

Senate voting

- 2.1 This chapter considers the history of Senate voting reform and outlines the current systems of Senate voting and counting.
- 2.2 Recognising that party registration requirements have a direct impact on the size of the Senate ballot paper, it also looks at the history and current practices of party registration.

History of Senate reform

- 2.3 Since federation, the Australian Parliament has not shied away from reform aimed at improving the electoral system. The Senate in particular has been a focus of rigorous debate and extensive reform.
- 2.4 The 1902 Electoral Act provided for plurality voting (first-past-the-post) in both the Senate and the House of Representatives but there was not full agreement on the appropriateness of this for the Senate system. It has been noted that 'the Bill received a rough ride in the Senate, and to a very large degree this was due to the proposed Senate electoral system.'¹
- 2.5 While the method of voting for the House of Representatives was settled by 1918 and has remained largely unchanged, Senate voting has continued to be a focus of debate.
- 2.6 A 1919 bill proposed that voters be required to complete a minimum number of preferences and 1922 reforms enacted grouping of candidates which had been originally withdrawn after criticism that it would encourage 'party machines'. In 1934 full compulsory preferential voting was introduced as per the system already in place in the House.

1 D. Farrell and I. McAllister (2006) *The Australian Electoral System: origins, variations and consequences*, UNSW Press, p. 21.

- 2.7 The system established by these reforms resulted in single party dominance of the Senate, with one party winning ‘all or most seats in one election only to lose all or most in the next election.’² This system remained in place until it became necessary for the size of the Senate to be increased in 1948 raising concerns about the impact of single party dominance in a larger chamber.
- 2.8 The 1948 reforms introduced proportional representation and thus broke the thirty-year pattern of single party dominance. While the reforms were criticised as being politically motivated by the Chifley government, which was expecting to lose the upcoming election and did not also want to lose control of the Senate, they were also applauded by advocates for proportional representation as fulfilling the destiny that the constitutional framers had envisioned.³
- 2.9 The 1948 reforms made the Senate more representative. However, the need to again increase the size of both Houses prompted further reform in the early 1980s.
- 2.10 Until this point any reforms of the electoral system had been criticised as facilitating partisan aims at the expense of electoral ideals. This Committee’s predecessor, the Joint Standing Committee on Electoral Reform, was established in 1983 in an endeavour to provide for a bipartisan approach to electoral reform. It was that committee’s first report that led to the most recent major reforms to the Senate electoral system.
- 2.11 Because of a high informal vote, the 1984 reforms were aimed at making the ballot paper more user friendly by:
- the inclusion of party names on the ballot paper;
 - a relaxation of the rules on the expression of preferences so that ballot papers with 90 per cent of the preferences correct would be accepted;
 - above the line party ticket voting – resulting in the ranking of candidates determined by the political party rather than voters; and
 - changed counting methodology for transferring surplus votes.⁴
- 2.12 Successive Parliaments have embraced reform and experimentation with the Senate electoral system and sent a strong statement to voters that we

2 D. Farrell, and I. McAllister (2006), *The Australian Electoral System: origins, variations and consequences*, UNSW Press, p. 41.

3 J. Uhr, (1999) ‘Why we chose proportional representation’, in *Papers on Parliament No. 34*, Australian Senate, <www.aph.gov.au/About_Parliament/Senate/Research_and_Education/pops/pop34> accessed February 2014.

4 D. Farrell, and I. McAllister (2006), *The Australian Electoral System: origins, variations and consequences*, UNSW Press, p. 44.

do not need to be wedded to a system simply for history's sake when problems are identified.

Party registration and its effect on Senate voting

- 2.13 Senate voting and party registration are intrinsically linked.
- 2.14 The combination of ATL voting with GVTs encourages preference deals, which in turn has provided the incentive for the registration of a large number of parties. As a consequence this has also led to a large increase in the number of candidates BTL.
- 2.15 Currently, to register a party for a federal election a party must:
- be an existing Parliamentary party (with at least one current member of Parliament), or a political party that has at least 500 members nationally who are on the electoral roll and are not relied on by any other party to meet their registration requirements;
 - be established on the basis of a written constitution that sets out the aims of the party;
 - have an acceptable name (determined by the Australian Electoral Commission in accordance with section 129 of the Electoral Act);
 - nominate a registered officer⁵; and
 - pay a fee of \$500.
- 2.16 These requirements are not as rigorous as some state systems (see Table 2.1). For example, the NSW system requires that a new party must:
- have an acceptable name (determined by the NSW Electoral Commission);
 - have at least 750 members, who are enrolled on the NSW electoral roll, and are not relied upon by another party for registration purposes;
 - have a registered officer;
 - have a written constitution that sets out the platform or objectives of the party; and
 - pay a \$2 000 registration fee.⁶

5 The party is required to nominate a registered officer for registration purposes, but is not required to currently have a person in that position, unlike the NSW system.

6 NSW Electoral Commission website, <elections.nsw.gov.au/candidates_and_parties/registered_political_parties>, accessed 14 March 2014.

