

# Submission to the Joint Standing Committee on Electoral Matters

Regarding the

## Commonwealth Electoral Amendment Bill 2016

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### Disclaimer

This submission is made by the author in a personal capacity. The information contained in this submission has been prepared by the author and only reflects the views of the author.

Although the submission has been prepared with care the author is aware there may be errors and would be grateful for any comments and/or clarifications from reviewers.

## 1 Introduction

I fully support the central tenet of this bill which is to remove ticket voting. This change is necessary to ensure the alignment of voter's intent with electoral outcomes for the Australian Senate. I will not provide further comment on this aspect of the bill in this submission.

This remainder of the submission addresses other issues arising from the Commonwealth Electoral Amendment Bill 2016.

## 2 Initial Count

Proposed Subsection 273 (2) c (ii) as originally drafted required AEC staff to "count the ballot papers without inspecting them" after ballot boxes are opened. It is good to see that this idea has now been dropped, but it is worth emphasising why such a change to the Bill was so important. The originally proposed amendment would have removed a cornerstone of electoral integrity from the senate count process. Australian elections rely heavily on the concept of multiple independent counts having sufficient alignment to give confidence in electoral outcomes. Typically initial counting of votes to first preference was done at voting centres in the presence of scrutineers soon after ballot boxes were opened. The absence of initial count information from the count would in my view have had the potential to reduce the public's confidence in the Senate's final count.

Currently, first preference votes for all above the line groups and below the line candidates are counted at voting centres and published on the AEC's VTR internet site as group totals by venue or vote type. The proposed amendment would have prevented that from happening at future senate elections, resulting in the public not being able to identify an alignment between the initial independent count and the final count.

Additionally, current initial count and reporting arrangements allow most candidates elected to the senate to be identified on or soon after election night by examining the first preference vote counts done in attendance voting venues. This is possible because electoral outcome for senate elections is predominantly determined by first preference votes. This will become increasingly the case with the removal of tickets and the introduction of optional preferential voting above the line.

Australian electors rightly put a lot of trust in initial counts because they know they are done independently at thousands of locations by tens of thousands of unrelated people and as such it would almost be impossible to commit a significant electoral fraud without detection.

Previously AEC management and the public could cross check the final first preference count with initial count to confirm count electoral integrity. The proposed amendment would have changed the relationship the public has with the Senate election process. Should it have been enacted there would have been no ability for the AEC management or the public to cross check the final senate count result only the number of ballots. The current initial count is a significant deterrent to vote tampering post-election night based on this well understood process. Without an initial count the AEC will be relying entirely on prevention mechanisms to stop tampering such as sealed containers.

I would understand that the original decision to not count the senate to first preference may have been made to reduce effort in polling places on election night and possibly as a cost saving measure.

I fully understand the reasoning behind the need to reduce polling place counting effort. I have personally experienced the issues associated with counting senate papers to first preference in a polling place on election night.

An alternative to the AEC's current initial count approach could be to follow what is done in NSW for Legislative Council elections.

- Count above the line to first preference group votes without any assessment for formality
- Count below the line ballot papers (not the preferences) without consideration for informality
- Count informal blank ballots.

This approach would greatly reduce the effort of election officials compared to current AEC requirements and still provides adequate result information to allow potentially 5 out of 6 senate candidate positions to be predicted.

It should also be emphasised that with the rise of pre-poll voting a the above proposed simplified initial count to group voting first preference will help reduce the effort required of DRO staff post-election day. Again it is important that initial counts of pre-poll votes is done as soon after election day as possible to minimise the risk of ballots being lost without detection in the DRO's office.

### **3 Count Integrity Confirmation**

Given initial count of senate results appear now to be in the bill, and the purpose of the initial count is to prove final result integrity, I would suggest that the bill also add a provision requiring the AEC to report on the differences between initial and final count first preference above the line group voting square results. This would be technically a very easy change, as the AEC has both sets of data and could easily prepare a download and report showing these discrepancies.

