

18 October 2016

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

Please accept my submission to the Inquiry into the Conduct and Related Matters of the 2016 Federal Election.

I am addressing three aspects of the election: formality of votes for the House of Representatives; the operation of the changed Senate voting system; and the Registration of Political Parties and their eligibility to nominate candidates.

I am employed as Principal Policy Adviser to the Minister of Electoral Affairs in the Government of Western Australia. I have held this position since 2008 and in 1995-2001. I have also been employed as an Electorate Officer to federal Members of Parliament and as a part-time staff member attached to the Parliament of Western Australia.

This however is a private submission representing my personal views. I would be interested to attend any public hearing held in Perth to answer any questions on my submission.

Kind regards

Jeremy Buxton

JOINT STANDING COMMITTEE on ELECTORAL MATTERS INQUIRY INTO THE CONDUCT AND RELATED MATTERS OF THE 2016 FEDERAL ELECTION

FORMALITY OF VOTES FOR THE HOUSE OF REPRESENTATIVES

I submit that it is wrong that electors who have both indicated a clear first preference and have filled in all, or all but one squares on the ballot paper, should have their vote invalidated because of a break in numerical sequence.

I submit that the *Commonwealth Electoral Act 1918* be amended in line with Clause 140A of the *Electoral Act 1907* of the Western Australian Parliament.

Clause 140A reads as follows:

140A. Some ballot papers with non-consecutive preferences can be formal

(1) Where a ballot paper in an election in which there are more than 2 candidates —

(a) has the numeral “1” in the square opposite the name of a candidate; and

(b) has other numerals in the squares opposite the names of the remaining candidates or all but one of the remaining candidates; and

(c) but for this subsection, would be informal under section 139(d), then —

(d) the ballot paper shall not be informal under section 139(d); and

(e) the numeral “1” shall be taken to express the elector’s first preference; and

(f) where numerals in squares opposite the names of candidates are in a sequence of consecutive numbers beginning with the numeral “1”, the elector shall be taken to have expressed a preference by the other numeral, or to have expressed preferences by the other numerals, in that sequence; and

(g) the elector shall not be taken to have expressed any other preference.

(2) In considering, for the purposes of subsection (1), whether numerals are in a sequence of consecutive numerals, any numeral that is repeated shall be disregarded.

(3) If a ballot paper does not have a numeral in the square opposite the name of a candidate but a preference for that candidate is marked on the ballot paper in some other manner that clearly indicates the elector’s intention, the ballot paper shall be regarded, for the purposes of this section, as having the numeral appropriate to that preference marked in the square opposite the name of that candidate.

The *Electoral Act 1907* was amended in 1996 with the intention that electors making an error in numerical sequence would not have their democratic vote rendered informal. It has operated through five subsequent general elections and two changes of Government. Significantly, no Western Australian Government has sought to reinstate such restrictive formality rules as were reintroduced by the 38th Federal Parliament.

At the March 2013 Western Australian general election, a total of 618 votes exhausted under S 140A of the *Electoral Act 1907*. This represents 0.31% of the 200,324 votes cast for 173 unsuccessful candidates finishing third or lower in the primary count: 200,324 votes that were distributed as preferences across the 59 Legislative Assembly districts.

- 984,108 valid votes were cast for the 118 candidates who finished in first or second place in the 59 seats. If we assume that 0.31% of these votes also had a break in numerical sequence, we are possibly looking at another 3050 exhausted votes.
- Some 3500-4000 saved votes out of 1.18 million hardly impacts the election outcome but represents a small measure of democratic justice.

In the last two general elections in Western Australia, the average rate of recorded exhausted votes was as few as 11 per Legislative Assembly district. In districts with four candidates or less, and in some notably affluent suburban seats, exhausted votes were counted in single figures or were not recorded at all.

Conversely, numbers of exhausted votes have tended to rise in seats with five or more candidates. This is another clear indication that when votes in Western Australian elections exhaust, the obvious cause is sequencing error rather than any deliberate intention to deny preferences to other political parties.

Electors should no longer be at greater risk from having their votes invalidated simply because larger numbers of candidates have chosen to contest a Federal division. It is well understood that rates of informality rise in this situation. To give but one example, when 22 candidates contested the 2009 Bradfield by-election, informal votes increased from 4.0% to 9.0%. Electors even in this highly educated, affluent division are not immune from sequencing errors.

