert electors that they are about to cast an informal vote, increasing the number of votes actually admitted to the count.

Under the current system a proportion of postal voters will also not have their votes counted if they are not received by the returning officer within a specified (usually quite limited) period. Internet voting could alleviate that risk, with ballot

would assist the registration process in an internet voting system, its absence makes it difficult, if not impossible, to carry out identity checks in polling places under the current system. While there has been little evidence of deliberate fraud at past federal or state elections, the fact remains that in the Australian system activity such as multiple voting is virtually impossible to prevent up front; it can only be detected after the fact.<sup>7</sup>

If fraudulent activity were to occur on a scale big enough to affect the outcome of an election, the only recourse would be to run the election again.

One of







papers readily accessible and the capacity to return them immediately. I am reminded of the 2008 general election in Queensland when a significant portion of the state was inundated by flood, rendering it impossible for electors in those regions to cast their customary postal vote. As Queensland's (then) Electoral Commissioner, I authorised the deployment of helicopters to fly ballot papers into affected areas, designating cattle stations to be individual polling places and appointing pilots as electoral officials, the only available means of ensuring that electors in the affected areas could actually vote. Given that electors were advised by email when the choppers would be arriving, internet voting would have been a cheaper and more easily accessible option if allowed under electoral laws. Similarly, given that Australians undertake a relatively high level of overseas travel,<sup>9</sup> internet voting would provide a far more reliable option than the vagaries of the international postal services.

The last but certainly not least consideration I wish to raise is that many Australians with disabilities such as blindness are currently denied a secret vote (and thereby their rights under international conventions) through the necessity to seek assistance in filling out a ballot paper. Many of them, though, have special

**“Internet voting also offers the potential to ensure that a greater proportion of votes cast actually end up being admitted to the count.”**

computer equipment in their own homes which they use for other transactions and which they could use to cast their vote without assistance, but again - if the legislation allowed. Only one Australian jurisdiction has to date authorised and implemented internet voting for people with disabilities. If a staged approach to the introduction of internet voting is considered desirable by other legislatures, there could be no more justified place to start than by using modern technology to ensure that people with disabilities are not denied their right to vote in secret.

This is the very least that can and should be done to reform our voting system. Australia was once a world leader in introducing the secret ballot. The opportunity presents itself to get back on the leaders board.

I make no claim that the introduction of internet voting offers a universal panacea to the challenge of declining electoral participation. Clearly, political parties have a part to play in the way that they campaign (handing out 'How to Vote' cards in polling booths is not likely to 'cut it' with younger people) and by reviewing the relevance of their policies to a younger generation of electors. I have already referred to the importance of civic education, a means of inculcating habits of community participation at an early age. From an electoral administrator's perspective, three further points are worth emphasising, however, by way of conclusion.

Firstly, Australian electoral laws and systems are showing their age and are crying out for reform.

Secondly, internet voting could be introduced in phases, initially targeting particular groups who stand to be disadvantaged or where there is a risk they may be disenfranchised under the current system.

Finally, instead of shying away because of security concerns, Australian legislatures would do well to provide electoral management bodies with the challenge and resources to build robust internet voting systems, at least as an adjunct to the current paper-based system. The time is fast approaching when new generations of electors will countenance nothing less.

## References

<sup>1</sup> For example the 2007 Australian federal election, where many commentators and media acknowledged there was a significant mood for change. There was a clear spike in enrolments leading in to the election.

<sup>2</sup> See for example: [http://www.elections.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0013/103207/International\\_Experiences\\_of\\_Electronic\\_Voting\\_and\\_Their\\_Implications\\_for\\_New\\_South\\_Wales\\_Report\\_2009.pdf](http://www.elections.nsw.gov.au/__data/assets/pdf_file/0013/103207/International_Experiences_of_Electronic_Voting_and_Their_Implications_for_New_South_Wales_Report_2009.pdf) p.29

<sup>3</sup> Only electors in remote areas, those who will be outside of the state when the election occurs, and people with disabilities that would otherwise deprive them of a secret vote, are entitled to register to vote online. New South Wales also recently became the first jurisdiction to authorise the universal use of ball point pens rather than pencils in polling booths.

<sup>4</sup> <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/8146.0Chapter12012-13>

<sup>5</sup> <http://www.internetlivestats.com/>

<sup>6</sup> See: [http://www.elections.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0013/103207/International\\_Experiences\\_of\\_Electronic\\_Voting\\_and\\_Their\\_Implications\\_for\\_New\\_South\\_Wales\\_Report\\_2009.pdf](http://www.elections.nsw.gov.au/__data/assets/pdf_file/0013/103207/International_Experiences_of_Electronic_Voting_and_Their_Implications_for_New_South_Wales_Report_2009.pdf)

<sup>7</sup> Lists of electors who voted are scanned after each election to check for possible instances of multiple voting. Electors are not expected, however, to provide any form of identification when they turn up to vote.

<sup>8</sup> At a cost of some A\$20 million

<sup>9</sup> It is worth noting that at the 2013 Western Australian general election over 17,000 electors were excused from not voting because they were either interstate or overseas at the time.

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# FALKLAND ISLANDS REFERENDUM: A LESSON IN ELECTORAL TURNOUT

The Falkland Islands historic referendum in 2013 was a demonstration of self-determination and democracy in action.



**Hon. Dr Barry Elsby, MLA** has responsibility for Education & Training, Youth Development and Sports & Leisure and was first elected to the Legislative Assembly during a by-election in 2011.



**Hon. Michael Poole, MLA** has responsibility for Environment & Tourism. He was first elected in 2013, becoming the first Member elected to have been born after the Falkland War in 1982.

On a chilly autumnal night in March 2013, many residents of the Falkland Islands gathered in the central Town Hall to hear the result of an historic referendum on their political future. Whilst the result had been widely predicted, there remained an air of nervous excitement.

At around 11pm on the 11 March, the Chief Referendum Officer announced the overwhelming result. In front a global audience, 99.8% of voters had clearly expressed their wish to retain their political status as an Overseas Territory of the United Kingdom. This was off the back of a 92% turnout after months of debate and discussion within and outside of the Islands around the referendum and its result.

As Archbishop Desmond Tutu stated later that week, the turnout was “*admirable*” and the result was a “*very conclusive expression of the people’s will*.” This sentiment was echoed by international observers that had been present in the Islands in the days leading up to the referendum.

British Prime Minister David Cameron expressed his delight at the outcome, but reiterated to the world that it was the choice of the Falkland Islands people as to where their political future lay. He also reminded people that the war fought in 1982 was not “*the old battles of empire*” but solely so “*the people living in the Islands were free to choose their own future*.”

With the global media watching and wide-ranging implications for the Islands for years to come, this was a referendum that needed to be properly and impartially run. It also required widespread electoral engagement and a very high turnout to reinforce its legitimacy. This article tells the story of how a tiny Government achieved that.

## The Falkland Islands – An Introduction

First, let us begin with some context. The Falkland Islands are a small nation situated in the South Atlantic, some 400 miles from the South American mainland and 850 miles north of the Antarctic Circle. The distance from the capital, Stanley, on the extreme East, to New Island, on the extreme West, is 150 miles.

Some 3,000 people live in these temperate Islands, with the majority living in Stanley. However c.350 people live in remote settlements or on smaller Islands of the archipelago. Remote destinations are served by a combination of a local air service, a basic road network and a ferry between the two main Islands.

Over 60 nationalities are represented in the community, and there are a number of families that can trace their ancestry back 10 generations in the Islands, right back to the original settlers.

The Islands economy has flourished since the establishment of an exclusive economic zone in the 1980s. Today the Islands have GDP of c.£120m p.a. with the key sectors being agriculture, fisheries, tourism and a developing offshore oil industry.

The Islands are an Overseas Territory of the United Kingdom with this relationship clearly defined in a modern constitution which was the result of years of discussion between the Islands elected Legislative Assembly members and the UK Government. The Islands are internally self-governed by eight elected Assembly Members, who are elected for four year terms. They manage all government budgetary affairs and all revenues are raised within the Islands themselves, with no external aid received. The UK Government are responsible, in consultation with the Island’s Government, for external relations and defence.

Since the middle of the 20<sup>th</sup> century, the Islands sovereignty has been disputed by Argentina, who claim ownership of the territory. This claim resulted in an illegal occupation in 1982 by Argentine forces and a bloody war prior to the Islands returning to the flag of their choosing on the 14 June 1982. Since then relations between the Islands and Argentina have fluctuated depending on the Argentine Government of the day, though





in recent years there has been considerably more rhetoric and active attempts by the Argentine Government to impose an economic blockade on the Islands.

This context meant that a clear and unequivocal demonstration of the right of Islanders to choose their own political future was deemed to be necessary.

## The Planning Process

Discussions around the need for a referendum began in earnest in early 2012. It quickly became apparent that, as with general elections, a referendum requires a clear legal basis.

Advice was sought on this from external lawyers and in October 2012 the Legislative Assembly passed the Referendum (Falkland Islands Political Status) Ordinance. This Ordinance clearly detailed the process for agreeing the referendum question, the timing, entitlement to vote and staffing provisions. The independent observers that subsequently reviewed this Ordinance found that it provided a sound legal basis for the Referendum

**Below: Falkland Islanders queueing to vote in the referendum.**



**Above: Gilbert House is the building in Stanley, Falkland Islands, where the Legislative Assembly of the Falkland Islands meets.**

and that it demonstrated the Falkland Islands Government had implemented it free from external pressure.

Arrangements were then made by the Chief Referendum Officer to ensure the proper conduct of the referendum. Not only did this include ensuring that the referendum process and count itself ran smoothly, but also covered the ensuring of proper conduct during the campaign leading up to it. The Chief Referendum Officer's powers in this latter area were

limited to extent that the process should be "conducted freely and fairly."

Following this, there was an open and transparent process to ensure that the question asked was properly framed so that it resulted in a meaningful outcome. This process ran for three weeks in late

2012 and involved a range of consultation and information-sharing mechanisms across the community. Feedback was received from across the electorate. The end result was a short preamble detailing the context and the following question which voters could answer yes or no to:

*Do you wish the Falkland Islands to retain their current political status as an Overseas Territory of the United Kingdom?*

Finally, and with the advice of the Canadian Government, arrangements were made for a panel of experienced independent observers to monitor the referendum itself. This panel was made up of 8 people. The panel came from the USA (2 individuals, the Head and Deputy Head of Mission), Brazil, Chile, Mexico, Uruguay and New Zealand (2 individuals). The panel were a mixture of experienced electoral experts and elected members. They worked to and assessed against the *Declaration of Principles for International Election Observation and the Code of Conduct for Election Observers*.

This declaration was adopted by the United Nations in 2005

and has been subsequently endorsed by 35 separate election observation groups.

## The Referendum Itself

Due to the challenging logistics of having voters spread over such a wide area, the referendum was held over two days, on both the 10 and 11 March. Ensuring all eligible voters had a chance to cast their vote was key and therefore a range of methods were utilised. These included postal and proxy votes; multiple static polling stations; an airborne polling station and mobile polling stations. All were properly and well equipped. The observer mission oversaw this process.

Votes were cast and ballots collected by appointed officers over those two days. All votes were then collected together in Stanley and ballot boxes were opened on the evening of the 11 June, when counting then took place, fully overseen by the observer mission.



## REFERENDUM: A LESSON IN ELECTORAL TURNOUT



Mrs Sarah Clement, a local Stanley resident on her experience of the Referendum said: *"The Referendum was one of the truly most significant points in my life. Since I can remember '82 has dominated my thoughts, pushed me to make the most of my life, be I hope, a good person, striving for the very best for my family. I think all Falkland Islanders are the same, it comes with the pride we all feel for the place we live and love, along with the respect and gratitude for what so many did for our future and that of our children. I shared the referendum with my daughter, a special moment marked down in history, stood side by side waiting; the atmosphere was electric and the result a confident reminder of who we are and who we want to remain. A great time that she will carry for ever, the day we told the world nothing's changed, we are British and proud!"*



As the statement highlighted from the Chief Referendum Officer indicates, with 55 members of the international press present, there was considerable scrutiny of the counting process in Stanley Town Hall. This only served to reinforce the presence of the eight external observers.

The turnout figure of 92% was very significant compared to global averages, though the Islands generally enjoy a high level of political engagement in general elections, with turnout being around the 75% mark on average. The observer mission reviewed campaigning leading up to the referendum itself and

Above and below: Election Observers at the Falkland Islands Referendum came from a number of countries including the USA, Brazil, Chile, Mexico, Uruguay and New Zealand.

concluded that it was done in an open and transparent manner with both 'Yes' and







## Falkland Island Referendum Key Facts

Total votes cast	1,518
Total valid votes cast	1,516
Turnout	92%
No. of 'Yes' votes cast	1,513 (99.8%)
No. of 'No' votes cast	3 (0.2%)

Data Source: Falkland Islands Government, July 2015

'No' campaigns receiving equal opportunity. Individuals and organisations were capped at expenditure of £1,000 to ensure that access to finance did not mean inequity of coverage. The observer mission also found that the campaigning, particularly on social media, was a contributing factor to the large turnout figure.

### A lasting legacy

Member of the Uruguayan Chamber of Deputies, Mr Jaime Trobo, encapsulates the overall view of the observer team well when he states that he "...was surprised that such a small community with so few human resources to organise an

*electoral act did things so well, so properly, in conformity with international standards. This was a demonstration of a desire that this should be an act of value, not only in terms of its effects in the Falklands themselves, but also for the international image of a legitimate process."*

As the statement highlighted from resident Mrs Clement demonstrates, the referendum in 2013 is something that will live long in the memory of all Falkland Islanders. Not only has it reinforced an existing sense of identity, but it has also shown to the world the clear wish of a large majority of the people of the Islands.

Whilst the result was unequivocal, and the process was independently agreed to be free and fair, the Islands Government have still learnt from it and can see improvements that can be applied to the electoral process in the future.

These improvements were all of a relatively minor nature, such as improving pencils and paper used and offering an 'emergency vote' option for those people that had to leave the Islands at very short notice (for example for medical reasons).

Some of this work was completed for the general election in late 2013, however some items remain and it is intended that the Electoral Ordinance will be updated in time for the next general election in 2017. In the meantime, as with all Commonwealth nations, the Islands democracy does not sit still and the Islands Assembly continues to seek best practice from around the world.

Below: Due to the remote nature of the Islands, mobile polling stations were used for some residents during the referendum.

All images copyright Sharon Jaffray and Falkland Islands Government.



**Chief Referendum Officer, Keith Padgett, pictured above announcing the referendum result, said:** *The referendum was a massive logistical task for me. I expected a large turnout because our status is important to us all. However, I don't think anyone expected it to be so large. There was a queue of eager voters through and outside the building all day long. Also, because the Islands cover such a wide area, we use mobile polling stations to allow as many people as possible to vote. The count therefore took longer than expected and I had the added glare of TV cameras from around the world watching my every move. Altogether an unforgettable experience!"*





# ELECTIONS AND CORRUPTION: A PERSPECTIVE FROM INDIA



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*The views expressed are personal views of author and are not of the Rajya Sabha Secretariat.*

Referring to India's audacious tryst with democracy, Sir Antony Eden, former Prime Minister of United Kingdom observed: *"Of all the experiments in government which have been attempted since the beginning of time, I believe that the Indian venture into parliamentary government is the most exciting. A vast sub-continent is attempting to apply to its tens and hundreds of millions a system of free democracy which has been slowly evolved over the centuries in this small island, Great Britain. It is a brave thing to try to do so. The Indian venture is not a pale imitation of our practice at home, but a magnified and multiplied reproduction on a scale we have never dreamt of. If it succeeds, its influence on Asia is incalculable for good. Whatever the outcome, we must honour those who attempt it."*<sup>2</sup>

## **Source of Corruption is Election Expenses**

Certainly the Indian venture into democracy has succeeded and it is of significance not only for our country but for the whole world. However it has been facing mounting problems one of which is the evil influences of the power of money on the electoral

process. While intimidation and use of muscle power in elections has been checked with a great deal of success, the power of money in polluting the election process and compromising the probity of electoral democracy remains a huge a challenge.

In fact it has been persuasively argued that the cause or causes of corruption can be traced to the enormous amount of money spent by political parties during elections and if measures could be taken to successfully deal with it then the very root of corruption can be struck with a decisive blow and a clean polity and society can be established.

The Santhanam Committee on Prevention of Corruption established in 1964 by the then Home Minister of India, Shri Lal Bahadur Shastri observed, *"The public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections. Such suspicions attach not only to the ruling party but to all parties, as often the opposition can also support private vested interests as well as members of the Government*

*party. It is, therefore, essential that the conduct of political parties should be regulated in this matter by strict principles in relation to collection of funds and electioneering. It has to be frankly recognized that political parties cannot be run and elections cannot be fought without large funds. But these funds should come openly from the supporters or sympathizers of the parties concerned."*<sup>3</sup>

In Common Cause (A Registered Society) Vs. Union of India (AIR 1996 SC 3081), the Supreme Court dealt with the issue of election expenses. While holding that the purity of elections was fundamental to democracy and the Election Commission could ask the candidates about the expenditure incurred by the candidates and by a political party, it held: *"...when the elections are fought with unaccounted money the persons elected in the process can think of nothing except getting rich by amassing black money. They retain power with the help of black money and while in office collect more and more to spend the same in the next election to retain the seat of power. Unless the statutory provisions meant*





to bring transparency in the functioning of the democracy are strictly enforced and the election-funding is made transparent, the vicious circle cannot be broken and the corruption cannot be eliminated from the country.”<sup>4</sup>

Chapter 4 of the Report of the National Commission to Review the Working of the Constitution 2001, notes that the high cost of elections “creates a high degree of compulsion for corruption in the public arena” and that “the sources of some of the election funds are believed to be unaccounted criminal money in return for protection, unaccounted funds from business groups who expect a high return on this investment, kickbacks or commissions on contracts, etc.” It also states that “Electoral compulsions for funds become the foundation of the whole super structure of corruption.”<sup>5</sup>

#### Measures by Election Commission to deal with Election Expenses

A few years back the former Chief Election Commissioner of India, Shri S. Y. Quraishi very boldly stated that corruption in India can be traced to election funding. That is the reason why during his tenure he appointed an officer of the Indian Revenue Service, Shri P.K. Dash, in the Election Commission to squarely deal with the power of money vitiating the election process and to restore the purity and integrity of electoral democracy.