The report should clearly state why significant differences have occurred and why the AEC believes the final count is correct rather than the initial count. Also given there will be small discrepancies due to normal human counting and handling errors it is important the AEC define when a discrepancy is significant. I would suggest a significant discrepancy could be a discrepancy greater than 1% of the final vote where it is more than 500 votes or is 5 votes where the final vote is equal to or less than 500 votes.

I accept that this would be considered a brave move by many electoral authorities as it potentially may lay the electoral authority open to criticism which may otherwise have been avoided. I believe the increase in public confidence of revealing fully and openly all potential counting errors in the count far outweighs the downside of public criticism. I would also understand that for this approach to be beneficial a greater level of maturity both in the media and the public regarding expectations of count accuracy needs to occur.

### **4 Ballot Paper Handling**

Bill Subsection 273 defines a process for handling senate ballot papers which requires the papers to be moved in containers from the voting centre to the DRO office and then to a central state-wide

count centre. The bill requires the DRO to open the container and count the number of ballots and confirm it matches the return in the container. Although this may seem a sensible check experience in NSW for 2007 and 2011 elections that the more often ballot containers are opened and ballots handled the more likely ballots will be lost or mishandled.

It is my view that the best approach would be for the DRO to only count the containers, not open the containers. The DRO should ensure all containers have arrived and have been dispatched and the seals are intact, which is the norm to prove good chain of custody in many logistics operations. This approach will reduce the likelihood of mishandling and potential loss of ballot papers in the DRO's office. This approach will also allow DROs to focus on the initial count of pre-poll and other ballots in their office which is in itself a mammoth task.

## 5 Unused Ballot Paper Handling

NSW Legislative Council experience indicates that one of the problems which can be encountered at a central scrutiny is the existence of anomalies and inconsistencies between the returns completed by the polling officials and the actual materials they have sent in. These will typically need to be resolved by reconciling the returns on the basis of a detailed examination of the actual materials. Bill Subsection 273 defines a process for handling ballot papers taken from the ballot box but does not address what happens to unused ballot papers. Experience in NSW has shown that often unused and used ballot papers are co-mingled at source or are simply just packed in the wrong box. The effect of these errors are significant when only used ballots are sent to the central count centre for further processing. It is an enormous problem for count centre staff to retrieve missing papers at that point to allow the final count to be performed. The only resolution to this problem is to send all ballot papers forward to the central count centre directly from each voting venue. This approach gives the maximum opportunity to resolve reconciliation issues in a timely manner prior to data entry and the final count.

I am aware of a situation where some 2,800 pre-poll votes were found to be missing after comparing initial with final count data at the end of all data entry. These ballots were subsequently found amongst the unused ballots in the RO's office a day before the office was due to be closed. Had they not been found, it is probable they would have been thrown out with the unused ballot papers. This situation would not have occurred if all the used and unused ballots were sent to the count centre. The only downside to this approach is the need for more storage space and the potential for blank informal ballots without initials to become confused with unused ballots.

## 6 Financial Impact

I note that the bill does not provide any cost estimates for the effort to count ballots which have 6 or more preferences above the line.

To assist the committee I have prepared below a "back of the envelope" estimate of what the AEC could expect the labour effort to be for double keying a senate election conducted in line with the approach outlined in the bill and an alternative single preference approach the committee may wish to consider. Note, the estimate is only for the cost of staff batching and counting votes in a state-

wide count centre, and all associated work. The current cost of central vote counting will need to be subtracted from this figure if the true incremental election cost is to be determined.

I do not believe scanning of ballots would be possible given the size of the NSW ballot. I also doubt if scanning would give a cheaper, more timely and cost effective result than double keying. Experience in the last NSW local government elections where ballots were scanned suggests scanning may not be that useful.

