LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

24 June 2014

Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: thlgc@parliament.qld.gov.au

Dear Sir/Madam

Re: Local Government Legislation Amendment Bill 2014

The Local Government Association of Queensland (LGAQ) appreciates the opportunity to provide a submission to assist the Transport, Housing and Local Government Committee's detailed consideration of the Local Government Legislation Amendment Bill 2014 (the Bill).

The LGAQ made a comprehensive submission in response to the Department of Local Government, Community Recovery and Resilience's (the Department) November 2013 discussion paper *Local Government Electoral Act Review,* addressing each of the 17 proposals contained in the discussion paper. A copy of this submission, dated 21 January 2014, is attached (**Attachment 1**). Member consultations undertaken since the release of the Bill have confirmed the ongoing support of LGAQ member councils for the positions outlined in the Association's January 2014 submission.

In summary, the Association welcomes and supports the majority of the changes, particularly empowering the chief executive officer of a local government as the returning officer for an election in certain circumstances. The Association also takes this opportunity to place on the record the open and full consultation undertaken by the Department on this important area of reform.

However, the LGAQ remains opposed to changing the system of voting for mayors in undivided councils from First Past the Post (FPTP) to Optional Preferential Voting (OPV) and changing the method of numbering candidates in FPTP elections. The LGAQ does not agree with the policy rationale for these changes outlined in the Explanatory Notes to the Bill.

System of voting for mayors in undivided local governments

The LGAQ remains opposed to changing the system of voting for mayors in undivided councils from First Past the Post (FPTP) to Optional Preferential Voting (OPV), for the following reasons:

- The change introduces a new inconsistency between the systems of voting for mayors and councillors in undivided local governments, with the former changing to OPV and the latter remaining FPTP. Arguably, voters will be more confused about this inconsistency, potentially leading to higher levels of informal voting, than the aforementioned inconsistencies which the change aims to resolve.
- A comprehensive analysis of the pros and cons of various options for voting systems for local government elections undertaken by the LGAQ in 2010 concluded that the current voting systems (OPV for divided and FPTP for undivided councils) were the most appropriate systems for these communities (**Attachment 1**).

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- 90.32 per cent of mayors surveyed by the LGAQ in February 2013 said they wanted no change to the current voting systems.
- Finally, the LGAQ submission to the Law, Justice and Safety Committee in July 2010 makes the point that an important factor in the choice of a voting system is that the system be simple and consistent (**Attachment 2**).

Method of numbering candidates in FPTP elections

The LGAQ remains opposed to changing the method of numbering candidates in FPTP elections, for the following reasons:

- The LGAQ is concerned that the proposed change may undermine the democratic process. In practice the proposal would mimic optional preferential voting and may lead to skewed outcomes.
- The proposed change is inconsistent with the agreement of all major parties in relation to the Senate voting system, as outlined in the Joint Standing Committee on Electoral Matters' Interim report on the inquiry into the conduct of the 2013 Federal Election (**Attachment 3**). The Committee recommends the introduction of 'partial' optional preferential below the line voting but with a minimum sequential number of preferences to be completed equal to the number of vacancies.
- The LGAQ is not convinced of claims that the current system leads to a higher number of informal votes which therefore justifies the change. Analysis undertaken of the 2008 local government election indicates average informal voting was 4.0% for councillors which compares favourably with a 4.15% informal vote for councillors in the 2012 election. It is LGAQ's position that this issue raises at least as many questions about the conduct of the 2012 elections and the lack of public awareness and education undertaken as it does about any complexity and confusion surrounding the requirement for multiple voting for councillors under the first past the post system.

The LGAQ looks forward to the opportunity to elaborate on these points when appearing before the Committee in July.

Should you have any queries regarding this matter, please contact [redacted] – Strategic Policy and Intergovernmental Relations on [redacted] or [redacted] who will be pleased to assist.

Yours sincerely

Greg Hoffman PSM
General Manager – Advocate

LGAQ
LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND

21 January 2014

[redacted]
Director – Policy, Legal and Corporate Support
Department of Local Government, Community Recovery and Resilience
PO Box 15009
CITY EAST QLD 4002

Email: [redacted]

Dear [redacted]

Thank you for the opportunity to provide a submission on the Local Government Electoral Act Review. The Local Government Association of Queensland (LGAQ) has consulted with its members and has prepared a submission for the Government's consideration.

If you have any questions regarding this matter please do not hesitate to contact Mr [redacted], Principal Advisor – Intergovernmental Relations on (07) [redacted] or via email at [redacted] who will be pleased to assist.

Yours sincerely

Greg Hoffman PSM
GENERAL MANAGER - ADVOCACY

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LOCAL GOVERNMENT ELECTORAL ACT REVIEW

SUBMISSION

Local Government Association of Queensland Ltd

17 January 2014

The Local Government Association of Queensland (LGAQ) is the peak body for local government in Queensland. It is a not-for-profit association set up solely to serve councils and their individual needs. LGAQ has been advising, supporting and representing local councils since 1896, allowing them to improve their operations and strengthen relationships with their communities. LGAQ does this by connecting councils to people and places that count; supporting their drive to innovate and improve service delivery through smart services and sustainable solutions; and delivering them the means to achieve community, professional and political excellence.

LGAQ Submission Local Government Electoral Act Review

Introduction

The LGAQ welcomes the opportunity to make a submission in response to the Department of Local Government, Community Recovery and Resilience's November 2013 discussion paper "Local Government Electoral Act Review".

This submission has been informed by:

- Consultations with LGAQ member councils in December 2013 and January 2014
- 2013 LGAQ Annual Conference resolution number 51, calling for councils to have the option to conduct their own local government elections
- LGAQ's submission in response to the Queensland Government's January 2013 discussion paper on the *Electoral Act 1992*
- A survey of all Queensland mayors conducted by LGAQ in February 2013 with a series of specific questions around the key issues raised in the January 2013 discussion paper, as they apply to local government electoral arrangements
- LGAQ's submission in July 2012 on the conduct of the April 2012 local government elections, which was preceded by consultations with members councils and an online survey open to the public
- LGAQ's submission to the 2010 review of the local government electoral system in Queensland.

LGAQ would request that the Association be included in the on-going consultations foreshadowed in the discussion paper as legislative amendments are developed. Likewise, we would be happy to assist in the facilitation of any consultation that the Department may undertake with local governments.

Comments on discussion paper proposals

1. **Providing CEOs the first offer to act as returning officers**

LGAQ has long argued that councils should be provided with the flexibility to conduct elections themselves, contract with the ECQ, or contract with some other qualified provider. This flexibility would ensure that elections are conducted in an appropriate, efficient and effective manner for a local government area.

This proposal was part of LGAQ's legislative reform proposals submitted to the Queensland Government following its election in 2012. In addition, a resolution calling for councils to be given the option to conduct their own local government elections has been successfully carried at several LGAQ Annual Conferences, including most recently in October 2013. LGAQ has written to the Hon. David Crisafulli MP, Minister for Local Government, Community Recovery and Resilience, advising of the 2013 LGAQ Annual Conference Resolution 51, and a copy of this letter is enclosed.

While LGAQ welcomes the proposal to require the ECQ to provide CEOs the first offer to act as returning officers as a step in the right direction, in LGAQ's view, it does not go far enough.

LGAQ urges the Government to consider the amendments which LGAQ has long advocated, namely:

> That the Local Government Electoral Act provide that the Chief Executive Officer of a local government be the Returning Officer for any of the elections required for the local government (quadrennial, by-elections and polls), and that the Returning Officer can opt to:
>
> a) Conduct the election him or herself and/or delegate to an appropriately qualified council officer;
> b) Contract with the Electoral Commission Queensland to conduct the election; or
> c) Contract with some other qualified and experienced provider for the conduct of the election.

LGAQ believes that this proposal, which remains LGAQ's preferred position on the conduct of local government elections, continues to have substantial merit and will allow councils greater flexibility with their communities to conduct elections as appropriate for their areas. It is consistent with the State Government's *Empowering Local Government* and *Red Tape Reduction* initiatives, as well as potentially provides substantial cost efficiencies that will contribute to the financial sustainability of local governments.

LGAQ would note that some of the proposals put forward in the discussion paper seem to assume that the ECQ will continue to conduct all local government elections in Queensland and are thus inconsistent with the proposal to provide CEOs the first offer to act as returning officers. In general terms the model included in the *Local Government Act 1993* prior to the relevant legislative provisions transitioning to the Local Government Electoral Act would be an effective starting point.

If LGAQ's main submission is not accepted, and the Council CEO is offered the Returning Officer role by the ECQ, then there are issues that will need to be considered, including:

a) where the CEO opts not to act as returning officer, the ECQ should be required in legislation to arrange consultation with the local government about arrangements for the election, including seeking advice about the site of polling places and other matters where local knowledge and experience should be considered.
b) whether the decision to be the Returning Officer is the CEO's to make individually or a decision of the local government.
c) operational issues such as whom will the CEO report to in his or her capacity as the Returning officer, is the CEO an employee of council or the ECQ while acting as the returning officer etc?
d) The ECQ should remain responsible for post election governance of electoral gift returns and the like, irrespective of whether the CEO accepts the role or not.

2. Aligning roll closure and enrolment with state provisions

LGAQ supports the proposal in the interest of avoiding voter confusion in circumstances where the state and local government elections occur within close proximity.

3. ECQ to nominate the format of the voters roll provided to candidates

LGAQ supports the proposal in the interest of consistency of voter roll formats throughout the state.

4. **How a nomination deposit can be paid**

LGAQ supports the inclusion of electronic funds transfers as a further option for the payment of the nomination deposit, which will be of particular benefit to candidates in rural and remote locations.

5. **Introducing a cut-off date for approving full postal ballots**

LGAQ supports a six months cut-off date for full postal ballots in the interest of avoiding the public awareness and logistical support issues which occurred during the 2012 elections and which LGAQ identified in its submission following the election.

However, LGAQ has concerns about the fact that a six months cut-off date for approval of a postal ballot would put the onus on councils to apply to the Minister well before they are six months out from their election.

In the interest of enforceability and clarity, LGAQ submits that the six months cut-off date should be only in relation to the deadline for the local government's application to the Minister.

This would still allow sufficient time for consultations between councils and the ECQ to occur, even taking into account the time required for the Minister to consider the application and convey the outcome to the ECQ.

LGAQ assumes that a six months cut-off date would apply regardless of whether the election was conducted by the council (with the CEO as returning officer) or the ECQ.

6. **Aligning ballot paper provisions with state elections**

LGAQ is opposed to this proposal. Keeping with LGAQ's preferred position that councils be given the option to conduct their own elections, in the event that position arises, then councils should retain the ability to approve and print ballot papers and determine the order of candidates for each ballot paper.

7. **Expanding access to postal voting**

LGAQ has previously argued that easy access to pre-poll and postal voting should be made available to make the election process as simple, easy to understand and convenient for the elector as possible to allow the community the best chance to cast their vote for the candidates they believe will best represent them.

In the February 2013 survey of mayors, there was also strong support for expanding the grounds upon which a person can apply for a postal vote in both state and local government elections (87.88 per cent of responses), with the argument that voting should be made as easy and convenient as possible.

LGAQ supports the proposal to remove unnecessary restrictions on postal voting and pre-poll voting.

However, LGAQ has concerns about the proposal to allow on-line applications for postal voting. The option should be provided, subject to those councils that decide to conduct their election, having the right to determine how on-line applications can be made within the technological facilities available to the council and the community within the local government area.

8. **Register of special postal voters**

LGAQ supports this proposal in the interest of alignment with the state system.

9. **Electronic voting**

Support for electronic voting from mayors surveyed in February 2013 was mixed.

In light of the significant resource implications, particularly for the rural and remote areas, LGAQ would propose that the introduction of electronic voting for blind and vision impaired voters, and voters who require assistance because of a disability, motor impairment or insufficient literacy, be implemented and trialled at least at one state election first to ensure the smooth running of the system before it is being extended to local government elections.

10. **Proof of identity**

Consultation with councils for the 2010 review of the local government electoral system revealed support for the introduction of a requirement that electors present identification to confirm their identity at a polling booth. It was argued that this could reduce electoral fraud. The introduction of such a requirement for both state and local government elections was also supported by a majority of mayors surveyed in February 2013 (62.50 per cent).

LGAQ welcomes the clarification that proof of identity would not be restricted to photographic identification and that implementation of this measure would be subject to public education and careful transition planning. LGAQ considers this would address many of the concerns raised by those opposed to the introduction of proof of identity.

There are still issues that need to be addressed in demonstrating proof of identity in postal voting elections, where the system of signatures and witnesses has been criticised by candidates and scrutineers, particularly with postal votes that arrive in the post 10 days after election-day.

11. **Replacement postal ballots**

LGAQ supports the proposal to allow people who have already applied for a postal vote, or are participating in a full postal ballot, to request replacement ballot material by phone or email, in the interest of avoiding unnecessary delays.

12. **The system of voting for mayors in undivided local governments**

LGAQ's 2010 submission contains a comprehensive analysis of the pros and cons of various options for voting systems for local government elections. The submission concludes that the current voting systems (optional preferential for divided and first-past-the-post for undivided councils) are the most appropriate because the other systems identified (compulsory preferential and proportional representation):

a) do not demonstrate more democratic outcomes will be delivered;

b) are more complex voting systems, particularly proportional representation, that are less likely to be understood by electors;

c) are more appropriate to and encourage party political elections, particularly proportional representation; and

d) are less complementary to the local government principles contained in Section 4 of the *Local Government Act 2009.*

The submission concluded that the voting systems in use provided successful election outcomes for their communities.

90.32 per cent of mayors surveyed in February 2013 agreed that there should be no change to the status quo.

The discussion paper itself acknowledges in proposal number 13 that the "First Past the Post (FPTP) voting system is used in all undivided councils because it is a more efficient method when multiple councillors are elected at one time".

Furthermore, the proposal to change the system of voting for mayors in undivided councils from FPTP to optional preferential will lead to confusion in these communities and potentially higher levels of informal voting, as the election of councillors would continue to be in accordance with FPTP.

For all of these reasons and in the absence of a compelling case for a change, LGAQ opposes the proposal to change the system of voting for mayors in undivided councils from FPTP to optional preferential.

13. **Numbering candidates in first-past-the-post elections**

LGAQ and most council respondents are opposed to the proposal to allow voters in FPTP elections to cast as few as one vote, as it may undermine the democratic process. In undivided councils, where the FPTP system applies, it is essential that voters cast as many votes as there are councillor positions available. In practice the proposal would mimic optional preferential voting and could be expected to lead to skewed outcomes.

14. **Online notification of poll results**

LGAQ opposes the removal of the requirement for the ECQ to provide a notice of poll results to candidates in local government elections, given the restricted access to the internet (and thus the ECQ website) in some remote and indigenous communities. There is no objection to the ECQ providing notice of poll results online, in addition to the formal written notice currently provided.