- 2.17 In addition to these requirements, parties are not entitled to run as a party in NSW state elections until 12 months after the date upon which they successfully register.
- 2.18 In Queensland, rigorous requirements are also stipulated that outline what a 'compliant constitution' entails; including procedures for amending the constitution, very clear membership rules, internal party administration requirements (such as dispute resolution), and pre-selection rules.⁷

Table 2.1: State/Territory party registration requirements

Jurisdiction	Membership requirements	Fees	Deadline for registration
Commonwealth		500	\$500 Before issue of writs
NSW		750	\$2000 Twelve months before close of nominations
Victoria		500	\$642 every 3 years Must re-register during each Parliament
Queensland		500	nil By day of issue of writ
Western Australia		500	nil Before issue of writ
South Australia		200	\$500 Application must be received 6 months before election day
Tasmania		100	nil Before issue of writ
ACT		100	nil Must be registered at least 37 days before election day
Northern Territory	200 or registered with Commonwealth		\$500 Application must be received 6 months before election day

Source *Australian Electoral Commission, Submission 20.3, p. 99*

- 2.19 The impact that the current federal system has on the Senate voting system, and the ease at which some parties can register, can be highlighted by the significant increase in minor or micro-parties over recent elections.
- 2.20 An example of this increase can be seen in the following three states/territory between the 2010 and 2013 elections:

7 Electoral Commission Queensland, *Registration of Political Parties Handbook*, p. 5. <http://ecq.qld.gov.au/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=148&libID=170> accessed 29 April 2014.

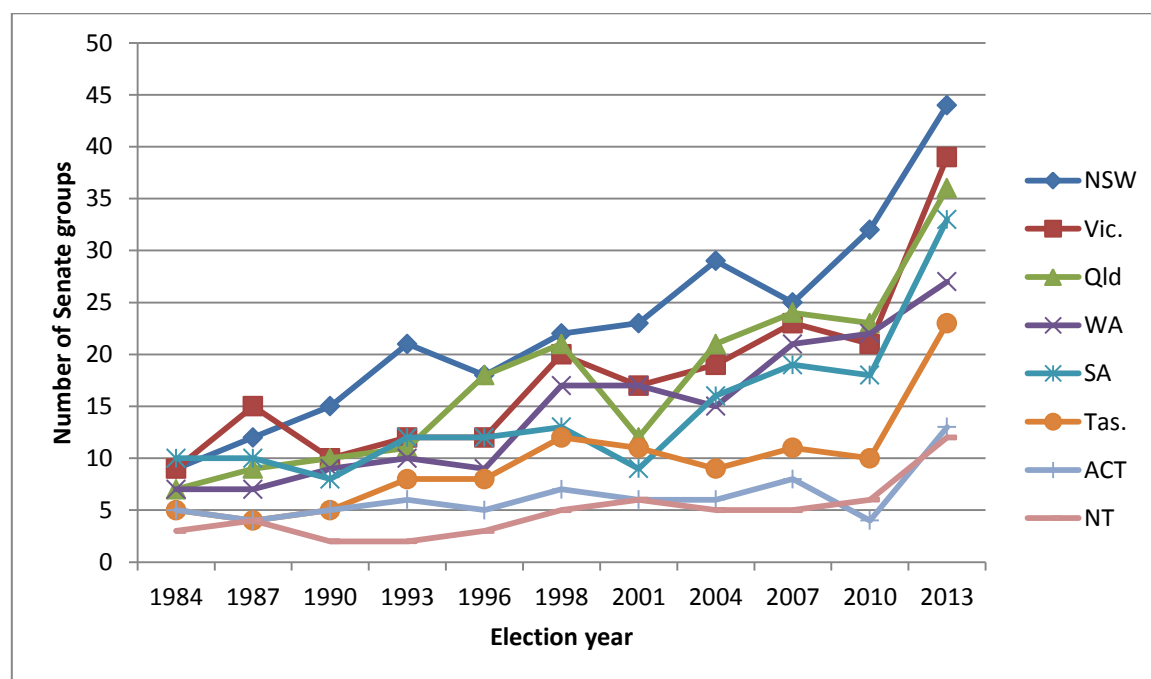
Table 2.2: Comparison of group numbers between 2010 and 2013 Senate elections in Tasmania, the Australian Capital Territory, and New South Wales

State/Territory	Number of groups – 2010	Number of groups - 2013	Percentage increase
NSW	32	44	37.5%
Tasmania	10	23	130%
ACT	4	13	225%

Source Australian Electoral Commission, *Virtual Tally Room results websites for 2010 and 2013 elections*, http://www.aec.gov.au/Elections/Federal_Elections/, accessed 22 April 2014.

2.21 This is mirrored over time by the overall increase in Senate groups over the past 30 years (see figure 2.1).

Figure 2.1: Senate Ballot paper groups, 1984 to 2013 Senate elections⁸



Source Australian Electoral Commission, *Submission 20.3*, p. 25

2.22 This increase in the number of parties and groups contesting Senate elections puts strain on the voting system as outlined below.

2.23 The legitimacy and intention of those parties and their platforms creates a risk of manipulation of election outcomes. It also impacts on electors' ability to comprehend the impact that their ATL vote, and the party manipulation of that vote, may have on the electoral outcome.

8 Excludes ungrouped candidates.

Current Senate voting

- 2.24 The current Senate voting system is complex and grows more complex as the number of groups and individuals standing for election increases.
- 2.25 How the vote works and how the count works are core to how the Senate voting system can be manipulated.

