



The Hon Tony Smith MP
Chair
Joint Standing Committee on Electoral Matters
PARLIAMENT HOUSE
Canberra, ACT 2600

By email: em@aph.gov.au

24 April 2014

Dear Mr Smith

The following submission outlines some of the views of the Australian Labor Party (ALP) in relation to the Terms of Reference for the Joint Standing Committee on Electoral Matters (JSCEM) Inquiry into the 2013 Federal Election.

The ALP notes that the specific purpose of the current hearings is to investigate whether changes should be made to processes for a Senate election. The ALP will consider a further submission into other issues associated with the last federal election at a later date.

The ALP has consistently supported the maximisation of the franchise and the election of representatives that reflect the true intention of voters. Following the 2013 federal election, the ALP is supportive of the JSCEM investigating the system of Senate elections.

Western Australian Senate Re-election

The ALP shares the disappointment of many that voters in Western Australia were forced to return to the polls six months after the last federal election for the half-Senate re-election.

The ALP notes the long history of effective service to the nation by the Australian Electoral Commission (AEC) but notes the finding of the review into the Western Australian ballot by Mick Keelty AO.

The recommendations of the Keelty Review should be implemented in full, and the JSCEM should also look at possible changes to the *Commonwealth Electoral Act 1918 (CEA 1918)* following from the decision of the Court of Disputed Returns in relation to the Senate vote in Western Australia.

In particular, JSCEM should note the reasoning in the judgement in the Court of Disputed Returns and the capacity for future challenges to declared results which may be vexatious.

Preventing Manipulation of the Senate Vote

The ALP believes that Australia's system of voting is fair, transparent and works to deliver on the intention of voters. As a general rule, alterations to the operation of the current voting system should be avoided. Without evidence of a problem that must be addressed, the fact that the

overwhelming majority of voters are comfortable with the existing voting system should be respected.

However, in relation to the Senate vote in recent years, it is clear that candidates have been elected with little public support. This has occurred through the manipulation of micro-party preference deals.

The ALP believes that JSCEM should consider recommendations that address these issues as they relate to the Senate.

Specifically, the election of Senators who attract only a very low primary vote and rely principally on preference arrangements to get elected do not reflect genuine voter intention and need to be addressed.

Not discounting the number of minor issues relating to the current Senate situation that will also need to be considered, it is our view that there are two primary issues that need to be specifically addressed:

1. The inadequacy of current registration requirements for micro parties to register and contest Senate elections; and
2. The current operation of Group Voting Tickets in harvesting preferences and by doing so delivering outcomes that are not an expression of genuine voter intent.

Current requirements for registering and contesting Senate elections

The ALP believes that JSCEM should consider recommendations that make changes to the system of party registration to ensure that candidates representing themselves, or a minority of interests are not able to abuse party registration to misrepresent or over-state to voters their agendas, intentions or status.

There has been an explosion of micro parties registering and contesting Senate elections. This has seen ballot papers grow dramatically in size which is compromising their functionality and has encouraged the harvesting of preferences through the registration of Group Voting Tickets (GVTs).

While not wishing to discourage genuine and new participants in the democratic process, it is clear that the current requirements around party registration and nomination are not proving a sufficient filter to discourage or eliminate those candidate whose objective is to game the current system and achieve Senate results which do not reflect the true intentions of voters.

There are a number of existing requirements for registration and nomination that operate in a number of state jurisdictions that are more rigorous than the existing federal requirements.

These have not proven to be a barrier in those states to those who would seek to stand and genuinely contest elections. In fact, there has been no evidence of which we are aware of any significant opposition to the operation of the various state requirements. In particular, NSW, Victoria, WA and SA all have requirements that extend beyond the current federal system if extrapolated to a national requirement.

While not wishing to impede the development or capacity for new and smaller genuine entrants to participate in our democratic system, it is difficult to reasonably argue that existing state requirements cannot be extended to address some of the issues that have emerged in the Senate.

The ALP supports a review of existing party registrations, and stricter regulations for the registration of a political party under the *CEA 1918*.

This should include parties with similar names to existing parties having their registration reviewed. The ALP believes that attempts to confuse and mislead voters via the party registration system should be discouraged.

