

## Chapter Five

### Reforming the Senate Electoral System

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*The 2013 Senate election saw the highest non-major party vote since the introduction of proportional representation in 1949. It resulted in the election of seven minor party and independent candidates. This paper argues that two factors contributed to this outcome: a long-term desire among a significant group of voters to ensure that the Government (of whatever political complexion) does not control the Senate; and the evolution of the Senate electoral system into a semi-closed party list system. Five reforms to the electoral system are considered: the introduction of a new plurality system; a change to a closed party list system; the introduction of a vote threshold for election; changing the rules around the registration of political parties; and increasing the cost of nomination. A change to a closed party list system combined with a vote threshold are viewed as most likely to achieve the desired outcome and to be politically acceptable.*

The 2013 Senate federal election saw almost one in three first preference votes cast for a minor party or an independent candidate. This was the highest non-major party vote since the introduction of proportional representation for Senate elections in 1949. The outcome was the election of seven minor party and independent candidates, from six separate groupings, plus four candidates from the Greens.<sup>1</sup> This was the highest level of minor party representation since 1987.<sup>2</sup> Two of the candidates who were elected – the Australian Sports Party and the Australian Motoring Enthusiast Party – received just 1.0 percent and 3.8 percent of the first preference vote, respectively, in their States.<sup>3</sup> The election of candidates who attracted such small initial votes raises questions about the efficient operation of the Senate electoral system.

The election of so many minor party and independent candidates attracted widespread criticism. The outgoing Minister for Foreign Affairs, Senator Bob Carr, characterised them as “pocket-handkerchief political effusions” (*AFR*, 24 October 2013), while the Greens leader, Christine Milne, warned of “an extraordinary array of people whose policies nobody’s got any idea about” (*The Australian*, 9 September 2013). The Independent Senator from South Australia, Nick Xenophon, who had attracted 1.76 of a quota in South Australia, talked of the process by which these candidates had been elected as “bizarre and demeans our democracy” (*The Australian*, 9 September 2013). However, derogatory comments about Senate candidates has a much longer history: in 1992 Paul Keating famously called the Senate “unrepresentative swill”, while Joan Child in 1983 talked of Senate elections offering choices between “candidates from the flat earth society and the radical bomb throwers and collectors” (quoted in Farrell and McAllister, 2005: 43).

The success of the minor parties in 2013 was made possible by two factors: long-term changes in voter behaviour combined with technical changes to the electoral system dating back to 1983. In terms of voter behaviour, the strength of partisan loyalties has been declining since the 1980s. Lifetime voting for the same party has declined significantly, from 72 percent in 1967 to 52 percent in 2010 (McAllister, 2011:

52). At the same time, voters are more likely to support different parties in the House of Representatives and the Senate. In the 1990s, just over one in 10 voters split their votes in this way; since 2001, the proportion has been just under one in five (McAllister, 2011: 14). Changes to the Senate electoral system have also contributed to the outcome. The system was changed in 1984 from proportional representation based on the single transfer vote (STV or “Hare-Clark”), to what is in practice a semi-closed party list system. This change has enabled the parties to negotiate the transfers of votes without reference to the wishes of voters.

This paper examines the reasons for the increasing success of minor party and independent candidates in Senate elections and evaluates the ways in which the system could be reformed. The first section examines the evolution of the Senate electoral system, focussing particularly on the 1984 reforms and their consequences. The second section outlines voters’ views of the system and charts the rise of split-ticket voting. The third section traces patterns of voting in Senate elections since 1949, while the fourth section identifies how the Senate electoral system might be reformed and assesses the likely consequences of these changes for party representation.

### **The Evolution of the Senate Electoral System**

The Senate electoral system has experienced a variety of changes since federation in 1901. The Conventions of the 1890s had largely ignored the issue of electoral system design. At one level this was driven by expediency, and a desire to obtain agreement on the institutional framework and to leave the design of the electoral system until later. This was embodied in the “wonderfully permissive s.9 of the Constitution” which allowed the Parliament to decide on a uniform electoral system for itself (Uhr, 1999: 29).

A further consideration was the issue of the franchise, which was complicated by South Australia’s decision to allow women the vote, and a wish not to disenfranchise any section of the electorate. The net effect was that the constitutional framers were anxious to avoid questions about uniform electoral systems which would upset some of the States, and thereby threaten the ratification of the Constitution (Crisp 1949: 65).

