

*Strong Families. Strong Values. Strong Australia.*

# FAMILY FIRST

*"I believe  
Australian Families  
deserve better"*



*Bob Day AO Federal Chairman*

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

**BY EMAIL: [em@aph.gov.au](mailto:em@aph.gov.au)**

Dear Chair,

## **SUBMISSION ON *COMMONWEALTH ELECTORAL AMENDMENT BILL 2016***

The Family First Party was formed in 2001 and has contested state and federal elections all over the country. The Party has secured Federal and State Parliamentary representation in multiple elections, has been represented by 8 Members of Parliament and currently has three: the Honourable Dennis Hood MLC and Honourable Robert Brokenshire MLC in the South Australian Legislative Council, and myself in the Senate. Our record of providing candidates in Federal elections is plain for all to see and, I suggest, makes us one of the larger of the second-tier parties in Australian politics.

Family First supports competition, which is best served by having low entry points for new competitors, not excessive regulation. A market is healthiest when a new competitor, or to use a popular modern term, 'disruptor', comes up with a better way of serving the market and starts taking market share from established players. Our policy position is that governments should resist the cries of the established market players for protection from disruptors, and instead allow the market to settle the matter without government intervention. Markets should only be regulated when the safety of the public is at risk.

### **We have grave misgivings about the Bill.**

Our most immediate concern is the rush with which the Bill is being put through the Parliament. This submission has been written one working day before it is due, as we have been provided inadequate time to respond to the specific proposals in the Bill. The public hearings on Tuesday 1 March only run for 4 ½ hours, hardly long enough for every interested party to have a say on the biggest change to the voting system in 30 years. Indeed, it is doubtful every interested party will have the time and

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resources to make a submission and get to Canberra to have its say. This alone illustrates what is wrong with this Bill – it does not provide everyone a fair go.

The government admits that the Bill does not enact all of the recommendations of the Committee's earlier inquiry. It is false and misleading to suggest that the public and parties like ours have already had the opportunity to make submissions about, and consider, the potential changes in this Bill. Nobody knows the potential impact until the government's accepted recommendations are put forward as one package. Now we know the impact, and it is unacceptable, potentially unconstitutional and certainly un-Australian.

The Senate voting system has been in place since 1984. The use of Group Voting Tickets has risen steadily to a stable 95-96% in recent elections. Some people have protested about the low primary votes received by some who were elected in the 2013 Federal election. There are a number of points to be made on that:

- (1) Senators from the Labor, Liberal and Greens parties got elected on less personal primary votes than what many crossbenchers received;
- (2) The voting system is preferential, not first-past-the-post. It is, I submit, a very Australian system as it reflects the voting for sporting 'best players' all over the country, from a country footy club to the Brownlow Medal and similar voting systems in many other sporting codes. The winner of the league's 'best and fairest' is not the player who wins the most first preferences, it is the player who wins the total points allocated to first, second and third preferences. The current voting system is similar. Nobody would say a back pocket footballer who wins 21 third preference (1 point) votes is less deserving than the player who wins 7 first preference (3 point) votes;
- (3) Over 25% of voters, some 3 million voters and rising, are now not voting for the Liberal, Labor, Greens or National parties (in our submission, 'first tier' parties). Irrespective of their primary vote, second tier party Senators elected on preferences from that 25% of the voting public hold seats representing that significant section of voters. If anything, second tier parties are under-represented in the Senate given the quota is just over 14.3%. In other words, 25% is closer to 28.6% (quota for two seats) than 14.3% (quota for one seat);
- (4) Many Australians, particularly supporters of parties like ours, like the group voting tickets because they relieve them of the need to complete every box below the line. They are very happy to delegate the distribution of their preferences to the party. That is a major factor in why 96% of Australians use them. Prospective Family First voters ring our office before elections asking who we will preference. Voters understand the preference system.\*;
- (5) Reference has been made to 'back room deals' that allegedly subvert the intent of the preference system. All parties – so-called 'major' and 'minor' parties alike – have benefited from preference deals. The Greens and Nick Xenophon both got their starts in politics thanks to preference deals with other parties. It is cynical and hypocritical for them to deny others the same opportunity. No protest about preference deals was raised until certain first tier parties decided their political market strength was threatened by competitors making better preference deals than they were;

and

- (6) Much has been said, most unfairly in my view, about the social hijinks and capability of Senator Muir prior to his entry into the Senate. His story encourages every Australian that they, too, could be elected to parliament. Senator Muir is, after all, only 1 federal parliamentarian out of 225! Senator Muir's election speaks against the pervasive public belief that only the wealthy and those well-connected with the powerful elites in the nation can get into, and deserve to be in, public office. Indeed, the public are very concerned about the Americanisation of politics and the emergence of an American billionaire as the front-runner for the Republican 2016 presidential nomination. The system that this Bill would establish would take Australia far faster towards, rather than away from, a system where new parties only succeed with billionaire backing.

The foregoing points illustrate that the arguments advanced for changes to the Senate voting system are selective and self-serving for certain first tier parties whose own interests are best served by the proposals. That is why the Government has not adopted every one of the Committee's proposals.

