
The Parliament of the Commonwealth of Australia

Advisory Report on the Commonwealth Electoral Amendment Bill 2016

Joint Standing Committee on Electoral Matters

March 2016
Canberra

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Deputy Chair Hon Alan Griffin MP (Deputy Chair)

Members Senator Carol Brown MP
Hon Gary Gray AO, MP
Senator Chris Ketter (to 24/2/16)
Mr Tony Pasin MP
Senator Lee Rhiannon

Senator Stephen Conroy (from 24/2/16)
Mr Ian Goodenough MP
Senator Barry O'Sullivan
Senator Linda Reynolds

Participating members for the purpose of the inquiry

Senator	the Hon. Eric Abetz	Senator	Chris Back
Senator	Cory Bernardi	Senator	Catryna Bilyk
Senator	Joe Bullock	Senator	David Bushby
Senator	the Hon. Doug Cameron	Senator	the Hon. Kim Carr
Senator	the Hon. Jacinta Collins	Senator	Sam Dastyari
Senator	Bob Day	Senator	Richard Di Natale
Senator	Sean Edwards	Senator	David Fawcett

Senator	Alex Gallacher	Senator	Katy Gallagher
Senator	Sarah Hanson-Young	Senator	the Hon. Bill Heffernan
Senator	the Hon. David Johnston	Senator	Chris Ketter
Senator	David Leyonhjelm	Senator	Joanna Lindgren
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Senator	Gavin Marshall	Senator	Jenny McAllister
Senator	Anne McEwen	Senator	Bridget McKenzie
Senator	Nicholas McKim	Senator	the Hon. Jan McLucas
Senator	Claire Moore	Senator	Ricky Muir
Senator	Deborah O'Neill	Senator	Nova Peris
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Terms of reference

On the 22 February 2016 the House referred the provisions of the Commonwealth Electoral Amendment Bill 2016 to the Joint Standing Committee on Electoral Matters for inquiry and report by 2 March 2016.



List of abbreviations

AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
ALP	Australian Labor Party
ATL	Above the line
BTL	Below the line
DLP	Democratic Liberal Party
DRO	Divisional Returning Officer
EM	Explanatory memorandum
GVTs	Group voting tickets
JSCEM	Joint Standing Committee on Electoral Matters



List of recommendations

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The Committee recommends that the amendments proposed in Recommendation 1 are incorporated into the <i>Commonwealth Electoral Amendment Bill 2016</i> , and that the bill is passed.	40

Introduction

- 1.1 On 22 February 2016, the Hon. Scott Morrison MP (the Minister representing the Special Minister of State) introduced the Commonwealth Electoral Amendment Bill 2016 ('the bill') into the House of Representatives. The same day, the House referred the provisions of the bill to the Joint Standing Committee on Electoral Matters ('the Committee') for inquiry and report by 2 March 2016.

An overview of the bill

- 1.2 The bill has three parts. Part 1 contains changes to the Senate ballot paper structure and changes a number of ballot paper handling instructions and procedures. Specifically, it proposes the following three measures to simplify and improve the Senate voting system:
- introduce optional preferential voting above the line, with voters instructed to number at least six squares in sequence;
 - abolish individual and group voting tickets which will return the control of preferences to voters. The abolition of GVTs will not impact on the ability of candidates to group their names for the inclusion of a square above the line on the Senate ballot paper; and
 - change the vote savings provisions such that a vote remains formal:
 - ⇒ even where voters have numbered fewer than six squares above the line;

- ⇒ where there are up to five mistakes by a voter when sequentially numbering their preferences below the line (increased from the current three mistakes).
- 1.3 Part 2 of the bill aims to remove ambiguity around the accountabilities, affiliations, and alliances of political parties. It proposes to remove the capacity for an individual to be a registered officer or deputy registered officer of multiple political parties.
- 1.4 Part 3 of the bill aims to address the confusion that may arise where political parties with similar names appear on the ballot paper. The bill proposes to allow for political party logos to appear, in black, on the ballot papers for both the House of Representatives and the Senate. It sets out the requirements for the registration of party logos with the Australian Electoral Commission.

The context of the reform and JSCEM's contribution

- 1.5 The Committee recognised in 2014 that the existing system of Senate voting in Australia is flawed. It expressed its concerns in the context of the 2013 federal election when candidates with small primary votes were able to win a seat by funnelling preferences to each other. This practice is known as 'preference harvesting': several micro-parties engaging in complex preference swaps to game the system in the hope that one of them will gather sufficient preferences for a quota.
- 1.6 The flaw in the current system is a combination of two factors: Group Voting Tickets (GVTs) and the overwhelming popularity of the option to vote for a party above the line.
- 1.7 GVTs, allowed under the *Commonwealth Electoral Act 1918*, enable parties to trade their preferences to maximise their chances for election. However, it is a mechanism that has taken power away from voters who cast their vote above the line.
- 1.8 The Committee noted in 2014 that while GVTs are available for electors to examine (often at very short notice before an election), very few do so due to the time involved and the complexity of these arrangements. The ability of parties to lodge up to three GVTs means that even if voters can follow the tickets, they do not know which one applies to their vote.¹

1 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 2.

- 1.9 The use of GVTs has been maximised through voters' preference for choosing a party by voting above the line. The reason for this preference is quite simple: it is far easier to cast a '1' above the line than complete many boxes sequentially below the line for candidates who are unknown to many voters. By the 2013 federal election, only 3.5 per cent of voters were completing their own preferences below the line.²

The secrecy and complexity of GVTs

- 1.10 The secrecy and complexity of GVT arrangements is not in dispute. As Labor Senator the Hon. Stephen Conroy reflected at the public hearing:

I have probably only met 10 people – most of them have been in this room this morning – who truly understand how it works and who actually have a genuinely full understanding of how that system would work.³

- 1.11 Mr Glenn Druery, who has constructed many micro-party preference deals, was also candid. Asked whether the practice of preference deals is one that the average voter does not understand, he responded:

That is a fair comment, but it is a system that was not put there by minor parties. It was put there by the major parties and it has been tinkered with by the major parties for about 100 years.⁴

- 1.12 In his submission to this inquiry, University of Sydney Adjunct Professor Antony Green explained that when GVTs were introduced, they were 'viewed as merely institutionalising the existing system of how-to-vote cards'. He added:

Ticket voting marginally increased the control over preferences of the larger parties. What had not been properly thought through at the time was that ticket voting for the first time allowed smaller parties to take control of their preferences.⁵

- 1.13 In its May 2014 interim report, the Committee set out some of the tactics adopted by micro-parties to use GVTs to allocate agreed higher preferences to each other. Micro-parties were created for the purpose of

2 Australian Electoral Commission, 'Senate Group Voting Ticket Usage', Election 2013, <http://results.aec.gov.au/17496/Website/SenateUseOfGvtByState-17496.htm> (accessed 28 February 2016).

3 *Proof Committee Hansard*, 1 March 2016, p. 27.

4 Mr Glenn Druery, *Proof Committee Hansard*, 1 March 2016, p. 38.

5 Professor Antony Green, *Submission 30*, p. 1.

orchestrating these preference deals. They formed part of an overall strategy, as Senator Leyonhjelm told the Committee in 2014:

Where Glenn Druery is very skilled is in understanding how those preferences, if they are allocated, what the impact of them will be on the outcome. And if you put them in a certain order and you get them coming before another party who's knocked out, you will end up benefitting.⁶

The distortion of voters' will

1.14 Voters' preference for voting above the line in the Senate, combined with the ability for preferences to be distributed between parties through GVT, has led to some highly unusual results. In recent years, GVTs have been used as a vehicle to construct complex preference deals enabling a party with a very low first preference vote to be elected to the Senate. There have been some notable examples from recent federal elections:

- at the 2004 federal election, Family First candidate Mr Steve Fielding was elected to the Senate with 1.9 per cent of the primary vote;
- at the 2010 federal election, a DLP candidate, Mr John Madigan, was elected with 2.33 per cent of the vote; and
- at the 2013 federal election, the Australian Motoring Enthusiast Party candidate Mr Ricky Muir was elected to the Senate with a record low primary vote of 0.51 per cent (17 122 first preference votes).

1.15 These results drew attention to the system that enabled these candidates to gather a quota (14.3 per cent). The Australian Motoring Enthusiast Party candidate was elected with primary votes totalling just 0.0354 of a quota.

1.16 The Committee noted in 2014 that the 2013 Senate election results were:

...a crucible in which some of the flaws of current arrangements merged: specifically, electors felt their votes had been devalued by preference deals and that they had been disenfranchised by being forced to prefer unpreferred candidates.⁷

1.17 The then Chair of the Committee, and the current speaker of the House of Representatives, the Hon. Tony Smith MP, summed up the Committee's concerns eloquently:

6 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 21.

7 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 2.

The ‘gaming’ of the voting system by many micro-parties created a lottery, where, provided the parties stuck together in preferencing each other (some of whom have polar opposite policies and philosophies) the likelihood of one succeeding was maximised. Many voters were confused. If they voted above the line, the choice of where their vote would go was effectively unknown, and accordingly in many cases their electoral will distorted...

While such ‘gaming’ of the system is legal, it has nonetheless distorted the will of voters, made Senate voting convoluted and confusing, and corroded the integrity of our electoral system.⁸

The case for change

1.18 The Committee concluded in 2014 that ‘the status quo is simply not an option’.⁹ It recommended that the *Commonwealth Electoral Act 1918* be amended to:

- abolish group voting and individual voting tickets;
- allow for optional preferential above the line voting;
- allow partial optional preferential voting below the line with a minimum sequential number of preferences completed equal to the number of preference; and
- strengthen party registration requirements.¹⁰

1.19 The Committee is pleased that the Government has essentially agreed to these reforms and that the Committee has been recognised for its contribution to Senate voting reform. In his *Second Reading Speech* on the bill, Mr Morrison stated:

The parliament has been well served by the work of its Joint Standing Committee on Electoral Matters, which regularly examines aspects of our electoral system, and issues that arise from the conduct of national elections. The bill responds to key elements of the interim and final reports of the Joint Standing

8 The Hon. Tony Smith MP, Foreword, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, Joint Standing Committee on Electoral Matters, May 2014, pp v–vi.

9 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 2.

10 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, pp xvii.

Committee on Electoral Matters inquiry into the 2013 Federal Election...

The government is committed to an open and transparent voting system that has integrity, is simple and clear, and provides voters with the ability to express their will to the greatest extent possible and to have their voting intent upheld. The JSCEM is to be commended for its work in identifying the changes that need to be made in our current voting arrangements to achieve this objective in relation to Senate elections in particular.¹¹

- 1.20 However, as this report highlights, the Committee's recommendations to reform voting below the line have not been considered in this bill.
- 1.21 Many submitters to this inquiry contended that the optimal voting system in the Senate would be a combination of partial optional preferential voting below the line and partial optional preferential above the line.

Conduct of the inquiry

- 1.22 On 22 February 2016, the Committee wrote to 93 individuals and organisations inviting a submission into the provisions of the bill. The Committee invited submissions from those individuals and organisations who commented substantively on Senate voting issues in their submission to the 2013 federal election inquiry. It wrote to all political parties represented in the Australian Parliament and several others.
- 1.23 The Committee received 107 submissions, which were provided on the Committee's website from 29 February 2016. Appendix 1 presents a list of submitters.
- 1.24 The Committee held a public hearing on 1 March 2016 at Parliament House in Canberra. The Committee invited the Liberal Party of Australia, the Australian Labor Party, the National Party of Australia and the Greens to give evidence at the hearing. The ALP and the Greens declined the Committee's invitation to appear.
- 1.25 The Committee also wrote to the eight cross-bench Senators to gauge their interest in giving evidence. With the exception of Senator Jacqui Lambie, these Senators noted that they would be participating in the inquiry as a

11 The Hon. Scott Morrison MP, Second Reading Speech, *House of Representatives Hansard*, 22 February 2016, p. 24.

participating Member. Appendix 2 presents a list of the individuals and organisations that gave evidence.

Amendments to, and the passage of, the bill

- 1.26 On 24 February 2016, the Government introduced amendments to the bill in the House of Representatives. The same day, the House of Representatives passed the amended bill.
- 1.27 While the Parliament directed the Committee to examine the bill in its form at the time of referral on 22 February, the Committee does make comment in this report on the merit of the Government's amendments.
- 1.28 At the time of writing, the bill was scheduled to be introduced into the Senate on 2 March 2016.

Committee membership

- 1.29 By Resolution of Appointment of both Houses, the Committee has ten members composed of:
- 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any minority group or independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 2 Senators to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group or independent Senator.¹²
- 1.30 On 22 February 2016, the House passed a motion to discharge the former Committee Chairman, Mrs Jane Prentice, from the Committee. In her place, Mr David Coleman was appointed to the Committee. The same day, the Committee elected Mr Coleman as Committee Chair.
- 1.31 On 25 February 2016, the Senate passed a motion to discharge Senator Chris Ketter from the Committee. In his place, Senator Stephen Conroy was appointed to the Committee.
- 1.32 On 22 February, both Houses of Parliament passed an amendment to the Committee's Resolution of Appointment allowing for participating members to be appointed to the committee on the nomination of the Leader of the Government in the Senate, the Leader of Opposition in the

¹² Joint Standing Committee on Electoral Matters, *Resolutions of Appointment*, passed by the House of Representatives on 21 November 2013 and the Senate on 2 December 2013.

Senate, or any minority group or independent Senator. Fifty-one Senators were appointed to the Committee as participating members: 23 ALP Senators, 15 Coalition Senators, nine Green Senators and five cross-bench Senators.

Acknowledgements

1.33 The Committee thanks all those who contributed to this inquiry.

Structure of the report

1.34 This report has four chapters:

- Chapter 2 compares the bill's key provisions with the corresponding recommendations in the Committee's May 2014 and April 2015 reports. It then explains the main provisions of the bill.
- Chapter 3 presents submitters' views on the bill;
- Chapter 4 concludes the report, presenting the Committee's view and recommendations.

Provisions of the bill

2.1 This chapter presents the provisions of the bill. It begins by highlighting the main changes that the bill proposes and compares these to the recommendations of the Committee's 2014 and 2015 reports into the conduct of the 2013 federal election. The chapter then outlines the main provisions of the bill.

A comparison of the bill, JSCEM's recommendations and the status quo

2.2 Table 2.1 presents this comparison. It shows that:

- both the bill and the Committee in its 2014 interim report: *Senate voting practices*, support the abolition of Group Voting Tickets;
- both the bill and the Committee propose the introduction of optional preferential above the line voting. The bill proposes printing advice to voters on the Senate ballot paper to number at least six squares, although ;
- the bill would effect no change to below the line voting (apart from increased savings provisions). The Committee recommended the introduction of 'partial' optional preferential voting below the line with a minimum sequential number of preferences to be completed equal to the number of vacancies;
- the Committee recommended 'appropriate formality and savings provisions' and the bill proposes increasing the vote savings provisions

to allow for up to five mistakes by a voter when sequentially numbering their preferences;

- both the bill and the Committee propose removing the capacity for an individual to be a registered officer or deputy registered officer of multiple federally registered political parties;
- the bill proposes to allow for party logos to be printed on the Senate and House ballot papers, enabling political parties to register logos and introduce the option for the reproduction of logos, in black, on ballot papers. The Committee did not make a recommendation to introduce logos but it did recognise the argument for logos on ballot papers to limit voter confusion.

**Table 2.1—
Key issue comparison of the status quo, the bill's provisions and JSCEM's 2014 recommendations**

Key issues	Status quo	Bill provision	JSCEM recommendation May 2014
Group voting tickets	A senate group may lodge a written statement setting out preference order of all candidates in the election.	The bill abolishes individual and group voting tickets.	The Committee recommends the abolition of group and individual voting tickets.
Above the line voting	Voters must place a single figure 1 in one square above the line in order to make their vote count.	The bill introduces partial optional preferential voting above the line, providing advice printed on the Senate ballot paper that voters number at least six squares in order of preference	The Committee recommends introducing optional preferential voting above the line voting.
Below the line voting	Voters must number all the boxes below the line in their preferred order for their vote to count.	The bill proposes to change the vote savings provisions to allow for up to five mistakes by a voter when sequentially numbering their preferences (increased from the current three mistakes).	The Committee recommends 'partial' preferential voting below the line with a minimum sequential number of preferences to be completed equal to the number of vacancies: six for a half-Senate election; twelve for a double dissolution, two for any territory Senate election.
Registered officers	Registered officers may be registered to one or more political parties.	The bill proposes to remove the capacity for an individual to be a registered officer or deputy registered officer of multiple federally registered political parties.	The Committee recommends stronger requirements for party registration, including restriction to unique registered officers for a federally registered party.

Identifying candidates on the ballot	Candidates name and party abbreviation are included on the ballot papers.	The bill proposes to allow for party logos to be printed on the Senate and House ballot papers. The bill proposes to enable the registration of logos by political parties and introducing the option for the reproduction of logos, in black, on ballot papers.	The Committee is did not make a recommendation on logos but noted the merits of the proposal to permit the inclusion of party logos on ballot papers. The potential to limit confusion amongst voters, especially with complex ballot papers, is an argument for the adoption of logos. (Final report)
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2.3 The key difference, therefore, between the bill and the Committee's views (as expressed in its May 2014 interim report and April 2015 final report) is the Committee's recommendation to introduce 'partial' optional preferential voting below the line. This issue will be discussed in chapters 3 and 4 of this report.

Key provisions of the bill

2.4 The following section sets out the main provisions of the bill, focussing on the five issues identified in Table 2.1. As chapter 1 noted, the bill has parts on Senate voting, registered officers and party logos.

Optional preferential voting above the line

2.5 Section 239 of the *Commonwealth Electoral Act 1918* ('the Act') relates to the marking of votes in a Senate election. The headline provision of the bill is Item 20 which seeks to repeal subsections 239(2) and (3) and insert a new subsection 239(2).

