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### Paper

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### **Abstract:**

#### The independent effect—the relevance, influence and impact of independent politicians on a parliamentary democracy

‘Where no counsel is, the people fall; but in the multitude of counsellors there is safety.’<sup>1</sup>

In the entrance to the State Parliament of Victoria in Australia, the aforementioned words can be seen on the mosaic floor of the vestibule. Although these words originate from a biblical proverb that is more than 2000 years old, they are directly relevant to any parliamentary democracy, no matter how old. The overarching principle being that a healthy democracy is reliant on the contributions of many stakeholders.

Political parties are relevant and influential participants in a political system and democracy without parties would not be possible. However, what value do non-party (or independent) politicians bring to a parliamentary democracy? Do independents have relevance and influence in a political system as well?, What do independents have to offer a parliamentary democracy?, and Do they make an indispensable contribution to a parliamentary democracy? In answering these questions, the paper offers a theoretical framework from which to understand the world of independent politics and the independent effect—the impact of independents on a parliamentary democracy through their contributions.

The paper will draw from recent research on the history and place of independents in parliamentary democracies—specifically those in Australia—federally and in its six states and two territories.

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<sup>1</sup> Proverbs 11:14.

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*‘Where no counsel is, the people fall; but in the multitude of counsellors there is safety.’<sup>2</sup>*

In the entrance to the state parliament of Victoria in Australia, the aforementioned words can be seen on the mosaic floor of the vestibule. Although these words originate from a biblical proverb that is more than 2000 years old, they are directly relevant to any parliamentary democracy, no matter how old. The overarching principle being that a healthy democracy is reliant on the contributions of many stakeholders.

The Commonwealth of Australia and its six states and two of its territories are parliamentary democracies.<sup>3</sup> At the heart of a parliamentary democracy is representativeness and responsibility—in which citizens choose their representatives at regular elections to a parliament to act on their behalf and to represent their interests and concerns between elections (representative government)—and in which there is a political system where the executive government is drawn from and is accountable to the parliament (responsible government).

Inherent in the concept of parliamentary democracy are the principles that power should not be concentrated in the hands of a few; those responsible for governing are held accountable; that better decisions are made by seeking a wide range of advice from others and considering other points of view; and citizens not only get to choose their representatives at regular elections but that the system provides for a variety of choice beyond party politicians.

This paper is about the effect that independent members have on a parliamentary democracy by offering the electorate an alternative form of representation to that sourced from major or minor parties at election time and, once elected, by the parliamentary contributions of these non-party politicians. It draws from recent research<sup>4</sup> on the history and place of independents in parliamentary democracies—specifically those in Australia—federally and in its six states and two territories.

The place and contribution of independents is examined in the context of parliamentary democracy—*firstly*, as it concerns relevance—offering the electorate an alternative form of representation to that sourced from major or minor parties at election time, and *secondly*, as it concerns influence and impact—once elected, the parliamentary contributions of these non-party members of parliament who sit on the crossbenches.

This paper is structured in three parts:

- Part one—sets the scene for the history and place of independents in parliamentary democracies—a road travelled and a road never travelled. It explores at a broad level the place and context of independents and asks the question—*What is an independent politician?*

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<sup>2</sup> Proverbs 11:14.

<sup>3</sup> The six states are New South Wales (NSW), Victoria (Vic), Tasmania (Tas), South Australia (SA), Queensland (Qld), and Western Australia (WA). The two territories are the Northern Territory (NT) and the Australian Capital Territory (ACT).

<sup>4</sup> Cullen, A 2022, *The Independent Effect—Parliamentary contributions from the crossbenches in Australia* (2<sup>nd</sup> edn.), Parliament Publishing, Canberra.

- Part two—explores the independent landscape in Australia. This part draws from a unique data set specifically compiled and analysed as part of recent research on the history and place of independents in Australia.<sup>5</sup>
- Part three—relevance and influence—examines the effect of independents on parliamentary democracies.

## Part one: The history and place of independents in parliamentary democracies—a road travelled and a road never travelled

In a parliamentary democracy, political parties have an instantly recognisable place and context. The same cannot be said of independent politicians. In Australia, for the purposes of elections, the Australian Electoral Commission (AEC)<sup>6</sup> currently defines independents as: ‘candidates or members of parliament who do not belong to a registered political party’.

In contrast, the Macquarie Dictionary<sup>7</sup> gives two meanings for the term ‘independent’, when used as a noun in a political context. These are: (i) ‘some-one who votes without blind loyalty to any organised party’; and (ii) ‘a candidate for election or an elected representative in parliament who is not formally affiliated with a political party’.

The AEC definition is almost the same as the Macquarie Dictionary’s second definition. The first Macquarie Dictionary definition is much broader than the second and would include elected party members who were permitted by their party to vote in any way that they saw fit. It would cover those party politicians who cross the floor to vote against their party. It may also extend to politicians who resign from the party from which they were elected during the term of the parliament and sit on the crossbench as an independent. Whilst the official AEC definition and the Macquarie Dictionary definition are contemporary in nature and refer to political parties, independent politicians are not a new phenomenon. They existed before political parties existed.

Before the advent of political parties, independents existed in the parliaments of the older political systems such as the Westminster system which was founded in England and later adopted by the parliaments of the Australian colonies, which became the states and the territories after federation, and the federal Australian parliament.

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<sup>5</sup> Election results for all federal, state and territory parliaments from the time the two-party system was considered established in Australian jurisdictions to the end of 2021 were analysed to identify all candidates elected under an independent label of some kind. An extensive analysis of biographical information for each elected independent was then carried out to determine the context and extent of their independent status.

<sup>6</sup> Australian Electoral Commission—Glossary (online), viewed 10 December 2019, <<https://www.aec.gov.au/footer/Glossary.htm#i>>.

<sup>7</sup> Macquarie Dictionary 2019 (online), viewed 26 November 2019.

