



**Submission to the Joint Standing
Committee on Electoral Matters Inquiry
into the Commonwealth Electoral
Amendment Bill 2016 (Cth)**

Brendan Molloy (brendan.molloy@pirateparty.org.au)
Mozart Olbrycht-Palmer (mozart.palmer@pirateparty.org.au)

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1 Technical issues of the Bill

1.1 Above-the-line savings provisions

Recommendation 1: Introduce provisions into the current Bill that would make it illegal to distribute electoral material such as how to vote cards that direct the voter to fill any fewer than six boxes above-the-line.

The current provisions allow all parties to advertise "just vote 1" without penalty, even though the ballot will state that the voter should number from 1 to 6. The savings provisions are too broad and do not have a sunset provision.

The Pirate Party recommends that a sunset period is introduced after two elections that considers a ballot with fewer than 6 preferences above the line as an informal ballot, and that it is specifically listed as an offense to hand out electoral material that advises a voter to fill any fewer than six boxes above the line.

1.2 Colour and dimensions of logos

Recommendation 2: In schedule 1 clause 61 — amend the proposed paragraph 162(2AA)(a) to specify that logos are to be in colour, greyscale or black and white, depending on the capabilities of the ballot-printing process used by the Australian Electoral Commission.

Recommendation 3: In schedule 1 clause 89 — amend the proposed subsection 214A(5) to specify the *maximum* dimensions of logos.

The drafters of this bill may have intended to specify 'greyscale' rather than 'black and white' for party logos. They are technically distinct. Black and white could quite literally mean *only* black and white, making it difficult (for instance) for the Liberal Party to use their logo, as the Union Jack would not appear accurate in only black and white. Greyscale, however, includes all tints between white and black, as Figure 1 demonstrates.



Figure 1: Image of a macaw in black and white (left), greyscale (centre) and colour (right).

It is proposed that the wording of the bill be changed to say ‘greyscale where possible’, to allow for printing technology to utilise greyscale where possible, and falling back to black and white where greyscale is unavailable. It may also be appropriate to future-proof the legislation by specifying *colour* where possible, and falling back to greyscale and then black and white if colour is not feasible.

Additionally, the Bill merely states that party logos ‘must be printed on the ballot paper in a uniform size and format.’ The expression ‘uniform size and format’ is ambiguous, and does not account for political parties using different dimensions for their logos. This can be rectified by specifying maximum dimensions for political party logos.

1.3 Eligibility for an above-the-line box

Recommendation 4: Clarify whether Form E will now permit a single, non-grouped candidate to be given an above-the-line box (as is indicated by column D of Form E).

Recommendation 5: If the Bill does not entitle single, non-grouped candidates to an above-the-line box, amend the Bill to make such provision.

Currently parties and independent candidates that wish to receive an above-the-line box are required to run at least two candidates, or be placed with other ungrouped candidates at the end of the ballot. If a party runs only one candidate, or an independent runs without a

group, their voters are required to fill in *all* boxes below-the-line.

It may be recalled that when the group voting ticket system was introduced it was challenged in the High Court on the basis that ungrouped candidates would be disadvantaged by not being given an above-the-line box (see *McKenzie v Commonwealth* (1984) 57 ALR 747). Although unsuccessful at the time (Gibbs CJ dismissed it as not being sufficiently anti-democratic as to be unconstitutional), this was in an era prior to there being 110 candidates on the Senate ballot (as there were in NSW).

The template ballot included in the Bill (Form E) shows all columns except for the ungrouped column as having an above-the-line box. This includes column D, which has a single candidate. It is not clear whether this is intended to do away with the requirement of parties to run a minimum of two candidates, or whether the template is in error and needs to be revised.

It is the Pirate Party's position that a party or independent that qualifies to run a single candidate should be automatically granted an above-the-line box. There is no legitimate justification for requiring a minimum of two candidates, especially if abolishing the GVT is expected to shorten the length of the ballot paper.

