



Submission to the Joint Standing Committee on Electoral Matters Inquiry into all aspects of the conduct of the 2013 Federal Election

The NSW Council for Civil Liberties (NSWCCL) 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). NSWCCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people.

We are grateful for the opportunity to make a submission and would appreciate the opportunity to provide further input as required.

Recommendations

The Senate electoral system is in disrepute. Failure to reform it is not an option. It is essential that the following two major reforms be made:

- introduction of optional preferential voting in Senate elections both above and below the line, and
- abolition of group voting tickets in Senate elections.

These two reforms would correct the core breach of democratic principles demonstrated in the 2013 Senate elections. Ignoring these reforms while tinkering with other parts of the electoral system will leave the core problems with the Senate electoral system unaddressed.

We also recommend that the following secondary reforms be introduced in conjunction with the major reforms mentioned above:

- the minimum number of members needed for a political party to be registered with the Australian Electoral Commission (AEC) be increased from 500 to 750
- the AEC strengthens its checking of the membership of an application for a political party registration in a way similar to that used by the NSW Electoral Commission
- there be no additional restrictions on the words parties can use in their name and that the AEC use empirical evidence to support its assessment of political party names, and
- the Senate ballot paper be redesigned to ensure that voters are able to easily vote for the party/candidate of their choice if there is a large number of parties/candidates.

We also recommend that there be no further identification requirements for persons to cast a vote in federal elections.

Introduction

When appearing before the Joint Standing Committee on Electoral Matters on 7 February 2014 on its submission on reforming the Senate electoral system, the New South Wales Council for Civil Liberties (CCL) was asked a number of questions that were taken on notice.

This submission contains our responses to those questions and discusses further proposed reforms to the federal electoral system.

Background

Two of the most important civil liberties are the right to vote in an election and the right to nominate for election. CCL has drafted this submission with these two rights in mind. 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
- 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 federal electoral system is key to ensuring that the Federal Parliament represents the overall stated views of voters expressed through their votes cast at an election. In our submission on the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* (the Xenophon Bill), we wrote that that Bill had been introduced in the context of concerns about whether the 2013 Senate election results truly reflected the intentions of voters. These concerns focussed on:

- questions about whether voters may have confused one or more parties with other parties
- the complexity and opaqueness of group ticket arrangements, with many voters unaware of their details, and
- concerns that the Senate election may have been ‘gamed’ with the registration of front parties with the intention of farming preferences for other parties through group voting tickets and not of electing candidates of the front party.

Our submission on the Xenophon Bill focussed on addressing the first two dot points. This submission focusses on party registration and other matters and should be read in conjunction with our submission on the Xenophon Bill (attached).

Removal of Senate group voting tickets and introduction of optional preferential voting for Senate elections

We strongly support the removal of group voting tickets for Senate elections and the introduction of optional preferential voting in Senate elections for both above and below the line voting.

Removing group voting tickets would reduce the opportunities for gaming of the Senate electoral system and ensure that the results of Senate elections more closely reflected the preferences of the electorate. The NSW Council for Civil Liberties is concerned that the combination of Senate group voting ticket deals and the lack of optional preferential voting has resulted in some Senators being elected on the basis of inter-party deals instead of voters' intended support.

Introducing these two reforms would remove the 'lottery' element of Senate elections. It would also reduce the incentives for front parties to be created to harvest preferences for other parties. Tinkering with other elements of the electoral system (e.g. party registration, nomination requirements, and the Senate ballot paper format) without removing group voting tickets and introducing optional preferential voting would not fix the current problems with the Senate electoral system.

Minimum number of members for party registration with the AEC

We recommend that the minimum number of members for a party to be registered with the AEC be increased from 500 to 750 members.

Currently, political parties are required to be established on the basis of a Constitution with its aims and purposes and to have at least 500 members. Deciding on a minimum threshold involves carefully balancing the right for new parties to be registered and for registered parties to have a certain minimum degree of membership.

Five hundred members are needed for party registration in Victoria, Western Australia and Queensland and 750 members are needed for NSW. As at 8 April 2014, 19 parties had registered with the NSW Electoral Commission, indicating that the NSW requirements are not a material barrier to party registration.

It is reasonable that at least 750 members should be needed for party registration at the federal election given that it is the threshold in one of the states. Furthermore, there is evidence that a 750 member threshold is not a barrier to new parties registering.

We oppose lifting the threshold above 750 members as this may reduce the ability of new parties to register and contest elections.

Ensuring minimum membership thresholds are met

The NSW Council for Civil Liberties recommends that the NSW approach to verifying party membership be adopted at the federal level.

The scrutiny of the membership for political party registration at a federal level needs strengthening. In order to register, the party must currently register a list of 500 members with each member's name, address and date of birth. The Commission contacts a sample of between 18 and 50 members for members to confirm their membership. If the party lodges a 550 members list, the Commission contacts 50 members and the registration can be valid if no more than 7 of them confirm their membership.

