

TIME TO IMPLEMENT EFFECTIVE VOTING SO ELECTORS' WISHES ARE PLACED AT THE HEART OF OUR FEDERAL ELECTORAL SYSTEM

Submission by the Proportional Representation Society of Australia in response to the Electoral Reform Green Paper *Strengthening Australia's Democracy* of September 2009

Summary

The Proportional Representation Society of Australia and its constituent branches work to strengthen democracy in a voter-oriented non-partisan manner.

Our objective is to secure the adoption of the quota-preferential method of proportional representation for the election of representative bodies. Electoral systems that have effective voting as an operating principle will always produce representative outcomes. Their best forms encourage extensive local campaigning in public elections as voters wield real polling-day influence.

Our submission concentrates on the House of Representatives and Senate electoral systems in use and matters that are closely allied. More generally, we support better use of technology and greater flexibility or discretion being available in administrative processes as long as official impartiality is not compromised. Similarly, we are predisposed towards harmonisation, especially of aspects of electoral administration such as enrolment, voting other than in person on election day and electoral education and promotion, as long as voter influence is not weakened.

Electoral administrations can learn much from the approach of Elections ACT which has led the way nationally in relation to electronic roll marking and voting and validated electronic entry of preferences marked on paper. It explores the possibilities for adopting technological advances next time in the period after a particular election has been wrapped up, and brings its conclusions before a reference group well before the balance of its activity must swing strongly to ensuring that the mechanics of the next election are properly implemented.

In general, prospective candidates should be encouraged to put themselves and their ideas forward for testing among voters. Some care must be taken to ensure that the electoral system not be brought into disrepute by such a proliferation that what is asked of voters makes a mockery of their legislated obligations in relation to voting.

To retain public credibility and good-will, the election process and outcome must be seen as *fair* to voters, candidates and parties. This is not achievable just by giving citizens an opportunity to vote. That is a necessary condition but not one that is sufficient.

Electors must be able to discern real influence if they are to become or remain engaged. Otherwise we are expecting them to fall for window-dressing or a token contest and should not be surprised if they largely switch off and periodically become hostile instead.

Single-member electorates fail to accurately reflect voters' views

In the pursuit of fairness, the best guiding principle is that of *maximising effective votes*, or equivalently, *minimising wasted votes*. Electors regard their participation as worthwhile because it is clear that their views are being heeded. This is also the best assurance that the next government will be determined by majority support of voters.

Only through effective voting can we always be certain of a representative parliament with government and opposition MPs accurately reflecting the geographical spread of their supporters.

Close correspondence between voters' expressed wishes and outcomes renders pointless thoughts of scheming for electoral changes that might bring advantage to one party or another. Candidates and parties soon come to understand that their best strategy is simply to obtain greater support through improved quality of individuals nominated and attractiveness of policies.

The great distortions of political activity that occur in single-member electorates are unhealthy for Australian democracy. Only around half the formal votes are effective.

Voters cannot be blamed if they find branch-stacking, limited local influence and seats that suffer from being foregone conclusions unacceptable. Serious campaigning is excessively concentrated on fewer than one-third of seats that are seen as marginal and therefore with outcomes critical to the formation of the next government.

It will take some courage to reverse the tendencies of the past few decades to lessen levels of voter influence and facilitate greater centralisation of authority within sections of political parties. Healthy openness to voters' views, with influence widely dispersed, is essential in a functioning democracy.

An electoral system that encourages and broadens competition based on policies and people to implement or advocate them is far more likely to win the respect and ongoing engagement of voters. With the level of current cynicism about party behaviour, cosmetic moves such as conducting local primaries, or manoeuvres seeking to alter enrolment eligibility in a manner smacking of self-interest, will not address deep-seated problems.

The Hare-Clark system of proportional representation shows the difference that effective voting makes

The best systems in operation in Australia are the Hare-Clark systems of proportional representation in Tasmania and the Australian Capital Territory. They use the single-transferable vote in multi-member electorates each returning an odd number of MPs. Eight-five per cent or more of votes are effective.

Their Robson Rotation and countback features leave voters with an attractive choice of parties and independents and considerable influence over the composition of their next Assembly. There is extensive serious campaigning by candidates and parties in every electorate.