How the vote works

Ballot Papers

- 2.26 Central to the mechanism of Senate voting, and how voters will ultimately choose to cast their vote, is the construction of the Senate ballot paper. A Senate ballot paper is divided into two voting option sections:
- ‘Above the Line’ (ATL) boxes for ‘groups’ that are either:
 - ⇒ registered political parties; or
 - ⇒ groups of independent candidates.
 - ‘Below the Line’ (BTL) boxes for individual candidate order, separated into group column order.
- 2.27 The order of groups on the ballot paper is determined by a random draw, along with a draw to determine the order of any ungrouped candidates who have a separate column BTL. The order of candidates within a group’s column is dictated by the group or political party.
- 2.28 In order for a group or party to get a box above the line, they must lodge a valid Group Voting Ticket (GVT) (or in the case of an incumbent Senator, an Individual Voting Ticket). The rules for the lodgement of GVTs is set out in section 211 of the Act which requires that:
- GVTs must be lodged within 48 hours of the closing of nominations for the election;
 - only those candidates who have requested that their names be grouped under section 168 may lodge GVTs;
 - the group must nominate how many GVTs they wish to submit (up to three).
- 2.29 Some groups in NSW, Victoria, Queensland and SA in the 2013 federal election did not meet the GVT deadline, resulting in them not having a box available above the line for voters to allocate an ATL preference flow.⁹

9 Australian Financial Review, *Faulty fax machine blamed in Sex Party spat over Senate seat*, <www.afr.com/p/national/faulty_fax_machine_blamed_seat_sex_MitiCX50WGyNFbGbzexZHO>, accessed 7 March 2014.

- 2.30 Groups may lodge up to three GVTs, and these GVTs dictate the full preference flow that will be applied when a voter votes above the line.
- 2.31 As candidate numbers have steadily increased over successive elections, the restrictions placed on the construction and format of Senate ballot papers by the Electoral Act has meant that many ballot papers have reached their maximum printable width (of over a metre) and font sizes have had to be reduced to cater for the increased numbers of candidates, ultimately resulting in ballot papers that are hard to read and equally difficult to manage for voting. Indeed, during the 2013 election, plastic magnifying sheets were made available for voters to assist them in reading the ballot paper.¹⁰

Above the line (ATL) voting

- 2.32 The most commonly used voting mechanism in Senate voting is the ATL system (see Table 2.3). Voters can place a single first preference in a group's box ATL, which then dictates their full preference flow for all candidates according to that group's GVT.
- 2.33 In a situation where two tickets were lodged, half of the votes cast by marking the square ATL for that group are deemed to follow one ticket, while the other half are deemed to follow the other; and if the number of votes in question is odd, a determination is made by lot of which ticket the last ballot paper is deemed to follow.
- 2.34 In a situation where three tickets were lodged, one-third of the votes are deemed to follow each ticket, with a determination again being made by lot of the fate of the remaining ballots, in cases where the number of votes in question is not divisible by three.
- 2.35 In the 2013 election, of those voters who voted formally nationally, 96.5 per cent voted above the line, leaving only 3.5 per cent who voted below the line (approximately 470 000 voters).¹¹ See Table 2.3 below.
- 2.36 The ATL 'ticket' system of preference flow distribution is predicated on the assumption that the voter will have scrutinised the published GVTs and be informed of, and fully comprehend, the potential flow of their preferences, both within the group of their first preference, and on to the other groups on the ballot paper.

10 Sydney Morning Herald, *Magnifying glass needed to read tiny print on huge Senate ballot paper*, <smh.com.au/federal-politics/federal-election-2013/magnifying-glass-needed-to-read-tiny-print-on-huge-senate-ballot-20130708-2pmcy.html>, accessed 22 April 2014.

11 AEC, results 2013 federal election, <results.aec.gov.au/17496/Website/SenateUseOfGvtByState-17496.htm>, accessed 4 March 2014.

- 2.37 If a voter marks more than one box ATL this does not make their vote informal, however only the '1' vote is taken into consideration, all numbers from '2' onwards are disregarded and preferences are distributed according to the GVT relevant to the marked '1' box.

Below the line voting (BTL)

- 2.38 BTL voting requires a voter to number all boxes below the line in a complete sequential order, expressing all preferences for all candidates in an order of their own choosing.
- 2.39 While the ballot paper instructs a voter to fill in every box below the line to make their vote count, section 270 of the Electoral Act allows certain ballot papers with non-consecutive number sequences to be determined as formal and for the preferences expressed (up to a point) to be distributed from those ballot papers.
- 2.40 During the 2013 election, there were many references made in social media to the 'savings provisions' in the Electoral Act, meaning many voters attempted to vote below the line without numbering all boxes below the line, in an aim to limit their preference distribution.¹²
- 2.41 Despite this commentary and the more complete control on preference flow allowed by voting BTL, the vast majority of voters voted above the line in the 2013 election, with the majority of those voters who did vote below the line expressing full preferences for all candidates.
- 2.42 Voters cannot practically know enough about the up to 110 candidates to be said to be casting an informed vote and yet they are required to express preferences beyond the point they may wish to.

