



Additional Comments – Senator Nick Xenophon

- 1.1 At the outset, I believe the committee has reached a good consensus on necessary and fair reforms to the electoral system. It is important to acknowledge that the candidates elected in the 2013 Senate election were legitimately and fairly elected under the current system. However, it is equally important to note that the outcome of that election has constituted a tipping point for reform.
- 1.2 There needs to be a combination of an improved Senate voting system and an ongoing public education campaign to ensure that voters are able to make informed decisions about casting their vote. Given Australia's compulsory voting requirement, however, it is my view that our system should allow all Australians (not just those with particular political interest or knowledge) to cast a vote that reflects their political view. If Australia believes that all votes are equal, then we should establish a system to ensure that all voters have an equal chance to vote that accurately reflects their intention.
- 1.3 As the Committee's report states, the Senate's voting system has always been subject to political manoeuvring, at least to some extent. It is my view that it is time to move past this and establish a system free from party politics and gaming of preferences through group voting tickets. The Senate voting system should be used by voters, not by parties or those with vested interests.
- 1.4 I strongly agree with Mr Antony Green's comments at the 7 February hearing, in which he stated:

The system, if changed, should advantage parties which campaign, not parties which arrange preference deals. If a party campaigns – hands out how-to-vote cards and increases its first-preference vote – then, if you have a system where voters have to give their own preferences encouraged by a how-to-vote card, then a party that campaigns and distributes a how-to-vote card material will have more say over their preferences. I do not see anything wrong with that, because I think that if a party can get votes by campaigning it also gets control over its preferences by campaigning, and I do not see why a party should get control over its preferences simply by putting its name on the ballot paper; it actually has to do something beyond that.¹

- 1.5 Any reforms to the Senate voting system must be made with these comments in mind.
- 1.6 The Committee report discusses in detail the ‘gaming’ that occurred in the 2013 election, and in particular the preference deals masterminded by Mr Glenn Druery. I believe that the very fact the system is clearly so vulnerable to such gaming and can be manipulated by individuals to further their own interests is the clearest possible indicator that major reforms are needed before the next election. Australia is proudly democratic, and such a weakness in our electoral system brings our democracy into disrepute.
- 1.7 As stated in the Committee report, I introduced the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* on 13 November 2013, in response to the public outcry following the 2013 election. The aim of the bill is to remove Group Voting Tickets and introduce optional preferential voting above and below the line for Senate ballot papers. The provisions of the bill are discussed in further detail in the Explanatory Memorandum (attached).
- 1.8 In particular, I agree with the Committee’s concerns regarding Group Voting Tickets. I believe that, at the very least, GVTs form the basis for the problems within the system and must be removed.
- 1.9 The provisions of my bill are consistent with the Committee’s first and second recommendations. As such, I strongly encourage the Government to consider the provisions of the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* when forming a response to the Committee report.

¹ Antony Green, *Committee Hansard*, 7 February 2014, p. 2

Recommendation: That, consistent with the Committee's recommendations, the Government support the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* as part of its response to the Committee report

- 1.10 Further, the bill does not contain any provisions relating to thresholds. Instead, it utilises the existing quota requirements with allowances for the next continuing candidates to be elected if all quotas cannot be filled. This is a far simpler way of structuring the system and ensures the will of voters is accurately represented. It is my view that thresholds may be undemocratic, unconstitutional, and may raise other concerns, particularly in terms of allocating preferences. I strongly support Mr Green's comments in relation to these matters.
- 1.11 I support the Committee's comments in relation to other changes that must occur in relation to party registrations, and in particular the requirements regarding unique members and registered officers, and compliance audits.
- 1.12 I also support the Committee's comments regarding additional resources for the AEC to allow it to undertake greater scrutiny of registrations. It is clear that the AEC must play a more significant 'gatekeeper' role in this area, and resources should be provided to allow this to occur. Further legislative change requiring the AEC's involvement may also be necessary.
- 1.13 Further, I agree with the Committee's view that the current federal register of political parties needs to be reset to ensure compliance with any new requirements. This will guarantee a higher standard of integrity in the register and address existing voter concerns.
- 1.14 Ultimately, it is the Parliament's responsibility to address the valid concerns of many voters regarding the integrity of the Senate voting system. The measures in the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* provide a way to implement the Committee's recommendations on this front, and it should therefore be supported.

