

Analysis and recommendations

- 4.1 The weight of evidence received from electoral experts, public sentiment and the views of political parties has suggested three key proposals for change namely:
- introducing some form of optional preferential voting, both above and below the line;
 - mandatory thresholds; and
 - strengthening party registration and candidate nomination rules.
- 4.2 In addition, significant community concern has been raised about the ability of people to stand for election in states and territories in which they are not resident and this is also an issue that must be considered.
- 4.3 This chapter examines these issues in more detail and makes six recommendations for reform as guidance for legislative change. These recommendations are based on the Committee's assessment and analysis of the evidence received, recognising the principle that the electoral system must be open and transparent through:
- a voting system that has integrity, is simple and clear and provides people with the power to have their voting intent upheld; and
 - political parties that are real and genuine and their participation in the electoral system is commensurate with real community support.

Proposals for change to above the line (ATL) voting

- 4.4 Chapter 2 provided an outline of the origins and development of the current system of full preferential voting below the line and the single-transferrable vote above the line in Australian Senate voting.

- 4.5 The requirement to fully outline all preferences below the line, or allocate preferences according to a GVT above the line, drew strong criticism from many commentators following the declaration of results of the 2013 election.
- 4.6 The majority of criticism focused on the above the line voting system and ‘gaming’ of preferences between political parties, and that the above the line system does not allow voters to adequately express their preferences for the candidates that ultimately may end up representing them in the Senate; ‘it means that a voter can vote for a party only to find that their preferences end up with a different party for which they never would have considered casting a vote.’¹
- 4.7 The undesirability of uncertainty when a voter’s preference ends with an unpreferred candidate is compounded by the onerous nature of voting below the line. Many voters indicated their choice to vote above the line because ‘the numbers of individuals was so vast I was concerned I would make a mistake and make my vote informal.’²
- 4.8 While ATL voting results in a voter’s preferences for all candidates being distributed through GVTs, compulsory BTL voting also requires voters to preference all candidates. Due to the current nature of transfer value methodology, when a first preference is excluded and transferred, the transfer value means that candidates with lower numbers of first preferences – even those that may be in one hundredth place in the current count – are treated as if they were a voter’s first preference if they come into play.
- 4.9 A change to a form of optional preferential voting both above and below the line would not only return control of preferences to voters, but remove the outcome that voters may end up preferencing groups that they have no desire to see elected or indeed no ideological agreement with, purely due to the mechanism of ticket voting and preference deals.
- 4.10 All of the proposals for change to voting above the line were advocated to the Committee with the worthy objective to end the gaming of the Senate voting system. It is the Committee’s view that all would be effective in ending the gaming of the system.
- 4.11 The Committee acknowledges that all the proposals for reform have strengths and drawback. It further notes any change of the magnitude contemplated inevitably will have consequences.
- 4.12 Compulsory preferential voting above the line would have the advantage of returning choice to the voters voting above the line, and mirrors the
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1 George Williams, *Submission 23*, p. [2].

2 YWCA, *Submission 76*, p. [2].

system used in House of Representatives elections. It would have the disadvantage of increasing the level of informal voting by virtue of voters continuing to merely fill in one box due to 30 years of habit, and the necessity to complete a large number of boxes.

- 4.13 Optional preferential voting above the line has a number of strengths, which are outlined later in the chapter, and was certainly recommended by the vast bulk of the evidence. The drawback that must be acknowledged, and has been even by its advocates, is that it will lead to higher rates of vote exhaustion.
- 4.14 In this sense there is an obvious trade-off between higher informality with compulsory preferential voting above the line, and higher vote exhaustion with optional preferential voting.
- 4.15 That is why some submitters advocated the compromise 'hybrid' of limited or partial preferential voting above the line, where voters would be required to complete a small specific number of boxes as a minimum to reduce vote exhaustion.
- 4.16 After considering all the options, and assessing their merit and capacity to strengthen Senate Electoral processes, the Committee's judgement is in favour of optional preferential voting above the line.
- 4.17 The Committee believes that this option will give the greatest choice to voters, and in the transition to this system, not drive additional levels of informal voting.

