

Introduction

- 1.1 On 22 February 2016, the Hon. Scott Morrison MP (the Minister representing the Special Minister of State) introduced the Commonwealth Electoral Amendment Bill 2016 ('the bill') into the House of Representatives. The same day, the House referred the provisions of the bill to the Joint Standing Committee on Electoral Matters ('the Committee') for inquiry and report by 2 March 2016.

An overview of the bill

- 1.2 The bill has three parts. Part 1 contains changes to the Senate ballot paper structure and changes a number of ballot paper handling instructions and procedures. Specifically, it proposes the following three measures to simplify and improve the Senate voting system:
- introduce optional preferential voting above the line, with voters instructed to number at least six squares in sequence;
 - abolish individual and group voting tickets which will return the control of preferences to voters. The abolition of GVTs will not impact on the ability of candidates to group their names for the inclusion of a square above the line on the Senate ballot paper; and
 - change the vote savings provisions such that a vote remains formal:
 - ⇒ even where voters have numbered fewer than six squares above the line;

- ⇒ where there are up to five mistakes by a voter when sequentially numbering their preferences below the line (increased from the current three mistakes).
- 1.3 Part 2 of the bill aims to remove ambiguity around the accountabilities, affiliations, and alliances of political parties. It proposes to remove the capacity for an individual to be a registered officer or deputy registered officer of multiple political parties.
- 1.4 Part 3 of the bill aims to address the confusion that may arise where political parties with similar names appear on the ballot paper. The bill proposes to allow for political party logos to appear, in black, on the ballot papers for both the House of Representatives and the Senate. It sets out the requirements for the registration of party logos with the Australian Electoral Commission.

The context of the reform and JSCEM's contribution

- 1.5 The Committee recognised in 2014 that the existing system of Senate voting in Australia is flawed. It expressed its concerns in the context of the 2013 federal election when candidates with small primary votes were able to win a seat by funnelling preferences to each other. This practice is known as 'preference harvesting': several micro-parties engaging in complex preference swaps to game the system in the hope that one of them will gather sufficient preferences for a quota.
- 1.6 The flaw in the current system is a combination of two factors: Group Voting Tickets (GVTs) and the overwhelming popularity of the option to vote for a party above the line.
- 1.7 GVTs, allowed under the *Commonwealth Electoral Act 1918*, enable parties to trade their preferences to maximise their chances for election. However, it is a mechanism that has taken power away from voters who cast their vote above the line.
- 1.8 The Committee noted in 2014 that while GVTs are available for electors to examine (often at very short notice before an election), very few do so due to the time involved and the complexity of these arrangements. The ability of parties to lodge up to three GVTs means that even if voters can follow the tickets, they do not know which one applies to their vote.¹

1 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 2.

- 1.9 The use of GVTs has been maximised through voters' preference for choosing a party by voting above the line. The reason for this preference is quite simple: it is far easier to cast a '1' above the line than complete many boxes sequentially below the line for candidates who are unknown to many voters. By the 2013 federal election, only 3.5 per cent of voters were completing their own preferences below the line.²

The secrecy and complexity of GVTs

- 1.10 The secrecy and complexity of GVT arrangements is not in dispute. As Labor Senator the Hon. Stephen Conroy reflected at the public hearing:

I have probably only met 10 people – most of them have been in this room this morning – who truly understand how it works and who actually have a genuinely full understanding of how that system would work.³

- 1.11 Mr Glenn Druery, who has constructed many micro-party preference deals, was also candid. Asked whether the practice of preference deals is one that the average voter does not understand, he responded:

That is a fair comment, but it is a system that was not put there by minor parties. It was put there by the major parties and it has been tinkered with by the major parties for about 100 years.⁴

- 1.12 In his submission to this inquiry, University of Sydney Adjunct Professor Antony Green explained that when GVTs were introduced, they were 'viewed as merely institutionalising the existing system of how-to-vote cards'. He added:

Ticket voting marginally increased the control over preferences of the larger parties. What had not been properly thought through at the time was that ticket voting for the first time allowed smaller parties to take control of their preferences.⁵

- 1.13 In its May 2014 interim report, the Committee set out some of the tactics adopted by micro-parties to use GVTs to allocate agreed higher preferences to each other. Micro-parties were created for the purpose of

2 Australian Electoral Commission, 'Senate Group Voting Ticket Usage', Election 2013, <http://results.aec.gov.au/17496/Website/SenateUseOfGvtByState-17496.htm> (accessed 28 February 2016).

