

## Provisions of the bill

2.1 This chapter presents the provisions of the bill. It begins by highlighting the main changes that the bill proposes and compares these to the recommendations of the Committee's 2014 and 2015 reports into the conduct of the 2013 federal election. The chapter then outlines the main provisions of the bill.

### A comparison of the bill, JSCEM's recommendations and the status quo

2.2 Table 2.1 presents this comparison. It shows that:

- both the bill and the Committee in its 2014 interim report: *Senate voting practices*, support the abolition of Group Voting Tickets;
- both the bill and the Committee propose the introduction of optional preferential above the line voting. The bill proposes printing advice to voters on the Senate ballot paper to number at least six squares, although ;
- the bill would effect no change to below the line voting (apart from increased savings provisions). The Committee recommended the introduction of 'partial' optional preferential voting below the line with a minimum sequential number of preferences to be completed equal to the number of vacancies;
- the Committee recommended 'appropriate formality and savings provisions' and the bill proposes increasing the vote savings provisions

to allow for up to five mistakes by a voter when sequentially numbering their preferences;

- both the bill and the Committee propose removing the capacity for an individual to be a registered officer or deputy registered officer of multiple federally registered political parties;
- the bill proposes to allow for party logos to be printed on the Senate and House ballot papers, enabling political parties to register logos and introduce the option for the reproduction of logos, in black, on ballot papers. The Committee did not make a recommendation to introduce logos but it did recognise the argument for logos on ballot papers to limit voter confusion.

**Table 2.1—  
Key issue comparison of the status quo, the bill's provisions and JSCEM's 2014 recommendations**

<b>Key issues</b>	<b>Status quo</b>	<b>Bill provision</b>	<b>JSCEM recommendation May 2014</b>
<b>Group voting tickets</b>	A senate group may lodge a written statement setting out preference order of all candidates in the election.	The bill abolishes individual and group voting tickets.	The Committee recommends the abolition of group and individual voting tickets.
<b>Above the line voting</b>	Voters must place a single figure 1 in one square above the line in order to make their vote count.	The bill introduces partial optional preferential voting above the line, providing advice printed on the Senate ballot paper that voters number at least six squares in order of preference	The Committee recommends introducing optional preferential voting above the line voting.
<b>Below the line voting</b>	Voters must number all the boxes below the line in their preferred order for their vote to count.	The bill proposes to change the vote savings provisions to allow for up to five mistakes by a voter when sequentially numbering their preferences (increased from the current three mistakes).	The Committee recommends 'partial' preferential voting below the line with a minimum sequential number of preferences to be completed equal to the number of vacancies: six for a half-Senate election; twelve for a double dissolution, two for any territory Senate election.
<b>Registered officers</b>	Registered officers may be registered to one or more political parties.	The bill proposes to remove the capacity for an individual to be a registered officer or deputy registered officer of multiple federally registered political parties.	The Committee recommends stronger requirements for party registration, including restriction to unique registered officers for a federally registered party.

<b>Identifying candidates on the ballot</b>	Candidates name and party abbreviation are included on the ballot papers.	The bill proposes to allow for party logos to be printed on the Senate and House ballot papers. The bill proposes to enable the registration of logos by political parties and introducing the option for the reproduction of logos, in black, on ballot papers.	The Committee is did not make a recommendation on logos but noted the merits of the proposal to permit the inclusion of party logos on ballot papers. The potential to limit confusion amongst voters, especially with complex ballot papers, is an argument for the adoption of logos. (Final report)
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2.3 The key difference, therefore, between the bill and the Committee's views (as expressed in its May 2014 interim report and April 2015 final report) is the Committee's recommendation to introduce 'partial' optional preferential voting below the line. This issue will be discussed in chapters 3 and 4 of this report.

## Key provisions of the bill

2.4 The following section sets out the main provisions of the bill, focussing on the five issues identified in Table 2.1. As chapter 1 noted, the bill has parts on Senate voting, registered officers and party logos.

### Optional preferential voting above the line

2.5 Section 239 of the *Commonwealth Electoral Act 1918* ('the Act') relates to the marking of votes in a Senate election. The headline provision of the bill is Item 20 which seeks to repeal subsections 239(2) and (3) and insert a new subsection 239(2).