Above the Line Optional Preferential Voting (ATL OPV)

- 4.18 Above the line optional preferential voting has been proposed to address the concerns and criticisms of 'preference harvesting' or 'gaming' between political parties.
- 4.19 Under this proposal, rather than having a single preference stated above the line equalling a full preference distribution through all candidates (via group voting tickets); voters will be able to express as many above the line preferences as they wish.
- 4.20 This system would allow for voters to do as they are able to do currently; express a first preference above the line, but to also express any further preferences for relevant groups by numbering boxes in a further sequential order, for the extent of their desired preference distribution.
- 4.21 For example, if a voter was to number three boxes above the line in order, then their preferences would be distributed in order of the candidates in those groups (with the order within the group still nominated by the group), until the last numeric preference was allocated. No further preferences would be distributed past the last candidate in the last group.

- 4.22 In practice this would mean that if a voter voted 1 for Party A (fielding 3 candidates) and 2 for Party B (fielding 3 candidates) ATL the vote would flow:
- 1, 2, 3 to the three Party A candidates;
 - 4, 5, 6 to the three Party B candidates.
- 4.23 Parties should still retain full control of the order of their candidates.
- 4.24 If a voter were still only to express one above the line preference, their preferences would only extend as far as the candidates within that group. This will adequately reflect the true intentions of that voter, if they do not want to express Senate preferences beyond that single group; however it may cause an issue where that group has less candidates than there are vacancies and their vote exhausts.
- 4.25 Some have advanced measures that could be employed to encourage voters to express a number of preferences so as to limit vote exhaustion under this model.
- 4.26 For instance Antony Green made two suggestions for consideration. The first was in order for a party or group to be listed above the line, that group must be required to field at least the number of candidates for which there are vacancies.
- 4.27 Secondly he suggested another possible option:
- You can do what they do in the ACT. The ACT says on its ballot paper: 'You must give five preferences or you must give seven preferences.' The Act says you only need one preference, but they say five or seven to encourage people to give more preferences. You can adopt that approach. The ballot paper instruction can say: 'You must give six preferences,' but the formality rule may be just one preference.
- 4.28 Indeed, the NSW Legislative Council voting system seeks to deal with vote exhaustion concerns by instructing voters to preference a minimum number of boxes, whilst still treating a vote with a single 1 as formal.
- 4.29 The Australian Labor Party's submission also makes note of this issue, and the potential for ballot paper instructions to seek to address vote exhaustion concerns:
- Labor's preferred position would also see a requirement that ballot paper instructions and how-to-vote material advocate that voters fill in a minimum number of boxes above the line, while still counting as formal any ballot paper with at least a 1 above the line.

This would highlight and encourage voters to indicate preferences if they were inclined to, and assist in keeping vote exhaustion to a minimum.³

Below the Line Optional Preferential Voting (BTL OPV)

- 4.30 Either independent of, or accompanying above the line optional preferential voting, optional preferential voting below the line has been suggested as a more complete way of addressing the concerns with Senate voting.
- 4.31 Allowing voters to express preferences below the line, for as many candidates as there are vacancies (or more if desired), or for a minimum of any arbitrary round number totalling more than the vacancies, allows for a voter to allocate their preferences accurately to their desired flow.⁴
- 4.32 This system would replicate the current control that voters have over full preference distribution below the line, but would remove the onus of distributing a preferences to all candidates. This would remove onerous requirement of correctly numbering large numbers of boxes in sequence in order to cast a formal vote.
- 4.33 It can be argued that with the recent numbers of parties and candidates in Senate elections, it is in fact impossible for a voter to actually cast a fully considered below the line vote. Mr Michael Maley has pointed out that the combinations of potential preference options 'in every State at the 2013 election, the number of alternatives was greater than the estimated number of atoms in the universe'.⁵

Conclusions and recommendations

- 4.34 The complexity of the current Senate voting system needs to be simplified in order to return the control of preferences to voters. The Committee is therefore recommending:
- the introduction of optional preferential above the line voting;
 - the introduction of 'partial' optional preferential below the line voting with a minimum sequential number of preferences to be completed equal to the number of vacancies (six for a standard half Senate election or twelve for a double dissolution election, two for territories); and
 - the abolition of group voting tickets.

