

Joint Standing Committee on Electoral Matters	
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SUBMISSION TO THE
JOINT STANDING COMMITTEE ON
ELECTORAL MATTERS

INQUIRY INTO THE CONDUCT OF THE 2004 FEDERAL
ELECTION AND MATTERS RELATED THERETO

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RECOMMENDATIONS

Recommendation One:

That Parliament amend the Commonwealth *Electoral Act* to require any proposed change to the current proportional representation electoral system in the Senate to be passed by a double majority referendum (both a majority of people and States).

Recommendation Two:

That Parliament pass the *Royal Commission (House of Representatives Elections) Bill 2003* to allow a thorough examination of the options for moving to proportional representation elections in the House of Representatives. A referendum should then be held on the issue in time for the changes to be implemented at the next Federal election.

Recommendation Three:

That Parliament pass the *Senate Voters' Choice (Preference Allocation) Bill 2004* in time for the changes to come into effect at the time of the next Federal election.

Recommendation Four:

That Parliament amend the *Electoral Act* to ban the handing out of election material to voters within 100 metres of the entrance to a polling place. At the very least, the *Act* should be amended to ensure that it must be prominently noted on all how-to-vote material that the order of preferences on the material are suggested only and that the voter may order the boxes on the ballot paper as they see fit.

Recommendation Five:

That Parliament pass the *Constitution Alteration (Right to Stand for Parliament-Qualifications of Members and Candidates) Bill 1998* so that a referendum may be held to amend section 44 of the Constitution.

Recommendation Six:

That Parliament amend the *Electoral Act* to introduce fixed three year terms for Members of the House of Representatives.

BACKGROUND

As a student studying Political Science and International Relations at The University of Western Australia I would like to bring to the attention of the Committee the thoughts of many young people regarding aspects of the conduct of the 2004 Federal Election. In addition to my studies I have also been a member of many committees representing young people (including the National Youth Roundtable) which has enabled me to obtain a very broad cross-section of young peoples' views on many issues relevant to this Inquiry. I seek to bring some of these views to the attention of the Committee in this submission. I would also very much appreciate the opportunity to appear before the Committee to further elaborate on these views.

PROPORTIONAL REPRESENTATION IN THE SENATE

Proportional representation has been used in Senate elections for well over half a century and has ensured that (for the most part) our Senate has been an effective check on the power of the Government, and in particular, the Executive, of the day. In a recent paper entitled "Reforming the Parliament" John Uhr suggests ten measures for parliamentary reform. He states that...

"Parliament works best when it 'adds value' to government by acting independently of the government of the day, which is accountable to Parliament. Despite their misgivings, governments have to learn to share power with parliaments. Australians increasingly expect that public decision-making will reflect the shared responsibilities of Parliament and the political executive. Proof of this can be seen in the trend around Australia to 'split-ticket voting' where voters balance their preference for a governing party in the lower house with an alternative preference for a non-government majority in the upper house.

Therefore, my first reform priority is to entrench PR in the system, to put it beyond the interfering reach of the major parties. This could be done by changing the electoral act to require a special majority of each house to alter the core of the PR system, or by requiring a referendum to alter this PR core."

The current Clerk of the Senate, Harry Evans, shares similar views on this issue...

"From bitter past experience, we know that governments with the total power conferred by complete control of the legislature tend to become arrogant, overbearing and corrupt, and that an upper house not under government control can provide an antidote to this disorder." (Accountability Versus Government Control: the Effect of Proportional Representation, Harry Evans, 1999, *Papers on Parliament*, no. 34)

In a submission to the Government's inquiry into section 57 of the Constitution, dated 4 November 2003, Evans also states that...

"In recent times it seems to be assumed in Australia by the great and the clever that we may erect a system in which all power is concentrated, not only in one group of persons, but in one office-holder.

The House of Representatives, one half of the legislature, rubber stamps his measures, after ineffectual, and often gagged, debate.