A 100-metre exclusion zone around polling places means that electors can make their way in to vote with whatever material they choose to bring and not face a scrum of party members handing out how-to-vote cards almost at the entrance.

Neither jurisdiction imposes unreasonable requirements for the casting of a formal vote. Casual vacancies are filled by reference to voters' views at the previous election day rather through further rounds of potentially-destabilising campaigning at unpredictable times.

Greater use of seven-member or nine-member electorates would increase competitive forces and vote effectiveness without excessively inflating candidate numbers in these jurisdictions or elsewhere in Australia.

Another possible improvement would be a more sophisticated manner of including all ballot papers received when transferring surpluses of elected candidates, making sure though to avoid the anomalies inherent in current Senate scrutinies by recognising differences in how much particular groups of ballot papers have contributed to any candidate's election.

Less authoritarian provisions should apply to what constitutes a formal vote federally

Voters mark preferences to indicate the order in which candidates may have access to their vote's remaining value.

The current authoritarian formality provisions for both House of Representatives and Senate elections serve no justifiable purpose and tend to undermine the will of the people as the arbiter of future government. Spending large amounts of time to see whether ballot papers have preferences that will not be required during the remaining stages of the scrutiny makes no sense.

High rates of informal voting are a sign of problems that need early attention, preferably by relying on the wisdom of a well-informed populace. These should be tackled from first principles rather than through the invention of ever-more-elaborate complex mechanisms that fail to acknowledge the real problem sources.

Had a more principled approach based on listening closely to voters' wishes been adopted at some point in the past, we would not have the current significant differences between federal and state/territory formality criteria, nor unnecessarily high levels of informal voting.

Party boxes in Senate elections have transferred power to party functionaries involved in negotiating preference deals. Periodic miscalculations on their part have led to outcomes that have alarmed many voters who unwittingly contributed to them.

It would be preferable to do away completely with party boxes, and instead make it straightforward to record a formal vote through marking of individual preferences.

However, if party boxes are retained, current discrimination against those voting below the line should end, and steps taken to end the potential constitutional difficulties associated with the lodgement by registered parties or other groups of candidates of multiple group voting tickets. Those inclined to follow a party's recommendation should benefit from an official mailout to all electors that includes detailed information about the preferences that will be deemed to have been marked if they vote above the line.

Exclusion thresholds are incompatible with the single transferable vote that minimises vote wastage. Past experience with these in South Australia and the Australian Capital Territory has highlighted how they can greatly distort outcomes and also exhibit major instability if some parties or candidates have support close to that arbitrary level. Even more pronounced distortions could be unleashed if there were no transfers from candidates or parties excluded at the outset.

Other electoral matters in need of attention

The anomalies inherent in the unweighted approach to defining transfer values in Senate elections are unacceptable in the age of computers. Following in the footsteps of recent enquiries or action in Western Australia, New South Wales and Victoria, the Weighted Inclusive Gregory method should be adopted instead.

An odd number of vacancies at each half-Senate election would ensure that a majority of votes translated into a majority of seats in each state. Currently, large parties generally aim to obtain three quotas (around 42.9%) after transfer of preferences as the prospects of a fourth are remote in normal circumstances.

Countback, which has worked well to quickly fill vacancies in Tasmania and the Australian Capital Territory, would provide a more comprehensive and appropriate way of filling all Senate casual vacancies than do the partial measures adopted by constitutional amendment following the events of 1975.

Its extension to single-member electorates also would foster changes in party and candidate behaviour as profound as would an amendment requiring the cost of a by-election after a voluntary resignation to be deducted from a vacating member's superannuation entitlements.

The luck of the draw for places continues to determine too many of the closest House of Representatives contests. Robson Rotation should be introduced if single-member electorates continue.

An Australian Democracy Web site would assist in achieving national goals in relation to electoral experience

Efforts at electoral education and promotion would be assisted by the adoption of simple national goals such as ensuring every Australian is familiar with what the marking of preferences means, exposing every primary and secondary school student to at least one mock election, and striving for every person working in the media and reporting on political matters to have an accurate grasp of how different electoral systems work.