12 Antony Green's ABC election blog, <blogs.abc.net.au/antonygreen/2013/08/voting-below-the-line-in-the-senate.html#more>, accessed 4 March 2014.

Table 2.3 Below the line vote totals and percentage of formal vote by state/territory (election held September 2013)

State/Territory	Below the line votes	Percentage of total formal votes cast
New South Wales	92 041	2.10%
Victoria	90 215	2.67%
Queensland	78 528	3.00%
Western Australia*	50 131	3.83%
South Australia	67 853	6.53%
Tasmania	34 834	10.34%
Australian Capital Territory	49 034	19.87%
Northern Territory	8 394	8.11%
Total of national formal votes	471 030	3.51%

Source Australian Electoral Commission, *Senate Group Voting Ticket Usage*, <results.aec.gov.au/17496/Website/SenateUseOfGvtByState-17496.htm>, accessed 24 March 2014.
*Based on voting for the September 2013 election.

How the count works

Election Night count

- 2.43 Upon the close of polling (6pm local time in each state and territory) Senate votes are counted at the polling place to record both ATL and BTL first preferences, in order to record initial indicative first preference flows from polling places. Counting of votes is known as the scrutiny, and the initial count (undertaken by polling officials supervised by Officers-in-Charge (OICs)) at the polling place is the first step in the scrutiny process.
- 2.44 When a House of Representatives election and a Senate election are held on the same day, the House of Representatives ballot papers are counted first. If a referendum were to be held on the same day, the referendum ballot papers would be counted last.
- 2.45 Polling officials in the polling place (under the direction of the OIC) are required to complete four main tasks relating to formal ballot papers after the polling places have closed. They are required to:
- count the first preferences on the House of Representatives ballot papers;
 - conduct a two-candidate-preferred count of the House of Representatives ballot papers;
 - count the first preferences on the Senate ballot papers; and

- count and sort any declaration vote envelopes received during the day (these remain unopened).
- 2.46 The first preference results for House of Representatives ballot papers are tabulated and phoned through to the Divisional Returning Officer, along with the number of informal votes. The Divisional Returning Officer enters the results for each polling place into the AEC's national computerised election management system (EIMS). These results are electronically fed to the Virtual Tally Room on the AEC website and directly to some media.
- 2.47 Polling officials then conduct an indicative distribution of preferences (a two-candidate-preferred count for the House of Representatives) between the two previously identified leading candidates to give an indication of the likely outcome of the poll in that division.
- 2.48 The first preference votes on the Senate ballot papers – above and below the line – are then counted and a single figure for each group and each ungrouped candidate is phoned through to the Divisional Returning Officer and entered into EIMS.
- 2.49 It is only possible to get a general impression of the Senate results on election night. This is because Senate results cannot be calculated until the state or territory wide total of votes used to determine the quota is known.
- 2.50 Accordingly, on election night, the only figures released for the Senate are the first preference votes for groups and ungrouped candidates.
- 2.51 Declaration envelopes containing absent votes, pre-poll declaration votes (i.e. those pre-poll votes cast outside an elector's division), postal votes and provisional votes are not included in the count until after polling day.
- 2.52 All ballot papers (formal, informal, and unused) are then packaged securely and returned to the Divisional Office as soon as possible (normally on polling night). This early return of materials and ballot papers allows for the continuation of the scrutiny and more detailed counting processes to occur (referred to as the "fresh" scrutiny).

Fresh Scrutiny

- 2.53 Fresh scrutiny of Senate ballot papers is conducted after election day. This scrutiny is usually done in a divisional scrutiny centre, but may be undertaken within the Divisional Office or in a central location within the state or territory.
- 2.54 The fresh scrutiny of Senate ballot papers involves opening parcels of ballot papers from polling places, extracting and checking ballot papers that have been marked below the line and appear to be formal and despatching these to the Central Senate Scrutiny Centre for data entry. All

- other Senate ballot papers are retained at the scrutiny location, then checked and grouped according to the above the line preference and whether they are determined to be informal ballot papers.
- 2.55 Fresh scrutiny is routinely conducted in the days following election day, with the exact time being advised to candidates by the DRO. Any person approved by the officer conducting the fresh scrutiny may be present, as well as any duly appointed scrutineers.
- 2.56 Any declaration votes or postal votes received during this time are also scrutinised to determine whether they can be admitted to the count (known as preliminary scrutiny), and if so determined, the ballot papers are added to the scrutiny process and handled accordingly.
- 2.57 During the fresh scrutiny, any scrutineer may challenge the formality or authenticity of a ballot paper. Upon such a challenge, the officer undertaking the scrutiny or the DRO will determine whether the ballot paper is to be accepted or rejected into further scrutiny.
- 2.58 Once finalised, the above the line totals for groups, informal totals, and other totals are entered into EIMS and these totals are subsequently loaded into the EasyCount Senate system, along with GVTs lodged by every relevant group, to be combined with below the line vote data from the Central Senate Scrutiny.

