

Commonwealth Electoral (Above-the Line Voting) Amendment Bill 2008

EXPLANATORY MEMORANDUM

GENERAL OUTLINE

The purpose of this bill is to improve the democratic outcome of all Senate elections. The bill amends and repeals the provisions in the *Commonwealth Electoral Act 1918* relating to group voting tickets and amends the Act to allow for preferential above-the-line voting.

The Commonwealth Electoral Act allows each party or group contesting elections to provide the Australian Electoral Commission with a paper indicating how preferences will flow if a voter chooses that party or group by voting for it above the line, thus removing the decision on preferences from the voter, and giving it to the party which the voter first selects. This bill removes that prerogative from the party or group and returns to the voter the sole right to allocate preferences. In ensuring that the voter is responsible for the preference flow of their vote, this bill strengthens democracy.

FINANCIAL IMPACT

There would be a financial impact arising from the extra financial resourcing for the Australian Electoral Commission for the additional personnel and resources required to count the Senate ballot-papers, which would be marked above the line with the numbers 1 to 4 rather than the current single numeral or mark.

NOTES ON CLAUSES

Clause 1 – Short title

This clause provides for the short title of the bill.

Clause 2 – Commencement

The bill would commence on the day on which it receives the Royal Assent.

Clause 3 – Schedule

This clause provides for the effect of Schedule 1, which is to amend or repeal sections of the *Commonwealth Electoral Act 1918* relating to group voting tickets and substitutes provisions for preferential above-the-line voting.

Schedule 1 – Amendment of the Commonwealth Electoral Act 1918

Section 4 Interpretation

Item 1: This amendment adds to subsection 4(1) a definition for the term “group voting square” – where two or more individuals have asked that their names be grouped on the ballot-papers for a Senate election, the square printed above the dividing line above their group is the group voting square.

Section 168 Grouping of candidates

Item 2: This amendment adds a subsection which provides for a group voting square where two or more candidates have requested that their names be grouped on the ballot-papers.

Section 169 Notification of party endorsement

Item 3: This repeals the existing subsection 169(4) and inserts a new subsection 169(4) which no longer contains references to group voting tickets and to composite names of parties.

Section 210 Printing of Senate ballot-papers

Item 4: This amendment is consequential on the repeal of section 211A below and repeals subsection 210(2) in the Act which allows for a sitting senator to request an individual voting square above the line.

Section 210A Form of party name on ballot-papers

Item 5: This amendment provides for a cross-reference to new subsection 168(4) in subsection 210A(5).

Section 211 Group voting tickets

Item 6: This amendment repeals the section allowing candidates in a group voting ticket to lodge with the Australian Electoral Officer a written statement directing preferences in relation to all the candidates in the election in an order specified in the statement. This is inconsistent with the purpose of this amending bill which is to ensure that the voter always has the responsibility to allocate his or her voting preferences.

Section 211A Individual voting tickets

Item 7: This amendment repeals the section which provides for a sitting Senator to request an individual voting square above the line and to submit to the Australian Electoral Commission a written statement directing preferences of voters according to the order specified in the statement. This is inconsistent with purpose of this amending bill which is to ensure that the voter always has the responsibility to allocate his or her voting preferences.

Section 214 Printing of political party names etc on ballot-papers

Item 8: This amendment to paragraph 214(2)(d) provides for a cross-reference to group voting square as defined in new subsection 168(4).

Item 9: This amendment to paragraph 214(2)(d) provides for a cross-reference to group voting square as defined in new subsection 168(4).

Item 10: This amendment repeals paragraph 214(2)(e) consequential on the removal of references to composite names of parties in new subsection 169(4).

Section 216 Group voting tickets to be displayed

Item 11: Repeals section 216 which is no longer applicable due to the repeal of section 211 in this bill.

Section 226 Provisions related to sections 224 and 225 (Mobile booths in hospitals)

Item 12: Repeals subsection 226(3) which refers to group voting tickets, which is no longer applicable due to repeal of section 211 in this bill.

