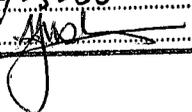


Joint Standing Committee on Electoral Matters	
Submission No.	147
Date Received	29-3-05
Secretary	

Tony Smith.
 Joint Standing Committee on Electoral Matters
 Parliament House
 CANBERRA, ACT 2600

Brian Cunnington
 30 Adams Street
 Bundaberg 4670
 QLD.

29th March 2005

Dear Sir,

I am contacting you with my concerns with the last Senate Elections, which I believe was illegal.

I have written to the Australian Electoral Commission, Queensland Ombudsman, Commonwealth Ombudsman, my Federal Parliament Member, Senator the Hon Eric Abetz (copy of letters enclosed) but to date I haven't recieved a satifactory reply explaining the situation, I get the feeling I am being "Stonewalled by them all".

My concerns are with the advertizing before the last Senate Election. In the Offical Guide on how to vote for the Federal Election on the page about the Senate, it clearly says - You have a choice. You can vote above the line or below the line. but not both. If you choose to vote above the line, write the number "1" in one of the boxes above the line and leave all then other boxes blank.

If you choose to vote below the line, you must number all the boxes in the bottom section of the ballot paper sequentially in the order of your choice. Continue to number the boxes in the order of your choice until you've numbered every box.

note: Some candidates are not part of a party or group which has a box above the line. To vote for these candidates you must vote below the line, remembering to put a number in every box.

In the advertizement on the TV before the Election the adds ran like this, - To vote you have 2 choices either vote by putting a number in the box above the line or by voting below the line but if you vote below the line you number every square, continue to number the boxes in order of your choice until you've numbered every box.

The add failed to mention, **note: some candidates are not part of a party or group which has a box above the line. To vote for these candidates you must vote below the line, remembering to put a numvber in every box!**

By not including the last part in the add on TV before the Election, (**also mention in a letter from Senator The Hon Eric Abetz Special Minister of State**) gave a tremendous advantage to a candidate who belonged to a party or group and a terrible dis-advantage to a candidate that didn't belong to a party or group which would be all Independent candidates, because of this error by the Australian Electoral Commission has made the Senate Election Illegal.

Electoral Act Section 158, "A person must not hinder or interfere with the free exercise or performance, by another person, of any right or duty under this act that related to an Election".

I might understand this happening in a country where corruption is ripe, but I can not understand it happening in a Democratic Country like Australia.

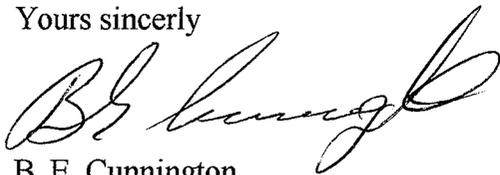
To date I haven't been able to obtain from anyone the number of people who voted for a candidate who didn't belong to a party or group (every Independent Candidate) and who vote for them in good faith in a box above the line, they keep telling me they haven't these numbers, but they counted the Informal vote, so I believe they must have counted these numbers also, thus I believe they must be Stonewalling me.

Because I haven't been able to obtain a satisfactory answer from anyone I have so far written to, this is the reason I am contacting you and hope you will be able to give me a satisfactory answer and agree with me the last Senate Election was Illegal and I believe the because the Australian Electoral Commission made the error in properly advertizing how to vote. the Senate Election must be run again to get a full, fair, proper and a legal result.

I have also written to the Australian Federal Police asking them to investigate my concerns.

I look forward to your reply, Thank You!

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. E. Cunnington', written in a cursive style.

B. E. Cunnington.



ATTACHMENT A

West Block Offices
Parkes ACT 2600

PO Box 6172
Kingston ACT 2604

Telephone (02) 6271 4411
Facsimile (02) 6271 4556
www.aec.gov.au
ABN 21 133 285 851

Mr Brian Cunnington
30 Adams Street
Bundaberg QLD 4670

Dear Mr Cunnington

I write in response to your letter of 11 October in which you express concern about AEC advertising in relation to voting in the Senate, particularly in relation to voting below the line.

I have noted your concerns but must disagree. AEC television and press advertising was quite clear in its message that the system of voting for the Senate offered electors a choice to either vote above the line or below the line. The message was also specific in stating that if voting below the line every box needed to be numbered.