15. **Recounting of votes**

LGAQ supports the proposal to include a provision mirroring section 130 of the EA in the LGEA in the interest of alignment of electoral arrangements for state and local government elections.

16. **Failure to vote provisions**

LGAQ supports the proposal to align the failure to vote provisions in the LGEA more closely with those in the EA.

17. Regulation of how-to-vote cards

Views among Queensland councils about the regulation of how-to-vote cards at local government elections differ. Consultation with councils revealed the common view on the issue was that how-to-vote cards should continue to be approved/registered by the returning officer and content regulated to minimise confusion of electors.

In light of this, LGAQ supports the proposal to introduce a requirement for all how-to-vote cards to be registered with the ECQ or Council and to be published on the ECQ or Council website and supports a proposal to enable the returning officer to refuse to register a how-to-vote card if the card is deemed to be misleading or confusing.

Technical Amendments

LGAQ supports the technical amendments proposed in the discussion paper.

Other electoral reform issues not raised in the discussion paper

Refund of candidate deposits - Section 40 (1)(c)

Currently, this section provides that candidates are refunded their deposit if they receive more than 4% of the formal votes cast in a first past the post-election. However it is suggested the methodology is flawed. For example, in the situation where, no unsuccessful candidate achieved 4% of the Total Formal Votes but each formal ballot paper contains 10 formal votes the actual number of individual formal votes is not properly reflected.

For clarity, LGAQ recommends that Section 40 (1)(c) of the Act be amended to clearly allow for the return of candidates deposits in first past the post elections where they receive formal votes exceeding 4% of the **formal ballot papers** for the election:

> ***40 Disposal of deposits generally***
>
> *(1) As soon as practicable after the conclusion of an election, each candidate's deposit must be refunded to the person who paid the deposit if—*
>
> *a) the candidate is elected; or*
>
> *b) if the system of voting at the election is optional-preferential voting—the number of formal first-preference votes received by the candidate is more than 4% of the total number of formal first-preference votes cast in the election; or*
>
> *c) of the system of voting at the election is first-past-the-post voting—the number of formal votes received by the candidate is more than 4% of the total number of formal votes (ballots) cast in the election.*

LGAQ would welcome consultations with the Department on other issues included in recent State Government reforms but not included in this discussion paper such as:

- Regulation of political donations and gifts;
- Donor prohibitions and disclosure requirements; and
- Controls to ensure truth in political advertising.

LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND LTD

LOCAL GOVERNMENT ASSOCIATION OF QUEENSLAND LTD

SUBMISSION

TO

LAW, JUSTICE AND SAFETY COMMITTEE

ON

A NEW LOCAL GOVERNMENT ELECTORAL ACT: REVIEW OF THE LOCAL GOVERNMENT ELECTORAL SYSTEM (EXCLUDING BCC)

July 2010

Background

The Law, Justice and Safety Committee is conducting a review of the local government electoral system in Queensland (except for Brisbane City Council), pursuant to a referral from the Legislative Assembly dated 25 March 2010. The referral reads:

1. That in light of the government drafting a new local government electoral act, the Law, Justice and Safety Committee undertake a review of the local government electoral system for all local governments except for Brisbane City Council.

2. In undertaking this inquiry, the committee should consider and report on the application of different electoral systems to local government elections in Queensland, including but not limited to postal voting, divided/undivided councils and proportional representation;

- *consider local government systems in other jurisdictions in Australia;*
- *conduct public hearings and consultation with stakeholders; and*
- *provide recommendations as to the content of the proposed new local government electoral act.*

3. The committee will report to the Legislative Assembly by the end of November 2010.

Summary of resources used in preparing this submission- previous LGAQ and other commentaries

1. Office of Local Government Commissioner – Information Paper – Local Government Electoral Arrangements – December 1995

2. LGAQ Submission on Review of Local Government Electoral Arrangements in the Local Government Act 1993 – June 2000

3. LGAQ Submission – Draft Legislative Proposals – Local Government Electoral Arrangements – May 2002

4. LGAQ response to 2006 Queensland Council Elections Discussion Paper

5. LGAQ Submission – Local Government Act Review – Paper 4 – Local Government Elections – October 2007 (p17-18)

6. Australian Parliamentary Library Research Brief – Electoral Systems – Gerard Newman as revised by Scott Bennett – February 2006

7. ECQ – Evaluation Report 2008 Local Government Elections – November 2008

8. LGAQ Analysis of 2008 Election – "Facts, Figures and Analysis" April 2008

9. LGAQ Annual Conference Proceedings 2001 – 2009, 2008 – onwards

10. Workshop on Issues Paper 15 July 2010 with Mayors, Councillors, CEOs and senior Staff of some Member Councils.

Background - Current (2008) Electoral Arrangements for Queensland

The wide ranging and sweeping reforms of local government in Queensland that commenced in April 2007 radically altered the electoral landscape which was already trending towards a more streamlined and whole of community focussed approach by councils.

There are now 73 councils in Queensland local government – 37 of which are continuing councils (unchanged in terms of area) and 36 new councils (changed in area by amalgamation or boundary change) formed as a result of the State Government's Local Government Reform agenda.

The reform has resulted in fewer councils, down from 157 (including 32 Aboriginal and Torres Strait Islander Community Councils that became local governments during the last four years) to 73 (which includes 12 continuing former indigenous councils and 2 new indigenous councils). Of those 59 remaining "mainstream" local governments, 25 are continuing councils

(including Brisbane) – albeit in most cases with reduced councillor numbers, and 34 are new amalgamated councils.

Voting for the March 2008 elections for those 73 councils was either by Postal voting (27 Councils) or attendance/booth voting (46 Councils).

ISSUE PAPER HEADING - DIVISIONS

RELEVANT BACKGROUND INFORMATION

Extract from "*LGAQ Analysis of 2008 Election – "Facts and Figures" April 2008*"

The reform process provided that new councils would be undivided unless all the affected/amalgamating councils unanimously agreed to be divided.

The current situation sees 51 of 73 councils undivided and the balance 22 (including Brisbane) having single member electoral divisions.

The option to use multi-member divisions was not available in the 2008 election, and does not appear to be available under the provisions of the 2009 Local Government Act.

The undivided councils have "first past the post" elections for mayor and councillors while the divided councils have optional preferential elections for mayor and councillors.

Historically, for 2004 there was a continuation of the trend to abolish electoral divisions. This figure increased dramatically from 24 councils with no divisions (elected at large) to 66 councils (nearly 50%) since 1991. As a result of the recent reforms 51 (70%) are now divided.

The adoption of undivided status has occurred for two reasons. Initially, in 1991 with the introduction of one-vote-one-value, many councils chose to abolish the divisions instead of re-drawing the boundaries to comply with the new requirement.

Since then the trend has continued, mainly in regional and rural areas, because of the less parochial and more "whole of area" thinking adopted in decision-making.

Issue Paper Questions

1) Are the procedures for the division of councils adequate?

Where a council is divided, (see response to Q 4), the determination of the internal divisional boundaries should require a balance of elector numbers (within error margins), and consideration to ensure the boundaries do not divide local neighbourhoods or adjacent rural and urban areas with common

interests or interdependencies, including, for example, economic, cultural and ethnic interests or interdependencies.

It does appear that the principal consideration legislated in the *Local Government Act 2009* (LGA 2009) and the repealed *Local Government Act 1993* (LGA 1993) is the number of electors, resulting in many cases of divisional boundaries cutting across communities of interest and other relevant features.

There exists the special circumstances of the Torres Strait Island Regional Council where electoral divisions (14) are based on the island communities of the former council areas, and elector numbers do not meet the error margin of 20%.

Similarly, Redland City Council has island communities that have significant community of interest together, but are melded with a portion of the mainland community simply to meet the 10% error margin for large communities.

This would also be reflected in divisional arrangements where low density rural community areas are joined with part of an urban community, again simply to meet error margins.

Whilst the democratic principle of "one vote one value" is strongly supported, there should be some recognition of special circumstances where a case for particular community representation can be accommodated.

The LGA 1993 did have provisions that allowed the then electoral and boundaries review commissioner some discretion:

> *S 286(3) Also, an electoral and boundaries review commission may, if it is satisfied it is appropriate in its determination, under section 93(4) or 102(4), of a reviewable local government matter, adopt a margin of allowance, but the quota must not be departed from—*
>
> *(a) for a local government area with more than 10000 electors—by more than 20%; or*
> *(b) for another local government area—by more than 40%.*

Currently, local governments are required to review divisional arrangements regarding elector numbers no later than 1 March in the year before the next quadrennial election (LGA 2009 Section 16) and give a report to the electoral commissioner and the Minister.

Normally these reviews are undertaken based on local knowledge and an element of community consultation, and as such, the local government is best placed to propose the electoral boundary arrangement that best suits the democratic and representative needs and aspirations of their local community.

There have been instances in the past where several well researched and considered recommendations by local governments for alteration to electoral boundary arrangements have been rejected by the (then) Electoral Commissioner, possibly on challengeable grounds.

The Association therefore submits:

> *That the recommendations regarding divisional boundary arrangements of a local government made to the electoral commissioner and the Minister in accordance with Section 16 of the LGA 2009, where supported by evidence of community support and considered deliberation by the local government, should be supported and endorsed by the Minister and electoral commission when referred to the **change commission** (Section 19(2) of LGA 2009).*
>
> *That legislation should be amended to provide that the **change commission** may, if it is satisfied it is appropriate in its determination of a reviewable local government matter, adopt an error margin of allowance but the error margin must not be departed from—*
>
> *(a) for a local government area with more than 10000 electors—by more than 20%; or*
>
> *(b) for another local government area—by more than 40%.*

2) If the procedures for the division of councils are not adequate, what changes are required?

See response to Question 1.

3) Are the error margins of 10% in local government areas with more than 10,000 electors and 20% in all other cases sufficient?

See response to Question 1.

Generally, the error margins are acceptable and workable, although local governments experiencing high levels of growth do find that reviews each term result in re-drawing of electoral boundaries because the error margin is breached within the term.

Despite setting the electoral numbers at the lowest possible level (minus 10%) at the start of the term, it is found that growth takes the number of electors past the upper tolerance (plus 10%) within the term.

This results in community confusion at election time due to electors being "moved" into a different division. This becomes an issue if polling place

arrangements do not allow casting of votes for other divisions (see Questions 29 & 30)

The LGA 1993 had provisions that allowed a local government to retain divisional boundaries if less that one third of its divisions were outside the tolerances (Section 288 LGA 1993) for one further term.

There would be merit is similar provisions being legislated in the LGA 2009 or its supporting regulations.

The Association therefore submits:

> *That the LGA 2009 be amended to allow deferral for one term of redrawing electoral division boundaries if one-third or less of the divisions are outside the error margin.*

4) Should the mix of divided and undivided councils remain? If so, should the decision to divide a local government area remain with individual councils?

Consultation with member councils confirms that local government is firmly of the view that is should be entirely up to each local government to decide whether or not electoral divisions should be established.

Decisions of that nature are normally made in the light of community consultation and engagement processes undertaken by the local government and the move from un-divided to divided or vice versa should not be imposed on a community without consultation/engagement.

If a local government does decide that electoral divisions meet the representational needs of its community, then as proposed above in the response to Question 1, the local government is best placed to propose the electoral boundary arrangement that best suits the democratic and representative needs and aspirations of their local community, and that decision should be supported by the electoral commission and the Minister.

The Association therefore submits:

> *That the decision to move from un-divided to divided or vice versa should remain with the local government involved following community engagement on the issue.*

5) Are there other matters the Committee should consider in regard to local government divisions?

A suggestion has been made that local government electoral divisions might be named, similar to State and Federal electorates, after prominent individuals, place or cultural features.

Also the use of multi-member divisions should be considered, but on the basis of choice by the local government involved.

ISSUE PAPER HEADING - CONDUCT OF ELECTIONS

RELEVANT BACKGROUND INFORMATION

Extract from "*LGAQ Analysis of 2008 Election - "Facts and Figures" April 2008*"

Another new feature of the 2008 local government elections was that for the first time Councils did not conduct their own elections. The Local Government Reform legislation prescribed that the Electoral Commission of Queensland (ECQ) would conduct all elections, whereas up to 2004, only Brisbane City Council elections had been conducted by ECQ.

Whilst this action was aimed at clearly demonstrating electoral probity and confidence to the community, over a century of tradition and satisfactory service by local Returning Officers) has come to an end.

Issue Paper Questions

6) Should the Electoral Commission of Queensland be responsible for the administration of the quadrennial local government elections or should this responsibility remain with Council CEOs?

Whilst the Electoral Commission of Queensland (ECQ) conducted all Local Government elections on 15 March 2008, the Association does not necessary support this arrangement continuing on a permanent basis.

The costs levied on councils by the ECQ for the 2008 elections were, on average, double the costs incurred previously when councils conducted the elections.

There were also many reports of organisational and operational failures; e.g. postal votes not being issued or the incorrect and/or multiple ballot papers being sent to electors.

Also, the location of polling places was inappropriate and there was limited or no consultation with the local governments to draw on their knowledge and experience.

The Association believes it may be appropriate that there be various arrangements for the conduct of elections. This may involve the ECQ in its own right or being contracted by councils to conduct elections on their behalf, as well as councils conducting the elections themselves or contracting other providers.

Discretion should remain with Chief Executive Officer of the local government (having advised the local government formally of the proposed method of conducting the election) to adopt the arrangements most

appropriate to their circumstances. However, if the decision is to use the ECQ, then that should be advised to the ECQ at least 12 months before the election date.

If the ECQ was to conduct council elections then it is expected that the organisation would take on all the operational and administrative roles involved, including the conduct of by-elections that might be required within the term.

The Association therefore submits:

> *That the proposed Local Government Electoral Act provide that the Chief Executive Officer of a local government be the Returning Officer for any of the elections required for the local government (quadrennial, by-elections and polls) and that the Returning officer can opt to*
>
> *(a) conduct the election him or her self;*
>
> *(b) contract with the Electoral Commission Queensland to conduct the election; or*
>
> *(c) contract with some other qualified and experienced provider for the conduct of the election.*
>
> *Further that, if it is decided that the ECQ is to conduct quadrennial elections for all local governments,*
>
> *(a) the ECQ should also be responsible for the conduct of by-elections, and*
>
> *(b) must be required to arrange consultation with the local government about the arrangements for the election, including seeking advice about the site of polling places and other matters where local knowledge and experience should be considered, and*
>
> *(c) must negotiate co-operatively the hand over of responsibility for post-election matters (electoral gift and donation returns, refund of nomination deposits etc) to the Chief Executive Officer of the local government.*

7) If the ECQ is to be responsible for local government elections should the new Act allow more flexibility in regard to the conduct of the quadrennial elections than the current Act does? If so, how?

The Association does not support the introduction of more flexibility in the conduct of elections by the ECQ, simply because the rules that currently apply to local government elections have been derived from decades of election experience and cover the (often) complex circumstances faced by Returning Officers and poll staff throughout the election period.