3 Australian Labor Party, *Submission 187*, p. [4].

4 Malcolm Mackerras, *Submission 7*, p. [2].

5 Michael Maley, Working Paper no. 16, *Optional Preferential Voting for the Australian Senate*, p. 16.

- 4.35 There are further considerations relevant to these recommended changes, such as quota and transfer value calculation methodologies, but due to their complexities and the requirement for practical manual fall-back counts, their suitability must be considered further. It is the Committee's view that the current quota calculation system be retained and the NSW system of transfer calculation of exhausted votes should be adopted.
- 4.36 These changes will have the benefit of:
- enfranchising voters by returning to them full control of preferences while removing the possibly onerous requirement of indicating full preferences that could result in invalid ballots;
 - ending voter frustration with having to award preferences to unknown candidates;
 - abolishing group voting tickets and therefore provide a disincentive to the proliferation of minor 'front' parties resulting in a reduction in the size of the ballot paper; and
 - removing the incentive to 'game' the system via preference deals.
- 4.37 The requirement to number a minimum number of boxes BTL will allow voters to exercise their vote to a reasonable degree (that being the number of vacancies), and further if they wish.
- 4.38 However, there is an acknowledged concern that high informality may result, if a voter were to number less than the minimum required boxes, even though they may have intended to cast a formal vote.
- 4.39 General formality provisions within the Electoral Act currently exist to recognise and protect a voter's intent expressed on a ballot paper.
- 4.40 Additionally, current savings provisions designed to ensure that votes that have a minimum number of preferences expressed (that would suggest a voter intended to vote formally, but made an unintentional error) could be modified and adopted to ensure that a Senate vote cast by a voter with a clear intention can be considered and 'saved' in circumstances determined appropriate.
- 4.41 The Government should consider the most appropriate options to address this concern in responding to this recommendation.
- 4.42 Naturally, there will need to be a thorough education campaign on any changes to the system so that voters are afforded the opportunity to fully comprehend changes to the system.
- 4.43 This is one reason this interim report has been presented as a matter of urgency so that changes can be put in place well in advance of the next federal election as it is recognised that the Government needs time not only to legislate, but to educate.

- 4.44 The changes recommended in this report are aimed at a simpler, more transparent, electoral system. The resulting education campaign will be a strong investment in civics education and therefore a good investment in democracy.

Recommendation 1

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.

Group voting tickets

- 4.45 The effect of GVTs is explained in full in Chapter 2. GVTs have resulted in a situation where voters do not know how their vote will be counted due to the length and complexity of these tickets. As parties can submit multiple GVTs, voters also do not know against which of these GVTs their vote will be counted.
- 4.46 GVTs have also led to the rise of 'gaming' the system through preference 'harvesting' resulting in the election of candidates with very low first preference votes. This is a lucrative trade for those who facilitate the practice and is unpalatable to the majority of voters.
- 4.47 Preferences are an important part of the single transferrable vote system and the preferential voting system needs to be retained, however, the allocation of preferences must be in the hands of voters.
- 4.48 Therefore, it is recommended that GVTs be abolished.

Recommendation 2

The Committee recommends that sections 211, 211A and 216 and any other relevant sections of Parts XVI and XVIII of the *Commonwealth Electoral Act 1918* be repealed in order to effect the abolition of group and individual voting tickets.

Recommendation 3

The Committee recommends that the Government adequately resource the Australian Electoral Commission to undertake a comprehensive voter education campaign should the above recommendations be agreed.