3 *Proof Committee Hansard*, 1 March 2016, p. 27.

4 Mr Glenn Druery, *Proof Committee Hansard*, 1 March 2016, p. 38.

5 Professor Antony Green, *Submission 30*, p. 1.

orchestrating these preference deals. They formed part of an overall strategy, as Senator Leyonhjelm told the Committee in 2014:

Where Glenn Druery is very skilled is in understanding how those preferences, if they are allocated, what the impact of them will be on the outcome. And if you put them in a certain order and you get them coming before another party who's knocked out, you will end up benefitting.⁶

The distortion of voters' will

1.14 Voters' preference for voting above the line in the Senate, combined with the ability for preferences to be distributed between parties through GVT, has led to some highly unusual results. In recent years, GVTs have been used as a vehicle to construct complex preference deals enabling a party with a very low first preference vote to be elected to the Senate. There have been some notable examples from recent federal elections:

- at the 2004 federal election, Family First candidate Mr Steve Fielding was elected to the Senate with 1.9 per cent of the primary vote;
- at the 2010 federal election, a DLP candidate, Mr John Madigan, was elected with 2.33 per cent of the vote; and
- at the 2013 federal election, the Australian Motoring Enthusiast Party candidate Mr Ricky Muir was elected to the Senate with a record low primary vote of 0.51 per cent (17 122 first preference votes).

1.15 These results drew attention to the system that enabled these candidates to gather a quota (14.3 per cent). The Australian Motoring Enthusiast Party candidate was elected with primary votes totalling just 0.0354 of a quota.

1.16 The Committee noted in 2014 that the 2013 Senate election results were:

...a crucible in which some of the flaws of current arrangements merged: specifically, electors felt their votes had been devalued by preference deals and that they had been disenfranchised by being forced to prefer unpreferred candidates.⁷

1.17 The then Chair of the Committee, and the current speaker of the House of Representatives, the Hon. Tony Smith MP, summed up the Committee's concerns eloquently:

6 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 21.

7 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 2.

The ‘gaming’ of the voting system by many micro-parties created a lottery, where, provided the parties stuck together in preferencing each other (some of whom have polar opposite policies and philosophies) the likelihood of one succeeding was maximised. Many voters were confused. If they voted above the line, the choice of where their vote would go was effectively unknown, and accordingly in many cases their electoral will distorted...

While such ‘gaming’ of the system is legal, it has nonetheless distorted the will of voters, made Senate voting convoluted and confusing, and corroded the integrity of our electoral system.⁸

The case for change

1.18 The Committee concluded in 2014 that ‘the status quo is simply not an option’.⁹ It recommended that the *Commonwealth Electoral Act 1918* be amended to:

- abolish group voting and individual voting tickets;
- allow for optional preferential above the line voting;
- allow partial optional preferential voting below the line with a minimum sequential number of preferences completed equal to the number of preference; and
- strengthen party registration requirements.¹⁰

1.19 The Committee is pleased that the Government has essentially agreed to these reforms and that the Committee has been recognised for its contribution to Senate voting reform. In his *Second Reading Speech* on the bill, Mr Morrison stated:

The parliament has been well served by the work of its Joint Standing Committee on Electoral Matters, which regularly examines aspects of our electoral system, and issues that arise from the conduct of national elections. The bill responds to key elements of the interim and final reports of the Joint Standing

8 The Hon. Tony Smith MP, Foreword, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, Joint Standing Committee on Electoral Matters, May 2014, pp v–vi.