2 Deficiencies of the Bill

2.1 Lower the 4% threshold for funding and cap election spending

Recommendation 6: Amend the Bill to include reductions in the threshold for election funding from 4% to 0.1% and introduce a cap on election spending.

Political parties are currently paid a set amount per first preference vote they receive, once an initial threshold of 4% is reached.

It is the Pirate Party's view that this threshold should be lowered so that candidates that receive the support of one vote per thousand eligible voters (that is, 0.1% of the vote) are entitled to post-election funding.

This mechanism would ensure that any candidate whose nomination and policies are taken seriously by even a relatively small section of the electorate will be able to recoup at least some of their expenses.

The Pirate Party also recommends a cap on overall election spending to alleviate a growing trend toward American-style elections where only the very wealthy are able to reasonably contest an election.

2.2 Equal access to public media during election period

Recommendation 7: Amend the Bill to include amendments to the *Commonwealth Electoral Act 1918* (Cth) guaranteeing all candidates a minimum amount of advertising time and space during election periods.

A minimum amount of advertising time and space across multiple forms of media should be guaranteed for parties and independent candidates. For example, a guaranteed amount of time for advertising on ABC and SBS channels, and equal access to debates.

This assistance would bring several benefits. Firstly, candidates would be able to focus on communicating their policies rather than raising funds. Secondly, it would reduce the reliance of candidates on donations, encouraging representation of legitimate civil interests. Lastly, Australia would be seen as a country that considers the right to political communication to be a *positive* right to be encouraged, rather than merely as a right that protects the people from government interference.

2.3 Optional preferential below the line voting

Recommendation 8: Amend the Bill to include below-the-line optional preferential voting with a minimum of six preferences (without any savings or transitional provisions).

A truly cynical person might argue that the reason the Parliamentary parties have overlooked introducing optional *below*-the-line voting (instead focusing solely on optional *above*-the-line voting) is that the factions within said parties desire to continue to determine the *effective*

preference order of their voters in order to allow factions to choose which candidates can and cannot be elected to the Senate within their totally-not-torn-apart-by-factionalism parties.

Of course, the *genuine* reason is simply that the legislation has been rushed and this is merely an innocent oversight. Fortunately we have the opportunity to correct this error.

The Pirate Party proposes that for below the line candidates, optional preferential voting is introduced with a minimum numbering of 6 candidates (without any savings provisions) and a maximum of all boxes. Provisions for errors in preferencing below the line should continue to apply as proposed.

The Party reminds the committee that it is potentially unconstitutional to not introduce this provision, as without it, the Bill creates two classes of candidate: those who can receive preferences above the line, and those who cannot. This penalises the voter who wishes to vote for an ungrouped independent by needing to fill out a potentially unreasonable number of boxes that yield a high number of spoiled ballots.

2.4 Reduction in unjustified costs of running a campaign

Recommendation 9: Return nomination deposits to pre-2013 levels, so that the deposit per candidate is \$1,000 or less.

The *Electoral and Referendum Amendment (Improving Electoral Procedure) Act 2013* (Cth) doubled nomination deposits from \$1,000 per candidate to \$2,000 per candidate (a total of \$4,000 per group). The justification provided these amendments was that there were 84 candidates across 33 columns in the 2010 NSW Senate Election (Explanatory Memorandum, Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012 (Cth), 3).

As demonstrated by the 110 candidates in the 2013 NSW Senate Election this had no observable effect on reducing the number of candidates participating in elections. The Pirate Party consequently proposes that these unfair and ineffective measures be repealed.

2.5 Introduction of a 'no candidate' box

Recommendation 10: Introduce a 'no candidate' box in which voters may mark their intention not to vote for any candidate.

The Pirate Party believes that in order to allow the voter to truly demonstrate their preference in any electoral system, particularly a mandatory system such as the Australian federal system, one must provide a mechanism for the voter to display their disenfranchisement.