Section 227 Mobile booths – Remote Divisions

Item 13: Omits a reference in subparagraph 227(8)(a)(i) to group voting tickets, which is no longer applicable due to repeal of section 211 in this bill.

Section 239 Marking of votes in Senate election

Item 14: Repeals subsection 239(2) which provides for a single mark or number in above-the-line voting and inserts a new subsection 239(2) which requires a voter to place a vote in at least 4 group voting squares in order of preference in a Senate election. If there are less than 4 group voting squares, the voter must place a vote from 1 to whatever number will fill in the group voting squares. In a full Senate election, after a dissolution of the Senate, the voter is required to place numbers from 1 to 7 at least, if there are 7 or more voting squares, or if there are less than 7, from 1 to whatever number will fill the group voting squares. In both types of elections, voters, if they wish, may also number more squares, if there are any, to further indicate their preferences.

Item 15: Repeals subsection 239(3) which provides that a mark in above-the-line voting is deemed to be the number 1, as that deeming is no longer applicable under new subsection 239(2).

Section 268 Informal ballot-papers

Item 16: This amendment to paragraph 268(1)(b), which outlines the requirements for a formal vote in a Senate election, inserts a cross-reference to new subsection 270A which provides the requirements for a formal vote in the group voting squares above the line.

Section 269 Formal votes according to group voting ticket

Item 17: Amends subsection 269(1) to insert the words “To avoid doubt” for clarity of intent.

Item 18: Repeals subsections 269(3) and 269(4) which refer to more than one mark or number in group voting squares. These subsections are no longer applicable due to new subsection 239(2) inserted by this bill. This item also provides for a change to the heading of this section to “Formal votes if recorded in group voting squares” as the reference to group voting ticket is no longer applicable.

Section 270 Certain votes with non-consecutive numbers to be formal

Item 19: This amendment inserts a new section 270A which outlines the requirements for formal votes in the group voting squares above the line.

Section 272 Senate ballot-papers deemed to be marked according to group voting tickets

Item 20: This amendment repeals section 272 which is no longer applicable under the provisions of this amending bill and replaces it with a new section 272, which provides for the allocation of preferences within a group and between groups on the basis of the voter's own preferences as indicated by above-the-line voting on the ballot-paper.

Section 273 Scrutiny of votes in Senate elections

Item 21: Under current paragraph 273(5)(f) only preferential formal below-the-line ballot-papers are forwarded to the Australian Electoral Officer for scrutiny. This amendment to paragraph 273(5)(f) enables preferential formal above-the-line ballot-papers also to be forwarded, which is now necessary as a result of preferential above-the-line voting.

Section 273A Computerised scrutiny of votes in Senate election

Item 22: This amendment substitutes a new paragraph 273A(3)(a) and inserts a new paragraph 273A(3)(aa) which provide direction for the Divisional Returning Officer in dealing with formal ballot-papers which contain preferences (be they above-the-line or below-the-line preferences).

Item 23: This amendment substitutes a new paragraph 273A(3)(c) to now provide for the Divisional Returning Officer to include formal above-the-line voting ballot-papers in the parcel or parcels transmitted to the Australian Electoral Officer.

Item 24: This amendment substitutes a new paragraph 273(3)(f) to now provide that the only information transmitted to the Australian Electoral Officer is total number of ballot-papers rejected as informal. Information concerning the number of first preference votes given for each candidate on unrejected wholly above-the-line ballot-papers is no longer applicable, as all formal above-the-line ballot-papers will be transmitted to the Australian Electoral Officer for scrutiny.

Item 25: This amendment provides a new definition "of wholly above-the-line ballot-paper" to now mean "a paper which has one or more numbers in the group voting squares above the dividing line".

Form E of Schedule 1 – The Senate Ballot-Paper

Item 26: This amendment substitutes the instructions on the Senate Ballot-Paper in relation to a formal above the line vote.

Item 27: This amendment provides an additional explanatory note for the printing of the Senate Ballot-Paper, explaining the number which needs to be inserted in the instructions to the voter, for preferential above-the-line voting, to be printed on the ballot-paper.