\* If we were to accept the argument that voters do not understand the system, then the solution is to make it less onerous to vote below the line. Allowing optional preferential voting below the line would let voters number only so many boxes as are deemed necessary, say 6 – the number of seats contested in States in a regular half-Senate election. The choice is then in the voter's hands – they can still vote 1 using a Group Voting Ticket above the line, but if they mistrust Group Voting Tickets, they can just number a handful – not all 100 or so – of boxes below the line.

I regret that we cannot more eloquently and comprehensively provide further information on the Bill, but in the interest of meeting the submission deadline, we conclude with our proposed recommendations on the Bill:

## **RECOMMENDATIONS:**

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*(to keep recommendations concise below, a reference to 'Contested Seats' refers to the number of seats up for election in that Senate election, be it 6 in a State in a regular half-Senate election, or 12 in a State in double dissolution, or 2 in a Territory half-Senate election or 4 in a Territory in a double dissolution election)*

### **RECOMMENDATION 1**

**That the Bill be rejected.**

## **RECOMMENDATION 2**

**That the government instruct Crown lawyers to receive a request from the Committee for advice on the constitutional validity of the Bill, and that the advice thereto be provided direct to the Committee without instruction or variation from the government.**

**Alternatively, that the government provide funding for the Committee to obtain independent legal advice of a similar nature. Regardless of how the matter is addressed, adequate time must be given for instructions to be sent and advice received, and therefore that the Bill not proceed further in the Senate until the advice has been received and properly considered by the Committee.**

## **RECOMMENDATION 3**

**That the proposals contained in the Bill be put out to proper and reasonably timed public consultation, with public hearings in every state and territory capital.**

## **RECOMMENDATION 4**

**Failing the foregoing, that the following amendments be made to the Bill:**

- A. That no election can be conducted using the Bill's voting changes until after 22 August 2016, the six-month anniversary of the government's Monday 22 February 2016 announcement of the changes.**
- B. That optional preferential voting be implemented below the line, not above – and that group voting tickets be retained above the line. Voters would have to number only as many boxes as are Contested Seats.**
- C. That if Group Voting Tickets are abolished, that the Bill be amended to provide that the vote of an elector voting above the line is invalid unless the elector completes a *minimum* number of boxes equal to the number of Contested Seats.**
- D. That the Bill be amended to prohibit a party or person advertising to encourage voters to both (a) 'Vote 1' and (b) not number any other boxes above the line. If optional preferential voting is truly optional, the voter should not be induced into how many or few boxes they complete.**
- E. That consideration be given to allowing voting to become voluntary.**

### Rationale for the Recommendations:

The following is not intended to be comprehensive but to indicate, where time has permitted, the reason why the recommendation has been advanced. In my capacity as a Senator I propose advancing further reasons in the Senate when the Bill is debated.

- 4A. It is dubious that the Australian Electoral Commission will be ready in 3 months for these changes to be implemented. They may have information systems prepared, but unintended consequences need to be accommodated via a reasonable timeframe. In our submission, the AEC's readiness also comprises sufficient time to inform every voter how the new voting system would work. The time-frame also allows enough time for constitutional advice to be considered and settled before an election, not leaving the election outcome under a cloud due to potential constitutional challenge. It may be that standing to challenge the laws in the High Court will only arise once the Bill becomes law.
- 4B. Our proposal puts the power back in the voter's hands whether they use Group Voting Tickets (GVT) or not. The Government's proposal encapsulated in the Bill does not restore choice to voters, as it takes one choice away – the Group Voting Ticket. The GVT choice is clearly a choice that 96% of Australians have consistently used in recent elections. One alleged objective of optional preferential voting (OPV) is to reduce informal votes, a problem already resolved by Group Voting Tickets, where the informality rate fell from 9.9% in 1983 to 2.96% in 2013.

4C. and 4D.

The experience from Australian jurisdictions that use optional preferential voting is instructive. Queensland's OPV state electoral system now sees some 70% of voters just voting 1 (i.e. not numbering any other boxes) even though they can vote for more. The Liberal/National Party ran advertisements during the last Queensland state election, and erected banners at polling booths, encouraging electors to vote 1 and not number any other boxes. The 2015 New South Wales state election (using OPV) saw 85% of voters just voting 1 in the upper house. The outcome has been a de facto first past the post system.

For 30 years electors have been conditioned to voting 1 above the line. It is presumptuous, to say the least, for the government to assume that in its rush to pass these laws and get to an election, every elector in the country will understand that they have an option to vote above the line in multiple boxes. Many will be uncertain, regardless of what is written on ballot papers or in polling booths, and revert to type – voting 1. Conversely, if the ballot paper or booth information tells them they must vote for a minimum number of Contested Seats, they will do so because to do otherwise would be to cast an informal, that is a wasted, vote. Allowing parties to promote "voting 1 only" under OPV encourages parties to exploit the generous savings provisions for political advantage.

- 4E. Group Voting Tickets and preferential voting have been the accepted trade-off in Australia for forcing every Australian to vote. Australia is the only English-speaking nation with compulsory voting, and certainly in the minority around the world. If we are to force people to vote under threat of criminal sanction for failing to do so, their vote ought at least reach someone who they would prefer to be elected. If we are to withdraw that choice and make voting pointless for many people – as many more of their votes, we argue over 3 million or 25%, will go to a candidate who is not elected – then the criminality of failing to vote must also be reviewed.

Yours sincerely,

**SENATOR BOB DAY AO**  
**Federal Chairman**  
**Family First Party**