From the outset, a preferential electoral system was regarded as the best system for the House of Representatives. This stemmed from three factors. First, Australia was heavily influenced by debates about preferential voting in Britain, particularly the 1917 Speaker’s Convention on electoral reform. Second, prior to 1901, the colonies had engaged in considerable experimentation in electoral system design, notably in Queensland and Tasmania during the 1890s. Third, there was the key influence of three figures: a campaigner, Catherine Spence; a legislator, Andrew Inglis Clark; and a theorist, Edward Nanson, each of whom promoted the adoption of preferential systems. While some have suggested that Australia’s contributions to electoral system design were borrowed from overseas (see, for example, Hancock, 1947: 81), it is unlikely that preferential voting would not have been adopted without the efforts of Spence, Clark and Nanson.<sup>4</sup>

While the 1901 election was conducted using the electoral systems then in place in the colonies, it was left to the newly elected Parliament to devise an electoral system for the House of Representatives and the Senate. Nanson had a particular influence over the adoption of preferential voting for the House of Representatives, and a proportional system for the Senate, as enshrined in the *Commonwealth Electoral Act*

1902. Nanson's aim was to avoid the disproportional outcomes common in plurality systems, while preserving the link between the elected representative and the constituent in the lower house. However, after much controversy and heated debate, these proposals were rejected and first-past-the-post voting was adopted for both houses, using single member plurality (SMP) for the House of Representatives, and block voting for the Senate.

**Table 1: House of Representatives and Senate Electoral Systems since 1901**

<b>Period</b>	<b>State</b>	<b>Type of Electoral System</b>
<b><i>House of Representatives</i></b>		
1901	NSW, Vic, WA	First-past-the-post, single member constituencies
	Qld	Contingent voting, single member constituencies
	SA	First-past-the-post, block voting
	Tasmania	Hare-Clark
1903–18	All States	First-past-the-post, single member constituencies
1918–	All States	Preferential, single member constituencies
<b><i>Senate</i></b>		
1901–17	All States, except Tasmania in 1901	First-past-the-post
1919–31	All States	Preferential block majority/optional preferences
1934–46	All States	Preferential block majority/compulsory preferences
1949–83	All States	Proportional representation/compulsory preferences
1984–	All States	Proportional representation/ticket preferences

Source: Farrell and McAllister (2005).

The adoption of first-past-the-post voting for the two houses was viewed as a temporary measure, necessitated by the failure to secure agreement on a permanent system, and debate about the design of the electoral system continued. The debate surfaced in, among other places, a royal commission report (1914-15), parliamentary motions (1909, 1911, 1914), and in a government bill (1906).<sup>5</sup> Preferential voting was eventually adopted in 1918 for the House of Representatives, following the “Flinders Deal” between the Nationalist Party and the Victorian Farmers’ Union, by which it was agreed to nominate only one non-Labor candidate. The preferential system that was adopted was identical to the one proposed by the Barton Government in 1902, with the exception of replacing optional with the compulsory expression of preferences. Since 1918, this electoral system has remained in place for the House of Representatives.

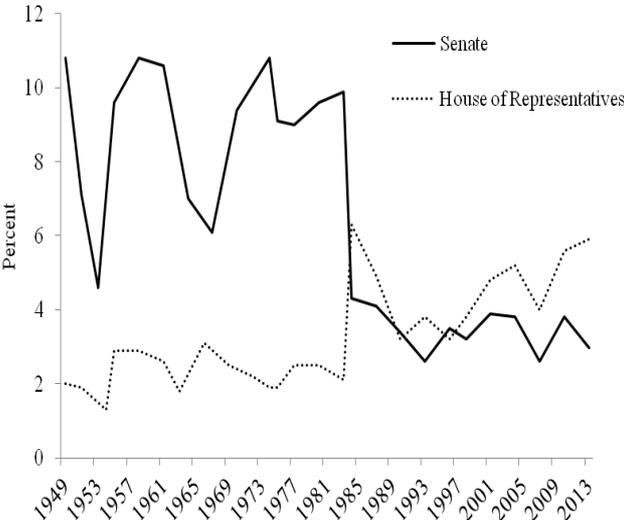
The Senate electoral system, by contrast, has generated continuous controversy. In 1919 a preferential block majority system was introduced; the idea was, first, to allow voters to rank order the candidates in the same manner as under majority preferential voting and, second, to ensure that each candidate was elected with an overall majority. In effect, what this produced was a series of mini-elections, one for the election of each candidate. All the votes of the winning candidate were transferred to the

remaining candidates, based on the next preferences and then there was a fresh count to see which of the remaining candidates had an overall majority of the vote. The process continued until the required number of candidates were elected. This electoral system institutionalised the “windscreen wiper” effect – of one party winning all or most of the Senate seats in one election, only to lose all or most in the next election – and elections in the following thirty years were to produce dramatic shifts in representation in the Senate based on relatively small moves in voting support.