2.6 The new subsection states that a ballot paper may be marked above the line by writing at least the numbers 1 to 6 in the squares above the line in accordance with their preferences (or as many preferences as there are squares if there are fewer than six squares). Item 41 of the bill requires the ballot paper to contain the following instructions for voting above the line: 'By numbering at least 6 of these boxes in the order of your choice (with number 1 as your first choice)'.

2.7 The repealed subsection 239(3) allows for ticks and crosses to be counted as a 1. The bill proposes moving this provision to a new subsection 269(1), which deals with above the line vote formality.

Above the line and formality

- 2.8 Section 269 of the Act currently relates the requirements for a vote to be formal according to a group voting ticket. It states that where a Senate ballot paper has no vote or does not indicate the first preference for one candidate and the order of the voter's preference for all the remaining candidates, it is not informal provided the voter has marked a vote on the ballot paper by writing 1 in a square.
- 2.9 Item 23 of the bill seeks to repeal subsection 269(1) and to replace it with a new 269(1) that explicitly states that provided the ballot paper is marked with at least the number 1 above the line the vote will be counted as formal. In other words, while the voter will be instructed to provide six preferences above the line, the amended Act will require no more than one preference above the line.
- 2.10 The Second Reading Speech of the bill indicates that the formality rules implement a savings provision so as not to render informal the votes of voters who continue to vote 1 above the line as they have previously done. Although the reform is intended to introduce multiple above the line preferences – with printed advice on ballot papers to this effect – the formality rules mean that the bill is in essence implementing the optional preferential voting system that the Committee recommended in its May 2014 interim report.

Treatment of ballots for above the line voting

- 2.11 Section 272 of the Act relates to how group voting tickets affect the above the line vote. Item 28 of the bill repeals this section. In its place, a considerably shorter section proposes that preferences above the line are treated as preferences for those groups below the line, and only those groups. The first above the line preference will be treated as a 1 vote for the first candidate in that group, followed by a second preference for the next candidate in the group, and so on through to the last candidate in the group. If there are additional preferences above the line, these will be treated as preferences for the candidates in those groups, in the order in which they are listed on the ballot paper.
- 2.12 The Australian Electoral Commission told the Committee that a vote above the line would be formal regardless of the number of boxes marked above the line. The AEC's advice to voters would be that voters should number six boxes above the line. However, the Electoral Commissioner

advised the Committee that should boxes be marked beyond a sixth box they would be counted.¹

- 2.13 Appendix 3 gives two examples of how a vote above the line would flow to candidates below the line. The Explanatory Memorandum also provides helpful examples:

It is expected that many voters will now vote '1, 2, 3, 4, 5, 6' above the line. If each of the six groups numbered by the voter had eight candidates, section 272 would treat the ballot paper as having 48 numbers below the line. The number '1' would be assigned to the first candidate in the '1' group; the number '2' would be assigned to the second candidate in the '1' group. The number '8' would be assigned to the final candidate in the '1' group and the number '9' would then be assigned to the first candidate in the '2' group.

Thus, where a voter places '1' above a group, their vote will be a first preference vote for the first candidate in that group. If that candidate is excluded in the distribution of preferences, the vote is transferred to the next candidate who is alive in the preference distribution. This might be a candidate placed lower in that group but would more usually mean the vote is transferred to the next group in the voter's preference (2, 3, 4, 5 or 6), which has candidates still alive in the distribution.²

- 2.14 The Committee highlights that this is the bill's most significant change. Voters will know exactly where their preference votes are flowing according to the party's list of candidates below the line. As the EM states:

Thus, the voter controls the course by which their vote is transferred upon preference distribution. Since 1984 the distribution of preferences has been done pursuant to ticket arrangements in a manner almost entirely unknown to most voters.³

- 2.15 Chapters 3 and 4 of this report note that some commentators have concerns with the bill in that the parties would continue to have influence over the order of candidates on the ballot paper. As explained later this report, the Committee's position is that it is appropriate that the parties retain full control of the order of their candidates.

1 Mr Tom Rogers, Electoral Commissioner, *Proof Committee Hansard*, 1 March 2016.

2 Commonwealth Electoral Amendment Bill 2016, *Explanatory Memorandum*, p. 10.

3 Commonwealth Electoral Amendment Bill 2016, *Explanatory Memorandum*, p. 10.

- 2.16 The bill contains a number of items intended to make the language in the Act consistent with the new above the line provisions, and removing language that refers to group voting tickets.

Counting of Senate ballot papers on election night

- 2.17 The remaining items in Part 1 of the bill are 'technical amendments to the scrutiny and count process to enable the AEC to improve and centralise the count of Senate ballot paper'.⁴ These items largely seek to amend ballot paper handling procedures and the secure transmission of ballot papers to the point where the scrutiny is undertaken.
- 2.18 Currently, the Australian Electoral Commission conducts an indicative count of first preference votes for groups and ungrouped candidates on election night. This occurs at the polling place after the House of Representatives ballots have been counted. This count does not constitute part of the scrutiny, as defined in Part XVIII of the Act. It is purely an indicator of the direction of results.
- 2.19 In the form that the bill was referred to the Committee, there was to be no provision for any determination of the results or examination of ballot paper for formality before the ballot papers arrived in the custody of the AEO. The Minister's Second Reading Speech states:
- In the past, voters mainly placed a '1' above the line on Senate ballot papers. This enabled an initial first preference count to be undertaken at polling booths. As the proposed Senate amendments will lead to multiple voter preferences being numbered above the line, preference counts at polling booths will no longer be possible.⁵
- 2.20 On 24 February 2016, the House of Representatives passed Government amendments to the bill that would reinstate the count of first preferences prior to the ballot papers being packaged and sent to the Divisional Returning Officer (DRO).⁶
- 2.21 Chapter 3 comments further on this issue.

4 The Hon. Scott Morrison, Second Reading Speech, *House of Representatives Hansard*, 22 February 2016, p. 24.

5 The Hon. Scott Morrison, Second Reading Speech, *House of Representatives Hansard*, 22 February 2016, p. 24.

6 Proposed subsections 273(2)(ca), 273(2)(d) and 273(2)(da)

Vote handling processes

- 2.22 Item 29 of the bill makes other technical amendments to ballot paper handling processes in subsection 273(2) to (6) of the Act. These processes require that ballot papers are removed from ballot boxes in the presence of any scrutineers, that the number and condition of the ballot papers is recorded, and that the count of first preference votes is transmitted to the DRO. The ballot papers are then sealed in a securely fastened container and transmitted to the DRO of the Division.
- 2.23 The DRO must then open the parcel of ballot papers, check that the number and condition of the ballot papers are as stated, and then re-package all ballot papers from the division and transmit them to the Australian Electoral Officer (AEO) for the relevant state. The AEO will then undertake the scrutiny (the count of the vote), including determining which ballot papers are informal.
- 2.24 The amendments proposed in the bill will reduce ballot paper handling and increase the security of ballot paper transport. The Committee highlights the importance of these amendments. They are entirely consistent with the recommendations of the Keelty report into the missing 2013 Western Australian ballot papers which the Committee strongly supports.⁷

Savings provisions to capture voter intent below the line

- 2.25 As noted earlier, the only changes that the bill proposes to below the line voting are to expand the number of errors that the voter may make in numbering.
- 2.26 Item 27 of the bill amends subparagraph 270(1)(b)(i) of the Act to allow, in particular circumstances, no more than five changes to numbers marked in squares below the line on a Senate ballot paper for the vote not to be formal. For these allowances to occur, there must be more than nine candidates below the line and not less than 90 per cent of the squares numbered.⁸

7 Inquiry into the 2013 WA Senate Election, Report commissioned by the Australian Electoral Commission and produced by M. J. Keelty AO, December 2013
http://www.aec.gov.au/About_AEC/Publications/Reports_On_Federal_Electoral_Events/2013/files/inquiry-into-the-2013-wa-senate-election.pdf (accessed 28 February 2016).

8 *Explanatory Memorandum*, p. 9.

Registered officers and deputy registered officers

- 2.27 Part 2 of the bill relates to new requirements for registered officers and deputy registered officers. Item 43 of the bill introduces a restriction on registered officers and deputy registered officers for a federally registered party. It states that 'a person must not be the registered officer or deputy registered officer of more than one registered political party at a particular time.'⁹
- 2.28 Further, the bill makes it clear that it is not permissible for a registered officer to be a deputy registered officer of another registered political party.¹⁰
- 2.29 The Explanatory Memorandum New subsection 126(2B) provides that:
- a person must not, at a particular time, be the registered officer of more than one party, a deputy registered officer of more than one party, or the registered officer of one party and a deputy registered officer of another party. ¹¹
- 2.30 This is consistent with the view from the Joint Standing Committee on Electoral Matters' Interim report on the inquiry into the conduct of the 2013 federal election: Senate Voting Practices. It recommended that registered officers for federally registered parties be unique. The report also included five other sub clauses of the recommendation in order to provide for stronger requirements for party registration. These are not addressed in the bill.
- 2.31 New subsection 126 (2C) is explicit in clarifying that the changes to the Electoral Act 1918 would be binding for federally registered parties only. It does not provide amendments for the 'purposes of an Act of a State or Territory, or Ordinance of an external Territory, of a political party or a branch of a political party.'¹²
- 2.32 Item 56 in the Explanatory Memorandum sets out the provision that the Electoral Commissioner must provide written notice to a party it is considering to deregister, setting out all reasons for doing so. It adds a person being the registered officer of more than one political party as one of the valid reasons for the Electoral Commissioner giving notice to a party that the Electoral Commissioner is considering deregistering the party.
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9 *Commonwealth Electoral Amendment Bill 2016*, p. 15

10 *Commonwealth Electoral Amendment Bill 2016*, subsection 126(2B)(c)

11 *Explanatory Memorandum*, p. 14.

12 *Explanatory Memorandum*, p. 15.

- 2.33 Item 57 explains that existing political parties have 90 days after the amendments have been enacted to correct any issues in relation to having a registered officer who is also the registered officer of another party before it risks being deregistered. It also provides that a party will not be deregistered under these provisions during an election.

Party logos

- 2.34 Part 3 of the bill would allow for eligible political parties to submit a logo of their party to the Register of political parties. Item 61 specifies the requirements for party logos which includes “a logo set out in an application must be in black and white: and b) meet any requirements determined under subsection (2 AB).”¹³
- 2.35 Item 88 in the bill states that ‘party logos are printed only in black on ballot papers’.¹⁴ There are provisions for the logo to be printed on both House and Senate ballot papers.
- 2.36 The precise placement of the logo is made explicit in the Explanatory Memorandum. It states:
- The printing of party logos on ballot papers will be adjacent to the square that is printed, adjacent to the name of the party.¹⁵
- 2.37 If candidates are endorsed by more than one political party no more than two logos may be printed adjacent to the square and if more than two of those parties have logos entered in the register the parties must notify the Electoral Commission, which of the logos are to be printed adjacent to that square.¹⁶
- 2.38 Several amendments in the bill mirror the existing provisions in the Act for the registration of political party names in terms of registration of logos.
- 2.39 The Explanatory Memorandum notes that the Electoral Commissioner may decide to refuse to enter the logo of the political party in the Register of Political Parties. One ground for refusal is that the logo will be confused with a business or another political party logo, or deemed to be obscene.

13 *Commonwealth Electoral Amendment Bill 2016*, p. 19

14 *Commonwealth Electoral Amendment Bill 2016*, p. 24

15 *Commonwealth Electoral Amendment Bill 2016*, p. 24

16 *Explanatory Memorandum*, p. 24

- 2.40 The bill seeks to amend the Act to prevent elections being declared void on the basis of an error in printing party logos on ballot papers, adding to an existing requirement that errors in names and abbreviations of parties will also not cause an election to be void.¹⁷ It also aims to protect the Commonwealth and its employees from action, suit or proceedings in relation to a logo of a party.¹⁸
- 2.41 The Committee noted in 2014 that logos could potentially limit confusion among voters. However, it also recognised that ‘if similar registered party names can cause confusion, so too could party logos closely resembling each other’.¹⁹
- 2.42 The 2014 JSCEM interim report commented that permitting the inclusion of logos would allow parties to utilise their branding more effectively. However the Committee flagged the potential copyright issues that may arise around branding and logos. In addition, the Committee cautioned that there may be technical and logistical challenges in printing small logos in black and white on ballot papers.²⁰

17 *Explanatory Memorandum*, p. 21 Item 90

18 *Explanatory Memorandum*, p. 21 Item 91

19 Joint Standing Committee on Electoral Matters, *The 2013 federal election: report on the conduct of the 2013 election and matters related thereto*, April 2015, p. 93.

20 Joint Standing Committee on Electoral Matters, *The 2013 federal election: report on the conduct of the 2013 election and matters related thereto*, April 2015, p. 93.

Views on the bill

- 3.1 This chapter presents the Committee's evidence on the bill. It has two sections. The first looks at views on the main provisions of the bill as sets out in the previous chapter. The second section addresses various arguments about the impact of the bill on the voting process.

Abolishing group voting tickets

- 3.2 Most submitters offered strong support for the abolition of group voting tickets (GVTs) as these GVTs encourage the secretive flow of preferences. Rightly, they viewed the removal of GVTs as the centrepiece of the reform. As Dr Kevin Bonham wrote in his submission:

It is clear that the system created by this Bill would resolve the core problem of preference-harvesting and ensure that elected candidates were elected on merit.¹

- 3.3 Mr Ian Brightwell simply stated:

I fully support the central tenet of this bill which is to remove ticket voting. This change is necessary to ensure the alignment of voter's intent with electoral outcomes for the Australian Senate.²

- 3.4 Similarly, Professor George Williams offered his support for the reform on the basis that voters will decide where their preferences flow:

1 Dr Kevin Bonham, *Submission 31*, p. 1.

2 Mr Ian Brightwell, *Submission 26*, p. 1.

The voting method proposed by the Commonwealth Electoral Amendment Bill 2016 is a major improvement on the current system. Critically...it allows voters to determine the flow of their preferences, and so electoral outcomes, rather than permitting these to be determined by political parties on their behalf.³

Proposed voting arrangements below the line

- 3.5 Several submitters to this inquiry offered their support for the Committee's 2014 recommendation to introduce partial optional preferential voting below the line. There was disappointment from these, and other submitters that the bill does not substantively address below the line Senate voting.
- 3.6 With reference to the Committee's May 2014 recommendations for above and below the line voting, Mr Michael Maley stated that:
- ...the JSCEM ... came up with proposals which, if implemented, will produce the best electoral system ever used at Senate elections....
- The Explanatory Memorandum for the Bill provides no substantive explanation of why the Government has rejected the Committee's unanimous view on this issue and adopted a different approach. Nor is any such explanation provided in the Second Reading Speech made in the House of Representatives by the Minister representing the Special Minister of State when introducing the Bill.⁴
- 3.7 Professor Antony Green expressed his disappointment that the bill does not propose optional preferential voting below the line. Instead, he proposed that voters be instructed to show at least 12 preferences for candidates below the line. Assuming a minimum two candidates per group, he noted that 12 below the line and the bill's proposal that voters mark six preferences above the line, would correspond.⁵
- 3.8 Dr Bonham argued that the bill should be amended to instruct voters to number at least 12 squares below the line for a valid vote, with the same savings provisions as for above-the-line voting.⁶

3 Professor George Williams, *Submission 18*, p. 2.

4 Mr Michael Maley, *Submission 3*, pp 2-3.

5 Mr Antony Green, *Submission 30*, p. 6.

6 Dr Kevin Bonham, *Submission 31*, p. 1.

- 3.9 Not all submitters wanted to remove the current system of full preferential voting below the line. Professor Williams advocated current below the line arrangements, but only if there is full preferential voting above the line. He noted that if there is, as the bill proposes, option preferential voting above the line:
- ...a like system should be introduced for below the line voting. For example, the Bill could be amended in line with the Interim Report on the 2013 Federal Election by this Committee...
- 3.10 One of the criticisms of the system of Senate voting that the bill would create is that in some circumstances, ballot papers with the same effective preferences are treated differently depending on whether the ballot paper is completed above or below the line.
- 3.11 An example is a vote with a single square marked for a party above the line where that party has only two candidates. This would be a formal vote under the bill's proposals. However, a formal vote to the same effect could not be marked below the line. The voter would have to mark the two candidates in order of preference but then continue to mark all the squares for the vote to considered formal.
- 3.12 Professor Green noted that from the perspective of the count, voting above and below the line under the current Senate voting system expresses a preference for every candidate on the ballot paper.⁷ The same cannot always be said for the proposed system. As mentioned earlier, Professor Green's preferred Senate voting system for voters to mark at least six squares above the line and at least 12 squares below the line (see paragraph 3.9). Professor Williams told the Committee that his preferred Senate voting system was one where voters were instructed to mark either six squares above the line or six squares below the line.⁸
- 3.13 The Committee believes Professor Green's proposal is sound. Clearly, as the Committee recommended in May 2014, optional preferential above the line voting is best matched with 'partial' optional preferential voting below the line.
- 3.14 As indicated above, there are a few options possible for a partial optional preferential below the line Senate voting system. Professor Williams proposed that six boxes be marked to apply consistency with above the line arrangements. Professor Green opted for a minimum of 12 preferences

7 Professor Mr Antony Green, 'Senate reform – Why bother forcing below-the-line votes to be fully preferential?', *Antony Green's Election blog*, ABC Elections, 25 February 2016.

8 Professor George Williams, *Proof Committee Hansard*, 1 March 2016, p. 10.

to be marked below the line, noting that a full six party choice above the line can be as few as 12 preferences below the line.