2.6 The new subsection states that a ballot paper may be marked above the line by writing at least the numbers 1 to 6 in the squares above the line in accordance with their preferences (or as many preferences as there are squares if there are fewer than six squares). Item 41 of the bill requires the ballot paper to contain the following instructions for voting above the line: 'By numbering at least 6 of these boxes in the order of your choice (with number 1 as your first choice)'.

2.7 The repealed subsection 239(3) allows for ticks and crosses to be counted as a 1. The bill proposes moving this provision to a new subsection 269(1), which deals with above the line vote formality.

### **Above the line and formality**

- 2.8 Section 269 of the Act currently relates the requirements for a vote to be formal according to a group voting ticket. It states that where a Senate ballot paper has no vote or does not indicate the first preference for one candidate and the order of the voter's preference for all the remaining candidates, it is not informal provided the voter has marked a vote on the ballot paper by writing 1 in a square.
- 2.9 Item 23 of the bill seeks to repeal subsection 269(1) and to replace it with a new 269(1) that explicitly states that provided the ballot paper is marked with at least the number 1 above the line the vote will be counted as formal. In other words, while the voter will be instructed to provide six preferences above the line, the amended Act will require no more than one preference above the line.
- 2.10 The Second Reading Speech of the bill indicates that the formality rules implement a savings provision so as not to render informal the votes of voters who continue to vote 1 above the line as they have previously done. Although the reform is intended to introduce multiple above the line preferences – with printed advice on ballot papers to this effect – the formality rules mean that the bill is in essence implementing the optional preferential voting system that the Committee recommended in its May 2014 interim report.

### **Treatment of ballots for above the line voting**

- 2.11 Section 272 of the Act relates to how group voting tickets affect the above the line vote. Item 28 of the bill repeals this section. In its place, a considerably shorter section proposes that preferences above the line are treated as preferences for those groups below the line, and only those groups. The first above the line preference will be treated as a 1 vote for the first candidate in that group, followed by a second preference for the next candidate in the group, and so on through to the last candidate in the group. If there are additional preferences above the line, these will be treated as preferences for the candidates in those groups, in the order in which they are listed on the ballot paper.
- 2.12 The Australian Electoral Commission told the Committee that a vote above the line would be formal regardless of the number of boxes marked above the line. The AEC's advice to voters would be that voters should number six boxes above the line. However, the Electoral Commissioner

advised the Committee that should boxes be marked beyond a sixth box they would be counted.<sup>1</sup>

- 2.13 Appendix 3 gives two examples of how a vote above the line would flow to candidates below the line. The Explanatory Memorandum also provides helpful examples:

It is expected that many voters will now vote '1, 2, 3, 4, 5, 6' above the line. If each of the six groups numbered by the voter had eight candidates, section 272 would treat the ballot paper as having 48 numbers below the line. The number '1' would be assigned to the first candidate in the '1' group; the number '2' would be assigned to the second candidate in the '1' group. The number '8' would be assigned to the final candidate in the '1' group and the number '9' would then be assigned to the first candidate in the '2' group.

Thus, where a voter places '1' above a group, their vote will be a first preference vote for the first candidate in that group. If that candidate is excluded in the distribution of preferences, the vote is transferred to the next candidate who is alive in the preference distribution. This might be a candidate placed lower in that group but would more usually mean the vote is transferred to the next group in the voter's preference (2, 3, 4, 5 or 6), which has candidates still alive in the distribution.<sup>2</sup>

- 2.14 The Committee highlights that this is the bill's most significant change. Voters will know exactly where their preference votes are flowing according to the party's list of candidates below the line. As the EM states:

Thus, the voter controls the course by which their vote is transferred upon preference distribution. Since 1984 the distribution of preferences has been done pursuant to ticket arrangements in a manner almost entirely unknown to most voters.<sup>3</sup>

- 2.15 Chapters 3 and 4 of this report note that some commentators have concerns with the bill in that the parties would continue to have influence over the order of candidates on the ballot paper. As explained later this report, the Committee's position is that it is appropriate that the parties retain full control of the order of their candidates.

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1 Mr Tom Rogers, Electoral Commissioner, *Proof Committee Hansard*, 1 March 2016.

2 Commonwealth Electoral Amendment Bill 2016, *Explanatory Memorandum*, p. 10.

3 Commonwealth Electoral Amendment Bill 2016, *Explanatory Memorandum*, p. 10.

- 2.16 The bill contains a number of items intended to make the language in the Act consistent with the new above the line provisions, and removing language that refers to group voting tickets.