## 6.1 Bill Approach

The voting instructions require voters to mark at least 6 above the line group voting squares with preferences above the line. The result of this will be that only a limited number of ballots will have a single preference above the line (formal due to saving provisions) and as such will be amenable to bulk entry of the single preference by group totals. Currently in NSW voters are instructed that they can place a single preference above the line. Some 80% of the above the line votes have only a single preference. These votes can be counted by hand to first preference and then bulk entered into the counting software thus saving significant keying effort.

Based on staff effort for NSW state election in 2015 it can be assumed that the AEC will need to spend **about \$30M for staff** to batch and data enter all ballots for the senate Australia wide using provisions in the current bill. The size of facility would be extensive and the time taken would be significant. Reasonably in NSW if every senate paper was data entered the result would not be known for at least one and a half months to two months after election day and the facility needed would be in the order of 7,000 sq. m. requiring about 120 networked computers. It is fully understood that this is a large warehouse and will be difficult to procure at short notice.

## 6.2 Alternative Approach

If the voting instructions were aligned with the NSW Legislative Council (LC) where the voter is told they only need to place a single preference above the line, then the data entry effort would be greatly reduced as it could reasonably be expected based on NSW experience that only 20% of ballots would need to be entered. This approach would require the AEC to spend **about \$8M for staff** to batch and data enter all ballots for the senate in Australia. The facility and computer requirements would remain the same as the bill approach but the time to complete would be more likely only 20 days.

## 6.3 Optional Preferential Below the Line

The proposed full preferential voting below the line is not consistent with the proposed optional preferential voting proposed for above the line. Full preferential voting below the line also is very expensive to count posing significant difficulties for the AEC.

Notwithstanding the relatively small number of below the line votes it is my view optional preferential voting should be used below the line if only to reduce counting effort.

## 7 Exhausted Votes

Some commentary has occurred regarding the growth of exhausted votes due to the use of optional preferential voting about the line. It is worth noting that in the last two NSW legislative council elections exhausted votes only made up some 7% to 8% of the formal votes.

## 8 Voting Instructions and Formality

The Australian senate enjoys a relatively low informal rate in NSW of 3.3% for 2013 election compared to the NSW Legislative Council (LC) which in 2015 was 5.7%.

Australian Senate % Informality Rates for 2013 election

State	Average	Min	Max	StdDev
ACT	1.98	1.88	2.08	0.14
NSW	3.33	2.08	6.95	1.10
NT	2.68	2.45	2.91	0.33
QLD	2.17	1.36	2.74	0.32
SA	2.65	1.89	3.53	0.52
TAS	2.45	2.19	2.97	0.32
VIC	3.37	2.13	5.69	0.91
WA	2.85	1.75	3.41	0.42
<b>Grand Total</b>	<b>2.95</b>	<b>1.36</b>	<b>6.95</b>	<b>0.94</b>

The reason for the difference between senate and LC is not clear, however the size of the NSW LC ballot could be a significant factor. However appendix A identifies districts with lower literacy levels using red and orange highlight. These districts also have the highest informality.

Appendix A also shows that 73% of informal ballots are blank. A blank ballot often means the voter is apathetic or confused (see voter instructions in App B), it is hard to tell which or if another factor is at play.

However, it is interesting to note that NSW has a higher level of informality for just blank ballots (4.1%) in the LC than overall informality for the senate (3.3%) in NSW. This would suggest the senate should not experience any significant changes in blank informality as apathy should not increase for senate voting and confusion will only increase if the ballot becomes more complex. Therefore, new voting instructions need to be kept simple so literacy is not an issue for voters. This would suggest requiring 6 preferences above the line may cause larger informality than if only a single preference is required by the voting instructions.

## Appendix A – NSW Legislative Council Informality

The table below illustrates the level of informality by District broken down by blank informal votes and marked informal votes. The interesting point to note is that the districts with high overall informality (see highlighted district names – red the worst and orange a bit better) typically are districts with low literacy levels. These districts also seem to have a higher level of marked informal votes which suggests the voters from these districts are trying to vote but their literacy is causing them to fail.

