Improving ballot paper design and rules for the election of senators

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Submission to the JSCEM Inquiry into the *Commonwealth Electoral Amendment Bill 2016*

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Executive Summary

Overview of submission

In my opinion the *Commonwealth Electoral Amendment Bill 2016* ("the Bill") should be supported. The Bill improves aspects of our electoral law, and makes none of the current arrangements worse. Further improvements remain to be dealt with in the future.

However, the way the Bill deals with certain issues can be improved. In brief, I suggest that the Bill be amended to:

- provide for fully optional preferential voting in the below-the-line area of the ballot paper
- omit the unnecessary rule that ballot papers become exhausted as soon as there is an error in the number sequencing
- provide a transparent and fair way for parties to cooperate at elections by creating a facility for unordered groups of candidates (under section 168(1)(a) of the Act) to distribute above-the-line votes equally between each candidate in the group
- briefly delay the enactment of the proposal for the use of party logos until all parties have had a reasonable opportunity to become equally prepared for the initiative.

The Bill represents a partial attempt to implement the recommendations of the *Interim Report of the Inquiry into the 2013 Election* issued on 9 May 2014 (the "1st Interim Report") of the Joint Standing Committee on Electoral Matters' ("JSCEM" or '"the Committee").

This submission refers to, and builds upon, the submission that I made to the Committee's 2014 inquiry (submission #181).

Summary of conclusions

What constitutes an optimal way of electing senators?

Conclusion 1: JSCEM, and Parliament, would assist the public debate on voting system issues by making clear what goals – such as voter equality of influence, achievement of actual representation by the greatest number of electors, and the scope and quality of elector choice – are considered to be the tests of good electoral laws.

The 2014 JSCEM inquiry and its recommendations

Conclusion 2: The Committee, and the Parliament, should be mindful of the practicalities of delivering the reforms proposed in the Bill. Parliament and the Government should provide to the Australian Electoral Commission adequate funding and support, and the maximum possible time to prepare for the Bill's implementation.

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Conclusion 3: The Bill's proposal to abolish the GVT system is well-founded and should be supported.

Conclusion 4: To maximise voter choice, minimise counting time and expense, and minimise the risk of legal challenge, the Bill should be amended to implement optional preferential voting below the line. This should be done either in plain and simple terms, or at least by using the compromises offered in the Committee's 1st Interim Report.

Conclusion 5: The proposed rule in provision 269(1A) should be replaced with provisions that: (1) gaps in numbering will simply be ignored, in the same manner as numberings of candidates who are already elected or eliminated candidates are ignored; and (2) ballots showing repeated numbers will be temporarily disregarded at any counting stage in which the candidates indicated by both (or all) the repeated numbers are still under active consideration (ie: are unelected and also eliminated).

Conclusion 6: The Committee may wish to consider whether the coming into effect of the proposal for use of party logos on ballot papers – see provision 214A(4) and also Form F – should be delayed until such time as there is no unfairness between parties arising from the short time period between introduction of the proposal and the next election held.

Matters left out of the 2016 Bill

Conclusion 7: The Bill should be amended to create a new facility for unordered groups of candidates under section 168(1)(a) of the Act to distribute above-the-line votes equally between each un-elected and un-eliminated candidate of the group at each vote counting stage.

What constitutes an optimal way of electing senators?

What goals should be pursued in choosing an electoral system?

In my submission to the Committee's 2014 inquiry I discussed the goals of electoral systems at length (pages 7-14). The material does not need to be repeated here.

I merely restate the suggestion made there that the Committee and the Parliament should over time lay down a consistent body of decisions which are linked to stated goals about the **goals**, and the measures of success, of voting systems. This would give clarity and justification to the choices Parliament makes in legislating electoral laws.

Conclusion 1: JSCEM, and Parliament, would assist the public debate on voting system issues by making clear what goals – such as voter equality of influence, achievement of actual representation by the greatest number of electors, and the scope and quality of elector choice – are considered to be the tests of good electoral laws.

Elections for the Australian houses of Parliament take place for the purpose of maintaining the system of responsible and representative government established by our Constitution. The Constitution includes a specific requirement that the houses be composed of representatives "directly chosen by the people".

Legislation needs to serve the purposes set out in the Constitution. The constitutional background limits the range of possible electoral devices that Parliament has power to legislate.

How does the current Senate election method measure up?

