

**A submission to the inquiry
by the Joint Standing Committee on Electoral Matters
into the 1998 federal election**

**prepared by
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**on behalf of
the Reclaim Your Parliament movement**

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Summary

This submission is lodged on behalf of the Reclaim Your Parliament movement, a movement which seeks to restore lost faith in Australia's parliamentary processes by making parliaments more representative and more democratic.

Democratic election processes should ensure that a broad range of able and representative candidates is encouraged to stand, that the electors are fully informed of what all candidates have to offer before they vote and that the informed preferences of the voters are truly reflected in the seats won. To achieve this in Australia, especially in relation to Senate elections, reforms are needed in the rules relating to election practices, the voting system itself and the provisions for public funding of campaigns.

The present rules have artificially inflated the size of fields contesting Senate elections by encouraging 'dummy' candidates which enable 'groups' to obtain privileges otherwise restricted to parties. Ticket voting has compounded this effect by encouraging the candidacy of mini-parties and groups which have negligible chance of election but are designed as 'preference harvesting' devices for other parties. The net effect has been to discourage below the line voting, effectively handing the choice of most of our Senators to major party preselection committees. Reforms are needed to reduce the size of fields and make the allocation of preferences by the voters themselves easier and more meaningful.

Current rules on nomination of candidates, allocation of positions on the Senate ballot paper and voting procedures are all severely biased against 'ungrouped' candidates. Reforms are needed to allow candidates to compete on a more equal footing and to make below the line voting less daunting. Ideally, the ticket vote, which conflicts with an important aspect of the Senate voting system, namely the ability of electors to choose their own representatives as well as their preferred party, should be done away with altogether. This would also be more consistent with our constitutional requirement that members be 'directly chosen' by the electors.

Provisions for public funding of election campaigns are anti-democratic in that they work against the voters making intelligent, informed choices between all the available options. Enormous sums are directed to the parties which least need them while those who are most deserving of assistance to get their message out receive nothing. Nor do the present funding provisions reduce the extent to which the major parties are beholden to unions or corporate sponsors. Reforms are needed to ensure that public funds are used for the benefit of the electors rather than the established parties.

If this committee fails to agree on reforms designed to make our elections more democratic, and particularly if it brings down partisan, dissenting reports, as happened following the 1996 election, cynicism and disillusionment among the general public can only increase. If worthwhile, democratic reforms are implemented this will be a first step in restoring respect for parliamentarians and confidence in parliament.

Recommended reforms

Nominations

Minimum essential reform

- Apply the same nomination procedures (e.g. nomination by 50 electors) to both party and non-party candidates.

Positions on the ballot paper

Minimum essential reform

- Treat non-party Senate candidates separately, unless they wish to be recognised as a group, and include them in the draw for positions (columns?) on the ballot paper.

Desirable reform

- Use full randomisation, or at least rotation, of positions of party teams and ungrouped candidates on the ballot paper. Additionally, randomise positions of candidates within party teams for the Senate.

The voting system

Minimum essential reform

- Require above the line Senate voters to consecutively number boxes for all parties, groups and independents.
- Allow below the line voters to leave at least six and perhaps up to ten boxes unnumbered.

Desirable reform

- Do away with ticket voting altogether.

Provisions for public funding of campaigns

Minimum essential reforms

- Change the public funding provisions to make them fairer, preferably by reallocating a substantial part of current public funding to the provision of information on all candidates to all electors.
- If the qualifying threshold is maintained, base it on a proportion of the average vote per candidate, rather than a flat four percent.
- Eliminate the bias against ungrouped candidates by deleting the provision for parties and groups to sum the primary vote of all their candidates to reach the qualifying threshold.

Desirable reforms

- Eliminate the current threshold vote to qualify for public funding.
- Implement strict election spending limits.

Background

It is widely recognised that trust in parliamentarians and parliamentary processes, which was never high in Australia, is currently at a particularly low ebb. Ordinary citizens don't believe that their politicians are there to serve them. Dissatisfaction with the present situation has given rise to a plethora of minor parties and candidates for election.

My recent observations of politics at all levels, including first-hand experience as one of only three non-partisan elected delegates at last year's Constitutional Convention, where I went under the title of 'The Voice of Ordinary, Fair-Minded, Thinking Citizens', has prompted me to initiate a new grass-roots movement called 'Reclaim Your Parliament'. It seeks to restore respect for our parliaments by making them more representative and more democratic. I present this submission in the name of the 'Reclaim Your Parliament' movement.

Introduction

In a democracy, parliament is supposed to represent, and be responsible to all citizens, not just those sectional interest-groups which have the support of particular political parties. The way that elections are conducted is crucial to ensuring that parliament remains representative and democratic. Although political parties have a valuable role, especially in lower houses where governments are formed, all citizens, regardless of any affiliations they may or may not have, should enjoy the right to contest elections and to have their claims to represent their peers considered on merit by the electors. This is especially true of the Senate, which was never meant to be a party house. All electors should have the complementary right to be fully informed about all the candidates and to have their wishes put into effect by a system that truly represents the preferences they express through the ballot box.

The original principle behind the Senate voting system was that the voter should have a choice, not only between parties, but also between candidates. The extent to which the choice of representatives has been taken from the hands of voters and placed in the hands of party machines is illustrated by the fact that the identities of twenty eight (i.e. 70%) of the forty Senators who will be elected each time are known with absolute certainty immediately on nomination. There is less certainty in the House of Representatives, but after the 1996 election the AEC classified sixty-nine out of the 148 seats (i.e. 40%) as 'safe' for the major parties and none of these changed sides in the 1998 election. This means that half of all our federal politicians were assured of their seats on nomination. They were, in effect appointed by their party preselection committees rather than being chosen by the voters.