### *A road travelled*

In England and the UK, independents can be traced back to Elizabethan times. In the Elizabethan era, the independents were those members of parliaments (MPs) who resisted the wishes of the Crown, or the great families, even at the cost of imprisonment in the Tower. They were members who were elected under their 'own steam', and 'once at Westminster, could not be relied upon to give consistent support to any particular policy or any particular personality'.<sup>8</sup>

It is in the twentieth century that the 'modern independents' or 'non-party men without reservations' appear.<sup>9</sup> The new place of independent politicians emerges as an alternative response to the evolution of political parties as disciplined and organised party machines. The founder of the UK Hansard Society, Commander Stephen King-Hall has emphasised that these types of members have an important place, not just as an alternative choice for the voter but that, once elected, in terms of the potential value of their parliamentary contribution. Specifically, the 'modern independents' are those who make 'the last stand on behalf of the theory that [p]arliament as a whole—and not the party therein—is the opposition to the executive'.<sup>10</sup>

Prior to the formation of the party system in Australia in the early 1900s, the organising framework of Australian politics in each jurisdiction was characterised by loose party groupings, coalitions or factions. Three groupings or factions were prominent—Protectionists, Free Traders and Labour.<sup>11</sup> Alfred Deakin famously described this arrangement 'as a game of cricket with three sides'.<sup>12</sup>

The formation of the two-party system(s) of parliamentary democracy in Australia occurred at the federal level in 1909 when the Protectionist and Anti-Socialist<sup>13</sup> parties merged to form the Commonwealth Liberal Party as a united opposition, and alternative, to the Australian Labor Party (ALP), which had formally formed federally in 1901. At the state level, the two-party system had essentially also become established by 1910, with the creation of the Liberal and Labor parties within respective state jurisdictions.

Whilst the formation of the party system in Australia and its later iterations established the organising framework for Australian politics, the place of an independent politician as an alternative to the parties or party politicians also became established.

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<sup>8</sup> King-Hall, S 1951, 'The Independent in politics', *Parliamentary Affairs*, V(1), p. 103.

<sup>9</sup> *Ibid.*, p. 113.

<sup>10</sup> *Ibid.*

<sup>11</sup> The spelling of Labour changed to Labor in 1912.

<sup>12</sup> Strangio, P, Hart't, P and Walter, J 2016, *Settling the office: the Australian Prime Ministership from federation to reconstruction*, Miegunyah Press, Carlton, Vic, (The Australian Prime Ministership, Volume 1); Adams, P 2016, 'Settling the PM's office', *Late Night Live*, ABC Radio—Radio National, viewed 7 February 2019, <<https://www.abc.net.au/radionational/programs/latenightlive/settling-the-office/7130222>>.

<sup>13</sup> Formerly the Free Traders Party.

### *A road never travelled*

There are some political systems in the world where potentially insurmountable electoral barriers are placed in front of independent politicians. This can be in the form of either candidate nomination requirements, or electoral eligibility rules that severely restrict or, in some cases, do not permit independent candidates.

Even where electoral rules permit independent candidates, nomination requirements may be so restrictive that independent candidates may not be able to meet them. For example, deposit requirements that are excessive or have specific conditions attached may prove challenging for candidates in some countries. Political scientist Dawn Brancati has explained that:

The difficulty candidates face in meeting deposit requirements depends not only on the size of the deposit, but also on a country's level of economic development. Obviously, a thousand dollar deposit in the United States is much easier to meet than a thousand dollar one in Turkey or Niger. As in the case of signature requirements, some countries provide exceptions to deposit requirements under specific conditions. In India, for example, independent candidates representing Scheduled Castes and Tribes pay a deposit that is half that of other independent candidates.<sup>14</sup>

Further, there are some countries where electoral eligibility rules do not permit independent candidates. For example, in the European Union (EU), only six of the EU member states 'explicitly permit independent candidacies'—Bulgaria, Cyprus, Estonia, Malta, Ireland and Romania.<sup>15</sup> The other EU member states 'use list-based electoral rules that do not allow single-candidate lists, although in Austria, Finland and the Netherlands single-candidate lists are not explicitly prohibited'.<sup>16</sup>

In Mexico, at the state congress level, independents have only been permitted to stand at the state level in the last seven years, 'after a 2014 change to the federal constitution allowed for candidates not affiliated with parties'.<sup>17</sup>

### Part two: The history and place of independents in Australia—a road well-travelled

Australia has a well-travelled road for independent representatives in the respective parliaments<sup>18</sup> of its six states, two territories and federally—spanning more than a century.

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<sup>14</sup> Brancati, D 2008, 'Winning Alone: The Electoral Fate of Independent Candidates Worldwide', *The Journal of Politics*, 70(3), pp. 648–662.

<sup>15</sup> On 31 January 2020 the UK officially left the EU. The UK then entered an 11-month transition period as part of the next stage of Brexit.

<sup>16</sup> Weeks, L 2017, *Independents in Irish party democracy*, Manchester University Press, Manchester, p. 56; Ehin, P, Ülke Madise, MS, Rein, T, Kristjan, V and Priit, V 2013, *Independent Candidates in National and European Elections*, Policy Department, European Parliament, Brussels, p. 18.

<sup>17</sup> Villegas, P 2018, 'Wave of Independent Politicians Seek to 'Open Cracks' in Mexico's Status Quo', *New York Times*, 11 March, viewed 25 May 2019, <<https://www.nytimes.com/2018/03/11/world/americas/mexico-election-pedro-kumamoto.html>>.

<sup>18</sup> Australia currently has six bicameral parliaments and three unicameral parliaments.

Election results for all federal, state and territory parliaments from the time the two-party system was considered established<sup>19</sup> in Australian jurisdictions to the end of 2021 were analysed to identify all candidates elected under an independent label of some kind. An extensive analysis of biographical information for each elected independent was then carried out to determine the context and extent of their independent status. This data shows that independents are not a new phenomenon in Australia—they have been present throughout most of this time to the present day. It also shows they have not been localised to only some of the jurisdictions—they have been present in all of the nine jurisdictions—although there clearly have been times when circumstances have strengthened the electoral support for independents and have resulted in the election of higher numbers of independents in certain jurisdictions.

A summary of key findings is set out in Table 1—A picture of the history and place of independent politicians in Australia.