Overall, the voting method by which Australian senators are elected is one of the best in the world. The quota-preferential single transferable vote system ("STV") achieves multiple goals of electoral system design.

STV is a system of **direct** election of candidates by voters that provides voters with high levels of **choice**. It gives all voters a largely **equal influence** on election outcomes, and (together with high rates of enrolment and **participation**) the voting system results in around 80% of voters achieving **actual representation** in the Senate. These are all good results, and collectively the performance of an appropriate STV voting system is not matched by any other electoral method.

However this highly meritorious voting system has been let down since 1984 by the use – and misuse – of the group voting ticket ("GVT") option, which seriously distorts voter choice and alters the nature of the voter influence which, whilst remaining equal in legal *form*, is no longer equal in *substance*. Happily the current Bill proposes to remove the error of the GVT system.

The Senate electoral system could approach its most optimal form if the opportunity to select between individual candidates, currently set out below-the-line, was made fully optional, and backed by rules of interpretation (including 'savings' rules) which recognise all genuine voter intent to the greatest extent possible.

Even fairer overall ballot design could be achieved by the complete removal of the above-the-line section of the ballot paper, or else by providing equivalent fully electronic ways of casting votes. These possibilities were not dealt with in the 1st Interim Report.

Optional preferential voting for individual candidates – discussed in more detail below – was proposed by the 1st Interim Report, but has regrettably not been taken in this Bill.

The current national best practice is to be found in Tasmanian House of Assembly and ACT Legislative Assembly ballot paper design and vote counting rules.

The 2014 JSCEM inquiry and its recommendations

The existence of JSCEM since the 1980s is a valuable part of the landscape of electoral administration in Australia. The consistency with which its enquiries are held, the ability of successive committees to monitor emerging issues over long periods of time, and the relative level of multi-partisanship with which it has examined issues and reported are all highly desirable.

In 2013 the result of the Senate elections drew unprecedented levels of public interest to the Committee's work. The extensive inquiry toured the nation, took many public submissions and promoted public and media attention on a range of important issues.

The resulting interim report proposed substantial improvements to the voting system for electing senators as well as improvements to other aspects of the electoral process.

In light of this, two events since the Committee's reports are of concern.

Firstly, it is clear that in some cases support for the Committee's multi-partisan recommendations has wavered. Of course all Members and Senators and their parties are free to reconsider their position on every issue. However, it is regrettable that unity of purpose could not be maintained.

The second and more specific concern is the extent to which the resulting amending legislation varies from the recommendations arising from the inquiries and reports.

Arguably the most important of the recommendations – the abolition of group voting tickets from ballot papers – has been put forward in the Bill. But other recommendations have been altered or omitted.

Again, the Government or any other Member or Senator is free to introduce amending legislation as they see fit. However, for the sake of long-term stability in the JSCEM review and reform process, it would be preferable for the recommendations of the Committee to be taken up by the Government of the day as closely as possible to their recommended form.

Finally, there is also the concern regarding timing. The Committee's recommendations have been available since mid 2014. The arrival of an amending Bill in Parliament late in the electoral cycle does not assist in generating considered debate.

These legislative matters are for Parliament to decide.

Any reform – indeed any electoral rule old or new – requires an adequately funded and prepared administration to deliver it. There is significant concern among commentators that the Australian Electoral Commission will face difficulties implementing the reforms outlined in the Bill, both in terms of the task of vote counting, and due to the limited time available to prepare for an election later this year.

Conclusion 2: The Committee, and the Parliament, should be mindful of the practicalities of delivering the reforms proposed in the Bill. Parliament and the Government should provide to the Australian Electoral Commission adequate funding and support, and the maximum possible time to prepare for the Bill's implementation.

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Removal of the Group Voting Ticket option (Recommendation 2)

The 1st Interim Report advised as follows:

> "Recommendation 2:
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> The Committee recommends that sections 211, 211A and 216 and any other relevant sections of Parts XVI and XVIII of the Commonwealth Electoral Act 1918 be repealed in order to effect the abolition of group and individual voting tickets."

A clear majority of submitters to the Committee's 2014 Inquiry – and most other public commentators – have noted the choice distortion involved in the group voting ticket device, especially where multi-party arrangements are entered into without effective public transparency.

The arguments are already well aired and well known to the Committee; to save time I will not add anything here.