The next change in the Senate electoral system came in 1948. The change was initiated by concerns about the impact of the “windscreen wiper” effect on an enlarged Senate (Crisp 1978: 219), as well as a desire by the Chifley Labor Government to gain partisan advantage (Uhr, 1999). The system adopted was largely based on that of Tasmania, with two exceptions: the use of random transfers at full value rather than the Gregory method; and the use of compulsory rather than optional preferences. This system remained in place until the election of the Hawke Labor Government in 1983, which proposed a series of reforms relating to party funding, boundary redistribution, the establishment of an electoral commission, party registration, ballot paper design, and the operation of the Senate electoral system.

The reform to the Senate electoral system was the most far-reaching. Concerns had been mounting about the high levels of invalid (or “informal”) votes in Senate elections, due to the complexities of the Senate ballot paper and the requirement to express preferences for all candidates. Other contributing factors included the differences in the State and federal electoral systems and the frequency with which elections are carried out which, coupled with compulsory voting, means that some 95 percent of registered voters have to attend a polling place about once every 18 months. Although levels of invalid voting had always been high for Senate elections (McAllister and Makkai, 1993), in elections in the 1970s invalid votes were constituting about one in 10 of all of the votes cast (see Figure 1). To try and reduce the numbers of informal votes, a modified PR list system was adopted, to give voters the option of expressing just one preference for a party “ticket” instead of the laborious task of having to rank-order all the candidates on the ballot paper.

**Figure 1: Levels of Informal Voting, 1949-2013**



Sources: Barber (2011); Australian Electoral Commission.

The impact of the change in the Senate system was immediate and dramatic, with the proportion of informal votes declining from 9.9 percent in 1983 to 4.3 percent in 1984. However, the change in the Senate ballot paper also caused confusion among some voters in their completion of the House of Representatives ballot paper, and informal votes trebled, from 2.1 percent in 1983 to 6.3 percent in 1984. It subsequently declined, but since 2001 informal votes have made up about one in 20 of all votes cast for the House of Representatives, historically a high figure. While the 1983 change undoubtedly made the act of voting in Senate elections simpler, it also effectively transformed the existing PR STV system into a semi-closed party list system, in which the rank-ordering of the candidates was determined by the political party rather than by the voters.

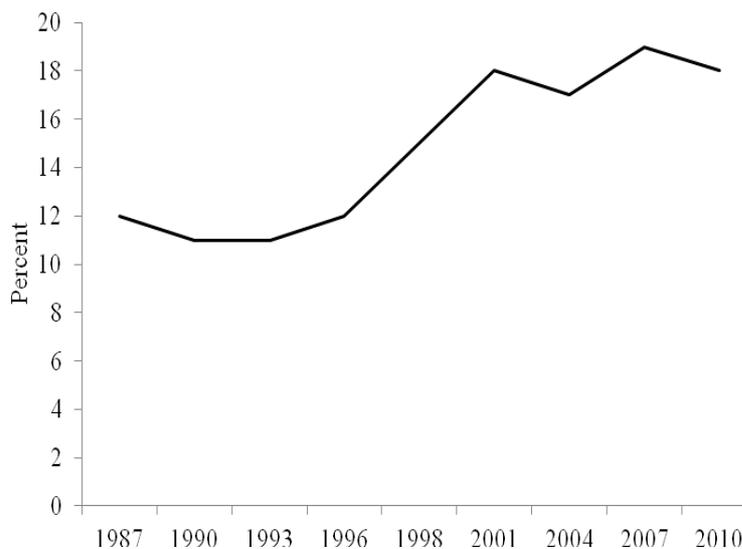
The Senate electoral system has therefore experienced a range of changes since federation, while the House of Representatives electoral system has largely remained unchanged since 1918. The current Senate system, following the 1984 changes, is no longer what it was intended to be in 1949, namely STV. In practice it is now a party list system, with voters choosing a party ticket rather than individual candidates. While the choice of ordering individual candidates remains, relatively few voters exercise that choice. How the public views the system and how it affects electoral outcomes are examined in the next two sections.