2013

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**COMMONWEALTH ELECTORAL AMENDMENT (ABOVE THE LINE
VOTING) BILL 2013**

EXPLANATORY MEMORANDUM

(Circulated by the Authority of Senator N Xenophon)

COMMONWEALTH ELECTORAL AMENDMENT (ABOVE THE LINE VOTING) BILL 2013

Background

The purpose of this Bill is to reform the current system for electing Senators to the Australian Parliament. The 2013 election revealed the current system's vulnerability to 'gaming' through preference deals, with some candidates elected with very small percentages of the primary vote; in two cases, representatives were elected with less than one per cent of the primary vote.

The aim of this Bill is to reform the system to make it easier for voters to determine their own preferences, rather than through the current system of group and independent voting tickets, and to increase transparency in the voting process. By introducing an optional preferential system above and below the line, these reforms prevent parties and groups from assigning preferences and instead make it easier and clearer for voters to know 'where their vote is going'.

The system proposed in this Bill is similar to that which already operates in New South Wales for the Legislative Council in state elections. Instead of lodging group voting tickets with the Australian Electoral Commission, groups standing at a Senate election will only be able to nominate the order of their candidates and therefore the preference flow within their group. Groups will not be able to allocate preferences to candidates outside their group.

Voters will have the option of numbering at least one group voting square above the line (and as many subsequent group voting squares as they wish) *or* at least as many candidate voting squares below the line as there are candidates to be elected (six for a half Senate election, twelve in the case of a full Senate election, or two in the case of Territory elections) and as many subsequent squares as they wish. Voters have the option of numbering no other squares beyond the minimum when voting either above or below the line. Under these provisions, a voter does not have to number all the squares below the line, which will reduce the number of informal votes where there are a significant number of candidates.

Candidates are then elected according to the current quota requirements. If not all vacancies are able to be filled under the quota requirements (for instance, if not enough candidates achieve a quota), then the remaining candidates with the largest number of votes will be elected.

This method will simplify the process of casting a vote and, by removing the use of group voting tickets and therefore preventing the manipulation of preferences, will more accurately represent the will of voters.

1. Short title

This clause is a formal provision and specifies that the short title of the Bill, once enacted, may be cited as the *Commonwealth Electoral Amendment (Above the Line Voting) Act 2013*.

2. Commencement

This clause provides for the commencement of the Act on the day after the Act receives Royal Assent.

3. Schedules

This clause states that each Act specified within a Schedule to this Bill is amended or repealed as set out by the provisions of the Bill.

4. Schedule 1

This Schedule amends the following provisions of the *Commonwealth Electoral Act 1918*:

Item 1 inserts new definitions into Subsection 4(1) of the Act.

A candidate group relates to a Senate election, and refers to candidates that have made a joint request under section 168 to have their names grouped together on the ballot paper, or a candidate that is a Senator (or in the case of a double dissolution, was a Senator immediately before the dissolution) who is not part of a request under section 168. This has the effect of allowing groups or sitting Senators (either Independents or those who are standing alone) to have a group voting square above the line on the ballot paper. This is consistent with the current law regarding candidates who can appear above the line.

A candidate voting square refers to the square printed opposite the name of an individual candidate below the line on the Senate ballot paper, in accordance with paragraph 210(1)(b).

A group voting square refers to the square for a candidate group printed above the line on the ballot paper, in accordance with paragraph 210(2)(b).

Item 2 repeals the existing subsection 169(4), and inserts a new subsection which allows a candidate group to request that a name be printed adjacent to the group voting square for the group above the line. This name may be either that of the registered political party that endorsed the group, or a composite name formed from the names of the registered political parties that endorsed the candidates. The new subsection removes the current requirement for this to occur only where the group has lodged a group voting ticket, which no longer exists under this bill.

Item 3 repeals the existing section 210, and inserts a new section relating to the printing of Senate ballot papers. The new section removes the requirement for groups to lodge a group voting ticket, but otherwise does not change the existing way the papers are printed.

Item 4 removes the reference to subsection 211(5) in subsection 210A(5) in accordance with the repeal of section 211 in item 25 of this bill. This removes the requirement for a group to lodge group voting tickets in order to have a square printed on the ballot paper above the line.

Item 5 repeals sections 211 and 211A, which relate to the lodgement of group and individual voting tickets. The repeal of these sections will mean that group and individual voting tickets can no longer be lodged.