Additionally, JSCEM should also consider a more rigorous system of registration. As previously noted is the case in other state jurisdictions, the ALP supports higher numbers of members required for a federally registered political party and regular audits of membership for those parties to continue their registered status. Upwards of 2,000 members nationally should be required as a minimum threshold to register a political party for a federal election.

The AEC should also be empowered to conduct signature checks of valid members. As a condition of state party registration in NSW and South Australia, a certain number of party members are required to physically fill out and sign an official form confirming their membership. This measure should be adopted federally.

Registered parties should be required to prove they have a certain number of valid members, for example 50 members, in every state and territory in which they contest elections. Further, there should be an increased fee for the registration of a political party and different parties should not be able to share the same office bearers.

The JSCEM may also wish to consider whether the requirements for candidate registration for the Senate meet community expectations. Candidates not resident in the state or territory they are nominating for, or being nominated by voters external to that state or territory present issues that JSCEM should examine.

Group Voting Tickets

The manipulation of Group Voting Tickets (GVTs) are a central reason that candidates with little public support have seen themselves elected to the Australian Senate. Without GVTs, the capacity of these candidates to deliver sufficient preferences through a coordinated preference harvesting strategy would not exist.

However, a return to the pre 1984 system where all voters must number every square on a Senate ballot paper would lead to a massive increase in informality and mass voter confusion. The sheer size of any Senate ballot paper, even if there is a decline in micro-parties, would still make such an approach impractical, onerous and confusing for voters.

A Senate ballot is complex for a number of reasons including:

- the large number of candidates,
- the nomination of multiple candidates from particular parties,
- the election of multiple vacancies, and
- the operation of a proportional representation electoral system.

As a result of the complexity of a Senate ballot, and the problems that have emerged with the gaming of GVTs, it is important that any changes considered by JSCEM:

- encourage formality,
- are simple for voters to understand, and
- maintain confidence in the democratic system.

In addition to the above, it is important to be clear that the possible measures suggested below that JSCEM may consider to address unique problems that have emerged with GVT in the Senate, particularly some form of Optional Preferential Voting (OPV), are a response to the specific issues with the current Senate voting system only.

There is no evidence that similar issues, most particularly the abuse of GVTs, exist in the current House of Representatives voting system and the ALP would not support any consideration of OPV for House of Representatives elections.

In this context, the ALP believes that an appropriate model of OPV should not be excluded from JSCEMs consideration as a possible option to address the specific undemocratic issues that have emerged in the current Senate voting system.

In the specific circumstances of the current Senate voting system where GVTs are so blatantly being abused to frustrate the democratic will of electors, even the normally undesirable effect of OPV which leads to a significant number of votes exhausting may be the lesser of two evils.

Maximising voter participation, encouraging formality and maintaining confidence in the electoral system must be JSCEMs key priorities if it is to consider any move to OPV for the Senate in response to the current abuse of GVTs that is occurring there.

In this context, the NSW upper house system could act as a guide to any proposed reform.

Under the NSW system for upper house voting:

- OPV is allowed both above and below the line,
- any preferences above the line are deemed to run through each nominated party's listed candidates in their nominated order before moving on to the next nominated party and
- a vote above the line can be a single 1, and be formal.

Due to a requirement of the NSW Constitution, a vote below the line must number 1 through 15 to be formal. There is no need for there to be such a requirement for the Senate.

Labor's preferred position would also see a requirement that ballot paper instructions and how-to-vote material advocate that voters fill in a minimum number of boxes above the line, while still counting as formal any ballot paper with at least a 1 above the line.

This would highlight and encourage voters to indicate preferences if they were inclined to, and assist in keeping vote exhaustion to a minimum.

Funding and Disclosure

The ALP has consistently argued for reform of the funding and disclosure regime to increase public funding for elections and to remove the distorting influence of vested interests and big money politics.

The need is more evident in Australia than ever before, and recent Senate election campaigns have again demonstrated that the ability to purchase a large media presence contributes to electoral results.

JSCEM should seek further data on actual media spends from registered political parties in 2013 and the WA Senate re-election and consider further reform in this area. It should also look at associated corporate media spends during the electoral period.

The ALP would welcome the opportunity to more fully present its views on reform of funding and disclosure at a later date.

Yours sincerely

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