### **Counting of Senate ballot papers on election night**

- 2.17 The remaining items in Part 1 of the bill are 'technical amendments to the scrutiny and count process to enable the AEC to improve and centralise the count of Senate ballot paper'.<sup>4</sup> These items largely seek to amend ballot paper handling procedures and the secure transmission of ballot papers to the point where the scrutiny is undertaken.
- 2.18 Currently, the Australian Electoral Commission conducts an indicative count of first preference votes for groups and ungrouped candidates on election night. This occurs at the polling place after the House of Representatives ballots have been counted. This count does not constitute part of the scrutiny, as defined in Part XVIII of the Act. It is purely an indicator of the direction of results.
- 2.19 In the form that the bill was referred to the Committee, there was to be no provision for any determination of the results or examination of ballot paper for formality before the ballot papers arrived in the custody of the AEO. The Minister's Second Reading Speech states:
- In the past, voters mainly placed a '1' above the line on Senate ballot papers. This enabled an initial first preference count to be undertaken at polling booths. As the proposed Senate amendments will lead to multiple voter preferences being numbered above the line, preference counts at polling booths will no longer be possible.<sup>5</sup>
- 2.20 On 24 February 2016, the House of Representatives passed Government amendments to the bill that would reinstate the count of first preferences prior to the ballot papers being packaged and sent to the Divisional Returning Officer (DRO).<sup>6</sup>
- 2.21 Chapter 3 comments further on this issue.

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

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

6 Proposed subsections 273(2)(ca), 273(2)(d) and 273(2)(da)

## Vote handling processes

- 2.22 Item 29 of the bill makes other technical amendments to ballot paper handling processes in subsection 273(2) to (6) of the Act. These processes require that ballot papers are removed from ballot boxes in the presence of any scrutineers, that the number and condition of the ballot papers is recorded, and that the count of first preference votes is transmitted to the DRO. The ballot papers are then sealed in a securely fastened container and transmitted to the DRO of the Division.
- 2.23 The DRO must then open the parcel of ballot papers, check that the number and condition of the ballot papers are as stated, and then re-package all ballot papers from the division and transmit them to the Australian Electoral Officer (AEO) for the relevant state. The AEO will then undertake the scrutiny (the count of the vote), including determining which ballot papers are informal.
- 2.24 The amendments proposed in the bill will reduce ballot paper handling and increase the security of ballot paper transport. The Committee highlights the importance of these amendments. They are entirely consistent with the recommendations of the Keelty report into the missing 2013 Western Australian ballot papers which the Committee strongly supports.<sup>7</sup>

## Savings provisions to capture voter intent below the line

- 2.25 As noted earlier, the only changes that the bill proposes to below the line voting are to expand the number of errors that the voter may make in numbering.
- 2.26 Item 27 of the bill amends subparagraph 270(1)(b)(i) of the Act to allow, in particular circumstances, no more than five changes to numbers marked in squares below the line on a Senate ballot paper for the vote not to be formal. For these allowances to occur, there must be more than nine candidates below the line and not less than 90 per cent of the squares numbered.<sup>8</sup>

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7 Inquiry into the 2013 WA Senate Election, Report commissioned by the Australian Electoral Commission and produced by M. J. Keelty AO, December 2013  
[http://www.aec.gov.au/About\\_AEC/Publications/Reports\\_On\\_Federal\\_Electoral\\_Events/2013/files/inquiry-into-the-2013-wa-senate-election.pdf](http://www.aec.gov.au/About_AEC/Publications/Reports_On_Federal_Electoral_Events/2013/files/inquiry-into-the-2013-wa-senate-election.pdf) (accessed 28 February 2016).

8 *Explanatory Memorandum*, p. 9.

