
The Parliament of the Commonwealth of Australia

Advisory Report on the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008

Joint Standing Committee on Electoral Matters

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Chair's foreword

The *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008* seeks to make a number of changes to the method of voting at Senate elections. Group voting tickets would be abolished and electors would be required to number at least four preferences when voting above the line in a half Senate election and at least seven preferences in a full Senate election. Ballot papers would exhaust once the last preference expressed by the elector was reached, unlike the current system which requires electors to indicate a single preference above the line with preferences directed to all other candidates in the order indicated on the group voting ticket.

The changes proposed by Senator Bob Brown would potentially affect the nature of Senate representation by reducing the pool of available votes through exhaustion. Other significant repercussions flowing from the amendment include restricting the ability of political parties and candidates to choose the order in which preferences would flow, and impinge on the ability of voters to both express a valid vote and 'control' the flow of their preferences.

The current system, introduced after the 1983 election when almost 10 per cent of ballot papers nationwide were ruled informal, has many advantages – allowing voters to express a single preference ('1') with preferences distributed in a sequence established in advance by candidates and political parties and made available in the public domain, whilst still giving those electors who choose to do so the opportunity to mark all candidates in order of preference if they vote below the line.

The relative simplicity of current arrangements needs to be carefully balanced against any change that makes it more difficult for voters to cast a valid vote. With informality at Senate elections declining to an all time low of 2.5 per cent at the 2007 election, the proposed changes risk disenfranchising hundreds of thousands

of electors, including the elderly, first-time voters, those with lower levels of education, Indigenous Australians and Australians from non-English speaking backgrounds. For every one percentage point increase in the Senate informality rate, around 130,000 electors are disenfranchised because they have not recorded a valid vote.

The committee has not made any recommendations on the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008*. There are a number of alternate options that require further and continuing discussion.

I would like to thank the Members and Senators of the committee for their contribution to the report and those that participated in the inquiry by making submissions or appearing at the public hearings. I would also like to thank the committee secretariat for their work in preparing this report.

Daryl Melham MP
Chair



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Membership of the Committee

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Terms of reference

On 14 May 2008 the Senate agreed to the following resolution:

That the Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008 be referred to the Joint Standing Committee on Electoral Matters as a particular part of its inquiry into all aspects of the 2007 Federal Election for inquiry and report not before June 2009.

Introduction

- 1.1 On 14 May 2008 the Senate referred the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008* to the committee as a particular part of its inquiry into all aspects of the 2007 federal election.¹
- 1.2 In summary, the bill seeks to amend the *Commonwealth Electoral Act 1918* to:
- remove the opportunity for parties or groups to lodge group voting tickets (GVTs); and
 - change the provisions relating to voting above the line in Senate elections so that an elector, who desires to vote above the line, is required to vote partial preferential by indicating at least four preferences above the line in a half Senate election or at least seven preferences above the line in a full Senate election.
- 1.3 The stated purpose of the bill is to ‘improve the democratic outcome of all Senate elections’.² By removing the opportunity to vote ‘1’ above the line and leave the preference distribution to the group voting ticket, Senator Bob Brown considers that the voter is advantaged because they are able to directly choose who is elected if his or her vote is not used, in full, to elect the party or group of first choice. An additional benefit of the changed arrangements cited by Senator Bob Brown is that there would also no longer be competition, inducement or cross-dealing by parties or groups over preferences, nor public uproar about preference deals.³

1 Senate, *Journals of the Senate*, No 12, 14 May 2008, p 390.

2 Senator Bob Brown, Senate Hansard, 14 May 2008, p 1778.

3 Senator Bob Brown, Senate Hansard, 14 May 2008, p 1778.

- 1.4 While the committee gathered evidence in relation to the bill as part of its broader inquiry into the 2007 election, this report specifically addresses the proposals outlined in the bill. Separate reports on electronic voting and the conduct of the 2007 federal election have also been produced by the committee.⁴
- 1.5 The inquiry was advertised in *The Australian* on 11 June 2008 and on the committee's website. The committee did not receive specific submissions in relation to the bill. However, evidence relating to the bill was included in submissions and at public hearings as part of the broader inquiry into the 2007 election.
- 1.6 The submissions and transcripts of evidence from the submissions and public hearings referred to in this report and are listed in appendix A and appendix B respectively. Copies of all submissions and public hearing transcripts for the 2007 election inquiry are available from the committee's website www.aph.gov.au/em.

⁴ Joint Standing Committee on Electoral Matters, *Report on the 2007 federal election electronic voting trials: Interim report of the inquiry into the conduct of the 2007 election and matters related thereto* (2009), Commonwealth of Australia; *The 2007 federal election: Report of the inquiry into the conduct of the 2007 election and matters related thereto* (2009), Commonwealth of Australia.

Key issues

Background

- 2.1 On 14 May 2008 the Senate referred the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008* to the committee as a particular part of its inquiry into all aspects of the 2007 federal election.¹
- 2.2 In summary, the bill seeks to amend *Commonwealth Electoral Act 1918* to:
- remove the opportunity for parties or groups to lodge group voting tickets (GVTs); and
 - change the provisions relating to voting above the line in Senate elections so that an elector, who desires to vote above the line, is required to vote partial preferential by indicating at least four preferences above the line in a half Senate election or at least seven preferences above the line in a full Senate election.
- 2.3 The stated purpose of the bill is to ‘improve the democratic outcome of all Senate elections’.² By removing the opportunity to vote ‘1’ above the line and leave the preference distribution to the group voting ticket, Senator Bob Brown considers that the voter is advantaged because they are able to directly choose who is elected if his or her vote is not used, in full, to elect the party or group of first choice. An additional benefit of the changed arrangements cited by Senator Bob Brown is that there would also no

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Existing arrangements

- 2.5 The existing Senate voting arrangements provide electors with the option of marking a single number '1' above the line or completing all boxes in numerical order below the line. For electors choosing to vote above the line, preferences are distributed according to GVTs lodged by parties and groups with the AEC prior to the election.
- 2.6 Within 48 hours after the close of nominations, a Senate group may lodge with the Australian Electoral Officer (AEO) for the state or territory a written statement setting out a preference order of all candidates in the election. The preference ordering must be constructed in the same way as a fully formal below the line vote – all candidates must be numbered. In addition, the candidates in the group lodging the statement must be ordered ahead of any other candidate.⁴
- 2.7 Group voting tickets are published on the AEC website prior to election day and booklets are available at all polling places showing how each party or group has decided to have its preferences distributed.⁵ Each party or group can lodge up to three group voting tickets.⁶
- 2.8 Similar provisions apply to incumbent Senators, who may also lodge a written statement setting out up to three preference orders of all candidates in the election. The statement must be signed by the candidate and lodged with the appropriate AEO, and must show a first preference for the incumbent Senator.⁷

3 Senator Bob Brown, Senate Hansard, 14 May 2008, p 1778.

4 *Commonwealth Electoral Act 1918*, s 211.