The absurdity is compounded by any electoral system in which the choice of the electors is not reflected in the result. This is the case in Australia. Governments now normally win office with only 40-odd percent of the vote, with most electors voting for someone else, and often with more electors voting for the losing party. Not infrequently the "winners" achieve fewer votes than the "losers", both before and after the distribution of preferences, as in 1998. So governments gain their much-vaunted mandate with most people voting against them.

In Australia, the mandate doctrine is even more absurd than in other "Westminster" countries. Parties win seats more nearly in proportion to their shares of votes in the Senate than in the House. The doctrine therefore involves an assertion that the less accurate, and often completely inaccurate, reflection of the electors' votes (in the House of Representatives) should prevail absolutely over the more accurate reflection of the electors' votes (in the Senate).

It is not understood that the Westminster component in our system, executive government control over the lower house, is far worse than it is in any other country with the so-called Westminster system. Indeed, there is a profound ignorance of how our Westminster component works. It is now, through the efforts of successive prime ministers, a system of personal, autocratic power. The prime minister controls the House of Representatives, unambiguously. Some of this control is quite overt, and is there to see for those who wish to see it (though usually occurring when the House is not being televised). It is not simply a matter of government legislation being passed. Question time is cancelled by prime ministerial fiat without any thought to the decision of the

House itself. Members are gagged, and debates are gagged, so that the House is not even permitted to discuss a matter without prime ministerial approval. Speakers of the House who do not meet prime ministerial expectations are removed. The prime minister approves government chairs of parliamentary committees. Government members swayed by facts to depart from the least line of government policy are carpeted.

Visiting parliamentarians from other "Westminster" jurisdictions, particularly the United Kingdom, when told of this situation, often observe that, while they are said to be under the executive thumb, they would not tolerate this degree of prime ministerial control.

One effect of our version of Westminster is that the government is not held to account in the House; on the contrary, this control of the House is used to suppress accountability measures. It is only in the Senate that such measures have been established, from the Regulations and Ordinances Committee in 1932 to the order for the publication of lists of government contracts in 2001. Only the Senate attempts to pursue inquiries into government malfeasance. In our system accountability now depends in practice on non-government parties. Members of the party in government are now expected to be protectors of their prime minister.

Of course, prime ministers may be replaced by their own party. Byzantine emperors could be deposed by the palace guard; this did not make them any less despotic. Both processes are to replace one autocrat with another. This is what "maintaining the confidence of the House", the shibboleth of the Westminster system, has been reduced to. Also, any augmentation of a prime minister's power increases his hold over his party as well as other components of government.

The effect of this system is to create a prime ministerial expectation of total control, of law-making as of everything else. It has also been observed that Australia must be the only country where the government expects one hundred per cent of its legislation to be passed; ninety-eight per cent is not enough."

I certainly agree with Uhr's and Evans' sentiments hence my first recommendation (which is ever more important given the results of the 2004 election which has shown that it is indeed possible for governments to gain control of both houses of Parliament under the current electoral arrangements)...

RECOMMENDATION ONE:

That Parliament amend the Commonwealth *Electoral Act* to require any proposed change to the current proportional representation electoral system in the Senate to be passed by a double majority referendum (both a majority of people and States).

In your consideration of this recommendation I would like to remind members of the following comments that the current Prime Minister made on 8 October 1987. Mr Howard referred to the Australian Senate as...

"one of the most democratically elected chambers in the world—a body which at present more faithfully represents the popular will of the total Australian people at the last election than does the House of Representatives; that is a fact in terms of the proportional representation system..." (Howard 1987, cited in House *Hansard*, 1 December 2003, p. 23318)

PROPORTIONAL REPRESENTATION IN THE HOUSE OF REPRESENTATIVES

Furthermore, I believe that proportional representation should not only be entrenched as the electoral system for the Senate – it should also be introduced into the House of Representatives to ensure that, in the house where Government is formed, the will of the voters is more accurately reflected in the distribution of seats.

Back in 2003 the then Member for Cunningham, Mr Organ, introduced the *Royal Commission (House of Representatives Elections) Bill 2003* to the House. He stated that the purpose of the Bill is to provide...