Thresholds for election

- 4.49 One concern raised about the election of the Australian Motoring Enthusiast Party's candidate in Victoria is the small percentage of first preference votes this group received. One proposal for dealing with this issue is to implement a minimum threshold of first preference votes that must be achieved in order for a party or independent candidate to be eligible for election.
- 4.50 Nonetheless, the threshold target is arbitrary. It is this arbitrary nature of devising the threshold that has been the subject of criticism in debate about the application of the threshold to the Australian Senate, including by this Committee's predecessor.⁶
- 4.51 There are two methods of applying a threshold, to the party (or independent) vote as a whole or to individuals. This second threshold would pose a greater obstacle for election and potentially see the elimination of the second and subsequent candidates of a major party, who often poll significantly lower than the primary candidate but are elected on clear party preferences.
- 4.52 As outlined in the previous chapter, there are a range of expert views on the use of a threshold and while it is an easily understood proposal for amending the system, the consequences of implementation may result in voter disenfranchisement.

6 Joint Standing Committee on Electoral Matters, 1989, *Report 5: Inquiry into the ACT election and electoral system*, pp. 81-83.

Committee conclusions

- 4.53 The proposal to require thresholds as a first measure for fixing the current problems with the Senate voting system is not supported. In a proportional multi-member electorate, it is easily foreseeable that a candidate preferred by a majority of electors may not reach a full threshold by the smallest of margins.
- 4.54 The call for thresholds is predicated on no other changes to the current system – in which the ‘1’ vote is a significantly greater indicator of voter preferences than the resultant preference flows. Under the current system this argument is sound as it is reasonable to assume that voters do not know where their preferences are flowing after the ‘1’ vote.
- 4.55 The Committee believes that the substantive nature of the recommendations made in this report will provide a better solution for the identified problems.

Party registration and candidate nomination

- 4.56 Suggestions on ‘validating’ the intentions of political parties have included the strengthening of rules for party registration. Further requirements on individual candidates nominating for election have also been suggested to ensure the nomination of only genuinely motivated candidates.
- 4.57 The current system of party registration and its impact on current Senate voting and ballot papers is outlined in Chapter 2, including a comparison with current state systems, such as current registration deadlines like NSW’s requirement to be registered 12 months before the next state election.
- 4.58 Many submitters have argued that both the cost of registration and the membership requirements should be increased at the federal level.

Membership requirements

- 4.59 The requirements to prove the valid membership of a registering political party’s listed members is currently on an ‘honour’ system for federal registrations. The 500 members must be enrolled and not relied on by another party for that other party’s registration, but no current membership status, or proof of membership, is required. The AEC does currently conduct a check of a random sample of 18-50 members, but relies on only a substantial confirmation they are a member.

- 4.60 It has been suggested that at the 2013 election, at least one of the parties registered was made up as a test, as part of a university exercise.⁷ The successful registration of a federal party by an internet or social media campaign raises questions about tightening of membership requirements.
- 4.61 The process of membership validation undertaken by the Electoral Commission Queensland has been suggested as a suitable process for improvement within the federal system.⁸ Once the membership list of 500 members is received from a registering party in Queensland, the Electoral Commission will write to the members requesting confirmation of their membership in writing (with any relevant evidence).⁹
- 4.62 These requirements can be measured against the reasonable membership requirements stated in the party's constitution, which should guarantee that legitimate micro-parties can still form and represent their relevant interests.
- 4.63 NSW and South Australia require members to supply a signed statement to prove genuine party membership. Antony Green noted that a lax registration system has had serious consequences:
- The legal cases that first convicted and later acquitted Pauline Hanson on fraud charges revealed a lack of clarity in the legal meaning of party membership under the Queensland Electoral Act. The provisions of the Queensland Electoral Act at the time were the same as those used by the Commonwealth Electoral Act. The Queensland Electoral Act has been updated since the Hanson cases to apply tougher tests of membership, but the Commonwealth Electoral Act is largely unchanged. Applying a tougher test on membership would avoid cases similar to Hanson's occurring under Commonwealth law.¹⁰
- 4.64 Many have also suggested that an increase in registration fee to \$2 000 for a federal party seems reasonable and would not be too onerous for a genuine party to raise from its membership given that the fees in the states and territories range from \$500 to \$2 000.
- 4.65 Others have also made the point that the requirement for the registered officer of a political party to be unique to that one party would seem

7 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 5.

8 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 5.