Yours sincerely

Phil Diek
Director Media and Communication

/ November 2004



SENATOR THE HON ERIC ABETZ
Special Minister of State
Liberal Senator for Tasmania

Mr Paul Neville MP
Federal Member for Hinkler
PO Box 535
BUNDABERG QLD 4670

29 NOV 2004

Dear Mr Neville *Paul,*

Thank you for your letter of 26 October 2004 on behalf of your constituent, Mr Brian Cunningham, regarding voting for the Senate in the 2004 election.

Mr Cunningham suggests that the Australian Electoral Commission (AEC)'s television advertisements on how to vote for the Senate did not explain how to vote for individual candidates, and as a consequence the voting for the Senate was invalid.

As you are aware, the conduct of federal elections is governed by the *Commonwealth Electoral Act 1918* (Electoral Act), which is administered by the AEC.

The AEC advises that, under section 239 of the Electoral Act, votes in a Senate election must be marked on the ballot paper either by consecutively numbering the squares opposite the names of all of the candidates (that is, below the line) or by writing the number 1 in a square printed on the ballot paper pursuant to ss. 211(5) or 211A(6), which provide for Group and Individual Voting Tickets (that is, above the line).

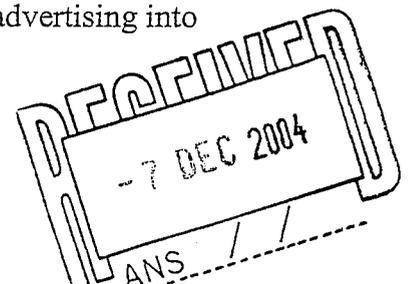
In the last week before polling day, the AEC's national advertising campaign focussed on how to cast a valid vote for both the House of Representatives and the Senate. The AEC informs me that the script for the Senate component was as follows:

"On election day, to be sure your vote counts for the Senate, make sure you vote correctly on the white ballot paper. You have a choice. Either put a 1 in one box above the line [*demonstration graphic - pencil marking the paper*]. Correct. Or number every box below the line, in your order of preference [*demonstration graphic - pencil numbering the squares*]. Correct. This is easy."

This clearly depicted the Electoral Act's requirements for Senate voting.

The AEC believes that the Senate election was conducted in accordance with the provisions of the Electoral Act.

However, the AEC advises me that it welcomes feedback on its advertising strategy for the election, and it will take Mr Cunningham's comments on the TV advertising into account in its planning for future federal elections.



Thank you for bringing your constituent's concerns to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Eric Abetz', written in a cursive style.

ERIC ABETZ

How to vote for the Senate

For the Senate you'll be given a white ballot paper which will look like this:

You have a choice. You can vote above the line or below the line, but not both.

ABOVE THE LINE

Above the line. If you vote above the line, your vote will be counted in the way chosen by the group or party you have voted for. This is called a group ticket vote and information will be available at all polling places showing you how each party or group has decided to allocate preferences. If you choose to vote this way, this is how your vote will be counted. If you choose to vote above the line, write the number '1' in one of the boxes above the line. Leave all the other boxes blank.

BELOW THE LINE

Below the line. If you choose to vote below the line, you must number all the boxes in the bottom section of the ballot paper sequentially in the order of your choice. Write the number '1' in the box next to the candidate of your first choice. Continue to number the boxes in the order of your choice until you've numbered every box.

Note: Some candidates are not part of a party or group which has a box above the line. To vote for these candidates you must vote below the line, remembering to put a number in every box.

If you make a mistake don't worry and don't waste your vote - just return your ballot paper to the polling official who gave it to you and ask for another one.

Once you have voted, place your folded ballot paper in the Senate ballot box.

Did you know?

