

## Evidence and proposals

3.1 Voter dissatisfaction with the current Senate system has been widely reported and widely submitted to this inquiry. Election commentator Antony Green identified the key problem:

Above all, what has been ridiculous in this process is that it has produced the gigantic ballot papers which we saw at the federal election and which presented voters with options where the size of the ballot paper and the range of options started to interfere with their ability to cast a sensible vote. It has produced results that were engineered by the preference deals rather than by the votes cast by voters. I think the case for some sort of reform to that system is compelling.<sup>1</sup>

3.2 Dr Kevin Bonham argued that the Senate voting system was 'broken', and offered the following reasons:

- Candidates being elected through methods other than genuine voter intention from very low primary votes.
- Election outcomes depending on irrelevant events involving uncompetitive parties early in preference distributions.
- The frequent appearance of perverse outcomes in which a party would have been more successful had it at some stage had fewer votes.
- Oversized ballot papers, contributing to confusion between similarly-named parties.
- Absurd preference deals and strategies, resulting in parties assigning their preferences to parties their supporters would be expected to oppose.

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<sup>1</sup> Antony Green, *Transcript of evidence*, 7 February 2014, Canberra p. 1.

- The greatly increased risk of close results that are then more prone to being voided as a result of mistakes by electoral authorities.<sup>2</sup>

3.3 It is clear that it is time to change some aspect of the system that allows individuals and parties to 'game' their way into the Senate, and to reduce the confusion for voters. Mr Green noted that:

the form of reform has to focus on the voters: what the voter is presented with as a choice and how they express their choice. That has to be the more important thing – how voters can be given an informed choice and how they can express it. Voters have to have some ability to know what is happening to their vote. ...

The system, if changed, should advantage parties which campaign, not parties which arrange preference deals. ... I do not see why a party should get control over its preferences simply by putting its name on the ballot paper; it actually has to do something beyond that.<sup>3</sup>

3.4 A range of individuals with expertise in the electoral system, political parties, both large and minor, community organisations and individuals offered proposals for reform to the Senate voting system. These proposals centred on:

- reform to ATL and BTL senate voting practices to make it easier for voters to express their preferences;
- the introduction of thresholds to ensure that candidates reach a minimum first preference vote to be eligible for election; and
- reform party registration requirements and candidate nomination to stop the proliferation of minor 'front' parties.

3.5 Further concerns were raised by the community and in the media about candidates not residing in the state or territory in which they were contesting election. It was reported that during the 2014 Western Australia Senate re-run when a reported 10 out of 77 candidates did not reside in the state.

3.6 This chapter outlines the evidence received by the inquiry and proposals for reform of the current system. Committee comment on these views is offered in Chapter 4.

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2 Dr Kevin Bonham, *Submission No. 140*, p. 1.

3 Antony Green, *Transcript of evidence*, 7 February 2001, Canberra p. 2.

## Senate voting practices

- 3.7 While the experts were in agreement that Senate voting practices are in need of reform, there are a range of views about exactly what form this should take. Mr Green noted that the introduction of party tickets had unforeseen consequences, by giving ‘control over preferences to smaller parties’, which otherwise would not have had this control:

That has produced deliberate deal-making. In the early days the deals were made with the major parties. In 1984 there were deals made to keep Peter Garrett and the Nuclear Disarmament Party out of the Senate. In 1998 there were agreements between the parties to try to keep Pauline Hanson’s One Nation out of the Senate, and the parties used ticket voting in that way. But what we have seen since then is the growth of the other parties – the minor parties and micro-parties – making use of the loopholes in the party registration laws, and then using the ticket voting to actually engineer results. That reached its logical – or illogical – conclusion at the recent election, with the election of parties with less than one per cent of the vote.<sup>4</sup>

## Above the line voting (ATL)

- 3.8 There was near unanimous agreement that the current system of ATL voting, where voters fill out just one box and have their preferences distributed via group voting tickets (GVTs), should be replaced.
- 3.9 A range of alternative voting methods were advanced in hearings and in submissions.