9 Electoral Commission Queensland, *Registration of Political Parties Handbook*, p. 6. <ecq.qld.gov.au/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=148&libID=170> accessed 1 April 2014.

10 Antony Green, *Submission 180*, p. 6

logical as well and the codification of this restriction in the Electoral Act would secure this aspect of strengthening party registration.

Conclusions and recommendations

Membership and party details

- 4.66 The current membership requirement for a party to be registered federally is set at 500 members nationally. This is equal to or more than some states and territories but less than NSW.
- 4.67 There is a clear argument to increase membership of federal political parties to be close to equal of that required by the states and territories combined (2 350). That is why many submissions suggested a national figure of 2 000. On balance the Committee believes that 1 500 is an appropriate minimum, when accompanied with its other proposed reforms.
- 4.68 The following membership requirements are therefore desirable:
- that the party membership requirement for registration be increased to a minimum of 1 500 bona fide members, unique to each party;
 - that parties be required to provide proof of members' particulars upon joining the party;
 - ⇒ that the particulars should, at a minimum, state the member's name, residential and enrolled addresses, phone numbers, postal details, email contacts, and membership joining particulars; and
 - that the AEC must be required to validate party membership with all stated members.
- 4.69 The AEC must be required to verify 1 500 members unique to each party. Therefore, with a minimum membership requirement of 1 500, each and every member must be relied upon. This means that if a party puts in a registration application with 1 503 members' details, but five of them cannot be verified or are relied upon by another party, then that application will fail.
- 4.70 While this increased membership level for federal registration is appropriate, a separate requirement should be established to allow for emerging parties to contest a federal election, but only within a particular state or territory. This would allow for a party to emerge, based on issues within their state or territory, who want to represent their policy platform in federal parliament, but do not want to field candidates in other states or territories.
- 4.71 This concept was also raised by the Liberal Party of Australia:

If a party wishes to only register Federally in one particular State, then the Liberal Party supports the requirement that the State-based party must have at least 500 members residing in that State, or at least one member of their party currently sitting in the Federal Parliament.¹¹

- 4.72 The requirement for 500 members for a state-level registration would be too onerous for parties within the smaller states or territories.
- 4.73 Accordingly, there are a number of potential options that could be adopted:
- a fixed number for each state or territory – such as 100 in a state or 50 in a territory; or
 - the number could be linked to the current state and territory requirements (see Table 2.1); or
 - the number could be relative to either population or electorate numbers, such as:
 - ⇒ a base number of 50, plus 50 more for every million population, as reported in the previous census; or
 - ⇒ 25 members per federal electorate in that state or territory (i.e. 125 for Tasmania); or
 - ⇒ Member numbers equal to 0.01% of the current population of that state or territory (rounded to the nearest number), as reported in the previous census. For example, in NSW this would equate to 692 members, whereas it would only be 50 in Tasmania.¹²
- 4.74 A number calculated on either a population or electorate basis is preferred, but no specific option is endorsed in recommendations. These are possible options for Government to consider in the response to the recommendation.
- 4.75 In addition to membership numbers, to register, parties must be required to provide a compliant party constitution that outlines the relevant mechanisms for members to join and maintain membership. The model that has been established in Queensland is a good model on which to base these requirements. This model requires that a complying constitution must set out:
- the party's objectives (which must include the promotion of election of a candidate);

11 Liberal Party of Australia, *Submission 188*, p. 5

12 2011 Australian Census Data – Australian Bureau of Statistics website, <abs.gov.au/websitedbs/censushome.nsf/home/census?opendocument&navpos=10> , accessed 1 May 2014.

- the procedure for amending the constitution;
 - the rules of party membership, including:
 - a statement about how the party manages its internal affairs;
 - the rules for selecting office bearers and candidates;
 - the rules for candidate pre-selection based on the principles of free and democratic elections.¹³
- 4.76 The AEC must conduct a compliance audit of non-parliamentary parties, each electoral cycle, to ensure that they are still complying with their registration requirements.
- 4.77 In addition, the omission in the Electoral Act that an individual could be a registered officer of multiple parties must be closed. This should not prevent registered officers of federal parties also being the registered officer of state branches or divisions.
- 4.78 The Committee acknowledges that these changes will require significant change, education, and administration of this function of AEC business, so is recommending that adequate resourcing be made available accordingly.