Table 1—A picture of the history and place of independent politicians in Australia<sup>20</sup>

Parameter	Analysis/finding
<i>Decade</i>	Independents have been elected in every decade from the time the two-party system was considered established <sup>21</sup> in Australian jurisdictions.
<i>Jurisdiction</i>	Independents have featured in all jurisdictions.
<i>Chamber type</i>	Independents have been elected to all types of parliamentary chamber. They have been greatest in number in Australian lower houses.
<i>Voting system</i>	Independents have been elected under plurality, majoritarian and proportional voting systems. Whilst they have been elected under all three types of systems, the data shows that their electoral strength has been more supported by majoritarian systems, as compared with the other two types of systems.
<i>Election type</i>	Independent politicians have been elected predominantly at general elections but also at by-elections.
<i>Gender and jurisdiction</i>	Both male and female independents have been elected in every jurisdiction. Male independents have been elected in higher numbers across nearly all jurisdictions.
<i>Constituency/district representation</i>	Independents representing metropolitan seats and regional/rural districts have been elected. Higher numbers of independents have been elected to regional/rural seats as compared with metropolitan seats.
<i>Federal chamber and state/territory representation</i>	Since 1910, all states and territories have been represented by an independent in the federal House of Representatives at some time.

### Part three: Relevance and influence—the effect of independents on parliamentary democracies

Political parties are acknowledged as relevant and influential participants in a political system. Democracy without parties would not be possible. Do independents have relevance and influence in a political system as well? What do independents have to offer a parliamentary democracy? Do they make an indispensable contribution to a parliamentary democracy, as the political scientist Graham Maddox has highlighted below?

<sup>19</sup> 1910.

<sup>20</sup> Cullen, op. cit.

<sup>21</sup> 1910.

...minor parties and independents are indispensable for infusing new issues into the political arena and, at least sometimes, for keeping the big parties on their toes.<sup>22</sup>

This part examines the relevance and influence of independent politicians in a parliamentary democracy. It offers a theoretical framework from which to understand the world of independent politics and the independent effect—the impact of independents on a parliamentary democracy through their contributions.

### Defining relevance

For independents, relevance is concerned with the applicability of these individuals to the institution of parliament, their impact on policy, and the way they conduct politics.<sup>23</sup> At a broad level, their place as participants in a political system, in particular Australia has been set out earlier. However, at a practical level, what is their relevance as a politician (in a parliamentary system)?

In political science, various scholars have offered differing perspectives as to what political relevance means. For example, Sartori (1976)<sup>24</sup> has suggested that the relevance of a politician in the parliamentary arena is connected with their blackmail or coalition potential. Herzog (1987)<sup>25</sup> has advanced the view that relevance is not limited to behaviour once elected but can also apply to behaviour prior to election. As an example of this, the act of standing for election can impact the electoral behaviour of entrenched parties encouraging them to campaign in different ways and/or to respond to previously unaddressed or emerging issues. Successful election and the increased legitimacy it bestows, taken together, can encourage a broadening of ‘the ideological boundaries of a political culture’<sup>26</sup> and lead to ‘policy poaching by the main parties or a refocusing of attention on previously unreflected issues’.<sup>27</sup>

Others (Lucardie, 1991)<sup>28</sup> have defined relevance in terms of the ‘mobilisation potential’ of a politician which encompasses behaviour prior to and once elected. Mobilisation potential for an independent is defined as the ability to: draw attention and challenge the status quo of other politicians; exert influence in the policy making process; and/or refocus attention on previously unaddressed or ignored issues—whilst at the same time offering a different form and style of politics.

Broadly speaking, relevance in a political context is therefore the capacity to mobilise some form of action or response either when seeking, holding and retaining office; it is also not a static state and its strength can shift in response to a range of political situations, which can either hinder or promote relevance.

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<sup>22</sup> Maddox, G 1992, ‘Political Stability, Independents and the Two Party System’, *Current Affairs Bulletin*, 69(1), p. 24.

<sup>23</sup> Copus, C et al. 2008, ‘Minor Party and Independent Politics beyond the Mainstream: Fluctuating Fortunes but a Permanent Presence’, *Parliamentary Affairs*, 62(1), pp. 4–18.

<sup>24</sup> Sartori, G 1976, *Parties and Party Systems: A Framework for Analysis* (vol. 1), Cambridge University Press, New York.

<sup>25</sup> Herzog, H 1987, ‘Minor Parties: The Relevancy Perspective’, *Comparative Politics*, 19(3), pp. 317–329.

<sup>26</sup> Copus, C et al. 2008, ‘Minor Party and Independent Politics beyond the Mainstream: Fluctuating Fortunes but a Permanent Presence’, *Parliamentary Affairs*, 62(1), p. 4.

<sup>27</sup> *Ibid.*, p. 8.

<sup>28</sup> Lucardie, P 1991, ‘Fragments from the pillars: small parties in the Netherlands’ in F. Mueller-Rommel and G. Pridham (eds), *Small Parties in Comparative and National Perspective*, SAGE, Newbury Park, p. 123.



When assessing the impact of independent members, establishing relevance is only one part of the equation, what follows is determining their influence—that is, how do they translate their mobilisation potential into action?

### Determining influence

Influence is concerned with the effect independents can have on the functions of democracy and institutions' governance. This can be explored by examining the nature of the political activity of independents both inside and outside parliament whilst they are seeking, holding and retaining office. This political activity can be organised across a spectrum ranging from measurable through to less measurable to more subtle influences. It can be argued that it is the less measurable or more subtle aspects of political activity that have the greatest influence.<sup>29</sup>

### Political activity

Political activity in a Westminster-style parliamentary democracy, like Australia, is underpinned by two important theoretical concepts—namely, the notion of a debating or deliberative parliament; and different modes of interaction between the executive and the parliament. The concepts are both highly relevant to independent politicians in Westminster-style systems. The concepts are discussed below.

#### *The notion of a debating or deliberative parliament*

Finnish academic Kari Palonen (2018) has advanced that there are three types of parliamentary politics or political action—namely: legislative; representative and deliberative. All parliaments engage in all three types of action to some degree. These parliaments can be organised into three groups based on whichever form of political action is more dominant.