As a step towards restoring faith in the political system, the current electoral procedures must be reformed so that people can be reassured that their vote **does** count, that parliament **does** truly represent them and that parliamentarians **will** act according to their wishes. This can only occur when parliamentarians recognise that they owe their seats, not to their party machines, but to the electorate at large.

Hence this committee has a crucial role. Should it bring down dissenting reports split along party lines, as happened following the inquiry into the 1996 election, it will only give cause for further disillusionment and cynicism among ordinary citizens. It will have done the country a grave disservice. I therefore strongly urge all committee

members to show sufficient political courage and integrity to completely put aside all considerations of party interest. I urge them to work together constructively to produce non-partisan recommendations that will serve all citizens well by truly advancing the cause of democracy.

Basic principles applying to parliamentary elections

The fundamental objective of any election should be to ensure that the available seats are occupied by the people best able to represent the electorate at large. To achieve this it is necessary that:

- a broad range of able and representative candidates is encouraged to stand,
- the electors are fully informed of what all candidates have to offer before they vote,
- the voting system ensures that the informed preferences of the voters are truly reflected in the seats won.

The first requirement cannot be met if able candidates, whether party members or not, are deterred from standing by the cost involved or by other barriers which, regardless of merit, make their chances of election so slight that they are unwilling to nominate.

The second requirement cannot be met if some candidates, regardless of merit, cannot let people know where they stand and what they have to offer because they do not have adequate access to the media and cannot afford an effective paid advertising campaign. It is also unlikely to be met if the electors are presented with an unduly large number of candidates, many of whom have no real intention to seriously contest the election in their own right.

The third requirement cannot be met if the voting system itself is confusing or does not truly give effect to the expressed wishes of the individual voters.

Areas where reform is needed

Over the years, changes made to election procedures, often to counter genuine problems, have given rise to adverse consequences which were perhaps not foreseen at the time. Other developments, such as the increase in the number of candidates and the rising cost of campaigning through the modern media, have also had an impact. In order to ensure that our elections are free, fair and effective, attention is needed in three areas.

These are:

- the rules relating to election practices,
- the voting system itself,
- the provisions for public funding of campaigns.

Rules relating to election practices

Two problems with the current rules are that they encourage unduly large fields of candidates, many of whom have little electoral appeal, and that they are blatantly biased against non-party candidates.

Factors affecting the size of fields

The nomination process should be designed so as to provide a reasonably broad range of serious candidates and policies from which the electors may choose, while not unnecessarily confusing them with too large a field of candidates.

In an attempt to curb the growth of fields, this committee's predecessor recommended an increase in the nomination deposit and in the number of electors required to nominate a non-party candidate. Those measures were implemented in the 1998 election and **have clearly failed miserably in their objective**. The number of parties, Senate groups and candidates (including non-party candidates who were the only ones affected by the second measure) has continued to grow across the board at an accelerating rate. In 1998, a record sixty nine candidates representing 22 parties or groups plus nine ungrouped candidates contested the Senate election in NSW. Most of the recent growth has not been in ungrouped candidates but in the plethora of groups and mini-parties.

In so far as it represents more candidates coming forward to offer a wider choice in the light of disillusionment with the existing parties, this growth is a healthy sign for democracy. However, there are also other less healthy factors at work here.

There will always be a number of joke candidates, crackpots and publicity seekers who nominate. Rather than trying to filter them out in the nomination process by measures such as high deposits, which may not achieve their objective but may have the adverse effect of discouraging serious candidates, we should accept their candidacy as an inherent part of the democratic process. If we ensure that the electors are well-informed it is likely that they will exercise their own judgment in casting their votes elsewhere.

Of more concern is the way that the existing rules encourage what may be termed as 'dummy' candidates to nominate for the Senate. These are candidates who do not expect to be elected and do not campaign seriously. They are there simply as 'running mates' to make up a 'group' with another candidate, thereby conferring entitlement to the privileges otherwise reserved for parties and denied to 'ungrouped' candidates. These privileges include the right to have a separate column on the ballot paper, to go into the draw for positions on the paper, to combine their primary vote to cross the threshold for public campaign funding and to lodge a preference ticket.

It is notable that twelve of the 1998 NSW Senate candidates were in two person groups not registered as political parties and that none of the second candidates from these groups attracted a significant personal below the line vote. Most of them did not even reach the tally of fifty voters required to nominate them in the first place. These people are likely to have been 'dummy' candidates.

Mini-parties which adopt a title designed to capture the primary vote of a particular sectional interest-group, along with Senate 'groups', tend to act as 'preference harvesters'. They are able to exploit the ticket voting provisions in directing to another party preferences that might otherwise go elsewhere. Where this is a genuine attempt by a special interest-group to favour a party which is sympathetic to their particular cause it is a legitimate tactic. There is a suspicion though that some of these mini-parties and 'groups' are actually devices promoted by the existing parties to increase their own vote by subterfuge. This is only possible because of ticket voting, which is itself a corruption of the principles on which Senate voting system is based. I will address this later in considering the voting system.

‘Dummy’ candidates would not be encouraged to stand if parties and groups gained no special privileges over non-party candidates– as should be the case in a truly democratic system. The removal of unfair discrimination against non-party candidates, would be likely to significantly reduce the number of candidates and groups nominating, thereby facilitating a more meaningful allocation of preferences by electors. The elimination of ticket voting would have an even more dramatic effect as there would be little point in mini-parties standing if they could not control preference allocations. This would encourage them to revert to being political lobby groups. My later recommendations provide a means of achieving these results.

