



29th February 2016

Committee Secretary  
Joint Standing Committee on Electoral Matters  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary

**RE: Commonwealth Electoral Amendment Bill 2016**

The Commonwealth Electoral Amendment Bill 2016 contains a number of provisions that can only be construed as an attack on the integrity of representative democracy in our federal parliament. Greater time for consideration and implementation is required to deliver changes that serve voters rather than incumbent political interests. Voter intent can be better reflected in alternative changes to electoral law.

**An attack on representative democracy**

Following the 2013 federal election, several Senators were elected from parties other than the three major parties (ie, the Australian Labor Party, the Liberal/National Coalition and The Greens). This was a predictable result for three reasons. First, there was a groundswell of support for minor and so-called “micro” parties as a reaction to the lack of differentiation between major party policies and dissatisfaction with recent governments. Voters were looking for alternate representation and demonstrated this with the near 25% of voters who cast a vote for a Senate candidate from outside the three major parties.

Second, technological innovations allow smaller parties, which receive little or no public funding, to get their message out to the electorate.

Third, the minor parties have caught up with the preference negotiating skills of the major parties, following the long history of preference deals between major parties such as between the Liberals and Nationals, and between Labor and the Greens.

Complaints that the makeup of the Senate following the election is somehow undemocratic and unrepresentative of the voting intentions of the Australian public have led to proposals to change the voting system.

Amendments in the *Commonwealth Electoral Amendment Bill 2016* seek to address claims that the system needs repair. One of the complaints arising out of the 2013 election is that the makeup of the Senate does not reflect the intentions of the voting public. *Figure 1* shows the Senate voting intentions of the public as expressed by valid, first preference votes cast at the 2013 Australian federal election.

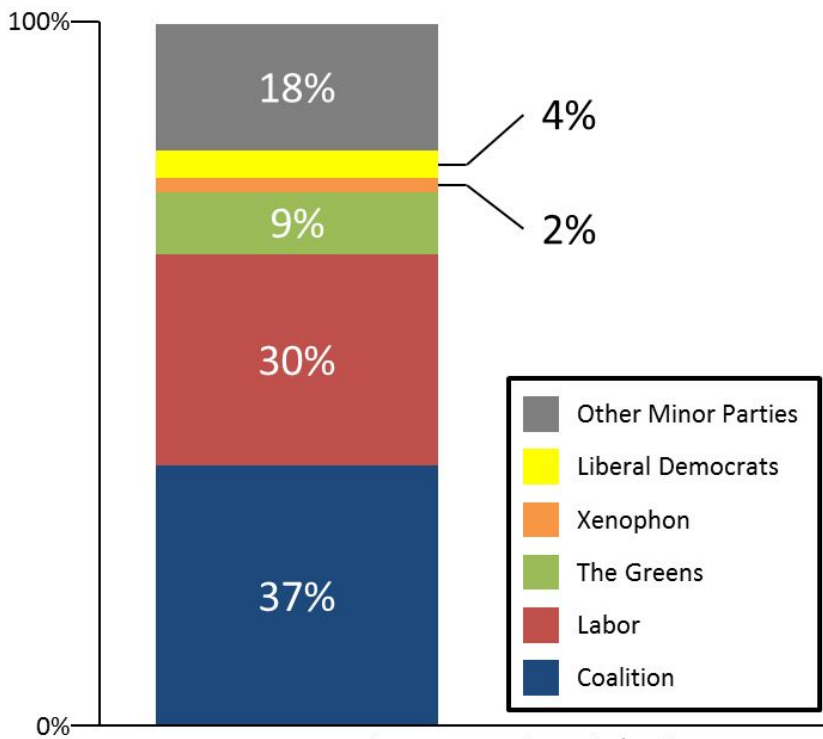


Figure 1: Voting Intention by Percentage of Formal 1<sup>st</sup> Preference Votes

The Liberal/National Coalition received 37% of the primary vote, followed by Labor with 30% and The Greens with 9%. While the three major parties account for more than three quarters of the primary vote, this still leaves nearly a quarter of votes for either an independent candidate or a candidate from a party other than one of the three major parties.