Standards could also be agreed among electoral administrations in relation to mailouts to all electors of helpful materials before any election and electronic messages about the freedoms available when they vote, as well as straightforward and timely Internet access after the poll to all key statistics and other important summaries arising from the voting and counting.

If new voters especially are to be encouraged to take an interest in our democracy, it is necessary for them to have easy access to accurate information about historical

developments, current arrangements and responsibilities, and matters over which there is continuing debate.

The task of education and promotion would be much easier if electoral arrangements make inherent sense to voters and could draw support from a sense of empowerment that encouraged active interest and participation rather than passive acquiescence or forbearance.

Individual electoral administrations are bound to give effect to their specific legislation and are understandably generally reticent about publicly entering areas where there is a degree of controversy or conflict.

A single *Australian Democracy* portal would serve an informative and inspirational purpose for citizens while having appropriate links back to the current electoral arrangements that apply in each jurisdiction. It would facilitate a celebration of Australian innovation that has led to aspects of our electoral arrangements being admired overseas, and encourage ongoing public debate about further desirable reforms.

An injection of additional resources for the Electoral Council of Australia or Commonwealth Parliamentary Library or perhaps the letting of an appropriate scoped tender would facilitate the early co-operative development of such a portal and should create the momentum for its ongoing improvement to which many thoughtful public-spirited researchers and analysts would willingly contribute.

The current House of Representatives voting system distorts political behaviour and produces unsatisfactory outcomes

Just as real competition among providers of goods and services benefits Australians, a situation in which local competition was the rule rather than the exception would invigorate political life and check unhealthy tendencies towards:

- resources being directed excessively towards a small number of marginal seats; and
- power within today's dominant political forces being further concentrated.

Currently around two-thirds of single-member electorates are seen as generally safe for one party or another. Obtaining preselection for the dominant party is what the political contest usually comes down to.

The manoeuvring following the House of Representatives redistributions of 2009 in New South Wales and Queensland illustrates a consuming interest among incumbents in who will get preselection in the safest seats, and shows how local party members may not be seriously involved in such decisions.

Citizens in many urban and most rural areas cannot be expected to maintain enthusiasm for the electoral process if they don't ever get to cast an effective vote in several decades or find unedifying the scrambles for seats after redistributions or campaign offers to shower facilities disproportionately on relatively few marginal seats.

Where an imposed new candidate creates anger within the dominant party sometimes there is a chance of an independent (often a dissatisfied would-be candidate denied endorsement) or minor party candidate challenging traditional local hegemony. Many voters then instinctively sense that could realistically be their last chance in a long while to be relevant.

In a winner-take-all environment where claims to government are determined by voter sentiment in a handful of marginal electorates, some proposals to amend the franchise or otherwise change electoral arrangements smack of being inspired by the possibility of tilting two-party odds in a particular direction.

Under single-member electorates, once all the campaigning is done, a narrow individual win is numerically the same as one by a huge margin, but strategically better in the sense that success has been achieved in a marginal electorate.

Regularly Labor and the Coalition win few or even no seats in regions where they have forty-or-more per cent two-party-preferred support. The make-up of the House of Representatives does not properly reflect the geographical support base for either side of politics. Smaller parties and independents are denied equitable representation.

If different parties dominate large regions, situations where majorities of votes overall fail to translate into majorities of seats are not unusual, as past election outcomes have regularly demonstrated.

Worse, at times there are artificial "landslide" effects when support for one of the contenders for government weakens noticeably, leaving the opposition demoralised with attenuated numerical presence in the new parliament: increased executive arrogance often follows,

particularly if the opposition is consumed with internal bickering in the face of having no prospect of returning soon to government.

An opposition may find itself reduced to a parliamentary rump left with only the safest seats, typically occupied by older MPs, and often in close geographical proximity. As its parliamentary representation fails to reflect its support base and because of the advantages that come with incumbency of government MPs in marginal electorates, it cannot be expected to recover quickly in some of the areas lost and which will have to be regained if there is to be a chance of returning to government. It is perverse to be almost relying on government arrogance to eventually kick-start a significant swing back of the electoral pendulum.