5 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 55.

6 *Commonwealth Electoral Act 1918*, s 211.

7 *Commonwealth Electoral Act 1918*, s 211A.

- 2.9 The Commonwealth Electoral Act includes specific provisions relating to the formality of ballot papers for Senate elections (box 2.1).⁸ If a voter chooses to vote both above the line and below the line and completes both sections formally, the below the line section takes precedence.⁹

Box 2.1 Formality rules for Senate elections

A Senate **ballot paper** is informal if:

- it is unmarked;
- it has not received the official mark of the presiding officer and is not considered authentic;
- it has writing on it which identifies the voter; and
- the voter's intention is not clear.

A vote **above the line** will be informal if:

- it has no first preference mark; and
- if there is more than one first preference mark.

A vote **below the line** is informal if:

- it has no first preference mark;
- a tick or cross has been used as a first preference mark;
- there is more than one first preference mark;
- there are 10 or more candidates and there are not numbers in at least 90 per cent of the squares next to the candidates names, which form a sequence of consecutive numbers beginning with the number 1, without repetition or omission, or numbers which would be such a sequence with changes to not more than three of them; and
- there are less than 10 candidates and there are not numbers in all of the squares next to the candidates names, or in all but one of those squares (which is left blank), which form a sequence of consecutive numbers beginning with the number 1, without repetition or omission, or numbers which would be such a sequence with changes to not more than two of them.

Source AEC, 'Voting - The Senate', viewed on 11 February 2009 at http://www.aec.gov.au/Voting/How_to_vote/Voting_Senate.htm; *Commonwealth Electoral Act 1918*, ss 268, 269, 270 and 272.

8 *Commonwealth Electoral Act 1918*, ss 268, 269, 270 and 272.

9 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 55.

2.10 Voters overwhelmingly choose to vote above the line. At the 2007 federal election, 96.8 per cent of electors voted above the line, with some variation across jurisdictions (table 2.1).

Table 2.1 Senate group voting ticket use, by jurisdiction, 2007 election

Jurisdiction	Ticket		Non-ticket		Total first preferences
	Votes	%	Votes	%	Votes
New South Wales	4,116,995	98.18	76,239	1.82	4,193,234
Victoria	3,117,212	97.95	65,157	2.05	3,182,369
Queensland	2,352,518	97.26	66,389	2.74	2,418,907
Western Australia	1,170,380	97.31	32,370	2.69	1,202,750
South Australia	937,905	93.16	68,904	6.84	1,006,809
Tasmania	275,112	84.17	51,734	15.83	326,846
Australian Capital Territory	186,570	82.8	38,751	17.2	225,321
Northern Territory	92,652	92.13	7,917	7.87	100,569
National total	12,249,344	96.78	407,461	3.22	12,656,805

Source Australian Electoral Commission, submission 169.1, p 23.

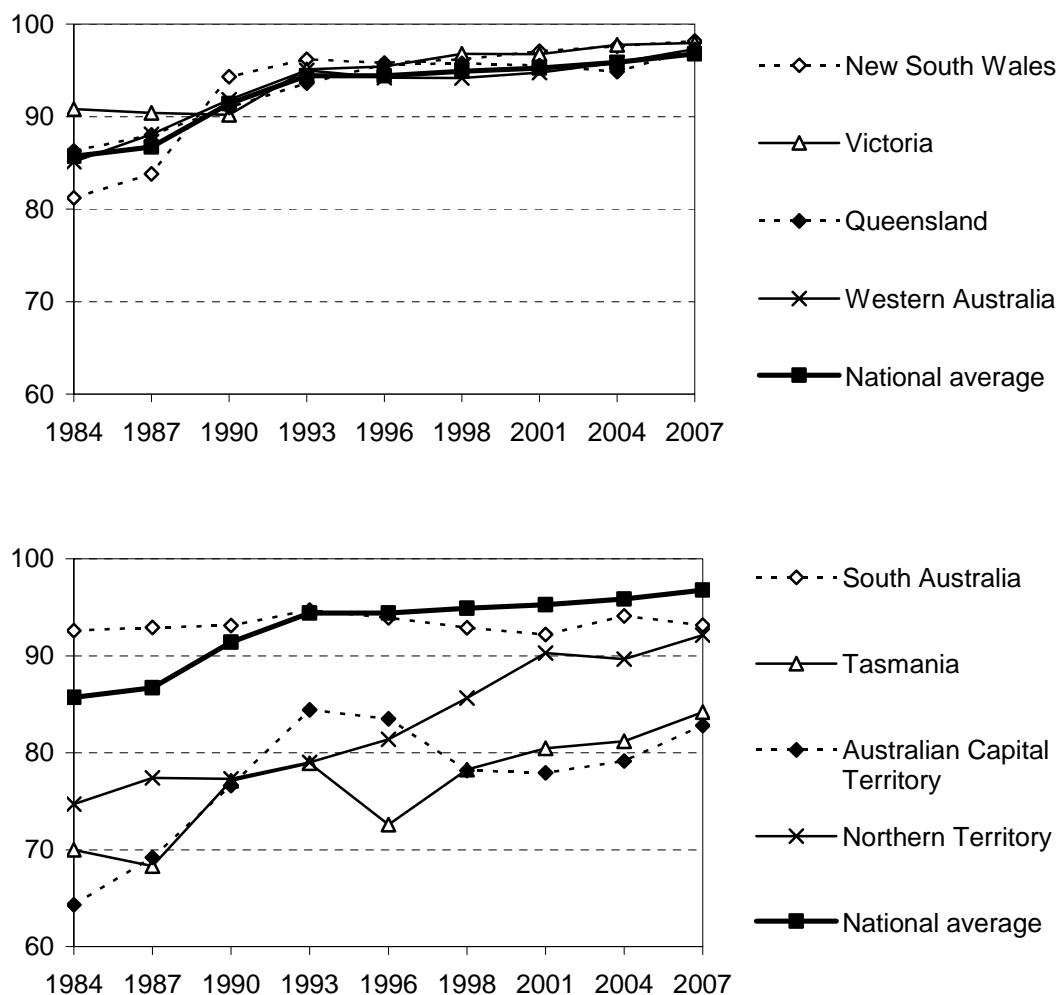
2.11 There has been a continuing trend in most jurisdictions for electors to vote above the line. Since its introduction in 1983, the proportion of electors choosing to vote above the line has increased steadily (figure 2.1).