Bias against non-party candidates

A fundamental test of the democratic nature of an election system is whether or not all candidates are given fair and equal opportunities. There should not be different sets of rules for different candidates. Yet the current system, especially as it relates to Senate elections, discriminates between nominees of political parties or so-called ‘groups’ and ‘ungrouped’ candidates in a number of ways, always to the disadvantage of the ‘ungrouped’ candidates.

I doubt that any fair-minded person could give an even faintly plausible justification for such double standards. Furthermore, the victims of these double standards are the candidates who are already severely disadvantaged by their lack of organisational and financial support and their lack of access to the media. I will address a number of concerns in turn.

Nomination requirements

Under the present rules a single official of a registered political party may nominate the party’s candidates, but an independent candidate must be nominated by fifty electors. Fifty electors is probably a reasonable requirement, but why does it not also apply to party candidates? There is no justification for this unfair discrimination.

Although parties are required to maintain a membership of at least 500 people, there is no requirement that they be internally democratic. We have already seen the precedent of a party set up as a private company controlled by three directors. There is no assurance that party nominations are supported by more than one or two party officials. To rectify this, the requirement for nomination by fifty electors should apply equally to **all** candidates.

Minimum essential reform

- Apply the same nomination procedures (e.g. nomination by 50 electors) to both party and non-party candidates.

Positions on the ballot paper

Currently a draw is held for the allocation of columns on the Senate ballot paper **between parties and groups only**. Ungrouped candidates cannot occupy the first column and always appear last. This is a particular disadvantage where Senate fields are very large. In the interests of fairness there is no logical reason why ungrouped candidates should not be treated the same as parties and ‘groups’. I have already referred to the additional benefits of such a move in reducing the number of ‘dummy’ candidates.

The best solution to these problems would be to randomise the positions on the ballot paper for both party teams and non-party candidates. No party or ‘group’ would then

gain an advantage by virtue of its position on the paper. This should be possible with modern technology. The papers could be printed vertically with horizontal lines separating the party teams and the individual non-party candidates from each other to give quite a compact paper, even with a large Senate field. This would also give non-party candidates the separate identities they deserve rather than lumping them all together.

Ideally, to give all party candidates a fair chance, randomisation should occur within, as well as between party teams.

Complete randomisation of positions may require a bar coding on each ballot paper to facilitate electronic identification of the positions of candidates on that particular paper during entry of preferences for the computerised Senate count. If our technology is not yet up to complete randomisation, then at least a draw for sequence on the paper, combined with rotating the starting points between the parties and independent candidates, such as has been used in Tasmania for some time, should be implemented.

If even this is regarded as too hard then, as a bare minimum, non-party candidates, some of whom may have diametrically opposed policies, should not be lumped together but should be given separate columns and included in the draw for positions.

These measures would reduce or eliminate any advantage from position on the ballot paper, reduce the number of ‘dummy’ candidates and give non-party candidates their separate identities while putting them on a more equal footing with party nominees. The net effect would be to make our elections fairer and more truly representative of the electors’ wishes.

Minimum essential reform

- Treat non-party Senate candidates separately, unless they wish to be recognised as a group, and include them in the draw for positions (columns?) on the ballot paper.

Desirable reform

- Use full randomisation, or at least rotation, of positions of party teams and ungrouped candidates on the ballot paper. Additionally, randomise positions of candidates within party teams for the Senate.

The voting system

The Senate voting system, as it was originally designed, is an excellent way of translating the electors wishes into seats **if the numbers on the ballot papers actually represent the electors’ informed preferences**. The trouble is that no-one could possibly argue that this essential precondition is presently met.

Where there are perhaps sixty-odd Senate candidates and over twenty ‘groups’ or parties, many of whose people and policies are totally unknown to the electors, while others are daily projected into every household, electors would find it very difficult to determine a fully informed preference ranking for all candidates. Even if they could, and they were prepared to take the trouble to sequentially number every box, there is a real risk that their vote would be partially or fully invalidated by errors in numbering.

Ticket voting, the rationale for which was to avoid the problems described above, was the wrong solution to this problem. It is in direct conflict with a fundamental feature of the Senate voting system, that is the ability of the electors to choose their own representatives. To a very large extent, the preferences on which two thirds of Senators are elected no longer represent the rankings determined by the electors but those determined by a small number of party officials.

It was never intended that voters should delegate the choice of representatives to party officials. This is in clear contravention of the spirit and intent of our constitutional requirement that Senators be 'directly chosen' by the people, even if constitutional lawyers advise that a high court challenge to the practice is likely to fail. The reality is that even when the allocation of ticket preferences is displayed in polling booths, hardly any voters refer to it and very few would have more than the remotest idea of how their preferences, on which two thirds of the seats depend, will be allocated.

These adverse effects are further compounded by the fact that ticket votes are permitted for party candidates and groups, but not for ungrouped candidates. This is a further inexcusable and undemocratic bias against the already seriously disadvantaged non-party candidates. No contest in which a vote for one candidate can be registered by marking a single box whereas a vote for another candidate requires the sequential numbering of sixty-odd boxes could ever be described as 'fair', even in the most primitive of democracies, much less a long-established one such as ours. This is a serious deterrent against voting for non-party candidates and a similar deterrent against quality non-party candidates standing when they know they will not have a fair chance of being judged on merit. In fact, no new non-party candidate has been elected to the Senate since the current rules were introduced in 1984.

The double standards relating to ticket voting **must** be done away with. As a minimum, this should be combined with a requirement for above the line voters to sequentially number the boxes of all parties and non-party candidates. This would ensure that at least preferences for parties, if not preferences for individual candidates within parties, reflect the wishes of the electors rather than those of their first-choice party.