The record at federal and state levels over the past thirty years, as summarised below, shows that both minority-support outcomes and artificially-weakened oppositions are major problems *inherent to single-member electorates* rather than aberrations or mishaps attributable to particular system design features. The lack of serious local competition in most areas is always unsatisfactory.

It is worth noting that South Australia with single-member electorates has had more minority governments than any other state over the past twenty-five or fifty years, while in the first half of the twentieth century Victoria had a succession of revolving governments during several periods.

While it was difficult to achieve majorities when six members were returned in each electorate under the Hare-Clark system of proportional representation, Labor held office in Tasmania continuously for the longest time in Australian history, between 1934 and 1969.

Federal and state electoral outcomes in recent decades regularly unfair despite equalised enrolments

Some often-repeated myths about electoral fairness being achieved by having roughly the same numbers of voters in each electorate have regularly been debunked in the past thirty years. Although equalisation of enrolments is desirable as a democratic principle, it is of no great reassurance in relation to fairness of outcomes in the absence of effective voting. Local winner-take-all effects may simply combine in an unbalanced manner.

For instance, former Special Minister of State, the Honourable Mick Young, asserted that after the 1983 changes to tolerance in enrolments under the *Commonwealth Electoral Act 1918*, we had a guarantee that the party or groups obtaining majority public support would always form a parliamentary majority.

When this failed to occur at the 1990 general elections, very little coverage was given to the discrepancy and the Coalition did not seek to make this an issue as the two-party-preferred vote was almost evenly split. Similarly Labor accepted the repetition of this phenomenon in 1998 with relative equanimity even though after distribution of preferences it had 52% two-party support but remained in opposition.

Tolerances in enrolments have been reduced to fairly low percentages around the nation, usually both at the time new boundaries are proclaimed and more stringently in terms of estimated numbers of electors on polling day. Malapportionment was largely ended in Queensland in 1991 and most recently in Western Australia's Legislative Assembly in 2005.

Both minority-support outcomes and lopsided ones where oppositions are left with very small numbers are *regular occurrences everywhere*, detracting greatly from the legitimacy of the electoral systems producing them.

For several decades in the twentieth century, Labor was typically disadvantaged across the nation because it wasted more of its strong support in (especially inner) urban electorates that would never elect a Liberal, than did its opponents in rural areas, many of which still had considerable unionised workforces at particular locations. Hence, even if there were no significant imbalances in enrolments, it could outpoll the Coalition overall without necessarily expecting to win enough seats to take government.

Over the last thirty-five years, the more common phenomenon has been of the Labor vote contracting to such a degree in rural areas that it is no surprise for the Coalition to achieve majority two-party-preferred support overall but not win government, especially when some incumbents in key marginal urban electorates cling on tenaciously.

South Australia's minority-support and lopsided outcomes

After it had been almost wiped out in metropolitan areas in 1985, the Liberal Party in South Australia achieved 52% of the two-party-preferred vote four years later but remained in opposition. The minority Bannon Government responded to frequent protests about the unfairness of the situation by proposing a change to the state's *Constitution Act 1934* through a referendum.

Henceforth there would be a redistribution after each election at which the Electoral Districts Boundaries Commission was charged with drawing single-member boundaries that would as far as practicable result in majority-support government next time. In practice, this has meant continual boundary adjustments for those in the most marginal electorates as the Commission has sought to make more electorates marginal.

The Electoral Reform Society of South Australia publicly rejected such proposals as window-dressing as it was perfectly clear that a differential concentration of support (and therefore vote wastage) in a number of regions could easily lead to future minority-support triumphs.

As the non-Labor dominance in South Australian rural areas has tended to become more pronounced than Labor support in its strongest metropolitan areas, the structural imbalance has worsened and the prospect of future minority-support Labor governments has increased when support for the two largest parties is fairly evenly divided.

The initial minority Rann Government gained office in 2002 through undertakings given to the Independent Member for Hammond who had previously been expelled from the Liberal parliamentary party and now became Speaker: it could not claim to have majority voter support. This is a perfect example of where, irrespective of whatever diligence is applied by the decision-makers during a redistribution process, individual political choices or actions of elected members can render such efforts irrelevant.