Currently, the Commission does not verify the bona fides of each member. We recommend the consideration of the establishment of a system that better ensures that the list of persons claimed to be members are bona fide members. The NSW approach does this better than the federal approach.

The NSW Electoral Commission requires the party to provide a Declaration of Party Membership completed and signed by each of the party's 750 members. The Commissioner contacts a certain number of members so that they can confirm they are members of the party. The party also has to enter member details on the online Political Party Registration System. The details are then compared with the data held for that person in the NSW Electoral Roll.

Requiring that each stated member of a political party complete and sign a Declaration of Party Membership would add to the administrative costs for members, parties and the AEC. However, it would be a reasonable way of ensuring that parties do in fact meet the minimum required threshold of members for registration.

Period to register parties before an election

At the Canberra public hearing into the Xenophon Bill, one suggestion was put forward that political party registration could be closed 12 months before the election to prevent the participation of parties which are formed in the lead up to an election. The general timing of an election is often widely canvassed in the media and among politicians and people may form parties in the months leading up to an election. The motive behind this suggestion appears to be to ensure that parties contesting an election are not ephemeral.

Adopting this suggestion would parallel arrangements in NSW in which a party seeking to stand for NSW Parliamentary or local government elections must be registered at least twelve months before an election.

We oppose this suggestion. Preventing party registration in the twelve months before an election would prevent a party that had formed to promote particular policies – e.g. in reaction to a particular recent event or government policy – from being able to contest an election simply due to timing issues. Such a party could only contest the *next* election as a registered party. This would be an anti-democratic restriction on the choice offered to voters.

Party names

We also oppose any further restrictions on the words that can be used in party names. While there is concern that some voters may have mistaken the Liberal Democratic Party for the Liberal Party in the 2013 NSW Senate election, it does not seem that voter confusion about

party names has been a material issue in most Senate elections. The fact that voters did not appear to confuse the Liberal Democratic Party for the Liberal Party in other states in the 2013 Senate elections suggests that any confusion arose due to other factors such as the relative placement of the two parties on the ballot sheet.

Imposing restrictions on party names would be anti-democratic as it would restrict the names new parties could have, making it more difficult for them to contest elections. Instead, the AEC should use empirical evidence to assist its assessment of applications for party names while retaining the existing statutory provisions for the assessment of party names. This would be a way of helping ensure that voters are unlikely to confuse one party's name for another without introducing unneeded barriers to new parties registering.

The AEC might use market research to consider whether voters are likely to be confused by a potential party name, for example in a simulated election using a ballot paper similar to the 2013 NSW Senate ballot paper.

Ballot paper design

We recommend that the Senate ballot paper be redesigned to enable voters to clearly identify and knowingly vote for the party of their choice regardless of the number of parties and candidates that stand in the election.

In the 2013 Federal election, the ballot paper for New South Wales had 44 groups and parties and 110 candidates. In practice, the ballot paper failed to be simple enough to enable voters to easily understand the potential effect of their vote.

We reject the approach of seeking to reduce the number of parties and candidates in Senate elections to fit the current ballot paper. Instead the ballot paper must ensure that voters can easily vote for the party/candidate of their choice regardless of how many candidates there are.

We also oppose ordering party names on a Senate ballot in a way that treats more popular parties or parties with sitting parliamentarians preferentially. The electoral system should treat all parties equally and not serve to entrench existing parties.

No additional identification to cast a vote

There has been some discussion in the media since the 2013 election that greater identification requirements should be introduced for voters.

We oppose any suggestion that additional identification requirements be introduced for persons to cast a vote. Doing so would be likely to lead to many people not casting a vote in the name of seeking to fix a problem that is comparatively minor in scale in practice. Requiring identification to cast a vote would be very likely to detrimentally affect young people, Indigenous people and members of other groups who generally have only limited forms of identification.

There is currently very little double or multiple voting in Australian elections. Introducing identification requirements may not prevent double or multiple voting as a single person can vote in multiple ballot booths. If there is concern that multiple of double voting may have affected the outcome of any election, a case could be taken to the Court of Disputed Returns.

No further restriction on prisoners voting

At least one current Federal MP has been reported in the last few years as suggesting that persons who are imprisoned for more than one year should lose their right to vote. Currently, persons who are imprisoned for three years lose their right to vote.

CCL opposes such a suggestion, as the right to vote is a civil right that is not connected to penalties imposed by a Court.

Conclusion

There is a need to reform the electoral system to ensure that it translates cast votes into a Parliament truly reflecting the collective view of voters. The following reforms must be made:

- introducing optional preferential voting in Senate elections both above and below the line
- abolishing group voting tickets for Senate elections, and
- reforming the party registration system.

Failure to reform the electoral system is not an option. Doing so would bring it into further disrepute.

Submission 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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