The legislation provides a common approach for every election official that can be relied upon, whether the election is in Gold Coast City or Diamantina Shire. Whether the election is conducted by the ECQ, the CEO or some other contractor, all election officials need to comply with the same processes throughout the election to guarantee consistency and equity.

The Association therefore submits:

> *That the new Act retain the rules for conduct of local government elections built up over decades of local government election experience and that these be applied consistently across all local governments.*

8) Is the time for the close of the rolls and the date of the elections appropriate?

At present, the LGA 2009 (Schedule 2), Section 277 provides:

277 Cut off day for voters roll

A voters roll must be compiled to 1 of the following dates—

(a) for a quadrennial election—31 January in the year of the election;

(b) for a by-election to fill a vacancy in the office of a local government councillor—at least 5 days, and not more than 7 days, after the publication in a newspaper, under section 274, of notice of the day of the by-election.

These timeframes are appropriate for quadrennial elections held on the last Saturday in March (Sections 268 and 269 of LGA 2009 Schedule 2), i.e. a period of approximately 50 to 55 days.

Should the date of the quadrennial election be moved to October (see response to Question 9 below) then the close of rolls would need to be adjusted accordingly, to retain the same relevant timeframe i.e. 50 to 55 days.

The issue of completeness and accuracy of the rolls was raised with the Association, suggesting that the ECQ (or AEC) should be more rigorous in ensuring that the enrolments are correct as at the close of rolls.

The Association therefore submits:

> *That the cut off periods currently applying for voters rolls for quadrennial and by-elections be retained.*

9) What changes, if any, should be made to the timing of local government elections?

As regards the date of the quadrennial election, the Association at its 2008 Annual Conference resolved that:

> "That the Local Government Association of Queensland make representations to the Minister for Main Roads and Local Government to amend the Local Government Act to change the date of the Local Government quadrennial elections to a date in October to take effect from 2012."

This decision was taken after consideration of the following background comment:

> "Arguments for the change are that an incoming council would have some eight months in which to review corporate plans, operational plans and policies prior to the adoption of its first budget in or about June the following year.
>
> The arguments against the change are that the outgoing council has a greater opportunity to adopt a more "voter friendly" and less strategic budget some three months before the election and also that the incoming council would have to "live with" the budget adopted by the previous council for some eight months before it can adopt its own plans, policies and rating arrangements.
>
> Currently Local Government elections are held in March and declarations of office for councillors are held in April; this timing allows only a couple of months to prepare and bring down Council's budget."

The Association therefore submits:

> *That the Local Government Act 2009 be amended to change the date of the Local Government quadrennial elections to a date in October to take effect from 2012.*

ISSUE PAPER HEADING - CANDIDATES – REQUIREMENTS AND CONDUCT

Issue Paper Questions

10) Is the nomination process adequate? Why?

Generally there is support for the current nomination processes to be retained, with one change proposed in relation to nomination deposits.

The nomination deposit is currently prescribed as $150, and it is suggested that this figure, which has remained unchanged for decades (certainly it has remained unchanged since at least 1994), may need to be brought up to a more relevant amount that will ensure nominations are made by serious candidates.

It is noted that the nomination deposit for state elections is $250, and this does not appear to have changed since 1992.

At the very least, it is proposed that nomination deposits for all but Special category local governments be increased to match state or federal figures. Special category local governments are determined by the Local Government Remuneration Tribunal and are generally indigenous councils or very small remote councils.

The Association therefore submits:

> *That the nomination deposit for all but Special category local government elections be increased to $250 and be aligned in the future to the nomination deposit required for candidacy for election to the Legislative Assembly.*

11) Does the current system encourage a diverse range of candidates to stand?

Comment has been received that the current system does encourage a diverse range of candidates, although there is a view that the cost of campaigning, particularly in large (geographically and voter numbers) local governments may be a deterrent to some possible candidates.

This could be abated if the same rules that apply to candidates for state and federal elections regarding tax deductibility of election expenses applied to local government election candidates.

The Association's long standing policy position is for expenses incurred by candidates at Local Government elections should be tax deductible in the

same manner as are those incurred by Federal and State election candidates.

In support of the claim that the current system does support a diverse range of candidates to stand is the LGAQ analysis of the 2008 election.

Analysis of nominations received:

- *There were 1634 candidates for the 553 positions. The ratio of 2.95 candidates per position compares to 2.1 in 2000 and 2004. Interest in standing for Local Government election remained at record levels.*

- *469 women stood for election. Women candidates represented 28.7% of nominations, compared with 27% in 2004 and 26% in 2000. The increase in female nominations experienced over the past four elections has continued.*

- *Multiple mayoral challenges occurred in 68 councils with an average of 3.9 mayoral candidates, up from an average of 3.4 in 2004 and 3 mayoral candidates in 2000. There was record interest in standing for election as mayor.*

- *In 57 (out of possible 73) councils there were fields more than twice as large as the positions available, compared with 57 in 2004 and 50 councils in 2000 (out of possible 125 Councils at those dates. The size of the fields for council elections has continued to increase.*

- *In 29 (out of 73 or 40%) councils, compared with 41 (out of 125 or 33%) in 2004 and 38 (out of 125 or 30%) in 2000, very large fields for mayors and councillors nominated ranging from 20 to 90 candidates seeking election:*
    - *Brisbane City had the largest councillor field with 81 candidates.*
    - *Brisbane also had the largest mayoral field with 9 candidates.*
    - *Gympie Regional Council had the highest average field for councillors with 42 candidates for eight positions – 5.25 candidates per position*
    - *9 councils had more than 40 mayoral and councillor candidates.*

Analysis of the LGAQ Census of Councillors undertaken after the 2008 election shows a reasonable cross section of occupation and qualification distribution amongst elected councillors:-

Occupation by Gender and Age

		Occupation													
Gender	age	Business owner/ operator	Councillor	Home Duties	Manager/ Administrator / Clerical	Plant & Machinery Operators & Drivers	Primary Producer	Professional	Public Servant/ Teacher/ Nurse etc	Retired	Salesperson / personal service worker	Tradesperson or related worker	Unemployed	NA	Grand Total
F	25-34	1							1						2
	35-44	3	4	2	1		1	2	2	1	1				17
	45-54	6	12		4	1	4	2	3		1			1	34
	55-64	6	23		2		2		1	2					36
	65 & over		1	1			1						1		4
	NA		2				1								3
	Under 25								1						1
F Total		**16**	**42**	**3**	**7**	**1**	**9**	**4**	**8**	**3**	**2**		**1**	**1**	**97**
M	25-34	3	3		1			1				1			9
	35-44	6	11			1	3	1	1			3			26
	45-54	18	24				14	1	1			1		1	60
	55-64	11	25		1	1	10	1		5	1	1		1	57
	65 & over	2	6				2			2					12
	NA	1	1				1								3
	Under 25		1				1								2
M Total		**41**	**71**		**2**	**2**	**31**	**4**	**2**	**7**	**1**	**6**		**2**	**169**
Grand Total		**57**	**113**	**3**	**9**	**3**	**40**	**8**	**10**	**10**	**3**	**6**	**1**	**3**	**266**
% of Respondents in Occupation		21%	42%	1%	3%	1%	15%	3%	4%	4%	1%	2%	0%	1%	**100%**

Qualifications

		ABS Qualification Code										
Gender	**age**	**0**	**11**	**12**	**21**	**22**	**31**	**41**	**42**	**51**	**52**	**Grand Total**
F	25-34								1			1
	35-44	1				1	5	1	4	2		14
	45-54	2	1	1	2	1	5	1	5	1	1	20
	55-64	2		2	2		3		6	4		19
	65 & over						1					1
	Under 25						1					1
	NA	2				1						3
F Total		**7**	**1**	**3**	**4**	**3**	**15**	**2**	**16**	**7**	**1**	**59**
M	25-34						4				2	6
	35-44	3		1			4	2	1	2	3	16
	45-54	3		1	2		6	2	2	6	14	36
	55-64	13			1		6	1	1	7	5	34
	65 & over	1		1							1	3
	Under 25									1	1	2
	NA						1					1
M Total		**20**		**3**	**3**		**21**	**5**	**4**	**16**	**26**	**98**
Grand Total		**27**	**1**	**6**	**7**	**3**	**36**	**7**	**20**	**23**	**27**	**157**
% of Respondants with Qualification		17%	1%	4%	4%	2%	23%	4%	13%	15%	17%	**100%**

Key to ABS Qualification Codes		**Grand Total**	**% of Respondants with Qualification**
0	no formal qualification or no detail regarding qualification	27	17%
11	Doctoral Degree	1	1%
12	Master Degree	6	4%
21	Graduate Diploma	7	4%
22	Graduate Certificate	3	2%
31	Bachelor Degree	36	23%
41	Advanced Diploma	7	4%
42	Diploma	20	13%
51	Certificate III & IV	23	15%
52	Certificate I & II	27	17%

The Association therefore submits:

That expenses incurred by candidates at Local Government elections should be tax deductible in the same manner as are those incurred by Federal and State election candidates.

12) Should a candidate be required to live in the local government area in which they stand for election?

Overwhelming comment is that candidates should live within the local government area in which they stand for election.

This provides the high degree of accountability, accessibility and availability expected by community members. Local government is the sphere of government "closest to the people". For this fundamental characteristic to be retained, councillors need to be resident in the area.

The Association therefore submits:

> *That a candidate should be required to live in the local government area in which they stand for election.*

13) Should a councillor be required to live in the local government area for their whole four year term?

Overwhelming comment is that candidates should live within the local government area for the whole of their four year term.

This provides the high degree of accountability, accessibility and availability expected by community members. Local government is the sphere of government "closest to the people". For this fundamental characteristic to be retained, councillors need to be resident in the area.

The Association therefore submits:

> *That a candidate should be required to live in the local government area for the whole of their four year term.*

14) Should a person be able to stand as a dual candidate for both mayor and councillor?

This proposal is strongly opposed as being in conflict with the "strong mayor" model of local government that the current legislation (and local government system) provides.

As will be outlined in responses to later questions on voting systems, it is important that the conduct of local government elections be as simple and straightforward as possible to allow the community the best chance to cast their vote for the candidate they believe will best represent them.

The introduction of dual candidacy, whilst possible in other jurisdictions, generates confusion and results in internal conflicts within councils – thereby compromising the effective governance of the local government.

For example, an unsuccessful mayoral candidate who was elected as a councillor would more than likely bring instability and a lack of cohesion to the council chamber.

The Association therefore submits:

> *That the current system of separate candidacy for either mayor or councillor be retained as being matched and suited to the Queensland system of local government.*

15) Should the new Act allow mayors to be appointed by their fellow councillors?

This proposal is strongly opposed as being in conflict with the "strong mayor" model of local government that the current legislation (and local government system) provides.

As will be outlined in responses to later questions on voting systems, it is important that the conduct of local government elections be as simple and straightforward as possible to allow the community the best chance to cast their vote for the candidate they believe will best lead them.

The introduction of appointment of the mayor by fellow councillors, whilst possible in other jurisdictions, generates confusion and results in internal conflicts within councils – thereby compromising the effective governance of the local government.

The election of the Mayor by all voters for the four year term truly gives the elected mayor a mandate as the leader of the community. This is a distinguishing and respected feature of Queensland Local Government.

This situation has been reinforced with the powers of the mayor as outlined in the new Local Government Act 2009.

The Association therefore submits:

> *That the current system of election at large of the mayor be retained as being matched and suited to the Queensland system of local government.*

16) Are the requirements for disclosure of campaign funding sufficient?

The current requirements for disclosure of campaign funding are comprehensive and onerous.

Comment was received that the simplest system, and therefore the system that would derive the most probity and public confidence in election funding would be for local government requirements to be aligned with those required of candidates and other stakeholders in state and federal elections.

Particular comment was received by the Association suggesting third party disclosure and donor registers for local government election expenditure are already excessive requirements that are onerous for local government and others for compliance and management.

The Association therefore submits:

> *That all electoral funding disclosures for local government election be aligned with those imposed on candidates and other relevant stakeholders in state and federal elections.*
>
> *That elections third party disclosure and donor registers for local government election expenditure be repealed.*

17) Should candidates make disclosures before, progressively during, and after an election period?

The current requirements for disclosure of campaign funding are comprehensive and onerous.

It was suggested that there should be no change due to the rigorous nature of post election requirements, and also due to the register of Interests maintained for elected councillors.

Comment was received that the simplest system, and therefore the system that would derive the most probity and public confidence in election funding would be for local government requirements to be aligned with those required of candidates and other stakeholders in state and federal elections.

The Association therefore submits:

> *That all electoral funding disclosures for local government election be aligned with those imposed on candidates and other relevant stakeholders in state and federal elections.*

18) Should all disclosure requirements, such as values, disclosure periods and who must comply, be standardised?

Comment was received that the simplest system, and therefore the system that would derive the most probity and public confidence in election funding would be for local government requirements to be aligned with those required of candidates and other stakeholders in state and federal elections.

The Association therefore submits:

> *That all electoral funding disclosures for local government election be aligned with those imposed on candidates and other relevant stakeholders in state and federal elections.*

19) Should particular fundraising activities for local government elections be prohibited?

Without some indication of what "particular fundraising activities" might be considered to need prohibition, it is difficult for the Association to respond.

20) Should how-to-vote cards be free from promotional content?

It is important that the conduct of local government elections be as simple and straightforward as possible to allow the community the best chance to cast their vote for the candidates they believe will best represent them.

There have been cases where misleading how to vote material has affected the running of elections and caused confusion amongst the electors.

Consequently, such material certainly needs to be registered and approved with the returning officer well before polling day.

Comment was received that "promotion free" how to vote cards work very successfully in other jurisdictions (notably South Australia).

The Association therefore submits:

> *That how-to-vote cards continue to be approved/registered by the returning officer and content be regulated to ensure that no content could possibly confuse or mislead an elector.*

21) Should how-to-vote cards be standard for all candidates? If so, should these be provided in all polling booths and postal vote packs by the Electoral Commission of Queensland?

This question seems to assume that the Electoral Commission of Queensland will in fact be conducting all local government elections in Queensland, and as seen in the Association's response to Question 6, this is not seen as the preferred outcome.

Therefore this question will be responded to as if the words "Electoral Commission of Queensland" were replaced by the words "Returning Officer".

Comment was received that "promotion free" how to vote cards work very successfully in other jurisdictions (notably South Australia).

Standard size and design cards (approved by the returning officer) placed in the polling booths as an alternative to the cards being distributed outside polling places would have advantages, in the smooth, fair and equitable conduct of the election, and would be environmentally friendly through reduced resource (paper) wastage.

If standard cards are to be used, the cost of producing one for each candidate would probably be regarded as part of the printing and stationery required by the RO to conduct the election.

Discussion did raise some differing views – there are views that the size be standard, but the content/colour scheme etc could be proposed by the candidate for the RO's approval. Also there was some support for retention of the current system.