The savings provisions above and below the line

3.15 The Australian Electoral Commission has informed the Committee that the impact of the bill's proposed savings provision on below the line informality using data from the 2013 federal election was as follows:

- 480 948 ballot papers were completed below the line of which 8 445 were deemed informal (approximately 1.8 per cent);
- 67 816 below the line ballots were saved because of the current saving provision of up to three allowable errors;
- If the savings provision of five allowable errors was applied, an additional 4 057 votes would have been saved leaving 4 388 votes informal (approximately 0.9 per cent);
- Some 241 of those 4 388 votes were also marked with a formal above the line preference and therefore were saved from below the line informality.⁹

3.16 Several submitters commented on the bill's proposal to increase below the line savings provisions and allow a vote to be counted above the line if there are fewer than six preferences marked.

3.17 Professor Green argued that in terms of the savings provisions above the line should: '[I]t was very important that any change we made did not declare votes that were currently formal as informal'.¹⁰

3.18 He noted that any vote above the line that is currently formal will also be formal under the proposed system. In the ACT Legislative Assembly:

[V]oters are instructed to complete as many preferences as there are vacancies to fill, five or seven preferences in the past. Any vote with fewer than the required preferences is also formal. At the 2012 ACT election, only around 2% of ballot papers had fewer preferences than the number listed on the ballot paper.¹¹

3.19 There was criticism of the bill's proposed savings measures below the line. Dr Bonham gave several grounds for his objections:

9 Electoral Commission, *Supplementary Submission*, 1 March 2016.

10 Professor Antony Green, *Proof Committee Hansard*, 1 March 2016, p. 14.

11 Professor Antony Green, *Submission 30*, p. 4.

The proposed increase in the number of allowable errors from three to five, absent of any other changes, appears to be poor policy because it:

- is tokenism, in that it appears to address concerns about the difficulty of below-the-line voting, but actually does not do so to any significant degree;
- will make a very small difference to the number of votes admitted to the count as formal, and will not significantly improve the attractiveness of voting below the line;
- makes the process of manually checking the formality of a vote more difficult;
- requires reprogramming and testing of reprogramming for the assessment of formality of BTL votes, without sufficient gains to justify this effort.¹²

3.20 At the public hearing, Mr Rogers commented that while it was difficult to speculate on voter behaviour, the bill's proposed savings provisions below the line will save 'a number of voters'.¹³

3.21 Mr Rogers was specifically asked what the impact of the bill's provision would have been had it been in place at the last federal election. Mr Rogers responded that the higher savings provisions in the bill would have saved, roughly, an additional 4000 votes.¹⁴

Counting of the votes on election night

3.22 As chapter 2 discussed, the original bill proposed not to count Senate first preference votes by party in polling places on election night or after they have been returned to AEC Divisional Offices. Subsequent Government amendments to the bill reinstated the current counting procedures.

3.23 Professor Green expressed his support for the Government's amendments:
...abandoning election and DRO Senate counts left as indeterminate the time frame for when any Senate figures would be released. The re-insertion of counting procedures into the bill is to be welcomed in allowing more transparency to the count.¹⁵

3.24 The Committee acknowledges the pressures on staff on election night. The Electoral Commissioner, Mr Tom Rogers, told the Committee in March

12 Dr Kevin Bonham, *Submission 31*, p. 2.

13 Mr Tom Rogers, *Proof Committee Hansard*, 1 March 2016, p. 2.

14 Mr Tom Rogers, *Proof Committee Hansard*, 1 March 2016, p. 4.

15 Professor Antony Green, *Submission 30*, p. 5.

last year that ‘doing work around saving the Senate ballot paper until a later date I think would save a significant amount of work for our staff on the night and probably aid accuracy’.¹⁶

- 3.25 Nonetheless, the Committee believes that it is desirable to continue to have a first preference count of Senate ballot papers on election night. The AEC has a substantial workforce across the country on election night. If the AEC did not have Senate figures on election night, it would be under considerable pressure particularly at a double dissolution election with a close result in the House. In this case, the Senate makeup would determine what might or might not pass through a joint sitting.
- 3.26 The Committee is aware of the higher trend in pre-poll voting over several recent federal elections. It has taken evidence from the AEC about the challenges that the higher incidence of pre-polling poses. One of these challenges is the count of pre-poll votes on election night.¹⁷ Professor Green suggested in his submission to this inquiry that the counting of pre-poll Senate votes be deferred where the ballot papers are already secured on AEC premises.¹⁸

Registered officers and deputy registered officers

- 3.27 A majority of the submissions received were supportive of the changes to the bill in relation to tightening regulations around registered officers and deputy registered officers of political parties.
- 3.28 The purpose of changing this section in the bill is to prevent one individual creating a number of parties for the purpose of directing preferences. However, given the proposed changes to above the line voting, with the proposed abolishing of GVT, such a strategy would presumably no longer be used to harvest votes through “pop up” minor parties.
- 3.29 One of the submissions commented that the strengthening of regulations around registered officers was a step in the right direction to improve voter confidence. By ensuring that registered officers and deputy registered officers are only registered to one particular political party this

16 Mr Tom Rogers, Australian Electoral Commissioner, *Committee Hansard*, 4 March 2015, p. 13.

17 See Mr Tom Rogers, Australian Electoral Commissioner, *Committee Hansard*, 4 March 2015, p. 13.

18 Professor Antony Green, *Submission 30*, p. 5.

provision will go some way to “improve voter confidence on the integrity of registered political parties.”¹⁹

3.30 Several of the submissions pointed out that whilst the amendments to the bill were positive in relation to ensuring that all registered and deputy officers are unique it was noted by some that this only touched on one out of six points addressed in the original JSCEM recommendation 4.²⁰

3.31 Mr Malcolm Baalman in his submission questioned why the Government had not tightened the registration of political parties further. He comments:

The issue of a required number of party members for registration is one of balance. I would personally lean towards setting that balance so as to encourage political engagement and activity in the community. On the other hand, the issue of artificial ‘front’ parties deserves careful consideration.²¹

3.32 Mr Baalman correctly asserts that the Government has not made a formal response to the recommendations in the report. He further states:

However the Government has offered no formal response on these recommendations, and the Bill does not take up most of these issues. It is not clear – and the explanatory material makes no attempt to explain – why the other Committee proposals are not adopted. The Government has publically cited a “lack of parliamentary support” for at least some part of this recommendation.²²

3.33 Professor Green made reference to further amending the registration of parties in his submission. He commented:

It is wise not to amend the party registration rules in the current legislation. Changing the rules would require parties to be re-registered under the tougher tests. While parliamentary parties would have time to re-register before the 2016 election, non-parliamentary parties would not. Any attempt to tighten the rules now would probably run into problems in the courts.²³

19 Mr Bernard Gaynor, *Submission 5*, p. 1.

20 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 60.

21 Mr Malcolm Baalman, *Submission 8*, p. 11.

22 Mr Malcolm Baalman, *Submission 8*, p. 11.

23 Professor Antony Green, *Submission 30*, p. 6.

3.34 However, Professor Green suggested that the matter should be re-visited after the election and he would make the following recommendations:

- that the documentary proof of electors being member of a political party for registration be toughened.
- in line with New South Wales and Queensland, the test for registration should be party membership, and the loop hole allowing parliamentary parties to be registered should be removed.²⁴

3.35 There is general consensus from the evidence to indicate that Part 2 of the bill is a legitimate regulatory proposal that should be supported. It is the Committee's opinion that further registration of political party issues, as outlined in the JSCEM interim report on Senate Voting Practices, should be revisited by the JSCEM in the 45th Parliament.

Party logos

3.36 The bill proposes to include the option for political parties to register a party logo in black ink to be printed on the ballot papers adjacent to the square and name of the political party on Senate and House ballot papers.

3.37 Several submissions commented that the inclusion of party logos would be practical and may assist to limit confusion amongst voters. This was the reason stated in the JSCEM report in support of logos.

The potential to limit confusion amongst voters, especially with complex ballot papers, is an argument for the adoption of logos.²⁵

3.38 Item 88 in the bill states that 'party logos are printed only in black on ballot papers.'²⁶ This is a practical inclusion as House of Representative ballot papers are printed in black ink on green paper.

3.39 Most of the commentary on logos was supportive however there was some debate as to how in practice some of the amendments to the bill regarding logos would play out.

3.40 For example, several submissions saw potential problems with the design of a party logo not providing clarity on the ballot paper in black ink only when reduced in size to be printed on the ballot papers. It was noted that

24 Professor Antony Green, *Submission 30*, p. 7.

25 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 federal election: Senate voting practices*, May 2014, p. 93.

26 *Commonwealth Electoral Amendment Bill 2016*, p. 24

the onus of creating an appropriate logo for the ballot papers would fall directly on the political party registering its logo.²⁷

- 3.41 One submission noted an important point consideration about the timing of the inclusion of logos.

... a note of caution may be appropriate about fairness and readiness. Not all registered parties may currently have a serviceable logo. Logos are an important part of identity and branding, and take time to consider, select and to generate public awareness. But simply, not all parties will necessarily have equally useable logos.²⁸

- 3.42 A few submissions do not support the introduction of the logo.

- 3.43 The following submission believed Part 3 of the bill was inequitable for independent candidates. The submission commented:

Groups of independent candidates are allowed to appear above the line but are given no party branding and will not be able to include logos. If party's are to be allowed logos, then so should independent groups.²⁹

- 3.44 The following alternative was suggested to allow for independent candidates to describe what they stand for:

If logos are to be permitted above the line, allow independent groups, along with registered parties, to have 6 words to describe their platform.³⁰

- 3.45 The Committee supports the inclusion of registered logos on House and Senate ballot papers. The inclusion of a logo on ballot papers will assist voters to clearly locate their intended vote on the ballot paper. In addition it will assist political parties to brand themselves. The Committee concedes it may take several elections for the exact impacts of these changes to do with logos to be executed with the intended benefits. This Committee suggests that future JSCEM Committees review this provision in the bill, if passed, for future elections.

27 Mr Bernard Gaynor, *Submission 5*, p. 1.

28 Mr Malcolm Baalman, *Submission 8*, p. 10.

29 Mr Stephen Mayne, *Submission 16*, p. 1.

30 Mr Stephen Mayne, *Submission 16*, p. 1.

How-to-vote cards

3.46 The bill does not address issues of how-to-vote cards. Any issues relating to misleading and deceptive conduct by those distributing these cards under a new Senate voting system would be dealt with under the current section 329 of the *Commonwealth Electoral Act 1918*.

3.47 At the public hearing, the Australian Electoral Commission was asked whether it would be against section 329 for a just-vote-1 how-to-vote card to be distributed. The Electoral Commissioner told the Committee:

The ballot paper will contain very clear instructions to voters to vote for six above the line to enable them to cast a valid vote. What we cannot do is mandate what all the parties may or may not say, but our advice and education campaign to voters would be to complete six boxes above the line. There will be notification in the polling place along those lines as well. However, if hypothetically someone did advise voters to vote 1 above the line, they would still be advising voters to vote formally.³¹

3.48 The Liberal Party National Director, Mr Tony Nutt, told the Committee that if the bill's above the line provision is enacted, 'it would be the intention of the Liberal Party to recommend preference allocation from 1 to 6'.³² National Party Federal Director Mr Scott Mitchell also indicated that the Nationals will be advocating on how-to-vote cards for people to vote 1 to 6.³³

3.49 Dr Bonham told the Committee that in his view, a just-vote-1 how-to-vote cards should be banned on the basis that it would be recommending that voters vote in a manner different to the instructions on the ballot paper. Professor Williams put essentially the same view arguing that:

...further protective measures need to be introduced into the bill to ensure that people are unable to produce how-to-vote cards and other material that could effectively turn this into a de facto 'vote 1' system.³⁴

31 Mr Tom Rogers, *Proof Committee Hansard*, 1 March 2016, p. 9.

32 Mr Tony Nutt, *Proof Committee Hansard*, 1 March 2016, p. 28.

33 Mr Scott Mitchell, *Proof Committee Hansard*, 1 March 2016, p. 34.

34 Professor George Williams, *Proof Committee Hansard*, 1 March 2016, p. 13.

Objections to the impact of the bill

3.50 The second part of this chapter responds to some of the objections to the bill on the basis that its impact will favour some parties over others. There are various arguments along these lines that need to be interrogated. In the Committee's opinion, the arguments do not have substance and can generally be attributed to misjudgements and the unsettling of narrow sectional interests.

3.51 Dr Bonham's submission identifies the following four propositions as to the impact of a Senate voting system as the bill proposes:

- that voters for parties other than Labor, Liberal and the Greens will be disenfranchised;
- that there will be a loss in political diversity; and
- that the exhaustion of preferences will entrench the position of the Labor Party, the Liberal Party and the Greens; and
- that the Coalition's higher primary vote will provide it with an advantage over Labor.

Will the proposed system reflect the will of the voters?

3.52 Some have argued that the proposed system will effectively disenfranchise those voters who intend to vote for parties other than Labor, Liberal and the Greens. The argument is that under the current system, at the last federal election, these 'other parties' received 23 per cent of the vote and won seven of 40 seats (17.5 per cent). Under the proposed system, it is claimed, the 'other parties' would have won either four or five seats based on the votes actually cast.

3.53 In his submission, Dr Bonham dismisses these arguments, providing empirical research to back his view:

This claim rests on the completely false belief that a person who prefers one other party to Labor, the Coalition or the Greens will also generally prefer different minor parties to the "big three"...I analysed sample preference flows from micro-parties when their candidates were excluded from House of Representatives counts. In cases where a micro-party candidate was excluded from the count, I found that between 33% and 71% of preferences (varying by micro-party) flowed directly to one of the "big three" even when there was still at least one other micro-party in the count...

The House of Representatives preferences show that once voters are making a choice involving the "big three" parties and any given micro-party, their support for the latter is nothing like as strong as the 23% support for all non big-three parties combined. A vote for a given micro-party is not a vote for any micro-party come what may, and therefore the idea of measuring the proportionality of support for micros by the proportion of seats they win collectively is a furphy.³⁵

- 3.54 The Committee has not had an opportunity to examine Dr Bonham's research but finds the logic of his analysis sound. The committee also draws attention to Professor Green's recent comments:

In my opinion this legislation does much to make the results of elections more proportional to the vote each party achieves. The current ticket voting system badly distorts proportionality compared to first preference vote. So that is one big tick for the legislation.³⁶

- 3.55 The Federal Director of the Liberal Party, Mr Tony Nutt, told the Committee that in his view, the reform would not lock in the Liberal Party's Senate electoral position or any party's position in the Senate. Rather, he noted that the reform would empower voters rather than National Party Secretaries.³⁷ Mr Scott Mitchell, the Federal Director of the National Party, expressed a similar sentiment.³⁸

- 3.56 Some have argued that the proposed reforms will lead to a loss in political diversity. The Committee cannot see the logic to this argument.

- 3.57 It is wrong-headed to put greater store in the diversity of the parties represented in the parliament than in ensuring that system that elects these parties is one that is transparent and empowers voters. A Senate voting system where voters can see where their vote and their preferences are flowing is clearly preferable to a system that delivers a multi-party Senate through back-room deals.

- 3.58 Dr Bonham challenged the 'political diversity' argument as follows:

Effectively this is an argument that the system is good because it fails to translate voting intention into seats appropriately, and

35 *Submission 31*, p. 5.

36 Professor Antony Green, 'Senate reform – Why bother forcing below-the-line votes to be fully preferential?', *Antony Green's Election blog*, ABC Elections, 25 February 2016.

37 Mr Tony Nutt, *Proof Committee Hansard*, 1 March 2016, p. 28.

38 Mr Scott Mitchell, *Proof Committee Hansard*, 1 March 2016, p. 34.

hence elects some different kinds of Senators. However if the voters want those kinds of Senators they are free to vote for them at any time and if enough do so, those Senators will be elected.³⁹

3.59 This argument stands to reason. If micro-parties deserve a place in the Senate, it should surely be on the basis of their popularity among voters.

3.60 Media sources have reported the view that the Senate voting system proposed in the bill will further entrench Coalition representation in the Senate.⁴⁰ At the public hearing, there was also discussion of this possible impact.⁴¹ Dr Bonham commented in his written evidence that this objection is based on the argument that:

...since the "right-wing" vote is more concentrated in the Coalition, that therefore Labor will suffer more from loss of preferences as "left-wing" parties are excluded and their preferences leak or exhaust.⁴²

3.61 Dr Bonham dismisses this view as 'unsound'. He notes that most of the 'left-wing' vote consists of Green votes and the Greens often win seats in their own right or are the last unsuccessful party standing. In other words, the Greens' vote does not leak.

3.62 Dr Bonham also addressed the concern that weaker than 100 per cent flows of Green preferences to Labor would cause the Coalition to win Senate seats. He simulated the impact of past election results under the Senate voting model that the Committee proposed in May 2014 and concluded:

I could actually find no case at all in which this (under the original JSCEM proposal) would have caused Labor or the Greens to miss out on a seat they actually won. Reasons for this include that Labor and the Greens are often fighting each other rather than the Coalition for the final seat, and that the proportion of votes being transferred between the parties when there is a transfer is relatively small compared to in the House of Representatives. The model in the Bill is even less sensitive to this situation than the original JSCEM model.⁴³

39 Dr Kevin Bonham, *Submission 31*, p. 6.

40 See Ross Gittins, 'Senate change a boost for lobbyists', *Canberra Times*, 29 February 2016, p. 12.

41 See the evidence of Professor Antony Green, *Proof Committee Hansard*, 1 March 2016, pp 23–24 and Mr Glenn Druery, *Proof Committee Hansard*, 1 March 2016, p. 46.

42 Dr Kevin Bonham, *Submission 31*, p. 6.

43 Dr Kevin Bonham, *Submission 31*, p. 6.

- 3.63 The Committee makes the broader point that it is the integrity and the transparency of the electoral system that is most important in electoral reform. The key issue is that the will of electors is fully expressed rather than the wishes of the parties. The final chapter of this report impresses this point.