So it was during the tenure of Shri S. Y. Quraishi that an attempt was made to boldly address the problem of the rising power of money which continue to adversely impact the conduct of elections and jeopardize the fairness of the electoral exercise. The expenditure monitoring measures which Shri Dash introduced constituted a historic step to put an end to



the power of money and its evil influences on our democracy.

#### Swami Vivekananda on Vote Politics and Corruption

It is interesting and educative to note that much before electoral democracy was introduced in India in a full-fledged manner, our great leaders had remarkable insight to understand the magnitude of corruption that elections could generate.

It was Swami Vivekananda who during his visit to Europe in the late 19<sup>th</sup> century could see widespread corruption, in the European societies of that time, arising out of vote politics and the system of ballot. In his illuminating article ‘*The East and West*’, he referred to parliament, senate, vote, majority, ballot, etc., in the countries of that continent and observed that powerful men there were moving society in whatever way they liked and rest of the people were following them like a flock of sheep. Stating that Indians did not get education on account of a

system of vote and ballot which the common people in the West did, he referred to the “*revelry of bribery, ... robbery in broad light, ... dance of Devil in man...*” which were practiced by politicians in those countries in the name of politics and in the pursuit of votes.<sup>6</sup>

#### Rajagopalachari on Elections and Corruption

The aforementioned observations of a scholarly monk in the late 19<sup>th</sup> century on corruption and bribery rooted in vote politics make us sensitive to the rising crisis of the power of money which gets multiplied on a day to day basis and contaminates our electoral and democratic process and gives rise to corruption at every level of our society and public life.

While Swami Vivekananda analysed the phenomenon of corruption in Europe and located it in the context of vote politics, a great leader of our freedom struggle, Shri C. Rajagopalachari made a sharp observation on elections and corruption at

Above: Ceremonial gates in New Delhi, India.

least 25 years before we got independence. While in Vellore Jail in 1921-22 he wrote: “We all ought to know that Swaraj will not at once or, I think, even for a long time to come, be better government or greater happiness for the people. Elections and their corruptions, injustice, and the power and tyranny of wealth, and inefficiency of administration, will make a hell of life as soon as freedom is given to us. Men will look regretfully back to the old regime of comparative justice, and efficient, peaceful, more or less honest administration. The only thing gained will be that as a race we will be saved from dishonour and subordination. Hope lies only in universal education by which right conduct, fear of god, and love, will be developed among the citizens from childhood. It is only if we succeed in this that Swaraj will mean happiness. Otherwise it will mean the grinding injustices and tyranny of



wealth.”<sup>17</sup>

What Rajaji wrote has become a painful reality for all Indians. Even after six and a half decades of independence, corruption arising out of the power of money and its debilitating influence on elections have become the bane of our time.

## Corporate Funding of Elections and the Integrity of Voters

Justice M. C. Chagla and Justice S. T. Desai of Bombay High Court while dealing with a case in 1957 involving contributions of a business house to a political party observed: *“The very basis of democracy is the voter and when in India we are dealing with adult suffrage, it is even more important than elsewhere that not only the integrity of the representative who is ultimately elected to Parliament is safeguarded, but that the integrity of the voter is also safeguarded, and it may be said that it is difficult to accept the position that the integrity of the voter and of the representative is safeguarded if large industrial concerns are permitted to contribute to political funds to bring about a particular result...”*<sup>18</sup>

The widespread concern expressed in the country about the corporate funding of the elections has to be understood in the context of the above

observations which were made in the formative period of our nation-building.

By safeguarding the integrity of the voter we can safeguard the integrity of the people's representatives who are elected by the voters and, thereby, can ensure the integrity of the electoral process. The manifold measures taken by the Election Commission of India to monitor election expenses constitute a bold step to not only check money power vitiating our electoral process but also to put an end to corruption in our country. The slogan 'Yes to Vote, No to Note' coined by the Election Commission of India for the general elections to elect Members of Parliament for the 16<sup>th</sup> Lok Sabha, in which approximately 815 million voters of our country were expected to participate, constituted a significant step to sensitize the voters to protect their integrity.

If as the former Chief Election Commissioner Shri S. Y. Quraishi stated that election expenses are sources of corruption, then we need to focus attention on the source itself to purge the electoral process of evil influences of money power and thereby put an end to corruption in our country.

It is pertinent to recall that in 1990, the Dinesh Goswami Committee Report on Electoral Reforms recommended that *“There should be a complete*

*ban on donations by companies and the relevant law should be amended accordingly.”*<sup>19</sup>

Shri Gopal Gandhi, former Governor of West Bengal, while speaking at the Seventh National Conference on Electoral and Political Reforms in Chennai on 12 February 2011 said the following: *“... we think it our duty to draw the attention of Parliament to the great danger inherent in permitting companies to make contributions to the funds of political parties. It is a danger which may grow apace and which may ultimately overwhelm and even throttle democracy in this country. Therefore, it is desirable for Parliament to consider under what circumstances and under what limitations companies should be permitted to make these contributions.”*

Former Prime Minister, Dr. Manmohan Singh while addressing the annual general meeting of the Confederation of Indian Industry (CII) on 24 May 2007 gave a ten point social charter to business houses. While elaborating on the ninth point on the responsibility of business to fight against corruption at all levels he stated that *“businessmen who enter politics should erect a Chinese wall between their political activities and their businesses.”*<sup>20</sup>

## Political Parties and Disclosure of Election Funding

The danger has to be met squarely. As per section 29C of the

Representation of People Act 1951 political parties are not required to disclose to the Election Commission the funds received by them from a person if such funds are below twenty thousand rupees only. Under such provisions of the above Act almost all political parties do not disclose the funds received by them on the ground that such funds are below twenty thousand rupees. Stringent measures have to be taken to make political parties accountable to the Election Commission in so far as the funds being received by them.

That is why the Dinesh Goswami Committee on Electoral Reforms recommended in 1990 that *“Submission of false account should be made an electoral offence and the minimum punishment for violation of this provision should be two years imprisonment.”* This recommendation has not been implemented even 24 years after it was put forward. It is extremely important to do so in 21<sup>st</sup> century India for the purpose of cleansing our democracy of the harmful impact of black money and excessive use of the power of money during election time.

We cannot afford to ignore such recommendations at a time when public opinion is building up to deal with rising levels of corruption with a slew of legislative measures. While there is ceiling on expenses to be incurred by a candidate contesting election there is no such ceiling for the expenses being incurred by political parties during elections. This issue requires the urgent attention of Election Commission and political parties.

While participating in the discussion on the Motion of Thanks on the President's Address in the Rajya Sabha on 10 June 2014, Shri Sitaram Yechury, an Honourable Member of the House, urged the

Below: The parliament building in India.







Government to seriously think about electoral reforms and very pointedly observed "... *there is a lacuna in the law that political parties' expenditures are not under any ceiling. Candidates are restricted but not political parties. What is this discrepancy? It is a very incongruous situation. Unless you correct these things, it is just money power that will distort your democracy. We have been talking about electoral reforms all these years, but that is required.*"<sup>11</sup> The order of the Central Information Commission Bench chaired by former Chief Information Commissioner, Shri Satya Nanda Mishra bringing almost all major political parties under the Right to Information Act<sup>12</sup>, opens up possibilities of opening their accounts to public scrutiny.

### Public Opinion and A Clean Electoral Process

There are several such proposals and recommendations which are there in the pages of the Commissions on Electoral Reforms. Such proposals and recommendations along with the proposals of the Director-General, Expenditure, Election Commission of India, Shri P.K. Dash, deserve serious consideration and implementation for the cause of purity and integrity of the electoral process.

These proposals along with the expenditure monitoring measures which he introduced and which resulted in massive seizure of money and liquor in successive elections over the last three/four years, would herald a new era in restoring the dignity and purity of our electoral democracy.

In an article entitled '*India competes with election cycle's dirty money problem*'<sup>13</sup> published in the Washington Post, it has been observed by its author Rama Lakshmi that the crack team deployed by the Election

Commission seized 31% more dirty cash in the 2014 election than during the last election five years ago, when there was no such coordinated effort. In spite of many challenges faced by the Election Commission, the success registered in seizing cash and other materials which were being unfairly used by certain political parties to their advantage is heartening. P.K. Dash was quoted in the aforesaid article in the Washington Post as having said that "*We have created fear in the minds of candidates.*"<sup>14</sup>

This augurs well for our democracy which has been badly vitiated and distorted by manifold corrupt practices. Already we have been successful in controlling muscle power which earlier influenced the election process and prevented many voters including weaker sections of society to come forward and cast their votes. If muscle power could be controlled then we can control the power of money. There are bright officers who have given practicable proposals to do so. Earlier we saw the strength of the Election Commission to discipline political parties. The same strength is there. It has to be put into action to sternly deal with the power of money which is a serious threat to the fairness and purity of our election.

There is yearning among citizenry particularly the youth to put an end to the power of money in elections. The vast number of young voters who cast their votes in the last general election indicates that they want positive and quick change so that democracy becomes meaningful for them. In an aspirational India we can hardly remain unaffected by the yearning of the youth who constitute a significant component of our population and whose talent and energy would reap us huge demographic dividend.

By putting an end to the power of money in elections we

can fulfill the long cherished desire of our youth to ensure that our democracy remains free from corruption and the evil influences of money.

As the aforementioned article of the Washington Post rightly observed "*The drive against illegal campaign spending by the Election Commission comes as middle-class Indians are increasingly demanding greater transparency in politics.*"<sup>15</sup> We need to be mindful of this to make our democracy not only more vibrant but also more clean and pure.

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<sup>2</sup> As quoted in the '*Report of the Committee on Electoral Reforms, 1 May 1990*', Government of India, Ministry of Law and Justice, Legislative Department, p.1-2

<sup>3</sup> The Report of the (Santhanam) Committee on Prevention of Corruption, Home Ministry, Government of India, 1964, p.104

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<sup>6</sup> The Complete Works of Swami Vivekananda, Mayavati Memorial Edition, Volume 5, Advaita Ashrama Publication Department, 5 Delhi Entally Road, Kolkata 700 014, pages 461-462

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<sup>8</sup> As quoted in *ibid*, pages 4-5.

<sup>9</sup> Report of the Committee on Electoral Reforms, 1 May 1990, Government of India, Ministry of Law and Justice, Legislative Department, p.46

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<sup>13</sup> Rama Lakshmi, "*In election season, India competes with campaigns' 'black money'*", Washington Post, 2 May 2014. (<http://www.washingtonpost.com>)

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

**"By putting an end to the power of money in elections we can fulfill the long cherished desire of our youth to ensure that our democracy remains free from corruption and the evil influences of money."**



# THE CHALLENGES OF DEALING WITH BOKO HARAM IN NIGERIA



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## Brief Background of Boko Haram in Nigeria

In 2002, when Mohammed Yusuf, a charismatic Muslim Cleric in Maiduguri, Borno state Nigeria, organized a group of people to establish God's kingdom on earth by extricating itself from the wider Nigerian society, little did the country imagine that it would later be confronted by a deadly insurgent group whose activities could hamper the progress or development of a section of the country in particular and the nation at large. Consequent upon his expulsion by Muslim Clerics from two mosques in Maiduguri for propagating radical and extreme views, Mohammed Yusuf set up a centre called *Markaz*. The centre was made up of a mosque and an Islamic school. It would later be a sought after centre for many poor Muslim families in Nigeria as well as neighbouring countries who desired an Islamic education for their children/wards. Nevertheless, the centre had ulterior political motives aimed at creating an Islamic state governed under strict Sharia laws. It soon became a recruiting avenue for future '*jihadists*' to fight the state and country.

Boko Haram is a recent manifestation of a decades-long

civil war within Islam. Radical reformers in what is now Nigeria have long claimed that unjust Muslim leaders are '*infidels*'. This often manifests in a conflict between Salafi fundamentalists and the tolerant Sufis who dominate the traditional Nigerian Muslim elites.<sup>1</sup>

Boko is a Hausa word, which means '*Western education*' or '*non-Islamic education*'. On the other hand, Haram, an Arabic word, literally means, '*forbidden*'. Thus, Boko Haram implies '*non-Islamic or Western education is forbidden*'. It does not only condemn Western education, but Western culture and the modern ways of doing things.

The insurgent group is branded by the official Arabic name, *Jama'atu Ahlis Sunna Lidda'awati wal-Jihad*, which means '*People Committed to the propagation of the Prophet's teachings and Jihad*'.

Boko Haram invariably promotes a version of Islam which makes it '*haram*', or forbidden for Muslims to take part in any political or social activity associated with Western society. This includes voting in elections, wearing shirts and trousers or receiving Western education. As part of its demand, the sect also calls for a replacement of the Sultan of Sokoto with a *shura* (council)

dominated by those that share their ideologies.

## Operations of Boko Haram in Nigeria

The operations of Boko Haram were rather non-violent until 2009 when its leader, Mohammed Yusuf got involved in the politics of Borno State.

Following a disagreement with local politicians which saw sect members disregarding a law requiring motorcyclists to wear helmets. This led to confrontation between the police and the sect members leading to loss of lives, destruction of government buildings and a prison break.

The repelling attack by combined security forces led to the capturing of Yusuf by military men who handed him over to the police. He later died in custody among claims of an attempted escape from custody. This was followed by the killings of hundreds of his followers and the forcing of the sect to go underground, a situation which was later reviewed and observed in many quarters as extra-judicial killings.

The group re-emerged in 2010 under the leadership of Yusuf's second in command, Abubakar Shekau. This marked the turning point in the operations of the sect as





they became more vicious and carried out a series of daring attacks to avenge the death of their erstwhile leader and followers.

At first, Boko Haram was involved mostly in fomenting sectarian violence. Its adherents participated in simple attacks on mostly Christians using clubs, machetes and small arms. By late 2010, Boko Haram had

**“Apart from the general apparent insecurity, the challenges of the Boko Haram insurgency in Nigeria are also socio-economic in nature.”**

added Molotov cocktails and simple Improvised Explosive Devices (IEDs) to its tactical repertoire.<sup>2</sup>

They were alleged to have links to international terror groups as they intensified attacks on security forces. The group strategized to take over the state, which they claimed was being run by compromised Muslims.

Over time, the sect has engaged in bombings, bank robberies, kidnappings for ransom, the abduction of children and women and especially the destruction of schools. Their attacks have been more frequent in the northern states of Borno, Yobe, Kano, Bauchi, Gombe, Adamawa, Niger, Plateau, Kogi, Kaduna and Sokoto, including the Federal Capital Territory, Abuja. However, they also claim

responsibilities for some attacks outside the northern parts of the country.

According to News24, *“the real estimate of Nigerians killed since the onset of the Boko Haram insurgents in 2011 is over one hundred thousand”*; and this figure is conservative. Most media reports put the number of deaths at 15,000.

#### **Challenges of Boko Haram**

Apart from the general apparent insecurity, the challenges of the Boko Haram insurgency in Nigeria are also socio-economic in nature. Having evolved from a region that is educationally disadvantaged, the activities of the sect have further put school age pupils in that region out of their schools. Statistics reveal that more than 14 schools have been burnt down in Maiduguri, the state capital of Borno state,

forcing over 7,000 children out of their schools.<sup>3</sup>

It is argued that the low level of education in that part of the country makes it easier for the sect to recruit its foot soldiers, who in the face of prevailing economic hardship, lack the capacity to challenge the apparent misinterpretation of the Muslim Holy Book.

Once the state had banned the use of motorcycles for commercial transportation in view of drive-by-killings by cyclists detonating explosives, the socio-economic implication was the twin consequences of causing increasing economic hardship to the majority of the population (about 80%) that use motorcycles as a means of transportation as well as rendering approximately 10,000 youths jobless. Unemployment no doubt causes frustration,



## THE CHALLENGES OF DEALING WITH TERRORISM

dejection, low status/esteem and increases the dependency rate. There is no doubt that the incidences of militancy, violent crimes, political thuggery and kidnappings amongst others places an enlarging scar on the face of the country. The problem of unemployment is a big challenge to Nigeria and the Boko Haram insurgency has continued to exemplify it.

Economically, the incessant attacks of the sect on the State have weighed down commercial and business activities in Borno and Kano states especially. The Maiduguri Monday Market, the biggest market in the city is reported to have been seriously hit by the crisis. Hundreds of shop owners, especially those from the southern parts of the country have closed down their businesses and left the embattled city. Approximately half of the 10,000 business stalls in the market were said to have been abandoned by traders

who fled the city. Financial institutions in affected areas are also not left out. They now operate under difficult situations and some have reduced their business hours to guard against being attacked by members of the sect.

The attacks on Kano have been very devastating because the city had been regarded as the commercial centre of western Africa for the past 500 years. As a result of the attacks, investors have relocated from the state and continue to search for fresh grounds for their investments. The commercial city had been regarded as the economic base of the North before the evolution of countries like Niger Republic, Chad and northern Cameroon as well as the Nigerian nation itself.

The crisis alongside poor power conditions is reported to have contributed in reducing the business prospects of the entire northern region of Nigeria.

According to Ike Okorie, Nigeria would not be able to tap into about US\$1.4tr investment capital which circulates around the world for as long as the insecurity situation persists. There is therefore the need to examine what the rising insecurity portends for the country particularly in the areas of foreign investment and employment generation. Insecurity is a risk factor, which investors the world over dread and encourages them to move elsewhere.

Accordingly, Okorie indicates that the severe security threat to life and property all over the country sends the wrong signals to the international community.<sup>4</sup>

In recent times, with the liberation of towns and villages occupied by the Boko Haram terrorist and the rescue of abducted persons by Nigerian troops, there has arisen the challenge of rehabilitating a community of traumatized

citizens and putting them on the path of self-actualization once more. This is a task that is really daunting given the huge rate of recaptured pregnant abductees as well as girls and women.

### What the Government has done

In tackling the menace, ex-President Goodluck Jonathan stated the resolve of his administration to overhaul the entire national security architecture, improve intelligence gathering, training, funding, logistical support to the armed forces and security collaboration with friendly countries to achieve visible and positive results.

The federal government of Nigeria also declared a state of emergency in the three states of Adamawa, Borno and Yobe. However, the policy of a state of emergency in a democratic Nigerian state means that the federal government has always been an onlooker in the fight







against the insurgency and nevertheless the enlarging crisis seemed to overwhelm the measures employed to confront it.