"for the appointment of a royal commission of inquiry to determine an appropriate model and method of implementation of a system of proportional representation in elections for the House of Representatives, pursuant to section 29 of the Constitution.

The idea behind this bill is to clean up the voting system applied to the House of Representatives.

This bill is necessary for a number of critical reasons. First and foremost, the current electoral system in Australia is skewed so that the will of the majority of electors does not always equate to the party which assumes government. In fact, we have a voting system where, more often than not, the party holding government does not hold an electoral majority or, worse still, the party gaining an electoral majority—that is, the party with more than 50 per cent of the votes of the Australian people—does not win government.

This state of affairs is not an occasional blip in the statistical line. It has been happening for decades now. For instance, back in 1954 the ALP won 50.4 per cent of the first preference votes, yet it held only 57 of the 121 seats in the House and so remained in opposition. Consider the last five elections and compare the government's primary vote. In 1990, the ALP won 39.4 per cent and held government. In 1993, the ALP won 44.9 per cent. In 1996, the coalition obtained 47.3 per cent and won government. In 1998, the coalition won 39.2 per cent of the vote. In 2001, the coalition won 42.7 per cent. *[In this (2004) election the Howard team got 46.7 per cent of the vote in the House of Representatives and 45 per cent of the vote in the Senate. In other words, the government failed to get a majority vote in either house, although that has translated into majorities under the current preferential system that we have in Australia.]*

That state of affairs clearly perverts our democracy. Going on recent trends, it is likely that the government of the day will not be supported by the majority of the Australian population, yet prime ministers are happy to claim a so-called mandate to do all manner of things on behalf of the Australian people, including invade other countries, destroy Medicare and privatise education et cetera. The claim of a mandate is not based upon the clear expression of the will of the majority of the electorate. This proposed royal commission into proportional representation is needed to give the people of Australia a truly representative voice in this parliament.

Secondly, the winner-takes-all system which the major parties have enjoyed to date is outmoded, redundant and, in fact, disappearing as voters turn to minor parties and independents. It is also undemocratic. For a party or group of parties to win 42.7 per cent of the vote and hold 52 per cent of the seats in this House is undemocratic. For parties such as the Greens, the Democrats and One Nation to poll from five to eight per cent of the vote nationwide and not win a single seat in this House is undemocratic.

Therefore, proportional representation offers our citizens genuine recognition in this House, which, in turn, legitimises the government of the day and its actions." (House *Hansard*, 1 December 2003, p. 23318)

In terms of the 2004 election had proportional representation been used in the House of Representatives the Greens, for example, with a vote of over seven percent would have held

ten seats in the House (Brown, Senate *Hansard*, 17 November 2004, p. 50). However, under the current system the Greens did not win a single seat – meaning that the votes of over seven percent of the population were effectively wasted (despite the preferential system). This is not good democracy. As Senator Nettle said in October of 2003...

"Electoral reform should be pursued to bring greater democracy to our parliament and to give greater power to the voting population of Australia. Our Constitution deliberately leaves open the option of expanding proportional representation in the House of Representatives. It allows it to occur by a simple act of parliament rather than requiring a referendum. Proportional representation exists in Australia in the ACT Legislative Assembly, in Tasmania and in most local councils in my home state of New South Wales. It has been adopted throughout continental Europe, in the European parliament, and in Ireland, Scotland, Wales and New Zealand. Recently the Blair Labour government committed to consideration of proportional representation for the House of Commons in the United Kingdom. Where we have seen proportional representation being introduced as an electoral system here and overseas, we have seen a greater proportion of women being elected to our parliaments.

As the Prime Minister noted in his document that was tabled in the parliament last week, it is proportional representation that allows a diversity of voices to be represented in our parliament. I think it is pertinent that today, whilst we debate the Senate proposal put forward by the Howard government, we have in the President's gallery six representatives from the Greens in New Zealand, where an electoral reform campaign has taken place over and beyond the last decade to bring in a system of mixed-member proportional elections, whereby the members who sit in the house are elected on the basis of proportional representation. The campaign in New Zealand came about not because of the will of either of the two major parties in the parliament of New Zealand but because, once the debate was allowed to occur in the community, people were able to recognise the inherent flaws that existed in the electoral system and the way in which the voices of women, the voices of Maori individuals in New Zealand and the voices of other disadvantaged groups were not represented in the parliament. There was a community groundswell, and the trade unions and people who were involved in a wide variety of groups came together and were part of a push in New Zealand that changed the system and brought the capacity for all the voters of New Zealand to have their views reflected in the composition of their federal parliament.