There was also concern that postal vote packs might become bulky if all candidates in a large field wish to have the pack contain a how-to-vote card. It was generally felt that candidates should be responsible for their own mail costs.

The Association's submission to Question 20 seems to be the only common view on the issue of how-to-vote cards.

22) What promotional material, such as bunting (continuous signage) and coreflutes, should be allowed during the campaign period and at polling booths on election day?

Comment received was somewhat varied, but it can be said that there a common view that there does need to be some mechanism for control of election signage/materials during the campaign period and at polling booths on election day.

Options provided included:

(a) Electoral Act should specify standard rules for all local government elections.
(b) RO police where, what and how long election material should be permitted to occur.
(c) Retain the current system, but prohibit continuous signage/bunting.
(d) Allow each local government to use its Local Laws to manage election signage in its area as at present.
(e) Allow no bunting or candidate signage at polling booths (south Australian example).

Consequently, the Association makes no submission on this issue as there is no consistent view that would be acceptable across the State.

23) Should the placement and amount of election campaign material be standard across all local government areas?

See response to Question 22.

24) Should a 'media blackout' period apply for local government elections? Why? For how long?

It is considered that a media blackout really only limits candidates advertising in the radio and television media.

Advertising and comment/articles in newspapers, and modern media like web pages, web blogs, Facebook, Twitter, You Tube and the like are almost impossible to control by any authority, particularly when some damaging statement is made on the eve of the election leaving the aggrieved candidate no opportunity to clear his or her name.

The Association therefore submits:

That no "media blackout" apply to local government elections.

ISSUE PAPER HEADING - VOTING

Issue Paper Questions

25) Should voting remain compulsory for local government elections in Queensland?

Overwhelmingly, the response from member councils to this question is "Yes!"

The *Local Government Act 2009* embraces principles of democratic representation, social inclusion and meaningful community engagement, and compulsory voting is seen as the best and only way to ensure that a local government's community is fully involved in deciding who will be their representatives on the Council.

The Association therefore submits:

> *That voting remain compulsory for local government elections in Queensland.*

26) Should the option of a postal vote be extended to all voters in every area?

Comments received supported this proposal.

In fact, there is strong support for the system that applies in State and Federal elections to also apply to local government elections, whereby the electors who have registered for the permanent postal vote service, automatically receive a postal vote pack.

The principal view underlying most comment received about conduct of local government elections is that every opportunity to make the election process simple, easy to understand and convenient for the elector should be made available.

It is important that the conduct of local government elections be as simple and straightforward as possible to allow the community the best chance to cast their vote for the candidate they believe will best represent them.

Therefore, if a postal vote will enable an elector to exercise their democratic choice more readily and conveniently, then it should be made available.

The Association therefore submits:

> *That the option of a postal vote should be extended to all voters in every area, and*
>
> *That the system that applies in State and Federal elections also apply to local government elections, whereby the electors who have registered for the permanent postal vote service, automatically receive a postal vote pack.*

27) Should a full postal ballot be automatic for some local government areas? If so, why and for which areas?

The Association's view is that local governments are best placed to take decisions about their operations so that their communities needs are best met.

This certainly applies to decisions about how elections should be conducted in each local government area.

As such, each local government should be empowered to determine, after reasonable community consultation/engagement (a requirement entrenched in the local government principles), whether a full postal ballot, attendance voting or some mixture is best for their community.

As such this does not need to be an "automatic" determination for any area – it should be a decision of the local government, made well in advance of the election.

The Association therefore submits:

> *That each local government should be empowered to determine, after reasonable community consultation/engagement (a requirement entrenched in the local government principles), whether a full postal ballot, attendance voting or some mixture is best for their community.*

28) Should the criteria for pre-polling and postal voting be abolished?

Comment received supported this proposal.

The principal view underlying most comment received about conduct of local government elections is that every opportunity to make the election process simple, easy to understand and convenient for the elector should be made available.

It is important that the conduct of local government elections be as simple and straightforward as possible to allow the community the best chance to cast their vote for the candidates they believe will best represent them.

Therefore, if easy access to pre-poll and postal voting will enable an elector to exercise their democratic choice more readily and conveniently, then it should be made available.

The Association therefore submits:

> *That the option of unrestricted access to pre-poll and postal voting should be extended to all voters in every area.*

29) Does the restriction on voters to attend only polling booths in a division in which they are enrolled adversely affect voters? If this were altered what impact would that have on the administration of the elections in that local government?

The principal view underlying most comment received about conduct of local government elections is that every opportunity to make the election process simple, easy to understand and convenient for the elector should be made available.

It is important that the conduct of local government elections be as simple and straightforward as possible to allow the community the best chance to cast their vote for the candidates they believe will best represent them.

However, there should be no restrictions on voters casting their vote within their local government area.

It was quite common in elections conducted by local government appointed ROs up to 2004 to provide the opportunity at designated polling places within the area for votes to be cast for more than one division, and normally the main polling place allowed votes for all divisions.

This is relatively easy to administer and provides an easy, convenient option for electors of the local government area.

The Association therefore submits:

> *That absentee voting be able to be offered within the local government area for any divisions of the local government area.*

30) Should the new Act allow absent voting? If so, should this be restricted to absent voting within a local government area only?

There are practical and administrative difficulties in any proposal that absentee votes be allowed outside of the local government area, difficulties that would be confusing, complex and difficult to understand.

The parallel can be drawn with State elections – absentee voting is allowed within the State, but cannot be arranged at polling places outside of the State.

Similarly, due to the number and complexity of elections involved in quadrennial elections (for example in 2008, there were 271 candidates for 73 mayoral positions, and 1363 candidates for 480 councillor positions), it is logistically impractical for absentee votes to be provided in other local government areas across the state.

See response to question 29 regarding absentee voting within the local government area.

The Association therefore submits:

> *That it is impractical for absentee votes to be provided in other local government areas across the state, and*
>
> *That absentee voting be able to be offered within the local government area for any divisions of the local government area.*

31) Should the right to vote in Queensland local government elections be extended to non-resident property owners within an area? If so, should this apply to overseas investors?

The *Local Government Act 2009 (Section 12(1))* provides that:

A councillor must represent the current and future interests ***of the residents*** *of the local government area.*

Therefore the proposal that non-resident property owners have voting rights should be rejected completely.

This property franchise system was taken out of Queensland electoral processes decades ago for very good reasons. It is undemocratic and distorts the fair and equitable delivery of services that the community requires.

Unimaginable results would occur in "company" mining towns like Moranbah or Blackwater where "non-resident" property owners own a majority of houses in the towns, and if given a vote (somehow) for each property would

dominate the election of the council that would then have to negotiate rating and other service delivery arrangements possibly unfavourable to the company.

The Association therefore submits:

> *That a property based franchise be completely rejected as being undemocratic and likely to distort the fair and equitable delivery of local government services to the resident community.*

32) Should voting rights be extended to non-resident occupiers (e.g. commercial lessees such as business owners who lease premises within an area but live outside of it)?

See response to Question 31.

33) Should multiple persons be able to claim non-resident voter eligibility for one property (e.g. two or more non-resident owners or lessees of a property)?

See response to Question 31.

34) Should people, based on the number of properties they own, be entitled to more than one vote per division?

See response to Question 31.

35) Who should be responsible for the creation, verification and maintenance of a non-residents' electoral roll?

See response to Question 31.

ISSUE PAPER HEADING - VOTING SYSTEMS

Issue Paper Questions

36) Which voting system is most appropriate for local government elections - Optional Preferential voting, Compulsory Preferential voting, First-Past-The-Post or Proportional Representation? Why?

The LGA 2009 prescribes principles for the operation of the system of Local Government in Queensland, namely

1) *transparent and effective processes and decision-making in the public interest; and*
2) *sustainable development and management of assets and infrastructure, and delivery of effective services; and*
3) *democratic representation, social inclusion and meaningful community engagement; and*
4) *good governance of, and by, local government; and*
5) *ethical and legal behaviour of councillors and local government employees.*

Of particular relevance to this review are principles 3 and 4.

Principle 3 links the requirement for democratic representation with the elements of inclusion and engagement. This seeks to secure both representative and participatory democratic outcomes.

Specifically, the LGA 2009 and regulations contain details about the requirements for a Community Engagement Policy and the use of contemporary engagement practice in the development of a Long Term Community Plan, Asset Management Plans and Financial Management forecasts and plans. In addition the legislation prescribes a suite of community engagement mechanisms to inform a council's decision making. The legislation also prescribes essential performance indicators and measures of sustainability and the public reporting of outcomes against these measures.

Principle 4 highlights the importance of good governance of and by the local government. To support the achievement of this principle LGA 2009 prescribes the roles and responsibilities of councillors. In particular, section 12(6) states – "When performing a responsibility, a councillor must serve the overall public interest of the whole local government area". The Act also includes the disciplinary procedures that apply should the roles and

responsibilities not be met. The legislation expects a collaborative model to apply to the operation of the local government.

These principles are instructive when it comes to the choice of electoral arrangements and voting systems to support the attainment of these principles. It is important that the characteristics of the voting system and the expectations of the operational arrangements contained within the Act are complimentary.

A Research Brief entitled "Electoral systems" produced by the Australian Parliamentary in 1989 and revised in 2006 identifies a number of questions as relevant to the consideration of an appropriate voting system.

These questions are:

- Is it easily understood?
- Do voters have a choice of candidates?
- Does it produce a quick result?
- Does the result reflect the electorate's wishes?
- Does the result representing all voices?
- Is the government supported by the majority?
- Will it provide stable government?
- Does the result provide effective constituent representation?

The author of the 2006 revision of the paper, Scott Bennett[1], in an address to the LGAQ's workshop on the Committee's Issues Paper held in Brisbane on 15 July 2010 emphasised that no single voting system provides a positive answer to each of these questions. He explained that the different systems provided positive answers to some of the questions but not all. In many respects they are mutually exclusive.

The executive summary of the paper provides a useful oversight as to how the various systems – first past the post, preferential and proportional representation address the questions identified above. Following is an extract from the summary.

Ostensibly, the prime requirement of an electoral system is that it enables the citizens of a nation to elect their legislative members and, in many cases, the head of state. There is more to it than just that, however, with a number of important factors coming into play. Discussion of these forms the major part of this paper. They include:

- *Whether or not an electoral system is easily understood by the voters. Is the simplest of all systems, First-past-the-post, to be preferred because it is so easy for voters to comprehend? On the other hand, does it matter if a system is difficult to comprehend if it delivers a legislature whose makeup reflects the popular will?*

[1] Former Senior Lecturer in Politics and Government, ANU and Researcher, Australian Parliamentary Library

- *How much choice of candidates do voters have? Should voters have full freedom to vote for any particular candidate, or does it not matter that they may only be able to vote for a closed ticket of party representatives with no individual choice possible?*

- *Does it matter if results of an election are not known for some time? Some results are known very speedily, others can take several weeks. Many would see this as a serious weakness in an electoral system.*

- *How much does an electoral system enable the voters' wishes to be reflected? Should there be an exact replication (e.g. a 50 per cent vote for a party producing 50 per cent of the legislature's seats), or does it not matter if the leading party gains more seats than its vote would seem to justify?*

- *Does the electoral system help ensure that a wide range of views is heard in the legislature? If not, does that matter? Should electoral systems be put in place that are likely to see a wider range of representation in the parliament than previously?*

- *Did a majority of the electorate support a new or re-elected government at the time of the election? If not, does that matter? Should an electoral system be put in place that guarantees this? Some observers believe that is it more important for electoral systems to produce stable governments than necessarily a majority of votes.*

- *Single-member electoral arrangements are typically based on the representation of particular localities, with the citizen easily able to identify the local member. By contrast, in an electoral system based on multi-member electorates there can be confusion in the general population as to which MP a citizen can approach to air a grievance or to seek assistance. Does this matter?*

These questions lead naturally to the question of what is the best electoral system to use to elect members of a national legislature. The implication in this question is that a 'best' electoral system can be found. In fact, there is consensus among political scientists that there is no 'best' system — indeed, it has been acknowledged that all systems have flaws and problems. It has been claimed that the 'necessary first answer' to the question of which is 'best' becomes: 'It depends on what one thinks an electoral system is for'.

The paper goes on to say that an important factor in the choice of a voting system is location. In other words it depends on the circumstances of the locality in which the system operates. This is particularly relevant for local government elections in Queensland recognising the diversity of situations contained in the State's 73 council areas.

Having regard to factors outlined in the paper and the requirements of the LGA 2009 the conclusion can be drawn that the relevant questions to be considered in this review are:

- Is it easily understood?
- Do voters have a choice of candidates?
- Does it produce a quick result?
- Will it provide stable government?
- Does the result provide effective constituent representation?

Another factor relevant to the choice of voting systems, particularly the introduction of a new system such as proportional representation, is that this should not be looked at in isolation of the voting systems for Queensland at both state and local government levels. Local government has long sought greater alignment between state and local government electoral arrangements. A move to proportional representation for local government is at odds with this principle. Conversely, if it is to be considered at the local government level why not consider its adoption at the state level as is the case in Tasmania and for the Upper Houses in the other state parliaments?

There have been strong representations made to the Association by member councils that any form of Proportional Representation voting system is not appropriate for local government elections.

Proportional Representation voting systems have application where political parties or groups are dominant and large numbers of positions are to be elected by large numbers of electors e.g. the Senate and State Upper Houses.

Local government elections are almost totally required to elect small numbers of councillors (where the council is un-divided) and the instances of endorsed party political teams running in these elections in Queensland is almost unknown (Gold Coast City Council election 2008 is the only known instance).

Local Government is identified as the level of government closest to the people and the absence of party political activity within Queensland local government is highly regarded by the community. It is a welcomed alternative to the political and heavily adversarial nature of state and federal politics. It provides the opportunity for genuinely independent members of the community not beholden to our constrained by political party controls to seek election to represent the whole community not just those of like political persuasion. This is a strength of local government in Queensland that should not be eroded.

It is impossible to use proportional Representation for single member elections, which are the majority of local government elections – 73 mayors and all divided council elections (22).

Because of the nature and size of local government elections, it is apparent that the only options that can be considered are Optional Preferential voting, Compulsory Preferential voting and First-Past-The-Post systems.

The principal view underlying most comment received about the conduct of local government elections is that every opportunity should be made available to ensure the election process is simple, easy to understand and convenient for the elector.

It is important that the conduct of local government elections be as simple and straightforward as possible to allow the community the best chance to cast their vote for the candidates they believe will best represent them.

Optional Preferential and First-Past-The-Post systems are well known in Queensland local government elections, having been in use for decades and the electorate is comfortable with and understands these systems. Indeed there is no evidence of broad based community interest in or calls for change.

The current situation is that for single member elections, Optional Preferential elections apply.

Where undivided councils require election of (basically) multi-member divisions, the First-Past-The-Post system is used – even for the election of the Mayor, which is (in reality) a single member election.

