

Submission

on the

Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012

to the

Joint Standing Committee on Electoral Matters

Department of House of Representatives

PO Box 6021

Parliament House

CANBERRA ACT 2600

Phone: (02) 6277 2374

Fax: (02) 6277 4710

Email: jscem@aph.gov.au

Website: www.aph.gov.au/Parliamentary_Business/Committees

by

FamilyVoice Australia

4th Floor, 68 Grenfell St.

Adelaide SA 5000

Phone: 1300 365 965

Fax: 08 8223 5850

Email: office@fava.org.au

Website: www.fava.org.au

13 July 2012

TABLE OF CONTENTS

1. Introduction.....	1
2. Democratic principles and nomination procedures.....	1
2.1 Individual freedom	1
2.2 Freedom of association.....	1
2.3 Representative democracy.....	2
2.4 Limitation of abuse.....	2
3. Increasing nomination deposits	3
4. Increasing the number of elector endorsements	3
5. Grouped Senate candidates.....	4
6. Endnotes.....	4

1. Introduction

On Thursday 28 June 2012 the Selection Committee referred *the Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012* to the Committee for inquiry and report.

The Committee has invited interested persons and organisations to make submissions by Friday, 13 July 2012.

The Bill would amend the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* to remove the prescription relating to how postal votes are processed and facilitate technological developments over time; and would amend the *Commonwealth Electoral Act 1918* to increase to \$1000 and \$2000, respectively, the nomination deposit that must be paid by or on behalf of candidates for the House of Representatives and the Senate; increase to 100 the number of electors required to nominate an unendorsed candidate; and require unendorsed Senate candidates, who have made a request to be grouped, to each be nominated by 100 unique electors.

FamilyVoice Australia is a national organisation which, among other things, has a longstanding interest in democracy, the rule of law, constitutionalism and the separation of powers. It is independent of all political parties.

This submission addresses the proposed changes to the nomination procedures.

2. Democratic principles and nomination procedures

The procedure of nominating to stand as a candidate for election is an integral element of a democratic system of government of critical importance to the integrity of the electoral process and the strength of parliamentary democracy as a whole. Consequently, election law regarding nominations should facilitate the kind of representative democracy cherished by the Australian people.

2.1 Individual freedom

As Professor Lumb points out in his book *Australian Constitutionalism*, the roots of the modern Australian system of government lie in the debates and battles in earlier centuries over providing a system of effective constraints on government power.¹ The idea of the rule of law, or limited government, overturned the earlier doctrine of unlimited sovereignty under which people were subject to the arbitrary will of the ruler.

The core idea of the Australian system of government is recognition of the right of the citizen to freedom under the law. This fundamental freedom is expressed in many ways, including the right to stand for election and to vote. Any constraint on the freedom of a citizen to stand for election needs to be carefully justified.

This recognition of individual freedom emerges from the Judaeo-Christian understanding of mankind being made in the image of God and therefore being entitled to respect and dignity.²

2.2 Freedom of association

Another central element of the dignity of mankind is the recognition that people are inherently relational and naturally join with others in groups of various kinds.

In a political context this involves “*recognition of the fact that between the ruler and the mass of the citizenry there are a variety of groups to which the citizens belong. They may be occupational (guild, union, association), religious (church), educational (school, university), cultural and social. Certainly, in earlier periods, battles over authority and allegiance were often fought between an overweening State (Monarch) and the Church anxious to preserve the rights of its members but also at times encroaching on such rights. The concept of limited sovereignty recognises that claims to allegiance or obedience may arise from a number of groups...*”³

Political parties are among the kinds of association which citizens should have the freedom to form or to join.

Other community groups which are not political parties should also be free to participate actively in the political process, including during election campaigns.

Candidates for election who are not members of a political party should also be entitled to form groups for the purpose of the election and any restrictions on this entitlement need to be justified.

2.3 Representative democracy

Australia’s system of representative democracy must be distinguished from direct democracy on the one hand and totalitarian democracy on the other.

Representative democracy is characterised by elected representatives who form a parliament charged with the responsibility of making decisions and acting in the public interest – without direct consultation with the electorate. This enables swift and resolute action in the face of changing circumstances.

Direct democracy involves decisions being made either by referendum or by delegates to a ruling body bound to vote in accordance with decisions made by a majority of their electors. Such a system is inherently slow and can be dominated by sectional interests.

In a totalitarian democracy, elected officials are bound to support an ideology independently of the views of the electorate. The ideology may be considered beyond the understanding of the electorate. The duty of the officials is to ensure that any inconsistent public or private activities are eliminated.⁴

Representative democracy works best when elected representatives maintain a close relationship with their constituents. While not being bound by their electorate, representatives are then able to take the views of the electorate into consideration when decisions are made in parliament.

The nomination process should be designed to reflect and support the notion of a close working relationship between representatives and their constituents.

2.4 Limitation of abuse

While civil society has a vitally important role in a healthy democracy, some elements of society nevertheless create the potential for corruption, manipulation and abuse. Such practices could distort the democratic process and undermine faith in government.

An important element of the Judaeo-Christian perspective on human society is an understanding of frailty or sinfulness of mankind. This notion is captured in Lord Acton’s famous dictum: “*Power tends to corrupt and absolute power corrupts absolutely.*”⁵

Consequently, some constraints on the nomination procedure may be necessary to avoid manipulation or abuse of the electoral process.