Instead, it may be useful to address the one prominent counter-argument that has been offered, which is that the proposal constitutes an unfair, or politically undesirable, attack on micro-parties.

The case is made that around 25% of voters supported some form of minor- or micro-party or independent Senate candidate in 2013, and that since this vote share *in aggregate* would appear sufficient to elect 1-2 senators in each state, any reform that prevents such candidates being elected involves denial of representation.

Whatever level of belief any person may hold that diversity in the Senate is a good thing, or that particular micro-parties should be elected, or that at least one among a diverse set of such parties should be elected if their voter support in aggregate would be enough to do so, such an outcome should not come about by artificial means.

The GVT device, when 'preference-whispered', is such an artificial means.

The quota-sized 'pool' of votes that elected at least two senators in 2013 was brought into existence solely by the use of GVTs. It is preposterous to claim that that aggregation of votes into these quota pools and the necessary internal preference flows that elected the 'last-elected' senators for Victoria and for South Australia would have occurred in an unadulterated voting system.

This is no reflection on the individuals who were elected, or of their low primary votes, but simply a critique of the rules under which the votes were counted.

The argument about a starting primary vote of 0.51% is not the issue. The issue is how the preference flows came about.

The other issue is the concept of the 'aggregate non-major party vote'. This pool of votes is simply not a political party. Whilst it is entirely legitimate for parties and independents representing that 25% of voters to cooperate to the extent that they wish to do so, and assuming that they do so transparently, it is simply not correct to treat them as if they were a unified pool of votes within which all the voters had agreed on a specific form of representation in the Senate.

Those of the opposite opinion argue that GVTs are the only way to allow the supporters of micro-parties to be represented. This is not true. The parties can campaign to win more votes and they can encourage their supporters to deliberately express preferences for similar candidates.

Another alternative – which may offer a reasonable compromise into the debate – is that micro parties could use more transparent ways of grouping themselves on the ballot; I discuss this matter in more detail below.

If significant numbers of voters do not want to see Government majorities in the Senate, then it falls to them to consciously go out and vote for minor parties and independents, and encourage other voters to do the same.

Whichever candidate or party each voter decides to support, we all deserve to know what process is occurring in the election and what result will come of our vote.

With GVTs, prediction of which candidate will receive the benefit of a ballot is literally *impossible*, both for the voters and for the parties concerned. The logical impossibility of this procedure amounting to an act of choice, leading to senators who have been "chosen" as the Constitution requires, is dealt with in my 2014 submission (page 37), and I refer also to the submission of Dr Michael Maley (submission #19, 2014).

In fairness, it is not appropriate to blame the elected Senators, or the micro-parties as a whole, for the events of recent elections. They did not call for, or legislate into being, the GVT system. Major parties have also attempted to make strategic use of the GVT system over many years.

Placing specific blame is not important. The fact is that the GVT tool corrupts the voting process, and corrupts all parties who have felt the temptation – or the strategic compulsion – to use it.

Finally, the argument is made that a diverse and vibrant crossbench that places a brake on Government legislation and actions is in and of itself a desirable outcome. Everyone will have their own view on that; the claim is fundamentally a political opinion and a submission to JSCEM is not the place to offer advice one way or another. What is clear, however, is that views on this angle are the dominant factor colouring responses to the Bill both inside Parliament and in the community.

I respectfully submit that the correct focus of this debate should be on the practical needs of the electors undertaking the task of choosing members of the Parliament for the purposes laid down (or implied) in the Australian Constitution. The legislation should be crafted so as to most effectively serve that task, and not to serve extraneous or contrary goals.

Conclusion 3: The Bill's proposal to abolish the GVT system is well-founded and should be supported.

Establishment of a new version of above-the-line voting (Recommendation 1)

The 1st Interim Report advised as follows:

> "Recommendation 1:
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> The Committee recommends that section 273 and other sections relevant to Senate voting of the *Commonwealth Electoral Act 1918* be amended to allow for:
>
> - optional preferential above the line voting; … [*other points omitted*]
>
> The Committee further recommends that appropriate formality and savings provisions continue in order to support voter intent within the new system."

The Bill implements one possible version of the new system that the recommendation calls for.

All above-the-line ("ATL") versions create some unfairness between party groups and individual candidates. Ideally, they would not be used.