The second Rann Government, after a comprehensive sweep of most metropolitan areas in March 2006 that left it with 27 of the 34 seats, has faced an Opposition completely out of alignment with its support base, with originally just five metropolitan members and ten rural

ones in the House of Assembly, and having a major battle to rebuild after losing its previous outer metropolitan seats in particular. There have been three new Opposition leaders during the current Parliament.

Premier Rann chose to keep in office the National Party and Independent Ministers who joined government ranks part-way through the life of the previous Parliament, on the grounds that they were able to bring a regional perspective not otherwise available in Cabinet. Despite its biggest-ever triumph in terms of seats or overall voter support, Labor's representation outside the extended metropolitan area (including Gawler and its hinterland) remained confined to the seat of Giles based on Whyalla.

For Labor, which was at first reduced to just ten members in a House of Assembly of 47 straight after the 1993 general elections, it has been a stunning turnaround assisted greatly by ongoing Liberal internal division and a series of ministerial scandals. In less propitious circumstances, the initially-demoralised party may have wandered aimlessly in the wilderness for several terms.

Minority-support and lopsided outcomes in New South Wales

The same structural imbalance was evident at the change of government in 1995 in New South Wales as the Coalition lost the "knife-edge" election when the key marginal electorates of Blue Mountains, Gladesville and Badgerys Creek fell to Labor, the last two extremely narrowly. Newly-elected Premier Bob Carr stated firmly that no apology was necessary for taking government with just 48% or thereabouts of the two-party-preferred vote as winning majorities in a majority of the electorates was the task at hand under the electoral system.

The Coalition in NSW went through a period of regular changes of leader in the early 80s as it sought to recover from the massive "Wran's the man" jolt to its representation in 1978. It also spent the best part of two terms in the doldrums after major seat losses in 1999 following a last-minute leadership change and a disastrous campaign.

Labor had been similarly reduced to its core areas of support when turfed out of office in 1988 after a lengthy stench of corruption exacerbated by criminal behaviour in some of its branches. A period of rapid change and a deal of controversy over ministerial actions related to coastline development and other matters gave it some hope of gradual recovery.

However, in 1991 many were still surprised by the success of a relentless Opposition campaign on the fear of consumption taxes being imposed as well as the complacency and arrogance of a government that had gone to the polls a year early. The Coalition was returned only as a minority government and forced by four independents to agree to a number of reforms including fixed dates for future elections.

This has become the source of a good deal of recent public aggravation as two new Premiers have emerged from internal government divisions in the past two years while basic public services and infrastructure continue to languish, and a debate has begun about the desirability of enacting appropriate recall powers that could be exercised by large numbers of disaffected petitioners.

Victoria's minority-support and lopsided outcomes

In Victoria, after the first half of the twentieth century had been punctuated by lengthy periods of revolving governments, twenty-seven years of unbroken Liberal government ended in 1982. The Cain Labor Government was returned for a third term at an early election in 1988 despite having achieved only a minority of the two-party-preferred vote.

However, after a multitude of economic calamities, Labor was dumped from office so severely four years later that it made little public headway for another six years, and its successful regional strategy in 1999 after a change of leader caught most observers and participants by surprise.

During the Kennett ascendancy, Labor's huge majorities in its remaining heartland saw it reduced to not much more than a token presence in the Legislative Council where each province comprised four contiguous Assembly electorates and one of its two members faced the people at every Assembly election. In both 1992 and 1996, it won in just five of the 22 provinces despite getting around 40% of first preferences, and improved upon this to just eight when it obtained 42% support at the same time as it moved into minority government.

Following a change in leadership shortly before the November 2002 general elections, first-preference support for the Liberals dropped by 8% to just under 34% and they lost 18 of their previous seats, being left with just 17 seats out of 88 in the new Legislative Assembly: they made little headway in 2006.

In addition, Labor unexpectedly gained ongoing control for the first time in the Legislative Council after provinces such as Higinbotham, Monash and Silvan were captured from the Liberals. Having established a Constitution Commission to enquire into the role and election of the Legislative Council during his first term, Premier Steve Bracks insisted that an early piece of finalised business in the new Parliament be the amendment of legislation to have the entire Council henceforth elected simultaneously with the Assembly, through quota-preferential proportional representation in eight five-member regions.