Now, whilst we have this debate in Australia, we have a tremendous capacity to learn from the experiences of our neighbours on the other side of the Tasman in order to ensure that we bring the voices of all of the community into our parliament—and not just into this chamber, the Senate, but also into the House of Representatives. We can do this by following up the Greens' proposal that was launched some time ago to introduce a system of proportional representation into the House of Representatives. In the Greens' paper a number of options were outlined, one of which was the MMP system used in New Zealand and another being the Hare-Clark system used in Tasmania and the ACT." (Senate *Hansard* 9 October 2003, p16086-16088 and Senate *Hansard*, 13 October 2003, p16117-16121)

As was shown by Jeffrey Karp and Susan Banducci (1999) from the University of Waikato the introduction of proportional representation also has the very positive effect of "fostering more positive attitudes about the efficacy of voting" and that following the first election held under proportional representation in 1996 "New Zealanders were more likely to be interested in politics and more likely to believe that their vote counted".

I would now like to counter some of the claims that advocates of systems other than proportional representation often bring up in discussions about the effectiveness of PR. In particular there is often the claim that non-PR electoral systems are more "efficient", particularly with regards to the economy. The research evidence simply does not back this up. In his study entitled "Australian Democracy: Modifying Majoritarianism" Arend Lijphart (1999) came to three conclusions in relation to this...

"First, PR has a uniformly better macroeconomic performance record than majoritarian systems, especially with regard to the control of inflation, but also, albeit more weakly, with regard to all of the other economic performance variables. Second, however, only a few of the correlations are statistically significant, and they clearly do not permit the definitive conclusion that PR systems are better policy-makers than majoritarian systems. Therefore, third, the most important conclusion is a negative one: majoritarian democracies are clearly *not* superior to PR systems as policy-makers—and the conventional wisdom is clearly wrong in claiming that this is the case."

Lijphart, as part of his article in the 34th issue of *Papers on Parliament* also studied five indicators of democratic quality as part of his study – women's representation (in parliaments and cabinets), income equality, voter turnout, satisfaction with democracy, and proximity between governments and citizens. He found that, using these indicators, it is clear that proportional representation systems work better than non-PR ones. Furthermore, Lijphart found that...

"Citizens in PR systems are significantly more satisfied with democratic performance in their countries than citizens of majoritarian democracies – the difference is approximately 19.4 percentage points."

He concluded that...

"Proportional representation has a much better record than majoritarian democracy on all of the measures of democratic quality, and that, as the previous section showed, majoritarian systems do not have a better record of governing. This means that there is no trade-off and no difficult choice to make in electoral engineering: PR systems clearly outperform non-PR systems."

Given this my second recommendation is...

RECOMMENDATION TWO:

That Parliament pass the *Royal Commission (House of Representatives Elections) Bill 2003* to allow a thorough examination of the options for moving to proportional representation elections in the House of Representatives. A referendum should then be held on the issue in time for the changes to be implemented at the next Federal election.

ABOVE-THE-LINE VOTING IN THE SENATE

The results of the 2004 Senate election have shown that there is an urgent need for an examination of above-the-line voting arrangements in the Senate. For example the Greens...