To allow the Senate voting system to work as was intended, ticket voting should really be abolished altogether, as it is in direct conflict with one of the fundamental principles on which the system is based. The loss of the ability for parties and groups to allocate preferences should reduce the numbers contesting elections and facilitate preference allocation by the electors. Those who wish to vote the party line could still do so by following a party how-to-vote card.

Nevertheless, it must be acknowledged that unequal knowledge of the candidates and the large size of the fields may still make a meaningful complete allocation of preferences difficult for many voters. However, the instruction that all boxes must be sequentially numbered is not necessary to maintain the integrity of the Senate voting system anyway.

A number of boxes up to one less than the seats available can be left unnumbered while still ensuring that every voter's preferences will count towards electing someone. Where there are less than 50 candidates this would require the numbering of less boxes than does the present requirement of 90% of all boxes to constitute a formal vote. Reducing the requirement even further to permit, say ten boxes to be left unnumbered where six Senators are to be elected would result in very few 'wasted' votes. The preferences of most voters would include a well-favoured candidate who

they can help to elect before reaching their tenth last preference. This, combined with reduced fields, may mean that even in NSW a voter would need to number no more than perhaps 30 boxes. The voluntary complete allocation of preferences was successfully undertaken by over 20% of Tasmanian voters in the 1998 election when there were 32 candidates within 12 groups plus independents, and over 27% in 1996 when there were 19 candidates within eight groups. In both these elections the informal vote of just over three percent was slightly below the national average.

The main objective should be to change the Senate system in such a way as to return to the principles on which it was based while allowing the voter to allocate only as many preferences as can be done intelligently and without serious risk of mistakes. The retention of proportional representation via the single transferable vote is highly desirable and the present system should be modified only to the extent that it will be made to better reflect the true wishes of the electors, not in a way that is in conflict with its fundamental basis. If we want to be seen as a truly democratic country then we should not perpetuate a system allows the major parties to, in effect, choose four out of every six Senators without reference to the voters.

Various measures have at times been proposed by the major parties to make it more difficult for minor parties or independents to gain Senate seats. To manipulate outcomes by such means would be a blatant denial of the voters' expressed wishes. The following table illustrates the distribution of votes and seats won in the last three Senate elections.

	1993		1996		1998	
	% votes	% seats	% votes	% seats	% votes	% seats
ALP	43.5	42.5	36.1	35.0	37.3	35.0
Coalition	43.0	52.5	44.0	50.0	37.7	50.0
Others	13.5	5.0	19.9	15.0	25.0	15.0

If these figures say anything it is that, due to the geographical distribution of votes and candidates, the Coalition parties have been advantaged and the 'Others' disadvantaged by the present system. Governments on either side have been unable to control the Senate **only because the voters chose not to allow them to**. To attempt to counter the rapid drift of voters away from the major parties by manipulating the system would only bring those parties into further contempt and accelerate that drift. It is irrational to claim that it should be made easier for the government of the day to control the Senate when the voting system used in the lower house cannot be relied on to give government to the party gaining the highest vote anyway. There is a stronger case for reforming the lower house voting system to ensure that happens. But that would probably require the major change of moving to multi-member electorates.

Minimum essential reform

- Require above the line Senate voters to consecutively number boxes for all parties, groups and independents.
- Allow below the line voters to leave at least six and perhaps up to ten boxes unnumbered.

Desirable reform

- Do away with ticket voting altogether.

Provisions for public funding of campaigns

The purpose of election campaigns should be to assist voters to make an intelligent choice by informing them of the policies and capabilities of all the candidates. Established parties start with a huge advantage in getting their message out due to their existing organisational infrastructure, their much greater access to corporate or union funding and to free media coverage and the fact that their overall philosophies are already well known.

Public funding of election campaigns can be used to further the democratic process in two ways. It can reduce the parties' reliance on corporate or union funding, which is inevitably accompanied by the perception that the providers of such funds will expect favoured treatment over the community-at-large. It can also be used to 'level the playing field' by allowing voters to hear what candidates without such resources at their disposal have to offer. Evidence from the 1998 election, in which around 85% of the public funding has gone to the major parties which received 77% of the combined vote for both houses, shows that it has instead been used to tilt the playing field even further against the other candidates.

The present rules, which ensure that nearly all of the public funding goes exactly where it is least needed (i.e. to the parties which are already well-served with infrastructure and funding support and have the lions share of free media access) are anti-democratic in that they work against voters making intelligent, informed choices between all the available options. Furthermore, they are not even applied fairly, as parties can sum the primary votes of all their candidates to reach the four percent qualifying threshold for public funding, whereas ungrouped candidates must qualify individually. Given all the impediments put in the way of ungrouped Senate candidates, the fact that over the 15 years that this provision has been in place no such candidate has qualified is very much attributable to the blatant biases in the system rather than the quality of the party candidates or any lack of electoral appeal by independent candidates.

The Constitutional Convention election, in which a statement from every candidate was placed in the hands of every elector at public expense, provided a valuable precedent for the use of public funding in the interests of the electors rather than the established parties. Even then, the rules relating to length of statements were biased against non-aligned candidates, but this was otherwise an excellent example of how public funding can be used to 'level the playing field'. It could be done for a fraction of the amount that is currently distributed, without any control on how it is used, to the major parties. There are compelling reasons for applying such a provision to parliamentary elections. The reallocation of a significant proportion of current funding in such a manner would result in better informed voters and thereby make our elections much more democratic and be likely to improve the quality of parliamentary representation.