The Party's preferred model for this is to introduce a 'no candidate' box on the above the line, that upon being marked with a '1', tick, cross, or any other unambiguous mark of preference, would consider the ballot to be counted specifically as a vote for 'no candidate', akin to a spoiled vote but demonstrating the intent to vote for no candidate.

Given the arguments for abolishing GVT stem towards removing the back-room deals and ensuring that the Australian voter has their wishes represented on the ballot, overlooking the introduction of this pseudo-candidate is quite interesting to say the least.

2.6 Removal of redundant requirement of printing place on electoral materials

Recommendation 11: Repeal the requirement of the *Commonwealth Electoral Act 1918* (Cth) that the place of printing be listed on electoral materials.

Name one situation where knowing where an electoral material was printed that had any relevance under any Act in Australia. This is a legitimate challenge. I expect answers by noon.

If you can't provide an answer (because we all know there are none), abolish this provision. It's anachronistic, petty and pointless. It may even impede political freedom, as printing places may not wish to be associated with the party opting to print their materials at their place of business. Other provisions already provide the necessary requirements for determining who is responsible for the printing and distribution of the electoral material, so this requirement is superfluous.

2.7 Introduction of Robson Rotation or similar shuffling method

Recommendation 12: Introduce a system of shuffling the columns on the Senate ballot.

The Liberal Democratic Party having an elected senator as a result of winning the AEC lottery for the first column on the Senate ballot had the unfortunate side effect of proving how many Liberal voters in New South Wales are effectively illiterate. This embarrassing truth can be masked by introducing Robson Rotation or a similar shuffling method as used in other state elections such as in the ACT or Tasmania (both using Hare-Clark as their voting methods).

One might hope that adding logos to the ballot will be enough to resolve this issue, but do you trust a full quota of voters to have brand recognition when their literacy is already in question?

(As an aside, yes Mr Leyonhjelm, we know you're steadfast in your belief that all those votes were legitimate preferences for you, just as your belief that windfarms cause illness is steadfast and legitimate, scientifically viable and accurate.)

2.8 Removal of administrative distinctions between parliamentary and non-parliamentary parties

Recommendation 13: Abolish the administrative distinctions between parliamentary and non-parliamentary parties.

Given there is now no power advantage of being a registered non-parliamentary political party in Australia, the Pirate Party requests that the minimum membership requirements are abolished, or at least lowered to 100, along with independent candidates having nomination signatures lowered to 50. Minor parties in Australia are predominantly volunteer organisations, and those of us who are legitimate parties and will remain to contest elections after the GVT system is abolished would much appreciate it if the irrelevant administrative burdens could be limited further.

Parties like Xenophon's and Lambie's exist only due to the fact that the provisions for registering a political party in Australia are \$500 and having a member of parliament. The Pirate Party position on this is that it is a fundamental perversion of the party registration system and an unintended consequence of sloppily written legislation that in its original intent was to control an explosion of preference harvesting parties in the 90s and 00s.

The Pirate Party proposes that this is overhauled correctly now that the GVT is being abolished. Parliamentary parties should be required to demonstrate the same minimum membership levels as a non-parliamentary political party, and have the same auditing provisions applied as non-parliamentary parties. This would promote fairness and equality in an already extremely biased system.

The Pirate Party however recognises and thanks the Liberal and Greens parties for not raising the threshold of minimum members above 500 in this bill, as it is the position of the Pirate Party that this would be yet another perversion of what should be an accessible and liberal democratic system. Given the abolition of the GVT, historical arguments for these provisions are now moot.

2.9 Release EasyCount into the public domain

Recommendation 14: Direct the Australian Electoral Commission to release the EasyCount source code into the public domain for public scrutiny and auditing.

Public trust in the Senate counting system was significantly shaken in the wake of the lost votes scandal of 2013. It was weakened further when the AEC refused a freedom of information request to access the source code of the EasyCount system on the grounds that it is commercial-in-confidence.

