

**A submission to the
Joint Standing Committee on Electoral Matters
Inquiry into the 2007 Federal Election**

**from
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INTRODUCTORY REMARKS

At the risk of jeopardising the reception of this submission, I feel I must first comment on the appropriateness of the practice whereby the Joint Standing Committee on Electoral Matters (JSCEM), which is made up of sitting party politicians, reviews electoral procedures after each federal election.

Recent history shows that, except for matters that equally serve the interests of all the parties represented on the JSCEM, its reports almost invariably divide neatly along party lines. After all, the future prospects of committee members are crucially dependent on how elections are conducted and it is natural that each should be concerned to maximise any advantage and minimise any disadvantage to their own party. This is not the same as putting the interest of the electors first by ensuring an equal opportunity for all aspiring candidates, be they party members or not.

Hence, all sitting members have a clear and unavoidable conflict of interest in passing judgment on such matters. It is hard to think of any other field in which people have such power to influence the selection processes on which their prospects for future employment or advancement are so vitally dependent. And the government of the day invariably has the largest committee representation so it is essentially a case of 'to the victor go the spoils'.

Yet, in an ideal democracy all citizens would be able to contest elections on an equal footing and all voters would have the opportunity to make an equally informed judgment on the merits of individual candidates and parties and to have their wishes accurately reflected in the makeup of parliament.

While I don't intend to hold my breath until it happens, I believe that such regular reviews of electoral processes would be more appropriately conducted by a disinterested committee which would be better able to dispassionately judge what best serves the interests of all the people, rather than a committee comprising sitting party politicians.

I lodged my last detailed submission to the JSCEM after the 2001 election, in which I was an independent Senate candidate, but little if anything has been done since then to remedy the numerous deficiencies I identified. However, the passage of the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008*, which is currently being inquired into, along with the *Commonwealth Electoral Amendment (Political Donations and Other measures) Bill 2008* would be steps in the right direction.

On this occasion I will concentrate on the two main matters that I believe are crying out for reform. They are the funding of election campaigns and the above-the-line Senate voting system. I will now expand on each of these issues.

FUNDING OF ELECTION CAMPAIGNS

There are serious deficiencies in the way that both private and public funding of campaigns is managed in Australia.

Private funding

It is reasonable for individuals and organisations to have the opportunity to assist their preferred candidates by providing funding, but this should be subject to three conditions:

1. All significant donors and the amounts contributed should be clearly identifiable to the public – this is necessary to allow the public to assess whether governments are acting in the interests of all the people or unduly favouring their main benefactors;
2. The size of donations from any particular source to a party or candidate should be subject to limits that don't leave parliamentarians so beholden to particular donors as to compromise their ability to truly represent their broader electorate;

3. Private spending on campaigns, both overall and within particular electorates, should also be subject to a cap that prevents saturation media coverage from overwhelming the efforts of other candidates to get their message out.

The current arrangements, especially the disclosure limit of \$10 000, inadequately satisfy condition 1, although the *Commonwealth Electoral Amendment (Political Donations and Other measures) Bill 2008* would be a step forward and is generally worthy of support. However, I have some reservations about prohibiting small anonymous donations. If donations remain truly anonymous (the difficulty lies in ensuring that this is so) then they cannot be a source of undue influence on parliamentarians.

The current arrangements make no attempt to satisfy conditions 2 or 3 and I believe that the imposition of reasonable limits on both donations and spending would be of advantage to all, even including the established parties who seem compelled to try to outspend each other in media blitzes at each election. We don't want to go any further down the path of American presidential campaigns, where the amount of money raised seems to be used as a primary measure of their success.

Public funding

There is a clear justification for public funding of election campaigns, but only if this results in fairer campaigns and better informed electors who are then able to better assess the merits of all candidates. This is especially important for candidates who lack the personal wealth, financial backers and organisational support enjoyed by party candidates. A secondary benefit arises if public funding makes candidates less reliant on private funding and therefore less beholden to particular organisations or sectional interest groups. This public funding should be subject to two conditions:

1. It is equitably distributed among the candidates;
2. It is actually spent on the election campaign.

Neither of these conditions is satisfied by the current system.