However, the type of ATL presented in the Bill provides voters with a reasonable means, within their understanding and their control, of automatically filling candidate numbers grouped by parties. Many voters will find this convenient. Certainly it provides a very different and less problematic ballot paper option once the GVT device is removed.

The savings rule for voters who number less than 6 boxes contrary to the official encouragement (see proposed paragraph 269(1)(b)) – which resembles the ACT practice and essentially renders the system one of optional preferencing (at least for whole groups) – is a welcome and important part of this Bill. Without it, the risk of a high informal ATL voting rate is substantial.

Proposed paragraph 269(1A), regarding single ticks and crosses, is also welcome.

Minor changes to below-the-line voting (Recommendation 1)

The 1st Interim Report advised as follows:

> "Recommendation 1:
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> The Committee recommends that section 273 and other sections relevant to Senate voting of the *Commonwealth Electoral Act 1918* be amended to allow for:
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> - … [*point omitted*] …
> - 'partial' optional 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; or
>   - two for any territory Senate election.
>
> The Committee further recommends that appropriate formality and savings provisions continue in order to support voter intent within the new system."

Here the Bill diverges significantly from what was recommended. No justification has been provided as to why this is so.

There will be widespread surprise at this form of the proposal. For two years public commentators have speculated about whether Parliament would deal with the GVT issue, but almost every interested person seems to have assumed that at minimum the proposal for optional preferencing below the line would be adopted.

The Bill fails in this regard. Instead it proposes that the current compulsion for 90% of the candidates being numbered continues. It offers a small but sensible (although ideally irrelevant) expansion of the savings rule regarding numbering errors (subparagraph 270(1)(b)(i)).

The counting effort in checking 90%-filled below-the-line ballots is surely greater that the effort that would be involved in a confirming the validity of each ballot that had been filled in using more freely optional preferencing.

But in any case, the new proposal fails to grapple with two key issues.

Firstly, the logical absurdity of expecting voters to correctly number 87 out of every 100 candidates (as currently instructed) in a conscious manner (which is necessary for this to constitute an act of 'choosing') is not meaningfully reduced by a new rule demanding merely that they correctly number 85 out of every 100. The difference is trivial. No voter honestly completes the current number of selections in the manner demanded by the ballot instructions, nor will they do so under the proposed adjustment.

Neurophysiologists and economists debate at length the inherent abilities of human minds to compare and rank options during the process of decision making. The maximum number of different options that can be meaningfully ranked and selected amongst may in fact be quite limited. Yet Dr Maley observed in his submission in 2014 (page 16) that "in every State at the 2013 election, the number of alternatives [for ordering Senate candidates] was greater than the estimated number of atoms in the universe".

Secondly, the constitutional issue that the penalty by which the rule is enforced – the invalidation of the ballot, a most serious result for the legislation to impose – is not addressed. My 2014 submission (pages 4-7) dealt with the High Court's *Lange* test for the validity of legislation.

Clearly the current law, and the Bill's barely different alternative – invalidates some of the votes of the people participating in each election. The series of relevant High Court decisions demands justification of such an event through a detailed process of reasoning.

It is therefore unclear that these rules would be safe from a serious legal challenge.

And all for what end? What justification can really be offered for maintaining such high degrees of preference compulsion?

Why not at least retreat to the lighter rules proposed by the 1st Interim Report – a position that is surely constitutionally safer and was achieving broad acceptance in the public debate over the past two years.

This aspect of the Bill's difference from the 1st Interim Report is illogical, baffling and disappointing.

Conclusion 4: To maximise voter choice, minimise counting time and expense, and minimise the risk of legal challenge, the Bill should be amended to implement optional preferential voting below the line. This should be done either in plain and simple terms, or at least by using the compromises offered in the Committee's 1st Interim Report.

The revised exhaustion rule regarding number sequencing

The proposed provision 269(1A) deals with preference number sequencing. The rule would provide that a break in strictly correct sequencing of numbers – either by a missing number or by a repeated number – has the effect of 'exhausting' the ballot paper from the point of the sequencing 'error' onward.

The equivalent current provision of the Act wholly invalidates a ballot, except for the minor relief of the allowable-errors savings provisions. The new provision is therefore more appropriate than the current law.