9 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 2.

10 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, pp xvii.

Committee on Electoral Matters inquiry into the 2013 Federal Election...

The government is committed to an open and transparent voting system that has integrity, is simple and clear, and provides voters with the ability to express their will to the greatest extent possible and to have their voting intent upheld. The JSCEM is to be commended for its work in identifying the changes that need to be made in our current voting arrangements to achieve this objective in relation to Senate elections in particular.¹¹

- 1.20 However, as this report highlights, the Committee's recommendations to reform voting below the line have not been considered in this bill.
- 1.21 Many submitters to this inquiry contended that the optimal voting system in the Senate would be a combination of partial optional preferential voting below the line and partial optional preferential above the line.

Conduct of the inquiry

- 1.22 On 22 February 2016, the Committee wrote to 93 individuals and organisations inviting a submission into the provisions of the bill. The Committee invited submissions from those individuals and organisations who commented substantively on Senate voting issues in their submission to the 2013 federal election inquiry. It wrote to all political parties represented in the Australian Parliament and several others.
- 1.23 The Committee received 107 submissions, which were provided on the Committee's website from 29 February 2016. Appendix 1 presents a list of submitters.
- 1.24 The Committee held a public hearing on 1 March 2016 at Parliament House in Canberra. The Committee invited the Liberal Party of Australia, the Australian Labor Party, the National Party of Australia and the Greens to give evidence at the hearing. The ALP and the Greens declined the Committee's invitation to appear.
- 1.25 The Committee also wrote to the eight cross-bench Senators to gauge their interest in giving evidence. With the exception of Senator Jacqui Lambie, these Senators noted that they would be participating in the inquiry as a

11 The Hon. Scott Morrison MP, Second Reading Speech, *House of Representatives Hansard*, 22 February 2016, p. 24.

participating Member. Appendix 2 presents a list of the individuals and organisations that gave evidence.

Amendments to, and the passage of, the bill

- 1.26 On 24 February 2016, the Government introduced amendments to the bill in the House of Representatives. The same day, the House of Representatives passed the amended bill.
- 1.27 While the Parliament directed the Committee to examine the bill in its form at the time of referral on 22 February, the Committee does make comment in this report on the merit of the Government's amendments.
- 1.28 At the time of writing, the bill was scheduled to be introduced into the Senate on 2 March 2016.

Committee membership

- 1.29 By Resolution of Appointment of both Houses, the Committee has ten members composed of:
- 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any minority group or independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 2 Senators to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group or independent Senator.¹²
- 1.30 On 22 February 2016, the House passed a motion to discharge the former Committee Chairman, Mrs Jane Prentice, from the Committee. In her place, Mr David Coleman was appointed to the Committee. The same day, the Committee elected Mr Coleman as Committee Chair.
- 1.31 On 25 February 2016, the Senate passed a motion to discharge Senator Chris Ketter from the Committee. In his place, Senator Stephen Conroy was appointed to the Committee.
- 1.32 On 22 February, both Houses of Parliament passed an amendment to the Committee's Resolution of Appointment allowing for participating members to be appointed to the committee on the nomination of the Leader of the Government in the Senate, the Leader of Opposition in the

¹² Joint Standing Committee on Electoral Matters, *Resolutions of Appointment*, passed by the House of Representatives on 21 November 2013 and the Senate on 2 December 2013.

Senate, or any minority group or independent Senator. Fifty-one Senators were appointed to the Committee as participating members: 23 ALP Senators, 15 Coalition Senators, nine Green Senators and five cross-bench Senators.

Acknowledgements

1.33 The Committee thanks all those who contributed to this inquiry.

Structure of the report

1.34 This report has four chapters:

- Chapter 2 compares the bill's key provisions with the corresponding recommendations in the Committee's May 2014 and April 2015 reports. It then explains the main provisions of the bill.
- Chapter 3 presents submitters' views on the bill;
- Chapter 4 concludes the report, presenting the Committee's view and recommendations.