Central Senate Scrutiny (CSS) and Senate 'count' process

- 2.59 The AEC conducts a Central Senate Scrutiny (CSS) process in each State and Territory. This is organised in a central location to enable data-entry operators to enter below the line preferences into the EasyCount Senate computer system, to enable outcomes on formality and eventual quota calculation and preference distribution to be undertaken.
- 2.60 The EasyCount Senate system calculates the quota, distributes preferences and determines the result of the Senate election. It also provides full accountability and an audit trail, including reports for inspection by scrutineers.
- 2.61 The relevant Australian Electoral Officer (AEO) notifies all Senate candidates by letter of the location and hours of operation of the CSS Centre in that State or Territory, so relevant scrutineers can be appointed and directed to the process.
- 2.62 Each ballot paper is entered twice by data entry operators as a quality assurance check. The initial data entry and the second entry (for verification) is undertaken by different data entry operators.

- 2.63 During this process, EasyCount Senate is able to detect whether there is a discrepancy in the number data entered by the two operators or whether a vote is informal.
- 2.64 Once all data entry of BTL ballot papers is complete, the system will combine the ATL and BTL ballot data and calculate a quota.
- 2.65 The quota is calculated by dividing the total number of formal ballot papers by one more than the number of Senators to be elected and then adding '1' to the result (ignoring any remainder).
- 2.66 As an example the quota calculation for the 2013 Senate election in New South Wales (NSW) was calculated in three steps:
- $\left(\frac{4\,376\,143}{6+1}\right) = 625\,163.28$;
 - Add 1 to that total = 625 164.28; then
 - Ignore the remainder, establishing a final quota of 625 164.¹³
- 2.67 The quota is designed to ensure that it is not possible to elect more candidates than there are vacancies. In the NSW example, if the quota was set at 625 163, it would be possible for seven candidates to each receive a quota of votes. When the quota is 625 164, this is not possible.
- 2.68 Candidates who receive the quota, or more, of first preference votes, are elected immediately. Surplus votes above the quota are transferred before any exclusions are undertaken. Each transfer of a surplus is undertaken using a system of transfer value calculation, which transfers a proportion of the surplus value to the next available preference indicated on the ballot.
- 2.69 Surplus votes are transferred to the candidates who received the second preference of voters (either according to the GVT if they voted above the line, or their second preference below the line). Because it is not possible to determine which votes actually elected the candidate and which votes are surplus, all the elected candidate's ballot papers are transferred at a reduced rate.
- 2.70 Each ballot paper is regarded as representing only a fraction of a vote, so that the total value of the transferred ballot papers is only equal to the number of votes in the surplus. This fractional value is called the 'transfer value'.
- 2.71 The transfer value is calculated by dividing the elected candidate's number of surplus votes by the total number of ballot papers held by that candidate. The resulting number is cut off after the eighth decimal place, without rounding.

13 The expressed arithmetic calculation is - $\left(\frac{4\,376\,143}{6+1}\right)+1 = 625\,164.28$

- 2.72 Ballot papers retain the transfer value assigned to them in this way until such time as they are transferred as part of another candidate's surplus, when they are assigned a new transfer value.
- 2.73 Occasionally, there may be no next available preference on the ballot paper, in which case it is set aside as 'exhausted'.
- 2.74 As a result of this process of transferring surplus votes, other candidates may be elected. If all surplus votes from elected candidates are transferred and there are still some unfilled positions, further preference distribution occurs by the exclusion and transfer of unsuccessful candidates (or bulk exclusion of sets of candidates), starting with the candidate that received the least votes.
- 2.75 Excluded candidates have their ballot papers distributed to the remaining candidates to whom the voters have given their preferences (or in most cases, the next preference according to that group's GVT).
- 2.76 Ballot papers of the same transfer value are distributed at one count. Papers with a value of '1' are distributed first; at the next count those with the next highest transfer value are distributed, and so on.
- 2.77 A single exclusion will be carried out only if a bulk exclusion is not possible.
- 2.78 In order for a bulk exclusion to occur, it must be determined in a manner prescribed in subsection 273(13A) of the Electoral Act that the exclusion of all of the candidates in question would inevitably occur if exclusions were conducted one at a time.
- 2.79 If any of the remaining candidates obtain a quota through this process of distribution, they are determined elected. Their surplus (if any) is transferred before any other candidates are excluded. The above process continues until all remaining vacancies are filled.
- 2.80 The order of election overall is determined by the count at which candidates achieve their quota, with those gaining a quota earliest being determined as elected to the relevant vacancy in order. If two or more candidates are elected at the same count, the candidate with the largest surplus is deemed to be elected first, the candidate with the next largest surplus is deemed to be elected second, and so on.
- 2.81 The order of election is significant where there are surpluses to be transferred. The surplus votes of the candidate elected earlier are always distributed before those of later elected candidates.
- 2.82 The same process of determining the order of standing in the poll is used to determine the order of election in a case where two or more candidates are elected at the same count with the same number of surplus votes.

