



Australian Senate

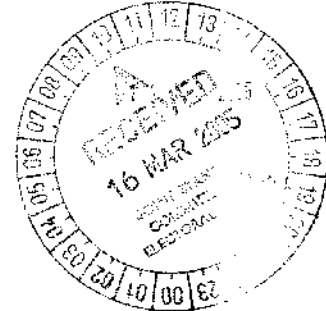
Wednesday, 9 March 2005

Joint Standing Committee on Electoral Matters
Submission No. <u>39</u>
Date Received <u>16-3-05</u>
Secretary <u>[Signature]</u>

SUBMISSION NO. 39

Bob Brown

Australian Greens Senator for Tasmania



Mr Tony Smith MP
Chair Joint Standing Committee on Electoral Matters
Parliament House
Canberra ACT 2600

Dear Mr Smith

Thank-you for your letter regarding the inquiry into the conduct of the 2004 federal election.

There are three matters I would like to draw to the Committee's attention.

1. The above the line Senate voting system.

I propose a democratic reform in voting for the Senate. At the last federal election the Greens were denied additional Senate seats because of secret preference deals done by other political parties against the wishes of their supporters.

For example, in Victoria, a Family First senator was elected with less than 2% of the vote, when the Greens candidate was not elected after achieving over 8% of the vote. The ALP directed preferences away from the Greens against the wishes of many of its members and voters.

I have introduced legislation into the Senate that would allow each voter, rather than parties, to allocate preferences above the line. The legislation is based on similar legislation which is now law for NSW Upper House elections.

Please find enclosed a copy of my private members bill, along with my second reading speech. I ~~would~~ ^{hope} the committee will consider the merits of this legislation.

2. Serious breach of journalist ethics resulting in the electorate being misled.

Please find attached a ruling from the Australian Press Council upholding a complaint lodged after last year's election. The readers of the Herald Sun were 'seriously misled' and so were many other voters. The Herald Sun article was widely distributed – including by the logging industry in Tasmania – as well as being quoted on many Liberal party election leaflets.

The Australian Press Council noted that 'potential damage [to the Greens] was considerable'. I estimate that the article led to the Greens losing thousands of votes and, very likely, seats in parliament.

I would appreciate the committee's comments on this matter and would like the committee to consider if any action should be taken to prevent similar deceptions either by the media outlets or political parties in their election material.

3. Removal of the truthfulness test for TV advertising

I am concerned that the Free TV Australia (formerly the Federation of Australian Commercial Television Stations- FACTS) surveillance of election advertisements was abandoned in June last year, leaving no adjudication or watch in the matter.

For example, the Family First Party ran TV advertisements saying the Greens were "giving kids easy access to marijuana". Such an ad - which was manifestly untrue - would not have been allowed under the previous regime monitored by FACTS.

Free TV Australia believes it does not have the legal authority to continue its previous practices in this area. I would appreciate the committee's views on the possibility of amending the relevant legislation to give it that authority.

Yours sincerely



Senator Bob Brown

EXHIBIT

2004

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Senate Voters' Choice (Preference Allocation) Bill 2004

No. , 2004

(Senator Brown)

A Bill for an Act to amend the *Commonwealth Electoral Act 1918* to enable voters at Senate elections to determine the order of their party preferences in above the line voting, and for related purposes

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1 **A Bill for an Act to amend the *Commonwealth***
2 ***Electoral Act 1918* to enable voters at Senate**
3 **elections to determine the order of their party**
4 **preferences in above the line voting, and for related**
5 **purposes**

6 The Parliament of Australia enacts:

7 **1 Short title**

8 This Act may be cited as the *Senate Voters' Choice (Preference*
9 *Allocation) Act 2004*.

10 **2 Commencement**

11 This Act commences on the day on which it receives the Royal
12 Assent.

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3 Object

The object of this Act is:

- (a) to enable a voter to allocate preferences to groups of candidates listed above the line; and
- (b) to require a voter to allocate as many preferences as there are groups listed above the line.

4 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1
2 **Schedule 1—Amendment of the**
3 **Commonwealth Electoral Act 1918**

4 **1 Subsection 169(4)**

5 Repeal the subsection, substitute:

- 6 (4) Where a request has been made under subsection (1) in respect of
7 candidates in a Senate election, the request may include a further
8 request that the name of the registered political party that endorsed
9 the candidates, or a composite name formed from the registered
10 names of the registered political parties that endorsed the
11 candidates, be printed on the ballot-papers adjacent to the square
12 printed in relation to the group in accordance with section 211.

13 **2 Subsection 210(2)**

14 Omit “has given notice of intention to lodge a statement under”,
15 substitute “has a square printed above the name of the candidate in
16 accordance with”.