### **Patterns of Split-Ticket Voting**

The electoral system provides the opportunity for voters to cast a ballot for one party in the House of Representatives, and for a different party in the Senate. Such split-ticket voting reflects a desire to ensure that the government of the day does not control the Senate and therefore enact its legislative agenda without proper scrutiny. In terms of bringing the possibility for split ticket voting to the attention of the public, Sharman (1999: 358) sees the 1955 election of a Democratic Labor Party senator as a turning point: “once a minor party had been elected to the Senate and had held the balance of power, a clarion call was sent to parties and voters that PR in the Senate could be used by a minor party with great effect to influence government policy.”

Despite this early indication that divided government could affect governance, split-ticket voting did not increase significantly until the mid-1990s, as Figure 2 indicates. Between 1987 and 1996, split-ticket voting was stable at between 11 and 12 percent of the electorate, increasing to 15 percent in 1998 and 18 percent in 2001. In the 2007 and 2010 elections, almost one in five voters opted for a different party in the House of Representatives and the Senate. While comparisons using survey estimates prior to 1987 are less accurate, the evidence suggests that there were lower levels of split-ticket voting in the 1960s and 1970s. For example, when asked in a 1979 survey about their voting intention, only nine percent of the respondents said that they would split their vote between the House of Representatives and the Senate. As in the United States and other countries, then, split-ticket voting appears to be a relatively recent phenomenon.

**Figure 2: Split-Ticket Voting, 1987-2010**



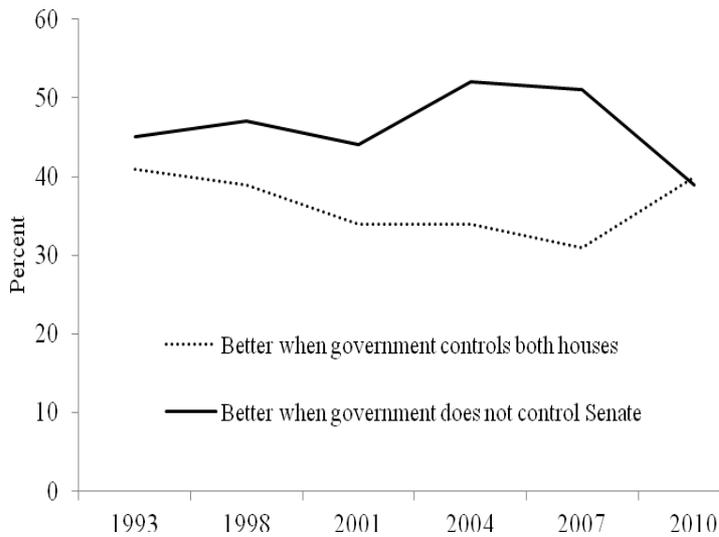
The Liberal and National parties are treated as a single party.

Sources: 1987-2010 Australian Election Study surveys.

The international research suggests that the phenomenon of split-ticket voting is a symptom of declining popular trust in parties. Fiorina (1992) argues that this widespread suspicion of parties is reflected in a preference for divided government, so that no single party possesses the capacity to govern unhindered. Australian research has endorsed the view that voters' motivations are tactical and positive rather than dysfunctional and negative. Bowler and Denemark (1993) use aggregate data to argue that the electoral systems of the upper and lower houses create very different structural opportunities for voters to cast their ballots tactically, and are unrelated to dealignment. Similarly, Bean and Wattenberg (1998) show that Australian split-ticket voters are largely motivated by a desire to see power shared between the parties, in line with the "keep the bastards honest" slogan that became the watchword of the Australian Democrats during its heyday in the 1980s and 1990s.<sup>6</sup>

Since 1993 the Australian Election Study has asked a question about whether the respondents favour a situation where the federal government controls both houses or where the government does not hold power in the Senate. As Figure 3 shows, until 2010 there was a gradual increase in the proportions preferring an outcome which leaves the government without a majority in the Senate; by 2007 the gap had increased considerably, with 51 percent preferring divided government and just 31 percent government control of the Senate. The gap closed once again in 2010, with 40 percent believing that it was better if the government had control of both houses. This may reflect the indecisive election outcome in 2010 and the dependence of the incumbent Labor Government on the support of three independent candidates in the House, all with differing priorities and views.

**Figure 3: Attitudes Towards Government Control of the Senate, 1993-2010**



“Which do you think is better – when the Federal Government has a majority in both the House of Representatives and the Senate, or when the Federal Government in the House of Representatives does not control the Senate?” The question was not asked in 1996.