Minority-support and lopsided outcomes in the Northern Territory

Labor did not have any representation in the first Northern Territory Legislative Assembly in 1978 despite receiving nearly one-third of the votes, and for much of the time in the 1980s and 1990s languished with only slightly more than a handful of members among the 25 elected to the expanded Assembly.

Government arrogance over preferences involving One Nation saw large numbers of voters in Darwin suburbs that had long kept Labor out of office change sides and Clare Martin found herself unexpectedly as the first Labor Chief Minister in 2001 despite achieving just 48% two-party-preferred support. The margin in the seat of Millner that ensured Labor majority government was just 82 votes.

At the following election in 2005, the Country Liberal Party was reduced to just four MLAs (two from around Alice Springs, one in Katherine and one among Palmerston suburbs) after its support fell from 45.4% of first preferences to 35.7% and its two-party-preferred support was just 41%. Its deposed leader from the previous election was reinstated a few months

before the election but this time lost his own seat after experiencing a swing of just over 20%, a magnitude repeated or nearly so in five of the six Labor gains.

Labor just retained majority government with 49.3% of the two-party-preferred vote (against all others) at the early election of August 2008 when its candidate in Fannie Bay won by 78 votes. However, two of its candidates were elected unopposed and its first-preference vote in contested electorates declined by around 8%: one has subsequently left the party but returned two months later when the other's angry departure in August 2009 prompted intense speculation about whether a no-confidence motion would succeed.

Removing enrolment imbalances in Queensland in recent years hasn't ended unsatisfactory outcomes

The lengthy domination of the National Party in Queensland, where an appointed Legislative Council had been abolished in 1922, was taken to a new level by the ouster of the Liberals from a longstanding Coalition agreement when two of its MPs changed party and remained Ministers in 1983. It only came to an end in 1989 after extensive hearings into corruption by the Fitzgerald Inquiry.

Originally vociferously opposed to the zonal weightings Labor introduced in the 1940s, the Country Party became the major beneficiary through having more MPs than the Liberals while they governed jointly after the Labor split in 1957, and not surprisingly refused to give up its advantage after preferential voting had been restored.

After the 1974 debacle in which its leader lost his seat and the party was left with just eleven MPs in a parliament of 82, it took Labor over a decade before it again appeared capable of being regarded as an alternative government.

The Goss Government made sweeping changes to electoral and administrative arrangements during its first term following the extensive recommendations of the Electoral and Administrative Review Commission, bringing all but a handful of remote seats of huge area into the same narrow enrolment tolerance bands, and introducing optional preferential voting.

On the back of concerns about government arrogance, in 1995 Rob Borbidge unexpectedly achieved 52.5% two-party-preferred support for the National Party and Liberals but the change to minority Coalition government did not occur until after a ruling by the Court of Disputed Returns that the Mundingburra result be set aside, followed by Liberal success at the supplementary election in February 1996.

Borbidge's government lasted only one term when unable to respond in a unified manner to the emergence of One Nation, and Labor took over in minority government.

Extensive revelations in the Shepherson Inquiry about fraudulent enrolment activity that had occurred within some Labor branches in pursuit of preselection control *in safe seats* led to the resignation of the Deputy Premier and disendorsement of two other MLAs and speculation that the government would not last much longer.

However, Premier Peter Beattie made a virtue of ending "electoral rorts" wherever he could find them and then decided to call an election in February 2001 to clear the air. The outmarshalled Opposition could not find campaign traction, losing over half its seats, and was

left with just 15 of the 89 seats in the Legislative Assembly: the Liberals were reduced to a record-low three seats, retaining just one in Brisbane and two others on the coast.

The Nationals polled only 8% of first preferences in the by-election, caused by their former leader's resignation straight after the general election. that was won by an Independent. The Opposition parties thereafter made little headway at the subsequent election nor for some time afterwards until major problems with the public health system came under continuing prominent scrutiny.