17 **3 Section 211**

18 Repeal the section, substitute:

19 **211 Group voting squares**

20 Where the names of candidates nominated in a Senate election are
21 included on a ballot paper in a group in a specified order in
22 accordance with a request under paragraph 168(1)(b), a square
23 shall be printed on the ballot-papers for use in the election above
24 the names of those candidates.

25 **4 Section 211A**

26 Repeal the section, substitute:

27 **211A Individual ungrouped senators as candidates**

28 (1) Where:

- 29 (a) a candidate in a Senate election is:
30 (i) a Senator; or

- 1 (ii) in the case of an election following a dissolution of the
2 Senate, a person who was, immediately before the
3 dissolution, a Senator; and
4 (b) the candidate has not joined in a request under section 168 in
5 relation to the election;
6 a square shall be printed on the ballot-papers for use in the election
7 above the name of the candidate.
- 8 (2) Where subsection 214(1) requires that the name of a registered
9 political party be printed adjacent to the name of the candidate on
10 the ballot-papers, the name of that party shall also be printed on the
11 ballot-papers adjacent to the square printed on the ballot-papers in
12 relation to that candidate in accordance with subsection (1).
- 13 (3) Where subsection 214(3) requires that the word "Independent" be
14 printed adjacent to the name of the candidate on ballot-papers, the
15 word "Independent" and the name of the candidate must also be
16 printed on the ballot-papers adjacent to the square printed on the
17 ballot-papers in accordance with subsection (1).

18 **5 Paragraphs 214(2)(d) and (e)**

19 Omit "subsection 211(5)" (wherever occurring), substitute
20 "section 211".

21 **6 Section 216**

22 Repeal the section.

23 **7 Subsection 226(3)**

24 Repeal the subsection.

25 **8 Subparagraph 227(8)(a)(i)**

26 Omit ", group voting tickets registered for the purposes of the election".

27 **9 Subsection 239(2)**

28 Repeal the subsection, substitute:

29 (2) As an alternative to the voting process outlined in subsection (1), a
30 person may mark his or her ballot-paper by:

- 31 (a) writing the number 1 in a square printed on the ballot-paper
32 under section 211 or section 211A; and
-

1 (b) writing the numbers 2, 3, 4 (and so on, as the case requires)
2 in all other squares printed on the ballot-paper under
3 subsection 211, so as to indicate the order of the person's
4 preference for the groups represented by the various squares.

5 **10 Subsection 239(3)**

6 Repeal the subsection.

7 **11 Subsection 268(1)**

8 Omit all words from "A ballot-paper" to the end of paragraph (b),
9 substitute "A ballot-paper shall (except as otherwise provided by the
10 regulations relating to voting by post) be informal if:

- 11 (a) subject to subsection (2), it is not authenticated by the initials
12 of the presiding officer or by the presence of the official
13 mark;
- 14 (b) subject to section 269 and subsection 270(1), in a Senate
15 election, it has no vote indicated on it, or it does not indicate
16 the voter's first preference for 1 candidate or group and the
17 order of his or her preference for all the remaining candidates
18 or groups;".

19 **12 Subsection 269(2)**

20 Repeal the subsection, substitute:

21 (2) If a ballot-paper in a Senate election:

- 22 (a) has also been marked validly in accordance with subsection
23 239(1); and
24 (b) has been marked validly in accordance with subsection
25 239(2); and

26 the ballot-paper shall, for the purposes of sections 272 and 273, be
27 deemed not to have been marked in accordance with subsection
28 239(2).

29 **13 Subsections 269(3) and (4)**

30 Repeal the subsections.

31 **14 Section 270**

32 After "candidate" (wherever occurring), insert "or group".

33 **15 Section 270**

1 After "candidates" (wherever occurring), insert "or groups".

2 **16 Section 272**

3 Repeal the section, substitute:

4 **272 Senate ballot-papers deemed to be marked according to group**
5 **order**

6 If a voter records a vote on a Senate ballot-paper by means of the
7 process outlined in subsection 239(2), the ballot-paper is taken to
8 have recorded on it a first preference vote for the first candidate
9 included in the group marked "1" and subsequent preferences for
10 all other candidates included in that group in the order of the names
11 of the candidates on the ballot-paper, followed by the candidates in
12 the group marked "2" in the order marked on the ballot-paper and
13 so on.

14 **17 Schedule 1, Form E**

15 Repeal the form, substitute:

SENATE BALLOT PAPER
(5)
ELECTION OF (6) SENATORS



You may vote in one of two ways

either

Number the boxes from 1 to [here insert number of candidates] in the order of your preference.