Item 6 inserts the word ‘candidate’ before the first occurrence of the word ‘group’ in subsection 213(1) to clarify that this subsection refers to candidate groups.

Item 7 repeals existing section 214. The proposed new section includes the same requirements as the existing section, but removes the provisions relating to voting tickets and takes into account the new terminology of ‘candidate voting squares’ and ‘group voting squares’ for the Senate.

The proposed section 214 also requires, in the case of the Senate ballot papers, that the name of the relevant registered political party or the word ‘Independent’ be printed next to the names of candidates who are not grouped in accordance with the new definition of ‘candidate group’ under section 4.

Item 8 repeals section 216, which relates to the display of group voting tickets.

Item 9 repeals subsection 226(3), which relates to the requirement that a presiding officer display all group voting tickets when visiting a patient at a hospital that is a polling place.

Item 10 amends subparagraph 227(8)(a)(i) to remove the reference to group voting tickets in mobile voting booths.

Item 11 amends paragraph 239(1)(a) to clarify that the subsection refers to the marking of a candidate voting square with a voter’s first preference.

Item 12 repeals existing paragraph 239(2) and inserts a new paragraph to provide that a person may number as many subsequent candidate voting squares as they wish. This is subject to the minimum set out in 239(1A).

Item 13 inserts a note at the end of subsection 239(1) drawing attention to the provisions relating to non-consecutive numbers in section 270.

Item 14 repeals existing subsection 239(2) and inserts a new subsection (1A), which requires a person to indicate at least as many preferences below the line as there are candidates to be elected (six for a half Senate election, twelve for a full Senate election, or two in the case of Territory elections).

It also inserts a new subsection 239(2) to allow voters to number at least one group voting square, and as many subsequent group voting square as they wish (including no further squares) when voting above the line.

Item 15 amends subsection 239(3) to remove the reference to group and individual voting tickets. This amendment does not change the intention of the subsection, which is to consider a vote valid where a person has marked a single group voting square above the line with a tick or cross, and that mark be considered a person’s first preference.

Item 16 amends paragraph 239(4)(a) to add the word ‘or’ at the end of the paragraph, consistent with modern drafting practice. This amendment does not change the intent or application of the paragraph.

Item 17 amends paragraphs 239(4)(b) and (c) to use the new terminology of ‘candidate voting square’.

Item 18 amends paragraph 268(1)(a) to add the word ‘or’ at the end of the paragraph, consistent with modern drafting practice. This amendment does not change the intent or application of the paragraph.

Item 19 amends 268(1)(b) repeals the subparagraph and inserts a new subparagraph to clarify that a Senate ballot paper is considered informal if it has no vote indicated on it, or a voter has not indicated his or her preferences for as many candidates as are to be elected.

Item 20 amends paragraph 268(1)(c) to add the word ‘or’ at the end of the paragraph, consistent with modern drafting practice. This amendment does not change the intent or application of the paragraph.

Item 21 amends paragraph 269(2)(b) to omit the reference to ‘paragraph 239(1)(a)’ and insert a reference to ‘subsections 239(1) and (1A)’ in line with other amendments to those subsections under this bill.

Item 22 repeals subsections 269(3) and (4) as they reference other subsections repealed under this bill.

Item 23 repeals section 270 and inserts a new section to deal with non-consecutive numbers in Senate ballot papers. The proposed section states that any number in a candidate voting square or a group voting square that is not part of a sequence of numbers commencing with the number 1 must be disregarded. Any number that is repeated is disregarded, along with any following numbers as they are no longer part of a consecutive sequence. For the purposes of this part, the number 1 used alone is considered to be a consecutive sequence.

Item 24 repeals section 272 and inserts a new section that provides for Senate ballot papers to be treated as having been marked according to above the line preferences. This new section takes into account the repeal of the use of group and individual voting

tickets and the amendments to subsection 239(2), which allow voters to number more than one group voting square above the line.

This section states that, where a voter has marked a group voting square with the number 1, the voter has assigned their first preference to the first candidate in that group, and their subsequent preferences to the other candidates in that group in the order they appear on the ballot paper.

Where the voter has marked any further group voting squares using a sequence of consecutive numbers after the number 1, it is taken that the voter has assigned their preferences to the candidates of those groups in the order they appear on the ballot paper.