## Registered officers and deputy registered officers

- 2.27 Part 2 of the bill relates to new requirements for registered officers and deputy registered officers. Item 43 of the bill introduces a restriction on registered officers and deputy registered officers for a federally registered party. It states that 'a person must not be the registered officer or deputy registered officer of more than one registered political party at a particular time.'<sup>9</sup>
- 2.28 Further, the bill makes it clear that it is not permissible for a registered officer to be a deputy registered officer of another registered political party.<sup>10</sup>
- 2.29 The Explanatory Memorandum New subsection 126(2B) provides that:
- a person must not, at a particular time, be the registered officer of more than one party, a deputy registered officer of more than one party, or the registered officer of one party and a deputy registered officer of another party. <sup>11</sup>
- 2.30 This is consistent with the view from the Joint Standing Committee on Electoral Matters' Interim report on the inquiry into the conduct of the 2013 federal election: Senate Voting Practices. It recommended that registered officers for federally registered parties be unique. The report also included five other sub clauses of the recommendation in order to provide for stronger requirements for party registration. These are not addressed in the bill.
- 2.31 New subsection 126 (2C) is explicit in clarifying that the changes to the Electoral Act 1918 would be binding for federally registered parties only. It does not provide amendments for the 'purposes of an Act of a State or Territory, or Ordinance of an external Territory, of a political party or a branch of a political party.'<sup>12</sup>
- 2.32 Item 56 in the Explanatory Memorandum sets out the provision that the Electoral Commissioner must provide written notice to a party it is considering to deregister, setting out all reasons for doing so. It adds a person being the registered officer of more than one political party as one of the valid reasons for the Electoral Commissioner giving notice to a party that the Electoral Commissioner is considering deregistering the party.
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9 *Commonwealth Electoral Amendment Bill 2016*, p. 15

10 *Commonwealth Electoral Amendment Bill 2016*, subsection 126(2B)(c)

11 *Explanatory Memorandum*, p. 14.

12 *Explanatory Memorandum*, p. 15.

- 2.33 Item 57 explains that existing political parties have 90 days after the amendments have been enacted to correct any issues in relation to having a registered officer who is also the registered officer of another party before it risks being deregistered. It also provides that a party will not be deregistered under these provisions during an election.

## Party logos

- 2.34 Part 3 of the bill would allow for eligible political parties to submit a logo of their party to the Register of political parties. Item 61 specifies the requirements for party logos which includes “a logo set out in an application must be in black and white: and b) meet any requirements determined under subsection (2 AB).”<sup>13</sup>
- 2.35 Item 88 in the bill states that ‘party logos are printed only in black on ballot papers’.<sup>14</sup> There are provisions for the logo to be printed on both House and Senate ballot papers.
- 2.36 The precise placement of the logo is made explicit in the Explanatory Memorandum. It states:
- The printing of party logos on ballot papers will be adjacent to the square that is printed, adjacent to the name of the party.<sup>15</sup>
- 2.37 If candidates are endorsed by more than one political party no more than two logos may be printed adjacent to the square and if more than two of those parties have logos entered in the register the parties must notify the Electoral Commission, which of the logos are to be printed adjacent to that square.<sup>16</sup>
- 2.38 Several amendments in the bill mirror the existing provisions in the Act for the registration of political party names in terms of registration of logos.
- 2.39 The Explanatory Memorandum notes that the Electoral Commissioner may decide to refuse to enter the logo of the political party in the Register of Political Parties. One ground for refusal is that the logo will be confused with a business or another political party logo, or deemed to be obscene.

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13 *Commonwealth Electoral Amendment Bill 2016*, p. 19

14 *Commonwealth Electoral Amendment Bill 2016*, p. 24

15 *Commonwealth Electoral Amendment Bill 2016*, p. 24

16 *Explanatory Memorandum*, p. 24

- 2.40 The bill seeks to amend the Act to prevent elections being declared void on the basis of an error in printing party logos on ballot papers, adding to an existing requirement that errors in names and abbreviations of parties will also not cause an election to be void.<sup>17</sup> It also aims to protect the Commonwealth and its employees from action, suit or proceedings in relation to a logo of a party.<sup>18</sup>
- 2.41 The Committee noted in 2014 that logos could potentially limit confusion among voters. However, it also recognised that ‘if similar registered party names can cause confusion, so too could party logos closely resembling each other’.<sup>19</sup>
- 2.42 The 2014 JSCEM interim report commented that permitting the inclusion of logos would allow parties to utilise their branding more effectively. However the Committee flagged the potential copyright issues that may arise around branding and logos. In addition, the Committee cautioned that there may be technical and logistical challenges in printing small logos in black and white on ballot papers.<sup>20</sup>

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17 *Explanatory Memorandum*, p. 21 Item 90

18 *Explanatory Memorandum*, p. 21 Item 91

19 Joint Standing Committee on Electoral Matters, *The 2013 federal election: report on the conduct of the 2013 election and matters related thereto*, April 2015, p. 93.

20 Joint Standing Committee on Electoral Matters, *The 2013 federal election: report on the conduct of the 2013 election and matters related thereto*, April 2015, p. 93.