The present system of allocating public funding has quite the reverse effect from what would be necessary to justify it. Instead of levelling the playing field it tilts it further in favour of the parties and candidates whose positions are already best known and who have the greatest access to the media and to private funding. There is no evidence that it has made parties any less reliant on private funding; it has simply increased their spending capacity and their ability to drown out the messages of other candidates.

The threshold of four per cent of the primary vote necessary to attract public funding is vastly more difficult to achieve in the Senate where the vote may be split between sixty or more candidates than in the House of Representatives where there are usually only three to five candidates.

If such a system were to be retained it should at least be modified by first dividing the total vote by the number of candidates and basing the threshold on a set proportion of this figure. If the chosen proportion was, say 20% of the average vote per candidate this would equate to 4% overall for a House of Representatives seat with five candidates, ten per cent with two candidates and 0.4% in a Senate contest with fifty candidates. In calculating entitlements, the votes of candidates who don't individually reach the threshold should be excluded from the party tally.

While candidates and parties must lodge a return on their electoral spending, no attempt is made to ensure that the public funding is actually spent on the campaign – it is simply a gift from the public purse to the candidate or party. This is unacceptable and it is pleasing to see that the *Commonwealth Electoral Amendment (Political Donations and Other measures) Bill 2008* seeks to remedy this situation.

There is a simple and effective way of overcoming all the deficiencies and anomalies in the present system of public funding. It is one that is widely used in other contexts and was used in the national election of delegates to the 1998 Constitutional Convention. Instead of the present arrangements, public funding could be put to producing a booklet containing brief statements on the backgrounds and policies of all parties and candidates. The statements could be lodged with the Electoral Commission at the time of nomination and, with modern technology, it should be possible to collate and print booklets from even large fields of Senate candidates within a week or two. These could be posted to all voters, displayed on the internet and made available at polling booths for last minute reference.

ABOVE-THE-LINE SENATE VOTING

The Senate voting system, as originally designed, was exemplary in that it provided not only for proportional representation of the electors' wishes in terms of party (or non-party) representation, but also for a choice of representatives within each party. When the Labor government introduced above-the-line voting in 1984, it was claimed that correctly numbering every box was excessively difficult and resulted in too many informal votes. Rightly or wrongly, there was a perception that this disadvantaged the Labor party.

This change had major adverse consequences that would be hard to justify in terms of any reduction in informal voting or increased fairness to the established parties. It certainly made the contest much less fair for non-party candidates to the extent that it took eight subsequent elections before Nick Xenophon became the first new non-party candidate to be elected under this system in 2007. Brian Harradine's success in holding his seat for so long was undoubtedly helped by his being granted the same electoral privileges as party candidates due to his status as a sitting senator at the time the changes were made.

Perhaps more importantly, the changes also effectively transferred the choice of representatives from the electors to the party machines, and created the reprehensible practice of opportunistic wheeling and dealing in preference tickets immediately after the close of nominations, which often results in preference allocations that are clearly inconsistent with the likely preferences of a party's supporters.

The fact that such a high proportion of electors choose to vote above-the-line has often been used to justify the present system, but the system itself has contributed to this by encouraging larger fields and making it more difficult for voters to allocate their own preferences below the line, as was originally intended.

Parties now have the capacity to trade preferences and independents can only share these privileges, as well as others such as gaining a separate column on the ballot paper, by nominating a 'running mate' who plays no part in the election. This has encouraged the proliferation of micro parties and candidates who have no expectation of winning a seat, but are effectively just a preference harvesting device. The capacity to dictate how preferences will flow is very important, given that two of every six seats are normally won on inter-party preferences.