"required 458,000 votes for each Senate seat. Contrast that with the coalition and the Labor Party, who required about 260,000 votes per Senate seat. Then there is Labor's Family First representative from Victoria, who required considerably fewer than 100,000 votes—in fact, it was a tiny vote. Family First required 1.88 per cent, or 56,000 votes in Victoria; and 210,000 votes nationally to win a seat—in other words, much less than half the number that was required by the Greens. One of the dastardly things that occurred was a central decision by the Labor Party to allow preferencing of Family First as a means of trying to blackmail the Greens into preference arrangements in the House of Representatives. It has backfired and we will continue to remind the Labor Party about that. However, what has come out of that is a look at the democracy that we have and how we might have parliaments best reflecting the will of the people." (Brown, Senate *Hansard*, 17 Nov 2004, p50-51)

A letter from Anthony van der Craats, from Carlton South, published in *The Age* on 12 October 2004 (p.14) summed up the situation in Victoria very effectively...

"The odds of Steve Fielding, on a primary vote of 1.9 per cent, being elected ahead of Jacinta Collins, the third ALP candidate, or David Risstrom, the Greens candidate, as a Victorian senator is akin to pulling three jokers in a row on a poker machine. That he very well may be elected highlights a serious problem that exists in the Senate's above-the-line voting system.

Under the current system, most voters are left unaware of the various preference deals that have been registered. Had voters been entitled to indicate preferences above the line, as opposed to just putting a single 1 in the nominated box, voters would have been afforded the opportunity to determine the order of preference allocation to each group with the ease of above-the-line voting.

Clearly the above-the-line system needs to be changed to ensure informed consent."

In her examination of above-the-line voting as part of ANU's Democratic Audit of Australia, Marian Sawer commented that...

"The group tickets registered by parties are supposed to be available in some form for inspection at polling booths. Originally they were displayed as posters, but were easily overlooked in the bustle of polling day. They were too big to be sent out to postal voters. Now they are available as booklets. But very few voters are aware of how the party they are voting for has directed its preferences, and might be very surprised to find out. One case that aroused controversy was the failure of Peter Garrett to win a Senate seat in NSW in 1984 for the Nuclear Disarmament Party (NDP), despite winning some ten per cent of the primary vote or over 77 per cent of a quota. The seat went instead to the Australian Democrats. This was a result of the way the major parties allocated their preferences. The ALP went as far as to allocate their preferences in NSW to the Coalition ahead of the NDP. In terms of 'issue-space', it might be expected that many ALP voters would prefer the NDP to the Coalition, but this was not reflected in the registered group ticket decided by party managers.

Another problem with above-the-line voting for the Senate, apart from the problematic destination of preferences, is that there is no provision for ungrouped candidates to have an above-the-line box. Independents are severely disadvantaged by only appearing in the little-used below-the-line option. In addition, they do not participate in the draw for ballot position and are automatically placed at the right-hand corner of the ballot paper. Not only are they disadvantaged in terms of attracting primary votes but they also lack the bargaining power of guaranteed preference flows. Grouped candidates above the line can use such bargaining power to arrange preference swaps or for other purposes.

Indeed as in South Australia, above-the-line voting in NSW began to encourage a proliferation of micro-parties. This led to the infamous 'table-cloth' election of 1999 and subsequently to the

reforms discussed later in this paper. The NSW Legislative Council elects 21 members every four years, with a quota of 4.5 per cent of the vote. In 1999 the ballot paper had to accommodate 264 candidates and 81 parties. Many of these were newly created parties with attractive names such as the Three Day Weekend Party, the Marijuana Freedom Party and the Four Wheel Drive Party.

The sole purpose of such micro parties was 'preference harvesting', attracting above-the-line votes which could then be channeled via registered group tickets to particular individuals, in this case Glen Druery of People First and Malcolm Jones of the Outdoor Recreation Party. In the end Malcolm Jones received preferences from 19 party tickets and won a seat, despite having attracted only 0.2 per cent of the primary vote. Voters for these micro parties were often deceived as to the nature of the party, as can be seen from the difference between the preferences indicated by below-the-line voters and those of the ticket registered by the party for above-the-line voters. Antony Green has analysed this difference and shown a particular discrepancy in the case of the 'green' sounding micro parties associated with Druery and Jones. For example, those voting below-the-line for parties such as the Marijuana Smokers Rights Party, the Gay and Lesbian Party, the Marine Environment Conservation Party, the Wilderness Party or the Women's Party/Save the Forests gave their preferences to the Greens and Australian Democrats. Those who voted for these parties above the line had their preferences directed to Glen Druery and Malcolm Jones. Needless to say, voters cannot be said to have been exercising an effective choice when being misled in this way. The controversy over the table-cloth election led to a series of reforms in NSW to set more rigorous requirements for the registration of political parties but also to change the nature of above-the-line votes. No longer would preferences flow in accordance with a registered group ticket. Voters still had the option of just placing a '1' in a party box, but this vote would only flow to the candidates for this party. It would then exhaust rather than flowing on to other parties in accordance with a registered group ticket. Voters were also given another option, which was to rank order the party boxes appearing above the line, in which case their preferences would flow accordingly, rather than in accordance with deals done by parties.