13 Electoral Commission of Queensland, *Election Funding and Financial Disclosure Handbook: Registration of Political Parties*, p. 5.

Recommendation 4

The Committee recommends that sections 126, 132, 134 and any other relevant section of Part XI of the *Commonwealth Electoral Act 1918* be amended to provide for stronger requirements for party registration, including:

- an increase in party membership requirements to a minimum 1 500 unique members who are not relied upon for any other party in order for a federally registered party to field candidates nationally;
- the provision to register a federal party, that can only run in a nominated state or territory, with a suitable lower membership number residing in that state or territory, as provided on a proportionate population or electorate number basis;
- the provision of a compliant party constitution that sets out the party rules and membership process;
- a membership verification process;
- the conduct of compliance and membership audits each electoral cycle; and
- restriction to unique registered officers for a federally registered party.

The Committee further recommends that the Government adequately resource the Australian Electoral Commission to undertake the above activities.

Registration deadline

4.79 Currently, all parties seeking a place on the ballot paper must register by the date of the issue of writs. Some states have chosen to implement a fixed qualification period in response to the surge in party registrations.

4.80 For example, having a fixed term has meant that NSW has been able to set its registration deadline at 12 months prior to the election. This acts as a deterrent to non-genuine parties who are simply interested in 'gaming' the system from registering simply to gain a spot on the ballot paper.

4.81 There have been some suggestions that to implement a similar system at the federal level, parties should register two years after the federal election which would generally be about one year prior to the next election.

4.82 While there are benefits to a deadline for the registration of political parties, it would be difficult to implement without fixed terms and the

'movability' of a registration deadline may introduce confusion into the system.

- 4.83 The imposition of a deadline would also unduly restrict the formation of genuine issues-based minor parties responding to emerging issues. In addition, tougher membership requirements should ameliorate the need for longer qualification periods. Therefore, a registration deadline is not recommended.
- 4.84 The Electoral Commission Queensland outlines a minimum 6 week timeframe for application verification¹⁴ and this timeframe would seem to be the minimum reasonable expectation that a federal party would have to consider when lodging an application, especially if an early issue of writ for an election would stop any current applications from being further processed.
- 4.85 It is not unreasonable to expect that the AEC could conduct the same verification process in a similarly efficient manner with adequate resourcing. Again, these recommendations are made in this interim report in order to give the Government sufficient time to put these processes in place well prior to the next election.

Cost

- 4.86 The monetary costs of registering a party, or in nominating for a federal election, are variable across jurisdictions, but also raise questions about whether a registration fee is a vehicle for covering administrative expenditure, or for deterring frivolous registrations and nominations.
- 4.87 The fee for registering a political party at the national level is \$500. The Committee's view is that it not be increased. To do so would increase the financial barrier to register to a party.
- 4.88 If the recommendations in this report are adopted then there will be suitable criteria to measure the validity of the real and genuine nature of political parties.
- 4.89 Given that this report is focussed on Senate issues, it does not address the issue of individual candidate deposits. This may be addressed in the Committee's final report.

Reviewing the register

- 4.90 These conclusions and recommendations will not have sufficient impact without a thorough review of the party register.

14 Electoral Commission Queensland, *Registration of Political Parties Handbook*, <ecq.qld.gov.au/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=148&libID=170>, accessed 22 April 2014, p. 9.

- 4.91 Accordingly, the register should be reviewed, and all existing parties should be required to meet the new rules established in recommendation 4.
- 4.92 Those Parliamentary parties as defined under s123 of the Act, and any associated units, will be eligible for continued registration under this section of the Act and therefore should have their registration continued.
- 4.93 Some concerns have been raised that sitting Members and Senators could use the provision under s126 (1)(a)(ii) to register multiple political parties. s126(1)(c) and(d) makes it clear that Parliamentarians may only be a member of one political party and therefore may not register multiple parties.