For any result to be considered fair in terms of proportional representation, the makeup of the cohort of senators entering parliament after an election should resemble, as closely as possible, the demonstrated voting intentions of the Australian public. *Figure 2* shows how the primary vote percentages shown in *Figure 1* would resolve to seat numbers if they were applied to the 36 state and 4 territory senators who entered parliament after the 2013 election.

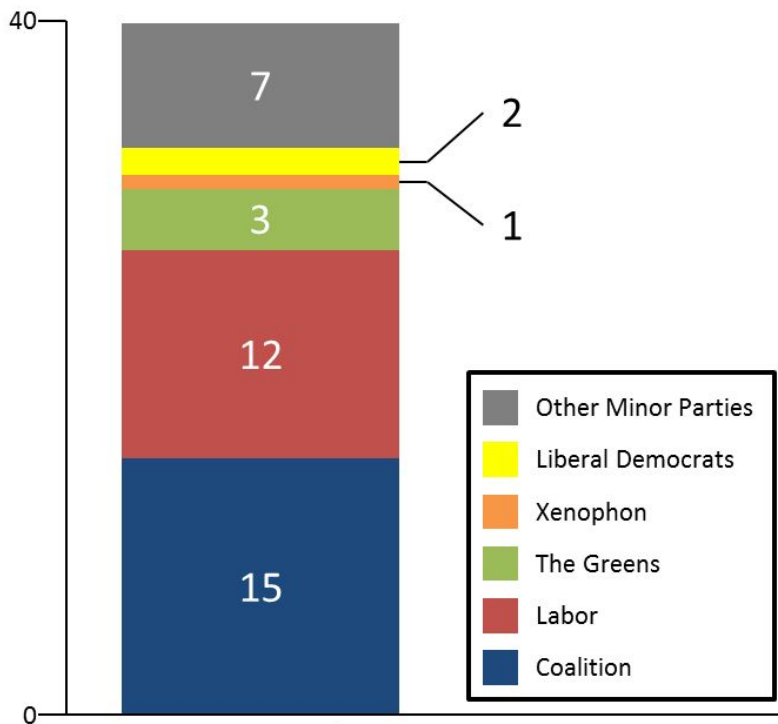


Figure 2: Projected Senate Seats as per Voting Intention

As three quarters of the votes were cast for the three major parties, it would be expected that the major parties hold three quarters of the available seats. The Coalition would receive 15 seats, Labor 12 and the Greens 3. The remaining ten seats would be distributed among the independents, minor and micro parties according to the flow of preferences.

Figure 3 shows the actual makeup of the senate cohort entering parliament after the 2013 election.