There seems to be no "value-add" for democratic election of the community's representatives in changing from the current voting systems.

There is no evidence that Compulsory Preferential will improve the democratic outcomes over the Optional Preferential system, and Proportional Representation systems will not be effective given the small numbers of positions to be elected, the absence of party politics, and the lack of public understanding of these complex and expensive systems.

The Association therefore submits:

> *That the current voting system arrangements for local government elections (First-Past-The-Post and Optional Preferential - dependent on whether the election is for multi-member or single member divisions) are the most appropriate because the other systems identified (Compulsory Preferential and Proportional Representation):*
>
> *(a) do not demonstrate more democratic outcomes will be delivered;*

(b) are more complex voting systems, particularly proportional representation, that are less likely to be understood by electors;

(c) are more appropriate to and encourage party political elections, particularly proportional representation, and

(d) are less complimentary to the principles and operational requirements contained within the LGA 2009.

37) Would different voting systems work better for different sized local governments? Why?

The current situation is that, no matter the size of the local government (demographically or geographically) for single member elections, Optional Preferential elections apply.

Similarly, where undivided councils require election of (basically) multi-member divisions, the First-Past-The-Post system is used – even for the election of the Mayor, which is (in reality) a single member election.

As such, currently, the voting systems in use provide successful election outcomes for their communities.

The Association therefore submits:

That the current voting system arrangements for local government elections (First-Past-The-Post and Optional Preferential - dependent on whether the election is for multi-member or single member divisions) are the most appropriate because the other systems identified (Compulsory Preferential and Proportional Representation):

(a) do not demonstrate more democratic outcomes will be delivered;

(b) are more complex voting systems, particularly proportional representation, that are less likely to be understood by electors;

(c) are more appropriate to and encourage party political elections, particularly proportional representation, and

(d) are less complimentary to the principles and operational requirements contained within the LGA 2009.

38) Should Proportional Representation be introduced for Queensland local government elections?

If so, why and

(a) which model/s should be implemented?
(b) how would this be implemented in divided and undivided councils?
(c) should it apply for all councils? If not, which councils should proportional representation apply to?

See response to Question 36

The Association therefore submits:

> *That the current voting system arrangements for local government elections (First-Past-The-Post and Optional Preferential – dependent on whether the election is for multi-member or single member divisions) are the most appropriate because the other systems identified (Compulsory Preferential and Proportional Representation):*
>
> *(a) do not demonstrate more democratic outcomes will be delivered;*
>
> *(b) are more complex voting systems, particularly proportional representation, that are less likely to be understood by electors;*
>
> *(c) are more appropriate to and encourage party political elections, particularly proportional representation, and*
>
> *(d) are less complimentary to the principles and operational requirements contained within the LGA 2009.*

ISSUE PAPER HEADING - OTHER

Issue Paper Questions

39) What other issues should the Committee consider in relation to this inquiry?

A number of other issues have been raised in the course of consulting with the Association's member Councils.

FULL POSTAL VOTE ELECTIONS

Comment was made that where a full postal ballot is occurring, there is no need for counting staff to wait until 6.00pm (close of poll) to commence processing and counting of postal voting papers received by close of business on the Friday preceding Election day. There will be no more postal deliveries until Monday morning.

With full postal ballot, this is an artificial delay that is not necessary.

The Association therefore submits:

> *That processing and counting of voting papers received as at last mail on the Friday before the Saturday election day be able to occur from 8.00am on the Saturday election day, and not be delayed until 6.00pm as at present.*

RECEIPT OF POSTAL VOTES AFTER ELECTION DAY

A matter that is often raised is the acceptance of postal votes for up to 10 days after the election day, where there is not way of identifying that the papers were in fact mailed before election day, and there is the possibility that electoral fraud could be committed by holding uncompleted papers and completing them after preliminary results are known, then mailing them so that they are received within the 10 day period.

It is felt that such papers received after the election day should only be processed if there is some postal mark indicating they were in fact posted before 6.00pm on the Friday prior to election Saturday.

The Association therefore submits:

> *That postal ballot papers received after the election day shall only be processed and counted if the outer envelope has markings indicating that the papers were posted before 6.00pm on the Friday prior to election Saturday.*

IDENTIFICATION OF ELECTORS

Comment was made that electoral fraud could be reduced if electors were required to present identification, such as driver's licence, proof of age card or letter from the ECQ to confirm their identity at a polling booth.

Similarly, cases of mis-identification of persons of the same name on the roll would be reduced if applications for pre-poll or postal votes required date of birth to be supplied.

The Association therefore submits:

> *That electors be required to present identification, such as driver's licence, proof of age card or letter from the ECQ to confirm their identity at a polling booth and*
>
> *That applications for pre-poll or postal votes require date of birth to be supplied.*

MAYORAL BALLOT COUNTED WHERE COUNCILLOR BALLOT REJECTED

The circumstance can arise where an elector believes they are enrolled for (say) Division 1, having moved recently from (say) Division 3.

The elector is issued with ballot papers for Division 1 election, including Mayoral ballot paper.

The ballot papers are completed by the elector and set aside for separate custody until the RO can get advice from ECQ as to where the elector is properly enrolled.

If it transpires that the elector was in fact not entitled to vote for the councillor in Division 1 because he/she was properly enrolled at the old address in Division 3, the papers are all set aside and not counted – despite the elector being entitled to vote for the mayoral ballot as being enrolled in Division 3.

There is a need for the procedure to allow the mayoral ballot paper to be counted despite the councillor ballot paper being ineligible.

The Association therefore submits:

> *That where ballot papers for both mayoral and councillor elections are set aside for separate custody and further investigation as to the elector's eligibility to vote in both elections, and it is subsequently found the elector is entitled to vote in only the mayoral election, that the Returning Officer be required to treat the Mayoral ballot paper as a properly made vote.*

BY-ELECTION ABORIGINAL AND TORRES STRAIT ISLANDER COUNCILS

Flexibility with regard to the timeframes for commencement of by-election processes is required for Aboriginal and Torres Strait Islander Councils, due to the cultural sensitivities arising with publication of names of recently deceased persons.

Should a sitting councillor die, it is understood that the cultural response is normally to not write, speak or otherwise acknowledge the deceased person's name until after the funeral/burial ceremony has been completed.

In that event, allowance or discretion should be allowed to defer the commencement of by-election or replacement procedures and only "start the clock" (Section 270(2) of Schedule 2 of LGA 2009 requires the by-election be held within 10 weeks of the vacancy occurring) once it is culturally appropriate to do so.

The Association therefore submits:

> *That for Aboriginal or Torres Strait Islander Councils, where a vacancy arises from the death of a Councillor, allowance or discretion be allowed to defer the commencement of by-election or replacement procedures and only "start the clock" (Section 270(2) of Schedule 2 of LGA 2009 requires the by-election be held within 10 weeks of the vacancy occurring) once it is culturally appropriate to do so.*

The Parliament of the Commonwealth of Australia

Interim report on the inquiry into the conduct of the 2013 Federal Election

Senate voting practices

Joint Standing Committee on Electoral Matters

May 2014
Canberra

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Foreword

The 2013 federal election will long be remembered as a time when our system of Senate voting let voters down.

Combined with pliable and porous party registration rules, the system of voting for a single party above the line and delegating the distribution of preferences to that party, delivered, in some cases, outcomes that distorted the will of the voter.

The system of voting above the line has encouraged the creation of micro parties in order to funnel preferences to each other, from voters who have no practical way of knowing where their vote will ultimately land once they had forfeited it to the parties' group voting tickets.

The current rules for party registration have provided the means and unacceptable ease to create the parties in the first place to garner primary votes above the line and then harvest the preferences in a whirlpool of exchanges.

This has resulted in voters being required to contemplate and complete a difficult to manage ballot paper a metre long. At the last election 44 parties or groups were listed above the line and 110 candidates below the line on the NSW ballot paper. At a metre long, the Senate ballot papers were the maximum printable width, which meant the printed size of the names of parties and candidates was unacceptably small. As a result the AEC was required to provide voters with plastic magnifying sheets.

Many voters were confused. If they voted above the line, the choice of where their vote would go was effectively unknown, and accordingly in many cases their electoral will distorted.

If they voted below the line they needed to complete preferences for each and every candidate - in many states, a very complex and time consuming exercise.

The 'gaming' of the voting system by many micro-parties created a lottery, where, provided the parties stuck together in preferencing each other (some of whom have polar opposite policies and philosophies) the likelihood of one succeeding was maximised.

Instead of a lottery ball popping out of a machine, in Victoria, a micro-party candidate popped out as the winner of a Senate seat.

The Australian Motoring Enthusiasts Party received just 0.51 percent of the primary vote, but their candidate was elected to the Senate through 'gaming' the system. Clearly, given the circumstances, this election did not represent the genuine will of the voters.

In some other States similar outcomes almost occurred.

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

These circumstances demand reform from this Parliament.

That is why for five months this Committee has worked in a bi-partisan way to suggest a course of action that will restore the will of the voter and ensure more transparency and confidence in Senate elections.

We have heard all the arguments, analysed all the evidence, and ensured every view has been evaluated.

We are conscious that in proposing any substantive reform the Committee must ensure its recommendations are fair and effective, and will represent a significant improvement to current electoral practice. That is why we have sought to produce a considered, robust and unanimous report – and we have.

We believe that retaining the current system is not an option.

We make six recommendations for reform as guidance to the parliament and the government for legislative change.

The current system of Senate voting above the line, and its reliance on group voting tickets, should be abolished and replaced with a new system that puts the power of preferencing back in the hands of the voter.

Our considered view is that the new system should be an optional preferential voting system, where the voter decides whether to preference and to how many parties or candidates to preference.

We also suggest consequential reforms to below the line voting to remove the need for voters to complete every box.

We also believe that party registration rules need to be enhanced to ensure that parties are real and genuine, rather than vehicles for electoral manipulation.

We have held three hearings in Canberra, and other hearings and briefings in Sydney, Melbourne, Hobart and Perth. The Committee has met for many days to consider the issues.

As Chair I want to place on record my thanks to the permanent members of the Committee, Senator the Hon John Faulkner, Ian Goodenough MP, Hon Gary Gray MP, Alex Hawke MP, Senator Helen Kroger, Senator Lee Rhiannon, Senator Anne Ruston, Senator Mehmet Tillem as well as three participating members from the Senate, Senator Bridget McKenzie, Senator Barry O'Sullivan and Senator the Hon Ian Macdonald who all showed a deep interest during the inquiry.

I particularly want to thank the Deputy Chair, the Hon Alan Griffin MP for his willingness to go the extra mile and work with me to gain the evidence and produce the best report we could.

The staff of the Secretariat have demonstrated the very best qualities of our public service; appreciating the importance of the issues confronted by the Committee and working tirelessly to support our deliberations with the aim of assisting to produce this report within a very tight time frame.

The Committee Secretary Glenn Worthington, together with Siobhan Leyne, Jeff Norris, James Bunce, Katrina Gillogly and Jessica Ristevska worked extremely hard in gathering the evidence and liaising with the range of individuals, groups and parties making submissions. They deserve thanks and recognition, as do their colleagues who supported all of us we travelled and worked.

This report has been produced at this time to not only provide the Parliament with the time to legislate change, but to enable thorough and adequate information, education and explanation of the improvements to the voting public well in advance of the next election.

It is critically important that the Parliament considers these recommendations for reform – and legislation to enshrine them into electoral law – as a very high priority.

Hon Tony Smith MP
Chair

Membership of the Committee

Chair	Hon Tony Smith MP	
Deputy Chair	Hon Alan Griffin MP	
Members	Ian Goodenough MP	Senator the Hon John Faulkner
	Hon Gary Gray AO MP	Senator Helen Kroger
	Alex Hawke MP	Senator Lee Rhiannon
		Senator Anne Ruston
		Senator Mehmet Tillem

Participating members for the purposes of the 2013 Election inquiry

Senator Chris Back
Senator Cori Bernardi
Senator Catryna Bilyk
Senator Mark Bishop
Senator the Hon Ronald Boswell
Senator Sue Boyce
Senator Carol Brown
Senator David Bushby
Senator the Hon Doug Cameron
Senator the Hon Kim Carr
Senator the Hon Jacinta Collins
Senator the Hon Stephen Conroy
Senator Sam Dastyari
Senator Sean Edwards
Senator Alan Eggleston
Senator the Hon Don Farrell
Senator David Fawcett
Senator Mark Furner
Senator Alex Gallacher
Senator the Hon Bill Heffernan
Senator Sue Lines
Senator the Hon Joe Ludwig
Senator the Hon Kate Lundy
Senator the Hon Ian Macdonald
Senator John Madigan
Senator Gavin Marshall
Senator Anne McEwen
Senator Bridget McKenzie

Senator the Hon Jan McLucas
Senator Claire Moore
Senator Deborah O'Neill
Senator Barry O'Sullivan
Senator Stephen Parry
Senator Nova Peris
Senator Helen Polley
Senator Louise Pratt
Senator Zed Seselja
Senator Lisa Singh
Senator Dean Smith
Senator the Hon Ursula Stephens
Senator Glenn Sterle
Senator the Hon Lin Thorp
Senator Anne Urquhart
Senator John Williams
Senator the Hon Penny Wong
Senator Nick Xenophon

Committee Secretariat

Secretary	Dr Glenn Worthington
Inquiry Secretary	Siobhán Leyne
Research Officers	James Bunce
Technical advisor	Jeff Norris
Administrative Officers	Katrina Gillogly
	Jessica Ristevska

Terms of reference

On 5 December 2013 the Special Minister of State, Senator the Hon Michael Ronaldson, requested the Committee to conduct an inquiry with the following terms of reference:

> That the Joint Standing Committee on Electoral Matters inquire into and report on all aspects of the conduct of the 2013 Federal Election and matters related thereto.

List of abbreviations

AEC	Australian Electoral Commission
AEO	Australian Electoral Officer
ATL	Above the Line
BTL	Below the Line
CSS	Central Senate Scrutiny
DRO	Divisional Returning Officer
ElMS	Election Management System
GVT	Group Voting Ticket
IVT	Individual Voting Ticket
LPV	Limited Preferential Voting
OIC	Officer-in-Charge
OPV	Optional Preferential Voting

List of recommendations

Analysis and recommendations

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.

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.

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.

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.

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.

1

Introduction

1.1 This report makes six recommendations for reform as guidance for legislative change. The purpose of these recommendations is to provide simplicity, integrity, transparency and clarity in the Senate voting system; to provide the people with the power to express and to have their voting intent upheld, and restoring confidence that the system of Senate voting reflects the will of the people.