### Compulsory or ‘full’ preferential above the line voting

- 3.10 Compulsory preferential ATL voting requiring voters to number all boxes above the line was acknowledged as an option to amend the current system.
- 3.11 The Nationals supported compulsory preferential ATL in order to provide for a mechanism that would be a near exhaustive preferential voting system.<sup>5</sup>
- 3.12 Compulsory preferential ATL voting was also recommended by this Committee’s predecessor in 2005, as it was similar to the voting system in the House of Representatives and could address the emerging issues that were identified at that time.

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4 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 1.

5 National Party of Australia, *Submission No. 184*, p. 3.

### Optional preferential voting above the line (OPV ATL)

- 3.13 Some form of optional preferential voting was widely recommended by electoral experts in order to return control of preference flows to voters.
- 3.14 Professor Ben Reilly noted that a simplification of the Australian voting system was required to restore public confidence in Australia's political process, and to 'return a degree of predictability to electoral outcomes'.<sup>6</sup>
- 3.15 Mr Green proposed OPV ATL as a way of removing party tickets and making it easier for voters to control their vote:
- I personally prefer the form of above-the-line voting used in New South Wales where voters can indicate their own preferences above the line and the group-ticket votes have been done away with.<sup>7</sup>
- 3.16 Dr Bonham also supported OPV, making the following recommendation:
- Voters may vote above the line. A voter voting above the line can just vote 1 or can preference as many other parties as they wish. Such a vote flows through all members of each preferred party in order, exhausting when it has no more parties to go to. This is similar to what happens in Hare-Clark in Tasmania – many voters choose to vote for one party only, then exhaust their vote.<sup>8</sup>
- 3.17 In contrast, Malcolm Mackerras AO submitted that ATL preference voting 'creates the impression of a party list system' and that 'any conversion of this system into a party list system is unconstitutional'.<sup>9</sup> Mr Mackerras emphasised that Australia's system is a candidate based system 'because it is proportional representation by means of the single transferable vote', and that people should be made to understand this better than is currently the case.<sup>10</sup>
- 3.18 He supported the current ATL system and party tickets noting that:
- If [voters] do vote above the line, that indicates that they are perfectly willing to accept the judgement of their party in relation to any possible transfer of votes from that party and they are willing to accept the judgement of their party in relation to the rank order of the candidates on that ballot paper.
- I don't see why people should not be allowed to express that they are happy with the judgment of their party in this way ...

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6 Prof Ben Reilly, *Submission No. 39*, p. 3.

7 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 2.

8 Dr Kevin Bonham, *Submission No. 140*, p. 8.

9 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 18.

10 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 20.

[However, at the last election, electors] were intimidated into voting above the line and there is proper resentment of that.<sup>11</sup>

3.19 Professor George Williams AO also argued for OPV ATL:

Just as voters can express their preferences below the line, so too should they be able to do this above the line. Voters 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.<sup>12</sup>

3.20 A number of parties also supported ATL OPV (see page 44). For instance, the Liberal Party of Australia stated:

Given the problems that have become apparent in recent elections through the manipulation of Group Voting Tickets, the Liberal Party believes it is timely to move to optional preferential voting above the line and abolish Group Voting Tickets for Senate elections. This would retain a relatively simple, straightforward voting system, removing avenues for possible abuse, and allowing the voter to preference further candidates if they wish.<sup>13</sup>

**Partial preferential or 'limited preferential' voting above the line (LPV ATL)**

3.21 Some submissions also made the case for 'limited preferential' voting above the line (LPV ATL); where voters would be required to complete a small number of boxes as a minimum, with the option of numbering further boxes.

3.22 As noted in a submission from Dr Norm Kelly:

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11 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 23.

12 Prof George Williams, *Submission 23*, p. 3.

13 Liberal Party of Australia, *Submission 188*, pp. 4-5.

Limited preferential voting (LPV) may be the best option. Using LPV, voters could be required to number the ballot paper with preferences 1 through to 6, or as an alternative, at least 1 to 6, but providing additional preferences if the voter wishes.<sup>14</sup>

3.23 Peter Abetz MLA (Western Australia) noted :

Under this proposal, voters would numerically indicate their preference for the group or party of their choice above- the- line.

Two approaches could be considered:

1. All boxes would need to be numbered in exactly the same fashion as voters vote for candidates to the House of Representatives.