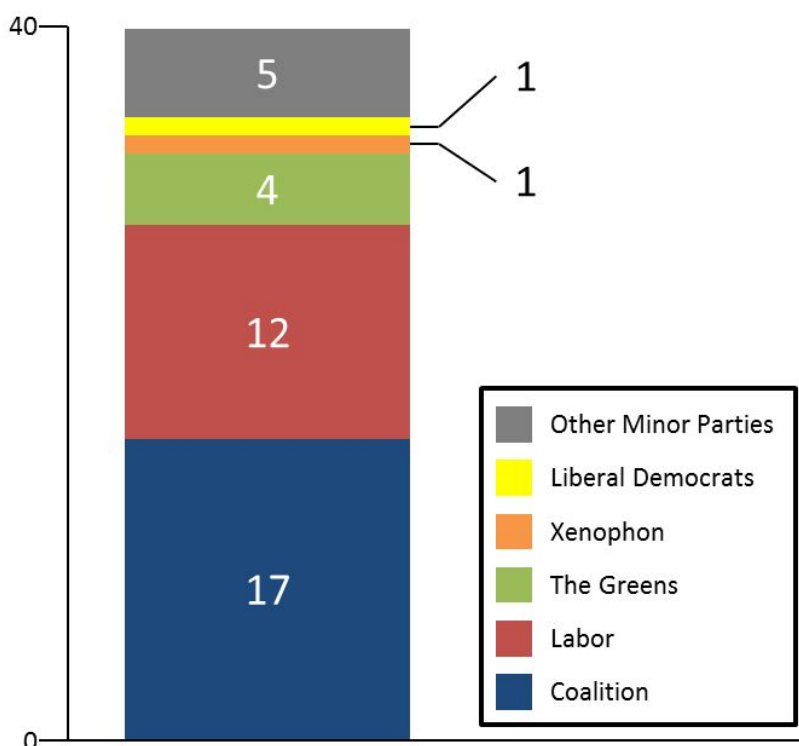


Figure 3: Actual Senate Results Following 2013 Election

It is clear that the primary beneficiaries of any discrepancies between voting intention and Senate seats are the major parties at the expense of minor parties. After the 2013 election the Coalition took 17 seats when it would be expected to take 15, while the Greens took 4 where they would have expected to win only three.

With the Labor party taking its expected 12 Senate seats it is obvious that two Coalition Senators and one Greens Senator have been elected contrary to the voting intention of the public. In proportional terms, those seats should have gone to Senators from outside the major parties. In fact after winning 76% of the primary vote, the major parties have been allocated 82.5% of the available Senate positions. While it is apparent that the system is not perfect, it is equally apparent that blaming minor parties for these distortions is fallacious.

The key consideration for the committee is the removal of group voting tickets, to be replaced by preferential voting above the line. Due to the 'savings' provisions, this will default to optional preferential voting and is likely to follow the same course as in NSW, where voting for the Legislative Council is primarily determined on first preferences.

Figure 4 shows the projected makeup of the Senate following implementation of the proposed changes to Senate voting. Far from correcting any imbalance between voting intention and proportional representation, the changes will serve to further entrench the bias toward the major parties.

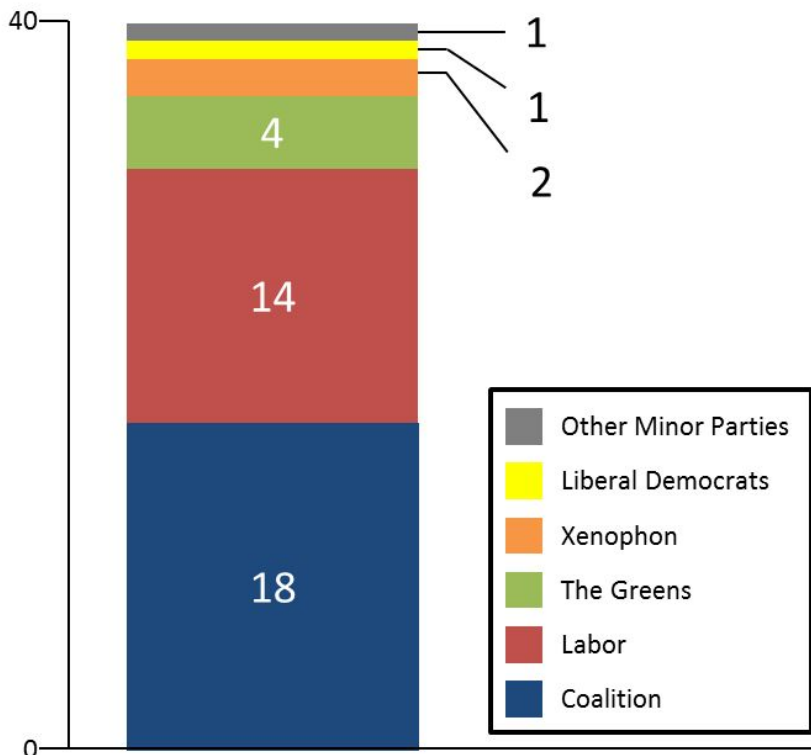


Figure 4: Projected Senate Results Using Proposed System

Inevitably, a significant number of votes cast - especially those cast for parties other than the three major parties - will simply exhaust instead of being allocated according to preferences. Where those votes would previously have helped to elect minor party candidates, they will simply not count toward any vote tally once the six candidates that the voter preferred are eliminated from the contest, *ie* the votes will be discarded. As an elector, the idea that your vote will be discounted if you do not vote for the government's preferred candidates should be horrifying.

