



New South Wales
Council for Civil Liberties

NSWCCL SUBMISSION

To

**Parliamentary Joint Committee
on Electoral Matters**

**Inquiry into the Commonwealth
Electoral Amendment Bill 2016**

29/2/2016

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts; attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (NSWCCL) welcomes the opportunity to submit its views on the Commonwealth Electoral Amendment Bill 2016 (the Bill) to the current inquiry by the Parliamentary Joint Committee on Electoral Matters (JCEM).

1. GENERAL COMMENTS AND OVERVIEW

NSWCCL is cautious about engaging in commentary on parliamentary electoral processes and outcomes as we are determinedly non-partisan in relation to political parties. We made an exception in relation to the 2013 Senate electoral processes because they so clearly and significantly breached core democratic principles and we, like many others, considered urgent reform essential for the well-being of our democracy. The NSWCCL focus was, and continues to be entirely on matters of democratic principles and processes and entirely disinterested in party/individual electoral outcomes. We make no comment on logistical and administrative matters.

We made a submission in December 2013 to the the Senate Finance and Public Administration Legislation Committee Inquiry into the Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013, gave evidence before the JCEM in February 2014 and submitted a follow-up broader and more detailed submission in April 2014.¹

2. PCEM 2014 Report

We made a public statement in May 2014 broadly endorsing the JCEM interim report recommending major reform. In that statement we noted that:

‘Most importantly, it recommends a move to optional preferential above the line voting, partial optional preferential voting below the line and the abolition of group and individual voting tickets. Together these two reforms will remove the major distorting factors by making it easier for voters to cast a vote that reflects their preferences – leading to the election of a Senate that is more likely to truly reflect the preferences of the electorate – and reducing the opportunities for gaming of the Senate electoral system.

The Committee also recommends stronger requirements for party registration. These are reasonable provisions that will establish stronger criteria for ‘genuine’ parties. Importantly, they are not so onerous as to materially inhibit the formation of new, small parties. The criteria will apply to existing as well as new parties.”.....

“The Committee has done its job well. We now look to the Government and Parliament to do their job and act on these recommendations quickly. The Australian people should not have to go to another election under the existing senate electoral system.’²

The report’s findings and recommendations had unanimous support from JCEM members including both coalition and ALP members. The Committee had given priority to consideration of the Senate

¹ NSWCCL: Submission to the Senate Finance and Public Administration Legislation Committee Inquiry into the Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013 31/12/13; Dr Sacha Blumen, Dr Lesley Lynch , Stephen Blanks: NSWCCL Evidence to Joint Standing Committee on Electoral Matters Public Hearing 7/2/14

² NSWCCL Media Statement: Unanimous Parliamentary Committee Call For Urgent Reform Of Senate Electoral Procedures. 9th May 2014

voting process in the 2013 elections and issued an interim report to allow the Government and Parliament to consider their recommendations and legislate for urgently needed reform before Australians had to vote in another federal election. It seemed a clear opportunity for productive Government action on a critically important reform.

It was therefore disappointing that both Government and Opposition failed to act on the report's recommendations for almost 2 years.

We commend the Turnbull Government for reviving the report's recommendations in the current session.

It is however regretful that there is no longer unanimity on the proposals for reform. While the Bill does vary from the PCEM's recommendations on some matters³, it is mostly consistent with the report's proposed reforms. It is particularly regretful that the Opposition appears to have allowed possible implications for party electoral outcomes to outweigh the restoration of a democratic electoral process.

There have been complaints about the rushed timeframe for consideration of this Bill. We share these concerns, but we do note that the PCEM did consult widely over a 5 month period and that it had input from 216 submissions before issuing its 2014 report. On balance, we see the current priority is to have reform in place before the next election.

We believe the Bill requires amendment in one important area – the failure to allow partial optional preferential voting below the line) but this can be achieved within the current parliamentary session given the clarity of the issue and the comprehensive consideration given to it in the PCEM 2014 report.

3. DETAILED COMMENTS ON BILL

Guiding Principles

NSWCCL assessed the Senate electoral processes against core civil liberties principles essential to a robust democracy.

Two of the most important civil liberties are the right to vote in an election and the right to nominate for election.

We have also drawn on the following civil liberties principles relating to electoral systems:

- the body that is elected must have legitimacy—that is, popular acceptance of its authority
- the body that is elected must reflect the collective expressed intention of voters
- voters must be freely able to easily cast a formal vote that reflects their preferences
- voters should not have to register a vote for candidates they oppose or do not wish to support

³ In relation to below the line voting - this is a significant variation.

- voters must be able to easily understand the potential effect of their vote
- the barriers to new candidates and parties contesting an election must be sufficiently low so that they are not material barriers to new candidates and parties contesting an election individuals must be free to promote candidates and policies they support, and
- the administration of electoral systems and the conduct of elections must be conducted transparently

The current Senate system breaches most of these principles. The JCEM report’s recommendations for reform were consistent with these principles. We have assessed the current Bill within the same principled framework.