Instead of alleviating the difficulty involved in below-the-line voting so as to ensure that the outcome better reflects the voters' wishes, the changes have discouraged below-the-line voting by making it more difficult. This has largely transferred from electors to party machines not only the choice and order of election of party candidates but also the allocation of vital preferences. It was a solution that created more serious problems than it resolved.

The net effect is that party preselections normally secure four of the six state seats in a half-senate election and party preference tickets determine the other two contested seats in a way that does not necessarily reflect the voters' wishes. A voting system originally designed to give electors the capacity to choose both party representation and candidates in accordance

with their own preferences has been corrupted to the extent that Senate elections are now something of a charade.

Possible improvements to senate voting procedures

The explanatory memorandum for the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008* is somewhat misleading in stating that it would return to voter 'the sole right to allocate preferences'. In fact, it would return to the voter only the sole right to allocate preferences between parties, not preferences between candidates within parties. Nevertheless, the return to voters of the responsibility to allocate inter-party preferences, would be a welcome move. It would also reduce the incentive for nomination of micro-parties and 'running mates', thereby reducing the number of candidates and making below-the-line voting easier. It would be so obviously a more democratic process, yet still quite simple and easy to follow, as to make it hard to see how any plausible argument could be mounted for retaining the present system.

However, I believe there is another option that would even more closely reflect the original laudable intentions of the senate voting system. As I argued in my 2001 submission, 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.

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 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.

Hence the original intention of the Senate voting system could be almost fully restored without requiring an excessive number of boxes to be numbered, thereby making it easier than pre-1984, as compared with the only partial restoration of this intention that would be achieved by the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008*. Only those who wished to express a preference against a party or candidate by putting them last in the order would need to number all boxes.

Another essential reform is the removal of the current anomaly whereby individual independent candidates who may have diametrically opposed policies all appear in the same column. When supporters of parties or groups can vote above-the-line it is patently unfair, especially where fields are large, that supporters of individual candidates can only vote by numbering all boxes below the line. If above-the-line voting is retained, even in modified form, then independents must each be allocated a separate column, thereby doing away with the need for them to nominate a 'running mate' just to get their own column and allow their supporters an above-the-line vote.

Ideally, the order of parties on the ballot paper should be randomised to cancel out any so-called 'donkey vote' effect. With modern technology this could be fairly simply achieved. The randomisation of candidates within party groupings would be a further step towards democratisation in that the candidates elected would represent the order of preference of the voters rather than the parties. Hence an assured seat in the Senate could no longer be offered as a sinecure for faithful party service. With such a move, the Senate ballot paper could be printed in vertical rather than horizontal format, as per the sample provided in the supplement to my submission to the inquiry into the 2001 election (Attachment 1), thereby alleviating problems with the physical size of the ballot paper when numerous groups or parties contest the election.

RECOMMENDATIONS

Electoral Funding

- Reduce the currently unduly high threshold for disclosure of political donations.
- Limit the size of donations from a particular source to any party or candidate.
- Place a reasonable limit on private campaign spending overall and within individual electorates.
- Preferably, replace the present system of public funding with the provision of information on all candidates to all voters via the Electoral Commission.
- Failing this:
 - Adjust the threshold to qualify for public funding according to the number of candidates for the electorate.
 - Apply the voting thresholds for public funding to individual candidates rather than aggregate party votes.
 - Limit public funding to what is actually spent on the campaign.

Senate Voting System

- Do away with above-the-line voting altogether.
- Do away with the requirement to have two grouped candidates in order to qualify for a separate column on the ballot paper (the paper can be reduced in length by printing it in vertical format).
- Reduce the proportion of boxes required to be numbered to the minimum level that can be relied on to accurately reflect the voters' preferences (this can be determined from a study of past voting patterns).
- Preferably, randomise the order on the ballot paper of both party groupings and individual candidates within parties.