OR

2. A minimum of 3 boxes need to be numbered, creating the possibility that the vote becomes “exhausted”

The preferences would then flow to the parties in the order chosen by the voter and not by the parties themselves.<sup>15</sup>

3.24 This model can be thought of as a compromise between full preferential voting and optional preferential voting by endeavouring to moderate the drawbacks that would flow from either model, such as informality in a compulsory ATL system and exhaustion in an OPV system.

### **Below the line voting (BTL)**

3.25 Mr Mackerras argued that a more reasonable BTL voting option would result in a greater BTL vote. He proposed optional preferential voting BTL with a minimum of 15 boxes required to be numbered. Mr Mackerras argued that 15 would allow for national consistency and no need to change requirements for a double dissolution election should a lower number be otherwise chosen.<sup>16</sup>

3.26 Mr Mackerras argued that consistency was more important than requiring voters list as many preferences as there were vacancies:

In the Senate election, we know that at every election there will be a difference between the different jurisdictions. There will be two for the Australian Capital Territory and the Northern Territory, six for the states and 12 in a double-dissolution election. Because of the differences in what psephologists call ‘district magnitude’... I

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14 Dr Norm Kelly, *Submission No. 156*, p. 4.

15 Peter Abetz MLA, *Submission No. 54*, p. 1.

16 Malcolm Mackerras, *Submission 7*, p. 2.

think that there should be a number that applies to everybody because that would simplify things.<sup>17</sup>

- 3.27 Mr Mackerras stated that giving people this option would also help to eliminate the perceived effects of 'gaming' the system:

When you give people a reasonable option to vote below the line, while there will be people who will try and game their way into parliament, this gaming will be overwhelmingly unsuccessful. Even under the present system it is not nearly as successful as many people make out. There are not all that many senators who have gamed their way into the system under this current position.<sup>18</sup>

- 3.28 Dr Bonham suggested:

Voters may vote below the line, but are required to number a specific minimum number of boxes for their vote to count. Six has been widely suggested though I believe four would actually be adequate and perhaps preferable (and for a full Senate election, twelve would be suggested but I would consider eight sufficient.) The reason for requiring that a minimum number of boxes be numbered (not just 1) is that otherwise major parties could suffer from exhaust caused by voters just voting 1 for their most popular candidate.<sup>19</sup>

- 3.29 Mr Green noted:

There must be an easier option for voting below the line. There must be some form of limited preferential voting below the line. People should not have to give 110 preferences below the line. My view is that the easiest way is to say: 'One above the line or six below the line or 12 at a double dissolution,' but when you do six or 12 below the line you start to get informal votes. I think the number of people who might go one, two, three below the line and stop is not large enough that it will interfere with the count in any significant way, and forcing them to give more preferences is going to cause informal votes.<sup>20</sup>

- 3.30 Democratic Audit of Australia was also supportive of OPV:

Voters would have to number as many squares as there are places to be filled (six in a half Senate election and 12 at (rare) double dissolutions. They can, of course, proceed to rank additional

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17 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 26.

18 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 20.

19 Dr Kevin Bonham, *Submission 140*, p. 8.

20 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 11.

candidates. The 'above the line' voting option would have to be removed to ensure that voters' preferences go where they intend them.<sup>21</sup>

3.31 Democratic Audit qualified their support for this proposal:

- while optional, voters must be made aware that a person who ranks (say) twenty candidates is likely to have a greater influence on the election outcome than one who numbers only six or 12. The earlier a vote exhausts the less salient it will be;
- while the last double dissolution election was in 1987, they will occur in the future and the requirement to number 12 squares will most likely increase informality – the reduction of which is why above the line voting was adopted in 1983; and
- a strong advertising campaign will be needed to avoid a repetition of the 1984 election when the House informality spiked because people just voted one; the 2013 Senate election may have been an aberration.<sup>22</sup>