3. Increasing nomination deposits

A candidate for a seat in the House of Representatives is currently required to deposit \$500 with the Australian Electoral Commission and a Senate candidate is required to deposit \$1,000.⁶

These amounts were last increased in 2006 from \$350 and \$700 respectively.⁷

If a candidate, or a group in the case of a Senate candidate who is included in a group, does not receive 4% of first preference votes the deposit is forfeited.⁸ The intention is to discourage candidates who are not seriously running in the election who have no substantive support in the community.

The requirement of a deposit is an effective method of excluding marginal candidates, since those with significant community support should be able to raise the necessary funds. Since senators have a term of office that is twice that of members of the House of Representatives and since they are elected by the entire state not just from one electorate, it is appropriate that the deposit for an aspiring senator be double that of an aspiring member of the House of Representatives.

However the current amount of the deposit has proved ineffective in dissuading candidates with little prospect of electoral support, especially candidates for the Senate, from nominating. This was exemplified by the Senate nominations for New South Wales in the 2010 federal election. Of the 84 candidates in 32 groups with 5 ungrouped candidates only 3 groups received more than 4% of the first preference votes. Of the remaining 29 groups only 4 groups received more than 1% of first preference votes.⁹

The Bill would increase nomination deposits for election candidates to \$1,000 for candidates for the House of Representatives and \$2,000 for Senate candidates with the threshold for returning the nomination deposit remaining at 4%. These amounts would be an increased deterrent for unrealistic candidates but still easily attainable by those who have significant community support.

Recommendation 1:

The proposed increases in the deposits required from candidates for the House of Representatives to \$1,000 and for the Senate to \$2,000 are justified and should be supported.

4. Increasing the number of elector endorsements

Schedule 2 to the Bill would increase the number of electors required to nominate an unendorsed candidate for either the House of Representatives or the Senate from 50 to 100 electors. Unendorsed candidates are candidates who are either not endorsed by a registered political party or not a sitting Independent candidate.

Candidates nominated by a registered political party do not need endorsements from electors. However to be and remain registered, a political party must have at least 500 current members or at least one sitting member.¹⁰

A sitting Independent candidate, that is a sitting member or Senator who was elected at the previous election as an independent, that is was not endorsed by any registered political party, only needs one other elector to sign a nomination.¹¹

The proposed changes would be useful in deterring candidates for election who do not have any significant measure of support in the community. If a candidate cannot find 100 electors to nominate him or her then there is little prospect of the candidate being elected.

Recommendation 2:

The proposal to increase the number of endorsements required for unendorsed candidates from 50 to 100 is justified and should be supported.

5. Grouped Senate candidates

The Bill would also require unendorsed Senate candidates who have made a request to be grouped with a box above the line to each be nominated by 100 unique electors. For example, if two Senate candidates have made a request to be grouped, the group will need 200 unique nominator electors.

The proposal that, to be grouped, Senate candidates each need 100 unique endorsements does not go far enough, at least for groups of between two and four candidates.

To be registered with the Australian Electoral Commission, a political party must either already have a sitting member or supply evidence of at least 500 current members.

Allowing a group of two candidates the privilege of a “group voting square”, with much lower endorsement requirements than political parties, is unfair to political parties.

Greater fairness would be achieved by requiring those applying to be treated as a group to produce evidence of a total of 500 endorsements by electors to the Australian Electoral Commission before such an application is accepted. An exception could apply for a group which includes a sitting member of either the Senate or the House of Representatives.

On the other hand if 6 or more Senate candidates apply to be treated a group then the proposed provision would require them to have a total of 600 endorsements – more than is required for a political party.

The best approach would be to require any application for grouping on the Senate ballot paper to be accompanied by a total of at least 500 endorsements regardless of the number of candidates applying to be grouped.

Recommendation 3:

The proposal that, to be grouped, Senate candidates each need 100 unique endorsements does not go far enough. Grouped candidates get the same advantage as registered political parties of an above the line box. Registered political parties need 500 current members. The Bill should be amended to require that any application for grouping on the Senate ballot paper be accompanied by a total of at least 500 unique endorsements regardless of the number of candidates applying to be grouped.

6. Endnotes

-
1. Lumb, RD: *Australian Constitutionalism*, Butterworths, 1983, Ch 1.
 2. Genesis 1:27.
 3. Lumb, *op cit*, p 5.
 4. See the 1952 book *The Origins of Totalitarian Democracy* by Israeli historian J. L. Talmon.

-
5. "Letter to Mandell Creighton, 5 April 1887", in *The Life and Letters of Mandell Creighton*, 1904, p 372 available at <http://ia300215.us.archive.org/0/items/a566044401creiuoft/a566044401creiuoft.pdf> ; also "Letter to Mandell Creighton", 5 April 1887, in *Essays on Freedom and Power*, Gertrude Himmelfarb (ed.) (World Publishing, 1948), pp. 335-336.
 6. *Commonwealth Electoral Act 1918*, s 170 (3).
 7. *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*, Schedule 1, items 53 and 54.
 8. *Commonwealth Electoral Act 1918*, s 173.
 9. Australian Electoral Commission, *Election 2012: Senate: First preferences by group: NSW*: <http://results.aec.gov.au/15508/Website/SenateStateFirstPrefsByGroup-15508-NSW.htm>
 10. *Commonwealth Electoral Act 1918*, s 126, 137.
 11. *Commonwealth Electoral Act 1918*, s 166 (1D).