As a result, the ratio of major party votes to non-major party votes will be artificially shifted in favour of the major parties. Instead of occupying the 76% of seats that would be a fair representation of the population's voting intentions, the major parties will have engineered a system whereby they would occupy a full 90% of senate seats. Effectively the government is attempting to disenfranchise nearly a quarter of Australian voters simply because they don't vote the way the government would like them to.

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The Oxford dictionary defines Democracy as "a system of government in which all the people of a state or polity are involved in making decisions about its affairs". For a government to call itself a representative democracy while simultaneously moving to disenfranchise a quarter of electors on the basis of the representatives they might choose makes a mockery of both terms.

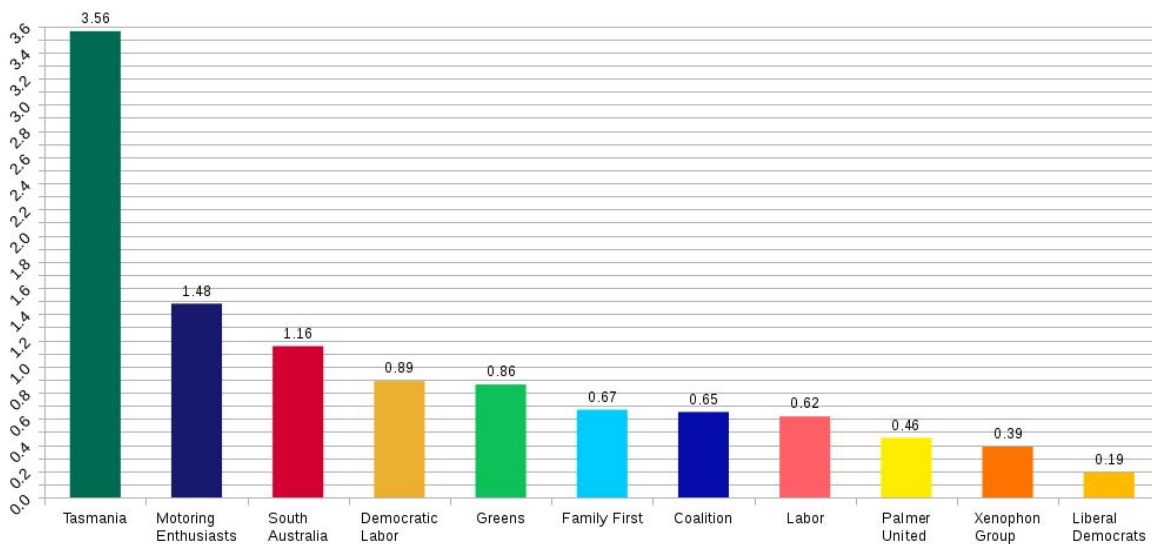
The removal of group voting tickets eliminates an easy mechanism for electors to enter a formal, fully preferred vote without having to number up to 110 boxes. The single transferable above-the-line vote is a mechanism that has only increased in its usage by electors since its introduction. It is a nonsense to expect all electors to be fully informed of the policies and positions of up to 50 disparate political parties to the point where they could effectively rank their candidates from 1 to 110. However voters regularly place their faith and trust in political parties to act in a manner consistent with their underpinning philosophies. Indeed this is the fundamental rationale behind representative democracy. Voters recognise that the single transferable vote model is a vote along party lines. This is borne out regularly by the results of preference flows which clearly show preferences flowing among parties with similar philosophies before trickling to parties with more divergent platforms. A recent example would be NSW Liberal Party Senator Arthur Sinodinos being elected rather than a Greens candidate on the back of preferences from the Climate Change Sceptics, Motoring Enthusiasts, One Nation, Christian Democrats, Shooters and Fishers, and the Fishing and Lifestyle Party. The voters for each of these parties would expect their vote to be used to elect Senator Sinodinos rather than a Greens candidate, and that is what occurred.

While a move toward optional preferential voting is not a bad thing in its own right, if it is introduced at the expense of a simpler and more exhaustive approach (ie the use of group voting tickets) then the net effect is to make voting in the Senate more complex and less comprehensive.