3.32 The New South Wales Council for Civil Liberties (NSWCCL) echoed many of the concerns raised by psephologists:

Firstly, senators can be elected without their election being seen as legitimate, particularly if they received very few primary votes and their election was due to a complicated set of preference deals between micro and minor parties. Alternatively, a senator's election may not be viewed as legitimate if it is perceived that voters confused their party for another party. Secondly, voters are required to express a preference for at least 90 per cent of the candidates if voting below the line and for all candidates through a ticket vote if voting above the line, regardless of whether the voter wishes to vote for so many candidates. In addition, voters believe that they must fill out all boxes if voting below the line. This can make it difficult and challenging for voters to cast a formal vote other than above the line.<sup>23</sup>

3.33 In order to remedy this situation, NSWCCL supported the amendments proposed in the *Commonwealth Electoral Amendment (Above the line voting) Bill 2013* (the Xenophon bill):

The Xenophon bill will more easily allow voters to cast a formal vote that reflects their preferences by introducing optional preferential above-the-line voting and removing group preference tickets. It will reduce incentives for the gaming of Senate elections

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21 Prof Brian Costar, *Submission 116*, p. 10.

22 Prof Brian Costar, *Submission 116*, p. 10.

23 Dr Sacha Blumen, *Transcript of evidence*, 7 February 2014, Canberra, p. 15.

– for example, where front parties are created with the aim of harvesting preferences for other parties. This may or may not be legal, but it is a fraud on voters. The bill will also remove the possibility that voters can vote above the line for one party but have their preferences allocated to an ideologically diametrically opposed party via ticket preferences. That this can currently happen might also be seen as a fraud on voters, given the difficulties in fully understanding the complete set of ticket preferences.<sup>24</sup>

3.34 Similarly, FamilyVoice Australia was supportive of measures to abolish preference tickets:

We see the abolition of the preference tickets as the primary thing that needs fixing. The preference tickets provide a motivation for stooze parties, front parties and micro-parties to game the system. This can be done in a variety of ways. You may have a party that stands for high taxation, arbitrarily, but they do not think that that will go down well with the public so they register the Low Tax Party, and the Low Tax Party distributes all its preferences to the party that has a high-tax policy. They garner votes on the basis of misrepresentation and corral them to a party that is in direct contradiction of the intention of the votes that have been corralled. It opens things up to that kind of manipulation and fraud. It also opens up the opportunity for what happened at the recent election, and it was done in the New South Wales 2011 election, where a couple of candidates decided to register 24 parties in the hope that collectively they would gather enough people who vote randomly or vote for strange reasons or have one particular focus and funnelled all those 24 parties into one or two people who wanted to get elected.<sup>25</sup>

3.35 FamilyVoice Australia based this opposition to GVTs on what is perceived as a lack of transparency:

The difficulty with the tickets is that they are essentially invisible. You can go online and look at them, but, to actually analyse that, you would be there for hours trying to work out what all the allocations on the tickets were. There was one election, I remember, where they were all around the wall of the polling booth. They had just about used the entire wall space to convey all the different ticket options. I do not think they do that anymore;

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24 Dr Sacha Blumen, *Transcript of evidence*, 7 February 2014, Canberra, p. 15.

25 Dr Phillips, *Transcript of evidence*, 7 February 2014, Canberra, p. 30.

there are just too many of them. You get a book which you can flip through, but you would be there for three hours trying to go through those. That is ridiculous. But on the ballot paper you have the list of candidates in the order the parties have listed them. If you like that, you can vote above the line; if you do not like that, you can vote below the line.<sup>26</sup>

3.36 YWCA Australia was also supportive of OPV, stating:

Optional preferential voting above the line coupled with an abolition of predetermined preference deals would shift the focus on preferences from backroom deals to the polling booth and simplify the voting process for voters. By abolishing predetermined preferences and putting the voter in control of their preferences, the incentive to register micro-parties for the purposes of so-called "preference harvesting" is diminished.<sup>27</sup>

3.37 Senate voting practices are the subject of the majority of submissions from the general public to this inquiry. These submissions are listed on the Committee's website. While they express a variety of ideas for reform, they are unanimous on one issue – that the current system must be improved upon.

### **Formality**

3.38 With any change to Senate voting, there will be a requirement for requisite change to the formality and relevant savings provisions.

