

LARGEST REMAINDER

(Not quite Quota Notes)

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Editorial

The Senate cross benches are becoming restive about genuine reform of the electoral system ('Senate crossbench revolt if group voting tickets abolished', *Sydney Morning Herald*, 21 June 2014).

It's not hard to understand why. Any reform – even the limited reform foreshadowed by the Joint Standing Committee on Electoral Matters – will see their re-election prospects plummet.

But, let's face it, their prospects are dismal anyway. Micro parties are only in it for the chance to win a lottery prize for themselves, not to deliver a result to someone else. Without significant change to the electoral system, the next election will almost certainly deliver similar results to micro parties – with certain exceptions: the unsuccessful micro parties all know who the winners were this time and, since it wasn't them, will make sure that those winners will be given a low preference in any negotiation.

Although 20% of voting Australians voted for a micro party, that 20% is not a homogeneous group that can be adequately represented by any one of those micro parties. The individuals elected do not represent the voters who voted for one of the wide range of micro parties.

Would DLP voters feel comfortable being represented by the Voluntary Euthanasia Party? Would Family First voters have been just as pleased had the Australian Sex Party won the preference lottery and become the

token micro party in Parliament?

If Senators-elect Ricky Muir, Bob Day and David Leyonhjelm want to win again they will need to take the opportunity of their fortuitous win in 2013 to build a profile and demonstrate that they are worthy of the trust given to them, not by the Australian people, but by providence.

JSCEM interim report on Inquiry into 2013 election – response from Electoral Reform Australia

Stephen Lesslie (President, Electoral Reform Australia) and Susan Gregory (Vice President, Electoral Reform Australia)

The Joint Standing Committee on Electoral Matters ('JSCEM') brought down its interim report on the conduct of the 2013 federal election, with a focus on Senate elections, on 9 May 2014.¹

What a disappointment it was!

Of the six recommendations, only one could be said to have any merit in addressing the issue of micro party candidates being elected with a very small percentage of the vote.

That was **Recommendation 2**, which stated:

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.

The abolition of group voting tickets is a no-brainer. Group voting tickets are the root cause of micro parties being elected to the Senate and other legislative bodies. This has been obvious since 1995 when 'A Better

¹ A copy of the interim report can be found at http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Interim_Report

Future For Our Children' won a seat in the New South Wales Legislative Council with only 1.24% of the primary vote.

All of the other recommendations are attempts to ensure that the stasiocratic nature of the electoral system is maintained. The major parties are more interested in making sure their favourite candidates are elected than in the prospect of electing the numbers they are entitled to under a *genuine* proportional representation system.

Paradoxically, because the proposed 'reforms' continue to distort the proportional nature of a genuine single transferable vote (STV) ballot, the major parties (i.e. the most popular parties) are also the main losers.

Recommendation 1

Recommendation 1 reads:

The Committee recommends that...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.*

This recommendation raises many questions, none of which can be answered satisfactorily.

Will two candidates constitute a group?

If just two candidates constitute a group then voters may need to vote for three groups below-the-line (six in a double dissolution) to ensure a formal vote. This creates a major inconsistency: you can vote for one group above-the-line and register a formal vote, but you may need to vote for up to three groups below-the-line.

If only two candidates constitute a group, most micro parties will continue to run their two candidates.

However, some groups, especially those who expect to reach the 4% threshold – or those with billionaire backers – may decide to run six candidates anyway. Having six candidates

would make the party stand out on the ballot paper and make it easier for any potential below-the-line voter, as they would only need to number the six candidates in the one group to vote formally.

Therefore, the number of candidates on the ballot paper would in fact increase, and these votes are also the ones most likely to exhaust.

Will six candidates constitute a group?

If so, any group that wishes to stand for election will be forced to stand six candidates. Those groups that reach 4% will have their electoral deposits returned; those that don't will lose \$12,000.

While Electoral Reform Australia supports substantially increased electoral deposits, such deposits should be paid per candidate and legislated for openly, not by subterfuge.

With six candidates constituting a group, the number of groups nominating may reduce but the number of candidates will not. Worse, the ballot paper is now being filled with candidates who cannot (and may even not want to) be elected.