Other measures put in place by the federal government include poverty alleviation programmes, economic development, education and social reforms. The government provided modern basic education schools for the *Almajiri* and established nine new federal universities in some states. Its youth empowerment programmes like *YouWin* were established to aggressively address the challenges of poverty. In addition, the government invested massively in infrastructure to promote economic development.

At the peak of the crisis, the government set up an Administrative Panel to discuss the situation with the sect, although they refused to meet with the government team.

The framework of the anti-insurgency policy of the President Goodluck Jonathan administration to confront insurgency in Nigeria included:

- The reinforcement of Nigerian Troops
- Putting in place the International Joint Task Force (JTF)
- The establishment and ratification of the state Civilian JTF by the federal government
- Imposition of curfews

- Regulating GSM (Global System for Mobile Communications) services in affected areas
- Setting up of road blocks for security cordon and search operations.

The proclamation by President Mohamadu Buhari, head of the new government on 29 May 2015 to move the command centre of the army to Maiduguri, signifies a strengthened resolve to end the crisis in Nigeria and only time shall reveal the extent to which this decision will help in addressing the crisis.

### Conclusion

The challenges of dealing with the Boko Haram crisis in Nigeria remain daunting; just as the crisis continues to affect national development.

The initial handling and killing of the erstwhile leader of the sect by the Nigeria Police contributed to the escalation of insurgency in the country. It is therefore wise to review the government's subsequent strategies towards combating the menace to include a strong local community effort. Education and civic awareness remain paramount in this quest, while adequate political will must be exerted towards this course to attract the expected success.

The involvement of frontline countries like Niger, Chad and Cameroon and the support of other friendly nations (especially the G7 and AU Nations) has gone a long way in the successes recorded in the war against insurgency.



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**"The challenges of dealing with the Boko Haram crisis in Nigeria remain daunting; just as the crisis continues to affect national development."**



# POWERING DEMOCRACY: LOOKING AHEAD TO CHOGM 2015 IN MALTA



CHOGM  
Malta 2015



**Hon Dr Godfrey Farrugia MP** is a Member of the Parliament of Malta and a Government Whip. A family doctor by profession, he has held numerous public posts and was Mayor of his home town between 1993 and 2000. Elected to Parliament in 2013, he also served as a Minister of Health and is head delegate for OSCE (PA) and IPU.

The shores of the Mediterranean have acted as the cradles of some of the world's greatest civilisations, as much as they have been their reluctant tomb. It is the spectacular restless navel of the planet where North meets South and East merges into West, where bloody battles for supremacy of the world have been fought and where many a valiant warrior has met the end.

To this day, the Mediterranean area remains a high tension zone with ceaseless wars ravaging its ancient East, revolutions and civil wars unsettling its South, and financial debt ridden wars tear away at the heart of its North.

This 'Middle' sea seems to be that nucleus of our planet where three continents and

their legacies clash, merge and ultimately fuse to produce the most diverse, colourful, vibrant, culturally rich spot that mankind can create. And the Maltese Archipelago occupies a very privileged spot right in the centre of this 'Middle' sea.

It is no wonder that our little grand islands are peppered by splendid architectural relics and precious artefacts, representative of all the stages that have marked the progress of human presence on this earth since time immemorial. The rich heritage in stone that played witness to the rise and fall of civilisations empires and kingdoms, is complimented by the continued existence of the Maltese people whose very existence, genetic make-up, language, culture and traditions

remain the personification of global ethnic fusion at its best.

After a very turbulent past characterised by the successive domination or colonisation by the consecutive masters of the Mediterranean, Malta succeeded in gaining its freedom.

Just over half a century ago, on the 21 September 1964, Malta became independent. Ten years later on the 13 December 1974, the little Archipelago, home to less than half a million people, became a Republic, boasting its own Head of State for the first time in its chequered history.

Since then successive governments in a Parliamentary democracy, have managed to create a sustainable and thriving economy. This robust, brisk economic activity based mainly on tourism, financial services, maritime and aviation services, e-gaming and manufacturing among other things, in turn supports a healthy standard of living for its citizens. Free comprehensive health care and free education from kindergarten up to a tertiary level, and a programme of ongoing social welfare reforms has ensured the eradication of poverty on the islands that was rife after the ravages of the Second World War. An educated digitally savvy population, supported by a diverse pluralistic culture entrenched in a deep







regard for the Rule of Law, remains the major resource the country can boast of and the undisputed driver of sustainable economic growth.

Malta is also a member of the European Union and the Eurozone with which it shares a common foreign policy. This is within the limits of the Constitution by which neutrality is entrenched. Malta has always been and remains at the forefront of brokering and maintaining world peace, an element in its character which has nurtured its own political stability and encouraged the acquisition of serenity in its neighbours as a key to their individual and collective success.

The determining factors that power our approach to current challenges are the principles and values embedded in Malta's Constitution. This firmly ensures that in our democratic society it is the sense of propriety and responsibility, the allegiance to the rule of law and the constant vigilance to uphold human rights, liberty and freedom of expression achieved by delicately balancing the powers

of those entrusted to govern by those enjoyed by the governed. The Maltese Constitution was born back in 1813 when the Maltese voluntarily placed their homeland under the protection of Great Britain. Since then this document was rewritten eleven times as attempts to address the changing overarching requirements of a young developing nation were addressed.

Forged in the Constitution is the writ that gave birth to the first Parliamentary Assembly of Malta in 1921. Once Malta gained its independence in 1964, this was elevated to a sovereign Parliament made up of a democratically elected government and opposition and a Speaker of the House.

The Maltese Parliament follows the Westminster model and therefore operates on a framework of Standing Orders that are modelled on the procedures of the British House of Commons. We are currently in the process of updating these Standing Orders.

To further strengthen democracy in our country, in 1995 a number of Permanent Standing Committees were set. Their purpose is to facilitate the smooth running and strengthen the scrutiny of the plenary. Since then these have been increased to eleven.

Another determined step



towards the strengthening of Parliamentary activity was the tabling in this twelfth legislature of the Bill on Standards in Public Life and the Parliamentary Service Bill. Once approved both bills will further enhance parliamentary integrity.

Other acts of note introduced in this legislature are the Whistle Blower Act and the Political Parties Finances Act which remain only two of 79 Acts enacted by Parliament since April 2013.

It is noteworthy that after 94 years in office, on 4 May 2015, Malta's highest institution migrated from the President's Palace, where it had occupied one of its grand chambers, to its own official building at City Gate. This contemporary, environmentally friendly Parliament building, designed by the globally acclaimed architect Renzi Piano, is among other attributes, digitally furnished, allowing real time transmission to the public and reaching the ultimate standards in Parliamentary transparency.

Besides the plenary sittings and Standing Committee meetings, Parliamentarians also participate actively in all European institutions and in other international fora that include the Organization of Security and Cooperation in

Europe, the Council of Europe, the European Mediterranean Parliamentary Assembly, the Inter-Parliamentary Union and the Commonwealth Parliamentary Association. It is through these representations that parliamentarians network to empower themselves and the relevant institutions to effectively address global challenges. High on our agenda are climate change, the plight of migrants and refugees who escape conflict, persecution and violence, as well as the scourge of the new brand of international terrorism.

As Malta hosts the CHOGM (Commonwealth Heads of Government Meeting) 2015 and welcomes heads of state and representatives of governments across the Commonwealth, I hope and expect that with determination and a strong will to succeed, we will actively champion and give life to the main theme chosen for CHOGM: 'Adding Global Value' by owning and implementing the Sustainable Development Goals promulgated by the United Nations.

**For further information about CHOGM 2015 please visit <https://chogm2015.mt/>**

**Images showing the new Parliament Building in Malta.**

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# MILLENNIUM DEVELOPMENT GOALS UPDATE: THE CALL TO ACTION ON TB



**Hon. Nick Herbert MP** is a Member of the UK Parliament, first elected in 2005 and appointed as a Minister after the election in 2010. Prior to his election, he was the Director of Reform, the independent think tank which he co-founded in 2002. Since becoming an MP, he has taken a keen interest in tackling tuberculosis, especially in developing countries. In 2006 he was elected Co-Chairman of the All Party Parliamentary Group on Global TB at the UK Parliament and was a leading figure in the establishment of the Global TB Caucus in 2014.

There are crises that are so terrible and urgent that they merit immediate attention: an outbreak of a killer disease that wreaks havoc across a region, or a natural disaster which leaves tens of thousands desperate and destitute. Then there are crises to which the world has become inured.

The global tuberculosis (TB) epidemic falls into this latter category.

It was not always like this. A hundred years ago TB was as common as flu is today. It claimed the lives of luminaries such as Keats, Orwell and Kafka. It featured in the popular culture of the day. It was responsible for as many as one in four deaths in Victorian England.

Yet today TB is a forgotten disease. Too many people in the West believe that the battle has been won. How wrong they are. The weapons used to turn the tide are no longer as effective. The disease has made a comeback. It is widely understood that we have an effective vaccine when we do not. The golden age of antibiotics which promised the end of diseases like TB has passed: drug resistant strains of the disease are emerging that are effectively impossible to treat.

Most people in the UK think that TB no longer exists, yet

22 years ago the World Health Organisation (WHO) declared TB a '*global health emergency*'. Since then nearly 30 million lives have been lost. Progress has been made, but at the current rate of reduction, TB will remain a threat to public health for two hundred years.

That any progress has been made at all is largely due to the inclusion of TB in Millennium Development Goal 6, which in turn led to the establishment of the Global Fund to Fight AIDS, TB and Malaria. The Global Fund provides nearly 90% of all international financing for the disease and has helped save millions of lives, but huge funding gaps remain.

Calls to step up the global response have been led by the BRICs nations (Brazil, Russia, India, China) and particularly Dr Aaron Motsoaledi, South Africa's inspirational Health Minister. With some of the highest rates of TB in the world, South Africa has launched one of the biggest diagnosis and treatment campaigns, but the challenge is enormous.

My involvement with TB began in 2005 when I travelled to Kenya with a small group of colleagues from the UK Parliament and witnessed a TB epidemic about which I had never previously heard a thing. In response to what

we'd seen, we established an All Party Parliamentary Group on TB in the UK Parliament – a cross-party grouping of MPs and Members of the Houses of Commons and Lords who work together to raise awareness of TB and to press our government to support global action and the efforts of countries like South Africa in tackling the epidemic.

In the last twelve months we have taken our campaign to a new level. TB is a global threat which requires a global response. So on World TB Day last year, 180 MPs from across the G7 Group signed a statement recognising the importance of the global TB epidemic. In the wake of the success of that effort, we decided to hold a global summit of parliamentarians, focusing on the disease.

With the tremendous support of Jose Castro, Executive Director of The Union (International Union Against Tuberculosis and Lung Disease) and thanks to the leadership of Minister Motsoaledi from South Africa, the TB Summit took place in Barcelona in October 2014. We were joined by representatives from nine countries spanning five continents, with messages of support from many others. It was the first global political meeting on TB for over a century.





**“We are indebted to many organisations for their support, including the Commonwealth Parliamentary Association, for helping raise the profile of this initiative. If elected representatives from across the globe make their voice heard, we have a chance to secure the action that will finally beat TB.”**

At the Summit we decided that a one-off initiative would not be sufficient and founded a Global TB Caucus – a network of parliamentarians spanning the world. We also drafted and launched a Declaration that articulates our vision for a world free from one of its oldest and deadliest diseases.

This Barcelona Declaration is open to any parliamentarian to sign. We have set ourselves the ambitious target of gathering support from representatives of 100 countries by December this year, when Minister Motsoaledi will host the second Global TB Summit in Cape Town. By then, the world will have agreed a new set of Development Goals which will shape the future of billions of people over the next fifteen years.

The creation of the Global TB Caucus has come at a critical time. TB still kills 1.5 million people a year and is increasingly resistant to our best drugs. A patient on treatment for drug-

resistant TB today has the same chance of survival as someone with untreated ebola. So we find ourselves at a crossroads: we can urgently scale up existing interventions and invest to develop new ones – a road that the WHO estimates could lead to the elimination of TB within a generation – or we can continue as we are and risk an explosion of drug-resistance that could undo all progress, even returning us to an era before antibiotics.

The Millennium Development Goals provided a catalyst for change which has helped push back the TB epidemic. Now it is vital that TB is included in the new Sustainable Development Goals. I am urging parliamentary colleagues around the world to add their names in support of the Barcelona Declaration and, in doing so, to become part of our campaign to end TB. So far, 400 political representatives from 60 countries have added their names in support.

We are indebted to many

**Above: The Summit Opening with (left to right): Nick Herbert UK MP, Dr Aaron Motsoaledi, South African Health Minister and Jose Castro, Executive Director of The Union (International Union Against Tuberculosis and Lung Disease).**

organisations for their support, including the Commonwealth Parliamentary Association, for helping raise the profile of this initiative. If elected representatives from across the globe make their voice heard, we have a chance to secure the action that will finally beat TB.

**Commonwealth Parliamentarians who are interested in signing the Barcelona Declaration on TB can visit [www.globaltbcaucus.org](http://www.globaltbcaucus.org) for further information and to add their name and legislature. See also [www.appg-tb.org.uk](http://www.appg-tb.org.uk).**



# Commonwealth Parliamentary Association Conferences, Seminars and Events



Left and below left/right: Delegates at the 53<sup>rd</sup> Commonwealth Parliamentary Association Canadian Regional Conference and the Commonwealth Women Parliamentarians (CWP) Canadian Regional Conference which took place in Victoria, British Columbia, Canada hosted by Hon. Linda Reid, Speaker of the Legislative Assembly of British Columbia and Chair, Commonwealth Women Parliamentarians, Canadian Region.



Left: The Commonwealth Women Parliamentarians (CWP) Australia Regional Conference took place in Sydney, Australia hosted by the New South Wales Parliament. Members of the CWP Australia Steering Committee are pictured with the Male Champions Forum at the conference (see page 211 for report).

Below: Serjeant at Arms Mr Leslie Gonye from New South Wales Parliament (centre) visited the CPA Secretariat during the Commonwealth Serjeant at Arms Conference (see page 236 for report).







Above: Delegates at the Commonwealth Parliamentary Association/Commonwealth Secretariat Seminar on *'The Role of Parliamentarians in the Promotion and Protection of Human Rights'* held for the Australia and Pacific Regions of the CPA.

The Seminar was held in Wellington, New Zealand and was opened by the Hon. Chester Borrows, Deputy Speaker, New Zealand House of Representatives. Keynote addresses were delivered by Dr Josephine Ojiambo, Commonwealth Deputy Secretary-General and Mrs Vicki Dunne, MLA, Speaker of the Legislative Assembly for the Australian Capital Territory and CPA Regional Representative. The Seminar was hosted by the CPA New Zealand Branch and the New Zealand Parliament.



Right and above: During the 40<sup>th</sup> Conference of the Caribbean, Americas and Atlantic Region of the CPA in Tortola, British Virgin Islands, the Caribbean Regional Youth Parliament (above) and the Regional Steering Committee of the Commonwealth Women Parliamentarians Caribbean Region (right) held their annual events and meetings.







# Commonwealth Women Parliamentarians (CWP) Regional Strengthening Activities

## **Samoa Women's Commonwealth Parliamentary Programme (SWCPP) 2015**

The Office of the Clerk of the Legislative Assembly in Samoa hosted its inaugural Women's Commonwealth Parliamentary Programme (SWCPP) in March 2015 at the Tofilau Eti Alesana Building.

The SWCPP is a joint initiative by the Commonwealth Parliamentary Association (CPA) to commemorate Commonwealth Day under the theme of 'A Young Commonwealth' and the Commonwealth Women Parliamentarians (CWP) group to commemorate International Women's Day (8 March). The CPA Samoa Branch invited young women between the ages of 18 to 25 from the National University of Samoa and the University of the South Pacific to participate and a total of 65 registered.

Participants learnt about the roles of the Commonwealth, the Commonwealth Parliamentary

Association (CPA) and the Commonwealth Women Parliamentarians Group (CWP) through presentations and discussions led by the Hon Gatoloaifaana Amataga Gidlow, Deputy Chairperson of the CWP Steering Committee and parliamentary officials.

The Speaker of Parliament, Hon Laauli Leuatea Polataivao Fosi Schmidt delivered the opening address where he stated that *"the theme, 'A Young Commonwealth' recognizes the capacity, contribution and potential of young people, who play a vital role in sustainable development and democracy."* He emphasized the need for good leaders to make good decisions for Samoa and encouraged the young women to get to know their Parliament and its place in the Commonwealth and also make use of this opportunity to make a contribution to the legislative process.

Participants observed the Parliament Pre-Sitting Briefing where five Bills scheduled to be introduced in the next sitting were discussed. They toured the Parliament House and

the Offices of the Legislative Assembly, where the participants learned about the work of each division. The presentations were geared to give participants basic knowledge and understanding of the Commonwealth, the CPA, the CWP and Samoa's involvement in these organizations.

The Clerk, Fepulea'i Attila M. Ropati spoke on The Roles of the Commonwealth and the CPA, highlighting the principles and objectives of the Commonwealth as well purpose of the CPA and how they work together with the Parliament of Samoa. The Deputy Clerk, Charlene Malele spoke on the relationship between the CPA and the Parliament of Samoa and how the Parliament of Samoa has benefitted from joining the CPA with for example the twinning project which has opened doors to funding and capacity building. The Deputy Chairperson of the CWP Steering Committee and Associate Minister for Women, Community and Social Development, Hon. Gatoloaifaana Amataga Alesana Gidlow spoke on the CWP in its support for increased representation of

*Member of the Commonwealth of Nations Today*, and a question and answer session lead by Hon. Gatoloaifaana Amataga Alesana-Gidlow. Subsequently participants were divided into two groups for further discussions, where it focused on the role of the CPA in the Pacific and their move to ensure the boost in women representation in the Pacific. The groups also identified obstacles preventing women from entering Parliament and how these obstacles can be overcome.

## **Niue Women's Parliamentarians Past and Present Reunion**

An event was held in March 2015 by the Niue Legislative Assembly to link past and present members of the Commonwealth Parliamentary Association (CPA) and the Commonwealth Women Parliamentarians (CWP).

This event was an excellent get-together for past and present Niuean women parliamentarians to listen and socialize with invited guests. The invited guests were young leaders of Niue, both male and female who have potential to become future parliamentarians.