The Liberals and Nationals amalgamated before the elections that were called early in March 2009 and picked up nine seats to reach 34 after a lift in their first-preference vote to 41.6%, against 42.2% first-preference support and 51 seats for Labor.

Labor's dominance in the Brisbane metropolitan area was the key to its very large majorities in 2001, 2004 and 2006 and its limited losses in 2009. As the outcomes have not accurately reflected the diversity of voter opinions, an air of unreality has descended on local politics, reflected at times in bizarre events unfolding in relation to leadership of the Liberal Party.

Reducing enrolment imbalances in Western Australia in recent years hasn't ended unsatisfactory outcomes

Three terms of Coalition rule came to an end in Western Australia in 1983. By persisting in the face of Legislative Council opposition and making the issue a major one in its re-election platform, the Burke Government was eventually able to achieve a significant lowering in the extent of imbalance between enrolments in metropolitan and rural electorates to around 2:1 in the Legislative Assembly and 4:1 in the Legislative Council, and to have the Council elected by proportional representation from 1989.

Thereafter, instead of half the Council being refreshed in single-member electorates each time after the issue of writs, the whole chamber has been elected simultaneously with the Legislative Assembly. This was initially in six multi-member regions, each consisting of between seven and fourteen contiguous Assembly electorates, and returning either five or seven members.

The next Labor leader, Peter Dowding, comfortably retained office in 1989 despite achieving just 47.5% two-party-preferred support, but his successor was swept from office four years later after the revelation of major financial losses from earlier government dealings. Labor remained demoralised for its first term in opposition, losing seats in 1996 to drop to just a one-third presence in the Assembly.

However, following a long-running finance brokers scandal and with One Nation pursuing a vigorous anti-incumbent approach in general, Labor returned to office somewhat unexpectedly in 2001 with just over 37% of first preferences. It maintained 32 seats in 2005 when both its first-preference vote and that for the Liberals increased by 4-5% as the previous support for One Nation collapsed.

No party had a majority of seats following a 6% drop in Labor support and 3% increase in Liberal votes at the election called for September 2008 immediately after the fourth change of Opposition leader since the previous election. Once it became clear that they and

Independents held the balance of power, the Nationals made acceptance of their “royalties for regional WA” policy a condition that Labor or the Liberals would have to accept to govern.

Hare-Clark system at Australian and world forefront of emphasising voter influence

Following its earlier application for several years in just Hobart and Launceston at the instigation of Attorney-General Andrew Inglis Clark, the Hare-Clark system of quota-preferential proportional representation has been in use continuously in Tasmania since the 1909 elections, and in the Australian Capital Territory since 1995.

With its pioneering spirit maintained and enjoying overwhelming voter backing, the Hare-Clark system has continued to evolve as a practical showcase of how voter empowerment can be achieved and periodically strengthened through the use of the single transferable vote in multi-member electorates.

From the outset, the electoral boundaries have coincided with those for the five House of Representatives seats that are guaranteed Tasmania by the Australian Constitution: each returned six members until 1956, seven at elections between 1959 and 1996 inclusive, and five from 1998 onwards.

Through the use of countback to fill casual vacancies, since 1917 House of Assembly voters have not needed to return to the polling places when a sitting member has resigned or died. Instead, the quota of ballot papers for the outgoing candidate (or ultimate predecessor from the previous election) has been re-examined to establish who among consenting defeated candidates was most wanted as a replacement by those voters.

On election day, voters have been offered a good choice of candidates on a manageable ballot paper, including balanced diversity within teams endorsed by parties with prospects of securing some electoral success. Taking account of the possibility of mid-term vacancies arising and, more recently, stricter formality requirements, Labor and the Liberals have tended to offer as many candidates as there have been vacancies, but occasionally one or two more.

Since 1979, Tasmanian legislation has provided that all candidates nominated by a party or group have equal access to the best places within that entity’s column.

This combinatorially-ingenious Robson Rotation starts with the fundamental premise that voters rather than preselectors should determine the composition of a parliament. It ensures fairness to all candidates, on top of the fairness to parties and independents guaranteed under all quota-preferential systems by transferring surpluses of elected candidates and ballot papers for candidates that are excluded.

