



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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