- The Senate is often called the 'States' House' or the 'Upper House'.
- Candidates are elected using a proportional representation system.
- Each State, regardless of its size or population, is represented by twelve Senators to ensure equality of representation for the States. Each Territory is represented by two Senators.
- To be elected a candidate must receive a certain proportion of votes, known as a quota.
- State Senators are elected for a six-year term; Territory Senators are elected for the same term as Members of the House of Representatives (a maximum three-year term).
- There is a total of 76 Senators (12 for each State and 2 for each Territory).
- This election is a half-Senate election which means each State is electing 6 of its 12 Senators and each Territory is electing both of its 2 Senators.

www.aec.gov.au

☎ 13 23 26



1st Level 25, 288 Edward Street ■ Brisbane QLD 4000
Fax 07 3229 4010 ■ Phone 07 3005 7000
Complaints 1300 362 072
ombudsman@ombudsman.gov.au
www.ombudsman.gov.au

Our ref: 2004-2328618

11 March 2005

Mr Brian Cunnington
30 Adams Street
BUNDABERG QLD 4670

Dear Mr Cunnington,

I refer to your letter of complaint of 5 November 2004 regarding the Senate Election. You say that the Australian Electoral Commission (AEC)'s advertising on how to vote for the Senate at the 2004 election did not explain how to vote for independent candidates. As a consequence you believe that the voting for the Senate was invalid.

You state, "... In the Electoral Booklet it states, either vote above the line or vote below the line, but voting below the line you must number all the boxes in the bottom section. Then it states, Note! Some candidate (sic) are not part of a party or group, which has a box above the line. To vote for these candidates you must vote below the line, remembering to put a number in every box...".

Your complaint to this Office was that all the television advertisements you saw stated that members of the public could vote above the line and below the line but if you vote below the line you must remember to put a number in every box. There was no mention of how to vote for a candidate who did not belong to a party or group, the Independent candidates.

As you may be aware, the conduct of Federal elections is governed by the *Commonwealth Electoral Act 1918 (Electoral Act)* and it is administered by the AEC.

I have carefully considered the matters you raised in your letter of complaint. I have also obtained information from the AEC and I have carefully analysed the Electoral Act.

The AEC advises that section 239 of the *Electoral Act* (copy attached) provides that votes in a Senate election must be marked on the ballot paper either by consecutively numbering the squares opposite the names of all of the candidates (that is, below the line) or by writing the number 1 in a square printed on the ballot paper pursuant to ss. 211(5) or 211A(6) of the *Electoral Act* (copy attached), which provide for Group and Individual Voting Tickets.

The AEC states that in the last week before polling day, its national advertising campaign focused on how to cast a valid vote for both the House of Representatives and the Senate. The television script for the Senate component was as follows:

“... On Election Day, to be sure your vote counts for the Senate, make sure you vote correctly on the white ballot paper. You have a choice. Either put a 1 in one box above the line [demonstration graphic – pencil marking the paper]. Correct. Or number every box below the line, in your order of preference [demonstration graphic – pencil numbering the squares]. Correct. This is easy...”

The AEC contends that the above script and supporting graphics clearly depicted the Electoral Act's requirements for Senate voting, and the images conveyed the message that to vote for individuals, electors should vote below the line.

The AEC agrees with your statement that the AEC's electoral booklet (page 7, paragraph 5) went into more depth stating that candidates, who were part of a registered group and therefore did not have a box above the line, could only be voted for below the line. AEC states that the depth of information provided in the official guide and distributed to householders could not be provided in 30 and 15 second television advertisements. This is because the two mediums are entirely different. However, the AEC states that the television commercials were effective and accurate, while the official booklet provided all Australians with the opportunity to access more detailed information about voting, counting and other election related information.

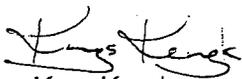
I do not believe that I could be critical of the AEC's actions regarding the content of its television commercials for the reason that it would not be possible to provide the same in depth information that was contained in the Election Book in 15 and 30 second commercials. As such I think that, so long as the content of the advertisement was correct and not misleading, it was reasonably open for the AEC to adjust its message to fit the particular medium.

The AEC has advised this Office that it welcomes feedback on its advertising strategy and says that it will take your comments on the TV advertising into account in its planning for future Federal elections.

I appreciate that you may be disappointed by my decision, but I trust you will understand the manner in which this conclusion has been reached.

In the circumstance, I do not consider that this Office can be of further assistance to you in regard to this matter.

Yours sincerely,



Krys Keryk
Investigation Officer



Level 25, 288 Edward Street ■ Brisbane QLD 4000
Fax 07 3229 4010 ■ Phone 07 3005 7000
Complaints 1300 362 072
ombudsman@ombudsman.gov.au
www.ombudsman.gov.au

Our ref: 2004-2328618

17 March 2005

Mr Brian Cunnington
30 Adams Street
BUNDABERG QLD 4670

Dear Mr Cunnington,

I refer to your letter of 14 March 2005 expressing your disappointment that I failed to grasp the importance and the seriousness of the last Senate Election. As a result of my letter of 11 March 2005 you have concluded that the Australian Electoral Commission (AEC) and I desire to have a fully controlled Senate.