This is offensive to the intelligence of everyone in the room. The Australian Electoral Commission is a state-owned corporation that exists for the purposes of guaranteeing the authenticity of elections including federal elections and labour union elections. The fact that a state-owned enterprise claims it legitimate to argue that they deserve to

derive a profit off a product that only exists due to tax paid by Australian residents is fundamentally flawed.

The Pirate Party requests that the AEC is directed to release the source code for the EasyCount system into the public domain for the purposes of public scrutiny and auditing. The EasyCount system merely exists to count the ballots from a database. It is not a security risk and those who would dare argue otherwise are not digitally literate enough to effectively defend this argument under any level of pressure or scrutiny.

The Party notes that Senate Motion 330 passed the Senate, which specifically required the AEC to release the code.

In a freedom of information request to the now-former Special Minister of State, Mal Brough, it was found that no correspondence occurred between the AEC and the Special Minister regarding the AEC's refusal to release the code as per the motion.

This raises several questions. Most of those questions are relating to how said minister was happy to present a document to the Senate stating that it would be a security risk to release the code, but never actually corresponded with those responsible for the code. Interesting. Also corrupt as all hell.

(Parliamentary privilege is great though, it feels like having legitimate free speech, which is an odd feeling in the only Commonwealth country without a bill of rights.)

3 Deficiencies of the overall process

3.1 Empowerment of an independent statutory body to conduct future inquiries

Recommendation 15: Empower an independent statutory body to conduct all future inquiries into electoral legislation.

While we hope that our proposals are considered in good faith, given the differences in power of this professional relationship, it is not hard

to concede that it is very akin to throwing the sheep to the wolves. It is not conducive to genuine and effective electoral reform, as even a casual observer would agree that there are obviously conflicts of interest with giving the majority winner of an election majority power to moreorless determine the future of the electoral system.

The Pirate Party proposes that future inquiries into the election system are handled by a neutral third party, such as the Australian Law Reform Commission, that guarantees distinct voices can have their proposals consider on their merit, and not on the political biases of the chosen politicians of a Parliamentary committee.

3.2 Royal Commission into the Australian electoral and parliamentary system

Recommendation 16: Conduct a broad review of the Australian electoral and parliamentary system through a Royal Commission.

Abolishing the GVT does not solve fundamental issues that remain with the Australian Federal electoral system. There are still major questions of proportionality, representation and effectiveness of our centenarian bicameral system of parliament and governance.

Much like the Royal Commission on the Electoral System that occurred in New Zealand in 1985–1986, the Pirate Party strongly proposes that a Royal Commission into the Electoral System is considered as soon as feasible by this Parliament to ensure that Australia can develop into a truly robust, liberal and modern democracy that can optimally face the challenges of the modern world that the federalists in the last 19th century could not have possibly considered.

Fundamental issues that need to be considered may include:

- Is instant-runoff voting the best solution for electing members to the House of Representatives?
- Should the House of Parliament where the Government is formed be proportionally elected as opposed to based on balanced constituencies, or multi-member proportional within said constituencies?

- What is the relevance of the Senate in a world where the purpose of the States in a post-colonial world is diminished to the point of irrelevance?
- Should the Senate continue to be elected using a single transferable vote method, or is a party list proportional method preferable given the dominance of parties over independent candidates in the modern political context?
- Does Australia need two houses of Parliament, or would a mixed model unicameral parliament be more suitable in a modern Australia?

There are merely a few of the questions that Australians deserve to ask after **over one hundred (100) years** of being governed under the current model with only minor tweaking around the edges (changing number of Senators, minor tweaks to election method such as GVT, etc).

It is time Australians were given the opportunity to collectively discuss whether our electoral and parliamentary system functions the best way it can in 2016 and beyond given the wealth of knowledge gained over the last century.