In Westminster-style parliaments, the dominant form of political action is deliberative. This is deliberation in the form of parliamentary debates *pro et contra* (for and against). For these parliaments, debate 'forms the methodological principle of parliamentary politics'.<sup>30</sup> Debate may cover motions on the agenda; the rules of agenda setting; and the rules of parliamentary procedure itself.

The key features of deliberative parliamentary politics are<sup>31</sup>:

- Parliamentary decisions cannot be properly understood without considering agenda setting and debates preceding resolutions.
- Whilst government motions have priority, time for motions by the Opposition and backbenchers must be included in the procedures.

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<sup>29</sup> Russell, M and Sciara, M 2008, 'Independent Parliamentarians En Masse: The Changing Nature and Role of the "Crossbenchers" in the House of Lords', *Parliamentary Affairs*, 62(1), p. 44.

<sup>30</sup> Palonen, K 2018, 'A comparison between three ideal types of parliamentary politics: representation, legislation and deliberation', *Parliaments, Estates and Representation*, 38(1), p. 11.

<sup>31</sup> *Ibid.*, p. 14.

- The key procedural instruments to empower parliament debate are the amendments, for they can interrupt debate on a motion and require an assessment of their strengths and weaknesses as well as open a new debate on the advantages and disadvantages of the amendments in relation to the original motion.
- Importantly, the debate for and against does not concern so much whether the original motion should be passed or not, but rather, whether one or more of the amendments to the original motion shall be passed.
- Debate can take place in the chamber and in committees—and both forums matter. In the Westminster tradition—the difference between the two forums is not size but in the rules of debate. In the chamber, members can only speak once on an agenda item. In committees (including committees of the whole house), replies are allowed and expected.<sup>32</sup>

A debating or deliberative parliament provides independent politicians with an equally important place to that of party politicians—namely<sup>33</sup>:

- In such a parliament, ‘the significance of electoral results and the numerical strength of the parties can be altered in the course of parliamentary deliberations’.
- In principle, ‘every speech and vote can threaten to reset the parliamentary constellation’.
- ‘[O]ne of the strengths of debating parliaments is that political struggle’ is not limited to a ‘government majority versus an opposition’. In effect, it is the opposite—‘Westminster procedure presupposes another political divide, namely occasions for parliamentary initiative and debate between frontbenchers and backbenchers regardless of parties’.
- ‘[T]horough debates are not merely a brake on governmental initiatives but occasions for individual members to use their political imagination and judgement’.

#### *Different modes of interaction between the executive and the parliament*

Political scientist Anthony King (1976)<sup>34</sup> has advanced that parliaments are complex organisations comprised of competing actors and the various modes of interaction between these actors cannot be merely reduced to an analysis of the relations between the executive and the legislature. In the Westminster system, the legislature is the parliament. King essentially ‘emphasised a focus on multiple relationships inside legislatures’ as a means to ‘strip away the noise and present parliamentary dynamics as a set of stylised relationships between different actors’.<sup>35</sup>

King argued that to fully understand the modes of interaction between competing actors within a parliament, one must consider the various ‘modes’ through which these actors can interact to challenge the executive. He identified five modes in which competing actors can interact—namely: non-party mode; inter-party mode; cross-party mode; oppositional mode; and intra-party mode.<sup>36</sup>

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<sup>32</sup> Ibid., p. 15.

<sup>33</sup> Ibid., p. 15

<sup>34</sup> King, A 1976, ‘Modes of Executive-Legislative Relations: Great Britain, France, and West Germany’, *Legislative Studies Quarterly*, 1(1), pp. 11–36.

<sup>35</sup> Russell, M and Cowley, P 2018, ‘Modes of UK Executive-Legislative Relations Revisited’, *The Political Quarterly*, 89(1), p. 18.

<sup>36</sup> King, A 1976, ‘Modes of Executive-Legislative Relations: Great Britain, France, and West Germany’, *Legislative Studies Quarterly*, 1(1), pp. 11–36.

Of the five modes—three are based primarily on interaction between and within parties (inter-party; oppositional; and intra-party), whilst the other two are based primarily on relationships that are not organised around parties (non-party and cross-party).

The oppositional mode is concerned with interactions between the government and the opposition; intra-party mode is the relationship between the government and its own backbenchers; and the inter-party mode is focused on interactions between combinations of cohesive parties, in the form of coalitions, with the government.

The non-party mode is concerned with interactions that unite various political actors, including independents, based on the interests of the parliament and not on party terms. According to King, this mode encourages members to ‘change their perception of their own roles’—seeing themselves as parliamentarians and not narrowly in party terms. Independent politicians predominantly work in the non-party mode.<sup>37</sup>

Parliamentary committees are legislative organisation mechanisms that can strengthen the non-party mode (and cross-party mode) as they are places where bridges can be built across party lines. These interactions in committees may also carry over to ways of working in the chamber. The cross-party mode unites various politicians in collective support for a specific position or ideology. Independents can encourage and support cross-party working.

Independent politicians can make important contributions to cross-party and inter-party modes of working, as well as the non-party mode of working, by acting as neutral or honest brokers and fostering these modes of working.