Invitations were also extended to current male parliamentarians who are champions of gender equality and have supported the women parliamentarians' causes in the past.

The reunion focused on the following objectives:

a) Reconnecting present women parliamentarians with former women parliamentarians to strengthen and invigorate ideas to promote future women parliamentary involvement in the Niue Legislative Assembly;

**Below: International Womens Day celebrations in the Pacific Region.**



Women in Pacific Parliaments accentuating on the CPA's commitment to gender equality and the need to encourage women to actively participate in national political institutions.

The programme concluded in a panel discussion on the topic, 'Samoa as a





b) Rejuvenate relationships between past and present women parliamentarians as well as male parliamentarians who can support and champion women's participation and involvement in the Niue Legislative Assembly;

c) Revive and revitalize relationships between past and present women parliamentarians with young women leaders with potential to become the future political representatives in the country.

### **CWP Regional Conference takes place in Sydney, Australia**

The Commonwealth Women Parliamentarians (CWP) Australia Regional Conference has taken place in Sydney.

The CWP Conference featured two special luncheons as part of the event. The first luncheon was addressed by Dame Quentin Bryce, Australia's first female Governor-General, who launched the Katrina

Dawson Foundation for the Education of girls. Ms Dawson was a victim of the Sydney Lindt Cafe siege in Martin Place last December. The event was attended by her brother, Mr Angus Dawson and 400 current and former MPs, barristers, solicitors and professional women.

During the CWP Conference, the Women MPs Alumnae was also launched with the Patrons being two distinguished former Commonwealth Ministers - Helen Coonan and Rosemary Crowley.

Other participants at the Conference included Anna Bligh



(Australia's first ever elected female Premier - Queensland), Rosie Batty (Australian of the Year), Catherine Cusack, MLC (CWP Chair Australia) and Jenny Aichison (CWP Steering Committee - NSW Representative).

The Women and the Media Forum at the conference was chaired by Monica Attard, winner of five Walkley Awards

Above: The CWP Australia Regional Conference in New South Wales with (left to right) Hon Catherine Cusack MLC, Dame Quentin Bryce, Rosemary Crowley, Helen Coonan and Hon Gladys Berejiklian MP.

(Australia's highest honour for journalism) and participants included Senator Marise Payne (Commonwealth Minister) and two of Australia's leading female journalists - Bridget Glanville and feminist icon and author Eva Cox

*Further reports of regional CWP activities received by the CPA Secretariat will be published in future issues of The Parliamentarian and at [www.cpahq.org](http://www.cpahq.org).*



Left: Dame Quentin Bryce speaking at the CWP Australia Regional Conference in the New South Wales Parliament Strangers Dining Room. CWP Australia images by Sasha Dobles.



**Available to CPA Members and Officials for purchase from the CPA Secretariat. Also available to members of the public.**

CPA publications are available by contacting the CPA Secretariat by email: [hq.sec@cpahq.org](mailto:hq.sec@cpahq.org) or by post: CPA Secretariat, Suite 700, 7 Millbank, London SW1P 3JA, United Kingdom. Visit [www.cpahq.org](http://www.cpahq.org) for further details.



# Parliamentary Report

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With thanks to Parliamentary Report and Third Reading contributors: Stephen Boyd (Parliament of Australia); Ravindra Garimella (Parliament of India); Michael Dewing (Parliament of Canada); Luke Harris (Parliament of New Zealand); Dany Forest (Assemblée of Québec); Neil Iddawala (Parliament of Sri Lanka); Helen Morrison (Legislative Assembly of British Columbia); David Slater (Parliament of the United Kingdom).

# 19<sup>TH</sup> AMENDMENT PASSED IN SRI LANKA PARLIAMENT

## 19<sup>th</sup> Amendment passed; vesting more powers with the Parliament

### Background

The 19<sup>th</sup> Amendment to the Constitution was a historic movement in Sri Lankan politics. After long deliberations, the President and the present Government could pass the 19<sup>th</sup> Amendment Bill with a two-thirds majority in Parliament.

There had been long held discussions for the removal of the Executive Presidency from its introduction in 1978. Since then, it had been a major vow in all Presidential election campaigns but none could accomplish. Therefore the introduction of the 19<sup>th</sup> Amendment was considered a historic event and was considered a major step taken to strengthen the democracy of the country as it was achieved constitutionally following the recommendations of the Supreme Court and also with the consent of all political parties.

The 17<sup>th</sup> and 18<sup>th</sup> Amendments to the Constitution paved the way for the introduction of the 19<sup>th</sup> Amendment. The 17<sup>th</sup> Amendment had made provisions for the establishment of the Constitutional Council and independent commissions and the 18<sup>th</sup> Amendment which was enacted during the previous government had replaced the Constitutional Council with the Parliamentary Council and had augmented the powers of the Executive President.

In his election manifesto, the President Maithripala Sirisena had pledged to restrict the excessive powers vested with the Executive President. It

was the most significant factor during the Presidential election campaign, which also led to the defeat of the previous ruling party (UPFA). Accordingly, the 19<sup>th</sup> Amendment to the Constitutional Bill was drafted, to disseminate certain powers of the Executive Presidency to the independent commissions and the Parliament.

As the draft of the 19<sup>th</sup> Amendment was gazetted, 19 petitions were received both in favour and against. The Supreme Court determined that the Bill was not inconsistent with the Constitution and should be passed with a special majority as per the Article 82 (5) of the Constitution and certain sections required to be agreed upon through a referendum. The sections which required summoning a referendum were repealed from the draft and taken for the second reading in Parliament.

The Second reading of the Bill was passed in House 215 in favour, 01 against. The Third Reading of the Bill was passed by the House, with a majority of two-thirds. A Division by name was taken (212 in favour; 1 against; 1 abstain; 10 absent) and the Bill was passed with amendments.

### Key Features

The main features introduced by the 19<sup>th</sup> Amendment include:

- Reintroduction of the Constitutional Council and empowering the Commissions
- Reduction of the tenure of the President and the Parliament
- Reintroduction of the two-term limit that a person can hold office as President
- Ensuring the right of the public to access to information
- President to be responsible to Parliament
- Limitation of number of Ministers
- Limitation of the power of President to dissolve the Parliament
- Prohibition of dual citizenship holders to be elected to Parliament
- Establishment of National Audit Commission and National Procurement Commission

### Reintroduction of the Constitutional Council'

This is the most significant feature of the 19<sup>th</sup> Amendment. As per the Amendment, the Constitutional Council shall consist of ten members of which seven of whom are Members of Parliament and the three of them are civilians. The Prime Minister, the Speaker and the Leader of Opposition in Parliament are ex-officio members of the Council where the Speaker is the Chairman.

It is the responsibility of the Council to recommend<sup>2</sup> to the President, the most suitable persons to be appointed as chairmen and members of,

- the Election Commission
- the Public Service Commission
- the National Police Commission
- the Audit Service Commission
- the Human Rights Commission of Sri Lanka
- the Commission to Investigate Allegations of Bribery or Corruption

- the Finance Commission
- the Delimitation Commission
- the National Procurement Commission.

All the above Commissions other than the Election Commission are responsible and answerable to Parliament. Apart from that the Council shall consider<sup>3</sup> the recommendations by the President for the appointments of:

- the Chief Justice and the Judges of the Supreme Court
- the President and the Judges of the Court of Appeal
- the Members of the Judicial Service Commission (other than the Chairman)
- the Attorney-General
- the Auditor-General
- the Inspector-General of Police
- the Parliamentary Commissioner for Administration (Ombudsman)
- the Secretary-General of Parliament

It is mandatory that the recommendation is approved by the Council to proceed with the appointment.

At the same time, the removal of any such appointed person shall be subject to the provisions made by the Constitution or any written law. When no such provision prevails the President shall remove such person only if approved by the Council. Thereby the powers vested with the President for appointing persons to the Independent Commissions and the stated high offices were imparted with the Constitutional Council.



### The term of office of the President and limitations on re-election

The term of office of the President was reduced to five years and the two-term limitation of a person can hold the office as President, which was repealed by the 18<sup>th</sup> Amendment was re-introduced.

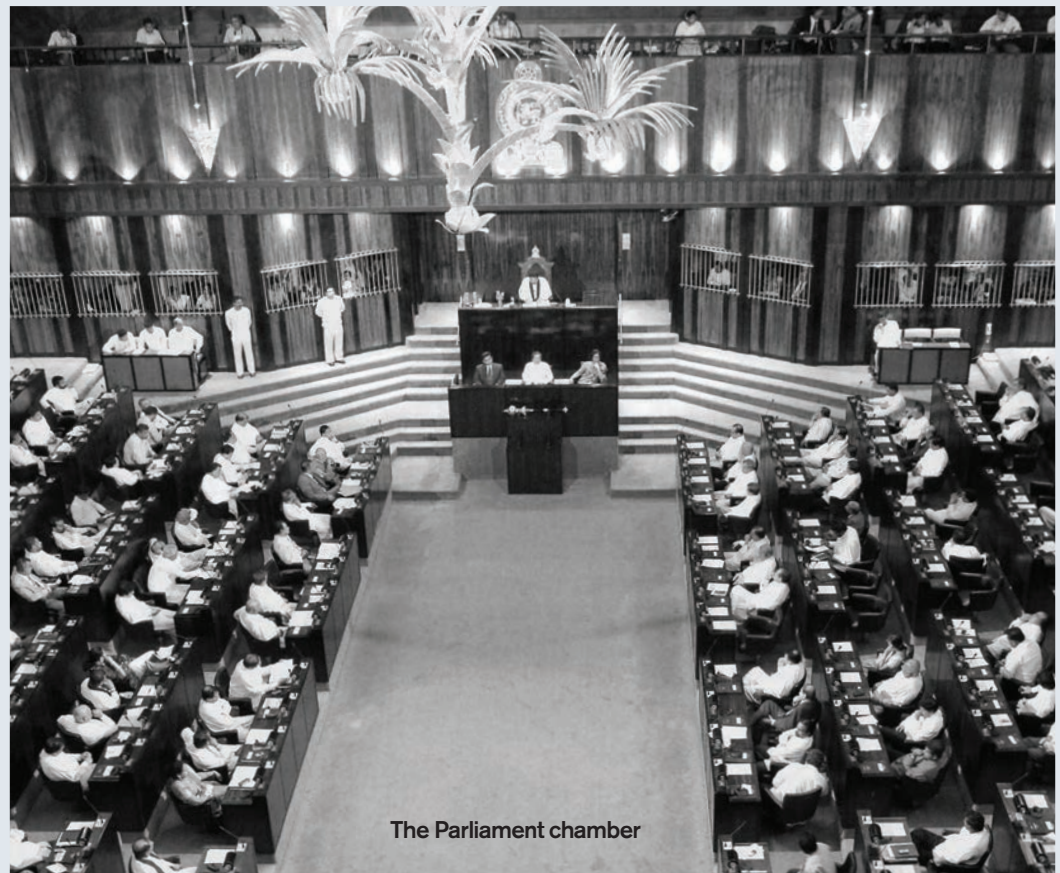
### The Parliament and the Ministers

The term of the Parliament was also reduced to five years. The number of Ministers was limited to 30 and the total of the non-cabinet ministers and deputy ministers was defined to be 45. But if the party with the majority decided to form a national government, the number of portfolios is still to be decided by Parliament.

The Power of the President to dissolve the Parliament at any time on the completion of one year was amended to four years. But, in order to dissolve Parliament before the expiration of the four years term, the President shall be requested to do so by a resolution passed with two-thirds majority in Parliament. It was also added that the President should be responsible to the Parliament.

### National Audit Commission<sup>4</sup>

A new National Audit Commission was established by the 19<sup>th</sup> Amendment. This Commission has the powers for appointment, promotion, transfer, disciplinary control and dismissal of the members belonging to the Sri Lanka State Audit Service. It also has the power to make rules in accomplishing the said duties subject to the policies determined by the Cabinet of Ministers.



The Parliament chamber

The establishment of this Commission aims to streamline the auditing process relevant to government institutions and related projects.

### National Procurement Commission<sup>5</sup>

This Commission is also newly established by the 19<sup>th</sup> Amendment. This was praised by all parties emphasizing the importance of having an independent commission to make guidelines and monitor the procurement processes of government institutions. Setting up this Commission aims to reduce the corruption, wastage and irregularities in any procurement process. Provisions have also been made to strengthen the Bribery Commission by the inclusion of the new Chapter XIX A.

### In brief

The 19<sup>th</sup> Amendment Bill had suggested provisions to further take away the powers of Executive Presidency by also

empowering the Prime Minister as the head of the Cabinet. But the Supreme Court has ruled that, such provisions as well as the amendments which would alter the basic structure of the Constitution should be summoned before a referendum.<sup>6</sup>

Therefore, the President shall remain the Head of the State, the Head of the Executive and of the Government and Commander-in-Chief of the Armed Forces.

The 19<sup>th</sup> Amendment repealed the provision which the government had for taking up urgent Bills. LLRC recommendations had also suggested repealing the said provision, which provided very limited access for the public to interact with the Bill to be presented.

The Opposition in Parliament was of the view that the Constitutional Council shall also consist of Members of Parliament. They emphasized the view that the accountability of the Commissions could be ensured by such representation

and safeguard the power of Parliament.<sup>7</sup>

The 19<sup>th</sup> Amendment while diluting the powers of the President empowered the Parliament. The Independent Commissions as well as the President shall be responsible to the Parliament. Thereby the Constitution itself highlighted the Supremacy of Parliament which shall ensure the sovereignty of the citizen.

### References

<sup>1</sup> CHAPTER VIIA of the Constitution as amended by 19A

<sup>2</sup> Article 41B

<sup>3</sup> Article 41C

<sup>4</sup> Article 153A -153H

<sup>5</sup> CHAPTER XIX B

<sup>6</sup> Hansard Volume 234, Column 555-558

<sup>7</sup> Hansard Volume 234, Column 525, Column 905

# BUDGET 2015 AND RETIREMENT OF LONG SERVING CLERK OF THE HOUSE

## Budget 2015

On 21 May 2015 the Minister of Finance, **Hon. Bill English MP** (National) handed down the National-led government's seventh Budget. In his Budget Statement, delivered to a full House, Mr English announced: *"The economy has risen from deep recession to solid, 3 percent growth."* He added: *"New Zealand remains one of the faster-growing developed economies."*

Budget 2015 included increased funding for education, health, research and development, rural broadband, biosecurity, and Māori suicide prevention, as well as a NZ\$25 weekly payment for beneficiary families with children.

The Prime Minister, **Rt Hon. John Key MP** (National) praised the economic stewardship of Mr English, saying: *"I am proud to have Bill English as the Minister of Finance of this country."* He said: *"The Budget was fair. It was thoughtful. It was reasonable."*

Speaking in support of the Budget, **Hon. Te Ururoa Flavell MP** (Co-Leader, Māori Party) congratulated Mr English *"on working extremely well with the Māori Party leadership."*

**Hon. Peter Dunne MP** (Leader, United Future) said: *"This government, under the Leadership of the Prime Minister and the Minister of Finance, understands that the nature and role of government in a modern society has also shifted."*

Opposing the Budget, **Mr Andrew Little MP** (Leader of the Opposition) moved an amendment expressing no-confidence in the government. He said: *"This is a government that is demonstrating*

*management by sleepwalk ... This is a Budget that manages the decline ... This is as good as it gets."*

**Ms Metiria Turei MP** (Co-Leader, Green Party) stated that *"the Prime Minister chose to do the barest minimum for the poorest children and to abandon the hopes of our younger generations."*

**Rt Hon. Winston Peters MP** (Leader, New Zealand First) said: *"This is a 'Split Enz Budget' ... as the group Split Enz sang, 'I see red, I see red, I see red.'"*

Following the Budget Statement, the House sat under urgency for the introduction and passing through all stages of four pieces of legislation pertaining to key Budget measures.

Speaking on the Social Housing Reform (Flexible Purchasing and Remedial Matters) Bill, the Minister for Social Housing, **Hon. Paula Bennett MP** (National) said: *"The government has embarked on an ambitious programme to improve*

*social housing."* She explained that the legislation will *"allow the Ministry of Social Development to explore other arrangements, such as long-term fixed-price tenancies that meet the needs of the Crown, provider, and tenants."*

However, **Mr Phil Twyford MP** (Labour) countered: *"This government has been selling off State houses all over the country without telling anybody."*

**Denis O'Rourke MP** (New Zealand First) said: *"This legislation allows the government to pretend that it will provide social housing more cheaply but, in fact, it will not. It will just push it off to somebody else. It will allow the government to avoid full accountability for social housing."*

**Ms Jan Logie MP** (Green Party) questioned the passing of the Bill under urgency: *"This legislation is passing without analysis from Treasury and without any*

*substantive input and analysis of the implications."*

Budget 2015 also included an immediate halt to the NZ\$1,000 'kick-start' payment for the government-sponsored superannuation scheme KiwiSaver. The Minister of Revenue, **Hon. Todd McClay MP** (National) said: *"KiwiSaver was launched over 7 years ago in different circumstances."* He commented: *"The incentive payment ... is no longer necessary."*

Minister for the Environment, **Hon. Dr Nick Smith MP** (National) added: *"It is now time to let the scheme be more about people saving for their own retirement and less about government top-ups."*

However, **Mr Grant Robertson MP** (Labour) responded: *"This is a broken promise ... It steals NZ\$1,000 from future generations."*

**Mr James Shaw MP** (Green Party) highlighted that *"New Zealand is 22nd out of 24 OECD*





countries for saving." Mr Shaw accused the government of having "no plan" and of "being completely unaccountable in passing this legislation." Speaking to the immediate axing of the NZ\$1,000 payment, **Mr Fletcher Tabuteau MP** (New Zealand First) said: "There was no warning. There is no fairness."

Speaking to the Telecommunications (Development Levy) Amendment Bill, Minister for Communications, **Hon. Amy Adams MP** (National) explained that the legislation "highlights the government's commitment to extending enhanced connectivity to regional New Zealand." She refuted suggestions by Opposition MPs that the levy is, for all intents and purposes, a new tax. She concluded her address: "The Bill is about letting us get on with making funding available for communities to improve their connectivity."

**Ms Clare Curran MP** (Labour) questioned the way that the previous funding has been used. "Labour believes that there should be an inquiry into the Rural Broadband Initiative" she told the House.