2.12 Explanations for the difference between jurisdictions in the proportion of electors who vote below the line in the Senate include:

- The larger the number of candidates the more complex is the voting task for below the line voters and so the more likely electors are to vote above the line; and
- Differences between voting systems. Tasmania and the Australian Capital Territory use the Hare-Clark electoral system, a system that requires voters to vote for individual candidates rather than party lists. Voters in New South Wales, South Australia and Western Australia would be more familiar with group voting tickets through their usage in those State's upper houses.¹⁰

10 Newman G, 'Senate Group Voting Tickets', *Parliamentary Library Research Note 6 1999-2000*, viewed on 11 February 2009 at <http://www.aph.gov.au/library/Pubs/RN/1999-2000/2000rn06.htm>.

Figure 2.1 Senate group ticket voting use, by jurisdiction, 1984 to 2007 elections (per cent)



Source Australian Electoral Commission, *Electoral pocketbook: election 2007 (2009)*, p 66; 'Virtual Tally Room (2004), Senate, Senate group voting ticket usage', viewed on 26 May 2009 at <http://results.aec.gov.au/12246/results/SenateUseOfGvtByState-12246.htm>; Election 2001 results CD, 'Use of group voting ticket by party by state, 1998 Senate results: Senate use of group voting tickets (1998)', viewed on 26 May 2009 at http://www.aec.gov.au/Elections/federal_elections/1998/senate/sen_gv.htm; Newman G, 'Senate group voting tickets', *Parliamentary Library research note 6 1999-2000*, p 1.

2.13 At the 2007 federal election there were a total of 367 candidates and 136 groups nominated (table 2.2). The large number of groups nominated in the more populous states has a direct impact on the size and complexity of the ballot paper. For example, the New South Wales Senate ballot paper was required to have 25 groups above the line and all 79 candidates (including four ungrouped candidates) listed below the line.

Table 2.2 Senate nominations, by jurisdiction, 2007 election

Jurisdiction	Vacancies	Candidates	Groups	Ungrouped candidates
New South Wales	6	79	25	4
Victoria	6	68	23	4
Queensland	6	65	24	6
Western Australia	6	54	21	2
South Australia	6	46	19	2
Tasmania	6	28	11	0
Australian Capital Territory	2	16	8	0
Northern Territory	2	11	5	1
Total	40	367	136	19

Source Australian Electoral Commission, *Electoral pocketbook: election 2007 (2009)*, p 52.

2.14 There has been a general increase at Senate elections in the number of candidates and groups contesting elections, with the number of ungrouped candidates rising and falling from election to election (table 2.3).

Table 2.3 Senate vacancies, quota and nominations, 1970 to 2007 elections

Election	Vacancies	State quota (%)	Candidates	Candidates per vacancy	Groups	Ungrouped
1970	32	16.7 (a)	101	3.2	33	14
1974	60	16.7	245	4.1	55	49
1975	64	16.7	271	4.2	58	53
1977	34	16.7	151	4.4	49	16
1980	34	16.7	182	5.4	61	25
1983	64	9.1	248	3.9	67	28
1984	46	12.5	202	4.4	55	14
1987	76	8.3	255	3.4	65	31
1990	40	14.3	223	5.6	64	37
1993	40	14.3	266	6.7	82	35
1996	40	14.3	255	6.4	85	29
1998	40	14.3	329	8.2	117	29
2001	40	14.3	285	7.1	101	26
2004	40	14.3	330	8.3	120	26
2007	40	14.3	367	9.2	136	19

Note (a) The state quota for NSW and Queensland at the 1970 election was 14.3 per cent.

Source Australian Electoral Commission, *submission 169.1*, p 20.

2.15 While counting of Senate ballot papers commences on election night, counting can continue for several weeks after the election. On election

night and in the days following the election, ballot papers are assessed for formality. Those with a vote cast above the line are sorted and first preference results telephoned through to divisional returning officers. Subsequently the numbers of above the line ballot papers are fed into the Central Senate Scrutiny System.¹¹

- 2.16 All below the line ballot papers are sent to central scrutiny centres, where they are data entered into the computerised Senate counting system. All below the line ballot papers are entered into the system twice, with the second data entry providing a check on the accuracy of data entered the first time.¹² At the 2007 election, only 407,461 formal below the line votes were sent to the AEC central scrutiny centres for data input into the computerised Senate scrutiny system.¹³

Proposed arrangements

- 2.17 The *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008* proposes to amend the Commonwealth Electoral Act to repeal provisions relating to group voting requirements and introduce partial preferential above-the-line voting. The current option of voting below-the-line would be retained.
- 2.18 The bill proposes specific amendments that relate to:
- Repeal of group and individual voting tickets – requirements to lodge group voting tickets for candidates and for a sitting Senator to lodge an individual voting ticket are removed (clauses 6 and 7);
 - Arrangements for candidates to be eligible to be listed above the line (clause 1 defines ‘group voting square’) – candidates are entitled to be listed above the line if two or more candidates have applied to do so (clause 2);
 - Formality – an elector who desires to vote above the line, is required to vote partial preferential by indicating at least four preferences above the line in a half Senate election or at least seven preferences above the line in a full Senate election. Formality is tied to the minimum number of preferences being indicated, with those preferences commencing at ‘1’ and being consecutively numbered (clauses 14 to 19);

11 *Commonwealth Electoral Act 1918*, s 273.

12 *Commonwealth Electoral Act 1918*, s 273.

13 Australian Electoral Commission, submission 169.1, p 23.

- Allocation of preferences within a group – the allocation of preferences within a group is deemed to be according to the order listed on the ballot paper for that group (clause 20); and
- Computerised scrutiny – all formal ballot papers are required to be sent to the Australian Electoral Officer (in each state or territory) for inclusion in the computerised Senate scrutiny (clauses 21 to 22).¹⁴

2.19 The Explanatory Memorandum to the bill notes that there would be a financial impact arising from the extra financial resourcing for the AEC for the additional personnel and resources required to count the ballot papers.¹⁵

Impact of proposed changes

2.20 While the bill seeks to change the way preferences are determined for votes cast above the line, the proposed voting system also may have implications for the nature of representation in the Senate. This is due to the votes being 'exhausted' and removed from the count when the number of preferences expressed by the voter has been reached but there are still vacant Senate positions to be filled.

Greater choice?

2.21 Introducing the bill, Senator Bob Brown noted the impact of above the line voting in removing a voter from making decisions about the allocation of preferences:

This bill removes [the group voting ticket] requirement from the party or group and returns to the voter the sole obligation to allocate preferences. The voter is advantaged because she or he decides the flow of preferences and directly chooses who is next elected if her or his vote is not used, in full, to elect the party or group of first choice.