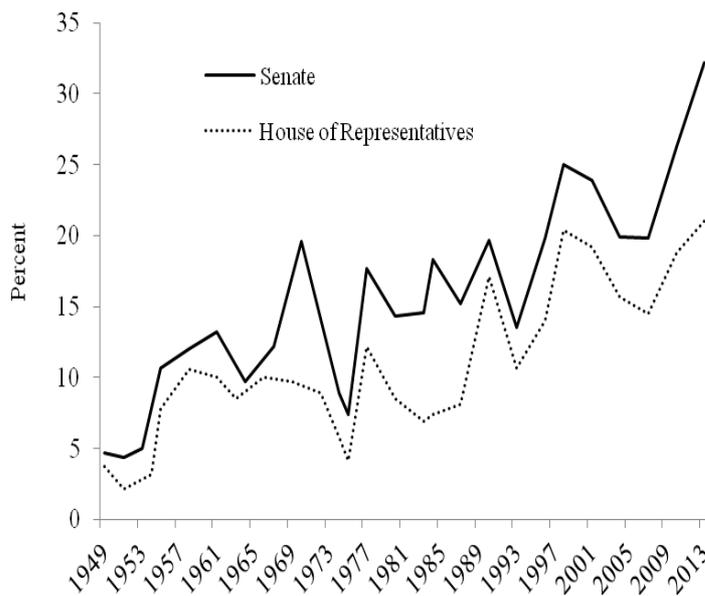
Sources: 1993-2010 Australian Election Study surveys.

How voters perceive political institutions is one factor that affects how they will choose to use the electoral system. One explanation for the representation of minor parties following the 2013 Senate election is the rules surrounding the counting of votes. However, the opinion poll results presented here also show that a significant number of voters value the opportunity of ensuring that a governing party does not control the Senate. These wishes need to be borne in mind when evaluating any changes to the Senate electoral system.

### **Patterns of Voting in the Senate since 1949**

The adoption of the single transferable vote for Senate elections in 1949 had no immediate effect on patterns of voting. In the election immediately prior to the change, the 1946 election, the two major parties attracted 95.3 percent of the vote and won all of the available seats; in the 1949 election the major parties attracted 95.4 percent of the first preference vote and again won all of the available seats. Even in the 1951 election, which, unlike 1946 and 1949, was a full Senate election, the major parties attracted 95.6 percent of the vote. However, Figure 4 shows that support for minor parties and independent candidates in Senate elections was gradually gaining ground, and consistently exceeding the non-major party vote in House of Representatives elections.

**Figure 4: The Non-Major Party Vote, 1949-2013**



Sources: Barber (2011); Australian Electoral Commission.

The 1984 change in the Senate electoral system had little immediate effect in increasing the vote for minor parties and independents. In the 1983 Senate election, 14.6 percent of the first preference vote was cast for non-major parties and, in 1984, following the change, there was a small increase, to 18.3 percent, followed by a decline, to 15.2 percent, in 1987. The most significant post-1984 changes came in the 2010 and 2013 elections: in 2010 the minor party vote jumped to 26.3 percent, and, in 2013, to 32.2 percent of the first preference vote. These increases in the non-major party votes coincide with an increasing sophistication among the minor parties in how to benefit from transfer arrangements based on group tickets. One element in this recent success has been the advice provided by a company called Independent Liaison, led by Glenn Druery.

Since the late 1990s Druery has specialised in providing advice to minor parties about how to maximize their Senate vote. Prior to the 2013 election, Druery had four meetings with the minor parties and provided advice to them on how to use the preference system to maximum advantage (*Guardian*, 13 September 2013). Called the “preference whisperer”, Druery first came to prominence in the 1999 New South Wales State election when he registered 24 minor parties, which resulted in one of the largest ballot papers ever seen in Australia and one of the largest in the world (*Sydney Morning Herald*, 10 September 2013). The purpose of these parties, “relying on nothing more than attractive names to gain votes” (Smith, 2006: 136), was to direct preferences to Druery’s own Republic 2000/People First Party. In the event Druery failed to win election, but a surprised candidate from the Outdoor Recreation Party, Malcolm Jones, did win a seat with just 0.2 percent of the first preference vote.<sup>7</sup>

The direction of preferences is an effective tactic because the vast majority of voters cast an “above the line” vote, that is, they opt for a party ticket. Their unused votes are then directed by the parties in a complex scheme of alliances. While preference arrangements have to be registered with the Australian Electoral Commission and are available on their website<sup>8</sup> and in polling stations, in practice voters will have no

knowledge of where their vote will ultimately go. In turn, voters have little option other than to vote for a party ticket because of the complexity and size of the ballot paper. To lodge a valid vote below the line, the voter is required to number all of the candidates in order of preference; in the 2013 New South Wales Senate election, this would have required the voter to number no less than 110 boxes. In the 2010 Senate election (2013 figures are not yet available at the time of writing) 96.1 percent of voters cast a ticket vote and just 3.9 percent voted below the line. These figures have been constant for many years.<sup>9</sup>

The evolution of the Senate electoral system into a semi-closed party list system has provided multiple opportunities for minor parties to “game” the system through the direction of preferences, particularly since the late 1990s. However, it should also be noted that the major parties have also found the direction of preferences useful, by directing preferences to and from smaller parties that they wish to favour or punish. In recent years the minor parties have simply mirrored the strategies of their larger cousins.