- 2.83 After each distribution of a surplus, and each exclusion or bulk exclusion, the candidates are listed in the order of their standing in the poll, that is, the order of the relative number of votes of each continuing candidate, with the continuing candidate with the most votes standing highest in the poll and the continuing candidate with the fewest votes standing lowest in the poll.
- 2.84 If two or more continuing candidates have the same number of votes, those candidates stand in the poll in the order of the relative number of votes of each of those candidates at the last count at which each of them had a different number of votes, with the candidate with the most votes at that previous count standing higher in the poll and the candidate with the fewest votes at that previous count standing lower in the poll.
- 2.85 For example, if on a particular count, candidates A and B both have 100 votes, but at the previous count A had 75 and B had 40, then A stands higher in the poll on this count than B.
- 2.86 If there is no such previous count at which the candidates had a different number of votes, the AEO for the state or territory determines the order of standing of those candidates in the poll by lot.
- 2.87 In the event candidates are tied for election, the AEO has a casting vote, enabled by the requirement that they otherwise do not vote at the Senate election.
- 2.88 There is a rare possibility that two candidates remain in the scrutiny and there is only one vacancy to fill. If this occurs, the continuing candidate with the larger number of votes is elected, even if that number is below the quota. This can happen if the election result is so close, and so many ballot papers have been set aside as exhausted, that it becomes impossible for any continuing candidate to reach a quota through further preference distribution.

Group Voting Ticket (GVT) preference flow 'gaming' effects

- 2.89 In the 2013 federal election, the preferences allocated on group voting tickets by micro-parties led to drastically different election results to those reflected in the primary vote results.
- 2.90 It is appropriate to note that this is not the first instance of this sort of result in the Senate. In 2004, Steve Fielding was successfully elected as a Family First Party candidate in Victoria with Family First only receiving 1.88 per cent of formal first preferences, equalling only 0.1298 of a quota. In the same election, the Australian Greens received 8.79 per cent of

formal first preferences, totalling 0.6087 of a quota, yet had no candidate elected.¹⁴

- 2.91 This is further illustrated by the successful election to the Senate of Victorian candidate from the Australian Motoring Enthusiast Party, whose party only received 16 604 above the line ticket votes and who received 479 below the line first preference votes, representing 0.51 per cent of formal first preference votes (or just 0.0354 of a quota).¹⁵ In the view of the Committee this demonstrates that the Australian Motoring Enthusiast Party candidate's successful election was not truly reflective of the electorate's will.
- 2.92 Despite this very small percentage of first preference votes, Senator-elect Muir was elected to the Senate for Victoria in the final vacancy.
- 2.93 His successful election was only achieved due to a final transfer value of 143 118 votes from the Australian Sex Party, which had secured a primary vote of 63 883 votes – more than the successfully elected party.¹⁶ This eventual transfer value of preferences and election of a candidate with an extremely low number of primary first preferences demonstrates that the 'lottery' effect of the 'gaming' of group preferences does indeed have the potential to pay off, albeit with random and uncertain outcomes.
- 2.94 In the context of the electoral system, the 'gaming' is created by micro-parties allocating agreed (or negotiated) higher preferences to each other (in some cases, these micro-parties have no similarities, indeed polar opposite, policy positions). When exclusions of lower polling candidates create an aggregate transfer of preferences, there is a higher likelihood of election of one of these micro-party candidates, based on transferred preferences that electors have no reasonable way of knowing when casting their above the line vote.¹⁷
- 2.95 Senator-elect David Leyonhjelm gave an example how this type of activity can result in preferences flowing to micro-parties with very different policies:

The Voluntary Euthanasia Party, which claims to be a single-issue party, by logic ought to have preferenced the Liberal Democrats quite high because voluntary euthanasia is quite an important

14 AEC, results 2004 federal election, <results.aec.gov.au/12246/results/SenateStateFirstPrefs-12246-VIC.htm>, accessed 14 April 2014.

15 AEC, results 2013 federal election, <results.aec.gov.au/17496/Website/SenateStateFirstPrefs-17496-VIC.htm>, accessed 6 March 2014.

16 AEC, WA Senate Distribution of Preferences, <results.aec.gov.au/17496/Website/External/SenateStateDop-17496-VIC.pdf>, accessed 6 March 2014.

17 Prof George Williams, *Transcript of evidence*, 13 March 2014, Sydney, p. 1.

issue to us. The Voluntary Euthanasia Party, in the Western Australian Senate election rerun, claimed to be a single-issue party. The party with one of the closest policies to theirs would be the Liberal Democrats. By rights, Voluntary Euthanasia Party supporters, I would think, would like to think that, if the party does not win, their preferences ought to go to another party which supports the issue, which would be the Liberal Democrats. They did not do that. They preferenced us after a whole lot of parties which have absolutely no policy on VE or are vaguely anti-VE.¹⁸

- 2.96 Graham Askey, registered officer of the Help End Marijuana Prohibition (HEMP) Party, noted that there were multiple avenues that a micro-party could take in negotiating or allocating preferences:

There are three ways to make use of elections to further a party's objectives. You can timidly direct your preferences to whichever parliamentary party promises to best take care of your issue, or you can use the opportunity to advocate for your cause with other parties who may be seeking your preferences, or you can actually try and win a seat.¹⁹

- 2.97 The actual negotiations process was outlined by Robbie Swann, registered officer of the Australian Sex Party:

You have got to remember, for example, the preference deal we did with David Leyonhjelm and the Liberal Democratic Party at the last federal election. In the state of Victoria and New South Wales, we negotiated a preference deal with him and for the other three parties that he controlled – the Outdoor Recreation Party, the Smokers Rights Party and at the end the Republican Party. He signed off on their GVTs.