A (2)

B (2)

C (2)

D (4)

F (2)

**Remember....
Number every box
to make your vote
count.**

A	B	C	D	E	F	Ungrouped
(2)	(2)	(2)	(2)		(2)	

<i>or</i>	<input type="checkbox"/> (1)	<input type="checkbox"/> (2)	<input type="checkbox"/> (3)	<input type="checkbox"/> (4)	<input type="checkbox"/> (5)	<input type="checkbox"/> (6)	<input type="checkbox"/> (7)
By placing the numbers 1 to (7) in the order of your preference:	<input type="checkbox"/> (1)	<input type="checkbox"/> (2)	<input type="checkbox"/> (3)	<input type="checkbox"/> (4)	<input type="checkbox"/> (5)	<input type="checkbox"/> (6)	<input type="checkbox"/> (7)
Remember....							
Number every box to make your vote count.							

- 1 (1) Here insert name of a candidate.
- 2 (2) Here insert name of a registered political party or composite name of registered political parties if to be printed.
- 3 (3) Here insert the name of a registered political party if to be printed.
- 4 (4) Here insert name of a registered political party or word 'Independent' if to be printed.
- 5 (5) Here insert name of State or Territory and year of election.
- 6 (6) Here insert number of vacancies.
- 7 (7) Here insert number of candidates.



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ATTACHMENT A

ADJUDICATED: 24 FEBRUARY 2005
ISSUED: 25 FEBRUARY 2005
FOR GENERAL RELEASE: 4 MARCH 2005
THE HERALD SUN: 3 MARCH 2005

THE AUSTRALIAN PRESS COUNCIL

ADJUDICATION No. 1270

The Press Council has upheld a complaint by Senator Bob Brown against The Herald Sun, Melbourne, for an article, headed *Greens back illegal drugs*, published on 31 August 2004 in the lead-up to the 2004 federal election.

The Council views this article as irresponsible journalism.

In the article a number of false claims were made about Greens Party policies. The article was accompanied by a graphic entitled 'What they stand for'. The graphic listed 20 broad proposals claimed to be advocated by the Greens.

Sen. Brown said a number of claims made by the paper in the article or graphic were wrong, including:

- an alleged policy of a 33% hike in company tax to at least 49 cents in the dollar (which did not reflect current Greens policy);
- suggestions that people would be *forced* to ride bicycles more often and eat less meat and business people to use alternatives such as rail, boat and teleconferencing (no coercion is advocated in the policies);
- existence of policies to keep out business immigrants, introduce taxes on family homes, drive farmers from their land and reduce infrastructure to 1995 levels (no such policies exists, Sen. Brown says); and
- a desire to cut the population by 2 million (Sen. Brown says there is no such policy and the claim is based on a Liberal Party paper).

Additionally, regarding the headline on the article, Sen. Brown said that it was 'manifestly wrong' and that Greens policy was a call for 'a study of options'.

Given the sweeping and unqualified nature of the claims, the newspaper ought to have checked the veracity and currency of the policy claims. Prior to the publication of the article, the reporter rang Sen. Brown's office asking for the Greens' policies. He was

informed 'that all current policies were available on the website'. There is evidence that, as well as any use made of the Party's website in writing the article, the reporter preferred other statements of Greens' policies, some erroneous and hostile to the Greens.

In the context of an approaching election, the potential damage was considerable. The actual electoral impact cannot be known but readers were seriously misled. On the day of publication, Senator Brown addressed his concerns with the article to the bylined journalist during a press conference, but no redress was forthcoming. In fact, a follow-up article, published the next day, was described by Sen. Brown as "derogatory".

An article by Sen. Brown, which responded to some points in the 31 August article, as well as comments by Treasurer Costello in a subsequent article, was published by the paper a month later.

The claims made in the original article were seriously inaccurate and breached the Council's guiding principles of checking the accuracy of what is reported, taking prompt measures to counter the effects of harmfully inaccurate reporting, ensuring that the facts are not distorted, and being fair and balanced in reports on matters of public concern.

* * * * *

Telephone inquiries:
(02) 9261 1930

The Australian Press Council
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SYDNEY NSW 2000

The Australian Press Council is a body which studies the performance of every section of the press in Australia, including non-members.

Representatives of publications complained against abstain from any discussion of, or vote on, such publications.

SENATE VOTERS' CHOICE (PREFERENCE ALLOCATION) BILL 2004: Second Reading

Senator BROWN (Tasmania) (9.37 a.m.)—I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The speech read as follows—

Senate Voters' Choice (Preference Allocation) Bill 2004

Above the line voting for the Senate was introduced in 1984 to meet the problem of increasing informal votes. With 50 to 100 Senate candidates in some states, many voters either made no attempt or lost their way and so lost their vote.

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.

Election analyst Antony Green put it well when speaking after the 2004 federal election "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".

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.

Senator BROWN —I seek leave to continue my remarks later.

Leave granted; debate adjourned.