There would no longer be competition, inducement or cross-dealing by parties or groups over preferences, nor public uproar about preference 'deals'.

14 *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008*, Explanatory Memorandum, pp 1 to 4.

15 *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008*, Explanatory Memorandum, p 1.

These amendments to the Commonwealth Electoral Act enhance democracy. They provide voters full control of the destiny of their vote and consequently, the make-up of the Senate.¹⁶

- 2.22 These sentiments were supported by several inquiry participants.¹⁷ Mr Rupert Kilcullen noted the ability of parties to direct preferences, rather than electors, was supported by current arrangements:

At present “above the line” voting allows the political parties to fill in all the preferences for voters who vote “above the line”. This leads to “preference deals” that distort the expression of voter opinion. Although it is in theory possible for voters to find out what the party’s preference order is, and it is usually reported in the media, in fact most voters do not know how their party will transfer their vote.

Voters for major parties often do not realize that their party’s “surplus” votes may go to a minor party (e.g. Liberal votes to Family First). Preference deals have led (for example in the 1999 election of the NSW Legislative Council) to the election of candidates with very little genuine public support.¹⁸

- 2.23 Mr Antony Green considers that ticket voting has introduced two tactics that are distorting the proportionality of the Senate’s electoral system. The first (preference ‘harvesting’) is a tactic which might be employed by minor and ‘micro’ parties to keep preferences away from major parties. The second (preference ‘corralling’) involves deals done between minor and major parties to engineer results.¹⁹
- 2.24 Although Mr Eric Lockett supported the intent of the bill, he noted that voters when voting above the line would only retain the right to allocate preferences between parties, not preferences between candidates within parties.²⁰
- 2.25 Some of the election results that have highlighted the impact of group ticket voting and associated preference dealing include the election of a Family First candidate in Victoria at the 2004 election, a preference swap between the major parties at the 1984 election to prevent the election of a

16 Senator Bob Brown, Senate Hansard, 14 May 2008, p 1778.

17 Festival of Light, submission 67, p 8; Kilcullen R, submission 85, p 2; Lockett E, submission 175, p 4.

18 Kilcullen R, submission 85, p 2.

19 Green A, ‘Above or below the line? Managing preference votes’, viewed on 26 November 2008 at <http://www.onlineopinion.com.au/view.asp?article=3359&page=2>.

20 Lockett E, submission 175, p 4.

Nuclear Disarmament Party candidate and the extensive use of preference corralling at the 1998 election as swaps between the major parties, Greens and Australian Democrats worked to prevent victories by candidates from Pauline Hanson's One Nation.²¹

- 2.26 While the current arrangements for below the line voting are to be retained under the amendments proposed by the bill, the ability of electors to indicate more than one preference above the line and the abolition of group voting tickets may give electors more choice about directing their preferences across groups. That said, preference allocation within a group will remain under the control of parties and groups, with preferences determined by the order of candidates on the group's nomination form.²²
- 2.27 The requirement for electors to number at least four groups at a half Senate election and at least seven groups at a full Senate election adds additional complexity to current arrangements, without necessarily bringing any consistency across state jurisdictions with existing upper house voting systems. The possible impact on formality is discussed further below.
- 2.28 The above the line voting system used in Senate elections is largely replicated in South Australia, Victoria and Western Australia, with different systems used in other states (box 2.2).
- 2.29 Several inquiry participants called for the harmonisation of voting arrangements, considering that such an approach could lead to reductions in informality.²³ The Hon Peter Lindsay MP told the committee that:

There seems little doubt that differences between voting procedures at the Commonwealth and state levels, and between the voting systems for the Senate and the House of Representatives, may also contribute to voting informality:

- in the 'full preferential' system used in elections for the House of Representatives, the elector must number every square on the ballot paper to cast a formal vote, but not all elections in Australia use a full preferential system;

21 See Green A, 'Above or below the line? Managing preference votes', viewed on 26 November 2008 at <http://www.onlineopinion.com.au/view.asp?article=3359&page=2>; Brent P, 'Above the line Senate Voting', viewed on 26 November 2008 at <http://arts.anu.edu.au/democraticaudit/categories/electoralfrm.htm>; Sharman C et al, 'Trading party preferences: the Australian experience of preferential voting', *Electoral Studies* (2002), no. 21, vol. 4, pp. 543-560.

22 Australian Electoral Commission, *Electoral pocketbook: election 2007* (2009), p 18.

23 Hon Peter Lindsay MP, Member for Herbert, submission 57, p 3; NSW Government, submission 161, p 2.

- New South Wales and Queensland both practice ‘optional preferential’ voting at the state level; and
- Senate above-the-line option can confuse House of Representatives voters.²⁴

2.30 When electors do not indicate preferences beyond the minimum number of preferences required for a formal vote it is possible that their vote, if not allocated to a group that remains in the count, is excluded at an early stage. Such an outcome is likely to occur when an elector’s limited preferences are allocated to minor parties and groups that do not poll large numbers of first preference votes.

2.31 Such an approach, which has the characteristics of optional preferential voting, albeit with a minimum number of preferences rather than a single preference as used in some state lower house elections, is seen by some as arguably more democratic than full preferential voting because electors are not forced to nominate a preference for all candidates. Prior to the introduction of optional preferential voting in Queensland, the Queensland Electoral and Administrative Review Commission summarised the benefits of optional preferential voting over compulsory preferential voting for electors:

The Commission is concerned that electors are currently recording views that they may not have, by ranking in order of preference all candidates offering in their electoral district. If they do not have a complete set of preferences they have either to invent preferences, or arbitrarily assign rankings to candidates about whom they know nothing and care less or accept that their ballot paper will be excluded from the scrutiny.

The Commission believes that it is not unreasonable or oppressive to require every adult citizen to play a meaningful role in the choice of their government ... but having accepted that duty be discharged, it is inappropriate for the electoral system to corral votes on behalf of candidates or parties who electors do not wish to support but merely consider less objectionable than the other on the ballot paper.²⁵

24 Hon Peter Lindsay MP, Member for Herbert, submission 57, p 3.

25 Queensland Electoral and Administrative Review Commission, *Report on Queensland Legislative Assembly Electoral System* (1992), vol 1, p 59.