The latter option, of rank ordering the party boxes above the line is superior to the option of marking only one box, which may lead to the vote becoming exhausted and failing to contribute to the election of any candidate. There is a good argument for reforms to Senate voting similar to those in NSW, so that voters can indicate their own preferences between parties above the line. Because of the higher quota there is not quite the same scope as in NSW or South Australia for preference harvesting to result in unknown candidates being elected. It could happen, however, in a double-dissolution election. And there is certainly a problem in terms of the ultimate destination of their votes being most often unknown and sometimes distasteful to voters. To give the voter the opportunity to express their own preferences between parties above the line, rather than leaving these decisions to party managers, would seem much more in the spirit of the way proportional representation has evolved in Australia. The present Senate system of discouraging below-the-line voting by insisting on the ranking of all candidates may suit party managers but offends against democratic values. Reform directed to encouraging voters to express preferences between parties above the line, or to express preferences between a limited number of candidates below the line, would better satisfy the values of the democratic audit concerning transparency and popular control of election outcomes."

Furthermore, Antony Green, the ABC's election analyst, had this to say about above-the-line voting in *The Sydney Morning Herald* on 29 October 2004 (p. 17)...

"Preference voting deals are starting to distort rather than reflect the will of the electorate, writes Antony Green.

The results of the election have revealed that the Senate's voting system, rather than allowing for the expression of the will of the electorate, has fallen under the control of party "bosses" engaging in complex preference deals designed to engineer electoral outcomes.

The problem is "above the line" or group ticket voting, introduced in 1984 to overcome the huge informal vote that had dogged Senate elections. It also offered political parties a wonderful opportunity to control party preferences, as was shown when Labor and the Coalition saw

common purpose in ensuring Peter Garrett did not win election for the Nuclear Disarmament Party.

NSW has acted to end this rort. While "above the line" voting has been retained, there are no longer registered tickets of preferences between parties. The only preferences are those filled in by voters, either for candidates below the line, or for parties above the line.

Some reform of this sort is required for the Senate. There were a record number of candidates and parties at this year's election, and parties engaged in some of the most Byzantine and ideologically questionable deals ever seen.

Family First has been the biggest beneficiary. Despite not polling enough votes to have their deposits returned or receive public funding, the party wins a seat in Victoria, and almost in Tasmania, despite recording only a fifth of the support of the Greens.

The deals that produced the Senate outcome have shown that the group ticket voting system used is starting to distort rather than reflect the will of the electorate. Instead of parties lodging tickets that reflect a logical listing of candidates in the order a party would like to see them elected, strange preferences are registered based on "show and tell" deals, strategic decisions made to engineer outcomes.

Voters, of course, have no idea of these deals. Trying to find out how a party will distribute its preferences is next to impossible. It requires time on the internet or a dogged interrogation of polling booth staff to get access to the register of preferences.

Yet voters have little alternative. In NSW, those voting below the line had to number 78 preferences. Who could say they knew anything about more than half of the parties or candidates on the ballot?

If elections are about voters expressing their will, then elections where you have to choose between a preference ticket deal you don't know, or give preferences to candidates you have never heard of, is clearly not fair. Reform is evidently needed."

On the 9th December last year Senator Bob Brown introduced the *Senate Voters' Choice (Preference Allocation) Bill 2004* into Parliament in order to address these issues. He outlined the purpose of the Bill in the second reading speech as follows...