However the proposed rule nonetheless causes the voter's ballot to become invalid (or 'exhausted' – in practice the two terms mean the same thing in this case) at a point during the count. It may be that the ballot paper has a value of 1 vote when such an event occur, or it could be that the paper has a reduced transfer value, in which case some part of the voter's vote has been effective already in contributing to the election of a representative. But either way, the proposed rule would exhaust (or invalidate) some or all of the value of a vote.

This exhaustion of a ballot is quite needless, and is based on an error of understanding.

To explain let me refer to a pair of examples, one with a *repeated* number and the other with a *gap*: {1, 2, 3, 4, 4, 5, 6} and {1, 2, 3, 5, 6, 7, 8}. In each case under the proposed rule the preference numbers as far as "3" will be used, but the ballot will exhaust thereafter.

The Explanatory Memorandum explains (and in the same words seeks to justify) the exclusion of the latter part of this number sequence by stating that it is required –

- "[b]ecause the voter has not expressed a clear choice for his or her third preference" (in the case of a repeat), and
- because "[t]he voter has not expressed a clear choice for his or her fourth preference: no square was marked with the number '4' and it cannot be safely assumed that the square marked '5' was the voter's fourth preference" (in the case of a gap).

These statements do not stand up to scrutiny as justifications for disregarding all the marks that follow the error in the sequence.

There is no reason in principle or practice why the voter's discrimination between the candidates marked "5" and "6" cannot later be used in the counting. The argument that they must be disregarded because it cannot be determined which candidate was the voters' 4th preference is irrelevant. The ballot can be used, and should be used, to contribute to vote tallies using the latter preference numbers after the error.

That this is so can be demonstrated merely by pointing out that under the established counting rules preference numbers are routinely overlooked in the case of already eliminated or elected

candidates. This disregarding of numbers for elected and eliminated candidates is entirely commonplace in every preferential ballot counting exercise. In preferential voting it is *relative* ranking that matters, not *absolute* numbering.

In an identical manner, in any instance where the two candidates marked "4" in the repeated-number example have already been eliminated from the count, the vote counters can simply ignore the digits "4" and proceed to the ballot's next higher numbering.

Where just *one* of the repeated preferences has been eliminated, the other can simply be used in the ordinary way.

The only difficulty is that if the error is a repeated number, and both (or if there were more than two, *all*) the candidates with the common number are still 'live' in the count (unelected and un-eliminated), then the ballot must be temporarily set aside until that is no longer the case.

The issue is even simpler in the case of an instance of a numbering gap. If so, the relativity of the voter's ranking of the many candidates remains perfectly clear. To infer instead that there is a 'missing 4th preference' of the voter, and that for want of being able to identify that candidate, the remainder of the ballot should be penalised by complete invalidation, is neither necessary nor justified.

The more logical inference is that what has happened is a numbering error pure and simple. It is easy to overlook the error, and that is exactly what should be done.

But even if the less likely inference is made that the voter has missed out, through their own error, on giving that imaginary 4th-preferred candidate their support, there is no reason why all the rest of their preference markings – which appear to have been deliberately entered – should be entirely disregarded. The ballot can, and should, be allowed to continue giving the voter their due influence on the rest of the count.

Finally, note that the rule as drafted operates to retain preferences for candidates 'above' the point of the sequencing error, but causes all preferences for candidates 'below' the error to be disregarded. This is a form of discrimination between different candidates and parties, and should attack strict legal scrutiny in terms of justification.

Conclusion 5: The proposed rule in provision 269(1A) should be replaced with provisions that: (1) gaps in numbering will simply be ignored, in the same manner as numberings of candidates who are already elected or eliminated candidates are ignored; and (2) ballots showing repeated numbers will be temporarily disregarded at any counting stage in which the candidates indicated by both (or all) the repeated numbers are still under active consideration (ie: are unelected and also eliminated).

Party logos on ballot papers

The Bill (in Part 3) proposes a new system of party logos on ballot papers.

The issue here relates to discussion in the 1st Interim Report about identity confusion between political parties based on similarities or common words in their names.

From the report and the inquiry hearings it is apparent that the key example of this problem allegedly occurring was confusion on the NSW ballot between the Liberal Democrats ("LD") party (which happened to have been allotted column A) and the Liberal/National coalition, which had a distant column on the ballot paper.