Recommendation 5

The Committee recommends that:

- **all new parties be required to meet the new party registration criteria; and**
- **all currently registered parties be required to satisfy the new party registration criteria within twelve months of the legislation being enacted or the party shall be deregistered.**

Candidate residency requirements

- 4.94 The current lack of requirement for a Senate candidate to be resident in the state or territory in which they are nominating for is an aspect of the Electoral Act that is of concern to some.
- 4.95 This has not been a significant problem in the past but has become so due to the rise of micro-parties becoming a feature of Senate elections. This has not been an issue of concern for House of Representatives candidates as there is a stronger local focus for these candidates and it is not feasible that a non-resident candidate would find political support.
- 4.96 The proliferation of micro-parties on the Senate ballot paper appears to have given rise to a situation in which these parties may not be able to field local candidates, highlighting a genuine lack of support within the electorate.
- 4.97 For example, the situation arose in 2013, where Australian Sex Party candidate Robbie Swan narrowly missed out on election to the Senate in Tasmania, when he was, and continues to be, a resident of the Australian

- Capital Territory. This situation is indicative of how the current system does not reflect current community expectation.
- 4.98 Similarly, the reported¹⁵ circumstance that up to ten of the 77 candidates for the Western Australian Senate re-election were not residents of the State, and have even been identified as a deliberate 'front' for feeding preferences to other parties, is a clear anomaly to the intention that the Parliament be constituted of elected representatives of the electorate.
- 4.99 While this was an issue of particular concern for Western Australians during the 2014 Senate election re-run, the special circumstances of the additional media attention on that election may have drawn more non-resident candidates to run.
- 4.100 At the time this concern was raised in the media, the Chair of this Committee also made a statement in the House, acknowledging the concerns of Western Australian voters and highlighting that maintaining the status quo is not an option.¹⁶
- 4.101 It is a clear community expectation that Senate candidates be residents of the state or territory in which they are nominating, given the Senate is the 'states' house' and is intended to have elected representatives that can reflect their state's priorities and views.
- 4.102 The most straightforward solution to this issue would be to legislate the requirement for all Senate candidates to be resident in the state or territory for which they are nominating.
- 4.103 Another option would be to require any non-resident candidates who is nominating for Senate election to be required to provide a list of nominators from the state/territory (similar to the requirement for independent candidates in section 166 of the Electoral Act).
- 4.104 This second option may be necessary if a straight residency requirement were considered at risk of Constitutional challenge, as section 117 of the Constitution requires equal treatment of citizens and an implied right of freedom of movement.
- 4.105 The same issue does not exist for House of Representatives candidates, as it is harder to campaign and be 'anonymous' within a House of Representatives Division, than it is to sit as one of 110 names on a dauntingly large Senate ballot paper. Nonetheless, it is a reasonable

15 The West Australian, *Senate Candidates don't live here*, <au.news.yahoo.com/thewest/latest/a/22111577/senate-candidates-dont-live-here/>, accessed 1 April 2014.

16 Hon Tony Smith MP, Chair, Joint Standing Committee on Electoral Matters, Statement to the House made 27 March 2014. <www.aph.gov.au/Parliamentary_Business/Hansard/Hansreps_2011>.

expectation that all candidates be resident in the state/territory in which they are standing for election.

- 4.106 It is obviously desirable that this issue be corrected, however if the recommendations of this report are adopted, then this issue will largely be resolved.

Recommendation 6

The Committee recommends that the Government determine the best mechanism to seek to require candidates to be resident in the state or territory in which they are seeking election.

Conclusion

- 4.107 The findings and recommendations in this report arise as a direct result of deep community concern at some of the outcomes of the 2013 federal election.
- 4.108 This report has been presented as a matter of urgency so that changes can be put in place well in advance of the next federal election and the Government will have time to both legislate and educate.
- 4.109 The reforms recommended in this report will be the most significant reform since the 1984 electoral reforms that established the current Senate voting system.
- 4.110 The recommendations contained within this report will provide simplicity, integrity, transparency and clarity in the Senate voting system. It will also provide the people with the power to express and to have their voting intent upheld.

Tony Smith MP
Chair