Another anomaly is that the flat four percent threshold is applied indiscriminately to all electorates and both houses. It is much easier to achieve four percent of the primary vote in a House of Representatives electorate with a field of three than in a Senate field of sixty-odd. Even candidates with quite strong electoral appeal who would have no trouble qualifying for funding in a House of Representatives seat

cannot do so in a Senate election which, because of the greater size of the electorate, is much more expensive to contest. It would be much fairer and more logical, if funding of this sort is to be continued, to either eliminate the threshold altogether or to base it on a set proportion (say 30%) of the average vote per candidate in that electorate.

The fact that the major parties still receive millions of dollars in donations from corporate or union sources shows that public funding provisions, rather than reducing the extent to which they are beholden to such bodies, have simply added to the amount they can spend on their election campaigns. This has even further disadvantaged minor parties and non-party candidates, thereby degrading the democratic process. The best remedy for this problem would be to implement strict spending limits on election campaigns.

Minimum essential reforms

- Change the public funding provisions to make them fairer, preferably by reallocating a substantial part of current public funding to the provision of information on all candidates to all electors.
- If the threshold is maintained, base it on a proportion of the average vote per candidate, rather than a flat four percent.
- Eliminate the bias against ungrouped candidates by deleting the provision for parties and groups to sum the primary vote of all their candidates to reach the funding threshold.

Desirable reforms

- Eliminate the current threshold vote to qualify for public funding.
- Implement strict election spending limits.

Conclusion

If the minimum essential reforms described above are implemented this will be a first step in restoring respect for parliamentarians and confidence in parliament. If they are not implemented or, worse still, this committee does not even recommend them or something very similar, cynicism and disillusionment among the general public can only increase. The widely-held view that parliament no longer represents the people, but has become the private property of powerful parties based on ideologies or sectional interest-groups to which only a tiny proportion of the people subscribe, will be further reinforced.

If the desirable reforms described are implemented this should give some hope to all those who believe in democracy and signal that at least some politicians share that belief.

**A SUBMISSION TO THE INQUIRY BY
THE JOINT STANDING COMMITTEE ON ELECTORAL
MATTERS
INTO THE 2001 FEDERAL ELECTION**

Prepared by Eric Lockett

4/07/02

BACKGROUND

In my capacity as a concerned citizen who had initiated moves to establish an organisation aimed at making parliaments more representative and more democratic, I lodged a carefully thought out and constructive submission on many aspects of our electoral processes to the JSCEM inquiry into the 1998 election. The report from that inquiry made only two or three passing references to my submission. It touched on none of the seven 'minimum essential reforms' I identified and only three of my 'desirable reforms'.

The summary of my submission on that occasion closed with the following statement.

If this committee fails to agree on reforms designed to make our elections more democratic, and particularly if it brings down partisan, dissenting reports, as happened following the 1996 election, cynicism and disillusionment among the general public can only increase. If worthwhile, democratic reforms are implemented this will be a first step in restoring respect for parliamentarians and confidence in parliament.

History shows that my worst fears came to pass. The JSCEM failed to recommend necessary reforms and again brought down three separate partisan reports. The inevitable further increase in cynicism and disillusionment among the general public has been remarked upon by many commentators.

In spite of my concerns about the glaring deficiencies of the electoral process, I resolved to contest the 2001 election as an independent senate candidate for Tasmania to test whether it was in fact possible to win a seat under the prevailing system. I could have exploited the flaws I pointed out in 1999 by nominating a dummy candidate and running as a 'group', but as a matter of principle I chose not to. I believe those flaws should be eliminated, not exploited. My experience has emphatically underlined why no new independent candidate has been elected since the present rules were introduced in 1984.

I actually received the second highest percentage primary vote of any ungrouped candidate throughout Australia (the only better performance being in the ACT where there were only 14 senate candidates in total) and finished thirteenth in a field of twenty-nine.

Yet in spite of all that, my primary tally was still only a miserable 0.15% of the formal vote. I'm sure it cannot be just dismissed as vanity for me to say that my level of acceptance by the Tasmanian people was nowhere near as low as that figure indicates. My vote was much more indicative of the almost insurmountable barriers put in the way of independent candidates by a system that ensures that their message will be drowned out by party candidates with vastly more resources at their disposal, including money from unions, corporations and taxpayer funding. As if this wasn't enough, the procedures then make it as difficult as possible for the electors to vote for non-party candidates.

I understand that in the old Soviet Union it was theoretically possible to elect a non-communist candidate, but the system was run in such a way as to ensure that never happened. Our senate elections are not much different, except that we allow for more than one party. **Unless this situation is remedied it would be much more honest to acknowledge the shortcomings of our democratic processes by prohibiting non-party candidates than to perpetuate the deceit of accepting their nominations while not providing them with a fair chance of election.**

In the light of my past experience, I therefore lodge this submission more out of duty than in any real expectation of changes for the better.

GENERAL COMMENTS

I will restrict my comments to the senate election as that is what I am most familiar with.

Having reviewed my submission to the inquiry into the 1998 election (the one that was largely ignored), it is obvious that all the comments and proposals it contains are as relevant now as they were then, in some cases even more so. I have therefore attached a copy of that submission and will largely concern myself this time with bringing the facts and figures up to date.

Size of senate fields

Nothing has been done to remove the enticements to nominate candidates who are not seriously seeking a seat. Although the increase in fields seems to have levelled out with 65 senate candidates in New South Wales and 29 in Tasmania, compared to 69 and 32 respectively in 1998, they are still far too large to make below the line voting acceptable to any but the most determined voters. An intelligent below the line vote is made particularly difficult by the number of unknown candidates who take no part whatsoever in the campaign. Some candidates living outside Tasmania did not even visit the state for the 2001 election.