The present enforcement of numerical sequence may in fact discriminate against some electors of a Chinese-speaking background. At the Marangaroo

Primary School polling booth in the division of Cowan at the 2016 federal election, it was reported to me that some 20 votes were invalidated because the number 4 was not recorded against any of the seven candidates.

I have subsequently been informed that in Mandarin, Cantonese and Hakka, the number 4 is pronounced as 'si', a homonym for 'die', 'dead' or 'death'. Presumably for this reason, some blocks of inner city apartments have 3A in place of 4 as a unit number. Although the majority of electors of Chinese origin evidently ignore this superstition and successfully complete their ballot papers, it should be of concern that *any* votes are invalidated for this reason.

It is unethical to seek to coerce and discipline that minority of electors who vote for minor parties, and may then deliberately repeat a number to deny effective preferences to major parties, at the expense of a far larger number of electors who are simply attempting to vote for the party of their choice.

Electors supporting major parties are less likely to be concerned as to subsequent preferences and could therefore be more liable to make an error in sequencing. Following the advice of a How to Vote card would avoid such errors, but many electors refuse any material offered outside polling booths, may then find themselves confronted by an unexpectedly long list of candidates on the ballot paper.

Should a "Langer option" of deliberate sequencing error be promoted, then the best defence is a prohibition on any electoral material that advocates filling in ballot papers contrary to instructions. Indeed there is merit in confining material handed out at polling booths to How-to-vote advice from those political parties contesting the election. Only the representatives of parties and candidates should be permitted to solicit votes and offer election material in the vicinity of polling booths.

EFFECTIVENESS OF REFORMED SENATE VOTING

The outcome of the 2016 Federal election has shown that the changes to Senate voting have worked to enhance democratic outcomes and have disproved the facile, self-interested and alarmist criticisms of these reforms. We are all indebted to Dr Kevin Bonham (6-8 August 2016) and Mr Antony Green (11th October 2016) for their careful analysis of the Senate results in their respective weblogs.

As the Senate is of course elected on the basis of State boundaries, giving some smaller parties massively varying levels of support, only a rough proportionality can ever be expected. Nonetheless there has been a strong correlation between national vote shares and the percentage of Senate seats won.

Excluding the four Territory Senators, Dr Bonham has compared each party's average of vote shares by state, with the percentage of the 72 seats won in the states.

With 34.6% of the vote, the Coalition has 28 seats, 38.9%. The ALP with 29.6% has 33.3% of seats; the Greens with 8.8% have 12.5% of the seats. The Xenophon Team has respective percentages of 5.1% and 4.2% while Pauline Hanson's One Nation with 4.1% of the vote has 5.6% of the seats.

Family First, the Liberal Democrats, the Jacqui Lambie Network and the Derryn Hinch Justice Party all polled between 1.6% and 1.4% of the national vote and each won a seat – namely 1.4% of the 72 seats. All other minor parties polled less than 1.4% and none gained seats. On a state by state basis, no party polling less than 2.8% of the vote succeeded in electing a Senator, in contrast to some outcomes in 2013 achieved through preference harvesting.

Democracy was ill-served by ticket voting and preference harvesting, justified by the specious argument that any randomly elected micro-party Senator 'represented' the aggregated electoral support for minor parties – in complete disregard for policies, personalities, and ideology. Those defending the former system were in effect arguing that the great majority of electors who prefer to vote above the line, should not be entrusted with control over preference allocation.

The results disprove the concern that electors would fail to allocate preferences beyond number 1. Nationally only 3.0% of electors did so: in five states the figure was below 2.5%, with the 4.7% rate in New South Wales partly reflecting voter trends in Legislative Council elections. Antony Green has shown that 81.2% of electors completed six preferences, with a further 5.6% filling in additional preferences, and with 6.5% voting below the line. In Tasmania 28.1% of Senate votes were below the line.

In a related concern, it was argued that many votes would exhaust before electing a Senator. Mr Green and Dr Bonham have established that nationally only 5.1% of votes exhausted during the many transfers of preferences to the crucial point where the last non-elected candidate is excluded, leaving the last two candidates in competition for the 11th and 12th seats – thus a matter only of ranking.