3.39 The Australian Greens noted:

we strongly recommend that the rules of any potential new system be devised to maximize formality and ensure the voter's intent is used wherever possible to retain a ballot as formal. The committee may believe this is best achieved through a combination of savings provisions alongside advice and education designed to encourage voters to express multiple preferences.<sup>28</sup>

### **Thresholds**

3.40 Professor Williams provided the strongest support for putting thresholds in place for election to the Senate:

A party (or independent candidate) should not see its candidates eligible for election to the Senate unless they have collectively

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26 Dr David Phillips, *Transcript of evidence*, 7 February 2014, Canberra, p. 33.

27 YWCA, *Submission 76*, p. 5.

28 The Australian Greens, *Submission 175.1*, p. 1.

attracted at least four per cent of the first preference vote. Where they fall under this threshold, their preferences should be allocated to the remaining people and parties.<sup>29</sup>

3.41 Thresholds are a common feature of proportional representation systems internationally:

- 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.<sup>30</sup>

3.42 The concept of a threshold already exists in the Electoral Act. Division 3 provides for a payment for each first preference vote received. Section 297 states:

- (1) A payment under this Division shall not be made in respect of votes given in an election for a candidate unless the total number of eligible votes polled in the candidates favour is at least 4% of the total number of eligible votes polled in favour of all the candidates in the election.
- (2) A payment under this Division shall not be made in respect of votes given in an election for a group unless the total number of eligible votes polled in favour of the group is at least 4% of the total number of formal first preference votes cast in the election.

3.43 Due to this existing provision, those proposing a threshold have mostly proposed a four per cent target, noting that given this is a threshold for existing funding it 'seems a reasonable test of whether they have any real support in the electorate.'<sup>31</sup>

3.44 However, Professor Williams was also of the view that:

if we did move to a system that was a fully preferential or optional above the line, then that would largely take the heat out of the

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29 Prof George Williams, *Submission 23*, p. 3.

30 G. Williams, *Submission 23*, p. [4]

31 Brian Costar, Swinburne Institute for Social Research, *Now it's urgent: why we need to simplify voting for the Senate*, <[inside.org.au/simplifying-the-senate](http://inside.org.au/simplifying-the-senate)>, accessed 14 February 2014; see also G. Williams, *Submission 23*.

threshold issue because the likelihood of someone being elected on a minuscule first preference vote would be very small if that occurred.<sup>32</sup>

3.45 Professor Bonham argued that the introduction of a primary vote threshold would:

remove the possibility of parties snowballing to victory on tiny percentages of the vote. Possibly, this alone would deter some of the micro-parties from competing. However, it would not stop horse-trading between those parties capable of getting 4%, and the number of such parties would be likely to increase as some of the micro-parties either did not run or merged to avoid splitting the primary vote. ... Furthermore, while micro-parties would no longer win (or would be encouraged to merge into broader niche parties that were more competitive, eg a broad libertarian right party, a broad left-libertarian non-Green party, a broad Christian-right party) they could still use their preferencing power to influence political goals. So it's not clear how much this would really cull the candidate list.<sup>33</sup>

3.46 The Federal Director of the Liberal Party of Australia, Brian Loughnane, proposed:

An ... option ... to discourage preference deals with distorted and concealed motives, would be a requirement that, before preferences from any party are distributed, that party must have received a primary vote of at least 10 per cent of the value of a quota. In other words, at a regular half-Senate election a party must exceed a threshold of approximately 1.4 per cent of a primary vote before its preferences can be distributed.<sup>34</sup>

3.47 It has also been noted that thresholds are likely to have no impact on 'preference harvesting':

In effect, the use of a threshold by itself would in all probability simply change the beneficiaries of preference harvesting from the micro-parties to parties which were capable of exceeding the threshold.<sup>35</sup>

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32 Prof George Williams, *Transcript of evidence*, 13 March 2014, Sydney, p. 5.

33 K. Bonham, 'Senate reform: Change this system, but to what?', <[kevinbonham.blogspot.com.au/2013/10/senate-reform-change-this-system-but-to.html](http://kevinbonham.blogspot.com.au/2013/10/senate-reform-change-this-system-but-to.html)>, 19 October 2013, accessed 21 February 2014.