Will the proposed system lead to the exhaustion of preferences?

- 3.64 A second and related argument is that the proposed Senate voting system will lead to the exhaustion of votes.

- 3.65 While under the proposed voting system a voter may number only '1' above the line for the vote to be counted, the printed instruction for voters to number at least six preferences above the line should mean that the exhaustion rate will be quite small.

- 3.66 Professor Green noted in his submission, and in verbal evidence to the Committee, that in New South Wales Legislative Council elections, more than 80 per cent of ballot papers consist of only a single '1' which creates a very high rate of exhausted preferences. While the voting system advises voters to only vote '1' above the line, he highlighted the fact that:

With a low quota (4.55 per cent) and 21 members to elect, the high exhaustion rates has not significantly distorted the NSW system. Even with the final few seats filled by candidates below the quota, the seats won by party have generally been proportional to the percentage votes by party.

Applied to the higher Senate quota, some contests would occasionally be decided by electing a candidate well short of the set quota.

The requirement to number at least six preferences above the line should mean the exhaustion rate at Federal elections will be lower than for NSW Legislative Council elections.⁴⁴

- 3.67 The Committee notes that should some votes exhaust because an elector has numbered only a certain number of parties, this is a representation of the elector's view.

44 Professor Antony Green, *Submission 30*, p. 4. Professor Antony Green, *Proof Committee Hansard*, 1 March 2016, p. 18.

Will the proposed reform be found to be unconstitutional?

- 3.68 Some have argued that the bill proposes a reform that the High Court may find to be unconstitutional.
- 3.69 The Hon. Malcolm McCusker argued in his submission that the fact that voters can only choose the order of their candidates below the line 'would not infringe section 7 of the Constitution, as voters will still be able to direct their preferences as they choose'.⁴⁵
- 3.70 The distinguished constitutional lawyer Professor George Williams AO cited a number of High Court judgments on electoral matters which indicated, to his mind, that a successful High Court challenge was unlikely. Among the judgments he cited was the following, from Chief Justice Harry Gibbs in *McKenzie v Commonwealth* (1984) 55 ALR 747:
- ...it is right to say that the electors voting at a Senate election must vote for the individual candidates whom they wish to choose as senators but it is not right to say that the Constitution forbids the use of a system which enables the elector to vote for the individual candidates by reference to a group or ticket. Members of Parliament were organized in political parties long before the Constitution was adopted and there is no reason to imply an inhibition on the use of a method of voting which recognizes political realities provided that the Constitution itself does not contain any indication that such a method is forbidden.⁴⁶
- 3.71 The Committee asked Mr Malcolm Mackerras whether the current system of above the line voting is unconstitutional. He agreed, noting that in his view, the system of party lists is not consistent with section 7 of the Constitution. Mr Mackerras said that in his view, all Australian Senate elections since 1984 have been unconstitutional.⁴⁷
- 3.72 Professor Green recently noted that there have been no cases with a constitutional judgment on the use of Senate party lists. He highlighted two key facts: that voters can still vote directly for candidates, and he could not see 'how the proposed ATL system could be declared

45 The Hon. Malcolm McCusker, *Submission 67*, p. 1.

46 Professor George Williams, *Submission 18*, p. 4.

47 *Proof Committee Hansard*, 1 March 2016, p. 21.

unconstitutional without the existing ATL system also being ruled unconstitutional'.⁴⁸

A final comment on the impact of the bill

- 3.73 This chapter has noted some criticisms of the bill for retaining full optional preferential voting below the line. In particular, the apparent inconsistency between above and below the line voting was of concern to some submitters and witnesses.

48 Professor Antony Green, 'Senate reform – Why bother forcing below-the-line votes to be fully preferential?', *Antony Green's Election blog*, ABC Elections, viewed 25 February 2016, <http://blogs.abc.net.au/antonygreen/2016/02/senate-reform-why-bother-forcing-btl-votes-to-be-full-preferential.html>

Committee views and recommendations

- 4.1 This chapter concludes the report, summarising the Committee’s central view of the bill and making recommendations to the Parliament.

A ‘principles-first’ approach

- 4.2 The committee believes that a proper assessment of the merit of the bill must be based on whether the bill would deliver on the laudable principles that underpin it. These principles were clearly articulated in the Second Reading Speech and the Explanatory Memorandum to the bill. They are the same principles that underpinned the Committee’s recommendations in its May 2014 Interim Report. As the Minister stated:

The government is committed to an open and transparent voting system that has integrity, is simple and clear, and provides voters with the ability to express their will to the greatest extent possible and to have their voting intent upheld. The JSCEM is to be commended for its work in identifying the changes that need to be made in our current voting arrangements to achieve this objective in relation to Senate elections in particular.¹

1 The Hon. Scott Morrison, Minister representing the Special Minister of State, Second Reading Speech, *House of Representatives Hansard*, 24 February 2016, p. 23. Parliamentary Joint Committee on Electoral Matters, Interim Report, May 2014, p. 64.

- 4.3 The Committee emphasises that legislators must not be driven by the repercussions that reform may have for parties' place in the political landscape. It is the integrity of the electoral system and process that is paramount. The key issue is to ensure that voters can express the order and the sequence of preferences, simply and transparently.

A significant electoral reform

- 4.4 This bill represents an important and necessary reform to Australia's electoral system. The current system is flawed.
- 4.5 For three decades voters have been herded into the above the line option. The size of ballot papers has increased as more parties and more candidates have competed. Part of this increase reflects the effect of GVTs which have encouraged secretive preference deals leading to the registration of a large number of parties and a large number of candidates BTL.²
- 4.6 The crux of the bill, and its primary significance as a piece of electoral reform, is the abolition of GVTs. By abolishing GVTs, the bill will increase the transparency and integrity of the voting system by removing the complexity of preference harvesting and the secrecy associated with GVTs. Voters will know where their preferences flow – according to the order of candidates for each party according to the ballot paper. It will hopefully also serve to reduce the number of parties by eliminating the incentive for parties to be created for the purpose of preference harvesting.
- 4.7 Abolishing GVTs is, therefore, a highly significant reform that will directly address much of the criticism and disenchantment with the Senate voting system arising from the last federal election. The Committee commends the Government for taking bold and decisive action to end the virulent forms of preference harvesting that has resulted in what is known as 'gaming the system'. This is a powerful change that enfranchises voters.

Voting above the line

- 4.8 The Committee supports the relative simplicity and transparency of the proposed above the line arrangements along with the abolition of GVTs. Voters will now be able to clearly see where, and in what candidate order,

2 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices*, May 2014 Interim Report, p. 7.

their preferences will flow above the line. The Committee argues that this is exactly as it should be.

- 4.9 The Committee agrees with Professor Antony Green that the bill's savings provision above the line is important. The reform should not render informal the votes of those who vote above the line as they have done (formally) in the past. It is important that the AEC conducts an effective campaign to educate voters in the lead-up to the next federal election. The focus of this campaign must be on what voters should do (number at least 6 boxes) rather than what they can do for their vote to still remain formal.

Below the line voting

- 4.10 The reforms proposed in the bill are not as far reaching as those the Committee proposed in May 2014. Several submitters noted that the bill would not change the current arrangements for below the line voting. The Committee's preferred position was for voters to number a minimum sequential number of preferences equal to the number of vacancies.
- 4.11 The Committee maintains that a system of partial optional preferential voting below the line is the best way to complement the bill's proposal of optional preferential voting above the line. Crucially, voters would be able to choose the same candidates in the same sequence both above and below the line. Further, compared to current arrangements, a partial system below the line would encourage the selection of candidates below the line.

Recommendation 1

The Committee recommends that the Government introduce a system of partial optional preferential voting below the line. It proposes that:

- voters should be instructed on the ballot paper to mark a minimum of 12 preferences to vote below the line; and
- a related vote savings provision for below the line votes be introduced to ensure that any ballot with at least six boxes numbered in a sequential order (starting at '1') be considered formal.

Parties' ordering of candidates

- 4.12 The Committee is aware of concerns that the bill does not end the influence of parties in the Senate voting system. Specifically, it has been noted that the order that candidates appear is effectively a form of

preference harvesting with a subtle form of preference harvesting within parties still allowed.³

- 4.13 The Committee does not accept this view and did not accept this view in its earlier discussion on this issue.⁴ Candidates standing for election with the support of a political party are chosen to represent the views of that party. It is not unreasonable that parties should wish to decide the order in which candidates appear on the ballot paper.

Registered officers

- 4.14 The Committee is pleased to note the restriction to unique registered officers for federally registered parties. The 2013 federal election raised concerns for the voting public about the legitimacy and intent of some of these parties, their manipulation of election outcomes and their contribution to the excessive size of Senate ballot papers.
- 4.15 As the Committee noted in its interim report:
- The combination of ATL voting with GVTs encourages preference deals, which in turn has provided the incentive for the registration of a large number of parties. As a consequence this has also led to a large increase in the number of candidates BTL.⁵
- 4.16 In its interim report, the Committee made a significant recommendation aimed at improving the transparency and integrity of the party registration system. The Government has chosen to only address one part of this recommendation in this bill. This amendment will fix an important omission in the Electoral Act.
- 4.17 Given the scope of the proposed voting reforms, the Committee is satisfied that there is no immediate need to also enact changes to the party registration system. However, this recommendation may need to be revisited after the 2016 federal election.
- 4.18 The Committee urges its successor to review the necessity of these measures in its review of the conduct of the 2016 election.

3 Professor Antony Green, 'Senate reform: why bother enforcing BTL votes to be fully preferential', <http://blogs.abc.net.au/antonygreen/2016/02/senate-reform-why-bother-enforcing-btl-votes-to-be-full-preferential.html#more>

4 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices*, May 2014, p. 50.

5 Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices*, May 2014, p. 7.

Party logos

- 4.19 The Committee commends the Government for proposing measures to allow for party logos to be printed on ballot papers. In its final report on the conduct of the 2013 federal election, the Committee recognised the merits of this proposal, not only for clarity on ballot papers, but to assist voters with language or literacy issues.⁶ However, it was reluctant to recommend for the inclusion of party logos on ballot papers without having an opportunity to assess the associated copyright and printing ramifications.
- 4.20 The Committee is pleased that these issues have been addressed to the Government's satisfaction and this measure can proceed. This will be a significant improvement to ballot papers particularly for those with literacy difficulties, and for whom English is not a first language, including many Indigenous Australians.

Concluding comment

- 4.21 The Committee highlights its support for the amendments proposed in the bill. The Committee commends the Government for bringing this reform to the Parliament.
- 4.22 However, it retains its view that the will of the voter is best optimised through a combination of 'partial' optional preferential voting below the line and optional preferential voting above the line.
- 4.23 A candidate with a strong policy position who is well known in their community has every chance of being elected. However, a candidate who wishes to be elected on preference deals that 'game' the system will no longer have this opportunity. The Committee believes that this is in line with community expectations.
- 4.24 The Australian Constitution requires that Senators for each state be directly chosen by the people of that state by a method determined by the Parliament.⁷ The Committee is of the view that these reforms place the power for electing senators directly into the hands of voters. This is to be commended.

6 Joint Standing Committee on Electoral Matters, *The 2013 federal election: report on the conduct of the 2013 election and matters related thereto*, April 2015, pp 92-93.

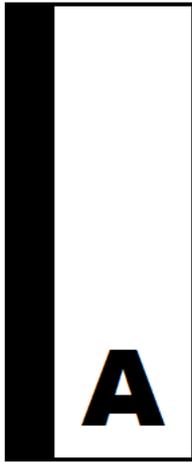
7 *The Constitution*, Part II, section 7, section 9.

Recommendation 2

The Committee recommends that the amendments proposed in Recommendation 1 are incorporated into the *Commonwealth Electoral Amendment Bill 2016*, and that the bill is passed.

David Coleman MP

Chair



Appendix A – List of submissions

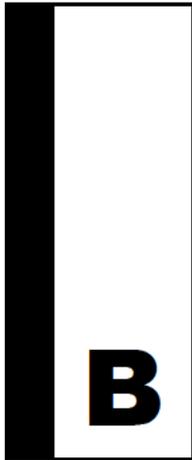
- 1 Ms Julia Jessop
- 2 Mr Rhys Morgan
- 3 Mr Michael Maley
- 4 Mr Philip Laird
- 5 Mr Bernard Gaynor
- 6 Mr Noel Conway
- 7 The Renewable Energy Party
- 8 Mr Malcolm Baalman
- 9 Mr Angus Murray
- 10 Mr Gil Linden
- 11 Non-Custodial Parents Party (Equal Parenting)
- 12 Name Withheld
- 13 Dr Peter Brent
- 14 Mr Pat Coleman
- 15 Sustainable Australia
- 16 Councillor Stephen Mayne
- 17 The Nationals
- 18 Professor George Williams AO
- 19 Liberal Party of Australia

- 20 Mr Jeff Waddell
- 21 Ms Jennifer Meyer-Smith
- 22 Mr Tony Backhouse
- 23 Mr Nick Casmirri
- 24 Mr Alexander Taylor
- 25 Mr William Gayton
- 26 Mr Ian Brightwell
- 27 Australian Independent and Minor Parties Association
- 28 Mr William Patrick Lesslie
- 29 Professor Benjamin Reilly
- 30 Professor Antony Green
- 31 Dr Kevin Bonham
- 32 Australian Electoral Commission
- 32.1 Australian Electoral Commission
- 33 Mr Justin Simon
- 34 Mr Greg Parkin
- 35 Name Withheld
- 36 Mr Jeremy Lawrence
- 37 Mr Daniel Elkington
- 38 Dr Martin Dunn
- 39 Voluntary Euthanasia Party
- 40 Mr Andrew Solomon
- 41 Mr Craig Thomler
- 42 Dr Paul Norton
- 43 Dr James Jansson
- 44 Alliance for Progress
- 45 Australian Motoring Enthusiast Party
- 46 Mr Peter Joiner

47	Mr Geoffrey Goode
48	Mr Evan Gallagher
49	Dr William Murray
50	Mr Graham Hawkes
51	Mr Anthony Tuffin
52	Family First Party
53	Electoral Reform Society of South Australia
54	Mr Greg Reid
55	Australian Democrats
56	Mr Peter Palethorpe
57	ADJ Consultancy Services
58	Chris Curtis
59	Mr Nick Thieberger
60	Professor Anne Twomey
61	Dr Klaas Woldring
62	Electoral Reform Australia
63	Dr Lee Naish
64	Stephen Stuart
65	Mr Philip Lillingston
66	Mr John Pyke
67	Hon Malcolm McCusker
68	Mr Bill Godfrey
69	Mr Desmond Mills
70	Mr John Storey
71	Mr Ian Scandrett
72	Mr Anthony van der Craats
73	Proportional Representation Society of Australia (Victoria-Tasmania) Inc
74	Name Withheld

- 75 Australian Sex Party
- 76 Mr Darren Austin
- 77 Dr Gareth Moorhead
- 78 Ms Margaret Morgan
- 79 Mr Andrew Oliver
- 80 Australian Liberty Alliance Ltd
- 81 Outdoor Recreation Party
- 82 Reverend Dr Brian Tucker
- 83 Professor Arthur Sale
- 84 Australian Institute of Company Directors
- 85 Mr Peter Breen
- 86 Mr John Bloomfield
- 87 Mrs Maria Rigoni
- 88 Name Withheld
- 89 Mr Russell Hayward
- 90 Pirate Party Australia
- 91 Mr Geoff Powell
- 92 Mr John Dalton
- 93 Mr Henk van Leeuwen
- 94 Ms Susan Gregory
- 95 Mr Derek Garson
- 96 NSW Council for Civil Liberties
- 97 Australian Greens
- 98 Rise Up Australia Party
- 99 Ms Catherine Reilly
- 100 Liberal Democratic Party
- 101 Ms Kate Lumley
- 102 Mr John Perkins

- 103 Mr Martin Willis
- 104 Proportional Representation Society of Australia
- 105 Name Withheld
- 106 Mr Malcolm Mackerras
- 107 Mr Stephen Lesslie



Appendix B – Public hearing and witnesses

Tuesday, 01 March 2016 – Canberra

Australian Electoral Commission

Mr Tom Rogers, Australian Electoral Commissioner

Mr Pablo Carpay, First Assistant Commissioner

Mr Paul Pirani, Chief Legal Officer

Liberal Party of Australia

Mr Tony Nutt, Federal Director

National Party of Australia

Mr Scott Mitchell, Federal Director

Private Capacity

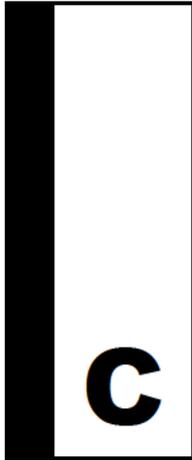
Dr Kevin Bonham

Mr Glenn Druery

Mr Antony Green

Mr Malcolm Mackerras AO

Professor George Williams AO



Appendix C – Above the line partial optional preferential flows

Below are two examples of how a vote above the line would flow to candidates below the line.