It is impossible to reach a definitive conclusion about the extent to which this occurred, but the sharply higher LD vote share in NSW compared to other states, and also compared to past elections, creates reasonable grounds for such an inference. That these two parties competed for the final seat

during the vote count, and that Senator Leyonhjelm's election materially affected the composition of the Senate after July 2014, gives the issue high importance.

In any case, it is entirely legitimate – especially with a growing number of registered parties – for Parliament to consider the problem of identity confusion, and design appropriate legislative amendments.

A few submissions to the 2014 inquiry proposed regulation of the permissible use of certain words in party names. This is deeply problematic as it risks turning widely used adjectival words into party property. The adjective "liberal", as with others such as "national", "conservative", "Christian", "social", "democratic", "republican" and many others refer to political positions that may easily be shared across multiple parties. The inquiry report wisely avoids endorsing this regulatory option – as does the Bill.

The Bill instead proposes the alternative solution of adding party logos onto the ballot paper.

Common sense suggests that this might be a useful idea. As mentioned, the desire to avoid party misidentification is perfectly legitimate.

However, a note of caution may be appropriate about fairness and readiness. Not all registered parties may currently have a serviceable logo. Logos are an important part of identity and branding, and take time to consider, select and to generate public awareness. But simply, not all parties will necessarily have equally useable logos.

The solution may simply be to allow time; namely, that this system should not be adopted until every registered party has had time to settle on a suitable logo, or conversely that time enough has passed that people creating a new party have sufficient warning that generating a logo is a necessary part of their set-up preparations. The point now being that this Bill is coming before Parliament less than nine months, and potentially merely three months, before an election.

It is conceivable that one or more political parties, feeling themselves disadvantaged by the lack of a suitable or established logo, may litigate against the validity of the proposed provision on the basis that it materially disadvantages them in a near-term election.

Conclusion 6: The Committee may wish to consider whether the coming into effect of the proposal for use of party logos on ballot papers – see provision 214A(4) and also Form F – should be delayed until such time as there is no unfairness between parties arising from the short time period between introduction of the proposal and the next election held.

Registered officers (Recommendation 4)

The 1st Interim Report advised as follows:

> "Recommendation 4:
>
> The Committee recommends that sections 126, 132, 134 and any other relevant section of Part XI of the *Commonwealth Electoral Act 1918* be amended to provide for stronger requirements for party registration, including:
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> - an increase in party membership requirements to a minimum 1 500 unique members who are not relied upon for any other party in order for a federally registered party to field candidates nationally;
> - the provision to register a federal party, that can only run in a nominated state or territory, with a suitable lower membership number residing in that state or territory, as provided on a proportionate population or electorate number basis;
> - the provision of a compliant party constitution that sets out the party rules and membership process;

- a membership verification process;
- the conduct of compliance and membership audits each electoral cycle; and
- restriction to unique registered officers for a federally registered party.

The Committee further recommends that the Government adequately resource the Australian Electoral Commission to undertake the above activities."

The Bill (in Part 2) picks up just one of the six proposed points of reform.

In its face, the proposal appears to be a legitimate regulatory proposal.

The issue of a required number of party members for registration is one of balance. I would personally lean towards setting that balance so as to encourage political engagement and activity in the community. On the other hand, the issue of artificial 'front' parties deserves careful consideration.

However the Government has offered no formal response on these recommendations, and the Bill does not take up most of these issues. It is not clear – and the explanatory material makes no attempt to explain – why the other Committee proposals are not adopted. The Government has publically cited a "lack of parliamentary support" for at least some part of this recommendation.

Matters left out of the 2016 Bill

Better uses of ballot paper groups

The current Act leaves open the option of an 'unordered' set of candidates being grouped on the ballot paper (see current paragraph 168(1)(a)).

One of the underlying issues behind the reforms which the Bill touches on is the proliferation of political parties on the register, and the extent to which they should be able, or indeed encouraged, to associate themselves for practical electoral purposes.

The GVT system – while it was not originally designed to be so – became a system by which parties could enter into mutually beneficial electoral practices. These have been rightly criticised for both their practical secrecy, and for their anomalous connection of political parties with sharply differing policy platforms.

Both these features undermine the integrity of the process by which voters choose senators to represent them appropriately in the Parliament. In doing so they logically contradict the constitutional requirement that senators be "directly chosen" as representatives.

But the issue was not association between parties per se. There is no necessary mischief in two or more political parties cooperating by forming electoral alliances. So long as such matters are publicly disclosed, voters can respond to such alliances through the consideration of their vote, as indeed they can react by many other activities in the political space.