Box 2.2 Upper house voting systems by state*New South Wales*

Elections for the NSW Legislative Council elect half of the 42 members within a single electorate. The names of the candidates are shown on the ballot paper and if endorsed by a registered political party their affiliation with that party is also shown. A group must have at least 15 candidates before it can have a group voting square above the thick black line. Candidates not included in a group ('ungrouped candidates') are shown in a column on the extreme right of the ballot paper. The group or party determines the order of its candidates within the group, but the order in which the groups or parties appear on the ballot paper is determined by a draw conducted by the Electoral Commissioner.

Voters may choose to vote above or below the line. If voting above the line an elector places the number 1 in one of the group voting squares, with the option of placing additional preferences 2, 3, etc in the other group voting squares. If a single preference is expressed, preferences are distributed to other members of the group, after which the vote is exhausted. If a voter chooses to vote below the line, a minimum of preferences 1 to 15 must be marked, although preferences beyond this may be expressed.

Victoria

Elections for the Victorian Legislative Council elect 40 members in eight 5-member electorates across the state. Candidates not included in a group are shown below the line in a column on the extreme right of the ballot paper. Two or more candidates nominating for a region may request that their names be grouped on the ballot paper and be grouped in a specific order. The order of groups on the ballot paper is determined by a random computerised draw.

Voters may choose to vote above or below the line. If voting above the line only the single preference '1' needs to be placed in one of the group voting squares. Further preferences are allocated according to the full list of preferences lodged by that party or group. If an elector votes below the line a minimum of preferences 1 to 5 must be marked, although preferences beyond this may be expressed.

Western Australia

Elections for the Western Australian Legislative Council elect 36 members from six multi-member regions, with each having six members.

The voting system is similar to the Senate, with a fully preferential voting system and the elector having the option of voting to the left or right of the line (rather than above or below the line). Two or more candidates may make a request to be included as a group on the ballot paper. On the left of the line, electors having the option of voting for political parties or groups by placing a single preference '1'. If an elector chooses to vote to the left of the line preferences are allocated according

to group voting tickets lodged with the electoral commission. If an elector wishes to vote to the right of the line, they must mark all candidates in preference order.

South Australia

Elections for the South Australian Legislative Council elect half of the council's 22 members in a single state-wide electorate. The voting system is similar to the Senate, with a fully preferential voting system and the elector having the option of voting above or below the line. If voting above the line, the elector only marks a first preference with remaining preferences allocated according to a group voting ticket lodged by the party/group. If voting below the line, the elector must mark all candidates in preference order.

Tasmania

Elections to the Tasmanian Legislative Council elect 15 members, with each member representing a separate electoral division. Elections are conducted on a 6 year periodic cycle. Elections for 3 members are held in May one year, with elections for 2 members held in May the following year and so on.

The ballot paper names of candidates will be listed in a single column with a box printed next to each name. For candidates nominated by a political party, the name of the political party will appear under the candidate's name. The rotation of candidates' names within the column is determined by Robson rotation.

When there are 3 or more candidates, an elector is required to allocate at least three preferences. If there are less than three candidates, the elector must mark as a minimum the number of candidates less one.

Source Electoral Commission NSW, 'Legislative Council', viewed on 7 June 2009 at www.elections.nsw.gov.au/state_government_elections/state_electoral_system/legislative_council; Victorian Electoral Commission, 'Victorian voting systems', viewed on 7 June 2009 at <http://www.vec.vic.gov.au/votingsystems.html#stateuh>; Western Australian Electoral Commission, 'A guide for candidates: Legislative Council', viewed on 7 June 2009 at www.waec.wa.gov.au/pp_candidate/documents/CandidatesGuideLC.pdf; South Australian Electoral Commission, 'Electoral questions and answers', viewed on 7 June 2009 at www.ecsa.sa.gov.au/apps/uploadedFiles/news/276/SEO_QA06_13feb06.pdf; Tasmanian Electoral Commission, 'Tasmanian Legislative Council elections: Information for candidates', viewed on 7 June 2009 at www.ecsa.sa.gov.au/apps/uploadedFiles/news/276/SEO_QA06_13feb06.pdf.

2.32 Where the number of candidates is large and ballot papers exhaust prior to the end of the count, a large number of voters are in effect not able to

determine who is elected. For example, at the 2007 NSW Legislative Council elections, which utilises an optional preferential voting system, more than 350,000 votes (9.2 per cent) out of 3.8 million had exhausted preferences and were excluded from the count by the end of counting.²⁶

2.33 The effect of votes being exhausted during the count in multi-member electorates is that candidates can be elected later in the count with significantly less than a full quota. For example, at the 2007 NSW Legislative Council elections, the final three out of 21 candidates were elected with around 100,000 votes each (57.7 per cent of a quota) after a full distribution of preferences, compared to a quota of 173,239 votes initially required to win a seat.²⁷

2.34 The main argument against optional preferential voting, which is also true of partial preferential voting, is that that large numbers of exhausted votes can undermine the legitimacy of elections, with the potential for a 'first past the post' system to eventuate, especially when large numbers of voters choose a limited number of preferences. Professor John Wanna summarised the possible impacts of optional preferential voting based on experiences over successive Queensland state elections:

In democratic terms, the use of optional preferential voting in Queensland appears to empower the voter, allowing individuals to decide whether or not to allocate preferences to some or all candidates. But in the hands of parties anxious to maximize their electoral advantage, optional preferential voting risks becoming a de facto first-past-the-post system – in which candidates can be elected with around 35 per cent of the formal vote. Optional preferential voting has the potential, then, to inflate majorities while penalising the most divided side of politics.

If voters deliberately choose to 'just vote one' (plumping) and intend their vote to exhaust if their candidate comes 3rd or worse, then this does not undermine democracy. However, if voters simply follow party instructions to vote for one candidate and out of ignorance or unfamiliarity do not allocate preferences, then if

26 NSW Electoral Commission, '2007 Legislative Council results: Detailed results', viewed on 26 February 2009 at http://www.elections.nsw.gov.au/__data/assets/pdf_file/0005/40379/Count_330_Excluded_CHESTERFIELD-EVANS.pdf