"While above-the-line voting gave voters an easier alternative, it also had a cost. It took the decision on preferences from the voter and gave it to the party which the voter selected.

Parties lodge their preference selection with the Australian Electoral Office two weeks before election date. This selection numbers all candidates according to the party's dictate. On polling day, above the line voters preferences are allocated according to that dictate.

Voters might expect that the party's choice would be for the most like minded other party put to be put second and the most unlike party to be put last.

The parties engage in negotiations, off the public record, to gain mutual preferences advantage. Policy matters can be swept aside to gain advantage through preference arrangements with otherwise hostile parties.

The perverse situation can arise where the party allocation of preferences is against the expectation of many or even most of its voters.

To overcome this problem, this bill creates preferential voting above-the-line. Voters may number the parties above-the-line according to their preference.

Of course, voters retain the more exacting option of choosing candidates by below-the-line voting.

In NSW similar legislation to this was introduced after the infamous 1999 'table cloth' ballot paper for the Legislative Council election (In that election a party on less than half of 1 percent was able to manipulate the process to win a seat in the upper house. This was done with secret deals between a number of small parties with misleading names).

The new NSW above the line preferential voting system has worked well. It was used for the state election in 2003. It did not eliminate, as some had feared, the chance of small parties to being elected. The Greens, Shooters Party and Fred Nile all won upper house seats.

However this bill is not identical to the NSW scheme. In NSW there is optional preferential voting for both the lower and upper house. Voters are not obliged to fill all the squares above the line and can limit their preferences to say 2 or 3 parties. Under this legislation, the Senate voting scheme will remain compulsory preferential. Voters will need to number all above the line boxes. This is consistent with the House of Representatives compulsory preferential system.

This amendment to the Electoral Act enhances democracy. It provides a simple and attractive option for voters to keep control of the destiny of their vote and so the make-up of the Senate." (Senate Hansard, 9 December 2004, p.4-5)

Given this, my third recommendation is...

RECOMMENDATION THREE:

That Parliament pass the *Senate Voters' Choice (Preference Allocation) Bill 2004* in time for the changes to come into effect at the time of the next Federal election.

HOW-TO-VOTE CARDS

The proliferation of how-to-vote cards is also creating many problems at Federal elections. As J. Brownell, from Fullarton, stated in a letter to the Editor of *The Advertiser* on 28 September 2004 (p. 14)...

"It is the provision of "How to vote" cards by the various political parties that is at fault for encouraging voters to give away their freedom of choice of the candidates on offer. Media publicity about party political "preference deals" is also at fault for encouraging voters to think that they are obliged to give away their freedom of choice of candidates. What better way could there be of sending a precise message to politicians than by ranking a large number of candidates in order of the desirability of their policies and values?"

There is also the problem of misleading how-to-vote material being used to deceive voters as is shown in an article from *The Age*, by Misha Schubert, on 3 November 2004...

"Young Liberals posed as "bogus Green campaign workers" on election day to trick Green supporters into voting Liberal, federal Labor MP Michael Danby has claimed. In a formal complaint to the Australian Electoral Commission, Mr Danby said the Green how-to-vote cards for his seat of Melbourne Ports - handed out by young women in green T-shirts and caps - misled voters.

The complaint claims the Liberal strategy breached the Electoral Act, which outlaws material "that is likely to mislead or deceive an elector" in relation to casting a vote". "On handing this card to voters, the young women said things like 'Vote for a Green Australia' ...or 'Voting Green?' before handing them the card," he wrote. "Polling place workers saw repeated instances of voters, particularly young voters, taking the green card in the belief that it was the Australian Greens card - a mistake they realised only when Greens workers pointed it out to them."

On the green how-to-vote card, the Liberals claim a series of environmental achievements, including "cutting greenhouse gas emissions". But official statistics from the Government's National Greenhouse Inventory reveal a 1.5 per cent increase in emissions in 2001."

In an article (regarding the WA State Election – but which is just as relevant to the conduct of the Federal Election), by Peta Rule, published in the *The West Australian* on 8 February 2005, the Democrats outlined further problems and suggested the following solutions...