Reforms to do away with the discrepancy between the rules for ‘groups’ and parties and those for independent candidates, especially the ability to lodge a party preference ticket, are urgently needed. This is necessary not only in the interests of fairness but also to reduce the incentives for non-serious candidates to nominate, thereby making below the line voting unnecessarily difficult.

The voting system

The senate voting system was originally designed to ensure that not only the voters’ party preferences but also their choice of candidates were reflected in the seats won. However, since it was corrupted by above the line voting in 1984, the effect of the elaborate (and expensive) system of allocating preferences to individual candidates then laboriously entering the data so that a sophisticated count can be applied to determine the outcome has largely only maintained the illusion that senators are elected according to the voters’ preferences.

An elementary analysis of the 2001 results shows that if the voters had simply been presented with boxes for each of the parties previously represented in the Senate and asked to put a cross against their preferred party, with seats being allocated from the top of each party’s list of candidates in proportion to the party vote, only two different senators would have been elected. They would have been Vicki Bourne (DEM) in place of Kerry Nettle (GRN) in NSW and Ted Murphy (ALP) in place of Lyn Allison (DEM) in Victoria. **In effect we have a party list system masquerading as voters’ preferences. I can see no way that the perpetuation of such a deceit can be justified. The system should either revert to one that more truly represents voters preferences, or abandon all pretence of doing so.**

The JSCEM’s citing of the 94.9% of voters Australia wide who voted above the line in 1998 as evidence that most people preferred that system is meaningless where the

option of allocating their own preferences is made so unnecessarily difficult. With the reforms I proposed in 1999, including measures to reduce the size of fields and amendment of the requirement to number all boxes, it is likely that many more would use the senate voting system as it was originally designed to be used. The inverse relationship between the size of fields in different states and territories and the incidence of below the line voting is good evidence of that. **The implementation of measures such as I suggested in 1999 would be the most effective way to restore integrity to the senate voting system.**

Electoral officers seem to have largely concluded that, as voters never consulted the posters indicating preference allocations on party tickets, there is little point in prominently displaying them. Although I did not specifically search them out I don't recall seeing any in the booths I visited on polling day. This further reinforces the spuriousness of ticket preference allocations.

Inadequate representation of non-major party vote

With the falling from favour of Pauline Hanson's One Nation party, the trend for an increasing proportion of the senate vote to be directed away from the major parties has continued at a slower pace. The table below updates the one shown on p10 of my 1999 submission.

	1993		1996		1998		2001	
	% votes	% seats	% votes	% seats	% votes	% seats	% votes	% seats
ALP	43.5	42.5	36.1	35.0	37.3	35.0	34.3	35.0
Coalition	43.0	52.5	44.0	50.0	37.7	50.0	39.9	50.0
Others	13.5	5.0	19.9	15.0	25.0	15.0	25.8	15.0

Again , this shows that the non-major party vote was not adequately reflected in seats won. My remarks from 1999 (pp 10, 11) still apply.

Access to publicity

If anything, the difficulty voters experience in finding out what independent senate candidates have to offer seem to have grown worse during the 2001 election.

The amount of free media coverage was extraordinarily loaded. I suspect an analysis would have shown that in Tasmania Dr. Bob Brown, the lone Green candidate, received at least 80% of all free senate coverage, with the Liberals, ALP and Democrats receiving the vast majority of the remainder. More than half of the candidates received none or virtually none. The advertising value of this coverage at commercial rates must have been many hundreds of thousands of dollars. Clearly, if the media decides that a candidate is not in contention they have the capacity to make this a self-fulfilling prophecy by denying coverage, or conversely, to greatly enhance a candidate's chances of election..

These difficulties are further aggravated by the ever-present problem of the prohibitive cost of advertising for independent candidates, even in a small state such as Tasmania, combined with public funding provisions that provide little or no benefit to the voters but huge benefits to the parties.

For these reasons it is imperative that changes to the public funding provisions such as those proposed in my 1999 submission are implemented without delay to begin to redress the balance and restore a measure of fairness to elections.

A MORE FUNDAMENTAL ISSUE

My experience, and no doubt the experience of many other members of the public who have provided submissions to inquiries into previous elections, raises a more fundamental issue – that is the appropriateness of the Joint Standing Committee on Electoral Matters, which is made up of party politicians, as a body to review democratic processes.

A quick examination of the report from the inquiry into the 1998 election shows that most of its recommendations concerned matters raised primarily by people with party connections or largely machinery matters raised by the Electoral Commission. Input from the public alone gave rise to only three of the 59 recommendations. They were the related recommendations 8, 9 and 10 concerning offensive names for candidates.

Hence it could be argued that the net effect of the around 200 submissions from individuals or organisations (other than the AEC) that had no obvious connections with political parties was virtually zero. The clear impression given is that members of the public are wasting their time lodging submissions unless their proposals also have the support of party politicians.

Given this record, combined with the JSCEM's consistent history of partisanship in its reports, there seems to be a strong case that only a body independent of party interests is capable of assessing public input impartially on the basis of what it can contribute to the democratic process.

Where there is a conflict between the voters' interests and party interests it is probably unrealistic to expect party politicians to produce recommendations that put voters' interests first, as should happen if democracy is to be best served. **If the present committee is unable or unwilling to rise to this challenge then it can best demonstrate its commitment to democratic principles by recommending the establishment of an independent body to receive public input and formulate impartial recommendations. Only then can the public be seen to receiving fair treatment.**

It would probably be better not to have the Electoral Commission conduct such inquiries as that may create conflicts of interest. If an independent body were established, parliamentarians could still have their say to the inquiries and any proposed legislative changes would have to pass through parliament anyway.