**Ms Tracey Martin MP** (Deputy Leader, New Zealand First) agreed: "It would be a good idea for the Commerce Commission to do an inquiry or a review of the NZ\$300 million spend."

However, **Ms Melissa Lee MP** (National) disagreed, saying Labour "is the only party in this Parliament that is opposing this Bill... We cannot wait for an inquiry."

Four pieces of Budget legislation passed all stages on 21 May, in a sitting that lasted over thirty hours. Mr Andrew Little's amendment failed to pass by 63 votes to 58.

## Retirement of Mary Harris, Clerk of the House of Representatives

**Ms Mary Harris QSO** retired on 3 July 2015 after a 28 year career at Parliament, the last 7 years of which were as Clerk of the House of Representatives.

On 1 July, the Prime Minister, **Rt Hon. John Key, MP**, (National) moved a motion in the House to recognize her retirement and years of service. Members spoke about Ms Harris' varied career, including a stint as a professional violinist and another representing New Zealand in the 1982 Cricket World Cup.

**Hon. Annette King MP** (Labour) said that Ms Harris was a right-handed batswoman, "and that is the only time that she has shown preference between the right and the left."

Those who spoke praised Ms Harris' significant contributions to parliamentary reform. **Metiria Turei MP** (Co-Leader, Green Party)

said: "Parliament is so much more accessible to so many more people as a result of [her] work."

Changes overseen by Ms Harris include the introduction of technological improvements, such as the e-Committee software now used by select committees. She also played a key role in the introduction of simultaneous translation of Te Reo Māori in the House, which **Hon. Te Ururoa Flavell MP** (Co-Leader, Māori Party) acknowledged. He said that Ms Harris' work has "enabled [him] to stand up... and to speak in the language of the parents and forefathers."

Also lauded were Ms Harris' calm demeanour, encyclopaedic knowledge of procedure, and the generous and professional advice she has given to all members.

**Hon. Peter Dunne MP** (Leader, United Future) described her "extraordinary ability to assess the situation and to offer advice." Others mentioned her legendary poker face.

**Tracey Martin MP** (Deputy Leader, New Zealand First) added: "...one of the things that I have discovered, or rediscovered, is that, actually, politicians come and go, but it is the public servants and people like [her] who actually hold our democracy together."

Ms Harris was New Zealand's first female Clerk of the House and her career will be bookended by two Davids: David McGee, whom she succeeded as Clerk, and David Wilson, who will replace her. Mr Wilson's parliamentary career started in 1994 and prior to being appointed Clerk, he served as a Clerk-Assistant responsible for the provision of secretariat services to the House. Mr Wilson is also president of the Australia and New Zealand Association of Clerks-at-the-Table.

Left: **Ms Mary Harris**, outgoing Clerk of the House pictured with her predecessor, **David McGee**, whom she succeeded as Clerk, and **David Wilson**, who will replace her.





## THIRD READING: NEW ZEALAND

### Animal Welfare Amendment Bill

The Animal Welfare Amendment Bill passed its third reading with unanimous support on 5 May 2015. It makes changes to the Animal Welfare Act 1999 to improve the clarity, enforceability, and transparency of New Zealand's animal welfare system.

The Bill explicitly recognizes the sentience of animals, places restrictions on the performance of surgical procedures, creates offences relating to wild animals, and enables regulations to be made regarding animal testing, offences, fees, surgical or painful procedures, and matters relating to the exportation of live animals. The Bill also bans cosmetic testing on animals.

Speaking at the third reading, **Mr Stuart Smith MP** (National) said that the Bill *"has a much greater enforceability ... I think that is really important because we too often see well-meaning Acts of Parliament with little enforceability or inappropriate penalties."* **Ms Mojo Mathers MP** (Green) said: *"We can be proud of the fact that New Zealand is now the first country in Australasia to ban cosmetic animal testing."* However, Ms Mathers also said: *"this Bill still represents a missed opportunity to get it right for the millions of animals suffering on factory farms."*

**Hon. Trevor Mallard MP** (Labour) also voiced concerns about factory farming: *"... we need to be aware that there is more and more focus on the way we treat our animals in a way that is similar to the way that we treat our environment."* **Richard Prosser MP** (New Zealand First), while commending the Bill, noted also: *"The issue of live exports for slaughter has not gone away ... New Zealand First is very much concerned that such exports may be resumed and that the provision for their resumption still exists under the Bill."*

The Minister for Primary Industries, **Hon. Nathan Guy MP** (National) acknowledged the contribution of Ms Mojo Mathers, who worked to secure cross-party support for the ban on cosmetic testing on animals. Mr Guy said: *"... although New Zealand is now ranked first equal by the global charity World Animal Protection, the Bill ... is evidence that we will never be complacent. Our world-leading animal welfare laws are being made even stronger."*

### Social Assistance (Portability to Cook Islands, Niue and Tokelau) Bill

On 18 June 2015 the Social Assistance (Portability to Cook Islands, Niue, and Tokelau) Bill passed its third reading with unanimous support, allowing people from the Cook Islands, Niue and Tokelau to receive New Zealand superannuation in those countries once they turn 65. Previously, people had to be resident

and present in New Zealand at 65 in order to receive superannuation.

The Minister for Social Development, **Hon. Anne Tolley MP** (National) said: *"This Bill will provide greater flexibility for people who wish to live in the Cook Islands, Niue, and Tokelau. This government wants to recognize the great contribution that people from those Islands have made to New Zealand."* She noted: *"New Zealand superannuation is paid at a minimum of 50% after 10 years' residence in New Zealand, rising to 100% after 20 years' residence."*

New Zealand superannuation regulations were already more generous for Pacific countries because of the Special Portability Arrangement. Ms Tolley explained that this *"is designed to recognize that contribution that Pacific peoples have made to New Zealand and the inability of Pacific countries and territories to fulfil the reciprocal obligations necessary to conclude social security agreements with New Zealand."*

Changes in the Bill are restricted to the Cook Islands, Niue and Tokelau because of New Zealand's unique constitutional arrangements with those States. Tokelau is a non-self-governing territory of New Zealand, and the Cook Islands and Niue are self-governing, although citizens still have New Zealand citizenship.

Several Opposition parties called for provisions in the Bill to go further. **Ms Carmel Sepuloni MP** (Labour) said *"Countries like Australia, the UK and the Netherlands ... can access their pension without having to spend 5 years in New Zealand between the ages of 50 and 65 ... If any citizens were going to be exempt from that 5 year rule, it should be the three countries that are actually part of the Realm of New Zealand."*

An amendment in the name of **Rt. Hon. Winston Peters MP** (Leader, New Zealand First) would have removed the stipulation that people spend 5 years in New Zealand after turning 50 in order to be eligible for New Zealand superannuation, but it did not gain sufficient support. In support of the amendment, **Mr Su'a William Sio MP** (Labour) said: *"the land of Aotearoa New Zealand should also include the Cook Islands ... Niue and Tokelau."* MPs also noted the contributions of people from these nations to New Zealand's efforts in World War I and World War II.

**Mr Stuart Smith MP** (National) disagreed with the amendment, saying: *"In those countries we have agreements with ... there is a provision known as totalization. That provision allows for reciprocal payments of superannuation within those nations. That does not apply in the Islands, because they are not able to pay their superannuation at the same rate."*



## THIRD READING: BRITISH COLUMBIA, CANADA

### **Liquefied Natural Gas Project Agreements Act**

The Liquefied Natural Gas Project Agreements Act sets out a framework for agreements entered into by government with industry for the development of liquefied natural gas (LNG) resources in the province. It provides authority for the Minister of Finance, with the approval of the Lieutenant Governor in Council, to enter into an LNG project agreement under which government provides an indemnity to a project proponent for any additional costs (above a certain threshold) that result from a tax law change or a greenhouse gas regulatory change.

**Premier Christy Clark** moved second reading of the Bill and spoke to three principles on which the project agreements are founded – ensuring British Columbians get a fair share of the benefits from resource development, environmental protection and fairness for investors and the business community.

During the debate, **John Horgan**, Leader of the Opposition stated that he did not support the bill due to the maximum length of the term of the agreement (25 years), insufficient guarantees around providing jobs for British Columbians (including concern over potential use of temporary foreign workers) and concerns as to whether First Nations had been adequately consulted and accommodated.

The Liquefied Natural Gas Project Agreements Act received Third Reading on 21 July 2015 and came into force on Royal Assent.

### **Ombudsperson Amendment Act, 2015**

The Ombudsperson Amendment Act, 2015 gives authority to the Ombudsperson to collect confidential information for the purposes of an investigation that has been referred to the Ombudsperson by the Legislative Assembly or a parliamentary committee.

The need for this amendment arose during consideration by the Select Standing Committee of Finance and Government Services of a request from the Minister of Health for referral of a matter to the Ombudsperson pursuant to section 10(3) of the Ombudsperson Act.

The Minister's request, conveyed by letter to the Committee, proposed that the Ombudsperson should investigate the circumstances surrounding the termination of eight researchers within the Ministry of Health in 2012. A referral under section 10(3) of the Ombudsperson Act would be the first such referral to the Ombudsperson under that section of the Act from either the Legislative Assembly or a Committee.

The Ombudsperson wrote to the Committee expressing a number of concerns with respect to the referral, including his authority to collect the information necessary to conduct a thorough public inquiry. To address this particular concern, the Committee wrote to the Minister of Justice and Attorney General requesting that government introduce legislation that would amend, on an urgent basis, section 19(2) of the Ombudsperson Act that provides that persons bound by obligations of confidentiality or nondisclosure under an enactment must not be required to supply any information to or answer any question put by the Ombudsperson in relation to that matter.

The Minister of Justice and Attorney General subsequently introduced amendments that provide that section 19(2) does not apply to an Ombudsperson investigation formally referred under section 10(3) and that the Ombudsperson can require persons to furnish information despite any other enactment in order to investigate and report on a referred matter.

The Minister of Justice and Attorney General characterized the amendments as being designed to support a unanimous referral by the Committee to the Ombudsperson and provide certainty that the Ombudsperson has the necessary powers to access information necessary to conduct a full investigation. The Opposition stated that it felt that the amendments would remove a significant obstacle to the Committee's decision-making process on whether to make the referral, and as such supported the Bill.

The Ombudsperson Amendment Act 2015 received Third Reading on 21 July 2015.



# SUMMER RECESS AND DISSOLUTION OF PARLIAMENT

## Summer recess and Dissolution

After a busy spring in Parliament, the House of Commons adjourned on 19 June 2015 and the Senate adjourned on 30 June. On 2 August, Prime Minister Rt. Hon. Stephen Harper MP asked Governor General His Excellency the Rt. Hon. David Johnston to dissolve Parliament and call an election for 19 October. The 78-day election campaign is the longest since 1926, when 74 days elapsed between dissolution and the election.

## Legislation

Before Parliament adjourned for the summer, 27 bills received Royal Assent. Among these was Bill C-51, the Anti-Terrorism Act 2015, which had been the subject of much debate.

Parliament also passed C-586, the Reform Act 2014, which was introduced by Conservative member Hon. Michael Chong MP. This Private Member's Bill gives the MPs in a party caucus the power to launch a leadership review, as well as a greater say on expelling and readmitting members of the caucus.

Before the Senate adjourned, it passed Bill C-377, an Act to amend the Income Tax Act (requirements for labour organizations). A controversial Private Member's Bill introduced by Conservative Russ Hiebert MP, it requires trade unions to disclose financial information, including statements of disbursements

related to lobbying, collective bargaining and legal activities, as well as to employees receiving compensation over C\$100,000.

The Bill was passed by the House of Commons in 2012 and amended and passed in the Senate in 2013 before it died on the Order Paper. It was re-introduced in the Senate that same year. At debate on Third Reading, opposition Liberal senators mounted a filibuster against the Bill.

On 26 June, the Speaker of the Senate, Hon. Leo Housakos ruled against a Conservative motion to cut off debate. In an unusual development, his ruling was appealed and overturned. In the House of Commons, the Speaker's rulings are not subject to appeal, but the Rules of the Senate allow Senators to appeal a Speaker's ruling. The Senate went on to pass Bill C-377 and it received Royal Assent.

## Committee Reports

In June 2015, the House of Commons Standing Committee on Procedure and House Affairs (PROC) tabled two reports related to the conduct of MPs. The House concurred in both reports.

One proposed the development of a code of conduct on preventing and addressing sexual harassment between MPs. It sets out a process for dealing with complaints.

PROC's other report dealt with the Conflict of Interest Code for MPs, which forms part

of the Standing Orders. Among other things.

PROC recommended that the threshold for disclosing gifts be lowered from C\$500 to C\$200 and that the same threshold apply to disclosing travel sponsored by third parties.

Other House of Commons Committees tabled reports on interprovincial trade barriers, the Canadian feature film industry, terrorist financing, North American relations and defence, the effects of electromagnetic radiation on health, the forest sector and transition services for ill or injured veterans.

Before the Senate adjourned, its Committees tabled reports on matters such as border security, digital currency, Canada's relations with Southeast Asia, the Canadian Broadcasting Corporation and bilingualism among Canadian youth.

## Auditor General's Report on Senators' Expenses

On 9 June 2015, the Auditor General of Canada, Michael Ferguson, released the much-anticipated results of an audit of Senators' expenses. He examined all the expenses of 116 Senators and former Senators and found that *"the oversight, accountability, and transparency of Senators' expenses was quite simply not adequate."*

In particular, he flagged 30 Senators and former Senators for having made inappropriate claims and recommended that nine of these cases be referred

to the Royal Canadian Mounted Police (RCMP) for investigation.

In his report, The Auditor General also recommended creating an independent oversight body to oversee Senators' expenses.

## Senate Reform

The Supreme Court of Canada having ruled that establishing term limits for Senators or changing the way in which Senators are chosen requires the approval of seven of the 10 provinces representing at least 50% of the population, on 25 July Prime Minister Stephen Harper announced a moratorium on Senate appointments. He said that this would force the provinces to come up with a plan to reform the Senate. As at 27 July, there were 22 vacancies in the 105-seat Senate.

## Changes in the Senate

On June 18, Senator Don Meredith was expelled from the Conservative caucus following allegations in the media that he had a sexual relationship with a 16-year-old girl.

With the dissolution of the 41<sup>st</sup> Parliament, the suspensions of Senators Pamela Wallin, Mike Duffy and Patrick Brazeau were lifted. In November 2013, they were suspended for the remainder of the session for claiming inappropriate expenses.



### Changes in the House of Commons

In May, **Patrick Brown MP**, Conservative Member for Barrie in Ontario, resigned following his election as Leader of the provincial Progressive Conservative Party. Mr. Brown was first elected to the House of Commons in 2006.

### Leadership of the Bloc Québécois

On 1 July, the Bloc Québécois (BQ) chose its former leader, **Gilles Duceppe**, as its leader once again. Mr. Duceppe, who was first elected to the House of Commons in 1997, was defeated in the 2011 election, after which he resigned as leader of the BQ. He was replaced by Mario Beaulieu. During 2014, two of the four BQ members left the caucus. In June, Mr. Beaulieu invited Mr. Duceppe to return as leader. Mr. Beaulieu will stay on as BQ president and is running in the next election.

### Sentencing of a former Member

On 25 June, former Conservative MP **Dean Del Mastro** was sentenced to one month in jail and four months of house arrest for exceeding the spending limits set out in the Canada Elections Act, for failing to report a personal contribution to his campaign and for submitting a falsified document. He resigned as MP in November 2014.

### Security in the Parliament Precinct

With the passage of Bill C-59, Economic Action Plan 2015 Act, No. 1, on 23 June, the new Parliamentary Protective Service was established. Led by the RCMP, it includes the former Senate and House of Commons security services. Long-expressed concerns about the lack of coordination

between the different security services came to a head in October 2014 when a lone gunman entered the Parliament Buildings, where a Canadian soldier was shot dead.

### Report of the Truth and Reconciliation Commission of Canada

Over 150 years, 150,000 Aboriginal children were removed from their homes, often against their parents' wishes and sent away to residential schools. There, they were dispossessed of their language and their culture. Many were subject to horrific forms of abuse and at least 6,000 died while at school.

A successful class-action lawsuit by former residential school students led to the Indian Residential Schools Settlement Agreement. In addition to providing compensation, the agreement called for the establishment of the Truth and Reconciliation Commission (TRC) with a mandate to learn the truth about what happened in the schools and to inform all Canadians of its findings.

In 2008, **Prime Minister Stephen Harper** delivered a formal apology in the House of Commons to former students (80,000 of whom are still living), their families, and communities. In 2009, the TRC was established under the chairmanship of Justice Murray Sinclair.

On 2 June 2015, the TRC released its findings and calls to action. The TRC said that by trying to dispossess Aboriginal people of their culture, Canada had pursued a policy of cultural genocide. The TRC's 94 calls to action revolved around preserving language and culture, promoting legal equity and educating Canadians on the residential schools and their impacts. Justice Sinclair said these calls to action are a first step toward reconciliation.

### Prince Edward Island Election

In the 5 May provincial election in Prince Edward Island, **Premier Wade MacLauchlan** led the Liberal Party to its third consecutive win, albeit with a reduced number of seats.

The Liberals took 18 of the 27 seats in the legislature (a loss of two), while the Progressive Conservative Party (PC) won eight seats (a gain of five) and the Green Party won its first ever seat. At dissolution, there was one independent and three seats were vacant.

In addition to the changes in the distribution of seats, there were sizable changes in the parties' share of the popular vote. The Liberals dropped from 51% in 2011 to 41% and the PCs fell from 40% to 37%. On the other hand, both the Green Party and the New Democratic Party (NDP) saw large increases in their share of the popular vote since 2011, going from 3% to 11% and 4% to 11% respectively. Of these two parties, however, only the Green Party was able to translate this increase into a seat in the legislature.

### Alberta Election

In a stunning upset, on 6 May, the NDP led by **Rachel Notley** won a majority in the Alberta provincial election, bringing the PC's 44 years in power to

an end. The NDP, which had never won an election in Alberta, took 53 of the 87 seats in the legislature (a gain of 49) and the Wildrose Party took 21 (a gain of 16) to become the official opposition. The PCs, which held 70 seats at dissolution, were reduced to 10 seats. The Liberal Party and the Alberta Party each took one seat.