That was contracted over a period of three months. They were really serious and in-depth negotiations.²⁰

- 2.98 Highlighting the tenuous nature of the process, those negotiations did not have the result that the Sex Party sought when Senator-elect Leyonhjelm failed to lodge the GVTs:

At that point we formed the view that he probably wasn't genuine in what he was saying and that in fact he had purposely not submitted the forms but we will never know why. That is what I think needs to be found out: why didn't he do that? Why did he break a promise that in retrospect probably would have seen Fiona

18 Senator-elect David Leyonhjelm, *Transcript of evidence*, 28 April 2014, Canberra, p. 40.

19 Graham Askey, *Transcript of evidence*, 1 May 2014, Canberra, p. 1.

20 Robbie Swan, *Transcript of evidence*, 1 May 2014, Canberra, pp. 5-6.

Patten as a senator-elect at the moment for Victoria and not Ricky Muir.²¹

2.99 The Committee received evidence that other attempts at 'gaming' had occurred during the 2013 federal election, with the formation of a micro-party alliance organised by Glenn Druery. Of particular interest to the inquiry Committee is Mr Druery's reported practice of negotiating preference deals.

2.100 The Committee received extensive evidence that supports the view that such practices distort the will of the electorate.

2.101 Senator-elect Leyonhjelm stressed Mr Druery's role:

Where Glenn Druery is very skilled is in understanding how those preferences, if they are allocated, what the impact of them will be on the outcome. And if you put them in a certain order and you get them coming before another party who's knocked out, you will end up benefitting.²²

2.102 The deliberate arrangement of minor and micro-parties into pre-arranged preference deals was emphasised by Greg Barnes, former Wikileaks Party advisor:

The first meeting I ever went to with him, he said something to the effect of - there were about 20 or 30 people in the room - "One of you and your party will be elected." And he had them from that moment on.²³

2.103 According to Senator-elect Leyonhjelm, Mr Druery:

encourages the members of his minor party alliance to set aside their policy differences as well in order to exchange preferences, and a few of them—I have to say not all of them but a few of them—have actually gone along with that.²⁴

2.104 Mr Druery denied these claims, stating that the micro-party alliance was not guided by him:

As far as the minor party alliance and how people preference are concerned, that is entirely up to them. I do not tell them how to preference, but I do say that there are essentially two broad-brush ways of getting elected if you are a minor party—or two ways of preferencing, I should say. They are the two Ps, as I like to put it:

21 Robbie Swan, *Transcript of evidence*, 1 May 2014, Canberra, p. 6.

22 ABC - 7:30, *Promoting people power or gaming the system? Meet 'the preference whisperer'*, <abc.net.au/7.30/content/2014/s3975400.htm>, accessed 28 April 2014.

23 ABC - 7:30, *Promoting people power or gaming the system? Meet 'the preference whisperer'*, <abc.net.au/7.30/content/2014/s3975400.htm>, accessed 28 April 2014.

24 Senator-elect David Leyonhjelm, *Transcript of evidence*, 28 April 2014, Canberra, p. 47.

there is the pragmatic approach and the philosophical approach. The philosophical approach is that you only preference groups that share philosophical views with you, and the pragmatic is that you do whatever you need to do to get elected. It is up to the groups within the minor party alliance to preference within their collective party conscience, if you will. Some of them are quite pragmatic, some of them are very philosophical, and we have a range in the middle. But what they do is up to them, their committee and their members.²⁵

2.105 Mr Askey also denied the claims about the intention of the alliance:

That is what I want to refute, that this small party alliance is sort of a gaming room of some fashion. I do not think that is true at all. In fact in my view it is Mr Leyonhjelm who wants to use this word 'gaming' and use the person who is 'gaming the system' because he has these three front parties which automatically give him a No. 2 preference. If you are an autonomous party you simply do not give up your twos straight away to another party. You try to swap preferences with someone else.²⁶

2.106 He further emphasised the perception of the alliance's operation:

Everyone thinks the so-called rules of the small-party alliance are that you must preference everyone else – it is like *Fight Club*: when you are in *Fight Club* you must preference *Fight Club*. That is not true. The rules are that you negotiate with anyone else who is in that room, in the small-party alliance. Just talk about your issues, and they will talk about their issues.²⁷

2.107 Mr Druery informed the Committee that he offers advice to members of the minor party alliance as a political consultant. They do not pay him a fee but they do pay for some services such as running tutorials and explaining how the preference system works. Two parties paid him to negotiate preferences.

2.108 The legal status of Mr Druery's practices are highlighted by Professor George Williams who said:

He's realised how that system can be exploited and he's entitled to do so. The system is designed in a way that enables that to happen.²⁸

25 Glenn Druery, *Transcript of evidence*, 1 May 2014, Canberra, p. 13.

26 Graham Askey, *Transcript of evidence*, 1 May 2014, Canberra, p. 1.

27 Graham Askey, *Transcript of evidence*, 1 May 2014, Canberra, p. 2.

28 ABC – 7:30, *Promoting people power or gaming the system? Meet 'the preference whisperer'*, <abc.net.au/7.30/content/2014/s3975400.htm>, accessed 28 April 2014.