3.1. Abolition of Group and Individual Voting Tickets

The PCEM was strong in its condemnation of the manipulation of the group tickets and recommended their abolition (Recommendation 2). The Government has accepted this recommendation .

The proposed abolition of group and individual voting tickets for above the line voting will remove a major distorting factor from the Senate voting process. NSWCCCL regards this as a pivotal reform in the interests of transparent and democratic process which will allow voters to know who they might be voting for. As the Explanatory Memorandum puts it:

“The Bill will also empower voters, returning control of their preferences to them, by abolishing individual and group voting tickets.”⁴

NSWCCCL Recommendation 1

NSWCCCL supports the Bills proposed abolition of group and individual voting tickets consistent with the recommendation of the PCEM 2014 report.

3.2. Voting above the line

Having repealed the group and individual voting tickets, the Bill provides for optional preferential voting above the line. It requires voters to register at least 6 preferences (1-6)⁵. Extended savings

⁴ Explanatory memorandum p2

⁵ *Subsection 239 (2) A vote may be marked on a ballot paper by:*

(a) writing at least the numbers 1 to 6 in the squares (if any) printed on the ballot paper above the line (with the number 1 being given to the party or group for whom the person votes as his or her first preference, and the numbers 2, 3, 4, 5 and 6 being given to other parties or groups so as to indicate the order of the person’s preference for them); or

(b) if there are 6 or fewer squares printed on the ballot paper above the line—numbering the squares consecutively from the number 1 (in order of preference as described in paragraph (a)).

provisions set out in Subsection 269 (1) allow a vote registering fewer than 6 preferences (including only 1) to be formal.

The specification of “at least” allows voters to register more than 6 preferences – including for all groups.

This is consistent with the NSWCCCL position and with recommendation 1 of the JCEM 2014 report.

NSWCCL recommendation 2

The NSWCCCL supports the proposed amendment providing for above the line optional preferential voting (subsection 239(2)) and the related savings proposals (subsection 269(1))

3.3. Voting below the line

The low number of electors voting below the line reflect the undisputed difficulty of grappling meaningfully with the very large numbers of candidates⁶ when they are required to register a preference for all candidates.

NSWCCL and the JCEM report recommended a move to partial optional preferential voting below the line to be consistent with our recommendation for above the line voting.

The Bill does not provide for this. It maintains full preferential voting and extends the savings provisions to give greater protection against votes being declared invalid.

This is not an adequate response for below the line voting on a number of counts:

- It is difficult to see what principle or rational argument could justify such inconsistency between above and below the line voting principles
- Notwithstanding the proposed extended savings concessions to prevent invalidity it will continue to be a difficult and formidable option for the large majority of voters
- It will still result in informal votes
- It will force the allocation of preferences for candidates that voters may not want to vote or about whom they have no information
- Recent media commentary has drawn attention to the bizarre potential outcome whereby a person who votes for same preferences above and below the line may have one set of votes ruled invalid and the other valid
- The below the line option is important notwithstanding the major reforms to the above the line option. Many voters may want to support a party but not all the listed individuals within the party group or the order of preference the party has chosen for them. This requires a below the line vote. If full preferential voting is not repealed this option will not be practically open to most voters. .

NSWCCL does not support the proposal in the Bill for full preferential voting below the line.

NSWCCL recommendation 3

⁶ 110 for NSW in 2013 election

- i. **NSWCCL recommends the Bill be amended to implement the JCEM recommendation 1 to provide for partial optional preferential voting below the line with a minimum sequential number of preferences to be completed equal to the number of vacancies - 6 preferences for a half Senate election, 12 for a full Senate election and 2 for a territory Senate election**
- ii. **NSW CCL also recommends it be explicit that voters should be allowed but not required to register more than this minimum number of preferences.**

3.4. Ease of formation and registration of new small parties

NSW considers is a core democratic principle that any reforms to the Senate electoral processes do not make it materially more difficult for legitimate new parties to form and to seek election. We considered the PCEM report to be balanced and fair on this issue. The proposals within the Bill are broadly consistent- and in places more protective of small parties than recommended by the report –eg the report recommended 750 minimum registered members of a political party. The Bill proposes the less onerous 500.

Conclusion

The NSWCCL considers the reform of the Senate electoral processes urgent and important to for democratic outcomes.

We urge the Parliament to amend the below the line proposals to be consistent with the PCEM report and to do so quickly within the current session of Parliament. Australians should not have to go into another election with the current process which allow such significant distortion of the voters intentions.

This submission was prepared by Dr Lesley Lynch VP of NSWCCL. I hope it will be of assistance to the Committee in its final deliberations.

With regards

Therese Cochrane
Secretary NSWCCL
29/2/16

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