I have also appended a copy of a brief paper that I circulated at a conference held in 1999 to mark 50 years of so-called proportional representation in the Senate. That paper outlines the thinking behind my submissions.

E. J. Lockett

4/07/02

How representative is the Senate?

Eric Lockett

(elected to the 1998 Constitutional Convention as ‘the Voice of Ordinary, Fair-Minded, Thinking Citizens’)

Background

This brief paper was prepared for distribution at the conference held in Canberra on 5th-6th August 1999 to mark 50 years of proportional representation in the Senate. While I am grateful to the organisers for the opportunity to participate in this conference, I regret that I did not learn of it in time to stake my claim to speak or to have a contribution included in the official papers.

This is deliberately not written as an academic paper. I am concerned that, in the midst of academic discussions on the historical and theoretical basis of Senate representation by those who in some way make their living from politics, a question of paramount importance may be too easily overlooked. That is, ‘how well does the Senate as it currently operates represent the ordinary citizens of Australia, as distinct from the political parties’.

The underlying premise of my participation is that politics should not be the property of academics, parliamentary officers, or political parties and lobby groups, but the property of all the people. I seek to represent the views of ordinary citizens and I write as the convenor of a non-party, non-partisan movement called ‘Reclaim Your Parliament’ which aims to make our parliaments more representative of and responsive to their wishes.

Introduction

I believe that there are two fundamental principles of representative democracy. Firstly, citizens should enjoy the right to have their claims to represent their peers in parliament fairly considered on merit by the electors. Secondly, all electors should enjoy the complementary right to be fully informed about all the candidates and to have their wishes put into effect by a voting system that truly represents the informed preferences they express through the ballot box. This paper will briefly examine how well the Australian Senate, as it currently operates, measures up to these ideals.

Who do the Senators really represent?

Few would dispute that the Senate presently functions primarily as a party house. Seventy percent of the current senators were assured of their seats immediately on nomination by their respective parties. To maintain those seats it is essential that they toe the party line so as to secure their preselection next time around – they are bound to represent their parties. This means that the parties wield enormous power over their parliamentary members.

So who do the parties in turn represent? Total party membership in Australia constitutes less than three percent of the population. The party positions largely represent the outcome of ideological debate and lobbying by powerful pressure groups in which the vast majority of citizens play no part. The people merely choose between what is offered on a take-it-or-leave-it basis.

Yet few people today are prepared to say 'my party right or wrong'. The reality is that if they were given unlimited choice there would be few issues on which most would see the particular position taken by either of the major parties as ideal. Many would prefer another option. But at election time they must, in effect, choose with one vote a Prime Minister, a party for government, a local MHR and a whole grab bag of policies, some of which they may strongly support and others they may equally strongly oppose. With their other vote they must choose a group of Senators.

Confronted with these almost inevitably conflicting considerations, most take the option of voting for a major party representative in the lower house, while an increasing number balance this with a vote for minor parties or independents in the Senate. For the lower house, most electors probably vote on the basis of the major party policy package they would have least objections to being implemented by government. This is unlikely to be their first preference policy package, but they recognise that only the major parties have a realistic chance of forming a stable government.

The concept of the Senate as a States House was probably never fully realised and seems to be diminishing in importance. In contrast, its importance in the minds of ordinary citizens as a house of review seems to be increasing. Given the dominance of the parties in the lower house, I believe that most citizens would like to see the Senate taking a role in refining the government's legislative proposals to make them more acceptable to the community-at-large, rather than just the supporters of the government of the day.

The Senate then should be neither a rubber stamp for government nor a party battleground, but a responsible, constructive forum that takes into account all shades of opinion. While it currently does much good work, particularly through its committee system, I believe that party dominance prevents it from properly fulfilling that role. The people therefore need to be able to elect senators who will help it to do so.

Representation proportional to what?

While the multi-member Senate electorates do give a somewhat broader representation of viewpoints than the single-member lower house electorates, the application of the term 'proportional representation' to the Senate is only valid in the narrow sense that the relative numbers of seats won by the major parties are generally roughly proportional to their respective primary votes. This is a very far cry from a house that accurately reflects the informed preferences, with respect to either personnel or policies, of the community-at-large.

Why is the Senate party-dominated?

Over the years the major parties have essentially rigged the electoral system to maintain their dominance. The whole electoral process is so blatantly biased against non-party candidates, and to a lesser extent against minor parties, that the Senate could never be truly described as representative. Present indications are that the parties are unlikely to relax their hold on their own parliamentary members to allow

them to act more in line with their personal convictions as to what is in the best interests of the community-at-large, as distinct from their party interests. Nor are the parties inclined to amend the electoral procedures to give non-party candidates a more equal chance of election. Quite the reverse.

It seems inexcusable that in a democracy we should have two different sets of election procedures, one for party candidates and 'incumbent senators' and another for 'ungrouped' candidates. These differences extend from nomination procedures to the allocation of positions on the ballot paper to voting procedures and to the provisions for public funding of parties. In every case they disadvantage the non-party candidates, often very severely.

Yet the non-party candidates are the ones who already suffer from the severe natural disadvantages of lack of organisational infrastructure and funding sources, lack of a public profile and lack of media access. If the aim is for a fully informed choice of representatives, shouldn't the rules be designed to overcome these disadvantages rather than to reinforce them?

The extent to which non-party candidates are disadvantaged is evidenced by the fact that no new independent senator has been able to be elected since 1975. Yet no-one could seriously claim that of all candidates in that time there has not been one non-party person better able to represent the people of his or her state than even the least capable of those elected from party tickets.

What is required to achieve more truly proportional representation?