- 2.109 This effect is also supported by the targeted naming of some micro-parties, aligning with interests or ideologies that may spark voters to allocate their preferences by association – sports, motoring, fishing, environmental or animal protection etc.
- 2.110 It can also be achieved when the same individual lodges the GVTs for multiple parties which share policies or basic ideologies. For instance, such an arrangement exists between the Liberal Democratic Party and the Outdoor Recreation Party, Senator-elect Leyonhjelm said:
- The Liberal Democrats is our main party. Outdoor Recreation Party preferences go straight to the Liberal Democrats. After that, they will go to parties with which we have done preference deals.²⁹
- 2.111 These micro-parties can then be used to harvest preferences for other parties, and could lead to the establishment of a large number of single issue parties which would then harvest preferences for the main party. Senator-elect Leyonhjelm told the Committee:
- If we had the energy, time and motivation, I would establish 20 such parties. There would be a 'tobacco taxes are too high' party. There would be a 'no alcopops tax' party. There would be a 'no carbon tax' party. I would have 20 of them. There would be no overlapping membership and there would be, I guarantee, enough people who are cranky about those sorts of issues to register them.³⁰
- 2.112 Mr Druery acknowledged that front parties have been established, which in effect do not have an ideological base as they are set up to harvest votes. Mr Druery said he had not been involved in establishing front parties since the 1999 NSW state election.
- 2.113 Mr Druery explained how easy it is to set up front parties:
- Currently, if you want establish the new Labor Party today and I was advising you, under the current system, I would say, 'Tony, get a teenager to set up a Facebook page for you. Put some emotive stuff on that Facebook page with some pictures and write some things on there that really grab people's attention. Spend your \$20 or whatever it is a day advertising with Facebook and get it out there to the public. 'I am not an IT guy but 'Click here to join the party or be directed to the party's website.' Click here to join. At that rate you can pick up your 500 members in a matter of weeks, sometimes a matter of days. That can be submitted electronically. You will go through the various checks and

29 Senator-elect David Leyonhjelm, *Transcript of evidence*, 28 April 2014, Canberra, p. 43.

30 Senator-elect David Leyonhjelm, *Transcript of evidence*, 28 April 2014, Canberra, p. 44.

balances and what not with the Electoral Commission and Bob's your uncle: you're a political party.³¹

2.114 This practice was re-affirmed by Mr Druery:

I was in attendance at meetings throughout 2010 and 2011 where it was the clear intent of David Leyonhjelm to set up and establish front parties – in fact, as many parties as he could. He eagerly admitted that if he had the time, he would establish 20 front groups and front parties. These groups were set up with a specific aim of attracting votes and directing them to the Liberal Democratic Party. And that is it.³²

2.115 The 'lottery' effect of preference deals reached between some of the micro-parties was highlighted by the fact that in the 2013 Western Australia Senate count a 14 vote difference between two candidates at one exclusion point, and a 12 vote difference between the same two candidates during the recount, resulted in the election of completely different candidates into the fifth and sixth vacancies in each circumstance.³³

2.116 The random benefit of this is akin to participating in a lottery:

in effect, [micro-party] candidates buy a lottery ticket, the price of which is the cost of the deposit, with first prize being six years in the Senate.³⁴

2.117 Whilst this system is not illegal and is purely an unintended consequence of the well-intended introduction of the ticket voting system in 1984, the eventual outcomes do not reflect the intentions of many voters.

2.118 Mr Druery refused to concede that a Senator being elected through GVT preference deals does not represent a considered vote by electors. He argued that voters should be able to understand the GVTs and that the GVTs provided greater diversity in the parliament. When asked about the seemingly random nature of the candidate elected, he stated:

It is not random diversity. I have a very good idea of who will be elected.³⁵

2.119 The reported practice of certain individuals in organising the creation of 'front' micro-parties and the negotiated allocation of preferences across multiple parties, to increase the chance of one of those parties winning the

31 Glenn Druery, *Transcript of evidence*, 1 May 2014, Canberra, pp. 11-12.

32 Glenn Druery, *Transcript of evidence*, 1 May 2014, Canberra, p. 13.

33 AEC Petition to the Court of Disputed Returns, <www.comlaw.gov.au/Details/C2013G01703>, accessed 2 April 2014.

34 Michael Maley, *Submission 19*, p. 8.

35 Glenn Druery, *Transcript of evidence*, 1 May 2014, Canberra, p. 14.

'lottery', is an indication of the recognition of this manipulation of the system and its potential benefits.³⁶

- 2.120 These benefits are not new either; while they have gained national prominence since the 2013 election, the manipulation of the ticket preference flows, and occurred in NSW until the voting system was reformed following the 1999 state election.³⁷

36 ABC News online, *WA Senate vote: Microparties unlikely to pick up seat says preference whisperer Glenn Druery*, <abc.net.au/news/2014-03-31/preference-whisperer-says-microparty-success-unlikely-in-wa-sen/5353046>, accessed 2 April 2014.

37 ABC - 7:30, *Promoting people power or gaming the system? Meet 'the preference whisperer'*, <abc.net.au/7.30/content/2014/s3975400.htm>, accessed 2 April 2014.