"East Metropolitan Region candidate Robyn Danski said the plethora of how-to-vote cards handed out on polling days was intrusive and intimidating for voters, a waste of paper and an unnecessary financial burden for Independent candidates.

WA legislation bans canvassing and soliciting votes within 6m of a ballot box. Ms Danski said the Democrats planned to increase the radius to 100m, a move she claimed would effectively put a stop to the cards.

"People just do not want to be hassled on their way into the ballot box," she said.

Tasmania and the ACT already have similar bans on how-to-vote cards. Tasmanian candidates' names are also rotated.

"I have always been pro-electoral reform and I think a lot more can be improved, this is just a start," she said. "I've stood at polling booths with how-to-vote cards at the last few elections and people hate it."

"And rotating the names of candidates will stop some deals being done. I like a healthy electoral system and I like people to think about how they vote."

The Democrats have developed two alternative ways to distribute how-to-vote information. Ms Danski said voting information would either be provided in the polling booth or the WA Electoral Commission would produce a book with voting information to be sent to all WA households.”

Therefore, my fourth recommendation is...

RECOMMENDATION FOUR:

That Parliament amend the *Electoral Act* to ban the handing out of election material to voters within 100 metres of the entrance to a polling place. At the very least, the *Act* should be amended to ensure that it must be prominently noted on all how-to-vote material that the order of preferences on the material are suggested only and that the voter may order the boxes on the ballot paper as they see fit.

QUALIFICATIONS OF CANDIDATES

It is clear that changes must be made to the current arrangements relating to the circumstances in which citizens are disqualified from running for office in the Commonwealth Parliament. Section 44 of the Constitution prevents anyone being elected to Parliament whilst being "a subject or a citizen of a foreign power", "holding an office of profit under the Crown" or "having an indirect pecuniary interest in any agreement with the Commonwealth". As Graeme Orr, from the Faculty of Law at Griffith University, wrote as part of the ANU's Democratic Audit of Australia, that because...

"of Australia's ongoing status as an immigrant nation in a globalising world, it is hard to see why holders of dual citizenship should be ineligible to serve the Australian Parliament, especially when citizenship by birth is not a question of choice.

The 'office of profit' disqualification is of equal concern in the numbers of citizens that it affects, and of even greater concern in the uncertainty it creates. As interpreted by the courts, it prevents anyone permanently employed by a government, State or Federal, from standing for Federal Parliament, even if granted leave without pay. Why should a whole class of employees be forced to risk joblessness to exercise its democratic rights? This affects not just public servants as demonstrated by the case of Phil Cleary, who was elected to the House of Representatives but then unseated by the High Court, even State schoolteachers on unpaid leave are disqualified. Few agree with the harsh effects of section 44. Yet altering it, especially to overcome the disadvantage to dual citizens, requires a constitutional referendum (of which only 8 out of 42 have ever passed)."

Given this, my fifth recommendation is...

RECOMMENDATION FIVE:

That Parliament pass the *Constitution Alteration (Right to Stand for Parliament-Qualifications of Members and Candidates) Bill 1998* so that a referendum may be held to amend section 44 of the Constitution.

FIXED TERMS

I would like to very briefly touch on another matter that has been an important part of the contemporary debate surrounding our electoral system. In recent years, many people have advocated the benefits of introducing fixed parliamentary terms for the Commonwealth Parliament. I certainly agree with these views as fixed terms would prevent the Executive, and the Prime Minister in particular, from manipulating the electoral cycle to their perceived advantage. I have not spoken with one person who is in favour of this manipulation – people want to see certainly brought to our electoral cycle.

I am in favour of fixed three year terms for the House which could be achieved by amendments to the *Electoral Act*, rather than a costly and I believe, unnecessary, referendum to increase the parliamentary term to four years (and, therefore, alter the term of Senators as well).

Therefore, my final, sixth recommendation is...

RECOMMENDATION SIX:

That Parliament amend the *Electoral Act* to introduce fixed three year terms for Members of the House of Representatives.