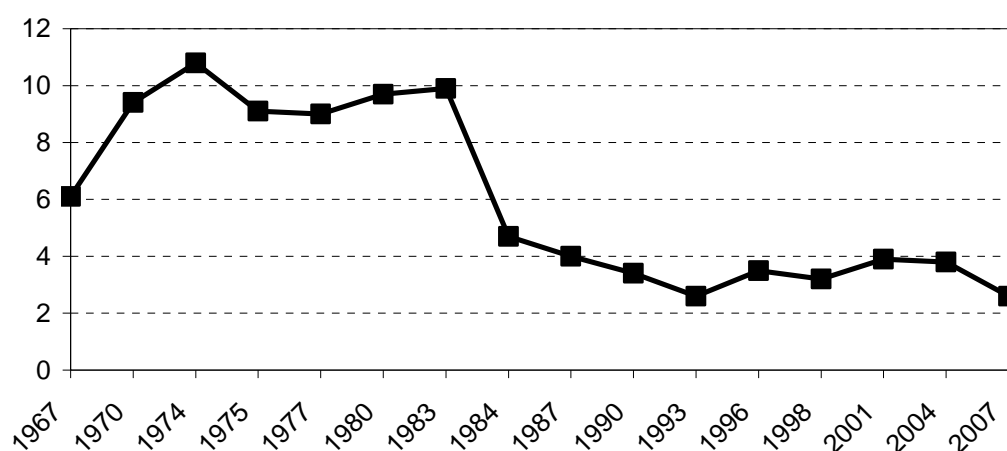
27 NSW Electoral Commission, '2007 Legislative Council results: Detailed results', viewed on 26 February 2009 at http://www.elections.nsw.gov.au/__data/assets/pdf_file/0005/40379/Count_330_Excluded_CHESTERFIELD-EVANS.pdf

their votes exhaust this could be a denial of a true democratic outcome.²⁸

Increased complexity?

- 2.35 The chief reason for moving to above the line voting in Senate elections in 1984 was to lower the informality rate. Prior to the changes, a formal vote in the Senate required electors to correctly number all candidates in preference order without the party names of candidates appearing on the ballot paper. At the 1983 federal election, NSW electors were required to correctly allocate preferences to 62 candidates. Mistakes in sequential numbering contributed to the rate of informality of 11.1 per cent in the state, with over 341,000 informal votes.²⁹
- 2.36 The adoption of above the line Senate voting has contributed to a continuing reduction in the rate of informality at Senate elections since it was first adopted for the 1984 election (figure 2.2).

Figure 2.2 Informality rate, Senate, 1967 to 2007 elections (per cent)



Source Australian Electoral Commission, submission 169.1, p 22.

- 2.37 Where state upper house voting systems are similar to that used for Senate elections (Victoria, Western Australia and South Australia), informality rates at state elections are higher than that recorded in the state at federal

28 Wanna J, 'Democratic and Electoral Shifts in Queensland: Back to First Past the Post Voting', Democratic Audit of Australia, viewed on 26 February 2009 at http://democratic.audit.anu.edu.au/search_keyw_frm.htm.

29 Joint Select Committee on Electoral Reform, Report No. 2, *The operation during the 1984 General Election of the 1983/84 Amendments to Commonwealth Electoral Legislation*, Parliamentary Paper 1/1987, December 1986.

elections (table 2.4). This is likely to reflect the differences between voting systems in the upper and lower houses within these jurisdictions. In New South Wales, where an optional preferential voting system is used above the line, the proportion of informal votes at the 2007 state election was almost three times that of the federal election held later the same year.

Table 2.4 Informality rates for recent selected upper house state elections and 2007 Senate election, by jurisdiction (per cent)

	Most recent state election (%)	Previous state election (%)	2007 federal election Senate informality rate (%)
New South Wales	6.11% (2007)	5.34% (2003)	2.2%
Victoria	4.28% (2006)	3.67% (2002)	3.2%
Western Australia	3.33% (2005)	2.64% (2001)	2.4%
South Australia	5.2% (2006)	5.4% (2004)	2.4%

Source *Australian Electoral Commission, 2007 election pocketbook (2008), p 56; Electoral Commission NSW, Report on the 2007 state election (2007), p 12; Victorian Electoral Commission, Report to parliament on the 2006 Victorian state election (2007), p 96; Western Australian Electoral Commission, 2005 state general election: election report (2006), p 29; South Australian Electoral Commission, Election report: South Australian election 18 March 2006 (undated), p 48.*

2.38 In some jurisdictions, electoral authorities have examined the reasons behind informal votes being cast in upper house elections. Confusion between Senate and state systems can be a factor, although most informal votes appear to result from errors made when voting below the line:

- In Victoria, the increase in informality for Legislative Council elections in 2007 and 2003 was largely attributed to changes in the voting system for the Council. With the new system allowing voters to express a single preference above the line, only 7.92 per cent of informal votes were above the line, while 45.87 per cent were below the line;³⁰
- In South Australia, where the Legislative Council voting system is similar to the Senate, informality is largely driven by errors made by voters when voting below the line – If blank and apparently deliberately spoiled papers are excluded, 56 per cent of informal votes were cast below the line.³¹

2.39 The Australian Greens supported the proposed changes in their submission to the government's green paper on donations, funding and

30 Victorian Electoral Commission, *Report to parliament on the 2006 Victorian state election (2007)*, p 96.

31 South Australian Electoral Commission, *Election report: South Australian election 18 March 2006 (undated)*, p 48.

expenditure, considering that individuals should have a greater say on preference distribution:

The objective of electoral reform is to make our electoral system more transparent, fairer and more democratic. In keeping with these objectives is the need to give voters greater control and expression in allocating their vote. One means to achieve this is to restore the distribution of party preferences to the voter rather than leave it in the hands of the party preference arrangements as is currently the case.

... These amendments to the Commonwealth Electoral Act enhance democracy. They provide voters full control of the destiny of their vote and consequently, the make-up of the Senate.³²

2.40 All of the remaining major parties pointed to the simplicity of current voting arrangements as a way of reducing informality and generally supported existing arrangements. The Australian Labor Party noted that:

All I can say is that on most of these matters I tend to start from: the simpler the system, the better the system when it comes to voting and when it comes to funding and disclosure. When it comes to most of these electoral matters you want to keep the systems as simple as possible, and that is why I am an advocate for a '1' above the line, just because, when you look at the figures, that is what most people choose to do, as opposed to going below the line. I worry that having preferential voting above the line will further complicate it.

... I just think that the more complex the system the higher the informal vote rate. That is what history shows; that is what the system used to show. The simpler the system, the more votes will be counted.³³

32 Australian Greens, 'Submission to the Electoral Reform Green Paper', viewed on 23 March 2008 at www.pmc.gov.au/consultation/elect_reform/pdfs/sub32.pdf.