	A	B	C	D	E	F
	<input type="checkbox"/> Party 1	<input checked="" type="checkbox"/> 1 Party 2	<input type="checkbox"/> Party 3	<input type="checkbox"/> Party 4	<input type="checkbox"/> Party 5	<input type="checkbox"/> Party 6 <i>Voter's Vote</i>
	<input type="checkbox"/> Candidate Party 1	<input checked="" type="checkbox"/> 1 Candidate Party 2	<input type="checkbox"/> Candidate Party 3	<input type="checkbox"/> Candidate Party 4	<input type="checkbox"/> Candidate Party 5	<input type="checkbox"/> Candidate Party 6
	<input type="checkbox"/> Candidate Party 1	<input checked="" type="checkbox"/> 2 Candidate Party 2	<input type="checkbox"/> Candidate Party 3	<input type="checkbox"/> Candidate Party 4	<input type="checkbox"/> Candidate Party 5	<input type="checkbox"/> Candidate Party 6
	<input type="checkbox"/> Candidate Party 1	<input checked="" type="checkbox"/> 3 Candidate Party 2	<input type="checkbox"/> Candidate Party 3	<input type="checkbox"/> Candidate Party 4	<input type="checkbox"/> Candidate Party 5	<input type="checkbox"/> Candidate Party 6
	<input type="checkbox"/> Candidate Party 1	<input checked="" type="checkbox"/> 4 Candidate Party 2		<input type="checkbox"/> Candidate Party 4	<input type="checkbox"/> Candidate Party 5	<input type="checkbox"/> Candidate Party 6
	<input type="checkbox"/> Candidate Party 1	<input checked="" type="checkbox"/> 5 Candidate Party 2			<input type="checkbox"/> Candidate Party 5	Preferences as Counted

	A	B	C	D	E	F
	4 Party 1	3 Party 2	5 Party 3	1 Party 4	6 Party 5	2 Party 6 <i>Voter's Vote</i>
	14 Candidate Party 1	9 Candidate Party 2	19 Candidate Party 3	1 Candidate Party 4	22 Candidate Party 5	5 Candidate Party 6
	15 Candidate Party 1	10 Candidate Party 2	20 Candidate Party 3	2 Candidate Party 4	23 Candidate Party 5	6 Candidate Party 6
	16 Candidate Party 1	11 Candidate Party 2	21 Candidate Party 3	3 Candidate Party 4	24 Candidate Party 5	7 Candidate Party 6
	17 Candidate Party 1	12 Candidate Party 2		4 Candidate Party 4	25 Candidate Party 5	8 Candidate Party 6
	18 Candidate Party 1	13 Candidate Party 2			26 Candidate Party 5	<i>Preferences as Counted</i>



Dissenting report – Labor Senators and Members

JSCEM inquiry into the Commonwealth Electoral Amendment Bill 2016
Dissenting Report by Labor Senators and Members

1. Labor Senators and Members recognise there are legitimate concerns about the laws governing the election of Senators and the outcome of the 2013 half Senate election. No system is perfect - the current system for electing Senators is no exception.
2. We believe the appropriate response is for the Parliament to deal with these concerns through a considered, principled and transparent process, involving all parties and, importantly, unaligned Senators and Members, to devise a solution which enjoys support across the political spectrum and prioritises the democratic interests of the Australian people above all other interests, especially the partisan self-interest of some established parties.
3. The Commonwealth Electoral Amendment Bill 2016 grossly fails this test. It is a perverse response to concerns about the outcome of the half Senate election in 2013, driven not by the democratic interests of the Australian people, but, rather, the political self-interest of the Liberal Party and the Greens political party.
4. This Bill will have the effect of maximising the number of Senators elected representing major parties, such as the Liberal Party, and established minor parties such as the Greens political party. This will deprive independents and so-called "micro parties" of votes and prevent new entrants from achieving election to the Senate, thereby entrenching the dominance of existing parties. If the Liberals and the Greens engaged in this conduct in trade or commerce they could be prosecuted for cartel behaviour.
5. Respected electoral analyst Mr Antony Green gave evidence that, under this system, at the 2013 Federal Election:
 - a) The Labor Party would have won a second seat in South Australia and Western Australia;
 - b) The Liberals would have won an extra seat in Victoria and Tasmania;
 - c) Senator Xenophon would have won an additional seat in South Australia; and
 - d) Greens Senator Sarah Hanson-Young would have lost her seat.
6. Worse still, the deal between the Liberals and the Greens demonstrates complete disregard for the democratic interests of Australians who vote for someone other than the major parties and established minor parties. At the 2013 Federal election, 3.3 million Australians voted for somebody other than the established players – the Liberal/Greens deal will see these voters disenfranchised.

7. The assertion by the Liberals and the Greens that this Bill essentially implements the relevant recommendations of this Committee in its *Interim report on the inquiry into the conduct of the 2013 Federal Election* is a dishonest farce.
8. This Bill does not implement the recommendations of that JSCEM report. The Liberal Government has not even bothered to respond to this report. It is incumbent upon Senator Di Natale and the Greens to explain to the Australian people how they can have any confidence that the Liberal Government has faithfully implemented the recommendations of the JSCEM report when the same government has not even responded to that report.
9. Furthermore, it is incumbent upon Senator Di Natale and his Greens colleagues to explain to the Australian people how the Bill they have concocted with the Liberals could possibly be seen as implementing the JSCEM recommendations, when there are clear discrepancies between what JSCEM previously recommended and the approach taken in the Bill.
10. Parliamentary scrutiny in relation to this Bill has been a farce. The Bill has been rammed through this Committee with less than half a day of public hearings and without the opportunity for all interested parties to make submissions or appear to give evidence. The Department of Finance did not appear before the Committee to answer questions about policy, nor was the Committee able to answer questions of the Minister. The Bill was passed through the House of Representatives before the Committee had even reported. This demonstrates that the inquiry was nothing more than a sham designed to cloak the Bill in a veneer of respectability. The Chair's draft of this Committee report was not produced until 9.40pm on Tuesday 1 March 2016, with Labor Senators and Members forced to produce any dissenting remarks by 8am – less than 12 hours later. This entire process is contemptuous of the Parliament and exposes Senator Di Natale and the Greens political party's purported commitment to parliamentary democracy as nothing more than a fraud.
11. Perhaps most concerning is Senator Di Natale and the Greens political party's naïve decision to hand the Liberal Party the keys to a double dissolution election, and a joint sitting of the Parliament that will see the worst elements of the Abbott-Turnbull Liberal Government's agenda become law, including harsh measures from the 2014-15 Federal Budget.
12. Passing these retrograde changes to Senate voting legislation prior to the Budget sittings of the Parliament is a central plank in the Liberal Party's plans to hold a double dissolution election, to clear out the Senate cross-bench, increase its Senate representation and hold a joint sitting to enact its draconian political agenda without interference from the Upper House.
13. The Government already possesses two double dissolution triggers which could be put before a joint sitting providing they were rejected by the Senate again after a double dissolution election. This includes legislation which seeks to abolish the Clean Energy Finance Corporation – a key component of the previous Labor Government's efforts to combat climate change and move Australia towards a clean energy future.

14. There are several other Bills which have satisfied the first stage of the double dissolution trigger under section 57 of the *Australian Constitution*, as they have been rejected by the Senate on one occasion. If the Senate fails to pass them before Mr Turnbull's planned double dissolution election, they will also become double dissolution triggers. If the Senate again fails to pass those Bills after the double dissolution election, the Government will be able to ram them through the Parliament at a joint sitting.
15. Bills in this category include:
 - a) The Climate Change Authority (Abolition) Bill 2013, which as the name suggests would see the abolition of the Climate Change Authority; another critical agency in the fight against climate change;
 - b) The Social Services Legislation Amendment (Youth Employment and Other Measures) Bill 2015, which will force unemployed young people to live on nothing for four weeks;
 - c) The Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014, which will force jobseekers to live on nothing for eight weeks if they fail to in certain circumstances;
 - d) The Australian National Preventive Health Agency (Abolition) Bill 2014, which as the name suggests seeks to abolish the Australian National Preventative Health Agency, a key agency in the fight against preventable illness and an important component of Australia's public health system; and
 - e) Communications Legislation Amendment (SBS Advertising Flexibility and Other Measures) Bill 2015, which seeks to double the amount of advertising permitted on SBS and push the SBS towards becoming a commercial television channel.
16. Senator Di Natale and the Greens political party voted against this legislation when it was previously before the Parliament – why are they now delivering to the Liberal Party the means to pass these Bills?
17. Mr Antony Green gave evidence to the Committee that, under the electoral system proposed by this bill, the Coalition would win 38 seats at a double dissolution election – enough to hand them a blocking majority in the Senate Chamber. Senator Di Natale and the Greens political party must explain to the Australian people why he supports handing control of the Senate to the Coalition.
18. Senator Di Natale's decision to provide the Liberals the keys to pass this legislation at a joint sitting of the Parliament following a double dissolution election is a betrayal of the claimed values of the Greens political party. It is difficult to identify any logic to this thinking.

19. Finally, the Australian Electoral Commission has advised that, at an absolute minimum, it will require 3 months from the time the bill is passed to implement any changes to the Senate electoral system. If this bill is passed, which the Australian Labor Party opposes, the Government must ensure the AEC is given at least 3 months to implement any changes, consistent with the clear evidence of the AEC.

20. **Recommendation:** Labor recommends the bill not be passed in its current form.



Additional Comments – Australian Greens

Introduction

The Australian Greens support the recommendation of the report of the JSCEM Inquiry into the Commonwealth Electoral Amendment Bill 2016.

However, we do regret the slow pace of Senate voting reform, considering the report of the first JSCEM inquiry into this matter was handed down in April 2014.

The Greens have been working for Senate voting reform for over a decade. Former Senator Bob Brown introduced legislation on the subject in 2004, 2008, and 2010. A commitment to Senate voting reform was a condition of Greens support for the minority Labor government in 2010 – a condition they agreed to, but failed to deliver on. The Greens initiated optional preferential voting reforms for the NSW Upper House in 1999. The changes were adopted and since then four elections have been successfully held under OPV.

We welcome the opportunity to comment on the report as well as the submission and witness statements.

The work of this inquiry builds on the 2014 JSCEM reports on Senate voting practices. The key recommendation of that inquiry was that Group Voting Tickets should be replaced with above the line preferential voting.

Voting

The Greens strongly support the Commonwealth Electoral Amendment Bill 2016. In particular we note the inclusion of these important changes:

- Partial optional preferential voting above the line. The Senate ballot paper will include advice that voters number, in order of preference, at least six squares.
- Group and individual voting tickets will be abolished.
- Appropriate vote savings provisions to capture voter intent and reduce the risk of increased vote informality.

Many submission and witness statements urged JSCEM to recommend optional preferential voting for below the line.

Michael Malley in his submission stated:

“... the scheme proposed in the Bill will create an anomaly never previously seen at Senate elections: identical preferences for candidates may produce a formal vote if expressed using the above the line mechanism, but an informal vote if expressed using the below the line mechanism.”

Professor George Williams stated:

“... as far as possible, the outcome should be determined by whom voters would actually like to see elected. This, and not the relative interests of those seeking election, ought to be the primary consideration.”

Adjunct Professor Antony Greens stated:

“It seems odd, having accepted that voters should not be required to preference all parties above the line, that the legislation would then retain the onerous full preferences requirement for the far more numerous candidates listed below the line.”

We welcome the decision of JSCEM to include OPV below the line as one of its recommendations. The Australian Greens submission on this point stated:

"We believe the Bill would be stronger if voters were not required to fill in all squares when expressing a preference below the line."

Recommendation

That the wording of the above the line voting instructions be reviewed by both the AEC and JSCEM after the first Senate election is conducted under the new rules.

AEC implementation

It should be noted that while the AEC submission stated that a minimum three month lead time would be necessary to implement the proposed counting changes set out in the bill it also noted that "implementing changes to electoral processes increases significantly with any compression of the timeframe between a government announcement."

These two statements should be considered together. It is vital that the new counting system is thoroughly prepared and tested before being rolled out for the actual election and that a comprehensive education system is undertaken for all voters.

Recommendation

That the Special Minister of State instruct the Department of Finance to work closely with the AEC to ensure that they have the required resources and further that additional money is allocated as required.

Source code and counting

Building confidence in the Senate counting system should be a priority of the AEC. We note that the AEC did not comply with a freedom of information request to release the source code of the EasyCount system on the grounds that it is commercial in confidence.

The Greens support the release of this source code into the public domain to promote public scrutiny, understanding of the counting system and the auditing of the process.

Recommendation

The Australian Electoral Commission to be directed to release the EasyCount source code into the public domain.

Critiquing the critics

Kevin Bonham provided useful analysis of the impact of the Bill on the make-up of the next Senate.

He stated:

- "Claims that the system would unfairly advantage the Coalition are not supported either by theoretical argument or by simulations of past elections".
- that while the collective category of "other parties" may have won 23 per cent of the Senate vote in 2013, it is a false logic to argue that collectively that should be rewarded with 23 per cent of the seats for micro parties. This was based on evidence that many micro party voters preference Labor, Greens or the Coalition ahead of other micro parties.



Additional Comments – Senator Nick Xenophon

**Senator Nick Xenophon's Additional comments to the
Joint Standing Committee on Electoral Matters**

Advisory Report on the Commonwealth Electoral Amendment Bill 2016

1. The current Senate voting system is in need of urgent reform. It must be reformed in order to take away the power from backroom political operatives and so called 'preference whisperers', and deliver that power back to the people
2. The reforms in the Commonwealth Electoral Amendment Bill (2016) will do that, particularly with the Committee's proposed amendment to allow for below the line optional preferential voting (in addition to a form of above the line OPV). This recommendation is consistent with a bill I drafted for Senate voting reform. Credible reform cannot only deal with above the line voting – it must include below the line – otherwise voters will, in effect, be railroaded into voting above the line.
3. I note that both respected electoral analysts and constitutional law experts have supported reform to below the line voting, including Adjunct Professor Antony Green, Professor George Williams and Dr Kevin Bonham. Their views are well set out in their submissions, their evidence to the Committee and in the Committee report.
4. Further, the proposed amendment to allow below the line voting will in all likelihood remove any lingering (albeit remote) prospect of a High Court challenge to the legislation.
5. I note that the Committee process has proceeded with much haste. Notwithstanding that, the previous Committee report into Electoral reform released in 2014 has canvassed the fundamental principles set out in this bill, the abolition of group voting tickets. I believe the changes recommended (compared to 2014) are a significant improvement in that it will encourage voters to consider choices other than the major parties. I also expect that the Senate's Committee stages of this bill to be appropriately robust, extensive and not time limited.
6. Given these are the biggest changes proposed to Senate voting in over 30 years I believe it is essential that the Government provide adequate resources to the AEC to publicise these changes extensively and to do a massive public education

campaign. The Government needs to spell out what those resources will be as soon as possible.

7. In terms of savings provisions and publicity I am in strong agreement with the views expressed by Dr Kevin Bonham in his submission to the inquiry, where he set out the following:

Savings Provisions and Publicity

A common issue surrounding the use of savings provisions is the potential for parties or commentators to advocate "just vote 1" style voting, which is contrary to the instructions on the ballot paper but formal as a result of the savings provision.

A balance has to be struck between freedom of political communication and protecting the system from actions that could increase differences in the exhaust rate between parties.

My suggestion is that the following be banned:

** Issuing any how-to-vote card that recommends that voters vote in a manner contrary to the instructions on the ballot paper (even if the instruction represents a formal vote).*

** Encouraging a voter to vote in a manner contrary to the instructions on the ballot paper.*

** Publishing or purchasing any advertisement that states that voters can vote in a manner contrary to the instructions on the ballot paper.*

While there has been some suggestion that even discussing the existence of the savings provision should be banned, I am strongly opposed to going that far. It is necessary that people be able to discuss a voting system and its operation for the purposes of research, analysis and debate.

8. The legislation ought to be amended to reflect Dr Bonham's reasoned approach.
9. This legislation will go a long way in restoring the electorate's faith in the Senate voting system. It will finally hand the power of preferences back to the people. It is long overdue and welcome.

NICK XENOPHON
Independent Senator for South Australia
02 / 03 / 2016



Dissenting report – Senator Ricky Muir

COMMONWEALTH ELECTORAL AMENDMENT BILL 2016

This document highlights the concerns Senator Muir has on the Bill and discusses alternative approaches. It makes recommendations on how the Bill can be improved to introduce meaningful reform that benefits the people not political parties.

*Dissenting Report
from Senator Muir
on behalf of the
Australian
Motoring
Enthusiast Party*

2nd March 2016

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Introduction

This document explores the specific concerns I have in relation to this Bill.

Broadly, there are risks and issues due to the compressed timeline to pass the Bill and implement these complex changes. The savings provision for above the line voting is prone to exploitation. The Bill creates a further imbalance between above and below the line voting and introduces a real risk of reducing diversity in the Senate.

Due to the rushed nature of this Bill, I have only been able to briefly consult with members of the Australian Motoring Enthusiast Party during the preparation of this report.

In addition due to the limited amount of time available to develop this position and report there are some aspects of this policy and recommendations that require further research.

Professor Fitzgerald's summary represents my general thoughts on this Bill quite well however:

"The changes to Senate voting proposed by Malcolm Turnbull and backed by the Greens and Nick Xenophon, represent unprecedented government interference in the Australian democratic system.

For all the talk about voters having to mark six boxes above the line on the ballot paper, the new laws will still allow a mark in one box above the line to stand as a legitimate vote. So let's not kid ourselves that this is somehow a voting system that is in any way inclusive of small parties.

For Turnbull, this legislation is an admission of his failure to be able to persuade and lobby others to agree with his vision for Australia. The imposition of radical electoral laws to achieve his goals does not bode well for the spirit of negotiation, if the Coalition retains office at the forthcoming election.

These new laws with regard to voting for the Senate will reshape the Australian political landscape for decades to come. By refusing to debate them with the people of Australia, Turnbull is admitting to the fact that this new legislation is simply designed to get rid of opponents at the next election. He cannot argue with the fact that almost 30 per cent of Australians voted for a minor party at the last Senate election."

Risks and issues related to the Bill

The most significant changes to the *Commonwealth Electoral Act 1918* since 1984 are being rushed through the Parliament for party political purposes. Adjunct Professor Michelle Grattan AO appears to agree and is on record with the following comment:

"While the government boasts about engaging the community on the tax issue, it has avoided public debate as it seeks to muster the numbers for voting changes that would have sweeping implications for the Senate's future composition...This would be an extraordinarily fast passage for such an important measure. But then speed is always possible if interests coincide." (Grattan, 2016)

This report makes various recommendations in relation to the Bill and I plan on making amendments and moving motions to establish Inquiries in line with these recommendations.