Moreover, as part of a thoughtful response to the problem of proliferation of political parties, there is no reason in principle why publicly transparent alliances and associations should not be encouraged.

Indeed, the Coalition of the Liberal and National parties for nearly a century is an obvious example of exactly such a practice.

With this in mind, consideration might be given to encouraging more effective use of the existing opportunities for two or more parties to use ballot paper grouping, as the Coalition parties have done for many years.

The problem is that some alliances of small parties may not wish to make use of a single order of candidates within a group. The realities of a group choosing a single lead candidate may in practice be a total barrier to cooperative effort.

The Act has hitherto allowed for 2 or 3 versions of GVTs to be submitted, but of course the Bill proposed the elimination of the GVT system altogether. In its place is to remain an optional above-the-line option to cast votes between party groups.

This new form of voting will be supported 'under the bonnet' by a practice of automatically filling the individually numbered preferences for candidates that the STV counting system requires by simply working through the numbers of candidates in each party marked above the line (see the proposed substitute section 272).

In order to make possible a more vibrant culture of alliancing between parties who wish to do so, the Committee should consider amendments to allow a section 168(1)(a) unordered group to distribute among all its member candidates an equal share of the number of votes marked above-the-line. The mathematics of doing this is not particularly complicated, although it will need to automatically react to the progressive elimination of individuals in the group during the count.

If such a facility could be included in the Bill, it will provide micro parties with incentives to cooperate.

This is not only a fair opportunity to grant smaller parties, reducing the disadvantage they face vis-à-vis larger single parties, but it offers the prospect over time of helping parties with the potential to do so to consider closer forms of merger, which may help reduce the problem of party proliferation which has emerging over recent elections.

This last observation is not offered as a criticism of those micro-parties who genuinely set about organising to offer the electorate new alternatives in representation. Political engagement is to be encouraged in a democratic society. Indeed the degradation of political engagement in recent decades, visible in the sharp falls in major political party memberships, is a serious concern.

But from a practical standpoint the benefit of increased choice the electorate gains from such a rich market is of little value if so many of the offerings have minimal prospects of success, if they cannot develop effectively over time, and if their sheer multitude interacts to damage the effective working of the candidate and party choice 'marketplace' as a whole.

Conclusion 7: The Bill should be amended to create a new facility for unordered groups of candidates under section 168(1)(a) of the Act to distribute above-the-line votes equally between each un-elected and un-eliminated candidate of the group at each vote counting stage.

Voter information and education (Recommendation 3)

Following on from its key recommendations 1 and 2, the 1st Interim Report advised as follows:

> "Recommendation 3:
>
> The Committee recommends that the Government adequately resource the Australian Electoral Commission to undertake a comprehensive voter education campaign should the above recommendations be agreed."

This recommendation is important, but unfortunately is not easily addressed in the compressed timeframe of an election year. As mentioned earlier, Parliament and the Government should provide to the Australian Electoral Commission adequate funding and support, and the maximum possible time to undertake information and educational services to the community.

Particular effort should be focussed on ensuring that the new rules do not cause any needless invalidation of people's votes.

Party registration criteria (Recommendations 4 and 5)

The 1st Interim Report made two recommendations relating to party registration and administration, including Recommendation 4 (cited above) and also:

> "Recommendation 5
>
> The Committee recommends that:
>
> - all new parties be required to meet the new party registration criteria; and
> - all currently registered parties be required to satisfy the new party registration criteria within twelve months of the legislation being enacted or the party shall be deregistered. "

These proposals have not been taken up by the Bill. In the interest of space I will not offer comment on them, other than to point out that by their nature, they are not proposals that could be implemented in an abrupt time frame without raising questions of fairness between parties. At this point in the electoral cycle, these recommendations are best left for consideration in a future Parliament.

Residency of candidates (Recommendation 6)

The 1st Interim Report advised as follows:

> "Recommendation 6
>
> The Committee recommends that the Government determine the best mechanism to seek to require candidates to be resident in the state or territory in which they are seeking election."

The Government does not appear to have made any response to this recommendation, and the Bill does not address it.

Conclusion

I have summarised my suggestions above, at the end of the executive summary.

I hope this submission is of use to the Committee.

Malcolm Baalman

23 February 2016