It is also interesting to note that overall 73% of the informal votes were are blank suggesting voter apathy or confusion. There does not seem to be a relationship between literacy and the proportion of blank votes.

District	Blank	Marked	% Marked	Total Inf.	% Informal Ballot Papers	Total Turnout
Albury	2133	599	22%	2732	5.7%	48104
Auburn	2339	1197	34%	3536	7.7%	45947
Ballina	1503	563	27%	2066	4.2%	48970
Balmain	1123	484	30%	1607	3.3%	48234
Bankstown	3004	1424	32%	4428	9.7%	45524
Barwon	2201	764	26%	2965	6.0%	49175
Bathurst	1960	560	22%	2520	5.0%	50125
Baulkham Hills	1510	561	27%	2071	4.1%	50761
Bega	1836	598	25%	2434	4.9%	49271
Blacktown	2276	1310	37%	3586	7.4%	48538
Blue Mountains	1466	419	22%	1885	3.8%	49900
Cabramatta	2247	1570	41%	3817	7.8%	49035
Camden	2145	676	24%	2821	5.6%	50053
Campbelltown	2382	829	26%	3211	6.8%	47413
Canterbury	2659	1694	39%	4353	8.7%	50212
Castle Hill	1434	465	24%	1899	3.8%	49702
Cessnock	2308	665	22%	2973	6.2%	48129
Charlestown	2557	654	20%	3211	6.3%	51125
Clarence	1910	722	27%	2632	5.4%	48873
Coffs Harbour	1965	528	21%	2493	5.3%	46829
Coogee	1264	473	27%	1737	3.7%	47600
Cootamundra	1824	652	26%	2476	5.1%	48583
Cronulla	1960	640	25%	2600	5.0%	52323
Davidson	1232	396	24%	1628	3.2%	50460
Drummoyne	1653	808	33%	2461	5.1%	48224
Dubbo	2056	522	20%	2578	5.3%	48395
East Hills	2385	1008	30%	3393	6.9%	49476
Epping	1440	539	27%	1979	3.9%	50940



District	Blank	Marked	% Marked	Total Inf.	% Informal Ballot Papers	Total Turnout
Fairfield	2646	1874	41%	4520	9.4%	48187
Gosford	2047	650	24%	2697	5.4%	50105
Goulburn	1814	480	21%	2294	4.6%	50158
Granville	2516	1426	36%	3942	8.3%	47248
Hawkesbury	2139	592	22%	2731	5.6%	49189
Heathcote	1887	541	22%	2428	4.6%	52978
Heffron	1832	807	31%	2639	5.5%	48132
Holsworthy	2612	1221	32%	3833	7.7%	49625
Hornsby	1577	502	24%	2079	4.1%	51087
Keira	1919	780	29%	2699	5.2%	52292
Kiama	1802	484	21%	2286	4.6%	49229
Kogarah	2507	1236	33%	3743	7.7%	48698
Ku-ring-gai	1252	379	23%	1631	3.3%	49869
Lake Macquarie	2579	577	18%	3156	6.4%	49717
Lakemba	2741	1582	37%	4323	9.2%	46919
Lane Cove	1590	516	25%	2106	4.2%	50290
Lismore	1451	398	22%	1849	3.8%	48293
Liverpool	3125	1853	37%	4978	10.4%	47904
Londonderry	2434	1072	31%	3506	7.2%	48668
Macquarie Fields	2556	967	27%	3523	7.1%	49585
Maitland	2331	504	18%	2835	5.7%	49631
Manly	1482	461	24%	1943	4.0%	48515
Maroubra	2075	969	32%	3044	6.3%	48012
Miranda	1992	695	26%	2687	5.2%	51359
Monaro	1618	540	25%	2158	4.5%	47490
Mount Druitt	2619	1180	31%	3799	8.0%	47344
Mulgoa	2458	867	26%	3325	6.6%	50587
Murray	2323	1041	31%	3364	7.0%	47990
Myall Lakes	2044	614	23%	2658	5.3%	49852
Newcastle	2220	572	20%	2792	5.6%	50091
Newtown	1194	525	31%	1719	3.7%	47097
North Shore	1012	305	23%	1317	2.8%	47472
Northern Tablelands	1869	583	24%	2452	4.9%	49631
Oatley	2047	798	28%	2845	5.7%	49773
Orange	2065	537	21%	2602	5.2%	50375
Oxley	1731	617	26%	2348	4.9%	48276
Parramatta	2174	907	29%	3081	6.2%	49642
Penrith	2461	563	19%	3024	6.1%	49939
Pittwater	1509	405	21%	1914	3.9%	49639
Port Macquarie	1865	489	21%	2354	4.6%	50968
Port Stephens	1995	530	21%	2525	5.2%	48863