This was the latest event in a momentous year in Alberta politics. In August 2014, **Premier Allison Redford** resigned over allegations of lavish spending. She was replaced by former federal cabinet minister **Hon. Jim Prentice**.

In October 2014, Ms. Notley became leader of the NDP. In December 2014, the Leader of the Wildrose Party, **Danielle Smith** and eight other members crossed the floor to join Mr. Prentice's government.

In the run-up to the election, however, Ms. Smith lost the nomination to run as a PC candidate. Shortly before the election, the Wildrose Party chose former Conservative MP **Brian Jean** as its Leader; he is now Leader of the Official Opposition. Mr. Prentice won a seat in the election, but resigned it and left public life shortly after the PCs were defeated.





## THIRD READING: QUÉBEC, CANADA

*Between February and June 2015, the National Assembly of Québec passed 19 public bills, including 12 unanimously.*

### **Abolishing regional health and social services agencies**

The National Assembly began its spring sessional period on 10 February 2015. Previously, at the Premier's request, the Assembly had met for an extraordinary sitting on 6 February to continue studying Bill 10, An Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies. The Bill was passed at the end of the exceptional legislative procedure provided for in the National Assembly's Standing Orders.

Under the Act, each health region's health and social services agency is amalgamated with all of that region's public institutions to create an integrated health and social services centre. However, the Gaspésie–Îles-de-la-Madeleine, Montérégie and Montréal regions will have two, three and five integrated centres, respectively.

The Act creates 13 integrated health and social services centres (CISSS) and nine integrated university health and services centres (CIUSSS). The latter type of integrated centre is either located in a health region where a university offers a complete undergraduate program in medicine or operates a centre designated as a university institute in the social sector. The purpose of the Act is to facilitate and simplify public access to services and improve the quality and safety of care, as well as make the network more efficient and effective by creating institutions with a broader mission. Lastly, the Act implements a two-tier management structure.

### **Amendments to the Cooperatives Act**

The Assembly unanimously passed Bill 19, An Act to amend the Cooperatives Act and other legislative provisions. Among other things, the Act specifies that sums devolved to a cooperative must be allocated to the cooperative's reserve and that the reserve may not be drawn upon in any manner. The Act also introduces measures to protect the patrimony of housing cooperatives a building of which

has been built, acquired, restored or renovated under a government housing assistance program. The cooperative must maintain the social or community vocation of the building. In addition, disposing of the building or changing its vocation requires the Minister's prior authorization. Lastly, in the event of the winding-up of a cooperative, the balance of its assets must be devolved to a cooperative of the same nature.

### **Implementation of certain provisions of the Budget Speech**

Bill 28, An Act mainly to implement certain provisions of the Budget Speech of 4 June 2014 and return to a balanced budget in 2015–2016, was passed at an extraordinary sitting on 20 April 2015, at the end of the exceptional legislative procedure provided for in the Standing Orders. The Act sets out various measures aimed at putting the State's finances in order and achieving a zero deficit for the 2015–2016 fiscal year, and amends several Acts in various fields of State activity.

The Act's most significant measures include giving the Minister of Finance responsibility for preparing and publishing a pre-election report on the Government's financial situation. Furthermore, the Auditor General must prepare a report on the plausibility of the forecasts and assumptions presented in the pre-election report.

The Act amends the Educational Childcare Act in order to change the rules for determining the contribution required from a parent whose child is receiving childcare from a subsidized childcare provider. Day care rates will vary based on family income. In addition, pharmacists' remuneration is amended and local development centres (CLD) and regional conferences of elected officers (CRE) are abolished.



### **Amendments to various legislative provisions**

The Assembly unanimously passed Bill 36, An Act to amend various legislative provisions mainly concerning shared transportation.

One of the purposes of the Act is to allow the Government to determine the date and terms of the transfer to the Société de Transport de Montréal of property relating to any subway system extension the Agence Métropolitaine de Transport is in charge of planning, carrying out and executing. Moreover, the Act gives the Minister of Transport the power to implement pilot projects to improve taxi transportation services in Québec.

The Act also authorizes public transit authorities to become associated. They can now apply for a non-profit organization to be constituted for the main purpose of making accessible goods and services they need to carry out their mission. For example, it will be possible for authorities to bundle procurement of buses.

### **Caisse de dépôt et placement du Québec to carry out infrastructure projects**

Bill 38, An Act to allow the Caisse de dépôt et placement du Québec to carry out infrastructure projects, was passed on 12 June 2015.

Under the Act, the Minister of Transport, when authorized by the Government, can enter into an agreement with the Caisse de dépôt et placement du Québec to mandate the latter to manage and carry out projects to develop new shared transportation infrastructures.

Created in 1965, the Caisse de Québec is one of the most important institutional fund managers in North America. It manages capital primarily for public and parapublic pension and insurance plans.

Under the Act, the Government defines the needs to be met and authorizes the solution to be implemented from among the various options proposed by the Caisse. It has full authority over each project that is the subject of such an agreement and may set rates for using the shared transportation infrastructure concerned.

### **Reorganization of certain labour institutions**

Bill 42, An Act to group the Commission de l'équité salariale, the Commission des normes du travail and the Commission de la santé et de la sécurité du travail and to establish the Administrative Labour Tribunal, was passed. This Act creates the Commission des normes, de l'équité, de la santé et de la sécurité du travail by grouping three existing bodies.

The Act also establishes the Administrative Labour Tribunal. The Act defines the Tribunal's jurisdiction, provides for the rules of procedure that are to apply to the matters it is to hear, establishes the framework applicable to Tribunal members and in particular to their recruitment and appointment, and sets the rules that are to govern the conduct of the Tribunal's business. The Act comes into force on 1 January 2016, except certain sections.

### **Other bills being studied**

On 12 June 2015, the National Assembly's spring sessional period ended. Proceedings will resume in September with the examination of Bill 59, An Act to enact the Act to prevent and combat hate speech, speech inciting violence and to amend various legislative provisions to better protect individuals; and Bill 62, An Act to foster adherence to State religious neutrality and to provide a framework for religious accommodation requests in certain bodies.



## THIRD READING: AUSTRALIA

### Norfolk Island Legislation Amendment Act 2015

The Norfolk Island Legislation Amendment Act introduces a range of measures for Norfolk Island, a small island community of 1,800 people off the coast of Australia.

The Joint Standing Committee on the National Capital and External Territories has over a number of years produced a series of parliamentary reports arguing the case for greater accountability and the need to bring Norfolk Island within the Australian taxation and welfare system to ensure its future financial viability.

The Minister for Regional Infrastructure and Regional Development, **Hon. Jamie Briggs MP** noted that *"under arrangements established in 1979, the Norfolk Island government is required to deliver all local, state and many federal services - more than any other government in Australia."*

He stated that *"it is not reasonable to expect such a small and remote community to deliver these responsibilities effectively. It is no surprise that services on Norfolk Island are now well below the standard Australians typically expect. In fact, there is almost a complete absence of the health and social services most Australian's take for granted."*

In relation to Norfolk Island's financial

position, Mr Briggs advised that *"the Australian Government has provided in excess of A\$40 million in assistance since 2010 to keep essential services operating."*

Mr Briggs stated that the legislation introduces *"structural reforms to ensure Norfolk Island's sustainability. In relation to social security measures, older Australians will have access to the age pension, families will be able to access a range of support payments and the community will also have access to Medicare and the Pharmaceutical Benefits Scheme and will no longer pay a separate Norfolk Island healthcare levy, which unfairly targets low-income earners."*

In relation to taxation, Mr Briggs noted that *"Federal taxes will replace a range of inefficient taxes and charges currently levied by the Norfolk Island government."*

However, the most contentious measure is the reforms to governance arrangements. Mr Briggs noted that the *"Joint Standing Committee on the National Capital and External Territories concluded that governance and economic reform must occur together to give the community the greatest chance of recovery. The committee's strong and bipartisan recommendation was that the Norfolk Island Legislative Assembly be transitioned to a regional council."*

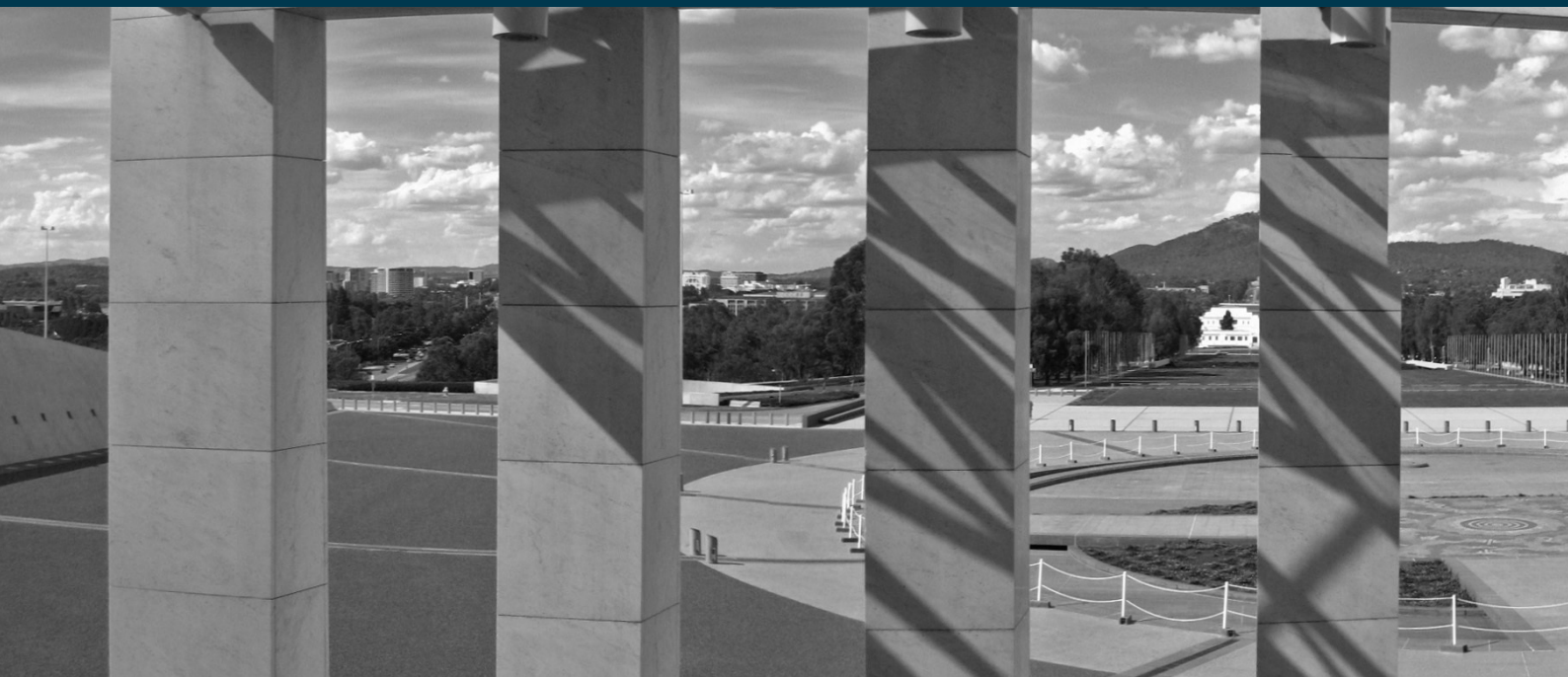
Mr Briggs advised that these measures have been accepted by the Federal Government. He stated that *"following the bill's commencement, the Norfolk Island Legislative Assembly and Executive Council will be dissolved, and a local advisory council appointed to represent community views."*

Mr Briggs concluded that *"these changes will bring Norfolk Island in line with other Australian communities and ensure services are delivered to a modern standard by the appropriate level of government."*

The legislation was supported by the Labor opposition. The Shadow Minister for Infrastructure and Transport, **Hon. Anthony Albanese MP**, however, noted that *"there is no doubt that some elements of this legislation are controversial and I have had some contact with Norfolk Islanders who are concerned about parts of this legislation. I say to the government: there is a need for ongoing consultation as these changes are implemented. Change is always difficult. This process, though, is the outcome of considerable consultation up to this point."*

Some groups on Norfolk Island are opposed to the reforms and, in particular, the measure to dissolve the Norfolk Island Legislative Assembly.

The Norfolk Island People for Democracy noted *"its intention to pursue the right of*





*the Norfolk Island People to an Act of Self Determination; a right first afforded to all of the people of the world living in non self-governing territories by the United Nations in 1960, and a right which the Australian Government has systematically and continually refused to extend to the Norfolk Island People."*

On 27 May 2015, the Speaker of the House of Representatives, the **Hon. Bronwyn Bishop MP** advised the House that she had received a remonstrance passed by the Legislative Assembly of Norfolk Island requesting that the Parliament "*affirm the rights of the people of Norfolk Island to self-government.*" Copies of the remonstrance were placed on the table and the full terms were recorded in the Votes and Proceedings and Hansard.

Similarly, on 15 June, the Acting Deputy President, **Senator Dean Smith** tabled the remonstrance in the Senate. The Senate Procedural Information Bulletin noted that "*remonstrances, or expressions of significant grievances, have a noble parliamentary history, including the Grand Remonstrance of 1642 which detailed numerous grievances against Charles I and proposed remedies. Remonstrances have been presented to the Senate on two previous occasions by the Northern Territory Legislative Assembly.*"

### **Defence Legislation Amendment (Military Justice Enhancements Inspector-General ADF) Act 2015**

The legislation strengthens and clarifies the independence, powers and privileges of the Inspector-General Australian Defence Force (ADF) and provides a statutory basis to support regulatory change including the re-allocation of responsibility for investigation of service-related deaths.

The Manager of Government Business in the Senate, **Senator Hon. Mitch Fifield** stated that the legislation provides "*transparency, predictability and accountability in decision making affecting Australian Defence Force members. It will do this by enhancing the independence of the Inspector-General of the Australian Defence Force and enabling regulatory reform of the Australian Defence Force's redress of grievance, investigation and inquiry practices.*"

Senator Fifield advised that "*following detailed review of Defence's system of inquiry, investigation, review and audit, the Australian Defence Force concluded its current arrangements for these processes are unnecessarily complex, inefficient and legalistic. I am conscious of the need to support commanders to make good decisions, not to impede or discourage them from doing*

*so. The complexity and inflexibility of current arrangements do not provide that support. I am also conscious of the need for robust, professional, credible and independent oversight of the military justice system."*

Senator Fifield commented that it was essential that complex and sensitive matters concerning the Defence Force such as the death of ADF members be subject to efficient and specialised internal inquiry and review.

The Shadow Minister for Defence, Senator **Hon. Stephen Conroy** noted Labor's support commenting that the legislation "*continues the bipartisan approach to reforming the military justice system that has been pursued by successive governments. It entrenches the independence of the Inspector-General by separating it from the military chain of command. It also enables the Inspector-General to be used to investigate a broad range of matters as requested by the minister.*"

Senator Conroy noted that "*by separating the Inspector-General from the military chain of command, the Bill ensures that the Inspector-General cannot be forced or ordered down an avenue that he or she considers inappropriate. This greater independence provides our Defence Force the ability to investigate failures or flaws in the military justice system and administrative processes.*"



# ELECTION OF THE SPEAKER AND NEW BUDGET MEASURES

## **Tony Smith MP elected as Speaker of the House of Representatives**

On 10 August 2015, Hon. Tony Smith MP was elected as the 30<sup>th</sup> Speaker of the House of Representatives following the resignation of Hon. Bronwyn Bishop MP who resigned following intense scrutiny of her travel allowance expenses.

Mr Smith, 48, is the Liberal member for the Melbourne seat of Casey and was first elected to the House of Representatives in 2001. Mr Smith indicated that he was committed to bringing more balance and independence to the role of the Speakership. His first step in achieving this was to confirm that as Speaker he would no longer attend Liberal Party room meetings.

Mr Smith in thanking the House for its support first noted the former Speaker commenting that *"as everyone has done in this debate, I recognise the member for Mackellar, who I have known for nearly 30 years and who has been a wonderful servant of our party. I want to recognise her at the outset. I thank the House for the confidence you have placed in me. There is no greater honour within the parliament than to be elected by one's peers."*

Mr Smith noted that *"I am a servant of this House and all of its members. There is,*

*however, a mutual obligation between presiding officers and individual members. I want to say at the outset that I will give a fair go to all on the floor of this chamber. But in return I do expect a level of discourse that reflects that."* In particular, Mr Smith commented that *"Parliament is a robust place. It should be a robust place. It is where we battle our view of a better Australia. It is the arena*

*for the battle of ideas and ideals. I make that point because often people say parliament should not be robust. It should, but it need not be rude and it need not be loud. That is something I would like to see improve. I cannot do that, but together we all can. I wanted to make that point at the opening."*

The Prime Minister, Hon. Tony Abbott MP commented that *"as the Speaker, you Sir are*

*the custodian of the traditions of this House. Your job is to maintain order in this House by commanding the respect of both sides of the chamber. I am confident, based on our friendship and comradeship going back some quarter of a century that this is exactly what you will do."* The Leader of the Opposition, Hon. Bill Shorten MP congratulated Mr Smith and commented



Right: Tony Smith MP takes the Chair as the new Speaker of the House of Representatives. Image: Australian Parliament website.



that *"you have been chosen by your peers as the first officer of the parliament, upholding a tradition that began with the parliament seven centuries ago and you bring to this position a proud record of advocating for a more accountable, more representative Australian democracy, particularly in your role as chairman of the Joint Standing Committee on Electoral Matters."* Mr Shorten noted that *"regardless of previous political allegiance, we welcome the Speaker's commitment not to attend their party's room meetings. Today is a chance to lift the standards of this parliament, to return them to a level which Australians rightly expect of their representatives—not just improving behaviour but lifting the standard of accountability."*

### Speaker Bronwyn Bishop resigns

On 2 August 2015 the Speaker of the House of Representatives, the **Hon. Bronwyn Bishop MP** resigned following intense scrutiny of her travel allowance expenses.

On 15 July it was revealed that Ms Bishop spent A\$5,200 chartering a helicopter for a return trip between Melbourne and Geelong to attend a Liberal party fundraiser. This trip would normally take just over an hour by car.

The Treasurer, **Hon. Joe Hockey MP** when asked about the expense claim noted that it did not pass the *'sniff test'*. On 16 July Ms Bishop agreed to pay back the money plus a 25% penalty. However, the matter did not rest there. The opposition referred the matter to the Australian Federal Police which responded that the matter should be dealt with by the Department of Finance.