In a half Senate election to elect six candidates a party would need at least 80% of first preferences. No party has ever elected even four out of six Senators. To run vastly more than they would rationally expect to have elected is pure hubris.

It is insulting to the Australian electorate for voters to have to consider the merits of makeweight candidates. No one should stand for election unless they actually want to be elected and the electoral legislation should not force or encourage parties to run makeweight candidates.

Will twelve candidates constitute a group in a double dissolution?

Requiring twelve candidates to constitute a group in a double dissolution election would be approaching the farcical situation of NSW Legislative Council elections in which fifteen candidates are required to constitute a group. At the 2011 New South Wales election, 311 candidates stood for the 21 positions. Ninety percent of candidates were makeweights. Even Fred Nile would not honestly believe

that the Christian Democratic Party could win fifteen seats, yet they ran twenty candidates.

Logically, since there are twice the number to be elected in a double dissolution, a voter should only need to vote for half as many candidates to have the same likelihood of finding a successful candidate and therefore prevent their vote from exhausting.

(It is noted that a party would need at least 85% of the first preferences to elect twelve candidates.)

What are the disadvantages of forcing voters to number six candidates (twelve in a double dissolution)?

Firstly, if a voter wishes to vote below-the-line, their votes will be informal if they fail to number all six (or twelve) boxes required.

Secondly, a voter may vote for one group of six candidates and not number any further, thinking that their job is done. Such a vote would have exactly the same effect as if they had only voted [1] above-the-line. This applies whether the group has multiple quotas or no quotas. The vote would exhaust when all the candidates in the group were either elected or excluded, or a mixture of both.

Under fully optional preferential voting, what would happen if a voter voted below-the-line for only the lead candidate in a group?

The vote would have the same influence on the outcome of the ballot as if the voter had only put a [1] in the box above-the-line.

The vote would exhaust if all the candidates in the group were excluded and would help to elect the lead candidate if that candidate had over a quota or was subsequently elected on transfers from other candidates. Should the lead candidate be elected with over a quota, then subsequent candidates in the group would still benefit, because the surplus is larger and every vote that proceeded (as the great majority would) would have a slightly higher transfer value.

However, under the JSCEM's recommendation, this vote would be informal and have no influence on the ballot.

Scrutineers regularly see votes that miss the

above-the-line box and give a single [1] for the lead candidate in the group. These votes, currently considered to be informal, would count at full value under fully optional preferential voting.

Take the 2011 NSW Legislative Council election as an example. By count 18, seventeen candidates had been elected on the surpluses of their leaders' quotas. Some votes did fail to be transferred because the sequential numbering was broken.² For example, Mike Gallacher, the lead Liberal candidate, received 30 votes that did not have a valid second preference. However, not a single vote exhausted. This number of zero exhausted votes would not have risen even if 180,000 voters (nearly a quota) had given a single [1] to Mr. Gallacher.

There is no potential for these single [1] votes to be so high as to cause a problem. The ACT Chief Minister, Katy Gallagher, received 23,996 votes at the last ACT Legislative Assembly election. Only 124 of these were single [1] votes, despite the ACT allowing fully optional preferential voting.

In the NSW Legislative Council example, if 30 votes were allowed despite not having a valid [2], how many votes with a single [1] for Mike Gallacher were declared informal? And why?

Will voters actually use the optional preferential above-the-line voting option?

The NSW Legislative Council uses preferential voting above-the-line. At the 2011 election, a large majority of voters (82.2%) voted a single [1] above-the-line. A majority of voters for every group only gave a single [1] above-the-line.

As a result, 7.66% of all votes exhausted and the last four Legislative Councillors were elected without a quota. While this is not ideal, the low 4.55% quota in NSW mitigated against a complete unravelling of the proportional representation principle. A similar number of exhausted votes, coupled with the higher Senate quota of 14.3%, would

² NSW allows a vote to be formal if there is a unique [1] and at least fifteen numbers, even if they are not sequential.

see the sixth and final Senate seat as a lottery in every State.