34 Brian Loughnane, *Transcript of evidence*, 28 April 2014, Canberra, p. 18.

35 Michael Maley, *Submission 19*, p. 8.

3.48 However, the use of a threshold has the potential to influence the outcome in a close Senate election. Mr Maley has noted the number of different counting options under a threshold:

- Votes for candidates or groups which failed to exceed the threshold could be treated like informal votes, and would not be included in the calculation of the quota. This tends to be the approach taken when a threshold is applied in the simplest cases of list proportional representation.
- Votes for candidates or groups which failed to exceed the threshold could be treated like votes for deceased candidates. The first stage of the distribution of preferences would then be the transfer of those votes according to the voter's preferences to candidates who had not been eliminated by the operation of the threshold. Such votes would be included in the calculation of the quota.
- Alternatively, candidates who failed to meet the threshold might be left in the count, but might be treated as incapable of having votes transferred to and/or from them.<sup>36</sup>

3.49 As individual thresholds are unlikely to be practicable in the Australian context, thresholds could only realistically be applied to the group/independent level.

3.50 Professor Williams addressed the potential constitutional question that arises with a group threshold level:

I do not think it is likely that such a proposal would be struck down. That is because the High Court has indicated that people must be able to directly choose their representatives, and this in no way gets in the way of a person making that direct choice as to who they wish to number '1' in the ballot box. In fact, if you were to think of a system that would be more susceptible of challenge, it is the current system where you put '1' above the line for parties rather than for the candidate. That is more susceptible of challenge than a threshold. So, I think you could say, yes, there are some issues around it, but, in fact, the current system is more challengeable than one that I believe introduces some sort of threshold at the minimum level. I would also say that is because, ultimately, the preferences are fully distributed. If my proposal were that votes of a candidate who does not reach a four per cent threshold disappear and the preferences of those votes were not allocated, I think that would be a problem. But the suggestion here simply is that, as part of the preferences, if someone does not get a sufficient level of support, their preferences move on. I note also

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36 Michael Maley, *Submission 19*, pp. 8-9.

that in other countries it is quite common to have a system of that kind.<sup>37</sup>

3.51 Mr Green urged caution when it came to adopting any form of thresholds:

The difficulty is that if you did not have the constitutional issue you would just simply group the candidates together to reach the threshold and say “If you’re not over that limit you get excluded”. There is an issue there, because [of what] the Constitution states about voting for candidates, and if you are excluding a candidate based on a vote for a party rather than a vote for them, then you may run into a constitutional issue there.<sup>38</sup>

3.52 Similarly, Mr Green saw a range of other potential issues with the adoption of any thresholds:

such as if you have a threshold quota, do you allow them to have preferences to be distributed? If they are distributed, at what point are they distributed? Do you elect the candidates elected from the first count and then exclude the other parties, or do you exclude them initially? Say the Coalition has 2.9 quotas, and then you exclude all parties under your threshold, suddenly the Coalition might get to 3.4 quotas overall, because you have done the exclusion of them before you have done any elections. So there is actually quite a number of complexities to the way you define this, as well as the constitutional issues.<sup>39</sup>

3.53 Dr Bonham also identified the following concerns:

- While it is deeply unlikely that candidates polling below the threshold will ever win by genuine voter intention, I would prefer that that be a matter decided by voter choice rather than automatic exclusion.
- A threshold solution would not address the problems of deceptively-named parties funnelling preferences away from other parties, or of parties directing preferences away from likeminded parties out of spite.
- Threshold systems can produce unsatisfactory outcomes if many small parties compete for a similar vote. Especially, a party with support close to the threshold level could be targeted by non-genuine parties aiming to take enough of its vote to knock it out of the count.<sup>40</sup>

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37 Prof George. Williams, *Transcript of evidence*, 13 March 2014, Sydney, p. 4.

38 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 4.

39 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 4.