For example, where a voter has numbered three group voting squares in consecutive order, beginning with the number 1, their preferences will be assigned as follows:

- Firstly, to the first candidate listed on the ballot paper for the group voting square the voter has numbered 1;
- Secondly, to any other candidates listed under in the group voting square the voter has numbered 1, in the order those candidates appear on the ballot paper;
- Thirdly, to the first candidate listed on the ballot paper for the group voting square the voter has numbered 2;
- Fourthly, to any other candidates listed under in the group voting square the voter has numbered 2, in the order those candidates appear on the ballot paper;
- Fifthly, to the first candidate listed on the ballot paper for the group voting square the voter has numbered 3;
- Lastly, to any other candidates listed under in the group voting square the voter has numbered 3, in the order those candidates appear on the ballot paper.

This process will continue until the vote exhausts. This section also contains a provision stating that any repeated number in a consecutive sequence must be disregarded. This also has the effect of disregarding any numbers following those that are repeated, as they are no longer part of a consecutive sequence.

Item 25 inserts ‘and’ at the end of paragraphs 273(5)(a), (b), (c) and (d) in accordance with modern drafting practice. This amendment does not change the intent or application of these paragraphs.

Item 26 removes the phrase ‘marked otherwise than in accordance with subsection 239(2)’ from paragraph 273(5)(f) to ensure that all unrejected ballot papers, not just those marked

below the line, are sent to the Australian Electoral Officer. This reflects the more detailed scrutiny ballot papers will need following the exclusion of group and individual voting tickets.

Item 27 inserts a note at the end of subsection 273(7). This clarifies that, because of the exhaustion of ballots under subsection (26), not all candidates will be elected with a full quota even once surplus votes have been transferred. In these circumstances, the last continuing candidates will be elected, as provided for in subsections (17) and (18). The practical effect of this is that when no further quotas can be achieved, the remaining vacancies will be filled by the candidates with the highest number of votes.

Item 28 amends subsection 273(18) to insert the words ‘notwithstanding that the number of votes for each of these candidates is below the quota’ at the end of the subsection. This clarifies that, in a situation where the number of vacancies remaining equals the number of continuing candidates, those candidates will be elected even if they have not achieved the quota.

Item 29 amends subparagraph 351(1)(b)(i) to omit the words ‘square opposite the name of’ and substitute the words ‘candidate voting square’. This amendment is in line with the new terminology of ‘candidate voting square’ introduced by the bill.

Item 30 amends the instructions for above the line voting set out on Form E in Schedule 1 of the Act (the Senate ballot paper) to reflect the new voting system as established by the bill, in which voters may number more than one square above the line.

Item 31 amends Form E in Schedule 1 of the Act to omit the word ‘or’ next to the squares above the line to reflect the new voting system as established by the bill, in which voters may number more than one square above the line.

Item 32 amends the instructions for below the line voting set out on Form E in Schedule 1 of the Act to reflect the new voting system as established by the bill, in which voters must number at least as many squares below the line as there are candidates to be elected.

Item 33 amends the instructions for below the line voting set out on Form E in Schedule 1 of the Act (the Senate ballot paper) to reflect the new voting system as established by the bill, which allows sitting Independents who are Senators (or, in the case of a double dissolution, who were Senators immediately before the dissolution) to have a group voting square above the line.

Item 34 amends the instructions for below the line voting set out on Form E in Schedule 1 of the Act to reflect the new voting system as established by the bill, in which voters are no longer required to number every square below the line.

Item 35 clarifies that the amendments made under Schedule 1 of the bill apply only to elections for which the writs are issued on or after the commencement of the Schedule (the day after the Act receives Royal Assent).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Legislative Instrument

The Bill amends the *Commonwealth Electoral Act* to implement an optional preferential voting system above and below the line for Senate elections.

Human rights implications

This Bill engages the right to take part in public affairs and elections, as contained in article 25 of the International Covenant on Civil and Political Rights (ICCPR).

The Bill enforces this right by amending the current Senate voting system to give voters greater control over their vote. By removing the use of group and individual voting tickets, the bill allows voters to assign their own preferences and prevents any abuse of the system through preference deals between candidates and parties.

Conclusion

The Bill is compatible with human rights as it seeks to enforce the right to take part in public affairs and elections by improving the current Senate voting system.

NICK XENOPHON