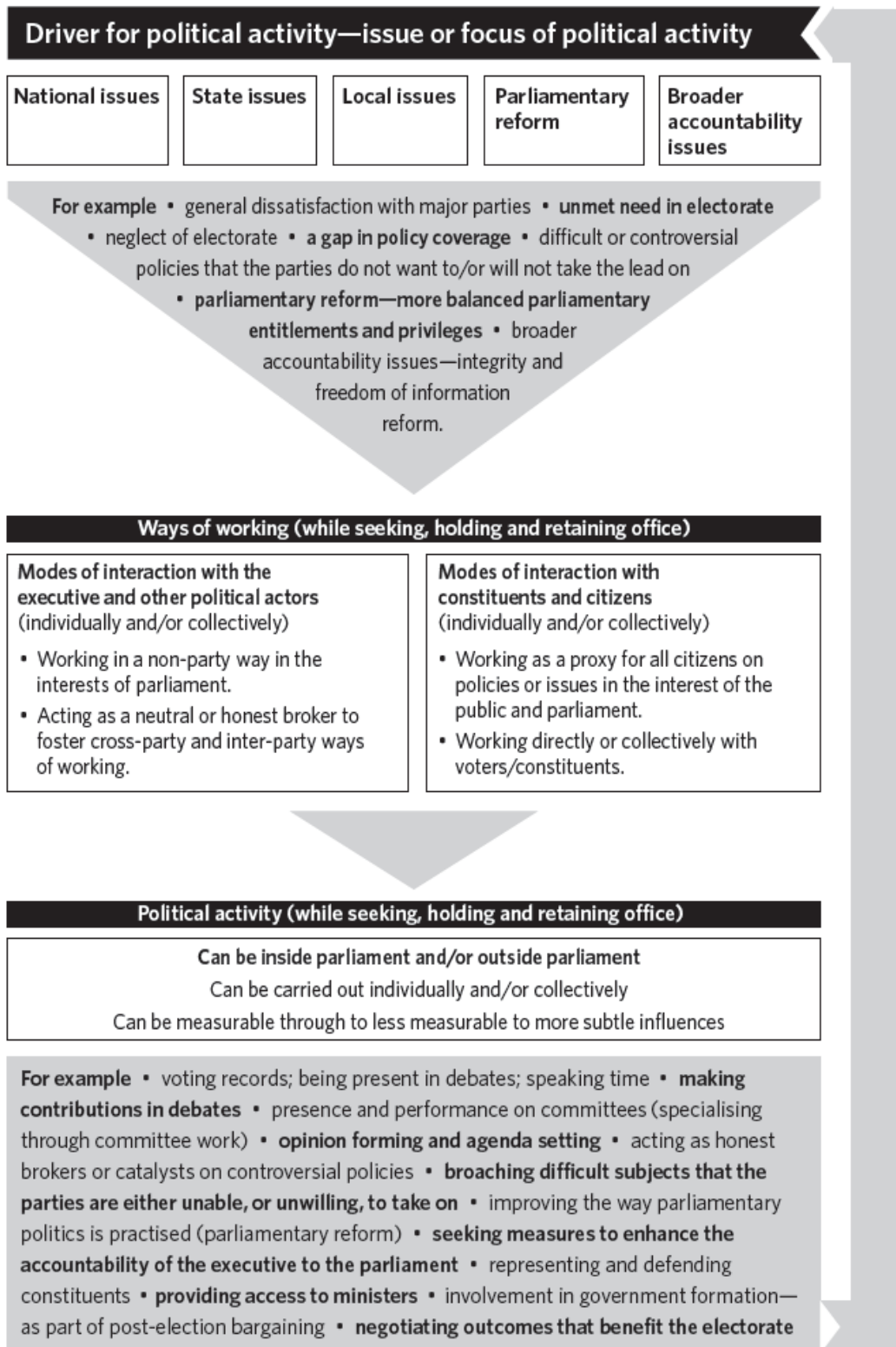
#### A framework for understanding the political activity of an independent politician

Underpinned by the aforementioned theoretical concepts for a Westminster-style parliament—the notion of a debating or deliberative parliament; and different modes of interaction between the executive and the parliament—the political activity of an independent in a Westminster-style parliamentary democracy can take place either inside or outside parliament. It can also encompass activity when seeking, holding and retaining office. The activity can involve different ways of working or interacting with the executive and other politicians and with constituents and citizens. The driver for political activity may be either, or a combination of, national issues, state issues, local issues parliamentary reform or broader accountability issues. Figure 1 sets out a framework for understanding the political activity of an independent politician in a parliamentary democracy. Further detail on various aspects of the political activity of independent politicians follows Figure 1. Some concepts related to the political activity of an independent politician are drawn from the work of UK political scientist Meg Russell.

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<sup>37</sup> Ibid., p. 19.

Figure 1: A framework for understanding the political activity of an independent politician



### *Measurable political activity*

It has been suggested that the political activity of independents is best considered through a framework of 'policy, office, or votes', with involvement in government formation, i.e., holding the balance of power, being a possible activity but not a commonplace one.<sup>38</sup>

Measurable political activity for a framework of 'policy, office, or votes' can include: voting; being present in debates; making contributions in debates; and having roles on committees proportional to respective strength in the chamber. Whilst these activities are clearly visible and measurable, the extent to which an independent politician may have influence doing them varies.

For an independent politician, every vote is a free vote and these non-party politicians often claim that such freedom can be very liberating.<sup>39</sup> Others have observed that it can be 'a strain as much as a privilege'.<sup>40</sup> Independents can be faced with hundreds of votes each year, and unlike their party colleagues, do not have the benefit of a whip and/or an informed party position to tell them which way to vote. Independents are forced to think about and prepare for every single vote. This is further accentuated by having limited information at hand to tell them which way to vote, and very little time to gather that information.<sup>41</sup>

Peter Andren, former Australian federal independent for the seat of Calare in NSW, reflected on the challenges independents face when voting, as follows:

While I am selective when it comes to voting, I will always vote against any attempt by the government to gag debate through use of the 'guillotine', which is often used to muzzle non-government members. I take my vote seriously, and many times I am still wrestling with the arguments for and against a piece of legislation as I head down the corridor and stairs to the House. Even on votes of great importance, I often have to tell the Labor or coalition members next to me (depending which side I am supporting) what *they* are voting on. There's a general understanding that 'the independents know what's going on'. And we do.<sup>42</sup>

Voting patterns can be indicators of the effect individual independent members may have on policy.<sup>43</sup> However, with the exception of those instances where an independent may hold the balance of power and can exercise a decisive influence, this form of political activity may not be

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<sup>38</sup> Miller, R and Curtin, J 2011, 'Counting the costs of Coalition: The case of New Zealand', *Political Science*, 63(1), pp. 106–125.

<sup>39</sup> Cowley, P and Stuart, M 2008, 'There was a Doctor, a Journalist and Two Welshmen: the Voting Behaviour of Independent MPs in the United Kingdom House of Commons, 1997–2007', *Parliamentary Affairs*, 62(1), pp. 19–31.