1.2 The Senate voting system has come under intense scrutiny following the 2013 election. In Victoria the Australian Motoring Enthusiast Party representative was elected to the Senate having received only 0.51 per cent of formal first preference votes. In Western Australia, there was a 14 vote difference between two candidates at one exclusion point and a 12 vote difference at the same exclusion point during the recount.[1]

1.3 The Motoring Enthusiast Party received only a total of 17 122 votes in Victoria, equalling just 0.0354 of a quota.[2] However, through manipulation of preference deals, the party was elected to the final seat with a transfer of 143 118 votes from the Sex Party, whose transferred votes themselves had been transferred from over twenty other parties, arguably coming from voters that had no idea that their vote would elect a candidate from such an unrelated party with such low electoral support.

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1 This difference is due to the operation of the count. For further information about how the count and the transfer exclusion point operates see <aec.gov.au/Voting/counting/senate_count.htm>.

2 Australian Electoral Commission (AEC), results 2013 federal election, 2014, <results.aec.gov.au/17496/Website/SenateStateFirstPrefs-17496-VIC.htm>, accessed 20 January 2014.

1.4 A diversity of candidates and political parties is important in a robust democracy and any system that lessens the capacity for diversity in political representation would diminish our democracy.

1.5 However, the Australian community is rightly concerned about a system that allows results such as those that occurred at the 2013 Senate election.

1.6 The final composition of the Senate should reflect the informed decisions of the electorate and it is clear that the Senate from 1 July 2014 will not do that, it will reflect deal making and preference swapping.

1.7 The 'gaming' and systematic harvesting of preferences involving complex deals that are not readily communicated to, or easily understood by the electorate has led to a situation where preference deals are as valuable as primary votes.

1.8 A further concern expressed by many voters after the 2013 election is that they are being forced into above-the-line (ATL) voting due to extremely large ballot papers (110 candidates were listed on the NSW ballot paper). Once the ATL vote is cast, the voter loses all power over their preference flow. While Group Voting Tickets (GVTs) are technically available for electors to examine, very few do so due to the time involved and the complexity of these arrangements. The ability of parties to lodge up to three GVTs means that even if voters can follow the tickets, they do not know which one applies to their vote.

1.9 The 2013 Senate election results were a crucible in which some of the flaws of current arrangements merged: specifically, electors felt their votes had been devalued by preference deals and that they had been disenfranchised by being forced to prefer unpreferred candidates.

1.10 It is clear that status quo is simply not an option.

1.11 This report addresses those issues that need reform to bring balance back to the Senate voting system.

1.12 Reports of the Joint Standing Committee on Electoral Matters as far back as 2005 gave consideration to these issues as they were emerging.

1.13 Concerns have also been raised about the construction of Senate ballot papers and party branding contributing to voter confusion which resulted, most publicly in New South Wales, in votes going to the Liberal Democratic Party rather than the Liberal/Nationals.

1.14 This in part had to do with the position the party drew on the ballot paper in the first column, together with the size of the ballot paper resulting in the party name 'Liberal' and 'Democrats' being split across two lines, leaving 'Liberal' as the more prominent part of the party name.

1.15 A variety of suggestions have been raised aimed at addressing this issue including that sitting Senators/parties should be allocated the first

columns on the ballot paper; that Robson rotation should be implemented; that party logos should be printed on ballot papers.

Conduct of the inquiry

1.16 The Committee has examined Senate voting in the context of its wider inquiry into the conduct of the 2013 federal election, referred by the Special Minister of State on 5 December 2013.

1.17 The 2013 Senate results made it clear that Senate voting is the issue of most concern to voters and so the Committee undertook to address this issue as a matter of urgency.

1.18 The Committee conducted public hearings on this and other matters in Canberra, Sydney, Melbourne and Hobart and received a wide range of submissions and correspondence regarding this issue. The Committee also travelled to Perth and received private briefings on the conduct of the Senate election and the subsequent re-run. All transcripts and submissions are available on the Committee's website: www.aph.gov.au/em and a full listing will be available in the final report.

The 'Xenophon Bill'

1.19 On 12 December 2013, the Senate referred the Commonwealth Electoral Amendment (Above the line Voting) Bill 2013 to this Committee for inquiry and report.[3] This bill is proposed by Senator Xenophon to address the concerns raised by the community in the wake of the 2013 election.

1.20 The bill proposes to reform the system for electing candidates to the Senate in light of perceived attempts to 'game' the system through preference deals at the 2013 federal election. The intention of the bill is to simplify the voting process to better allow voters to determine their own preferences.

1.21 The bill proposes an optional above the line voting system for electing candidates to the Senate. Electors would have the option either of numbering at least one group voting square above the line, or below the line at least as many candidates as there are to be elected at that particular election. Voters would then have the option to go on to number as many other squares as they wish. This would allow voters to express their preferences to the extent they wish.

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3 Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013, <aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=s934>, accessed 4 April 2014.

1.22 The Committee reported to the House on 24 February 2014 and the Senate on 3 March 2014 that it would consider the proposal as part of an interim report on the 2013 election rather than address individual reforms by way of private bills.

1.23 The substantive Senate voting issues raised by Senator Xenophon are addressed in this report.

Structure of the report

1.24 Chapter 2 discusses the history of Senate voting reform and how the current voting and counting system works.

1.25 Chapter 3 presents the evidence received by this inquiry from the community, political parties and experts in the electoral system.

1.26 Chapter 4 concludes the report and presents findings and recommendations for significant change to the Senate voting system.

2

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.

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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

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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 officer[5]; 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. <ecq.qld.gov.au/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=148&libID=170> accessed 29 April 2014.

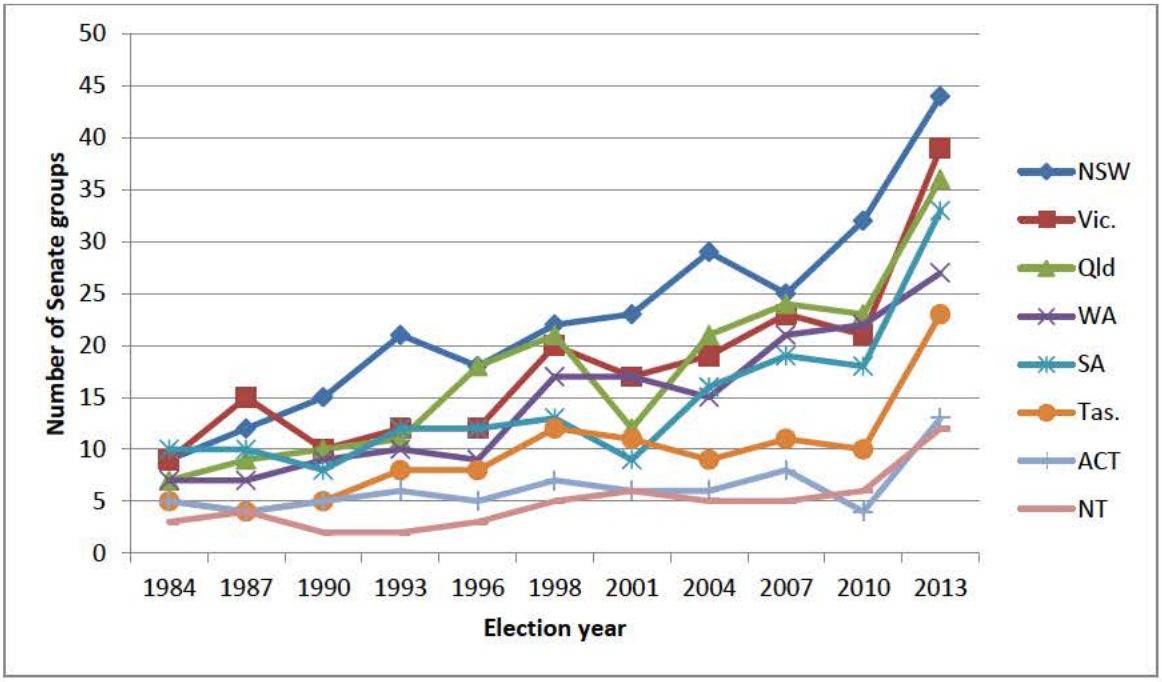
Table 2.2: Comparison of group numbers between 2010 and 2013 Senate elections in Tasmania, the Australian Capital Territory, and New South Wales

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 elections[8]



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]

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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.

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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 (ElMS). 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 ElMS.

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 ElMS 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.

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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]

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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

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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.

3

Evidence and proposals

3.1 Voter dissatisfaction with the current Senate system has been widely reported and widely submitted to this inquiry. Election commentator Antony Green identified the key problem:

> Above all, what has been ridiculous in this process is that it has produced the gigantic ballot papers which we saw at the federal election and which presented voters with options where the size of the ballot paper and the range of options started to interfere with their ability to cast a sensible vote. It has produced results that were engineered by the preference deals rather than by the votes cast by voters. I think the case for some sort of reform to that system is compelling.[1]

3.2 Dr Kevin Bonham argued that the Senate voting system was 'broken', and offered the following reasons:

- Candidates being elected through methods other than genuine voter intention from very low primary votes.
- Election outcomes depending on irrelevant events involving uncompetitive parties early in preference distributions.
- The frequent appearance of perverse outcomes in which a party would have been more successful had it at some stage had fewer votes.
- Oversized ballot papers, contributing to confusion between similarly-named parties.
- Absurd preference deals and strategies, resulting in parties assigning their preferences to parties their supporters would be expected to oppose.

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1 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra p. 1.

- The greatly increased risk of close results that are then more prone to being voided as a result of mistakes by electoral authorities.[2]

3.3 It is clear that it is time to change some aspect of the system that allows individuals and parties to 'game' their way into the Senate, and to reduce the confusion for voters. Mr Green noted that:

> the form of reform has to focus on the voters: what the voter is presented with as a choice and how they express their choice. That has to be the more important thing—how voters can be given an informed choice and how they can express it. Voters have to have some ability to know what is happening to their vote. …
>
> The system, if changed, should advantage parties which campaign, not parties which arrange preference deals. … I do not see why a party should get control over its preferences simply by putting its name on the ballot paper; it actually has to do something beyond that.[3]

3.4 A range of individuals with expertise in the electoral system, political parties, both large and minor, community organisations and individuals offered proposals for reform to the Senate voting system. These proposals centred on:

- reform to ATL and BTL senate voting practices to make it easier for voters to express their preferences;
- the introduction of thresholds to ensure that candidates reach a minimum first preference vote to be eligible for election; and
- reform party registration requirements and candidate nomination to stop the proliferation of minor 'front' parties.

3.5 Further concerns were raised by the community and in the media about candidates not residing in the state or territory in which they were contesting election. It was reported that during the 2014 Western Australia Senate re-run when a reported 10 out of 77 candidates did not reside in the state.

3.6 This chapter outlines the evidence received by the inquiry and proposals for reform of the current system. Committee comment on these views is offered in Chapter 4.

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2 Dr Kevin Bonham, *Submission No. 140*, p. 1.

3 Antony Green, *Transcript of evidence*, 7 February 2001, Canberra p. 2.

Senate voting practices

3.7 While the experts were in agreement that Senate voting practices are in need of reform, there are a range of views about exactly what form this should take. Mr Green noted that the introduction of party tickets had unforeseen consequences, by giving 'control over preferences to smaller parties', which otherwise would not have had this control:

> That has produced deliberate deal-making. In the early days the deals were made with the major parties. In 1984 there were deals made to keep Peter Garrett and the Nuclear Disarmament Party out of the Senate. In 1998 there were agreements between the parties to try to keep Pauline Hanson's One Nation out of the Senate, and the parties used ticket voting in that way. But what we have seen since then is the growth of the other parties – the minor parties and micro-parties – making use of the loopholes in the party registration laws, and then using the ticket voting to actually engineer results. That reached its logical – or illogical – conclusion at the recent election, with the election of parties with less than one per cent of the vote.[4]

Above the line voting (ATL)

3.8 There was near unanimous agreement that the current system of ATL voting, where voters fill out just one box and have their preferences distributed via group voting tickets (GVTs), should be replaced.

3.9 A range of alternative voting methods were advanced in hearings and in submissions.

Compulsory or 'full' preferential above the line voting

3.10 Compulsory preferential ATL voting requiring voters to number all boxes above the line was acknowledged as an option to amend the current system.

3.11 The Nationals supported compulsory preferential ATL in order to provide for a mechanism that would be a near exhaustive preferential voting system.[5]

3.12 Compulsory preferential ATL voting was also recommended by this Committee's predecessor in 2005, as it was similar to the voting system in the House of Representatives and could address the emerging issues that were identified at that time.

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4 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 1.

5 National Party of Australia, *Submission No. 184*, p. 3.

Optional preferential voting above the line (OPV ATL)

3.13 Some form of optional preferential voting was widely recommended by electoral experts in order to return control of preference flows to voters.

3.14 Professor Ben Reilly noted that a simplification of the Australian voting system was required to restore public confidence in Australia's political process, and to 'return a degree of predictability to electoral outcomes'.[6]

3.15 Mr Green proposed OPV ATL as a way of removing party tickets and making it easier for voters to control their vote:

> I personally prefer the form of above-the-line voting used in New South Wales where voters can indicate their own preferences above the line and the group-ticket votes have been done away with.[7]

3.16 Dr Bonham also supported OPV, making the following recommendation:

> Voters may vote above the line. A voter voting above the line can just vote 1 or can preference as many other parties as they wish. Such a vote flows through all members of each preferenced party in order, exhausting when it has no more parties to go to. This is similar to what happens in Hare-Clark in Tasmania – many voters choose to vote for one party only, then exhaust their vote.[8]

3.17 In contrast, Malcolm Mackerras AO submitted that ATL preference voting 'creates the impression of a party list system' and that 'any conversion of this system into a party list system is unconstitutional'.[9] Mr Mackerras emphasised that Australia's system is a candidate based system 'because it is proportional representation by means of the single transferable vote', and that people should be made to understand this better than is currently the case.[10]

3.18 He supported the current ATL system and party tickets noting that:

> If [voters] do vote above the line, that indicates that they are perfectly willing to accept the judgement of their party in relation to any possible transfer of votes from that party and they are willing to accept the judgement of their party in relation to the rank order of the candidates on that ballot paper.
>
> I don't see why people should not be allowed to express that they are happy with the judgment of their party in this way …

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6 Prof Ben Reilly, *Submission No. 39*, p. 3.

7 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 2.

8 Dr Kevin Bonham, *Submission No. 140*, p. 8.

9 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 18.

10 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 20.

