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Committee Secretary
Joint Standing Committee on Electoral Matters
Department of House of Representatives
Parliament House
Canberra ACT 2600

Dear Secretary

Inquiry into the 2013 Federal Election

Thank you for the opportunity to make a submission to this inquiry.

The Problem

There are a number of ways to measure the health of a voting system. One of the most important is how well that system translates the preferences of voters into electoral outcomes.

Put simply, as far as is possible, the outcome should be determined by whom voters would actually like to see elected.

Unfortunately, the 2013 Senate elections failed this test.

One symptom of the problem was voters being issued with a magnifying glass to read the ballot paper. This was necessary in NSW because there was a record 110 senate candidates and the ballot paper was 45 columns wide.

The reason for the profusion of parties and candidates was because, based upon the prior NSW upper house experience, people realised they could exploit the voting system to produce outcomes that had little relationship to voters actual intentions.

The capacity for exploitation is based upon the following:

- Voters have the option of making the full extent of their preferences known, but this can be an elaborate and complex exercise. Filling in say 110 boxes below the line takes a level of commitment beyond almost every voter, and creates the real prospect that a minor mistake will lead to informality.

- Voters can take the simple option of numbering one box above the line, but in doing so they abandon control over their preferences to the first party of their first choice. Overall, over 95% of voters choose this method, meaning that the distribution of preferences in the Senate is determined largely by deals between political parties.

- The above the line preferential system lacks transparency. By and large, voters have no idea of where the party of their first choice will actually allocate their preferences. Parties can enter into agreements with other parties involving the transfer of votes across hard ideological lines in return for hoped for electoral benefits. It means that a voter can vote for a party only to find that their preferences end up with a different party for which they never would have considered casting vote.

These weaknesses in the Senate voting system enable a profusion of parties with tiny levels of popular support to exploit an unwieldy ballot paper. They can manipulate preference flows by way of aggregating their preferences.

The result is a lottery in which a micro party securing an infinitesimal first preference vote can win a seat in the Senate.

This is a perversion of Australian democracy. It means that the Senate does not reflect the will of the people. It instead reflects voter confusion and the inability of people to grasp a complex web of preference deals.

The outcome also threatens good governance, and so community well-being. Where a micro party Senator shares the balance of power, they can hold the government to ransom. Moreover, they can do this without a significant popular constituency of their own to hold them to account.

This introduces an unchecked, maverick element into the Senate that can produce special deals at odds with the national interest. It is hard enough to govern the country as it is, let alone while beholden to such interests.

This problem needs to be fixed. Unless reforms are made, there is a possibility that the ballot paper will be even larger next time round, and that the major parties themselves might need to take on the micro parties by forming their own micro party supporters to channel preferences to themselves.

Four Proposals for Reform

I propose the following as reforms that ought to be considered as part of this debate. I do not say that each of these must be undertaken, only that they represent viable means of addressing current problems.

1. Preferential voting above and below the line

Just as voters can express their preferences below the line, so too should they be able to do this above the line. Voter should be able to indicate a preference between the listed parties and any independent candidates.

I would prefer that voters be required to indicate the full extent of their preferences, just as they do in the House of Representatives, but would be open to considering an optional preferential voting model, like that used for the New South Wales upper house.

If optional preferential voting is allowed above the line, I imagine it should also be permitted below the line.

The benefit of this reform is that it does not limit new parties from forming, but removes the incentives for micro-parties to form with the intention of harvesting votes through preferences. It encourages smaller like-minded parties to coalesce and grow by attracting votes and building real support in the electorate. Under this system, it is much less likely that candidates would be elected through miniscule first preference votes and high rates of transferred votes.

2. Rotation of columns on the ballot paper

The success of the Liberal Democrat Party in the 2013 federal elections was in part attributed to its advantageous position on the ballot paper. To prevent unfair advantage or disadvantage caused by placement on the ballot paper, a process of rotating columns across ballot papers (though not the order of names in each column, which should continue to be determined by each party) should be adopted.

3. Party registration

The Act should tighten the regulation of political parties in line with New South Wales legislation. Under the *Parliamentary Electorates and Elections Act 1912* (NSW), an 'eligible party' means a party that has at least 750 members.

4. Threshold quotas

A party (or independent candidate) should not see its candidates eligible for election to the Senate unless they have collectively attracted at least 4% of the first preference vote. Where they fall under this threshold, their preferences should be allocated to the remaining people and parties.

This minimum threshold is reflected in existing provisions in electoral legislation.

Under the *Commonwealth Electoral Act 1918* (Cth), a Senate group as a whole must receive at least 4% of formal first preference votes in the Senate Election in that state or territory in order to be entitled to election funding. The 4% figure is also significant where the law specifies that the $2000 deposits for the Senate are returned only if a candidate gains more than 4% of the total first preference votes or is in a group of senate candidates which polls at least 4% of the total first preference votes.

Thresholds have been used in party-list proportional representation systems around the world. They stipulate that a party must receive a minimum percentage of votes, either nationally or within a particular district to gain a seat in parliament:

- Under the additional member system in Germany, there is a threshold of 5%, only applicable where the party does not win at least one electoral seat.
- Likewise in New Zealand under the mixed-member proportional electoral system, there is a 5% threshold.
- Israel has a 2% threshold under its nation-wide proportional representation system.
- Turkey has a 10% nationwide threshold under its closed list proportional representation system; and
- Sweden a 4% nationwide threshold under its party-list proportional representation system.

These four changes are a sensible way of eliminating gaming from the system. Voters, and not parties, should choose how preferences are allocated. There should not be a windfall of votes because of the luck of the draw on the Senate ballot paper. And if a party cannot attract at least four first preference votes out of every 100, they have no place in controlling the future direction of the country in the Senate.

Constitutional considerations

These and other proposals for reform of electoral law must be carefully considered in light of limits placed by the High Court upon the power of Parliament.

Recent High Court decisions, notably *Roach v Electoral Commissioner* (2007) 233 CLR 162, *Rowe v Electoral Commissioner* (2010) 243 CLR 1 and *Unions NSW v New South Wales* [2013] HCA 58, have demonstrated the willingness of the High Court to strike down electoral legislation as being inconsistent with the Constitution, especially the mandate in sections 7 and 24 that members of the Senate and the House of Representatives must be 'directly chosen by the people'. These words have given rise to significant limitations upon federal power, including a constitutional guarantee of freedom of political communication.

Yours sincerely

George Williams