Due to the speed that this Bill is progressing through the parliament, I am concerned that the limited drafting and research resources available, to the non-Government members, who wish to make amendments to the Bill, will be unable to.

I am concerned that any sensible amendments will not be given serious consideration by the Government. I make this statement on the basis they are seeking to have the changes to the Act ready for use at the next election. My concerns appear to be founded given the evidence provided by Mr Rogers from the Australian Electoral Commission:

"If the bill to be put before the Senate changes significantly, I will need to review that to see what impact it might have on our estimates of timing and resources. But, if we do not get the time or funding we need, it is going to be very difficult for us to implement." (Commonwealth of Australia, 2016)

I am mindful of the outcome from the original Western Australian 2013 Senate election and the chaos that caused. It is well known that the computer systems needed to count the Senate votes will need to be changed. Are we about to have the most spectacular failed project implementation of an IT system since Queensland Health Payroll? We can mitigate these risks by reducing the simplifying the changes that the AEC need to do in time for the next election and begin the debate on meaningful electoral reform, for both houses.

It is concerning that the Government does not appear to be concerned with seeking broad support for these changes, given that they will likely be around for decades to come.

One witness to the inquiry, Mr Malcolm Mackerras AO was particularly scathing of this Bill:

"These provisions mean that the electoral system for all our federal politicians must be candidate based. The Commonwealth Electoral Amendment Bill, as it now stands, is breathtaking in its contempt for the Australian Constitution. It is a bad bill. It should be withdrawn and redrafted to bring it fully back to comply with the Constitution." (Commonwealth of Australia, 2016)

Also, given that I am often named as the reason why these changes are necessary, I would have thought that the Government would have been interested in my perspective.

Like with any Bill, I have attempted to take an objective approach and will make recommendations based on what I believe will improve democracy and not the self-interest of political parties.

Recommendation 1 – Make the necessary resources available to non-Government members who wish to be involved in this debate

- The consideration of this Bill should be delayed until the week of the 15th of March at a minimum for the following reasons:
 - It will allow the library to complete their research and return advice to Senators;
 - It will give the non-government members the drafting resources that they need to move the necessary amendments;
 - Due to the compressed timeline and the controversial nature of the Bill the resources of the drafting office and Parliamentary library are overstretched; and
 - I am concerned that my cross-bench colleagues will not be able to move any necessary amendments due to research and drafting constraints.

Recommendation 2 – Slow down the debate to ensure adequate scrutiny of the Bill

- Extend the reporting date of the Committee to allow all options and submissions to be considered properly:
 - This committee process appears to be nothing more than a token process. Due to the unrealistic timelines involved, I have written the majority of this report before the hearings have begun and I suspect others have done the same; and
 - This compressed timeline cannot possibly allow for anything more than token scrutiny of the Bill.
- In the brief time available to scrutinise the Bill, I have noticed the following and do not believe that the committee process that has been proposed can adequately explore the concerns that I have in relation to the Bill:
 - The Bill appears to favour the established political parties and creates a further divide between political parties and independent candidates;
 - There are aspects to the Bill that do empower voters, however it would appear that the Bill as it stands right now is missing essential changes that I would expect related to party influence within a party group;
 - I understand that passing this Bill quickly is in the interest of the Government; however it is not the parliament's fault that the Government has delayed such important reforms to the last minute;
 - By rushing this Bill through the parliament, only selected changes in the interests of the Government, Greens and Senator Xenophon will be considered. Other changes that I feel are necessary will not have time to be considered in detail or be included in this Bill;
 - I would appreciate the opportunity to engage with the Government, Greens and Senator Xenophon on how I believe the Bill can be improved.
 - My understanding is that this Bill also seeks to introduce measures that originated from the Keely report into the events around the 2013 WA Senate Election. Due to the debate around other aspects of the Bill and the compressed scrutiny, I will not have the opportunity to consider these; and

- This is an irresponsible approach for those advocating for the swift passage of this Bill and I am very concerned about the unintended consequences as a result.

Recommendation 3 – Delay the implementation of the more complex reforms and implement some simple transitional changes in time for the next General or Double Dissolution Election.

- In order to help take the pressure off the passing of this Bill and bypassing necessary scrutiny, I would recommend some transitional arrangements apply for the next Senate election only;
- These recommendations will reduce the scope of change that the Australian Electoral Commission will have to implement in the next four to seven months;
- The Government has had since May of 2014 to consult around meaningful reform and has left these changes to be rushed at the last minute. This is no way to make significant changes to the electoral system;
- This late decision to implement these changes places the next election at significant risk;
- Unless the Government has been consulting with the Australian Electoral Commission (AEC) behind the scenes, it has had very little time to scope out the requirements necessary to implement these changes;
- I am not able to independently explore these concerns due to the Bill being rushed. At worse, the AEC has around three months to implement and educate, and at best, seven.
- I am concerned that in order to meet these timelines, project implementation quality requirements will be reduced and the cost to implement will be increased due to the additional resources that will need to be allocated to such a project;
- Not only will the AEC need to implement the changes, it will need to suitably educate the voting public. It will take time for the AEC to develop the message and roll it out. Simplifying the change for the next election with full implementation of changes thereafter would be a more responsible approach;
- By reducing the scope of change for the next election the likelihood of a successful implementation is increased.
- This also allows for a more comprehensive reform process to be adequately debated or considered. This improves the chance for a more broad consensus not only within the Parliament, but within the broader community;
- For the next Senate election only, I would recommend the following transitional changes:
 - Implement the ‘a minimum of six preferences below the line’ recommendation from the JSCEM, but retain group and individual voting tickets in a limited form;
 - This modified version of group and individual voting tickets for the next election would only be available for the next election;
 - As such, these tickets would only need to be marked under a partial optional preferential with a minimum of six preferences below the line, however it would be possible for a party to mark up to all of the boxes;
 - Make changes to the Act to require the AEC and parties involved to better inform the voting public in relation to the group voting tickets that they register with the AEC; and

- Have the full suite of agreed changes in the Bill implemented after the next election.
This can be agreed to by this Parliament, but have a delayed implementation date.
- This would then allow the AEC to implement the necessary changes with a higher focus on quality, due to the additional time made available to them;
- Ensure that all participants have a fair and even chance to adapt to the changes; and
- This avoids needed to rush the Bill and allowing valid recommendations and amendments to be considered correctly.

Concerns relating to the above the line legacy savings provision

Professor Ross Fitzgerald, professor of history and politics at Griffith University makes the following observations about the Bill:

"For all the talk about voters having to mark six boxes above the line on the ballot paper, the new laws will still allow a mark in one box above the line to stand as a legitimate vote. So let's not kid ourselves that this is somehow a voting system that is in any way inclusive of small parties." (Fitzgerald, 2016)

The Government has introduced these risks due to the rushed implementation schedule. Its mitigation strategy is to allow an otherwise informal vote to be declared formal. The way the Bill is drafted also ensures that this savings provision is in effect for all future full or half Senate elections, long after the likelihood and impact of this risk is mitigated.

Such a provision or loophole in the legislation is prone to exploitation by larger parties and politically-interested groups. These groups have the resources to overwhelm any education message delivered by the AEC. It is expected that at the next election, those parties with the resources will promote the ability to simply vote 1 above the line.

Antony Green touches on this concern in his blog:

"If a savings provision for '1' only votes is allowed in the Senate changes, what is to stop a party that wanted to give no preferences from recommending a '1' only vote? You could make such a how-to-vote illegal, but that runs into the problem with 'Langer' voting in the 1980s and 1990s when activist Albert Langer tried to encourage voters to use duplicate preferences, then allowed as a savings provision." (Green, Another Exclusive on Possible Senate Electoral Changes, 2016)

In addition, he notes the concerns in relation to voter education as a result of these changes:

"Even with the best education program and the clearest instructions, a significant number of voters will do as they have for 30 years and mark a single '1'." (Green, Another Exclusive on Possible Senate Electoral Changes, 2016)

I actually oppose the savings provision due to the loophole it introduces into our electoral system, but on balance and reflection, perhaps there is a short-term need for such a provision. I am very concerned about the risks that a major political party or interest group with significant resources can use its ability to influence voters to simply vote 1. To address this, I will propose a new offence under the Act to discourage such activities.

This ability to prosecute may already be covered under S329 of the *Commonwealth Electoral Act 1918*, however I am not satisfied that the penalties for such an offence are sufficient.

The current penalties under S329 are:

- S329 (4) (a): "if the offender is a natural person--by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both; or"
- S329 (4) (b): "if the offender is a body corporate--by a fine not exceeding \$5,000"

As such, I will be moving an amendment to address this concern.

Recommendation 4 – Introduce an offence to advocate or campaign for optional preferential voting below the minimum requirement.

- Any case in relation to this offence is heard by the Court of Disputed Returns (the Court);
- In the event that the Court finds that the savings provision has been exploited, then the Court is given the power to declare any ballot papers tainted by such a campaign informal and order a recount; and
- That the court has the flexibility to assess the level of influence such a campaign had. For example, the court could take into account how much influence the campaign had and deliver a proportionate finding.

This specific offence provides the necessary deterrence to those who would consider exploiting the loophole introduced into the Bill. This would be preferable to advocating for the opposition of the above the line savings provision in the Bill. Should this amendment not be passed then I will be supporting any amendments proposed to remove the above the line savings measure from the Bill.

Recent debates have highlighted how other transitional or grandfathering provisions introduced into Acts tend to remain long after there is a genuine need for these provisions.

“Deal between the Coalition and the Greens blocks amendment proposed by Ricky Muir to remove historic ‘grandfathering’ arrangement” (Hurst, 2015)

I will move an amendment that will introduce a sunset clause into the legislation for the sections that relate to the savings provision. This sunset clause will ensure that a future parliament will need to determine if extending the provision is appropriate, if the provision needs to remain on a permanent basis, or simply to allow it to self-repeal. A future parliament would be able to reach this conclusion based upon evidential analysis after an election. This review could become part of the routine JSCEM processes held after an election.

Recommendation 5 – Introduce a sunset clause in relation to the savings provision:

- The above the line savings provision should be considered a transitional arrangement;
- That an appropriate sunset clause be introduced into the Bill to allow a reasonable amount of time to re-educate the voting public about how to cast a formal optional preferential vote above the line; and
- This sunset clause should repeal the above the line savings provision and any additional offences introduced designed to protect the integrity of the above the line savings provision in either six or nine years. This timeframe is subject to further debate and research, time permitting.

An imbalance between above and below the line voting

“I might go to a slightly outrageous notion and if the major parties really want to be serious about some kind of electoral reform that's fair to everybody maybe we should completely remove any party reference whatsoever from the voting ticket - no above the line” (Muir, AM with Michael Brissenden, 2016)

Essentially what I am calling for in that statement would be to repeal the changes introduced for the 1984 election. My ideal approach to senate elections would be to adopt the Hare-Clark electoral system and remove any above the line voting. I agree with the statement made by respected ABC electoral analyst Antony Green in the view that was expressed in his election guide into the 2006 Tasmanian election:

“In terms of how the count is conducted, there are only minor differences between the Senate-style systems and Hare-Clark. The real difference is created by the way the Senate system favours parties, while Hare-Clark gives greater weight to candidates.” (Green, Hare-Clark Explained, 2006)

This position is consistent with the view of the other stakeholder groups such as the Proportional Representation Society of Australia:

“As speculation intensified about the Government’s intentions on changes to party registration and Senate formality provisions, the PRSA emphasised the need to keep changes simple and oriented towards voters’ wishes.

Party boxes are not needed. They make the ballot paper more cluttered and divert electoral officials from just advertising that the marking of preferences is an instruction about the order in which continuing candidates may have access to anything that remains unused of their single transferable vote.

Electors who understand that the marking of further preferences cannot harm the prospects of those they support most strongly are likely to make the most of their vote.

The proposed changes announced on 22 February 2016 ignored a key Joint Standing Committee on Electoral Matters (JSCEM) recommendation that it should be much easier to record a formal vote below-the-line and, remarkably, treated as formal some party box numberings while rejecting equivalent numberings below-the-line, allegedly because insufficient boxes have been numbered. Such inconsistent treatment is unprecedented in Australian and world electoral practice.” (Proportional Representation Society of Australia, 2016)

As noted in the explanatory memorandum into the Bill, “the current ballot paper encourages above the line voting”. (Cormann, 2016) This creates a bias in our electoral system that shifts the balance away from below the line, candidate-based voting; to above the line, party-based voting.

In fact, the changes proposed in this Bill further entrench above the line voting in the Senate electoral system.

This bias towards above the line, party-based voting encourages the establishment of micro/pop-up parties. Quality independents are forced to do this in order to compete with other parties for above the line recognition.

Reform that was truly in the interest of democracy would attempt to address this bias.

This bias is evidenced in the table listed below. It shows a breakdown of how many voters choose to express their vote above the line. In a true democratic system that is supposed to advocate for candidate-based voting over party-based voting, this is an unfortunate side effect of the current Act at best. A more cynical person would argue that this is an outcome engineered by major political party influence to entrench a party system in our democracy.

SENATE GROUP VOTING TICKET USAGE					
State	Ticket		Non-Ticket		Total First Preferences
	Votes	%	Votes	%	
New South Wales	4,284,102	97.90	92,041	2.10	4,376,143
Victoria	3,291,314	97.33	90,215	2.67	3,381,529
Queensland	2,540,933	97.00	78,528	3.00	2,619,461
Western Australia	1,260,147	96.17	50,131	3.83	1,310,278
South Australia	970,581	93.47	67,853	6.53	1,038,434
Tasmania	302,119	89.66	34,834	10.34	336,953
Australian Capital Territory	197,708	80.13	49,034	19.87	246,742
Northern Territory	95,085	91.89	8,394	8.11	103,479
TOTAL	12,941,989	96.49	471,030	3.51	13,413,019

Table 1 - Senate Group Voting Ticket Usage (Australian Electoral Commission, 2013)

It is interesting to note, those jurisdictions that use the Hare-Clark electoral system for their own State (Tasmania) and Territory (Australian Capital Territory) elections have a much higher percentage of voters choosing to vote below the line. It is unclear if this is as direct result of the local familiarity of below the line voting or due to the number of voters in those electorates. Given the data for the Northern Territory and South Australia, one could argue that there is a predisposition to vote below the line in jurisdictions that are already using Hare-Clark locally.

This Bill is being rushed through in the name of democracy and giving the people full control over their vote, yet in states like New South Wales, greater than 97% of voters will have their vote subjected to party control. Due to the disparity this Bill introduces between above and below the line voting, in all probability this number is likely to increase should the Bill be passed in its current form.

A true democratic system encourages a culture that focuses on the best candidate and not the political party. I have very serious concerns that the current Bill further creates a bias towards above the line, party-based voting. Political leaders arguing democracy should be arguing for below the line, candidate-based voting.

Understanding that there is no political will to adopt my preferred option of a Hare-Clark system and remove above the line voting altogether, I would like to explore reform options and amendments to this Bill that can further encourage and empower voters to vote below the line for their preferred candidate.

Inconsistency between the Bill and Joint Standing Committee on Electoral Matters (JSCEM) Recommendations

As I have outlined already, this Bill creates a further bias towards above the line voting whilst squandering the opportunity to encourage below the line voting.

Given all the rhetoric around the fact that this was originally a bi-partisan proposal and agreement, it is surprising that the Bill does not accurately reflect Recommendation 1 from the Senate voting practices interim report of May 2011:

"The Committee recommends that section 273 and other sections relevant to Senate voting of the Commonwealth Electoral Act 1918 be amended to allow for:

- *optional preferential above the line voting; and*
- *'partial' optional preferential voting below the line with a minimum sequential number of preferences to be completed equal to the number of vacancies:*
 - *six for a half-Senate election;*
 - *twelve for a double dissolution; or*
 - *two for any territory Senate election.*

The Committee further recommends that appropriate formality and savings provisions continue in order to support voter intent within the new system." (Joint Standing Committee on Electoral Matters, 2015, p. 189)

The proposal in the Bill does not implement this recommendation. Rather, it only makes changes to the party based above the line voting. It would appear that the Bill adopts a partial optional preferential voting above the line and retains the full preferential voting below the line.

During the inquiry into the Bill, Antony Green is on record as saying:

"I think it is regrettable that the easier option of voting below the line has not been included in this bill." (Commonwealth of Australia, 2016)

I specifically asked a witness, Professor George Williams AO why he thought the Government would have ignored the recommendation for below the line voting. Professor Williams replied:

"I really have no knowledge. I have searched through the papers on the public record. I can find no justification for that, and it does disturb me. I think that that was a lengthy and effective process and, in the absence of a clear, compelling justification, particularly given the extraordinary expedition involved in this bill, surely the appropriate thing is to follow the path that that committee has, I think rightly, identified." (Commonwealth of Australia, 2016)

I and others are concerned that these recommendations have not been adopted due to the deal done between the Government, Greens and Senator Xenophon, and this represents a compromise position that all three groups could agree to:

“As recently as 2011 the National Party re-affirmed its position of backing the existing system of full preferential voting.” (Green, The case for optional preferential voting, 2013)

The recommendation from the JSCEM appears to have attempted maintain a balance between above and below the line voting. Based on the recommendation, Voting 1 above the line for a party implies that someone would be effectively voting somewhere between two to six below the line, within that group in a half Senate election or two to twelve in the case of the double dissolution election, in the case of a State-based Senate candidate.

The recommendation also takes into account the differences in relation to the number of vacancies at each Senate election for the Australian Capital Territory and Northern Territory.

The Bill however proposes a minimum of six above the line or all candidates below the line. This creates a bias that encourages voters to vote above the line and does nothing to encourage below the line voting.

It also creates a bizarre anomaly where a formal vote above the line, cannot be expressed below. To me this is a huge red flag that this Bill has been rushed.