The public perception that politicians always toe their party line to protect their seats rather than representing the people, along with the belief that the parties are there to serve their rich and powerful benefactors, are major contributors to the low esteem in which politics is held in Australia. To raise public confidence in political processes this must be changed.

The Senate voting system has been seriously corrupted by the introduction of ticket voting. In addition to being in direct conflict with the spirit, if not the law of our constitutional requirement that members be 'directly chosen' by the people, ticket voting is blatantly unfair in that it is restricted to parties or groups. A system that allows a vote to be cast for one candidate by marking a single box, whereas a vote for another candidate may require the sequential numbering of more than sixty boxes, could never be described as fair in even the most primitive of democracies, much less an advanced one such as Australia. The situation is made worse by the fact that although two-thirds of all senate seats are won on preferences, hardly any above the line voters have more than the foggiest notion of where their preferences will flow.

Furthermore, the rules encourage unduly large fields of small parties and groups that have no real chance of election but appear to be mainly 'preference harvesting' devices for other parties. This makes the task of casting a valid below the line vote for a serious non-party candidate even more daunting. Most don't even try. If we want a truly representative Senate then ticket voting should preferably be done away with altogether, or at least be made available to all candidates and modified to ensure that the ranking of parties, if not all candidates, is according to the real wishes of the voters rather than those of their first-choice party.

Public funding of campaigns is also misused. It can only be justified if it is used for the benefit of all electors by assisting them to become fully informed of what all the

candidates have to offer. Adoption of the Constitutional Convention election measure of circulating at public expense statements from all candidates to all electors would help achieve this, but the present funding arrangements do not. Nor do they reduce the extent to which the major parties are beholden to their powerful benefactors. They simply put tens of millions of extra dollars into the coffers of those who least need it to get their message across, with no accountability whatsoever as to how that money is used.

Overall, the present system discourages serious, well qualified non-party candidates from running. No one but a millionaire could possibly afford to get their message out to all the electors of New South Wales without party support. Even in the smaller states a non-party candidate faces such a daunting task that few well-qualified people would waste their time standing. This further encourages the perpetuation of an adversarial party system in the Senate.

The present situation then satisfies neither of the two fundamental principles I set out initially. If the changes I have proposed, along with others outlined in my recent submission to the inquiry by the Joint Standing Committee on Electoral Matters into the 1998 election were implemented, that should help fulfil the first condition by making it easier for a broad range of serious candidates to receive due consideration. The voters in turn would be able to make a better informed selection from those candidates, with the assurance that the seats would be allocated in a manner more closely reflecting their wishes. That would help fulfil the second condition.

The final outcome would be that the views represented in the Senate would be more nearly proportional to those in the community-at-large. The Senate would become less adversarially partisan and more constructive in reviewing legislation to ensure that it best serves the interests of the whole community. It would become a Forum rather than a Colosseum.

The standing of politics would be enhanced by a more truly representative Senate – to the ultimate benefit of all.

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**Supplementary submission to the
Joint Standing Committee on Electoral Matters
Concerning an Alternative layout of Senate ballot paper**

On reviewing my submission dated 4/7/02 I felt that there was a need for some more emphasis on the importance of revising the layout of the Senate ballot paper to make voting fairer, as recommended in my submission to the Inquiry into the 1998 election.

I have therefore attached a mockup of the 2001 Tasmanian Senate ballot paper using my proposed layout. It shows how up to 30 candidates can easily be fitted onto an A4 sized sheet without having to lump ungrouped candidates who may have directly opposing policies together in the same column. In this case I have placed the names in the same order they appeared on the actual ballot paper, but in practice the ungrouped individuals would all go into the draw and may appear anywhere in the order.

This layout would still allow a 'left of the line' or 'right of the line' vote although, as my submission to the inquiry into the 1998 election stated, a 'left of the line' vote should require boxes to be filled in for all parties/groups.

To maximise fairness these measures should, as I originally stated, be combined with rotation, or better still full randomisation, of positions for both parties and candidates within parties. This would probably require a bar code on each paper so that the data entry operators could key in the numbers from top to bottom and the computer could then allocate them to the correct candidates. The results would then represent the true wishes of the electors rather than those of party power-brokers.

Eric Lockett

9/07/02

TASMANIA FIRST PARTY ☐	☐ CRACK Marilyn ☐ JACKSON David ☐ PRESSER John
HOPE PARTY AUSTRALIA ☐	☐ BRISTOW James Tate ☐ PETHERBRIDGE-de TISSERA Shamara
PAULINE HANSON'S ONE NATION ☐	☐ BOAG Bronwyn ☐ STOKES Peter
GROUP D ☐	☐ BONNER Stephen ☐ HOWARD Geoff
AUSTRALIAN GREENS ☐	☐ BROWN Bob
LIBERAL ☐	☐ CALVERT Paul ☐ WATSON John ☐ COLBECK Richard ☐ PARRY Stephen
GROUP G ☐	☐ BAINBRIDGE Alex ☐ CLEARY Sarah
AUSTRALIAN DEMOCRATS ☐	☐ BUTLER Debbie ☐ TOOHEY Brendan
AUSTRALIAN LABOR PARTY ☐	☐ MACKAY Sue ☐ SHERRY Nick ☐ BILYK Catryna
LIBERALS FOR FORESTS ☐	☐ PULLINGER Peter ☐ THOMAS Michael
REPUBLICAN PARTY OF AUSTRALIA ☐	☐ CONSANDINE Peter ☐ LAWATSCH Bert
CITIZENS ELECTORAL COUNCIL ☐	☐ LARNER Rob
INDEPENDENT ☐	☐ MARMARINOS John
INDEPENDENT ☐	☐ LANE Helen

INDEPENDENT

☐☐

LOCKETT Eric