It is telling that the Government's proposal is to introduce optional preferential voting in the senate, but not in the house of representatives. If the move was in the interests of fairness then one could only assume that it would be equally fair to allow optional preferential voting in both houses of parliament. As it stands it can only be understood that advocating optional preferential in one house while retaining full preferential in the other equates to the changes being made to secure an electoral advantage for the government rather than a sincere attempt at instilling fairness in the electoral system.

It is also telling that the Government proposes to limit to two the number of party logos that can be displayed in a column, despite there being no limit on the number of parties that can agree to be presented in the one column. This proposal seems tailored to improve the prominence of the Liberal/National Coalition on the Senate ballot.

If we take into account the population discrepancies between states, it becomes increasingly clear that the idea of minor-party Senators somehow being unrepresentative or having too small a voter base to stake a legitimate claim to a Senate seat is demonstrably untrue. *Figure 5* shows the number of Senators per 100,000 voters for each party elected to the Senate after the 2013 election.



**Figure 5: Senators per 100,000 electors, parties contrasted with Tasmania and South Australia**

If we take the ultimately-elected Coalition government as the baseline, we posit that a ratio of 0.65 Senators per 100,000 voters constitutes a reasonable degree of representation. The opposition Labor party having 0.62 Senators per 100,000 voters would lend weight to this correlation. From the graph it becomes apparent that any distortions in representation tend to be a factor related to the population discrepancies between the states rather than from the use of group voting tickets. In 2013 the Family First Party and the Liberal Democratic Party each had one Senator elected. Where Senator Leyonhjelm of the Liberal Democrats was elected in the most populous state of New South Wales, the effective representation of the Liberal Democrats is only 0.19 Senators per 100,000 voters. Meanwhile, Senator Day of Family First was elected from the nation's least populated mainland state of South Australia giving Family First an effective representation of 0.67 Senators per 100,000 voters. Even so, the Greens at 0.86 Senators per 100,000 voters remain less representative than most of the parties elected in 2013.

Contrasting the representation of parties with the representation afforded the least populous states in the nation shows that the people of South Australia are represented by 1.16 Senators per 100,000 voters while the least populous state of Tasmania, having a voter turnout of just over 345,000 electors, ends up having representation of 3.56 Senators for every 100,000 voters, more than double the number afforded the oft-complained-about Australian Motoring Enthusiasts Party.



## **Hasty consideration and implementation**

The introduction of new voting procedures requires a great deal of work. Not only must the electoral commission retrain staff and reproduce thousands of booklets and other instructions to voters, the voters themselves will require sufficient time to acclimate to an unfamiliar system. The current system with group voting tickets was introduced more than 30 years ago. For any voter under 50 it is the only federal senate voting system they have ever used.

The Joint Standing Committee on Electoral Matters provided its First Interim Report in May 2014, stating “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”. Clearly the Government has not heeded the advice of the Committee. A handful of sitting days between introduction and voting on the Bill does not represent “time to legislate”. And a handful of weeks between passage of the Bill and the potential calling of an election prevents “thorough and adequate” engagement with voters. The vision of the Committee is clearly being perverted. This seems indicative of a desire to capitalise on voter confusion rather than to make the system fairer.

## **Alternative changes to better reflect voter intent**

It does not follow that problems with the current voting system mean that the Government’s proposal should be adopted. The voting system can be improved without disenfranchising voters who favour minor parties over the Coalition, Labor and the Greens.

The Government claims that its proposal is motivated by a desire to allow voters to choose their own preferences. But voters can be given more practical options to choose their own preferences by changing below the line voting. Currently 90 per cent of squares below the line need to be completed in a Senate election. This makes below the line voting onerous. In contrast, voters who vote below the line for the Victorian Legislative Council only need to fill in as many squares as there are vacancies. This makes voting below the line an easy, practical option for voters in Victoria. Such a system should be adopted for the Senate. This would allow voters who trust their favourite party to allocate preferences on their behalf to continue to do so by voting above the line, and would allow voters who do not trust their favourite party to allocate preferences on their behalf to easily vote below the line.