The Prime Minister, **Hon. Tony Abbott MP** received increasing media attention

about Ms Bishop's travel expenses which was diverting time from his focus on promoting his government's policy agenda and attacking the opposition.

On 20 July the Prime Minister stated that Ms Bishop was on 'probation' although this seemed to confuse matters further as it was not clear what this meant. Following this announcement, further information about Ms Bishop's travel expenses was scrutinised.

On 24 July it was revealed that in 2006 she charged taxpayers A\$600 to attend the wedding of her colleague and former member Ms Sophie Mirabella. Ms Bishop's office claimed that in addition to attending the wedding she was in Albury on parliamentary business as the Chair of the Family and Human Services committee.

On 29 July the Minister for Communications, **Hon. Malcolm Turnbull MP** noted on Twitter that he had paid A\$12 to take a train from Melbourne to Geelong to inspect the National Broadband Network rollout.

On 30 July Ms Bishop formally apologised for letting down the Australian people although she stopped short of resigning.

The Leader of Opposition Business, **Hon Tony Burke MP** rejected the apology noting that Labor would disrupt parliamentary business unless Ms Bishop resigned. Mr Burke stated that *"any level of cooperation that the Government ordinarily relies on is gone if we have a situation where Bronwyn Bishop's still in the chair."*

On 1 August it was revealed that Ms Bishop spent A\$6,000 chartering a plane for a 160km trip from Sydney to Nowra in 2014.

By 2 August, with pressure mounting, Ms Bishop released a statement advising that she had written to the Governor-General and tendered her resignation as Speaker. She stated that *"I have not taken this decision lightly, however it is because of my love and respect for the institution of the Parliament and the Australian people that I have resigned as Speaker."* She noted that she would continue to serve as the local Member for Mackellar.

Following the election of the new Speaker, Mr Abbott referred to Ms Bishop noting that *"it should be said of the member for Mackellar that, despite some admitted errors of judgement, she has served this parliament, our country and her party with dedication and distinction for over 30 years. She has been a warrior for the causes that she believes in."*

The Leader of the Opposition, **Hon. Bill Shorten MP** noted that *"for all our clashes with the former Speaker, we wish her well."*

Ms Bishop joins only a few number of Speakers that have resigned in controversial circumstances.

In October 2012 the then Speaker, **Hon. Peter Slipper MP** resigned amid allegations of sexual harassment against a former staff member, Mr James Ashby and the misuse of cab charges. During the trial thousands of text messages between Mr Slipper and Mr Ashby were made public as part of the sexual harassment case against Mr Slipper. These messages revealed highly explicit and sexist comments about women.

In the wake of Ms Bishop's expense controversy, Mr Abbott announced that there would be a *'root and branch'* review of the entitlements system.

### Death of sitting member Mr Don Randall, MP

On 21 July 2015 the Liberal Member for the Western Australian seat of Canning, **Donald James Randall MP** died unexpectedly at age 62.

Mr Randall was first elected to the House of Representatives for the seat of Swan between 1996 and 1998 and then was elected to the seat of Canning from 2001. He leaves behind his wife Julie and children Tess and Elliot.

On 10 August the Prime Minister, **Hon. Tony Abbott MP** moved a condolence motion in the House of Representatives. The President of the Senate, **Senator Hon. Stephen Parry** informed the Senate of the death of Mr Randall.

During debate in the House of Representatives, Mr Abbott stated that *"Don Randall was a man who had kept bees, tended roses, caught rabbits, played the violin and trained horses. He had more than a passing interest in footy, golf and good wine. Along the way he had been a jackaroo, a rodeo rider and a local government councillor. For 20 years he was a teacher; his work included helping children with intellectual disabilities. All of this reflected a natural inquisitiveness and an interest in people that made him well suited to public life."*

Mr Abbott noted that *"Don's motto in the electorate was, 'You talk, I listen.' Over here, especially in the party room, it was sometimes a case of, 'I'll talk, you listen'—at least to leaders. He was fearless, absolutely fearless, and utterly impervious to political correctness, but he did have a natural affinity with people."*

The Leader of the Opposition, **Hon. Bill Shorten MP** noted that *"there was, of course, much on which Don Randall and the Labor Party disagreed, often very*



*deeply. But, personally, not for one moment did I doubt the strength of his convictions or his advocacy. He was, as the Prime Minister says, his own man and acted in line with his own views. I note from my personal conversations with Don Randall that he had many sides - some are well known, such as his fierce love of family; some less well known, such as his abiding interest in special education. I regret now that I never followed up his invitation for Gary Gray and I to have lunch with him and his great mate Steve Irons. Perhaps there is a lesson for all of us not to always waste so much energy upon our disagreements."*

#### **Australian Federal Budget 2015**

On 12 May 2015 the Treasurer, Hon. Joe Hockey MP delivered the second Budget of the Abbott Liberal/National Government. Mr Hockey's previous Budget was widely condemned as harsh and unfair. As a result, the government suffered a significant fall in its electoral standing with many polls showing that the Labor Opposition could win an election. The 2015 Budget sought to reverse this position by withdrawing unpopular measures and introducing a range of spending proposals. Mr Hockey referred to his 2015 Budget as the 'have a go budget'.

The Australian economy is entering its 25<sup>th</sup> year of economic expansion with real GDP growth for 2015-16 forecast to grow by 2¾% rising to 3¼% in 2016-17. The underlying cash deficit in 2015-16 is expected to be A\$35.1 billion which is 2.1% of GDP. The deficit is expected to reduce to A\$6.9 billion by 2018-19. The unemployment rate is hovering around 6¼%. The consumer price index was 1¾

for 2014-15 which is forecast to increase to 2½% for 2015-16.

Mr Hockey noted the economic challenges faced by Australia include a dramatic fall in iron ore prices, weaker than expected global demand and falling revenue. Mr Hockey stated that "even in the face of the largest fall in our terms of trade in half a century, which has contributed to a significant fall in tax receipts, our economic plan has helped Australia to have one of the fastest growing economies in the developed world."

One of the focus areas for the government is assisting small businesses to grow and invest. Mr Hockey announced that "from 1 July this year, small companies with annual turnover of less than A\$2 million will have their tax rate lowered, from 30% to 28½%."

Mr Hockey noted that this was the lowest company tax rate in almost 50 years. In addition to this measure, Mr Hockey announced that small business can claim an immediate tax deduction for each and every item they purchase up to A\$20 000. Mr Hockey's clear message to small businesses was to expand, innovate and create new jobs.

Parts of Queensland and New South Wales are in drought which is creating significant pressure for farming communities. Mr Hockey announced that the government would commit over A\$300 million in drought assistance. In addition, to cope with future droughts, Mr Hockey announced that "all farmers will get an immediate tax deduction for new investment in water facilities and a three-year depreciation allowance for all capital expenditure on fodder storage assets."

In relation to retirement policy, Mr Hockey announced

that there would be no new taxes on superannuation. For those people reliant on the Age Pension, Mr Hockey noted that this would continue to increase, twice a year at the highest available indexation rate.

The Age Pension at an annual cost of A\$44 billion is the Budget's biggest item of expenditure. In order to ensure that the pension is sustainable over time, Mr Hockey announced that "from 1 January 2017, we will make changes that benefit pensioners with fewer assets beyond the family home. But we will also tighten eligibility for those pensioners with higher levels of assets."

The Leader of the Opposition, Hon. Bill Shorten MP in his Budget reply speech commented that "the 2015 budget has neither the qualities nor the priorities of the Australian people. Australians awaited this budget in fear, anticipation and hope - fear that the unfairness and cruelty of last year's budget would be repeated; anticipation that it might not; hope that the government would at last, after 613 days, get the economy right. But once again, in every way, this government let Australia down. The test for this budget was to plan for the future, to lift productivity, to create jobs, to boost investment, to turbocharge confidence for the years and decades ahead, to restore hope, but this budget fails every test."

In relation to the size of the government's stimulus package, Mr Shorten commented that "the sum total of this government's stimulus is a A\$5.1 billion deposit against a A\$96 billion withdrawal. Is the Treasurer seriously asking Australians to believe that this is the best he can do in response to a A\$96 billion withdrawal?" Mr Shorten noted that "this budget drops the ball on reform,



*change and fiscal sense. It is a sorry rollcall: 17 new taxes; tax at its highest level in a decade; the deficit doubled, up from A\$17 billion to A\$35 billion since the Treasurer's last budget; spending outweighing revenue every year; over 800,000 Australians unemployed; and no plan to tackle the structural deficit."*

Mr Shorten noted the impact of 'bracket creep' on personal income tax rates. Mr Shorten commented that *"bracket creep is the biggest driver of revenue in his budget. The Treasurer should have told Australians that, for every dollar that the government keeps in spending cuts, A\$2 will be collected through higher taxes. In a lazy budget, Tony Abbott and Joe Hockey are getting inflation to do their dirty work. Eighty cents in every dollar and the rise in revenue comes from bracket creep—the invisible hand in the pocket of every Australian worker."*

Mr Shorten noted that Labor would support the government's measures to support drought relief and support for small business. In relation to the tax cut for small businesses, Mr Shorten stated that *"a 1½% cut for small businesses might be enough to generate a headline but it is not enough to generate the long-term confidence and growth our economy needs. Tonight I say: let's go further—let's give small businesses the sustainable boost to confidence that they deserve, the confidence to create jobs. I invite you to work with me on a fair and fiscally responsible plan to reduce the tax rate for Australian small business from 30 to 25% - not a 1½% cut; a 5% cut. That is the future. That is confidence."*

### **Senate Budget Estimates (25 May to 4 June 2015)**

Senate estimates are one of the most effective instruments of the Australian Parliament for scrutinising and holding the executive to account. The former Leader of the Opposition in the Senate, **Hon. Senator John Faulkner** has described the process as the *"best accountability mechanism of any Australian parliament."*

There are eight Senate Legislative and General Purpose Standing Committees which are responsible for eight subject areas ranging from community affairs through to rural and regional affairs. Departments and agencies, by order of the Senate, are allocated to these legislation committees. In addition to other activities, these committees conduct the estimates hearings. Budget estimates are held for two weeks shortly after the Commonwealth Budget is presented in May.

Supplementary Budget estimates are held in October and Additional Estimates are held in February. Relevant Senate ministers, together with senior public servants appear before the relevant committees to explain expenditure proposals and to answer questions concerning the effectiveness and efficiency of various programs. Ministers residing in the House of Representatives are not called before Senate Estimates Committees.

At the hearings between 25 May and 4 June some of the issues canvassed included: the cost of security upgrades at Parliament House; Bureau of Meteorology views on climate change and the development of a new El Nino weather event; quantities of crystal methamphetamine arriving in Australia; possible electoral fraud in the federal seat of Indi;

progress on Defence Force investigations of abuse claims; the submarine replacement project; the potential for funds to flow through charities to terrorist organisations; the scale of fraud in the Department of Defence; multinational tax fraud; possible criminal investigation of events surrounding the Football Federation of Australia's World Cup Bid; and the impact of the new paid parental leave scheme on low-paid women.

### **Senator Christine Milne Leader of the Australian Greens retires**

On 6 May 2015, the Leader of the Australian Greens **Senator Christine Milne** announced that she was stepping down as leader immediately.

Senator Milne was elected to the Tasmanian Parliament in 1989 becoming Tasmania's first female political leader in 1993. In 2004 she moved to the Federal Parliament as a Senator for Tasmania. In 2008 she was elected as Deputy Leader of the Australian Greens under then Leader **Senator Bob Brown**. In 2012 Senator Brown announced his retirement and Senator Milne was elected as the new Leader.

Senator Milne was deputy Leader and Leader of the Greens during the period of the Labor minority government from 2010 to 2013. It was a pivotal period for the Greens as they signed a deal with Labor to secure stable government and implement key reforms most notably the introduction of

a price on carbon emissions from July 2012. Senator Milne was heavily involved with the development of the carbon pricing mechanism and is highly regarded for her knowledge and expertise.

Shortly after Senator Milne announced her resignation as leader, **Senator Richard Di Natale** was elected unopposed as the new Leader of the Australian Greens. Senator Di Natale is a trained doctor and self-declared sporting tragic who played football in the Victorian Football league for six years and loves to surf. Senator Di Natale commented that *"I've always believed that the Greens are the natural home of progressive mainstream voters. I look forward to working with my colleagues to provide a caring voice for all Australians."*

**Below: Senator Christine Milne, Leader of the Australian Green Party.**



## THIRD READING: INDIA

### **The Andhra Pradesh Reorganisation (Amendment) Bill 2015**

The Andhra Pradesh Reorganisation Act 2014 was enacted on the 1 March 2014 to provide for reorganisation of the State of Andhra Pradesh into the State of Andhra Pradesh and the State of Telangana. Sub-section (1) of section 22 of the Act provides for a Legislative Council for each of the successor States consisting of not more than 50 members in the Legislative Council of Andhra Pradesh and 40 members in the Legislative Council of Telangana in accordance with the provisions contained in article 169 of the Constitution. Sub-section (2) of section 22 provides that the existing Legislative Council of the State of Andhra Pradesh shall, on and from the appointed day, be deemed to have been constituted as two Legislative Councils of the successor States and the existing members shall be allotted to the Councils as specified in the Fourth Schedule to the Act.

According to section 23 of the Act, there shall be 50 seats in the Legislative Council of Andhra Pradesh and 40 seats in the Legislative Council of Telangana, respectively. The said section also amended entry 1 of the Third Schedule to the Representation of the People Act, 1950 so as to provide the composition of the Andhra Pradesh Legislative Council.

Clause (1) of article 171 of the Constitution provides that the total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State. However, the total number of members in the Legislative Council of a State shall in no case be less than forty. At that point, the successor States of Andhra Pradesh and Telangana were having 175 and 119 seats respectively in their Legislative Assemblies. The State of Telangana had already been allocated 40 seats in the Legislative Council (i.e. one-third of 119 seats). Since, one-third of 175 seats in the Legislative Assembly of the State of Andhra Pradesh comes to 58, it was proposed to amend sections 22 and 23 of the Act to enhance the number of seats of the Andhra Pradesh Legislative Council from the existing 50 to 58 members and to amend entry 1 of the Third Schedule to the Representation of the People Act, 1950 accordingly.

The Andhra Pradesh Reorganisation (Amendment) Bill 2015 was accordingly brought forward by the Government amending sections 22 and 23 of the Principal Act enhancing the number of seats of the Andhra Pradesh Legislative Council from the existing 50 to 58. This measure also amended entry of the Third Schedule to the Representation of the People Act, 1950. The measure, since it sought to rectify a statutory anomaly, found unanimous support from all sections of the House.

The Bill was passed by Lok Sabha on 17 March and by Rajya Sabha on 20 March 2015. The Bill as passed by both Houses of Parliament was assented to by the President on 30 March 2015.

### **The Coal Mines (Special Provisions) Bill 2015**

The Supreme Court of India in Writ Petition (Criminal) No. 120 of 2012 (Manoharlal Sharma Vs. Principal Secretary & Ors.) and Writ Petition (Civil) No. 463 of 2012 (Common Cause Vs. UOI & Ors.) and other connected Public Interest Litigations, vide its judgement dated 25 August 2014 had held that allocations of the coal blocks made through Screening Committee and Government Dispensation route as arbitrary and illegal.

The Supreme Court pronounced its order on 24 September 2014 cancelling allocation of 204 coal blocks out of a total of 218 allocated since 1993. In case of 42 coal blocks (37 producing and 05 ready to produce), cancellation was slated to take effect from 31 March 2015 and in respect of the others, with immediate effect. The Court had also directed that an additional levy of Rs. 295/- per metric ton be paid by these 42 coal block allocatees for the coal extracted since commencement of production till 31 March 2015.

In light of the judgement and order of the Supreme Court, it was considered expedient in the public interest by the Central Government to take immediate action so as to ensure energy security of the country. The need for promulgation of the Ordinance was felt to overcome the acute shortage of coal in core sectors such as steel, cement and power utilities, which are vital for the development of the country. Further, to mitigate the hardships on household consumers, medium and small enterprises, cottage industries, as well as to overcome the overall shortage of coal in the country and augment its production by allocating coal mines to new allocatees, the Coal Mines (Nationalisation)

Act 1973 was amended by inserting section 3A and the Mines and Minerals (Development and Regulation) Act 1957 was amended by substituting section 11A, thereby removing the restriction of end use from the eligibility to undertake coal mining, in the national interest.

In order to implement the judgement and order of the Supreme Court and to address the above objectives, an Ordinance namely, the Coal Mines (Special Provisions) Ordinance 2014 was promulgated by the President on 21 October 2014 under article 123 of the Constitution. To replace the said Ordinance, the Coal Mines (Special Provisions) Bill 2014 was introduced in Lok Sabha on 10 December 2014. The said Bill had been passed by Lok Sabha on 12 December 2014 and was pending in Rajya Sabha.

In pursuance of the Coal Mines (Special Provisions) Ordinance 2014, actions had been initiated by the Central Government including the framing of Rules for allocation of Coal Mines and therefore, it was considered necessary to give continuity to the provisions of the said Ordinance and save the actions taken thereunder.

Since Parliament was not in session and the President was satisfied that circumstances existed which rendered it necessary for him to take immediate action, the Coal Mines (Special Provision) Second Ordinance, 2014 was promulgated on 26 December 2014 under clause (1) of article 123 of the Constitution.

Under the circumstances, the Government proposed to introduce the Coal Mines (Special Provisions) Bill 2015, to replace the Coal Mines (Special Provision) Second Ordinance 2014.

**Salient Features of Amending Bill** – the Amending Bill provides for:

- Allocation of coal mines and vesting of the right, title and interest in and over the land and mine infrastructure together with mining leases to successful bidders and allottees through a transparent bidding process with a view to ensure continuity in coal mining operations and production of coal and for promoting optimum utilisation of coal resources consistent with the requirement of the country in national interest.
- Having regard to the coordinated and scientific development and utilisation of coal resources consistent with the growing requirement of the country, it had been



prescribed the condition to rationalise the coal sector for mining operations, consumption and sale.