33 Bitar K, Australian Labor Party, transcript, 11 November 2008, p 10.

2.41 The Liberal Party of Australia also expressed support for a simple system:

I think the simpler the better, as a general proposition. I remain to be convinced of the virtues of optional preferential voting. I know that is not necessarily the view of all members of this committee. A change to that system federally would really need to be worked through very carefully.³⁴

2.42 The Nationals also supported existing arrangements:

From the party's perspective, we are happy with the current arrangements. ... What has assisted are the improved party registration processes, which have cut down the size of the Senate paper, for instance, and have also led to a cut-down in the number of bogus parties.³⁵

Possible implications for election administration

2.43 The Explanatory Memorandum for the bill notes that there would be a financial impact arising from the extra resourcing for the AEC for the additional personnel and resources required for the counting of ballot papers.³⁶

2.44 At the 2007 federal election, only 407,461 formal Senate votes (3.22 per cent) were below the line or non-ticket votes and were sent to AEC central Senate scrutiny centres for data input into the computerised Senate scrutiny system.

2.45 Under the amendments proposed by the bill, all ballot papers would need to be sent to central scrutiny centres and require data entry. Such a requirement may also create additional logistical and security issues for the AEC in managing large quantities of ballot papers in central scrutiny centres.

2.46 The additional data entry and complexity of counting Senate ballot papers under the voting system proposed by the bill may lead to a delay in completing the count and the return of the writs.

34 Loughnane B, Liberal Party of Australia, transcript, 2 December 2008, p 6.

35 Henderson B, The Nationals, transcript, 3 February 2009, p 10.

36 *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008*, Explanatory Memorandum, p 1.

- 2.47 An indication of the potential resources and timelines for counting required under the proposals is available from the counting systems required for NSW Legislative Council elections in 2003, the first council election conducted under a voting system that allowed voters to nominate at least one preference above the line. The NSW Electoral Commission count of the votes, which required data entry for 1.6 million ballot papers, was completed 18 days after the election:

At the 2003 election, there were 284 candidates and 15 groups. Of the 3,931,308 votes cast, approximately 1.6 million required data entry. These were data entered by 250 operators per shift, supported by up to 120 warehouse clerical staff per shift. There were 3 x 6 hour data entry shifts worked each day. The remaining 2.3 million ballot papers, marked with a single 1 above the line were entered into the system in bulk totals as “tickets” for the respective groups.

The 1.6 million ballot papers went through two rounds of data entry. However, due to logistical problems with the storage and movement of ballot papers between separate buildings and within an environment not conducive to ballot paper data entry of this scale, it was considered that the potential risk of misplacement of batches was such that first and second rounds of data entry would be undertaken by the same operator. While this was not desirable, it was considered to be an area of very low risk given that the system was designed such that the operator could not see the result of the first round of data entry when entering the second round.

The entire operation continued predominantly at full scale until Wednesday 2 April at the warehouse when most ballot papers had been batched and Friday 4 April at the data entry centre, when the number of ballot papers awaiting data entry could not support 250 operators for 18 hours a day. Data entry was eventually completed on Wednesday 9 April.³⁷

- 2.48 Given this experience with 1.6 million ballot papers, it is clear that the counting of more than 12.5 million Senate ballot papers would be a significant exercise for the AEC, an exercise up to 30 times greater than under current voting arrangements.

37 State Electoral Office, ‘Submission to the [NSW Parliament] Joint Standing Committee on Electoral Matters’, p 35–36, viewed on 26 February 2009 at [http://www.parliament.nsw.gov.au/prod/PARLMENT/committee.nsf/0/6bd39b93036026cfa256fbf0017e89f/\\$FILE/SUB10%20-%20SEO.PDF](http://www.parliament.nsw.gov.au/prod/PARLMENT/committee.nsf/0/6bd39b93036026cfa256fbf0017e89f/$FILE/SUB10%20-%20SEO.PDF).

Other proposals to give electors more control over the allocation of preferences

2.49 The impact of group ticket voting and alternate methods of above the line voting has been raised in previous election inquiries undertaken by the Joint Standing Committee on Electoral Matters. The current requirements that a booklet be made available at polling booths showing the order of preferences in the group voting tickets lodged with the AEC was a recommendation of the then Joint Standing Committee on Electoral Matters' inquiry into the 1998 election.³⁸

2.50 While the Electoral Reform Society's preferred voting system was for optional preferential voting in the Senate, the Society considered that if above the line voting was to be retained that details on voting tickets should be more widely available and that voters should be able to mark a blank Senate ballot paper to allow electors to choose carefully before the election and take it with them to the polling booth to complete. The Society noted that:

While Section 216 [of the Commonwealth Electoral Act] stipulates that details on voting tickets need to be available at polling places, this information is actually of very little use at such a late stage in the election. Rather than provide details on voting tickets at polling booths, this needs to be provided before Election Day.

It is preferable that it be in printed form. Consideration needs to be given to either the Australian Electoral Commission distributing the voting tickets – perhaps in their booklet “Your official guide to the 2007 federal election”, or legislating so that the political parties must provide this detail in print form.³⁹

2.51 Mr Eric Lockett considered that above-the-line voting should be done away with altogether and below-the-line voting should be made easier by reducing the proportion of boxes a voter is required to number.⁴⁰ Mr Lockett noted that:

I am reluctant to specify how many boxes should be numbered, but current computerised tallying of Senate votes should enable an appropriate figure to be chosen. An empirical, retrospective analysis could be done to find how great a role lower-order

38 Joint Standing Committee on Electoral Matters, *The 1998 election: Report of the inquiry into the conduct of the 1998 election and matters related thereto* (2000), Commonwealth of Australia, p 116.

39 Electoral Reform Society, submission 94, p 3.

40 Lockett E, submission 175, p 4.

preferences have historically played in determining outcomes and how much difference it would have made if preferences beyond a specified figure were disregarded. The number of exhausted votes would be likely to increase, but I strongly suspect that the proportion of boxes required to be marked could be substantially reduced without affecting outcomes in terms of who is elected.

Furthermore, with the elimination of the need to field two candidates to qualify for a party preference ticket, below-the-line voting should be made even easier by a decline in the overall number of candidates.⁴¹

- 2.52 Another proposal is that the current requirement to express only a single preference above the line be retained, with the option given to voters to express any further preferences. Such a proposal could be implemented in a form that retains group voting tickets or as a full optional preferential system.⁴²
- 2.53 Alternatively, preferences allocated above the line could be allocated among all candidates within a group rather than cascading them in the order determined by the party. Such an approach could be based on the Robson Rotation system used in Tasmania and the Australian Capital Territory, whereby the order of candidates within a group differs across ballot papers.⁴³

Committee conclusion

- 2.54 The choice of voting system for the Senate, including arrangements for the ordering of ballot papers, mechanisms for allocating preferences and the counting of votes, has implications for participation by electors, the nature of campaigning and the representative nature of the Senate.
- 2.55 The current voting system for the Senate, in place since 1984, appears to be widely accepted by the community, with almost 97 per cent of formal votes at the 2007 election cast above the line. Additionally, the current voting system offers a relatively simple approach to voting that leads to a very high proportion of formal votes being cast, taking account of the additional complexity introduced by different voting systems across states and territories.