I note that the *Commonwealth Electoral Amendment (Political Donations and Other measures) Bill 2008* and the *Commonwealth Electoral (Above-the-Line Voting) Amendment Bill 2008* would each go part way to achieving the objectives of making electoral funding more transparent and electoral processes fairer and more democratic. If the above recommendations are not implemented I would support the passage of those two bills.

**Supplementary submission to the
Joint Standing Committee on Electoral Matters
Concerning an Alternative layout of Senate ballot paper**

On reviewing my submission dated 4/7/02 I felt that there was a need for some more emphasis on the importance of revising the layout of the Senate ballot paper to make voting fairer, as recommended in my submission to the Inquiry into the 1998 election.

I have therefore attached a mockup of the 2001 Tasmanian Senate ballot paper using my proposed layout. It shows how up to 30 candidates can easily be fitted onto an A4 sized sheet without having to lump ungrouped candidates who may have directly opposing policies together in the same column. In this case I have placed the names in the same order they appeared on the actual ballot paper, but in practice the ungrouped individuals would all go into the draw and may appear anywhere in the order.

This layout would still allow a 'left of the line' or 'right of the line' vote although, as my submission to the inquiry into the 1998 election stated, a 'left of the line' vote should require boxes to be filled in for all parties/groups.

To maximise fairness these measures should, as I originally stated, be combined with rotation, or better still full randomisation, of positions for both parties and candidates within parties. This would probably require a bar code on each paper so that the data entry operators could key in the numbers from top to bottom and the computer could then allocate them to the correct candidates. The results would then represent the true wishes of the electors rather than those of party power-brokers.

Eric Lockett

9/07/02

TASMANIA FIRST PARTY <input type="checkbox"/>	<input type="checkbox"/> CRACK Marilyn <input type="checkbox"/> JACKSON David <input type="checkbox"/> PRESSER John
HOPE PARTY AUSTRALIA <input type="checkbox"/>	<input type="checkbox"/> BRISTOW James Tate <input type="checkbox"/> PETHERBRIDGE-de TISSERA Shamara
PAULINE HANSON'S ONE NATION <input type="checkbox"/>	<input type="checkbox"/> BOAG Bronwyn <input type="checkbox"/> STOKES Peter
GROUP D <input type="checkbox"/>	<input type="checkbox"/> BONNER Stephen <input type="checkbox"/> HOWARD Geoff
AUSTRALIAN GREENS <input type="checkbox"/>	<input type="checkbox"/> BROWN Bob
LIBERAL <input type="checkbox"/>	<input type="checkbox"/> CALVERT Paul <input type="checkbox"/> WATSON John <input type="checkbox"/> COLBECK Richard <input type="checkbox"/> PARRY Stephen
GROUP G <input type="checkbox"/>	<input type="checkbox"/> BAINBRIDGE Alex <input type="checkbox"/> CLEARLY Sarah
AUSTRALIAN DEMOCRATS <input type="checkbox"/>	<input type="checkbox"/> BUTLER Debbie <input type="checkbox"/> TOOHEY Brendan
AUSTRALIAN LABOR PARTY <input type="checkbox"/>	<input type="checkbox"/> MACKAY Sue <input type="checkbox"/> SHERRY Nick <input type="checkbox"/> BILYK Catryna
LIBERALS FOR FORESTS <input type="checkbox"/>	<input type="checkbox"/> PULLINGER Peter <input type="checkbox"/> THOMAS Michael
REPUBLICAN PARTY OF AUSTRALIA <input type="checkbox"/>	<input type="checkbox"/> CONSANDINE Peter <input type="checkbox"/> LAWATSCH Bert
CITIZENS ELECTORAL COUNCIL <input type="checkbox"/>	<input type="checkbox"/> LARNER Rob
INDEPENDENT <input type="checkbox"/>	<input type="checkbox"/> MARMARINOS John
INDEPENDENT <input type="checkbox"/>	<input type="checkbox"/> LANE Helen
INDEPENDENT <input type="checkbox"/>	<input type="checkbox"/> LOCKETT Eric

