

NSW CCL statement

Joint Standing Committee on Electoral Matters
7 February public hearing

9:45am, Friday 7 February 2014
Committee room 2R1
Parliament House, Canberra

We thank the Joint Standing Committee for the opportunity to give evidence on the issues identified in our submission to JSCEM's inquiry into the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* (the Xenophon Bill) and Senate practices more generally.

CCL's position is that all electoral systems must be designed to be consistent with certain civil liberties principles, including:

- the body that is elected must have legitimacy – i.e. 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
- 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
- the administration of electoral systems and conduct of elections must be conducted transparently

These principles will be put into effect in different ways across different jurisdictions and elected bodies. CCL's concern is not whether any particular set

of electoral laws for a legislative body is optimal in relation to these principles. Instead, CCL is focussed on whether:

- the existing Senate electoral system detracts from the above civil liberties principles, and
- the Xenophon Bill would change the Senate electoral system so that it is closer to these principles.

We consider that there are elements of the existing Senate electoral system that are clearly inconsistent with civil liberties principles.

- Senators can be elected without their election being seen as legitimate – particularly if they received very few primary votes and their election was due to a complicated set of preference deals between micro and minor parties. Alternatively, a Senator’s election may not be viewed as legitimate if it is perceived that voters confused their party for another party.
- Voters are required to express a preference for at least 90% of all candidates if voting below the line and for all candidates through a ticket vote if voting above the line – regardless of whether the voter wishes to vote for so many candidates. In addition, voters believe they must fill out all boxes if voting below the line. This can make it difficult and challenging for voters to cast a formal vote other than above the line.
- Most voters are not aware of the full set of ticket preferences before they vote. The ticket preferences are relatively difficult to find (although available at all polling booths and on the internet) and are presented in a complicated way. The complete set of printed ticket preferences for NSW in the 2013 Senate election was a thick report.
- Voters may cast an above the line vote for a party they assume reflects one set of policy and ideological views but whose ticket preferences are directed towards parties with different political and ideological views.
- It is possible that voters can accidentally cast a vote for one party when intending to vote for another – due to similarity in party names, the relative placement of the parties on the ballot sheet, and the size of the ballot sheet. Noting that it is not possible to conclusively determine

whether this potential issue has had a material effect at any election, concern has been expressed by a number of people that the incoming LDP Senator for NSW may have been elected for these reasons.

We support the Xenophon Bill:

- It will increase the legitimacy of Senators and the Senate by ensuring that candidates are only elected in accordance with the explicit stated preferences of voters and not due to inter-party preference deals.
- It will introduce optional preferential voting into Senate elections - voters should only be required to preference candidates they wish to (subject to requiring voters to fill in a small, minimal number of squares – we do not have a view about the precise level of this minimum number).
- It will more easily allow voters to cast a formal vote that reflects their preferences by introducing optional preferential above-the-line voting and removing group preference tickets (other than where the ticket includes only the party's own candidates).
- It will reduce incentives for gaming of Senate elections – e.g. where front parties are created with the aim of harvesting preferences for other parties. This may or may not be legal but it is a fraud on voters. The Bill will also remove the possibility that voters can vote above-the-line for one party but have their preferences allocated to a ideologically diametrically-opposed party via ticket preferences. That this can currently happen might also be seen as a fraud on voters given the difficulties in fully understanding the complete sets of ticket preferences.

We are happy to take questions from the Joint Standing Committee.

Statement prepared on behalf of NSWCCCL by Dr Sacha Blumen, Vice President and Convenor of the Civil Rights Subcommittee, with input from NSWCCCL Committee members.

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