> [However, at the last election, electors] were intimidated into voting above the line and there is proper resentment of that.[11]

3.19 Professor George Williams AO also argued for OPV ATL:

> Just as voters can express their preferences below the line, so too should they be able to do this above the line. Voters should be able to indicate a preference between the listed parties and any independent candidates.
>
> I would prefer that voters be required to indicate the full extent of their preferences, just as they do in the House of Representatives, but would be open to considering an optional preferential voting model, like that used for the New South Wales upper house.
>
> If optional preferential voting is allowed above the line, I imagine it should also be permitted below the line.
>
> The benefit of this reform is that it does not limit new parties from forming, but removes the incentives for micro-parties to form with the intention of harvesting votes through preferences. It encourages smaller like-minded parties to coalesce and grow by attracting votes and building real support in the electorate. Under this system, it is much less likely that candidates would be elected through miniscule first preference votes and high rates of transferred votes.[12]

3.20 A number of parties also supported ATL OPV (see page 44). For instance, the Liberal Party of Australia stated:

> Given the problems that have become apparent in recent elections through the manipulation of Group Voting Tickets, the Liberal Party believes it is timely to move to optional preferential voting above the line and abolish Group Voting Tickets for Senate elections. This would retain a relatively simple, straightforward voting system, removing avenues for possible abuse, and allowing the voter to preference further candidates if they wish.[13]

Partial preferential or 'limited preferential' voting above the line (LPV ATL)

3.21 Some submissions also made the case for 'limited preferential' voting above the line (LPV ATL); where voters would be required to complete a small number of boxes as a minimum, with the option of numbering further boxes.

3.22 As noted in a submission from Dr Norm Kelly:

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11 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 23.

12 Prof George Williams, *Submission 23*, p. 3.

13 Liberal Party of Australia, *Submission 188*, pp. 4-5.

> Limited preferential voting (LPV) may be the best option. Using LPV, voters could be required to number the ballot paper with preferences 1 through to 6, or as an alternative, at least 1 to 6, but providing additional preferences if the voter wishes.[14]

3.23 Peter Abetz MLA (Western Australia) noted :

> Under this proposal, voters would numerically indicate their preference for the group or party of their choice above- the- line.
>
> Two approaches could be considered:
>
> 1. All boxes would need to numbered in exactly the same fashion as voters vote for candidates to the House of Representatives.
>
> OR
>
> 2. A minimum of 3 boxes need to be numbered, creating the possibility that the vote becomes "exhausted"
>
> The preferences would then flow to the parties in the order chosen by the voter and not by the parties themselves.[15]

3.24 This model can be thought of as a compromise between full preferential voting and optional preferential voting by endeavouring to moderate the drawbacks that would flow from either model, such as informality in a compulsory ATL system and exhaustion in an OPV system.

Below the line voting (BTL)

3.25 Mr Mackerras argued that a more reasonable BTL voting option would result in a greater BTL vote. He proposed optional preferential voting BTL with a minimum of 15 boxes required to be numbered. Mr Mackerras argued that 15 would allow for national consistency and no need to change requirements for a double dissolution election should a lower number be otherwise chosen.[16]

3.26 Mr Mackerras argued that consistency was more important than requiring voters list as many preferences as there were vacancies:

> In the Senate election, we know that at every election there will be a difference between the different jurisdictions. There will be two for the Australian Capital Territory and the Northern Territory, six for the states and 12 in a double-dissolution election. Because of the differences in what psephologists call 'district magnitude'… I

14 Dr Norm Kelly, *Submission No. 156,* p. 4.

15 Peter Abetz MLA, *Submission No. 54*, p. 1.

16 Malcolm Mackerras, *Submission 7,* p. 2.

> think that there should be a number that applies to everybody because that would simplify things.[17]

3.27 Mr Mackerras stated that giving people this option would also help to eliminate the perceived effects of 'gaming' the system:

> When you give people a reasonable option to vote below the line, while there will be people who will try and game their way into parliament, this gaming will be overwhelmingly unsuccessful. Even under the present system it is not nearly as successful as many people make out. There are not all that many senators who have gamed their way into the system under this current position.[18]

3.28 Dr Bonham suggested:

> Voters may vote below the line, but are required to number a specific minimum number of boxes for their vote to count. Six has been widely suggested though I believe four would actually be adequate and perhaps preferable (and for a full Senate election, twelve would be suggested but I would consider eight sufficient.) The reason for requiring that a minimum number of boxes be numbered (not just 1) is that otherwise major parties could suffer from exhaust caused by voters just voting 1 for their most popular candidate.[19]

3.29 Mr Green noted:

> There must be an easier option for voting below the line. There must be some form of limited preferential voting below the line. People should not have to give 110 preferences below the line. My view is that the easiest way is to say: 'One above the line or six below the line or 12 at a double dissolution,' but when you do six or 12 below the line you start to get informal votes. I think the number of people who might go one, two, three below the line and stop is not large enough that it will interfere with the count in any significant way, and forcing them to give more preferences is going to cause informal votes.[20]

3.30 Democratic Audit of Australia was also supportive of OPV:

> Voters would have to number as many squares as there are places to be filled (six in a half Senate election and 12 at (rare) double dissolutions. They can, of course, proceed to rank additional

17 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 26.

18 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 20.

19 Dr Kevin Bonham, *Submission 140*, p. 8.

20 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 11.

> candidates. The 'above the line' voting option would have to be removed to ensure that voters' preferences go where they intend them.[21]

3.31 Democratic Audit qualified their support for this proposal:

- while optional, voters must be made aware that a person who ranks (say) twenty candidates is likely to have a greater influence on the election outcome than one who numbers only six or 12. The earlier a vote exhausts the less salient it will be;
- while the last double dissolution election was in 1987, they will occur in the future and the requirement to number 12 squares will most likely increase informality—the reduction of which is why above the line voting was adopted in 1983; and
- a strong advertising campaign will be needed to avoid a repetition of the 1984 election when the House informality spiked because people just voted one; the 2013 Senate election may have been an aberration.[22]

3.32 The New South Wales Council for Civil Liberties (NSWCCL) echoed many of the concerns raised by psephologists:

> Firstly, senators can be elected without their election being seen as legitimate, particularly if they received very few primary votes and their election was due to a complicated set of preference deals between micro and minor parties. Alternatively, a senator's election may not be viewed as legitimate if it is perceived that voters confused their party for another party. Secondly, voters are required to express a preference for at least 90 per cent of the candidates if voting below the line and for all candidates through a ticket vote if voting above the line, regardless of whether the voter wishes to vote for so many candidates. In addition, voters believe that they must fill out all boxes if voting below the line. This can make it difficult and challenging for voters to cast a formal vote other than above the line.[23]

3.33 In order to remedy this situation, NSWCCL supported the amendments proposed in the *Commonwealth Electoral Amendment (Above the line voting) Bill 2013* (the Xenophon bill):

> The Xenophon bill will more easily allow voters to cast a formal vote that reflects their preferences by introducing optional preferential above-the-line voting and removing group preference tickets. It will reduce incentives for the gaming of Senate elections

21 Prof Brian Costar, *Submission 116,* p. 10.

22 Prof Brian Costar, *Submission 116*, p. 10.

23 Dr Sacha Blumen, *Transcript of evidence*, 7 February 2014, Canberra, p. 15.

> – for example, where front parties are created with the aim of harvesting preferences for other parties. This may or may not be legal, but it is a fraud on voters. The bill will also remove the possibility that voters can vote above the line for one party but have their preferences allocated to an ideologically diametrically opposed party via ticket preferences. That this can currently happen might also be seen as a fraud on voters, given the difficulties in fully understanding the complete set of ticket preferences.[24]

3.34 Similarly, FamilyVoice Australia was supportive of measures to abolish preference tickets:

> We see the abolition of the preference tickets as the primary thing that needs fixing. The preference tickets provide a motivation for stooge parties, front parties and micro-parties to game the system. This can be done in a variety of ways. You may have a party that stands for high taxation, arbitrarily, but they do not think that that will go down well with the public so they register the Low Tax Party, and the Low Tax Party distributes all its preferences to the party that has a high-tax policy. They garner votes on the basis of misrepresentation and corral them to a party that is in direct contradiction of the intention of the votes that have been corralled. It opens things up to that kind of manipulation and fraud. It also opens up the opportunity for what happened at the recent election, and it was done in the New South Wales 2011 election, where a couple of candidates decided to register 24 parties in the hope that collectively they would gather enough people who vote randomly or vote for strange reasons or have one particular focus and funnelled all those 24 parties into one or two people who wanted to get elected.[25]

3.35 FamilyVoice Australia based this opposition to GVTs on what is perceived as a lack of transparency:

> The difficulty with the tickets is that they are essentially invisible. You can go online and look at them, but, to actually analyse that, you would be there for hours trying to work out what all the allocations on the tickets were. There was one election, I remember, where they were all around the wall of the polling booth. They had just about used the entire wall space to convey all the different ticket options. I do not think they do that anymore;

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24 Dr Sacha Blumen, *Transcript of evidence*, 7 February 2014, Canberra, p. 15.

25 Dr Phillips, *Transcript of evidence*, 7 February 2014, Canberra, p. 30.

> there are just too many of them. You get a book which you can flip through, but you would be there for three hours trying to go through those. That is ridiculous. But on the ballot paper you have the list of candidates in the order the parties have listed them. If you like that, you can vote above the line; if you do not like that, you can vote below the line.[26]

3.36 YWCA Australia was also supportive of OPV, stating:

> Optional preferential voting above the line coupled with an abolition of predetermined preference deals would shift the focus on preferences from backroom deals to the polling booth and simplify the voting process for voters. By abolishing predetermined preferences and putting the voter in control of their preferences, the incentive to register micro-parties for the purposes of so-called "preference harvesting" is diminished.[27]

3.37 Senate voting practices are the subject of the majority of submissions from the general public to this inquiry. These submissions are listed on the Committee's website. While they express a variety of ideas for reform, they are unanimous on one issue – that the current system must be improved upon.

Formality

3.38 With any change to Senate voting, there will be a requirement for requisite change to the formality and relevant savings provisions.

3.39 The Australian Greens noted:

> we strongly recommend that the rules of any potential new system be devised to maximize formality and ensure the voter's intent is used wherever possible to retain a ballot as formal. The committee may believe this is best achieved through a combination of savings provisions alongside advice and education designed to encourage voters to express multiple preferences.[28]

Thresholds

3.40 Professor Williams provided the strongest support for putting thresholds in place for election to the Senate:

> A party (or independent candidate) should not see its candidates eligible for election to the Senate unless they have collectively

26 Dr David Phillips, *Transcript of evidence*, 7 February 2014, Canberra, p. 33.

27 YWCA, *Submission 76*, p. 5.

28 The Australian Greens, *Submission 175.1*, p. 1.

> attracted at least four per cent of the first preference vote. Where they fall under this threshold, their preferences should be allocated to the remaining people and parties.[29]

3.41 Thresholds are a common feature of proportional representation systems internationally:

- Under the additional member system in Germany, there is a threshold of 5%, only applicable where the party does not win at least one electoral seat.
- Likewise in New Zealand under the mixed-member proportional electoral system, there is a 5% threshold.
- Israel has a 2% threshold under its nation-wide proportional representation system.
- Turkey has a 10% nationwide threshold under its closed list proportional representation system; and
- Sweden a 4% nationwide threshold under its party-list proportional representation system.[30]

3.42 The concept of a threshold already exists in the Electoral Act. Division 3 provides for a payment for each first preference vote received. Section 297 states:

> (1) A payment under this Division shall not be made in respect of votes given in an election for a candidate unless the total number of eligible votes polled in the candidates favour is at least 4% of the total number of eligible votes polled in favour of all the candidates in the election.
>
> (2) A payment under this Division shall not be made in respect of votes given in an election for a group unless the total number of eligible votes polled in favour of the group is at least 4% of the total number of formal first preference votes cast in the election.

3.43 Due to this existing provision, those proposing a threshold have mostly proposed a four per cent target, noting that given this is a threshold for existing funding it 'seems a reasonable test of whether they have any real support in the electorate.'[31]

3.44 However, Professor Williams was also of the view that:

> if we did move to a system that was a fully preferential or optional above the line, then that would largely take the heat out of the

29 Prof George Williams, *Submission 23*, p. 3.

30 G. Williams, *Submission 23,* p. [4]

31 Brian Costar, Swinburne Institute for Social Research, *Now it's urgent: why we need to simplify voting for the Senate*, <inside.org.au/simplifying-the-senate>, accessed 14 February 2014; see also G. Williams, *Submission 23.*

> threshold issue because the likelihood of someone being elected on a minuscule first preference vote would be very small if that occurred.[32]

3.45 Professor Bonham argued that the introduction of a primary vote threshold would:

> remove the possibility of parties snowballing to victory on tiny percentages of the vote. Possibly, this alone would deter some of the micro-parties from competing. However, it would not stop horse-trading between those parties capable of getting 4%, and the number of such parties would be likely to increase as some of the micro-parties either did not run or merged to avoid splitting the primary vote. … Furthermore, while micro-parties would no longer win (or would be encouraged to merge into broader niche parties that were more competitive, eg a broad libertarian right party, a broad left-libertarian non-Green party, a broad Christian-right party) they could still use their preferencing power to influence political goals. So it's not clear how much this would really cull the candidate list.[33]

3.46 The Federal Director of the Liberal Party of Australia, Brian Loughnane, proposed:

> An … option … to discourage preference deals with distorted and concealed motives, would be a requirement that, before preferences from any party are distributed, that party must have received a primary vote of at least 10 per cent of the value of a quota. In other words, at a regular half-Senate election a party must exceed a threshold of approximately 1.4 per cent of a primary vote before its preferences can be distributed.[34]

3.47 It has also been noted that thresholds are likely to have no impact on 'preference harvesting':

> In effect, the use of a threshold by itself would in all probability simply change the beneficiaries of preference harvesting from the micro-parties to parties which were capable of exceeding the threshold.[35]

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32 Prof George Williams, *Transcript of evidence*, 13 March 2014, Sydney, p. 5.

33 K. Bonham, 'Senate reform: Change this system, but to what?', <kevinbonham.blogspot.com.au/2013/10/senate-reform-change-this-system-but-to.html>, 19 October 2013, accessed 21 February 2014.

34 Brian Loughnane, *Transcript of evidence*, 28 April 2014, Canberra, p. 18.

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

3.48 However, the use of a threshold has the potential to influence the outcome in a close Senate election. Mr Maley has noted the number of different counting options under a threshold:

- Votes for candidates or groups which failed to exceed the threshold could be treated like informal votes, and would not be included in the calculation of the quota. This tends to be the approach taken when a threshold is applied in the simplest cases of list proportional representation.
- Votes for candidates or groups which failed to exceed the threshold could be treated like votes for deceased candidates. The first stage of the distribution of preferences would then be the transfer of those votes according to the voter's preferences to candidates who had not been eliminated by the operation of the threshold. Such votes would be included in the calculation of the quota.
- Alternatively, candidates who failed to meet the threshold might be left in the count, but might be treated as incapable of having votes transferred to and/or from them.[36]

3.49 As individual thresholds are unlikely to be practicable in the Australian context, thresholds could only realistically be applied to the group/independent level.