<sup>40</sup> Martin Bell quoted in: Cowley, P and Stuart, M 2008, 'There was a Doctor, a Journalist and Two Welshmen: the Voting Behaviour of Independent MPs in the United Kingdom House of Commons, 1997–2007', *Parliamentary Affairs*, 62(1), p. 21.

<sup>41</sup> Prosser, B 2012, 'New integrity issues for independents and minority governments', *Policy Studies*, 33(1), pp. 79–95; Cowley, P and Stuart, M 2008, 'There was a Doctor, a Journalist and Two Welshmen: the Voting Behaviour of Independent MPs in the United Kingdom House of Commons, 1997–2007', *Parliamentary Affairs*, 62(1), p. 22.

<sup>42</sup> Andren, P 2003, *The Andren report: an independent way in Australian politics*, Scribe, Melbourne, p. 116.

<sup>43</sup> Russell and Sciara, op. cit., p. 42.

considered as one of the main ways they seek to gain influence.<sup>44</sup> Accepting this, there are other areas where independents can seek to gain influence and have an impact beyond voting alone. These areas can include: simply being present in debates; speaking time; contributing to debates in the chamber and committees; presence and performance on committees; representing and defending their constituents; and specialisation through committee work.<sup>45</sup>

However, the extent to which an independent may participate in political activity in parliament is determined by legislative rules and organisation.<sup>46</sup>

Further, it has been recently suggested that the influence independents can have on policy in Australia's two and a half-party system may be more in terms of blocking policy initiatives rather than creating new policy.<sup>47</sup> Danielle Wood of the Grattan Institute has observed that independents:

[i]n a way [have] been more significant in terms of what they've prevented happening rather than new initiatives.<sup>48</sup>

Another form of measurable activity is access to ministers. Independents by virtue of their status attract attention and this can facilitate greater access to the executive on behalf of their constituents. Further, government ministers may at times be willing to meet with or permit officials to brief independents on the content of bills. This can be useful as independents do not have the regular access to briefings on bills and other matters that their party colleagues receive.<sup>49</sup>

Two other important visible and measurable forms of political activity of independents are the involvement in government formation and parliamentary reform. These forms of activity are expanded on below.

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<sup>44</sup> Cowley, P and Stuart, M 2008, 'There was a Doctor, a Journalist and Two Welshmen: the Voting Behaviour of Independent MPs in the United Kingdom House of Commons, 1997–2007', *Parliamentary Affairs*, 62(1), pp. 19–31.

<sup>45</sup> Cowley and Stuart, op. cit., pp. 19–31; Fox, R 2019, 'The Independent Group of MPs: will they have disproportionate influence in the House of Commons?', *Hansard Society*, 4 March.

<sup>46</sup> Döring, H (ed.) 1995, *Parliaments and Majority Rule in Western Europe*, St. Martin's Press, Frankfurt; Fox, op. cit.

<sup>47</sup> Wood, D, Daley, J and Chivers, C 2018, *A crisis of trust: the rise of protest politics in Australia*, Grattan Institute, Carlton, Victoria; Koziol, M 2019, 'Why the era of the independents in the box seat is almost over', *The Sydney Morning Herald*, 18 January, viewed 17 November 2019, <<https://www.smh.com.au/politics/federal/why-the-era-of-the-independents-in-the-box-seat-is-almost-over-20190115-p50rh4.html>>.

<sup>48</sup> Quoted in: Koziol, M 2019, 'Why the era of the independents in the box seat is almost over', *The Sydney Morning Herald*, 18 January, viewed 17 November 2019, <<https://www.smh.com.au/politics/federal/why-the-era-of-the-independents-in-the-box-seat-is-almost-over-20190115-p50rh4.html>>; Wood, D, Daley, J and Chivers, C 2018, *A crisis of trust: the rise of protest politics in Australia*, Grattan Institute, Carlton, Victoria.

<sup>49</sup> McGowan, C 2020, *Cathy goes to Canberra—Doing politics differently*, Monash University Publishing, Clayton.

### *Involvement in government formation—holding the balance of power*

There are occasions where an independent politician may either solely, or together with other independents or other crossbenchers, hold the balance of power. Through a process of post-election bargaining, these politicians can extract a range of concessions—e.g. official positions, constituency interests, broader policy interests and/or constitutional and parliamentary change—in return for their agreement to support a minority government.

Some have the view that independents in these situations can exercise a ‘disproportionate negotiating power’ and that any concessions extracted are not placed before the electorate.<sup>50</sup> However, this is not always the case, for example, in NSW the 1991 memorandum of understanding that three independents—Clover Moore, Ted Mack and Peter Macdonald—had with the Premier at the time led to a referendum on four-year fixed parliamentary terms (which was subsequently held and passed).<sup>51</sup>

In all Australian parliamentary jurisdictions—federal, state and territory—there have been occasions where independents have held the balance of power after an election. The nature of the negotiated arrangements and agreements and the form of concessions extracted in return for support have varied.

Contents of these political arrangements have ranged from minimal (guaranteeing supply and confidence) to more expansive terms including: desired policy outcomes across a range of areas—ranging from specific environmental and forestry related issues to focusing on local issues, or on rural and regional interests generally; parliamentary and electoral reform; constitutional change; commitments to address respective constituent needs—for example, social and economic rejuvenation of specified areas; additional staffing and resourcing entitlements; and mechanisms to improve government and ministerial accountability.<sup>52</sup>

Further, in a departure from the norms of the Westminster system of Cabinet government, these arrangements have included independents being offered and taking up Cabinet posts, subject to certain conditions.<sup>53</sup>

The level of detail in the terms of the negotiated agreements range from a broad agenda focus (for example, emphasising principles, rather than details) to highly prescriptive in nature, where desired policy outcomes and deadlines for achievement are specified. Formal terms setting out the conditions under which the negotiated arrangements are to operate have been codified in writing in documents that have been referred to as either memorandums of understanding, compacts, accords, charters or agreements.

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<sup>50</sup> Norton, P 2013, *Parliament in British Politics* (2nd edn.), Palgrave Macmillan, Hampshire, pp. 208–209.

<sup>51</sup> Browne, P 2010, ‘The fabulous fiftieth NSW parliament, and other minority governments’, *Inside Story*, 10 September, p. 7, viewed 23 March 2018, <<https://insidestory.org.au/the-fabulous-fiftieth-nsw-parliament-and-other-minority-governments/>>.