### **Options for Reform**

Since 1901 there have been five separate Senate electoral systems, with the current system now 29 years old, the second oldest system of the five. Coupled with the debate about preferencing and the representation of minor parties in the Senate, this may be an opportune time to consider reform. Electoral system design is, of course, a complex area and there are a myriad of possibilities for change. Five main reform options and their consequences are considered here: changing the electoral system into a plurality system; changing it into a closed party list system; introducing a vote threshold; changing the rules around the registration of political parties; and increasing the cost of nomination.

***Plurality Electoral System.*** If the Senate electoral system is not delivering the outcomes that are seen as consonant with good governance, then the obvious solution is to change the system. One option would be to introduce a plurality or majoritarian system, as existed prior to 1949. This would have two advantages. First, it would simplify the whole voting system and bring the Senate more into line with the House of Representatives, thus reducing the high level of informal votes, particularly if both systems permitted optional preferences. Second, it would usually result in one party winning a Senate majority, thereby ensuring that the Government could enact its legislative program and thereby enhancing the clarity of accountability for voters (unless it was the Opposition which had the majority).

The main disadvantages of any move to a plurality electoral system would be threefold. First, that it would contradict an aspiration among a significant proportion of voters for divided government, as demonstrated in successive public opinion surveys. Second, there would inevitably be large swings in party representation in the Senate and a high turnover in members, particularly in the event of a double dissolution election. This “windscreen wiper” effect was what the 1949 change to PR was designed to avoid. Third, it would reverse an international trend towards the use of proportional rather than majoritarian electoral systems.

***Closed Party List Electoral System.*** A second option for changing the electoral system would be to recognize what the system has evolved into – a semi-closed party list system – and to redesign it to become a closed party list system. This would involve removing the option to vote below the line; voters would only have the option of voting for one or more parties above the line, with the parties deciding on the rank order of their candidates. An advantage of this change would be to simplify the ballot paper greatly, thus reducing the burden on voters and the level of informal ballots. Such a change could be accompanied by optional preferencing, as occurs in most other party list systems. A version of this has been proposed by the former Greens senator, Bob Brown.<sup>10</sup>

The introduction of a closed party list system would effectively mirror the reform to the Legislative Council in New South Wales following the 1999 election, although below the line voting remains an option.<sup>11</sup> The effect of this change has been progressively to reduce the representation of minor parties in the NSW Legislative Council; in the 2011 State election, for example, the party with lowest vote to gain representation was the Christian Democratic Party with 3.1 percent of the first preference vote.

One consideration in the adoption of a party list system is whether it would be constitutional. Section 7 of the Constitution states that the Senate must be directly elected. It could be argued that the election of parties rather than candidates contravenes the requirement for direct election. However, in the 1984 McKenzie judgment, the High Court ruled that group voting tickets were not contrary to section 7 of the Constitution and upheld the “above the line” voting option introduced in the 1984 reform. While any further reforms would need to be tested legally, it seems likely that, based on McKenzie, a party list system would be deemed constitutional.

***Threshold for Election.*** A common method of reducing the number of parties is to introduce a minimum vote threshold that parties must meet before they can gain parliamentary representation. Within the 34 countries that form the OECD, 19 have some form of election threshold; these countries, together with the threshold and the electoral system currently in operation, is shown in Table 2. Most of the 19 countries operate some form of proportional representation, usually an open or closed party list; none of the countries use a majoritarian system and none use STV.