3.50 Professor Williams addressed the potential constitutional question that arises with a group threshold level:

> I do not think it is likely that such a proposal would be struck down. That is because the High Court has indicated that people must be able to directly choose their representatives, and this in no way gets in the way of a person making that direct choice as to who they wish to number '1' in the ballot box. In fact, if you were to think of a system that would be more susceptible of challenge, it is the current system where you put '1' above the line for parties rather than for the candidate. That is more susceptible of challenge than a threshold. So, I think you could say, yes, there are some issues around it, but, in fact, the current system is more challengeable than one that I believe introduces some sort of threshold at the minimum level. I would also say that is because, ultimately, the preferences are fully distributed. If my proposal were that votes of a candidate who does not reach a four per cent threshold disappear and the preferences of those votes were not allocated, I think that would be a problem. But the suggestion here simply is that, as part of the preferences, if someone does not get a sufficient level of support, their preferences move on. I note also

36 Michael Maley, *Submission 19,* pp. 8-9.

> that in other countries it is quite common to have a system of that kind.[37]

3.51 Mr Green urged caution when it came to adopting any form of thresholds:

> The difficulty is that if you did not have the constitutional issue you would just simply group the candidates together to reach the threshold and say "If you're not over that limit you get excluded". There is an issue there, because [of what] the Constitution states about voting for candidates, and if you are excluding a candidate based on a vote for a party rather than a vote for them, then you may run into a constitutional issue there.[38]

3.52 Similarly, Mr Green saw a range of other potential issues with the adoption of any thresholds:

> such as if you have a threshold quota, do you allow them to have preferences to be distributed? If they are distributed, at what point are they distributed? Do you elect the candidates elected from the first count and then exclude the other parties, or do you exclude them initially? Say the Coalition has 2.9 quotas, and then you exclude all parties under your threshold, suddenly the Coalition might get to 3.4 quotas overall, because you have done the exclusion of them before you have done any elections. So there is actually quite a number of complexities to the way you define this, as well as the constitutional issues.[39]

3.53 Dr Bonham also identified the following concerns:

- While it is deeply unlikely that candidates polling below the threshold will ever win by genuine voter intention, I would prefer that that be a matter decided by voter choice rather than automatic exclusion.
- A threshold solution would not address the problems of deceptively-named parties funnelling preferences away from other parties, or of parties directing preferences away from likeminded parties out of spite.
- Threshold systems can produce unsatisfactory outcomes if many small parties compete for a similar vote. Especially, a party with support close to the threshold level could be targeted by non-genuine parties aiming to take enough of its vote to knock it out of the count.[40]

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37 Prof George. Williams, *Transcript of evidence*, 13 March 2014, Sydney, p. 4.

38 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 4.

39 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 4.

40 Dr Kevin Bonham, *Submission 140*, p. 9.

Party registration

3.54 It is widely considered that there should be a higher standard for party registration and candidate nomination and a variety of solutions were proposed.

3.55 Mr Green advocated a tightening of regulation for registering parties at the Commonwealth level, noting that regulations in the states are much tighter:

> All up there is much tighter regulation in the states for parties than in the Commonwealth. At this federal election we saw a 50 per cent increase in the number of registered parties between the start of the year and the calling of the election. We saw a record number of parties, a record number of House candidates and a record number of Senate candidates.[41]

3.56 Specifically, Mr Green proposed that, in order to register, parties should be made to demonstrate that they have national membership of at least 2000, given that the membership number state-wide in New South Wales is 750.

3.57 Mr Green considered the NSW approach of parties needing to be registered for at least 12 months before an election to be reasonable. Mr Green explained the reasoning behind raising requirements for parties to register:

> Registered parties have significant advantages in the system. They get their name on the ballot paper, and they get the ability to centrally nominate candidates, which takes the difficulty out of getting nominators… I think parties get significant advantages and therefore they should be forced to jump higher. We require independents to prove they have some minimal level of support to get on the ballot paper. Deposit laws are about expressing a minimum desire to run for parliament by putting in your money, so I do not see that there is any problem in just lifting that barrier, particularly for parties.[42]

3.58 Mr Mackerras identified reform of party registration as a means to reduce the size of Senate ballot papers:

> At present registration requires a party to demonstrate that it has 500 members. I propose that the number be raised to 2000. I propose also to raise the required fee from $500 to $2000. Also, I

41 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra p. 1.

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

> think there should be stiffer documentation required to register a party.[43]

3.59 Aside from these general comments, Mr Mackerras stated that he absolutely supported the views of Mr Green in regard to party registration.[44]

3.60 Professor Williams advocated a tightening of party registration rules, noting:

> The Act should tighten the regulation of political parties in line with New South Wales legislation. Under the Parliamentary Electorates and Elections Act 1912 (NSW), an 'eligible party' means a party that has at least 750 members.[45]

3.61 Professor Williams also supported an increase in the fee for party registration:

> I would broadly agree with the changes brought in in New South Wales, which I think amount to tightening but not, if you like, closing the door on new parties. Again, I think this is where the High Court would take a careful look, but in the decision of Mulholland some years ago, the High Court did give greater leeway to the Federal Parliament to change the rules for parties. So I think altering the [party registration] fee, increasing the number of members, and requiring officeholders not be across multiple parties would all be sensible things…[46]

3.62 Dr Bonham put forward a range of reforms intended to fix the issues he identified, similar to those raised by Mr Green, however Dr Bonham did not support other means of tightening party registration, such as increasing deposits or membership numbers:

> I like the idea that a party can, starting from very little, attempt to enter the political marketplace and try to win support for its ideas, and grow over a series of elections. We shouldn't be attempting to drive genuine candidates out of elections simply because the presence of a large number of them threatens the integrity of a flawed system. Instead we should have a system that is open to any number of candidates without their presence having the potential to damage outcomes.[47]

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43 Malcolm Mackerras, *Submission 7, Attachment A,* p. 1.

44 Malcolm Mackerras, *Transcript of evidence*, 7 February 2014, Canberra p. 27.

45 Prof George Williams, *Submission 23*, p. 3.

46 Prof George Williams, *Transcript of evidence*, 13 March 2014, Sydney, p. 8.

47 Dr Kevin Bonham, *Submission 140*, p. 10.

3.63 Democratic Audit of Australia supported tightening party registration, noting:

> One reform that will not affect the operations of the STV PR system is to tighten the regulations regarding political party registration. At present a party will be registered if it provides to the AEC the names of 500 persons who are eligible to be on the roll, provides a constitution (which later does not have to be abided by) and pays a fee of $500. The Audit recommends that the requirement be 1 000 names of persons actually on the roll and the payment of a $5 000 fee. While the latter may appear iniquitous, to ask those who endorse a party to contribute $5 each for its registration is a very modest impost.[48]

3.64 Glenn Druery, in supporting a party membership level of 1500 for the purposes of registration, expanded his thoughts on how party registration could work. He stated:

> I personally would make it 1500 on pieces of paper, and then we can talk about a whole range of things, like documentation of meetings and perhaps even a nominal joining fee.[49]

3.65 Not all submitters supported the strengthening of party registration on a financial basis. The Australian Greens noted:

> The Australian Greens believe that party registration is an important process that should be used to test and evaluate genuine community support for political parties. As such there should not be an increase in financial barriers to party registration.[50]

3.66 However, this position was contrary to most other submissions.

Candidate nomination and residency requirements

3.67 Views were expressed on the residency status of candidates nominating for the Senate. Mr Green said:

> When the party reforms were brought in [in 1984], the requirement for party candidates to have nominators was done away with. I would consider bringing back nominators for the Senate for parties. The reason for that is that, if you look at who nominated at the federal election, you will see that the micro-parties managed to nominate candidates in states where they barely existed. In Tasmania, the Liberal Democrat candidate was

48 Prof Brian Costar, *Submission 116,* p. 10.

49 Glenn Druery, *Transcript of evidence*, 1 May 2014, Canberra, p. 12.

50 The Australian Greens, *Submission 175.1*, pp. 1-2.

> the mayor of Campbelltown in Sydney and was able to be nominated to Tasmania because he did not need nominators; he could be nominated under the central nomination process. The Sex Party candidate was Robbie Swan, who lived in Canberra. You cannot stop people from standing interstate, because the Constitution allows people to be treated equally. But, if the parties were forced to put nominators up when they lodge tickets for the Senate, then a party that does not exist in the state could not use the central nomination process.[51]

3.68 Dr Bonham also proposed reform to candidate nomination as a method to seek state residency of candidates. Dr Bonham recommended provisions to:

> Require a candidate to have nominators who are resident within the state in which they are standing. This would discourage micro-parties from nominating candidates not resident in the state simply to buy a seat at the preference-dealing table in that state. The number of nominators could be a set number per state or could be on a pro-rata or partly pro-rata basis.[52]

3.69 Despite little evidence being put to this inquiry on this issue it is clearly an issue of concern to the public, with significant media discussion on the matter, in particular during the re-run of the Western Australia Senate election in April 2014.

Party views

3.70 As significant stakeholders, the political parties have also expressed a range of views on any potential changes to Senate voting practices. These views are outlined in brief below and available in party submissions and evidence on the Committee's website.[53]

3.71 On ATL optional preferential voting (OPV), the following political parties were in support:

- Australian Greens
- Liberal Party of Australia

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51 Antony Green, *Transcript of evidence*, 7 February 2014, Canberra, p. 2.

52 Dr Kevin Bonham, *Submission 140*, p. 8.

53 Liberal Party of Australia, *Submission 188*, Australian Labor Party *Submission 187*, *Submission* Australian Greens, *Submission 175*, The Nationals, *Submission 184,* Future Party, *Submission 169*, Progressive Democratic Party, *Submission 155*, Pirate Party, *Submission 177*, HEMP Party, *Submission 60*. See also transcripts of evidence, 28 April & 1 May 2014, Canberra.

- Australian Labor Party
- Australian Christians
- Progressive Democratic Party[54]
- Pirate Party

3.72 The following political parties are not in support of ATL OPV:

- The Nationals
- The HEMP Party

3.73 The following political parties were in support of BTL OPV:

- Australian Greens
- The Nationals
- Australian Labor Party
- Liberal Party of Australia
- Australian Christians
- HEMP Party (only if ATL is abolished)
- Progressive Democratic Party
- Pirate Party
- Sustainable Population Party

3.74 No submissions were received from political parties supporting the continuance of compulsory BTL voting.

3.75 The following political parties support the abolition of GVTs:

- Australian Labor Party
- Liberal Party of Australia
- Australian Greens
- Progressive Democratic Party
- Future Party
- Pirate Party (conditionally).

3.76 Similar to the experts and community group views outlined above, the parties submitted various views on proposed changes to party registrations. While there were a variety of views, all parties agreed that some form of reform is needed.

3.77 It is interesting to note that of the 77 parties[55] that were registered for the 2013 federal election, at time of publication of this report less than fifteen

54 Not a registered political party.

55 AEC, *Submission 20.3*, p. 105.

political parties had submitted to this inquiry. Only one micro-party submitted to this inquiry defending the current system.[56]

56 Help End Marijuana Prohibition Party, *Submission 60*.

4

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

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.

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3 Australian Labor Party, *Submissio 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

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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);

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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 verification[14] 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.

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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 reported[15] 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

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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

Additional Comments – Senator Nick Xenophon

1.1 At the outset, I believe the committee has reached a good consensus on necessary and fair reforms to the electoral system. It is important to acknowledge that the candidates elected in the 2013 Senate election were legitimately and fairly elected under the current system. However, it is equally important to note that the outcome of that election has constituted a tipping point for reform.

1.2 There needs to be a combination of an improved Senate voting system and an ongoing public education campaign to ensure that voters are able to make informed decisions about casting their vote. Given Australia's compulsory voting requirement, however, it is my view that our system should allow all Australians (not just those with particular political interest or knowledge) to cast a vote that reflects their political view. If Australia believes that all votes are equal, then we should establish a system to ensure that all voters have an equal chance to vote that accurately reflects their intention.

1.3 As the Committee's report states, the Senate's voting system has always been subject to political manoeuvring, at least to some extent. It is my view that it is time to move past this and establish a system free from party politics and gaming of preferences through group voting tickets. The Senate voting system should be used by voters, not by parties or those with vested interests.

1.4 I strongly agree with Mr Antony Green's comments at the 7 February hearing, in which he stated:

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

1.5 Any reforms to the Senate voting system must be made with these comments in mind.

1.6 The Committee report discusses in detail the 'gaming' that occurred in the 2013 election, and in particular the preference deals masterminded by Mr Glenn Druery. I believe that the very fact the system is clearly so vulnerable to such gaming and can be manipulated by individuals to further their own interests is the clearest possible indicator that major reforms are needed before the next election. Australia is proudly democratic, and such a weakness in our electoral system brings our democracy into disrepute.

1.7 As stated in the Committee report, I introduced the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* on 13 November 2013, in response to the public outcry following the 2013 election. The aim of the bill is to remove Group Voting Tickets and introduce optional preferential voting above and below the line for Senate ballot papers. The provisions of the bill are discussed in further detail in the Explanatory Memorandum (attached).

1.8 In particular, I agree with the Committee's concerns regarding Group Voting Tickets. I believe that, at the very least, GVTs form the basis for the problems within the system and must be removed.

1.9 The provisions of my bill are consistent with the Committee's first and second recommendations. As such, I strongly encourage the Government to consider the provisions of the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* when forming a response to the Committee report.

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

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

1.10 Further, the bill does not contain any provisions relating to thresholds. Instead, it utilises the existing quota requirements with allowances for the next continuing candidates to be elected if all quotas cannot be filled. This is a far simpler way of structuring the system and ensures the will of voters is accurately represented. It is my view that thresholds may be undemocratic, unconstitutional, and may raise other concerns, particularly in terms of allocating preferences. I strongly support Mr Green's comments in relation to these matters.

1.11 I support the Committee's comments in relation to other changes that must occur in relation to party registrations, and in particular the requirements regarding unique members and registered officers, and compliance audits.

1.12 I also support the Committee's comments regarding additional resources for the AEC to allow it to undertake greater scrutiny of registrations. It is clear that the AEC must play a more significant 'gatekeeper' role in this area, and resources should be provided to allow this to occur. Further legislative change requiring the AEC's involvement may also be necessary.

1.13 Further, I agree with the Committee's view that the current federal register of political parties needs to be reset to ensure compliance with any new requirements. This will guarantee a higher standard of integrity in the register and address existing voter concerns.

1.14 Ultimately, it is the Parliament's responsibility to address the valid concerns of many voters regarding the integrity of the Senate voting system. The measures in the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* provide a way to implement the Committee's recommendations on this front, and it should therefore be supported.

2013

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

COMMONWEALTH ELECTORAL AMENDMENT (ABOVE THE LINE VOTING) BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by the Authority of Senator N Xenophon)

COMMONWEALTH ELECTORAL AMENDMENT (ABOVE THE LINE VOTING) BILL 2013

Background

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

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

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

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

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

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

1. Short title

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

2. Commencement

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

3. Schedules

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

4. Schedule 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statement of Compatibility with Human Rights

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

Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013

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

Overview of the Bill/Legislative Instrument

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

Human rights implications

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

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

Conclusion

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

NICK XENOPHON