<sup>52</sup> Griffith, G 2010, *Minority governments in Australia 1989–2009: accords, charters and agreements*, Background Paper No 1/10, NSW Parliamentary Library Research Service, Sydney, viewed 22 March 2018, <<https://www.parliament.nsw.gov.au/researchpapers/Documents/minority-governments-in-australia-1989-2009-acco/Minority%20Governments%20Background%20Paper.pdf>>, pp. 1–53.

<sup>53</sup> Griffith, op. cit., p. 9

Whilst post-election bargaining and subsequent agreements will always be the ‘products of their own unique political circumstances’, the history of these arrangements shows the extent to which each instance builds on the accumulated experience of those minority governments in Australia that have gone before.<sup>54</sup>

Invariably, the sustainability of some of the reforms independents negotiate is always subject to change when governments regain parliamentary majorities. Being in a position where an independent holds the balance of power can place them in an invidious position. Russell Savage, one of three independents to support the formation of a Labor minority government after the 1998 Victorian election, told a conference the following year that:

This issue of the balance of power caused me some significant anxieties and significant grief...<sup>55</sup>

Further, how independents reconcile and acquit their decisions to support various governments and the terms of these agreements can be an extra and uneasy burden these individuals must carry. During a radio interview in 2010, Peter Wellington, a former Queensland independent who supported a minority Labor government, reflected on what it was like for him to be in such a situation:

But I suppose I was sort of in a desperate situation because my electorate was very conservative, and I’m thinking, ‘Well, I think I’ve done the right thing, but let’s see what happens in the next election, I may not be here after then’.<sup>56</sup>

The arrangement mentioned previously—where an independent takes up a cabinet post subject to certain conditions—has occurred in three jurisdictions in Australia—namely, ACT;<sup>57</sup> SA; and WA. The conditions in these cases have included retaining status as an independent member and applying the conventions of collective cabinet responsibility only in relation to their own portfolio areas and the annual budget bills. The nature of these conditions have brought forth a range of views in the literature.<sup>58</sup> These have included: comment on the oddity of such arrangements under the Westminster parliamentary system of government<sup>59</sup>; and the potential effect such arrangements have on the blurring of the distinction between executive and parliament and the fundamental tenets of responsible government.<sup>60</sup> Jon Stanhope, a former ACT Chief Minister who formed a minority Labor government after the general election in 2001, commented that:

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<sup>54</sup> Griffith, op. cit., p. 41

<sup>55</sup> Browne, op. cit.; Costar, B and Hayward, D 2010, ‘Victoria’s unexpected minority’, *Inside Story*, 3 September, pp. 1–5, viewed 15 September 2019, <<https://insidestory.org.au/victorias-unexpected-minority/>>.

<sup>56</sup> Peter Wellington quoted in: Australian Broadcasting Corporation, ‘Trade my horse’, op. cit.

<sup>57</sup> The arrangement that occurred in the ACT took place in the Fourth Assembly (1998–2001) and was based on the April 1998 Pettit report, *Review of the Governance of the ACT*. The report had recommended increasing the number of ministers from 4 to 5 and had posed the question ‘whether it is possible to envisage a looser coalition arrangement that would enable some crossbenchers to serve as ministers’.

<sup>58</sup> Griffith, op. cit., p. 9.

<sup>59</sup> Palmieri, S 1999, ‘Political Chronicles—Australian Capital Territory, July to December 1998’, (45), *Australian Journal of Politics and History*, pp. 306–308.

<sup>60</sup> Palmieri, op. cit., pp. 306–308; Griffith, op. cit., pp. 1–53.



Our electoral system has meant minority governments have had to deal with a Parliament in which they did not control the numbers. Too often this has led to the practices and traditions of Westminster being compromised; to a blurring of the necessary distinction between executive and legislature; to the requirements of cabinet government and the demands of ministerial responsibility, that are a fundamental characteristic of the system, not being met.<sup>61</sup>

Some argue that an independent politician needs to hold the balance of power to make a difference in terms of influence. For example, John McLeay, one of the 14 independent MPs elected to the 39 seat lower house at the 1938 South Australian general election, later acknowledged 'that his three-year period in the House of Assembly was a waste of time, in terms of ... being able to accomplish anything as an independent'.<sup>62</sup> Further Michael Moore, an independent member of the Legislative Assembly who was appointed to the Liberal cabinet in the Australian Capital Territory in April 1998, was of the view in 2001 that he had:

...achieved more in the three and a half years that I spent as a minister than the years I spent on the cross benches ... I make no bones about it, it was a trade-off and in accepting a ministry I did lose some of my independence, but not all of it by any means.<sup>63</sup>

Others have argued that the reality of being in such a situation is not common-place and it should not be a desired goal. Independents can have considerable influence without holding the balance of power simply by being an opinion former or being prepared to have a voice and position on policy matters that the major parties are either unable or unwilling to tackle politically. Clover Moore, a former independent member of the NSW Parliament, has observed: 'in four successful state elections I don't believe that many people voted for me in the belief that I would hold the balance of power. I believe they voted for good representation ...'.<sup>64</sup> As to further views on representation and holding the balance of power, another former independent member of the NSW Parliament, Tony Windsor has commented: 'I've been in a hung parliament with a majority of one and [another parliament with] a majority of seventeen and really it doesn't make a lot of difference [provided] you are genuine in terms of your constituents ... People don't expect you to kick goals every time you go into bat and in fact they will quite often reward failing'.<sup>65</sup>

### *Parliamentary reform*

Some independent politicians pursue parliamentary reform as a primary focus of their political activity, whilst others seek to combine it with other priorities. Independent politicians seek to pursue such reform to uphold good governance and enhance accountability. The focus of this type of reform has included procedural changes to increase: the authority and opportunities for participation for all MPs, irrespective of their political party or status of office; the accountability of the executive to the parliament; and parliamentary integrity. Further, at times it has also included electoral reform to provide for a more representative parliament.

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<sup>61</sup> Stanhope, J 2001, ACT Legislative Assembly *Debates*, 12 November, pp. 6–7.