40 Dr Kevin Bonham, *Submission 140*, p. 9.

## Party registration

- 3.54 It is widely considered that there should be a higher standard for party registration and candidate nomination and a variety of solutions were proposed.
- 3.55 Mr Green advocated a tightening of regulation for registering parties at the Commonwealth level, noting that regulations in the states are much tighter:
- All up there is much tighter regulation in the states for parties than in the Commonwealth. At this federal election we saw a 50 per cent increase in the number of registered parties between the start of the year and the calling of the election. We saw a record number of parties, a record number of House candidates and a record number of Senate candidates.<sup>41</sup>
- 3.56 Specifically, Mr Green proposed that, in order to register, parties should be made to demonstrate that they have national membership of at least 2000, given that the membership number state-wide in New South Wales is 750.
- 3.57 Mr Green considered the NSW approach of parties needing to be registered for at least 12 months before an election to be reasonable. Mr Green explained the reasoning behind raising requirements for parties to register:
- Registered parties have significant advantages in the system. They get their name on the ballot paper, and they get the ability to centrally nominate candidates, which takes the difficulty out of getting nominators... I think parties get significant advantages and therefore they should be forced to jump higher. We require independents to prove they have some minimal level of support to get on the ballot paper. Deposit laws are about expressing a minimum desire to run for parliament by putting in your money, so I do not see that there is any problem in just lifting that barrier, particularly for parties.<sup>42</sup>
- 3.58 Mr Mackerras identified reform of party registration as a means to reduce the size of Senate ballot papers:
- At present registration requires a party to demonstrate that it has 500 members. I propose that the number be raised to 2000. I propose also to raise the required fee from \$500 to \$2000. Also, I

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41 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra p. 1.

42 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 5.

think there should be stiffer documentation required to register a party.<sup>43</sup>

3.59 Aside from these general comments, Mr Mackerras stated that he absolutely supported the views of Mr Green in regard to party registration.<sup>44</sup>

3.60 Professor Williams advocated a tightening of party registration rules, noting:

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.<sup>45</sup>

3.61 Professor Williams also supported an increase in the fee for party registration:

I would broadly agree with the changes brought in in New South Wales, which I think amount to tightening but not, if you like, closing the door on new parties. Again, I think this is where the High Court would take a careful look, but in the decision of Mulholland some years ago, the High Court did give greater leeway to the Federal Parliament to change the rules for parties. So I think altering the [party registration] fee, increasing the number of members, and requiring officeholders not be across multiple parties would all be sensible things...<sup>46</sup>

3.62 Dr Bonham put forward a range of reforms intended to fix the issues he identified, similar to those raised by Mr Green, however Dr Bonham did not support other means of tightening party registration, such as increasing deposits or membership numbers:

I like the idea that a party can, starting from very little, attempt to enter the political marketplace and try to win support for its ideas, and grow over a series of elections. We shouldn't be attempting to drive genuine candidates out of elections simply because the presence of a large number of them threatens the integrity of a flawed system. Instead we should have a system that is open to any number of candidates without their presence having the potential to damage outcomes.<sup>47</sup>

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43 Malcolm Mackerras, *Submission 7, Attachment A*, p. 1.

44 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 27.

45 Prof George Williams, *Submission 23*, p. 3.

46 Prof George Williams, *Transcript of evidence*, 13 March 2014, Sydney, p. 8.

47 Dr Kevin Bonham, *Submission 140*, p. 10.

- 3.63 Democratic Audit of Australia supported tightening party registration, noting:

One reform that will not affect the operations of the STV PR system is to tighten the regulations regarding political party registration. At present a party will be registered if it provides to the AEC the names of 500 persons who are eligible to be on the roll, provides a constitution (which later does not have to be abided by) and pays a fee of \$500. The Audit recommends that the requirement be 1 000 names of persons actually on the roll and the payment of a \$5 000 fee. While the latter may appear iniquitous, to ask those who endorse a party to contribute \$5 each for its registration is a very modest impost.<sup>48</sup>

- 3.64 Glenn Druery, in supporting a party membership level of 1500 for the purposes of registration, expanded his thoughts on how party registration could work. He stated:

I personally would make it 1500 on pieces of paper, and then we can talk about a whole range of things, like documentation of meetings and perhaps even a nominal joining fee.<sup>49</sup>

- 3.65 Not all submitters supported the strengthening of party registration on a financial basis. The Australian Greens noted:

The Australian Greens believe that party registration is an important process that should be used to test and evaluate genuine community support for political parties. As such there should not be an increase in financial barriers to party registration.<sup>50</sup>

- 3.66 However, this position was contrary to most other submissions.