District	Blank	Marked	% Marked	Total Inf.	% Informal Ballot Papers	Total Turnout
Prospect	2523	1421	36%	3944	7.9%	49682
Riverstone	1906	589	24%	2495	5.1%	48877
Rockdale	2268	1273	36%	3541	7.4%	48102
Ryde	1864	771	29%	2635	5.3%	49951
Seven Hills	2036	941	32%	2977	5.9%	50210
Shellharbour	2588	930	26%	3518	6.6%	53724
South Coast	1978	726	27%	2704	5.7%	47539
Strathfield	1799	811	31%	2610	5.4%	48359
Summer Hill	1683	1075	39%	2758	5.6%	49026
Swansea	2253	762	25%	3015	6.0%	50237
Sydney	1439	414	22%	1853	4.2%	44149
Tamworth	2142	545	20%	2687	5.3%	50350
Terrigal	1867	480	20%	2347	4.6%	50776
The Entrance	2288	601	21%	2889	5.8%	50188
Tweed	2056	639	24%	2695	5.9%	45789
Upper Hunter	1888	503	21%	2391	4.9%	49004
Vaucluse	1394	467	25%	1861	3.9%	47540
Wagga Wagga	1901	499	21%	2400	5.0%	48283
Wakehurst	1867	621	25%	2488	5.0%	49678
Wallsend	2556	705	22%	3261	6.3%	51821
Willoughby	1494	454	23%	1948	4.0%	48784
Wollondilly	2010	551	22%	2561	5.2%	49284
Wollongong	2623	1300	33%	3923	7.4%	52788
Wyong	2260	766	25%	3026	6.3%	48085
	187565	70803	27%	258368	5.7%	4574866

## Appendix B – NSW Legislative Council Voting Instructions 2015

**You may vote either ABOVE OR BELOW the Line:**

**If you vote ABOVE the Line:**

- Write the number **1** in the square next to the group of your choice.
- You can show more choices, if you want, by writing numbers in the other squares, starting with number 2.
- Do not write any numbers below the line.

**Group A**

☐ **NO LAND TAX**

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**THE LINE**

**OR**

**If you vote BELOW the Line:**

- Write the numbers **1** to **15** in the squares next to the candidates of your choice. You must number at least 15 squares for your vote to be counted.
- Write number 1 in the square next to the candidate who is your first choice, number 2 in the square next to your second choice and then keep numbering 3 to 15.
- You can show more choices, if you want, by writing numbers in the other squares, starting with number 16.
- Do not write any numbers above the line.

**Fold this ballot paper so your vote cannot be seen and place it in the ballot box (or in the envelope provided).**

**Group A**

**NO LAND TAX**

☐ **JONES**  
Peter  
NO LAND TAX

☐ **CARBONE**  
Pat  
NO LAND TAX

☐ **MACRI**  
Gus  
NO LAND TAX

☐ **RUBEN**  
James  
NO LAND TAX

☐ **ADAMSON**  
Gary  
NO LAND TAX

☐ **O'TOOLE**  
Cathy  
NO LAND TAX

☐ **FITZPATRICK**  
Sharon  
NO LAND TAX

☐ **WILSON**  
Ron  
NO LAND TAX

☐ **LOPPELATO**