The Government claims that it is motivated by a desire to empower people. One option to empower people is to give them the option to not enrol or vote. For voting to be a right, people must be free to not vote. Forcing the unwilling to vote skews Australian politics. Elections turn not on whether parties convince engaged voters that their policies are the best. Instead, they turn on whether parties convince





unengaged voters to remember their name in the split-second that they enter the ballot booth. As the rest of the world demonstrates, compulsory voting is in no way necessary to maintain democracy.

The Government claims that its proposal does not represent an attempt to prevent new minor parties from emerging and growing. But such restraint of new minor parties is inherent in the continued quarantining of election funding to major parties. To demonstrate that the Government is not seeking to entrench the established major parties, the rule denying election funding to parties that receive less than four per cent of first preference votes should be abolished. This would ensure that one vote really does have one value. Election funding per vote should be reduced to ensure that overall taxpayer funding to political parties falls.

**To summarise:**

1. The Liberal Democrats do not accept that the 2013 senate election result was anomalous, unrepresentative or counter to the expressed preferences of the Australian electorate with regard to providing an advantage to minor party, micro party or independent senate candidates.
2. The Liberal Democrats maintain that the current senate voting system already confers an advantage on the three major parties, namely the Liberal/National Coalition, the Australian Labor Party and The Greens.
3. The Liberal Democrats support the view that the proposed changes to the senate voting system will result in a further entrenchment of bias toward the three major parties at the expense of minor party, micro party and independent candidates.
4. The Liberal Democrats support the view that the full expression of preferences results in a closer approximation of elected candidates to expressed voter intention than discarding the votes of those who support non-major party candidates.
5. The Liberal Democrats believe that any further entrenchment of the bias toward the major parties in the senate will contribute to a degradation of the ability of the senate to function effectively with regard to its stated charter as a house of state's rights.
6. The Liberal Democrats contend that the proposal to remove group voting tickets removes power from electors by taking away a popular voting option.
7. The Liberal Democrats propose the following two options be available for Senate voting:



- a. Group voting ticket above the line - where the elector marks a single box above the line indicating a preference for following that party's group voting ticket (as is currently the case),
  - b. Optional preferential voting below the line where the elector is asked to number at least 6 boxes below the line indicating their desired preference order.
8. The Liberal Democrats contend that the proposal to allow optional preferential voting in the senate, but keep full preferential voting in the lower house is indicative of an attempt to secure short-term electoral advantage at the expense of maintaining a fair and equitable democratic system.
  9. The Liberal Democrats believe there is insufficient time for the government to effectively put into place the appropriate mechanisms for staff training and electoral education such that the voting public and AEC staff are sufficiently aware of the changes to the point where an election could be held without significant disruption and perversion of voter intent.
  10. The Liberal Democrats alternate proposal of simply allowing optional preferential voting below the line would allow voters to specify their own preferences more conveniently. This will minimise the re-education required and the changes required in AEC systems.
  11. The Liberal Democrats contend that the entire aim of the Commonwealth Electoral Amendment Bill 2016 is to limit the ability of minor parties to effectively contest senate elections and thus constitutes an attempt to disenfranchise a significant number of Australian electors.

**Recommendation 1:**

That the bill in its current form be rejected.

**Recommendation 2:**

That any changes to the electoral system be deferred until 2017 to allow for a sufficient timeframe for AEC staff training and general voter awareness.

**Recommendation 3:**

That group voting tickets be retained as an option for voters, to maximise voter choice and continue to empower the voter to delegate their preferences to the party if they choose to do so.

**Recommendation 4:**



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To empower the voter and maximise voter choice by allowing optional preferential voting below the line, consistent with the approach used in the Victorian Legislative Council.

**Recommendation 5:**

That voluntary enrolment and voting be introduced, to empower people who do not wish to vote.

**Recommendation 6:**

That electoral funding not be limited to parties receiving four per cent or more of first preference votes, and that funding per vote be reduced to ensure that overall taxpayer funding to political parties is reduced.

**Kind regards,**

**Gabriel J. Buckley**  
**National President - Liberal Democratic Party**