**Table 2: Electoral Thresholds in 19 Countries**

<b>Country</b>	<b>Percent vote threshold</b>	<b>Type of Electoral System</b>
Austria	4	Open list (D'Hondt)
Belgium	5	Open list (D'Hondt)
Czech Republic	5	Closed list (D'Hondt)
Denmark	2 (or winning one constituency)	Open list (preferential)
Estonia	5	Open list (Hare quota)
Germany	5 (or winning three constituencies for compensatory seats)	Mixed member proportional
Greece	3	Semi-proportional
Hungary	5	Mixed member proportional
Iceland	5 (for compensatory seats)	Closed list (D'Hondt)
Israel	2	Closed list (D'Hondt)
Italy	4	Semi-proportional
Netherlands	First seat cannot be remainder seat	Closed list (D'Hondt)
New Zealand	5 (for compensatory seats)	Mixed member proportional
Norway	4 (for compensatory seats)	Open list (Saint-Lague)
Poland	5 (8 for alliances)	Open list (D'Hondt)
Russia	5	Mixed member proportional
Slovakia	5 (7 for two-party alliances, 10 for multi-party alliances)	Semi-open list
Slovenia	4	Closed list (D'Hondt)
Turkey	10 (none for independents)	Closed list (D'Hondt)

Source: Derived from <http://electionresources.org>.

Among the 19 countries listed in Table 2, the thresholds range from two percent (Denmark, Israel) to 10 percent (Turkey) of the vote, with a median threshold of between four and five percent of the vote. Several countries place caveats on these thresholds. In Iceland, New Zealand and Norway, the threshold applies only to compensatory seats, not seats won in a constituency vote. Denmark and Germany dispense with the vote threshold if at least one seat is won. The threshold is often increased for party alliances; in Slovakia, for example, the threshold doubles from five to ten percent in the case of multiparty alliances. In Italy, the threshold is doubled for elections to the upper house, the Senate.

The main advantage of introducing a threshold is its simplicity and ease of administration. However, thresholds also have a number of disadvantages. First, they increase disproportionality in election outcomes and contribute to wasted votes (Anchar, 1997). Second, thresholds discourage new parties from contesting elections and arguably limit the choices of voters in an election. Voters may be discouraged from supporting a minor party in order not to waste their vote. Third, the level at

which a threshold is set can often be arbitrary. A related consideration is whether a vote threshold in the current Senate system should apply to group voting tickets or to individual candidates.

The effect of introducing an election threshold of, say, five percent of the valid vote in Australia for parties would reduce the representation of minor parties from seven senators in the 2013 election to four. Those losing their seats in 2013 would be Family First, the Liberal Democrats, the Australian Motoring Enthusiast Party and the Australian Sports Party; the Palmer United Party, the Liberal Democrats and the Xenophon Group would all retain their seats. In other words, the impact of a vote threshold on the outcome of the 2013 Senate election would be modest, paralleling the impact of a similar reform in Belgium in 2002 when a five percent threshold was introduced.<sup>12</sup>

**Registration of Political Parties.** The formal registration of political parties in democracies serves to regulate political funding and to control the party names (and sometimes emblems) which appear on ballot papers. To gain registration in Australia, a political party must have a written constitution and either at least one federal member or 500 members who are on the electoral roll and who are not members of another party. Currently there are 54 parties registered with the AEC.<sup>13</sup> The political consultant, Glenn Druery, regards these rules as overly lax and has argued that “the reason we have so many groups registered is because forming a party is so easy” (*Guardian*, 13 September 2013).

The introduction of more stringent rules for the registration of political parties would be administratively easy, perhaps requiring a larger number of registered members. Russia, for example, required a registered political party to have at least 50,000 members, but this requirement proved too stringent and was reduced to 500 members in 2013. The main problem with increasing the membership threshold for registration is that it is relatively easy to circumvent; any increase would have to be modest, perhaps from 500 to 1,000 members. Another problem, shared with the introduction of an election threshold, is that it would discourage new parties from contesting elections.

**Cost of nomination.** Requiring a deposit from a candidate, refundable if a minimum number of votes is reached, was gradually introduced in most democracies during the twentieth century in order to discourage frivolous candidates. In Britain, the current deposit is £500, refundable if the candidate wins five percent of the valid vote. In Canadian federal elections the deposit is \$1,000, refundable if Elections Canada receives properly completed financial returns on time. In Australia, the deposit is \$2,000 for a Senate candidate and \$1,000 for a House of Representatives candidate. The deposit is returned to a Senate candidate if the candidate or their group ticket attracts four percent or more of the formal first preference vote.

Increasing the cost of nomination would be administratively easy, but it is unclear whether it would deter many minor parties from contesting elections, unless the cost became excessive. Moreover, the current level of deposit is broadly in line with that found in comparable democracies.

## **Conclusion**

In bicameral systems with strong upper houses, who gains election to the upper house is obviously crucial to the success of the government's legislative program. Along with Germany, Switzerland and the United States, Australia counts as one of only four advanced democracies with an upper house that can exercise any significant legislative authority (Farrell and McAllister, 1995). In practice, the Senate acts as an institutional veto player and its composition can have major implications for governance. In this context, the method of election to the upper house takes on a greater significance than is the case in other democracies.