**Debate:** The Bill had in-depth deliberations in both Houses of Parliament. Some of the issues which emerged were:

- the issue of the problem of land acquisition after auction of mines needs to be addressed.
- the State Governments should be given priority during allocation of coal blocks.
- there need to be provisions for addressing concerns of Scheduled Tribes and farmers.

The Minister in-charge of the Bill assured to address concerns of the Members. The Minister stated that the Government would like to see Coal India as a single company. Through restructuring, the Government would introduce new technology, increase production, make operations smooth and increase the safety standards as well as the wages of the workers. The Minister assured that the Government in the coming days would work out ways to provide better facilities to the workers and those displaced. The Minister also assured that all the decisions of the Government have been taken with the coordination of Ministries of Steel, Commerce, Mines, Law and Finance. The Minister also assured that suggestions of members would also be implemented.

The Bill was passed by Lok Sabha on 4 March 2015 and by Rajya Sabha on 20 March 2015. The Bill as passed by both Houses of Parliament was assented to by the President of India on 30 March 2015.

### **The Mines and Minerals (Development and Regulation) Bill, 2015**

The Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) is the Central Act which governs the development and regulation of mines and minerals in terms of the powers vested in the Central Government. The provisions of the MMDR Act extend to the whole of India. State Governments have to regulate the mines and minerals in terms of the MMDR Act. The Act had been amended several times over the years, notably in 1972, 1986, 1994 and 1999.

With a view to comprehensively amending the law governing the mineral sector, the Mines and Minerals (Development and Regulation) Bill 2011 (MMDR Bill, 2011) was introduced in the Lok Sabha on 12 December 2011. Extensive

consultations preceded the finalization of the draft of the Bill. It was, thereafter, intensively scrutinized by the Standing Committee on Coal and Steel who gave their Report in May 2013. However, the Bill could not be passed before the dissolution of the 15th Lok Sabha and consequently lapsed.

The mining sector had been subjected to numerous litigations in the past few years. Important judgements related to the mining sector had been pronounced by the Supreme Court, besides judgements on the issue of allocation of natural resources which have direct relevance to the grant of mineral concessions.

The present legal framework of MMDR Act 1957, does not permit the auctioning of mineral concessions. Auctioning of mineral concessions would improve transparency in allocation. It emerged that the Government would also get an increased share of the value of mineral resources. Some provisions of the law relating to renewals of mineral concessions had also been found to be wanting in enabling quick decisions. Consequently, there had been a slowdown in the grant of new concessions and the renewal of existing ones. As a result, the mining sector started registering a decline in production affecting the manufacturing sector which largely depends on the raw material provided by mining sector. The Government had, therefore, felt it necessary to address the immediate requirements of the mining sector and also to remedy the basic structural defects that underlie the current impasse.

In view of the urgent need to address these problems, the Mines and Minerals (Development and Regulation) Amendment Ordinance 2015 was promulgated on 12 January 2015. Consequently, the Government brought forward the Mines and Minerals (Development and Regulation) Amendment Bill 2015. This Ordinance replacing Bill was designed to put in place mechanism for:

- (i) Eliminating discretion;
- (ii) Improving transparency in the allocation of mineral resources;
- (iii) Simplifying procedures;
- (iv) Eliminating delay in administration, so as to enable expeditious and optimum development of the mineral resources of the country;
- (v) Obtaining for the government an enhanced share of the value of the mineral resources of the

country; and

(vi) Attracting private investment and the latest technology.

**Salient Features of the Bill:** In the Ordinance replacing Amending Bill, the key provisions which have been made as under:

- Removal of discretion; auction to be sole method of allotment: The amendment seeks to bring in utmost transparency by introducing auction mechanism for the grant of mineral concessions.
- Impetus to the mining sector: The mining industry has been aggrieved due to the second and subsequent renewals remaining pending. In fact, this has led to closure of a large number of mines. Provisions have been made that mining leases would be deemed to be extended from the date of their last renewal to 31 March 2030 (in the case of captive mines) and until 31 March 2020 (for the merchant miners) or until the completion of the renewal already granted, if any, or a period of fifty years from the date of grant of such leave, whichever is later.
- Safeguarding interest of affected persons: There is provision to establish District Mineral Foundation in the districts affected by mining related activities.
- Provisions have been made with regard to encouraging exploration and investment: It has been provided to set up a National Mineral Exploration Trust created out of contributions from the mining lease holders, in order to have a dedicated fund for encouraging exploration in the country.
- Stronger provisions have been provided for checking illegal mining

**Debate:** There had been a constructive debate on the Bill in both Houses of Parliament. Members dwelt upon in-depth and critical details pertaining to the measure. The Minister in-charge of the Bill stated that the Bill will end discretionary powers completely, there would be transparency in the allocation, mining activities would get an impetus and exploration would be speeded up. The Bill was passed by Lok Sabha on 3 March 2015 and by Rajya Sabha on 20 March 2015 (Amendments made by Rajya Sabha were agreed to by Lok Sabha on 20 March 2015). The Bill as passed by both Houses of Parliament was assented to by the President of India on 26 March 2015.

# NEW MEMBERS, BUDGET 2015 AND ENGLISH VOTES

## The State of the Parties

Against the expectations of many, who had expected a hung Parliament, the May 2015 General Election resulted in a majority Conservative Government. Rt Hon. David Cameron MP (Con) returned as Prime Minister, with the Conservative Party holding 330 seats. Their erstwhile coalition partners – the Liberal Democrats – were reduced to just 8 seats. The former Deputy Prime Minister, Rt Hon. Nick Clegg MP, resigned as party leader and was replaced by Tim Farron MP.

The main opposition party remains the Labour Party, with 232 seats. Their leader, Rt Hon. Edward Miliband MP, also stood down following the election. The results of a leadership election, contested by Rt Hon. Andy Burnham MP, Jeremy Corbyn MP, Liz Kendall MP and Rt Hon. Yvette Cooper

MP, will be announced on 12 September.

The biggest single change to the new Parliament relative to its predecessor came from Scotland, where the Scottish National Party increased its representation from 6 to 56 out of 59 Scottish constituencies. In Wales, Plaid Cymru held their three seats. In Northern Ireland, the Democratic Unionist Party and Social and Democratic Labour Party both maintained the same number of seats – 8 and 3 respectively. The Ulster Unionists gained two seats at the expense of Sinn Féin and the Alliance Party. Lady Hermon remains the only independent in the House.

Despite winning 12.6% of the national vote, the UK Independence Party won a single seat; as did the Green Party with 3.8% of the vote.

## The New Members

The new Parliament has a record number of female MPs, 191 (29%), up from 143 in 2010. Research by University College London and Birkbeck College suggest that (excluding Northern Ireland) there are 42 non-white MPs in the new Parliament. At 6.6% this is also a record and compares to 27 in the previous Parliament. They included the first MP of Chinese and East Asian origin, the Conservative Alan Mak MP. The average age of MPs has, however, changed little. At 51 it



Above: The youngest UK MP since the mid-19<sup>th</sup> Century, the new SNP member, Ms Mhairi Black MP.





is slightly on the older side (all Parliaments since 1979 have had an average age of 49-51) despite the presence of the youngest MP since the mid-19<sup>th</sup> Century, the new SNP member, **Ms Mhairi Black MP**.

### **The July 2015 Budget**

As is normal following a General Election, there were two Budgets this year. The first, in March, was the last Budget of the Coalition Government.

The July 2015 Budget was the first Budget of the new Conservative Government. Both were delivered by the Chancellor of the Exchequer, **Rt Hon. George Osbourne MP**. The Chancellor began his Budget statement by saying: *“This will be a Budget for working people—a Budget that sets out a plan for Britain for the next five years to keep moving us from a low wage, high tax, high welfare economy to the higher wage, lower tax, lower welfare country we intend to create.”*

The Chancellor reported that the UK was forecast to have the highest growth among major advanced economies in the world during 2015. He announced that the deficit was *“less than half the 10% we inherited”*. He said that in the 2015-2020 Parliament the Government would *“cut the deficit at the same pace as we did in the last Parliament. We should not go faster; we should not go slower.”*

The most eye-catching and controversial changes in the Budget related to the minimum wage and welfare benefits. The Chancellor's headline announcement was the introduction of a *“national living wage”* of £9 an hour for people aged 25 and over by 2020. Alongside this, he announced a series of reforms to welfare payments – limiting tax credit payments for children





Above: The Acting Leader of the Opposition, Rt Hon. Harriet Harman MP,

to two children per household, reducing the “benefits cap” from £26,000 to £23,000 in London and £20,000 in the rest of the country, reducing the income threshold for tax credits from £6,420 to £3,850 a year and removing universal credit work allowances from non-disabled claimants without children.

Concluding his statement, the Chancellor said: *“This is the first Conservative Budget for 18 years. It was the Conservatives who first protected working people in the mills. It was the Conservatives who took great steps towards state education. It was the Conservatives who introduced equal votes for women. It was the Conservatives who gave working people the right to buy. So, of course, it is now the Conservatives who are transforming welfare and introducing the national living wage. This is the party for the working people of Britain.”*

Responding for the Opposition the acting Leader of the Labour Party, Rt Hon. Harriet Harman MP, argued that the Chancellor’s package of tax credit changes and living wage would actually leave “low-paid working people” worse off. She criticised the Government for “ducking” decisions on infrastructure – such as whether there should be a third runway at Heathrow, for postponing planned railway enhancements and for taking other measures that she argued could improve UK productivity. She concluded: *“Before the Chancellor makes more promises, he has to deliver on those he has already made. He says that he stands up for working people; what he does is make them worse off. He says he has a long-term economic plan; what he does is duck the big infrastructure projects. He talks one nation, but many of the measures announced today will make this country more divided. The hopes of millions of working people are more important than his hopes of being the future Tory leader.”*

Speaking as Chair of the Treasury Committee Rt Hon. Andrew Tyrie MP (Con) drew attention to four economic risks that he felt could threaten growth – the potential for the crisis in Greece to have an impact on the UK economy, the possible impact of a Chinese stock market crash, the impact of domestic interest rate rises and the high level of personal debt in the economy. He also addressed the need to “unwind” the Bank of England’s quantitative easing programme and pressed for Parliament to have a role in scrutinising whether that programme made a loss or profit. Approaching his conclusion, he criticised the Government for “tying its hands” through pre-election pledges on taxes and spending. He said: *“Almost half of public expenditure is now ring-fenced by pledges to protect or increase spending on health, schools, foreign aid, pensions and child benefit, and that, of course, excludes the defence announcement [that the Government would spend 2% of national GDP on defence each year] that we have just heard. While it is understandable on political grounds, it could make economic management considerably more difficult in the years ahead.”*

Speaking for the Scottish National Party, Stewart Hosie MP, also focused on the UK’s poor productivity record. He observed: *“I hope the [Chancellor’s] plans to tackle productivity are rather more successful than the plans to tackle the deficit and the debt and borrowing, where he failed to meet every single one of the targets he set for himself.”* The focus on welfare and wages in the Budget debate set the tone for the early weeks of the Parliament, with an internal Labour Party debate about whether to vote against the

Government’s Welfare Reform and Work Bill becoming a key issue in their leadership contest. In the end, all four candidates voted for a “reasoned amendment” that would have prevented the Bill having its second reading, with Jeremy Corbyn also voting against the second reading itself once the amendment had been defeated.

### English Votes for English Laws (EVEL)

The “West Lothian question” has been a running debate in British politics since the 1970s. The question, posed by the then Member for West Lothian, Tam Dalyell MP (Lab), asks why should Scottish, Welsh and Northern Irish MPs be able to vote on matters that only affect England when English MPs cannot vote on the same issues when they relate to Scotland, Wales or Northern Ireland because they have been devolved.

Making a statement to the House on 2 July 2015, the Leader of the House, Rt Hon. Chris Grayling MP (Con), said he intended to “make a real start in addressing these concerns”. His proposals were intended to ensure that a Bill, provision in a Bill or piece of secondary legislation relating only to England could only be approved if it were supported by a majority of English MPs. The proposal would, in effect, require a “double majority” to support such measures – a majority of all Members and a majority of English Members. Concluding, the Leader of the House said: *“Today we are answering the West Lothian question and recognising the voice of England in our great union of nations. This change is only a part of the wider devolution package, but it is a vital next step in ensuring that our constitutional settlement is fair and fit for the future.”*



The proposals gained support from many on the Conservative side of the House. For example, **Rt Hon. John Redwood MP**, said it addressed *“the problem that devolution has posed”* whereby Members of Scottish Parliament could vote for lower income tax in Scotland, whilst Scottish Members of Parliament voted for higher income tax for the rest of the UK.

However, the proposals attracted hostility from the opposition parties. The Leader was also criticised for introducing them at speed and without cross-party consultation. The Shadow Leader of the House, **Angela Eagle MP** (Lab), described the Leader’s proposal for a debate before the summer recess as *“an outrage”* and described the proposals themselves as *“rushed and partisan”*. For the Scottish National Party, **Pete Wishart MP** described them as *“constitutional bilge and unworkable garbage”*. On 6 July 2015 the Speaker and the House agreed to a request by the Liberal Democrat Member, **Alistair Carmichael MP** to have an emergency debate on the proposals. The debate was held the following day. The debate took place on the neutral motion that *“This House has considered the means by which the Government seeks to deliver the objectives outlined by the Leader of the House in his Statement on English Votes on English Laws.”* Nonetheless, at the end of the debate the Opposition parties called a vote. The Government abstained from the vote and the motion was defeated by 291 votes to 2. The Government has since revised its proposals and intends to bring them back to the House at a later date.



# COMMONWEALTH SERJEANTS AT ARMS GATHER IN LONDON FOR 600<sup>TH</sup> ANNIVERSARY

## Commonwealth Serjeants at Arms gather in London for 600<sup>th</sup> anniversary

Serjeants at Arms from across the Commonwealth gathered at the Association of Commonwealth Serjeants at Arms Conference 2015 which was held in London as part of the celebrations for the 600<sup>th</sup> anniversary of the post of Serjeant at Arms in the UK Parliament's House of Commons.

*Lawrence Ward\*, the 40<sup>th</sup> Serjeant at Arms at Westminster, discusses the anniversary and outlines the ways in which the UK Parliament marked the occasion.*

## Marking the 600<sup>th</sup> Anniversary

As part of the UK Parliament's anniversary commemorations for the 600<sup>th</sup> anniversary of

the post of Serjeant at Arms in the UK Parliament's House of Commons,

50 Serjeants at Arms, Ushers of the Black Rod and their equivalents from state and national legislatures from across the Commonwealth and the USA attended the Association of Commonwealth Serjeants at Arms Professional Development Conference 2015 from 27-31 July. The purpose of this conference was to provide an opportunity to discuss the shared experiences of managing and supporting parliamentary democracy. Delegates participated in regional group meetings, workshops, field visits and plenary sessions, and had tours of the Palace of Westminster and the Elizabeth Tower.

On Monday 27 July a Service was held at All Saint's Church in Wandsworth, London where there is a memorial plaque to the first Serjeant at Arms in Westminster, Nicholas Maudit. The Service was led by the Speaker's chaplain, the Reverend Rose Hudson-Wilkin and included readings by the current Serjeant at Arms and Black Rod and an address by local historian, Dorian Gerald as well as music performed by the St Mary-at-Hill Choir. The Mayor of Wandsworth, Cllr Nicola Nardelli, and the local Member of Parliament and Government Minister, Jane Ellison MP also attended.

## Parliament in the Making

This year is momentous for the UK Houses of Parliament as we commemorate a series of major

number of other anniversaries: 50 years since Churchill's death (24 January 1965), 50 years since the first Race Relations Act (8 December 1965), 200 years since the Battle of Waterloo (18 June 1825), 600 years since the Battle of Agincourt (25 October 1415) and 600 years since the first Royal Serjeant at Arms was appointed (1415).

Throughout 2015, the UK Parliament is bringing these anniversaries to life through a year-long programme of public engagement across the United Kingdom, encouraging people of all ages to come together to mark and remember the movements and moments that tell the story of the UK's democratic heritage.

## History of the Role of Serjeants at Arms

The office of Serjeant at Arms dates back to 1415 and the reign of Henry V when the Serjeant at Arms was responsible for carrying out the orders of the UK's House of Commons, including making arrests.

Today, the Serjeant at Arms in the UK Parliament is still appointed by the Monarch and is responsible for all aspects of access to the House of Commons and for security and keeping order in the Chamber, galleries, Committee rooms and all Commons' areas of the parliamentary estate. There are also ceremonial aspects to the role that date back to



anniversaries, including 800 years since the sealing of Magna Carta and the 750<sup>th</sup> anniversary of Simon de Montfort's representative parliament, which paved the way for the House of Commons as we know it today.

2015 also marks a





Above and opposite page bottom: Images from the Service at All Saint's Church in Wandsworth, London. Image credits: © Jessica Taylor, UK Parliament

the early days of the office and the Serjeant at Arms wears Georgian court dress and carries a sword. At the head of

the daily Speaker's Procession, the Serjeant at Arms is required to carry the Mace and also processes into the House of Lords during the State Opening of Parliament, Prorogation and during the election of the Speaker - but without the Mace.

Many Commonwealth Parliaments have a Serjeant at Arms with similar roles to the

UK Parliament, responsible for a combination of day-to-day security and keeping order in the Chambers of Parliament and a ceremonial role in the Parliament at different times of the year.

A small exhibition containing historical artefacts, photographs and pictures as well as information about the role of the UK's Serjeant at Arms is displayed in the Norman Porch at the Houses of Parliament until the end of August. This provides the many visitors to the UK Parliament who undertake public tours over the summer to learn more about the modern role and its history.

A book has also been revised by the UK Parliament's House of Commons library that expands upon the history of the role and includes accounts of fascinating events such as the role the Serjeant at Arms played in the many confrontations with the Suffragettes and during the

English Civil War. It is available from the UK Parliamentary bookshop.

*\*Lawrence Ward, the Serjeant at Arms, has worked in the House of Commons at the UK Parliament since 1997, holding the post of Assistant Serjeant at Arms since 2008. Mr Ward took up the post of Serjeant at Arms on 1 May 2012.*

Below: Association of Commonwealth Serjeants at Arms Conference 2015 delegates pictured with The Speaker of the UK Parliament's House of Commons, Rt Hon. John Bercow MP and The Lord Speaker of the House of Lords, Baroness D'Souza (centre). Image credit © Roger Harris, UK Parliament



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Portrait of The Queen © John Swannell/Camera Press



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