Further, optional preferential voting above-the-line retains the current dual voting options on the Senate ballot paper with two sets of voter instructions, a row of party boxes above a large distracting black line and a further set of boxes below-the-line.

Optional preferential voting above-the-line will dramatically increase the number of exhausted votes.

At the 2012 ACT Legislative Assembly election with fully optional preferential voting and no above-the-line voting, when the last candidate in every group was excluded, a majority of votes continued preferencing and were able to be transferred.

Why did a majority of ACT voters continue giving preferences beyond their preferred group?

Apart from the Labor and Liberal parties, most groups did not run as many candidates as there were places to be filled. Voters, when they reached the end of their favoured group at [2] or [3], felt that they had not completed their voting task and found another group. It is worth noting that the group with the least number of votes transferring was the group that ran a full complement of candidates.

Of course, there weren't two sets of instructions and a distracting big black line across the middle of the ballot paper.

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.

The Australian Electoral Commission should certainly undertake a comprehensive voter education campaign but it should do this even if more sensible reforms are enacted.

If the ballot paper looks exactly like it has for the last thirty years, a voter education campaign will achieve very little.

Recommendations 4 and 5

Recommendation 4 reads:

The Committee recommends that...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 1500 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 reads:

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.*

Recommendations 4 and 5 are just petty. While they will help to reduce the number of parties running in a Senate election, this could be achieved by sensible electoral reform and without the need to resort to draconian administrative procedures.

With genuine reform no party will last if it does not have community support and is unable to direct preferences.

If the voters are given the right to control their own preferences and electoral deposits are payable per candidate, not per party, then bogus parties will wither on the vine.

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.

We believe that since Australia is one country any citizen should be capable of standing for a federal election if nominated in any Australian jurisdiction. Let the voters determine if the candidate is suitable.

This recommendation, rather ludicrously, would stop a resident of Tweed Heads (NSW) from running in the neighbouring electorate of McPherson (QLD) but would allow a resident of Cooktown (sure, Queensland, but 2,000 kilometres away) to stand. Would a resident of Jervis Bay, an ACT enclave within NSW, only be allowed to stand for a seat in Canberra?

Will this recommendation prevent elected Members and Senators from moving to and living in Canberra?

What this recommendation aims to do could be achieved more easily and sensibly by requiring all House of Representatives candidates to be nominated by ten individual electors from the electorate in which they intend to run and by not allowing parties to mass nominate candidates for these seats.

Exhausted Votes

Exhausted votes are an inevitable part of any electoral system³ and are equivalent to the votes given to a losing candidate in a single member electorate.

Unlike informal votes, they are not to be feared: they are merely votes that failed to find a winning candidate. Had the electorate as a whole voted differently, they may have counted; informal votes never count. Should the JSCEM recommendations be implemented there will be substantial numbers of these exhausted votes – Electoral Reform Australia's recommendations would see fewer of them.

Electoral Reform Australia recommends that the method of counting an STV ballot be changed to the Meek Method. The Meek Method allows the ballot to be recounted as

though each exhausted vote had not participated in the ballot, meaning that at the conclusion of the count every candidate is elected with a quota.

Conclusion

If the JSCEM recommendations are designed to ensure that the candidates elected to the Senate are elected democratically and in accordance with proportional representation principles, then they have failed.

To achieve a genuine democratic and proportional electoral system, Parliament has to trust the voters. Voters should be allowed to choose freely their own candidates without any artificial devices such as above-the-line voting and group voting tickets.

Fully optional preferential voting is essential and paradoxically will reduce both the number of exhausted votes and the number of informal votes. Electoral Reform Australia challenges anyone who disputes this to produce the research paper or mathematical study that demonstrates otherwise.

The JSCEM has done the least that it could do. What a shame.

Future Meetings

Committee meetings will be held in Sydney on Wednesday 27 August and Wednesday 19 November at 7.30pm. Anyone is welcome to attend.

For details, please contact Stephen Lesslie at president@electoralreformaustralia.org or on (02) 6351 2598.

Comments and/or contributions are welcome:

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Electoral Reform Australia is the NSW Branch of the Proportional Representation Society of Australia

³ See *Largest Remainder* (No. 22) May 2014