As I explained in my letter of 11 March 2005, I appreciate that you may be disappointed by my decision. I could not be critical of the AEC's actions regarding the content of its television commercials in relation to the last Senate Election. I set out the reasons for this in my letter of 11 March 2005.

The AEC advise that information was provided prior to the Senate Election through the following channels: television, press, radio, internet and AEC's website. In addition the Electoral Booklet was distributed to *all* households. The AEC's public awareness campaign was to ensure that the public understood the correct way to mark the Senate ballot paper. As explained previously no two mediums are the same and to be effective information must be presented in a manner suited to the particular medium being used.

As you will recall the television script for the Senate component was as follows:

"... On Election Day, to be sure your vote counts for the Senate, make sure you vote correctly on the white ballot paper. You have a choice. Either put a 1 in one box above the line [demonstration graphic – pencil marking the paper]. Correct. Or number every box below the line, in your order of preference [demonstration graphic – pencil numbering the squares]. Correct. This is easy..."

On reading the above script I note that the content does not mention Groups, Parties or Independent candidates. The script states a fact, namely, that there is a choice of either putting a 1 in one box above the line or to number every box below the line in order of preference.

Although the AEC advised that it welcomed feedback on its advertising strategy and it would take your comments on the TV advertising into account this is not in itself an admission of guilt or that it failed to advise the public on how to vote correctly.

I do not believe that there is anything further that I can do in relation to your complaint.

Given your concerns, however, it may be of interest to you to lodge a submission to the Joint Standing Committee on Electoral Matters. The Committee is conducting an Inquiry into the conduct of the 2004 Federal Election and other related matters. For your convenience I have downloaded from the internet information on how you can have a say on electoral reform and on how to lodge a submission.

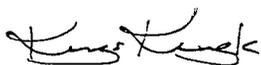
The Committee Secretariat can be contacted at:

Committee Secretary,
Joint Standing Committee on Electoral Matters
Department of House of Representatives
Parliament House
CANBERRA ACT 2600

Please note that submissions close on **31 March 2005**.

I trust that the above information is of some assistance to you.

Yours sincerely,



Krys Keryk
Investigation Officer

Krys Keryk
Investigation Officer Commonwealth Ombudsman
Level 25, 288 Edward St,
Brisbane. 4000.

21st March 2005.

Dear Mr/ Ms Keryk,

I am in receipt of your letter dated 17th March and after studying the contents I can only conclude by your unconcerned response that you have not yet grasped the seriousness and the possible illegality of the senate voting system enacted at the last federal election.

The electoral act, as far as I can interpret it, states that candidates, and or political parties, will not be accorded any voting advantage over one another either by way of ballot paper, advertising or any other process that the Australian Electoral Commission may institute in conducting an election. This was not the case in the 2004 senate election and in fact most of the major parties had a distinct advantage over all other candidates.

In the first place the ballot paper carried the names of the major political parties next to their voting box listed above the line. They were standout identifiable.

Independent candidates and parties however were only assigned an alphabetical letter, which was meaningless as a form of identification. Why were these candidates not accorded the same advantage as major political parties with their names printed alongside their voting box?

The electoral commission claims the reason for this was because these candidates had not nominated where their preferences were to be assigned. That is a ridiculous excuse and has no bearing whatsoever on why the independent candidates names should not appear next to their voting box above the line.

Alternatively the above the line position should only be for candidates or parties who have indicated preferences. Unless of course the paper has been deliberately designed to confuse the voting public which appears to be the case.

Now let us deal with the wording of the official voting guide that appears on page seven (7) and titled "How to vote for the senate" and in particular paragraph four (4).

The thirty-six (36) words that make up this paragraph are supposed to clearly inform the voting public precisely what voting below the line actually means. It says in part "some candidates are not part of a party or group which has a box above the line". This is totally confusing and misleading. The public has no way of identifying those candidates above the line because they are only assigned a letter as identification.

The other point that needs clarification is why the Commission placed candidates who have not nominated their preferences above the line in the first place.