At that point a further 2.4% of the vote exhausted: in Western Australia, at the elimination of the Nationals candidate, half the Nationals votes exhausted rather than express a preference for either One Nation or the Greens. Such 'rational' exhaustion of votes when electors have no interest in ranking disfavoured political parties should not cause any concern.

Altogether 16.1% of electors voted for parties that were excluded before the final count, but 83.9% of these allocated above-the-line preferences to parties that did elect Senators. In New South Wales a higher exhaustion rate of 20.1% results from the reluctance of voters supporting left-wing parties to decide on preferences between the Liberal Democrats and the Christian Democrats.

Under the count conducted under Section 282 of the *Commonwealth Electoral Act 1918*, mimicking a normal half-Senate election, a larger number of votes would necessarily fail to elect a Senator owing to the higher quota and the exclusion of some minor party Senators. However an exhaustion rate of 27.1% or 800,000 votes is far less than the 3 million total claimed by the opponents of Senate electoral reform.

The 2016 Senate election did not produce a de facto first past the post contest between the highest remainders as many had anticipated. Preferences allocated by above-the-line voters enabled Family First in South Australia to come from behind to win the 12th Senate seat. In Queensland the preferences from a broad range of excluded minor parties, parties of the left as well as the right, enabled the second One Nation candidate to overtake five other parties and win the 12th seat.

A spurious issue has been raised by those drawing attention to the 77 below-the-line votes obtained by the second placed One Nation candidate in Queensland. Tasmania aside, the totals of below-the-line votes obtained by individual, lower placed members of Senate tickets are largely a democratic irrelevance: yet in the minds of some people, below-the-line votes possess some mystic superiority over the 93.5% of valid Senate votes that were filled

out above the line. The fact that above-the-line voters prioritise the ranking of political parties over the ranking of individual candidates is not an indication of apathy or of lesser democratic engagement.

Some opponents of Senate electoral reform have made an illogical comparison between those below-the-line primary votes obtained by elected major party Senators, and the minuscule above-the-line totals won by successful micro-parties in 2013. Such misleading comparisons should be firmly rejected.

I submit that as the revised Senate voting rules are working well, they should be left unchanged for subsequent general elections.

REGISTRATION AND ELIGIBILITY OF POLITICAL PARTIES

Political parties should not be registered in the absence of genuine support. I submit that the *Commonwealth Electoral Act 1918* be amended to give effect to the following changes:

Firstly, incumbent Senators and MPs should no longer be able to register new political parties without first gaining the support of 500 electors who are not affiliated to any other political party. Elected Senators and Members changing their party allegiance ought not have the privilege of creating their own instant political parties.

Secondly, political parties that are registered only at the federal level should face the same requirements as Independent candidates in nominating candidates for the Senate. This will require them to obtain the signatures of 100 electors in each State where they seek to nominate candidates.

- It is inequitable that a political party solely reliant on 500 members who may generally reside in one State, can automatically nominate candidates across other States where they have minimal support.
- Unless they are also registered at State level, they should like unendorsed candidates complete Form 59-e and gather the necessary signatures of local electors before lodging nominations.

APPENDIX: RECORD OF EXHAUSTED VOTES IN ELECTIONS FOR THE LEGISLATIVE ASSEMBLY OF WESTERN AUSTRALIA

| Election | Votes Distributed as Preferences | Percentage of all valid votes | Exhausted Votes | Percentage of Pref votes |
|----------|----------------------------------|-------------------------------|-----------------|--------------------------|
| 1996 | 157,566 | 16.35 | 1675 | 1.06 |
| 2001 | 285,185 | 27.78 | 8207 | 2.87 |
| 2005 | 211,902 | 19.77 | 1287 | 0.61 |
| 2008 | 230,968 | 21.20 | 666 | 0.29 |
| 2013 | 200,324 | 16.91 | 618 | 0.31 |

Clause 140A of the *Electoral Act 1907* has applied for each election since December 1996.

- At the 2001 election the number of Legislative Assembly candidates increased from 262 in 1996 to 366 and there was greater fragmentation of the vote. A proportion of the exhausted votes, particularly those cast by supporters of Pauline Hanson's One Nation, could have deliberately repeated numbers.
- In 2005 however with an even larger number of candidates (375) the rate of exhaustion fell dramatically.
- With 302 candidates standing in 2008 and 291 in 2013, the recorded rate of exhaustion has fallen to 0.3% of all votes distributed as preferences.