### **Candidate nomination and residency requirements**

- 3.67 Views were expressed on the residency status of candidates nominating for the Senate. Mr Green said:

When the party reforms were brought in [in 1984], the requirement for party candidates to have nominators was done away with. I would consider bringing back nominators for the Senate for parties. The reason for that is that, if you look at who nominated at the federal election, you will see that the micro-parties managed to nominate candidates in states where they barely existed. In Tasmania, the Liberal Democrat candidate was

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48 Prof Brian Costar, *Submission 116*, p. 10.

49 Glenn Druery, *Transcript of evidence*, 1 May 2014, Canberra, p. 12.

50 The Australian Greens, *Submission 175.1*, pp. 1-2.

the mayor of Campbelltown in Sydney and was able to be nominated to Tasmania because he did not need nominators; he could be nominated under the central nomination process. The Sex Party candidate was Robbie Swan, who lived in Canberra. You cannot stop people from standing interstate, because the Constitution allows people to be treated equally. But, if the parties were forced to put nominators up when they lodge tickets for the Senate, then a party that does not exist in the state could not use the central nomination process.<sup>51</sup>

- 3.68 Dr Bonham also proposed reform to candidate nomination as a method to seek state residency of candidates. Dr Bonham recommended provisions to:

Require a candidate to have nominators who are resident within the state in which they are standing. This would discourage micro-parties from nominating candidates not resident in the state simply to buy a seat at the preference-dealing table in that state. The number of nominators could be a set number per state or could be on a pro-rata or partly pro-rata basis.<sup>52</sup>

- 3.69 Despite little evidence being put to this inquiry on this issue it is clearly an issue of concern to the public, with significant media discussion on the matter, in particular during the re-run of the Western Australia Senate election in April 2014.

## Party views

- 3.70 As significant stakeholders, the political parties have also expressed a range of views on any potential changes to Senate voting practices. These views are outlined in brief below and available in party submissions and evidence on the Committee's website.<sup>53</sup>
- 3.71 On ATL optional preferential voting (OPV), the following political parties were in support:
- Australian Greens
  - Liberal Party of Australia

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51 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 2.

52 Dr Kevin Bonham, *Submission 140*, p. 8.

53 Liberal Party of Australia, *Submission 188*, Australian Labor Party *Submission 187*, *Submission Australian Greens, Submission 175*, The Nationals, *Submission 184*, Future Party, *Submission 169*, Progressive Democratic Party, *Submission 155*, Pirate Party, *Submission 177*, HEMP Party, *Submission 60*. See also transcripts of evidence, 28 April & 1 May 2014, Canberra.

- Australian Labor Party
  - Australian Christians
  - Progressive Democratic Party<sup>54</sup>
  - Pirate Party
- 3.72 The following political parties are not in support of ATL OPV:
- The Nationals
  - The HEMP Party
- 3.73 The following political parties were in support of BTL OPV:
- Australian Greens
  - The Nationals
  - Australian Labor Party
  - Liberal Party of Australia
  - Australian Christians
  - HEMP Party (only if ATL is abolished)
  - Progressive Democratic Party
  - Pirate Party
  - Sustainable Population Party
- 3.74 No submissions were received from political parties supporting the continuance of compulsory BTL voting.
- 3.75 The following political parties support the abolition of GVTs:
- Australian Labor Party
  - Liberal Party of Australia
  - Australian Greens
  - Progressive Democratic Party
  - Future Party
  - Pirate Party (conditionally).
- 3.76 Similar to the experts and community group views outlined above, the parties submitted various views on proposed changes to party registrations. While there were a variety of views, all parties agreed that some form of reform is needed.
- 3.77 It is interesting to note that of the 77 parties<sup>55</sup> that were registered for the 2013 federal election, at time of publication of this report less than fifteen

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54 Not a registered political party.

55 AEC, *Submission 20.3*, p. 105.

political parties had submitted to this inquiry. Only one micro-party submitted to this inquiry defending the current system.<sup>56</sup>

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56 Help End Marijuana Prohibition Party, *Submission 60*.