This has not gone unnoticed by others:

“By far the oddest feature of the proposed Senate electoral reform legislation is the retention of full preferential voting for below the line (BTL) voting.

Having abolished group ticket voting, and having accepted that voters can't be asked to fill in every party square in the above the line (ATL) option, it seems very strange not to acknowledge that preferencing all candidates below the line is as onerous and unrealistic as preferencing all parties above the line.

Since ticket voting was introduced in 1984, the effort involved for electors in voting either above or below the line has always been an asymmetric choice.

Voters had the quick and easy option of voting '1' in an ATL box, or the laborious task of numbering every square below the line.

This asymmetric choice has always looked like a way of herding electors into using the ATL option.” (Green, Senate Reform - Why Bother Forcing Below-the-line Votes to be Full Preferential?, 2016)

Professor George Williams AO when giving evidence to the inquiry noted:

“Unfortunately, the bill only does half the job because it only deals with above-the-line voting. As a result, we would have a system which is unduly onerous when it comes to below-the-line voting.”
(Commonwealth of Australia, 2016)

Professor Williams AO also noted:

“A voter should have a free choice as to whether they want to vote for a party or a candidate and that the system should not be structured so as to make one of those, particularly candidate voting, so onerous that it puts it beyond the bounds of practicality.” (Commonwealth of Australia, 2016)

I hope that this oversight in the Bill is as a result of the Bill being rushed through drafting. I do, however, have great concerns that this represents the outcome of a compromise situation as a result of the deal done by the Government, Senator Xenophon and the Greens to expedite the changes in time for the next election. This highlights the critical need to have an open, consultative and transparent process when dealing with a process such as electoral reform. Antony Green has suggested a more spurious motive for such an imbalance, however:

“Perhaps that is why it has not been allowed in this bill, to prevent pesky voters from interfering with the carefully organised pre-selection orderings of the parties.

My view is that if a political party picks a dud lead candidate, it shouldn't be able to shelter that candidate from the wrath of voters by hiding behind enforced full preferential below the line voting...

...Retaining full preferential voting below the line makes no logical sense when you look at the entirety of what the legislation is trying to achieve.”
(Green, Senate Reform - Why Bother Forcing Below-the-line Votes to be Full Preferential?, 2016)

I will be moving amendments in an attempt to address this imbalance. It is my understanding that others may also be moving very similar amendments to the Bill. I propose two possible solutions to address this and intend on moving both amendments. At this point, I will be calling for a vote on partial preferential voting below the line first, as I believe that this more closely reflects the recommendations from the JSCEM report; however as a contingency I will have another version that also brings this disparity into balance.

On the basis that the JSCEM recommendation appears to apply a standard that a single box above the line represents up to six boxes below the following calculations are made:

- Half-Senate $6 \times 6 = 36$
- Double Dissolution $6 \times 12 = 72$
- Territories $6 \times 2 = 12$

The above calculation assumes that each party will run the maximum number of candidates in each scenario. In the case of the territories, twelve below the line would be an acceptable minimum number. However in the case for the States is a little more complex. Using six as the multiplier to

maintain balance between above and below the line might provide a disincentive for voters to vote below the line.

Based on this, I have attempted to determine an appropriate ratio to maintain a balance between above and below the line voting.

NOMINATION BY STATE				
State	Seats	Candidates	Groups	Ungrouped Candidates
New South Wales	6	110	44	4
Victoria	6	97	39	2
Queensland	6	82	36	0
Western Australia	6	62	27	1
South Australia	6	73	33	2
Tasmania	6	54	23	1
Australian Capital Territory	2	27	13	1
Northern Territory	2	24	12	0
TOTAL	40	529	227	11

Table 2 - Nominations by State (Australian Electoral Commission, 2013)

Using the Election 2013 Virtual Tally Room Nominations by State as a guide, the average number of candidates per group for each state can be calculated. This is done to determine a fair group multiplier to calculate a reasonable minimum number of boxes to number below the line:

- NSW - 2.5
- Victoria - 2.49
- Queensland - 2.28
- Western Australia – 2.3
- South Australia – 2.21
- Tasmania – 2.35

Based on this information, a 2.5 multiplier might be appropriate for a half-Senate general election and this value can simply be doubled for a full-Senate Double Dissolution election.

This then equates to:

- Half-Senate $6 \times 2.5 = 15$
- Double Dissolution = 30

Recommendation 6(a) – Introduce partial preferential voting below the line.

- On the basis of the calculations above I will be moving an amendment that sets out the following minimum for partial preferential voting below the line:
 - 15 for a half-Senate (State);
 - 30 for a full-Senate (State); and
 - 12 for Territories.

I also propose an alternative to recommendation 6(a). The recommendation 6(b) is a secondary preference, given there appears to be a political will to avoid full preferential voting above the line.

Recommendation 6(b) – Introduce full preferential voting above the line.

- Given that the supporters of the Bill find it perfectly acceptable for voters to number over 100 boxes below the line for each individual candidate, logic then dictates that it is perfectly acceptable for voters to number a smaller subset of boxes above the line; and
- Should the supporters of the Bill insist on full preferential voting below the line, for consistency they should also be advocating for full preferential above the line. To do anything else would imply that the reasons for these changes are in the individual political interest and not in the interest of the Australian voter who wants to take full control of their vote.

It is my firm position that unless one of these two options is adopted to address the anomalies that this Bill would introduce to above and below the line voting, I will be unable to support the Bill in its current form. Anyone who chooses to vote for such an anomaly is simply putting the interests of their political party ahead of the Australian voting public. Even one to six above and one to six below still creates a voting anomaly between above and below voting, however, that is not as serious as the one the Bill introduces in its current form.

Bias against ungrouped independent candidates

The current system and proposed changes encourage the establishment of micro and pop-up parties by independent candidates that are attempting to compete on an even playing field with political parties. It is worth noting that others have made this observation as well. Councillor Stephen Mayne, who has made a submission to this Inquiry (Submission number 16), states that:

“The numbers really dropped off (Independent Candidates) as pop up parties exploded. There was 228 groups above the line but only 8 (3.3%) were independents. The best result was just 0.1% in South Australia. There was 10 independent candidates running below the line and the highest primary was 0.21% in the ACT. To only have 18 independent options in the Senate across Australia is a travesty(sic).” (Mayne, 2016)

This is largely because any candidate that intends to run as an independent is only represented below the line. The advantages and ease of nominating as a political party far outweigh any disadvantages in establishing such a party. In addition, most minor and micro parties only run a second candidate so that they may be grouped above the line. One term I have heard used to describe this is a “sacrificial candidate”. This has the effect of increasing the number of candidates that are running below the line just so that they can compete.

Rather than making it harder to register, I would recommend that the disparity between nominating under a political party vs nominating as an independent be addressed. This will go a long way to addressing the rise of pop-up or micro parties, more so than abolishing group voting tickets.

Once again, Green highlights the disadvantage independent candidates have, given the voting culture that currently encourages above the line voting, which this Bill is entrenching in its current form:

“The issue of ungrouped candidates raised in the McKenzie case could come into play again.

How can you vote for an ungrouped candidate under the proposed system as there is no ATL square? Exactly the same as if you voted for any other candidate below the line, by filling in all the square. The method is onerous, but no different than if I chose to vote for any candidate.

But if I vote for a party using the ATL method, and wanted to give preferences to an ungrouped candidate, I can't. The only way I can give a preference to an ungrouped candidate is by voting below the line. Under the old system, group voting tickets had preferences for all candidates including ungrouped candidates.

But preferencing ungrouped candidates would be the same as wanting to preference any grouped candidate individually - I would have to number all squares below the line. The difference in how I choose to individually preference candidates whether grouped or ungrouped is not so large that it would engage the High Court.

What might attract more interest is that certain votes for candidates that are formal when implied from an ATL vote, would be informal if a voter transcribed them using the below the line option.

For example, say I wanted to vote 1 to 6 for six micro-parties above the line, and each of those parties had two candidates. The vote exactly matches the ballot paper instructions and would be formal. The six boxes would be imputed to be 12 candidate preferences for the two candidates of each of the six parties.” (Green, Senate Reform - Why Bother Forcing Below-the-line Votes to be Full Preferential?, 2016)

Currently under S166 of the *Commonwealth Electoral Act 1918*, an independent Senate candidate can nominate provided they show that they have the support of 100 electors.

“An Independent candidate is required to prove a minimum level of support in the electorate or state they are contesting, where a party candidate requires no such proof, relying only on having achieved national registration.” (Green, Should MPs and Senators be Allowed to Register Political Parties, 2015)

I am very concerned that the unintended consequence of removing individual voting tickets has not been fully explored. Given the policy position around removing group voting tickets, it makes sense to remove them but the safety net these provisions provided to a sitting member has not been adequately replaced.

The Bill effectively removes the ability for a sitting Senator, seeking re-election without the endorsement of their political party, from running above the line. This safety net prevented undue

influence a party would have on its Senators. Once again, the changes proposed in the Bill shift the bias away from encouraging independent thought in the Senate to bowing down to the party line. Should a senator choose to cross the floor on controversial issues, the risk around not being endorsed by the party at the next election is much greater without this provision.

Both of these issues could be easily addressed by ensuring that both grouped and ungrouped candidates are entitled to automatic representation above the line. The Bill fails to consider this at all and I have so far not heard any debate on this topic. I would like more time to investigate this issue further and consult with specialists in this area, but alas that is not possible due to the rushed manner in which this Bill is progressing through the parliament.

In addition, the provisions being repealed under Section 210(2) of the Act effectively mean that a senator seeking re-election is not able to run above the line either, in his or her own right.

“While there was little consideration given to equality of treatment between independents and parties when registration was introduced in 1984. The experience of the 2013 election should make it a more important issue.” (Green, Should MPs and Senators be Allowed to Register Political Parties, 2015)

There are other incentives in establishing micro-parties in order to be able to compete at an election and Green highlights a lot of these:

“The ability of parties to nominate candidates centrally had its biggest impact in the Senate. A party based in a single state can nominate candidates in every other state, nominated centrally with no local input. Parties do not need local nominators to prove any membership support in the state.” (Green, Should MPs and Senators be Allowed to Register Political Parties, 2015)

“An Independent candidate is required to prove a minimum level of support in the electorate or state they are contesting, where a party candidate requires no such proof, relying only on having achieved national registration.” (Green, Should MPs and Senators be Allowed to Register Political Parties, 2015)

Recommendation 7 – Allow Independent Candidates to be represented Above the Line

- Amend the Bill to ensure that all candidates are represented both above and below the line regardless of their party affiliation or independent status. All candidates should have equal opportunity to be represented above as well as below the line.

Recommendation 8 – Standardise the nomination process for party based and independent candidates

Due to the lack of available time I have not been able to completely research this recommendation and would be interested to see this recommendation explored in a more public debate, however:

- As outlined above, Green touches on this issue in his blog. I believe that this is a very sensible recommendation and should be included in the Bill as part of broader and more comprehensive reforms;
- This should become a requirement for anyone seeking to nominate however the number of nominators per group needs to be investigated;

- Currently this is 100, however in the limited time I have had to investigate this it is unclear if this number is appropriate or should in fact be adjusted up or down;
- It could be argued that if a Senator was seeking re-election for either their party or as an independent candidate, and they had received an amount of first preference votes below the line equal to or greater than the required level to nominate, at the previous that they could be excused from this requirement;
- Any Senator who failed to attract sufficient below the line primary votes at the previous election would also need to show some sort of local nomination support before they were able to recontest for their position; and
- In the case of a Senator who had filled a casual vacancy, as they had not stood for election at the previous election, they would be required to then show some sort of local nomination support before they could recontest. Due to the limited time available, I have not been able to have any constitutional implications assessed in relation to casual vacancies.

The Bill fails to encourage below the line voting

As noted earlier, most voters are choosing to vote above the line. There is also a culture of voting for the team or the team leader, rather than the player as the election process is becoming more presidential.

"We have drifted to a more presidential style of politics where the public claim some sort of "ownership" of the office of PM, but structurally we remain a parliamentary system under which the prime minister is the person whom the party that controls the House of Representatives installs as leader." (Dunlop, 2012)

As already outlined, the Bill further encourages voting for the party over the candidate and I hope to address with the recommendation that I have previously outlined. There are further reforms however that can be introduced to encourage below the line, candidate based voting.

My recommendation will empower those who are politically-engaged and rewards voters and individual candidates for their effort and hard work.

Recently it has been reported that Senators in the major parties are vying to be in the top six on the ticket in the event of a double dissolution election.

Matthew Knot recently wrote about the specific phenomenon where the major parties get to choose who is safe and who is not:

"After a double dissolution election – which has not been held since 1987 – all senators are placed in either "first class" or "second class" as if they are airline passengers.

Half the Senate – those in "first class" – would not face the voters for another six years while the other half would be up for re-election at the next poll.

This raises the stakes for Senate candidates to win prized spots at the top of the ballot paper.

"I thought I'd seen the final instalment of The Hunger Games but I might have been wrong," Labor Senator Sam Dastyari said.

"Seventy-six senators getting in a room to decide who is 'first class' and 'second class' – you could sell tickets to the show."

Another senator said: "There have been lots of conversations in huddled corners about who will get the gold prizes and who would get the silver prizes..."

...Factional wrangling before the last election saw Labor Senator Penny Wong relegated to second spot on Labor's South Australian ticket behind little-known powerbroker Don Farrell. Senator Wong only managed to remain in the Senate because Mr Farrell eventually sacrificed the top spot to her.

Similarly, sitting Labor senator Louise Pratt was relegated to second spot on the party's WA ticket behind union heavyweight Joe Bullock and lost her seat." (Knott, 2016)

Knott also notes that,

"According to Odgers' Australian Senate Practice, on the seven times it has been necessary the Senate has designated senators first or second class according to the order of their election." (Knott, 2016)

However, as the order in which Senators appear in their groups tends to determine the outcome, if you are nominated listed in the top six you can consider yourself to be in the Gold Class.

I am sure most of the Australian voting public find this particularly distasteful and believe that the people should have more of a say in as to who represents them for six years vs three years after a double dissolution election. I also feel that the concept of a "safe seat" on the ticket should be awarded by the people and not the politicians or power brokers in a political party.

Some might argue that this ensures that a quality candidate receives priority on the list. My counter-argument to this is that this is a symptom of a larger problem. For example, having to run a sacrificial candidate below the line, which recommendation 7 seeks to address.

One way to eliminate this type of behaviour in our political class is to introduce the Robson Rotation within each group, so that each member of a party group receives no advantage. That way a vote above the line accurately reflects a party vote. The Tasmanian Parliamentary Library describes the process used in their state:

"Under the current electoral process a draw is made for the position of Party or independent groups across the ballot paper. Other candidates are classed as 'ungrouped' on the far right of the ballot paper. Next the rotation process is applied. Since 1996 this has been achieved by batch printing which first places

candidates in a random sequence in each vertical column, then 'rotates' the names evenly in the positions available.

On polling day only first preference counting occurs; after postal votes arrive the cut-up of preferences commences. Candidates who achieve or exceed a quota of first preferences are declared elected.” (Tasmanian Parliamentary Library, 2015)

The Proportional Representation Society has this to say in relation to the Robson Rotations effect in Tasmania:

“The Tasmanian and Australian Capital Territory use of Robson Rotation each reduces the artificial concentration of votes on a party organization's proclaimed number one candidate, and instead reflects voters' explicit choices of other candidates within their preferred party, in striking contrast to the Australian Senate.

Robson Rotation can remove a handicap that major parties heedlessly inflict on themselves by their practice, even in Tasmania at Senate polls, of plying voters with how-to-vote cards that urge voters to concentrate their vote on a single preferred candidate.” (Proportional Representation Society Of Australia, 2015)

This will encourage members of a group to then go out and engage with their constituents. They will spend more time with the people they are planning to represent and less time doing internal deals to ensure their future. Those who have a stronger rapport with their communities will receive a stronger personal below the line vote. Therefore, once preferences are distributed from the party group ticket, those with the stronger local presence and support will have a head-start over other less popular candidates in the group, effectively allowing the voters determining the order on the ballot paper.

This approach is also consistent with removing the “back room deals” mantra by those supporting the current Bill.

In addition, this change will encourage voters to learn about their preferred candidates because they know that their vote not only helps the party that they would like to support, but their favourite candidate(s).

So this statement made by the Prime Minister when announcing this agreement to the public,

“These reforms will bring to an end the days of political parties determining preference flows. Individual voters will now decide how their preferences are allocated.” (Turnbull, 2016),

I would argue that without the Robson Rotation, this statement is not 100% accurate as political parties will still determine preference flows within the party group.

Recommendation 9 – Introduce the Robson Rotation

Ensure that political parties have no control over preferences within their party group by introducing the Robson Rotation:

- Robson Rotation is currently used by Tasmania and the ACT in their State and Territory elections;
- This will eliminate “back room deals” in relation to where a candidate is placed within a party group at the ballot box
- This encourages candidates to seek below the line votes from potential supporters, which in turn enhances the relationship between the candidate and the electorate
- Helps to minimise the influence the political party has on who is elected to the Senate and returns the power to the voter.

Reform the usage of How to Vote cards for Senate Elections

With the introduction of Robson Rotation and the removal of group and individual voting tickets under the changes being made by this Bill, the how to vote card system will be the next part of our electoral system to be gamed.

This gaming already occurs as described by the AEC,

“Second preference how-to-vote cards are those in which a party (usually a major party) recommends a first preference vote for a candidate of another party (usually a minor party) while recommending its own candidate as the second preference (or at least a preference higher than other major parties). These how-to-vote cards are actually authorised by the originating political party (usually a major party) although they sometimes appear, due to their heading, colour and general layout, similar to the official how-to-vote card of the party endorsing the candidate recommended as the first preference. A party which puts out a second preference how-to-vote card may also put out its own official how-to-vote card recommending a first preference vote for its own endorsed candidate.