Since 1949 the Senate electoral system has gradually evolved from a candidate-centred PR system to a semi-closed party list system. The preference distributions that so benefitted the major parties after the 1983 introduction of ticket voting are now being used strategically by minor parties to gain election with small parcels of first preference votes. These perverse outcomes confirm the views of many critics of STV who have argued that the direction of preferences inherent in the STV system results in a choice of winners that is "semi-chaotic" (Dummett, 1997: 142). The 2013 Senate election result exemplified this outcome by electing a candidate who received just 108 first preference votes in his State, when the quota for election was 187,183 votes.

While this paper has shown evidence to support the view that a significant group of voters wishes to see divided government and about one in five vote strategically to achieve that goal, it is difficult to argue that this outcome is what these voters had in mind. Moreover, if voters cast a ballot above the line, there is little transparency about where their vote will ultimately go. This paper has canvassed five reforms to the electoral system intended to minimize these perverse outcomes and to restrict minor parties "gaming" the system. Among these five changes, the replacement of PR STV with a plurality system is perhaps the least politically acceptable and it would result in large swings in party representation in the Senate. Among the other reforms, tightening the rules surrounding the registration of political parties and increasing the costs of nomination would be relatively easy to circumvent by a determined group of individuals. These reforms also start to restrict the freedom to stand for democratic election which is a cornerstone of the democratic system.

The most effective and politically acceptable changes involve either the introduction of a closed party list system or the introduction of a threshold for election, or a combination of both. The introduction of a closed party list system would formally recognize what the system has already evolved into, and institutionalize that change. It would, however, give control of who gets elected solely to the political parties and remove the option for voters to pick their preferred candidates. The introduction of a threshold for election would follow common practice in other open and closed party list systems and effectively exclude minor parties that did not reach the threshold. The main disadvantage is that it would increase disproportionality.

## **Endnotes**

1. The result in Western Australia is likely to be tested in the Court of Disputed Returns since a recount found that 1,375 votes had been lost.

2. The 1987 election was a full Senate election: all elections since then have been periodical elections for half the Senate.
3. The Australian Sports Party candidate received 0.01 of a quota in Western Australia and the Australian Motoring Enthusiast Party candidate received 0.04 of a quota in Victoria.
4. See Farrell and McAllister (2005). For biographical and historical accounts of these individuals, see Haward and Warden (1995); McLean (1996); Reid and Forrest (1989).
5. All these debates have been well-documented: see, for example, Reid and Forrest (1989), and Uhr (2000).
6. The slogan was coined by the Australian Democrats' founder, Don Chipp, at a press conference in 1980.
7. Jones's victory came about thanks to preferences from 22 other parties, including the Marijuana Smokers Rights, the Three Day Weekend Party, the Gay and Lesbian Party (which apparently had no gay and lesbian members), Animal Liberation, the Four Wheel Drive Party, the Marine Environment Conservation Party and the Women's Party/Save the Forest. See Antony Green blog, <http://www.abc.net.au/news/2013-09-11/green-hand-the-power-of-preferences-back-to-the-people/4951020>
8. There is also a website providing this information, <http://www.belowtheline.org.au/>
9. Voters in Tasmania and the ACT are least likely to vote above the line: 79.8 percent and 75.9 percent, respectively, voted above the line in 2010. This is partly because these jurisdictions have many fewer candidates (24 in Tasmania and 9 in the ACT in 2010), and partly because of a familiarity with the STV system since it is used for State and territory elections.
10. Brown's proposal is to allow voters to number the parties above the line in order of preference, with a minimum of six preferences being required in order to cast a valid vote. "Below the line voting could be maintained, or abolished if this is needed to minimise confusion for ordinary voters" (*Sydney Morning Herald*, 11 September 2013).
11. A minimum of 15 preferences below the line are required in order for the vote to be valid.
12. The Belgium reform in 2002 introduced a threshold of 5 percent of the national vote (though it does not apply to three constituencies). The change was motivated by a desire to reduce the parliamentary representation of anti-system parties. In the 1999 lower house election, 12 parties stood for election and 11

gained one or more seats in the lower house. In the 2003 election, following the reform, 12 parties again stood for election with 10 gaining one or more seats. In effect, then, the reform had little direct effect on parliamentary representation.

13 See

[http://www.aec.gov.au/parties\\_and\\_representatives/party\\_registration/Registered\\_parties/](http://www.aec.gov.au/parties_and_representatives/party_registration/Registered_parties/)

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