

**Submission to the Senate Finance and Public Administration Legislation Committee
Inquiry into the Commonwealth Electoral Amendment (Above the Line Voting) Bill
2013**

The NSW Council for Civil Liberties (NSWCCL) is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006). NSWCCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people.

We are grateful for the opportunity to make a submission and would appreciate the opportunity to provide further input as required.

Summary

NSWCCL strongly supports the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* (the Bill). The Bill would materially strengthen the ability of voters to cast a vote that reflects their preferences – leading to the election of a Senate that is more likely to truly reflect the preferences of the electorate – and reduce the opportunities for gaming of the Senate electoral system.

NSWCCL response to particular provisions of the Bill

1. Proposal to remove group preference tickets for Senate elections

We strongly endorse the removal of group preference ticket arrangements (except in relation to a ticket that includes only the group's own candidates).

2. Proposal to introduce optional preferential voting for Senate elections

We endorse the proposal to introduce optional preferential voting (OPV) in Senate elections.

NSWCCL comments on other matters relevant to electoral reform

Registration of political parties

The Australian Electoral Commission (AEC) should undertake market research and/or consider market research presented by a petitioner about whether voters are likely to be confused by a proposed party name when considering an application to register a party.

Minimum number of members for a political party to be registered

The minimum number of members needed for a political party to be registered by the AEC is not the subject of this Bill but has been commented on in public debate since the 2013 federal election. Should this matter emerge for potential inclusion in the Bill, there would have to be careful and transparent public discussion before Parliament could consider a change to the threshold.

Detailed discussion

The Bill has been introduced in the context of expressed concerns among some members of the community and the media as to whether the results of the 2013 Senate election truly reflected the intentions of voters.

These concerns have focussed on:

- questions about whether voters may have confused one or more parties with other parties
- the complexity and opaqueness of group ticket arrangements, with many voters unaware of their details, and
- concerns that the Senate election may have been ‘gamed’ with the registration of front parties with the intention of farming preferences for other parties through group voting tickets and not of electing candidates of the front party.

Not all of these concerns are addressed by this Bill.

1. Proposal to remove group preference tickets for Senate elections

We support the removal of group tickets for two reasons.

First, it would mean that the preferences associated with counting a Senate ballot would better reflect the voter’s intention. Currently, the vast majority of voters vote above the line and the preferences associated with such votes follow the lodged group voting tickets. Most voters would be unaware of the details of the group voting tickets given their complexity and the number of parties on the Senate ballot. In addition, feedback from community members after the 2013 Senate election suggests that many voters were unaware of the details of the group voting tickets.

Second, it would reduce the incentives for persons to game Senate elections by registering front parties with the primary intent of farming preferences rather than the election of candidates for those front parties.

2. Proposal to introduce optional preferential voting for Senate elections

The Bill proposes introducing optional preferential voting (OPV) to Senate elections subject to voters needing to mark the same number of preferences on their ballot as there are Senators to be elected in the State or Territory. OPV is not essential to the core aim of the Bill, which is to abolish group preference tickets.

We support the proposal for the following reasons:

- a voter need only indicate preferences for candidates and parties they support
- it would be easy for voters to make a formal Senate vote.

The informal vote in Senate elections would likely increase if group preference tickets were removed and voters were required to fill out all boxes above the line or all boxes below the line.

The rest of this submission touches on two issues that are not included in the Bill but which might arise during the Inquiry.

Registration of political parties

Some members of the community have expressed concern that the name(s) of one or more parties in the 2013 Senate election was confusing or misleading and that voters may have thought they were voting for a different party. A NSW Senator-elect has noted this concern in relation to NSW.¹

The *Commonwealth Electoral Act 1912* (the Act) comprehensively provides for restrictions on the name a party can register. The key test in the Act for this discussion is whether the proposed name is likely to be confused with or mistaken for another party's name or acronym (section 129(1)(d)) or that a reasonable person would think there's a connection/relationship with another party (section 129(1)(da)).

The Act appears to strike a good balance between allowing new parties to register with the name of their choice and ensuring that the name is not likely to be confused with or mistaken for another party's name or acronym. The effectiveness of these provisions then lies in their application by the AEC.

An example of the AEC's application of these provisions can be found on its webpage describing its 2010 agreement to the application of the Liberty and Democracy Party to be renamed the Liberal Democratic Party.² That webpage does not indicate that the AEC used empirical evidence (e.g. market research) to assess whether the name change application should have been supported or rejected under section 129 of the Act. Market research (by the AEC or a petitioner) may assist the AEC in making a decision about whether voters are likely to confuse party names.

Given the potential key political impacts resulting from voters mistaking one party for another on a Senate ballot, the AEC should draw on empirical evidence when assessing whether a party name application should be rejected under section 129 of the Act. In addition, the AEC should be prepared to consider market research presented by a petitioner about whether voters are likely to be confused by a proposed party name when considering an application to register a party.

¹ 2 October 2013, Sydney Morning Herald, "The \$1m mistake: senator's poll windfall", <http://www.smh.com.au/federal-politics/political-news/the-1m-mistake-senators-poll-windfall-20131001-2uqs6.html>

² http://www.aec.gov.au/Parties_and_Representatives/party_registration/Registration_Decisions/2010/3580A.htm

Minimum number of members for a political party to be registered

The minimum number of members needed for a political party to be registered is a key parameter in the federal electoral system.

This matter has been subject to public debate since the 2013 federal election but is not touched on by this Bill. Should this matter emerge during the Inquiry, there would need to be careful and transparent public discussion before Parliament could consider a change to the threshold.

Submission prepared on behalf of NSWCCCL by Dr Sacha Blumen, Vice President and Convenor of the Civil Rights Subcommittee, with input from NSWCCCL Committee members.

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