The political strategy involved in major political parties issuing second preference how-to-vote cards is to capture the second or later preferences ahead of other major political parties after the minor political party candidate or independent candidate is eliminated from the count. The concern is that voters might be misled into believing that these second preference how-to-vote cards are the official how-to-vote cards for the minor political party or independent candidate shown as the first preference.” (Australian Electoral Commission, 2015)

What is interesting to note is that there are references to the provisions under the Act that would appear to be able deal with this. Information on that same website would appear to indicate that these laws are not strong enough, however once again due to time constraints; I am not able to investigate this issue further.

Political parties with the financial resources to spend significant amounts on Election Day will have a distinct advantage over those candidates who do not. They are able to manipulate the system by deceiving the voter.

The implementation of the Robson Rotation within party groups will go a long way to addressing the influence how to vote cards will have on below the line voting.

The Proportional Representation Society of Australia makes the following observations:

“Robson Rotation has completely overcome two difficulties that soon became evident with preferential voting...

... the second was the use by political parties of "how-to-vote" cards handed to voters by party workers outside polling booths, on which a representation of a completed ballot-paper was shown, with a request that it be copied exactly in order to meet the party's wishes. If numerous voters follow such cards, the decision as to which of a party's candidates is elected is effectively transferred from the voters to the party organizations. That regimentation of voters preferences has always succeeded on the Australian mainland, but the freedom and choice Hare-Clark has always given Tasmanians led to their State parties' avoiding that tactic until an ALP headquarters attempt to do so in 1979. That was immediately perceived as the threat it was to the wider democratic power base of MHAs, and was forestalled by the prompt introduction of Robson Rotation.” (Proportional Representation Society Of Australia, 2015)

This outlines a recent issue that resulted into a Senate Inquiry into allegations made in relation to Election Day how to vote card abuse:

“A Senate inquiry is to investigate allegations that Labor Party members posed as being from Family First at the South Australian election on March 20.

Voters in several marginal electorates were given how-to-vote cards which used the words 'put your family first' but were authorised by the ALP.” (ABC, 2010)

How to vote cards would still play a critical role in influencing above the line voting, especially with a partial optional preferential system above the line. It has already been established this is where around 97% (Australian Electoral Commission, 2013) of the votes for the Senate are cast. The reality is that quality independent, micro and minor parties are placed at a disadvantage when needing to compete against candidates and parties with large financial donors behind them when it comes to how-to-vote cards.

At least when group voting tickets existed, all groups were all required to play by the same rules and had an equal opportunity to negotiate with other participants in relation to preference deals, even if those chose not to partake or disclose to the public that they did.

These preference deals will still exist in the form of how to vote cards, but rather than these deals being registered on a level playing field with the Australian Electoral Commission, they will focus on how messages are delivered by the political parties who have the cash to splash to be re-elected.

This places quality independent candidates at a disadvantage.

The Greens have expressed some interesting views on this topic and would appear to want to eliminate how to vote cards in their entirety.

Previous Leader of the Greens, Senator Bob Brown made the following statement in additional comments to the report into the *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010*:

“The predominance of how-to-vote cards negatively impacts on electors’ capacity to make their voting decision free from interference. The adoption of above-the-line voting in Senate elections, especially in larger states that feature a large field of candidates, means that should voters choose to they can readily make just one mark on the ballot in order to cast a valid vote. The argument made by the major parties for the necessity of party’s how to vote cards to tackle vote informality rates is spurious. If voter education is required, then non-partisan materials and programs should be delivered via the AEC.

Accordingly, the Greens believe that voters’ interests would best be served by the Tasmanian and ACT state election model where how to vote cards are not handed out at polling booths on election day being adopted nationally.”
(Brown, 2010)

Queensland Labor also appears to support this view in part. In their submission into electoral reform in Queensland they noted that:

“Queensland Labor therefore proposes a blanket ban of the distribution of political material seeking to influence the casting of votes in all public places for the whole of the election day.

Queensland Labor further proposes that registered how-to-vote cards be reasonably displayed in each voting cubicle/stall provided in polling places as well as be permitted to be displayed on prominent signage in the area of the approach to the designated entrance doorway of each polling place.”
(Queensland Labor)

My preference would actually be the blanket ban of political material in all public places for the whole of Election Day. Should someone move such an amendment in the debate to do this, I would give it serious consideration for support.

In the spirit of compromise, however, I am of the opinion that all party funded how to vote cards and electoral material designed to influence someone's vote should be banned from being handed out or displayed within 100 metres of a polling booth on Election Day.

Truthful how to vote cards do play a crucial role in the election process in educating voters on what is a valid vote. Based on this, I will be moving a proposal that takes this out of the hands of political parties and places the responsibility for distributing how to vote information squarely in the hands of the Australian Electoral Commission (AEC).

Those groups/candidates represented above the line on the ballot paper would continue to lodge their preferences, as they have done in the past with group and individual voting tickets with the AEC.

This information is then printed and distributed by the AEC within a 100 metre exclusion zone around a polling booth. Only official AEC material would be permitted to be displayed within that exclusion zone.

The details of how this information would be made available to voters should be left up to the AEC to determine, so long as the process is fair and equitable.

One suggestion might be that the how to vote information could be the form of a booklet handed out at the time the ballot papers are handed to a voter. The voters would then be able to review how to vote information for the parties that they are interested in voting above the line for.

Parties would be free to recommend that their voters vote below the line in the order of their choice and/or make a recommendation as to how they would like their supporters to vote above the line.

This would also help to show their position on the ballot paper and avoid voter confusion.

Once finished, the voter would then be able to hand these back to the staff running the booth, where they can be quickly inspected to ensure that they have not been tampered with and then reused.

This would be publically-funded, however part of that funding could come from the nomination deposits candidate are required to pay.

I am also concerned about the environmental impact how to vote cards have and would encourage the Greens to support our recommendations in this matter.

Much like group voting tickets, the use of how to vote cards has been a necessary evil due to the system we have currently. Based on limited research this appears to be something unique to the Australian system and we have an opportunity to clean this up.

In an attempt to research the Greens position on how to vote cards and environmental impact I noticed a press release where the Greens introduced an electronic version of delivering how to vote

cards. Whilst I applaud the Greens in this initiative, however this is also an example of the financial disparity between the haves and have nots of the current electoral system and donation laws.

"Greens NSW MP John Kaye said: "Using their smart phone, voters will be able to identify their electorate, read the Greens how-to-vote and find their nearest polling booth." (The Greens - New South Wales, 2015)

I would be interested to explore how this concept could be developed in a non-partisan way by the Australian Electoral Commission for elections in Australia. My recommendation would be a hybrid approach to both an electronic and paper based solution. Over time, it is expected that the dependency on paper based how to vote solutions to become a way of the past.

Recommendation 10 – Introduce a ban on posters, how-to-votes, handbills and all forms of campaigning within 100 metres of a polling place.

A compromise recommendation, instead of a complete ban:

- This is not without precedent; the Northern Territory recently passed such laws. Antony Green reports on this measure in his election blog where he notes, "a ban on posters, how-to-votes, handbills and all forms of campaigning within 100 metres of a polling place." (Green, Northern Territory Adopts Optional Preferential Voting and Bans Campaigning Near Polling Places, 2016); and
- This change was introduced at the same time they moved from full preferential voting to optional preferential voting.

Recommendation 11 – Have candidates and parties register their how-to-vote cards with the AEC so that the AEC can distribute them on polling day.

- Utilising similar processes that exist today in communicating the preference intent from the candidate or party to the Australian Electoral Commission;
- This would be for expressing above the line voting information only;
- Option to indicate that a party would prefer below the line votes however still express above the line preferences on the AEC managed card;
- The AEC would then be responsible for communicating/making this information available on a fair and even basis to all who present to cast their vote; and
- Part of the funding for this measure would come from the nomination deposits each candidate must pay to on nomination. The remainder would be funded out of the budget for the election.

Recommendation 12 – Hold an Inquiry into how to evolve the how-to-vote card system towards an electronic system managed by the AEC.

- This is a recommendation for the future and not necessarily needed before the Bill is passed.
 - Inquire into the use of electronic how-to-vote cards;
 - Investigate existing platforms, such as that developed by the NSW Greens;
 - Determine how such a platform could be implemented in neutral way by the Australian Electoral Commission;
 - Investigate other opportunities such a system would provide the AEC. For example in delivering such a service to other State based electoral commissions;

- Investigate how such a system could be used to allow candidates to register their preferences with the AEC;
- Investigate how such a system could be used by the AEC in delivering such a service for other preferential based elections the AEC is asked to supervise;
- Deliver and project mandate recommendation in regards to design and implementation; and
- Any other related matter

Impact of reducing diversity in the Senate

I would argue that having diversity in the Senate is a good thing and that legislation designed to wipe out that diversity is of great concern.

There are a significant number of people who choose to vote other than Liberal, Labor or the Greens in the Senate and their wishes need to be respected.

In recent history it has been very rare for the Government of the day to have a majority in both houses. For a long time the Democrats would 'keep the bastards honest', until they didn't in the eyes of the voters.

The ALP for many years was reasonably responsible in Opposition in the Senate, again until recent years. The Greens unfortunately have not been able to play the peacemaker between the ALP and the Coalition reliably and often side with the ALP.

After the 2007 election, the toxicity of opposition politics sharply increased and the Senate is at great risk of becoming a house of opposition rather than a house of review.

There have been no centrist voices that a significant portion of the population can identify with, which is why I believe the total of Senate votes for anyone other than the Coalition, Labor or the Greens has risen.

Until a few years ago I had thought that Senator Xenophon might have filled that that void, however, given the deals done in relation to this Bill, I am no longer sure that will be the case.

I am by no means a Don Chipp, but do believe that I have attempted to not only keep the Government honest, but also the Opposition.

Rather than having fixed policy positions on most issues before even being elected, I have been able to consider each case on its merits.

The Australian Motoring Enthusiast Party (AMEP) introduced the concept of "Senate Commitments":

When legislation is proposed we will use the following guidelines to review it.

- 1. We seek to support balanced legislation and will test that legislation against our core values. We will work to moderate extreme legislation through negotiation and by the introduction of amendments to the proposed legislation. If these methods will not allow for the extremist elements of the proposed legislation to be removed then we will seek to vote against that legislation.*
- 2. We seek to promote Unity and Respect within Australia, Politics and the local community, as well as within the Motoring Enthusiast Community. We will not support legislation or public debate that is divisive or disrespectful. The Australian Motoring Enthusiast Party membership is made up of a diverse range of Australian families, united around a*

passion for Motoring Enthusiast pursuits. We need to be mindful of this diversity in everything we do.

3. *We will not accept proposed legislation that places the Australian Family Lifestyle at risk. This includes the right to modify and restore vehicles based upon their own freedom of expression; we do expect these restorations and modifications to be safe. We also support the right to participate in activities on public land. We support activities that are safe, responsible and sustainable, such as Four Wheel Driving, Camping, Fishing and other recreational pursuits.*
4. *We will promote personal responsibility and consequence of individual action. Our emphasis is on community education to allow the law abiding majority to do the right thing and focus enforcement activities on the minority who willingly choose to break the law.*
5. *We will not support proposed legislation that:*

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- *Further marginalises; disadvantages; isolates; or erodes the rights or way of life of the Motoring Enthusiast community or other groups.*
 - *Is an extremist policy.*
 - *Hurts the Australian way of life or penalises the law abiding for the sake of the irresponsible minority, thus making life harder for Australian families or takes away the right to a "fair go".*
 - *Damages the country financially or creates unnecessary sovereign risk.*
 - *Is policy that should be taken to an election or referendum.*
 - *Goes against advice from industry or experts in the field.*
 - *Is policy that the Party and Australian community strongly object to.*
-

*The AMEP is a Senate only independent party. We value our independence and keep an open mind on proposed legislation that enters the Senate for review. We will not agree to resolutions or motions in the Senate that reduces the effectiveness of the role of the Senate in Australia's political system.
(Australian Motoring Enthusiast Party, 2013)*

I understand that these were hastily-developed prior to the 2013 Election; it was the view of the Central Executive and other members that this made the AMEP unique. The AMEP never planned to run the country; that is for the House of Representatives. , Our role has always been to review and influence when necessary.

I believe that I have lived up to these commitments. It would appear that others in the community agree with this position.

“Muir does exactly what a senator should. He approaches issues with few preconceived positions, listens to the arguments on different sides, then makes up his mind on how to vote. Except for issues involving cars, it is hard to predict how he will vote based on the party he was elected to represent.

Muir makes up his mind based on how he thinks the proposed policy will affect ordinary Australians like himself. It is his very ordinariness that makes him such a good senator.” (Dryzek, 2016)

This Bill will further shift the balance away from allowing independent voices into the Senate and further entrench party politics in the way it is currently drafted.

Any discussion around electoral reform also needs to include a discussion about the role of the Senate and how its independence can be maintained from the House of Representatives, so that it remains a house of review “that could control the excesses to which lower houses might be prone.” (Dryzek, 2016).

As I touched on earlier, not only can these independent voices hold the government of the day to account, but can also help curb opposition excesses in the Senate. I have made reference to such opposition excesses in this speech delivered to the Senate on parliamentary behaviour:

“The recent, unnecessary, Senate distraction in relation to the trade union royal commission is the most recent example of this toxic political environment. The political stunt served to not only delay and distract from the role of the Senate to review the legislative agenda of the government; it had the effect of wasting the resources of my office and the offices of other senators who constantly had to drop their work to discuss the issues around this motion. This is time that could have been better spent investigating the issues in relation to the legislative agenda of the government—something that we are paid to influence. We are not paid to influence the outcome of a royal commission or legal proceedings. Had this motion from the opposition passed, it would have had no effect on the royal commission. The Governor General would have been under no obligation to act on the message from the opposition. Legal representation for the unions have decided not to have the apprehended bias finding challenged in the courts at this stage and that suggests to me that they either accept the ruling or they are worried that the court will also dismiss their application. I am a strong believer in the separation of powers, and this motion sought to interfere in legal matters.”

(Muir, Parlinfo - Statements by Senators - Parliamentary Behaviour, 2015)

In order to address these concerns, I make the following recommendations.

Recommendation 13 – Hold an Inquiry into the value of diversity in the Senate in maintaining as a House of Review

- This is a recommendation for the future and not necessarily needed before the Bill is passed.
- We are of the opinion that the large number of micro parties exists largely because in order to have a chance at success, you need to be organised and registered as a political party.
- This is because the Act is biased towards political party voting vs independent members, especially when participating in a Senate election.
- Suggested terms of reference for such an Inquiry would be:
 - Investigate the options of how to ensure the Senate remains a house of review or reflection rather than a tool of either the Government or Opposition;
 - The influence of party politics on the Senate in its role as the house of review;
 - The advantages and disadvantages to encouraging political diversity in the Senate ;
 - The advantages and disadvantages in having members of the Ministry and Executive in the Senate;
 - Any other related matter.

One thing that I have also noted is the discussions in relation to having someone with life experience and outside of the political class having a voice in the house of review and reflection. In the spirit of that debate, I would also like to propose the following recommendation as it is often mentioned how having some representation based on Sortition may well go a long way to ensuring the Senate remains in touch with the people.

Recommendation 14 – Hold an Inquiry into the feasibility of appointing two Senate members from each state via Sortition

- This is a recommendation for the future and not necessarily needed before the Bill is passed.
 - One seat in each State is reserved for a member of the Indigenous community;
 - One seat in each State reserved for any other Australian in the community;
 - Based on these members being afforded all the rights and entitlements of an Elected Senator, but with a limited 36 month term;
 - Inquire into a suitable selection process and ensures independence so that these members can act as a jury; and
 - Any other related matter.

Concluding Statements

I had wanted to touch on other aspects of electoral reform such as the concerns I have in relation to the transparency of donations and the lack of ability for the AEC to investigate and prosecute cases of donation fraud. Due to the short timeframe in relation to the consultation period of these reforms, I have had to exclude this from this document. I do note however that the ALP has raised this topic in the public debate on electoral reform and I look forward to following that debate.

The political parties and politicians that decide to take a principled stance against accepting donations from large corporates and unions, such as what I and the Australian Motoring Enthusiast Party have done to this point place them at a disadvantage when competing against those who are less concerned about the matter.

Unless serious and meaningful reforms are made in the area of political donations in the near future, when combined with these as the Bill is currently drafted any hope for a diversity of views in the Senate, I believe will be lost.

As the Bill stands right now, the savings provision is prone to being exploited; it further discourages voters to be engaged with their choices as it encourages above the line, party-based voting, based on a presidential-style campaign where people are voting for leaders and not state representatives. Independent candidates are still prevented from having a presence above the line unless they either group with another candidate or form a micro party.

These are the areas I and others believe need to be reformed, yet the Bill does nothing to address these concerns. This Bill will simply result in party politics having a greater stranglehold on the Senate. There will no longer be any middle ground; rather we see a future Senate that is either the rubber stamp of the Government or a tool of a hostile Opposition. Neither of these two choices will benefit to this country in the long term. This Bill risks further alienating the over 3 million and growing voters who choose to vote for anyone else but the Liberals, Nationals, Labor or the Greens.

If this Bill was truly about democracy and the negotiators were genuine about their rhetoric, they will give serious consideration to the recommendations that I have put forward to the Bill.

I call on the Government to work with me on constructive and meaningful reform. I would like to see them introduce amendments based on this report or to at least provide me with the specialist resources needed so that I may have the appropriately drafted amendments ready to be introduced in time for the debate.

As the Bill stands, I cannot support the Bill, however should the Government, Greens and Senator Xenophon agree to support key recommendations that I make, I am sure that we can work together to introduce meaningful reform that benefits the people and not political parties.

Senator Ricky Muir

Australian Motoring Enthusiast Party Senator for Victoria

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