<sup>62</sup> Wikipedia—'John McLeay Sr.', viewed 10 December 2019, <[https://en.wikipedia.org/wiki/John\\_McLeay\\_Sr](https://en.wikipedia.org/wiki/John_McLeay_Sr)>.

<sup>63</sup> Quoted in: Costar, BJ and Curtin, J 2004, *Rebels with a cause: independents in Australian politics*, UNSW Press, Sydney, p. 24.

<sup>64</sup> Quoted in: *Ibid.*, p. 25.

<sup>65</sup> Costar, BJ and Curtin, J 2004, *Rebels with a cause: independents in Australian politics*, UNSW Press, Sydney, p. 25.

In 1999, Steve Bracks became Premier of Victoria, forming a minority Labor government, with the support of three country independents—Russell Savage (Mildura), Craig Ingram (Gippsland East), and Susan Davies (Gippsland West). The three independents achieved a number of parliamentary and electoral reforms. The former Premier has commented on that period of minority government, as follows:

I didn't have any problem with the minority government we had. ... We didn't have a majority in the lower house, we did subsequently win some by-elections which gave us more comfort. But still, we had a minority government. We also didn't have a majority in the Legislative Council; ... So, we had to negotiate everything through. The Liberal Party by itself had a majority in the upper house in Victoria. So, we had no majority anywhere. But I rate that as one of the best periods of government that I had of the period right through the eight years, and the three terms. We had to be on our toes, there was a lot of accountability, but also we had to explain properly what legislation meant, and what it meant to the broader public. Not just simply driving through your agenda because it happened to be a matter on which you were elected on, but to keep explaining, keep consulting, keep working it through. I enjoyed the periods on each parliamentary session where I sat down with the three independents and worked through the legislative agenda, where we're going, providing support and assistance in understanding better the legislation so they could make decisions. So, in some ways, it was a moderation on your own party and I found that quite useful.<sup>66</sup>

In the previous year, Peter Beattie became Premier of Queensland, also forming a minority Labor government, with the support of independent Peter Wellington. Wellington did not give any guarantees about which legislation he would support the government on, with the exception of the government's annual budget appropriation bill and confidence motions (unless there was evidence of gross fraud, misappropriation or like illegal activities).<sup>67</sup> This meant that Wellington reserved the right to argue every piece of legislation on the floor of the Legislative Assembly of the Queensland Parliament. As observed by Wellington, the outcome for parliament was enhanced scrutiny and vigilance, as follows:

And one thing that happened was that every minister was on their toes, every shadow minister was on their toes, and every member of parliament was in parliament. There was a real sort of hands-on, 'We have to really understand what we are doing'.<sup>68</sup>

Further, as parliament is the forum for independent and party politicians to speak and pursue their issues, Premier Beattie amended the Standing Orders, so that independents:

...were assured that if we introduced private member's bills, or the opposition introduced private member's bills, after 90 days they would actually come forward onto the Notice Paper for debate. Because in the past the governments and the oppositions, you know...You may introduce a private members' bill and would just gather dust, it would never be debated.<sup>69</sup>

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<sup>66</sup> Australian Broadcasting Corporation 2010, 'Trade my horse', *National Interest*, ABC Radio—Radio National, viewed 15 September 2019, <<https://www.abc.net.au/radionational/programs/archived/nationalinterest/trade-my-horse/3024052#transcript>>.

<sup>67</sup> Griffith, op. cit.

<sup>68</sup> Australian Broadcasting Corporation, 'Trade my horse', op. cit.

<sup>69</sup> Peter Wellington quoted in: Ibid.

As to how the change to Standing Orders facilitated Wellington's political activity in the form of the introduction of private member's bills and its subsequent impact, Wellington observed in 2010:

...that was the significant win for us because although there were only two Independents, I've introduced a number of private member's bills under this procedure and I've been able to gather support from the government - admittedly, we had significant discussions after they were introduced - and also from the opposition. One was the rights of the terminally ill, another was in relation to double jeopardy. Those are now laws in Queensland. But that only happened because the government changed the Standing Orders so that independents actually had the chance to get their proposed bills debated in parliament.<sup>70</sup>

### *Less measurable and more subtle political activity*

Less measurable and more subtle activity that independent politicians may engage in includes: being opinion formers and agenda setters; serving as expert and impassioned opponents; acting as honest brokers; acting as catalysts on controversial policies that the parties leave alone; working behind the scenes; pushing the boundaries of convention; and being an audience that all political sides consider is worth paying attention to.<sup>71</sup>

## Conclusion

The day after a prominent former Australian independent for the federal seat of Calare in NSW, Peter Andren—was first elected; a National Party spokesman claimed that 'Andren is wasted space'.<sup>72</sup> After announcing his decision to retire from the federal House of Representatives, Andren, having served the constituents of Calare for four parliamentary terms reflected:

I look back on the last eleven and a half years with great pride, having forever silenced the sceptics who say an independent is 'wasted space' in the political system.<sup>73</sup>

This paper demonstrates that independents are not wasted space in a parliamentary democracy. This is because of the effect that independent members have on a parliamentary democracy by offering the electorate an alternative form of representation to that sourced from major or minor parties at election time and, once elected, by the parliamentary contributions of these non-party politicians.

The effect demonstrates that independent members in a parliamentary democracy matter—firstly, because parliament matters, and secondly, because both inside and outside of parliament they fulfil tasks that add value to the political process.<sup>74</sup>

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<sup>70</sup> Ibid.

<sup>71</sup> Russell and Sciara, op. cit., pp. 32–52.

<sup>72</sup> Andren, P 2003, *The Andren report: an independent way in Australian politics*, Scribe, Melbourne, p. 1.

<sup>73</sup> Andren, P 2007, *Thank you—Peter Andren MP, Federal Member for Calare*, media release, 17 October; also quoted in Melham, D 2008, Condolence Motion, Federal Parliament—House of Representatives, *Parliamentary Debates*, 21 February, p. 1206.

<sup>74</sup> Norton, P 2017, *Reform of the House of Lords*, Manchester University Press, Manchester, pp. 2–3.