41 Lockett E, submission 175, p 4.

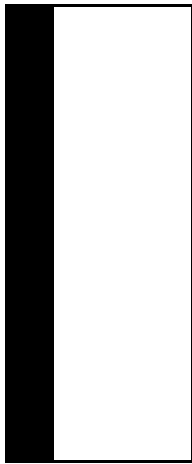
42 Kilcullen R, submission 85, p 2.

43 Bowe W, submission 106, p 3; Powell G, submission 96, p 2.

- 2.56 The current system may provide parties with a strategic advantage in arranging their preference distribution. However, concerns about this need to be balanced against the level of acceptance and the relative simplicity of current arrangements.
- 2.57 In the committee's view, the changes proposed by the bill will reduce the ability of Australians to participate fully in the electoral system by abolishing a very simple method of voting above the line and replacing it with the requirement that an elector number at least four preferences in a half Senate election and at least seven preferences in a full Senate election.
- 2.58 There is no doubt for the committee that the inevitable effect of the introduction of compulsory partial preferential above-the-line voting for the Senate, as proposed, will be to push up the rate of informal voting in Senate elections, depriving a significant number of voters of the ability to cast a valid Senate vote. In combination with the likelihood that a significant proportion of votes may be exhausted and removed from the count, the changes have the potential to undermine the legitimacy of an election result by lowering the number of votes required to gain election.
- 2.59 For every one percentage point increase in the Senate informality rate, around 130,000 electors are disenfranchised by not recording a valid vote – if the national Senate informality rate were to double from the 2.5 per cent seen in 2007, it would deprive 662,000 Australians of a valid Senate vote. Those likely to be most effected are the elderly, first-time voters, those with lower levels of education, Indigenous Australians and Australians from non-English speaking backgrounds.
- 2.60 Another consequence of the proposed introduction of compulsory preferential voting for the Senate is likely to be the re-appearance of the practice of ballot flooding (running numerous bogus Senate tickets so as to create a huge ballot paper and confuse voters), which was largely stamped out by the 1984 reforms.
- 2.61 Given that different state and territory voting systems can impose additional complexity on the voting task for some electors, current federal arrangements provide for a relatively simple voting system, maximising the likelihood that a vote will be counted. Electors retain the capacity to direct their preferences in the manner of their own choosing by voting below the line.
- 2.62 The committee does, however, consider that there are several options that should be examined to make below-the-line voting more accessible for electors seeking to gain more control over the distribution of preferences.

- 2.63 The first is to provide more information to electors about group voting tickets by requiring the AEC to make blank ballot papers available to electors so that they can complete their preference allocation prior to polling day based on the electors analysis of group voting tickets (which are published on the AEC website prior to polling day).
- 2.64 The second is to change arrangements for votes cast below-the-line to require a smaller number of preferences to be indicated, say up to 15, for a vote to be included as a formal vote. Such an approach has been adopted for below the line votes in Victoria (minimum of five preferences for multi-member electorates with up to 26 candidates in each electorate at the 2006 state election) and New South Wales (minimum of 15 preferences in a single electorate, with 333 candidates at the 2007 state election). Based on the 2007 federal election, such a change would reduce the number of preferences to be completed below the line by around half for electors in NSW, Victoria and Queensland and around one third for electors in Western Australia and South Australia.
- 2.65 A further option is available in relation to changing the above-the-line voting provisions to give voters the option of marking more than one preference. This approach would retain group voting tickets to distribute preferences if an elector marks a single preference but, if more than one preference were made, a vote would exhaust at the last preference expressed.
- 2.66 The committee has not made any recommendations in relation to these options, believing that there should be further and continuing discussion of the various approaches.

Daryl Melham MP
Chair
2 June 2009



Dissenting Report – Senator Bob Brown, Australian Greens

The committee has let a worthwhile opportunity pass by choosing not to make a recommendation about my Commonwealth Electoral (Above-the-Line Voting) Amendment Bill.

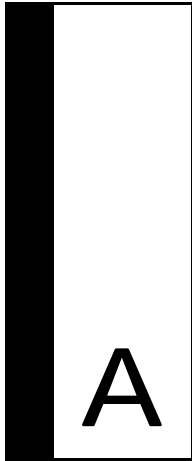
This Bill aims to make our electoral system more transparent, fair and democratic by taking the power to allocate preferences out of party backrooms and into the hands of voters.

Opponents of the bill foreshadow a rise in informal votes if it goes ahead. However, there is no evidence to indicate this will happen. The 2003 NSW experience of the introduction of above-the-line preferential voting resulted in a decrease in informal votes on 1999 results. The informal rate for state elections is higher in NSW than for federal elections, but this is also the case in Victoria, Western Australia and South Australia.

What the NSW experience does show is that there may be interest from voters for above-the-line preferential voting: in 2003 there was a 3.7% increase in the number of above-the-line ballot papers.

Any new system of voting needs to be explained clearly for people of all literacy levels. This will go a long way to ensuring the number of informal ballot papers do not rise substantially. As voters get used to allocating preferences, we may also see a decline in any initial spike in the number of informal ballot papers. In Tasmania where proportional representation is the norm in the lower house, below-the-line voting in Senate elections is around the 20% mark compared to 3% in most other states.

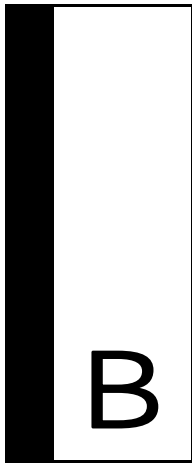
Senator Bob Brown



Appendix A – Submissions

Submissions to the 2007 election inquiry that relate to the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008*:

57	Hon Peter Lindsay MP, Member for Herbert
67	Festival of Light Australia
85	Mr Rupert Kilcullen
94	Electoral Reform Society of South Australia
96	Mr Geoffrey Powell
106	Mr William Bowe
106.1	Mr William Bowe
161	New South Wales Government
175	Mr Eric Lockett



Appendix B — Public Hearings

Public hearings for the 2007 election inquiry that relate to the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008*:

Tuesday 11 November 2008 - Canberra

Australian Labor Party

Mr Karl Bitar, National Secretary

Mr Elias Hallaj, Assistant National Secretary

Mr Nick Martin, Assistant National Secretary

Tuesday 2 December 2008 - Canberra

Liberal Party of Australia

Mr Brian Loughnane, Federal Director

Tuesday 3 February 2009 - Canberra

The Nationals

Mr Brad Henderson, Federal Director