The original scheme of rotations skilfully achieved fairness to candidates by having exactly as many printing orders for names within a column as there are endorsed candidates therein.

On the basis of rigorous research into the properties of Latin squares, Robson Rotation has been further refined in the ACT through the introduction of a second tier of rotations to eliminate, as much as is actually possible, beneficial down-the-column flows to any continuing candidate after someone is elected or excluded.

Tasmania took the step in 2009 of doubling the previous number of rotations by also reversing every order below a name at the top of the column, to guard against anyone being advantaged by an exclusion leaving just two continuing candidates from the one party.

In both Tasmania and the ACT, voters are used to much more pre-election interaction with candidates than happens in most single-member electorates or at Senate elections. No-one has a guaranteed place because of the effects of Robson Rotation in spreading out the vote intended just for a particular party, and hence those who are nominated and consider themselves real possibilities for election tend to do a lot of doorknocking and undertake other extensive community contact, in addition to making efforts to obtain media publicity.

As how-to-vote material is not permitted within 100 metres of the entrance to polling places, electors work out whether they wish to bring any helpful material with them and make their way in to vote without being approached or addressed by party helpers keen to thrust something into their hands at the last moment just in case it makes a difference.

Although elements within ACT Labor made failed attempts at presenting preferred candidates within their teams in 1995 and 1998, all parties now look to increase their support by endorsing new candidates with strong community links and recognition.

Replacements finalised quickly by countback in both jurisdictions serve voters' interests by increasing numbers of candidates nominating and sending a message about community expectations for the entire parliament ahead.

As outcomes are guaranteed to align with voters' wishes, no great advantage is available from any efforts to obtain more favourable electoral boundaries, and there has been a stability about these in both jurisdictions, much appreciated by voters. There have also been relatively few attempts to amend electoral legislation that could reasonably be characterised as primarily seeking partisan advantage.

Tasmanian outcomes have closely reflected the will of the people

Majority Labor governments were elected in Tasmania throughout the 1970s but the last of them disintegrated over the proposed damming of the Franklin River and the new Premier lost a vote of confidence early in 1982.

The Liberal Party moved into ascendancy with strong majorities in 1982 and 1986 reflecting the widening gap between its and Labor's support, the latter getting as low as 35%. Nevertheless, Labor was still taking two or three seats in each seven-member electorate, whereas such a deficit in support would have made the winning of seats under any single-member arrangement rather problematic for it.

However in 1989, Liberal support dropped 7% to just below 47% and the party narrowly failed to get a majority of MHAs. Labor's vote fell just below 35% and it won 13 seats, while the Tasmanian Greens standing under that name for the first time achieved 17% support and took a seat in each electorate. The Greens supported a minority Labor government in return for signed policy concessions: prominent business figures were convicted and jailed after later revelations about failed attempts to bribe a Labor MHA to cross the floor.

Following the collapse after two years of the Labor-Green accord underpinning the minority Field Government, support for the Labor Party in Tasmania fell to just 29% in the early election of February 1992 and it was reduced to just eleven members in a House of Assembly of 35, including just one of seven in Braddon. First preferences for the Greens fell 4% but they retained each of their seats.

Through perceived arrogance, particularly in relation to local government amalgamations and, even more, 40 % pay increases for MPs without any accompanying promised reduction in the size of the parliament, the Liberals lost significant support and three seats in 1996, being left with 16 seats. Compared with their opponents' 41.2% of first preferences, Labor recovered to 40.5% and won fourteen seats, while support for the Greens fell to 11.1% and they lost one seat. Former MHR Bruce Goodluck won as an Independent in Denison where the Liberals were reduced to just two seats in an electorate for the first time since 1972.

The Liberals continued to govern in minority with Green support. Following a protracted stalemate between parties and chambers over different plans to reduce the size of the parliament, in May 1998 one Liberal crossed the floor to support Labor's legislation for five five-member electorates and a reduction of Legislative Council membership from nineteen to fifteen: others had threatened to do so. A special one-day sitting in July saw this legislation passed in an undisguised attempt to reduce the influence of the Greens, and an election was announced for the following month.

While there were seven-member electorates, the quota for election was just above 12.5%. Because a shift of just 2-3% in voter support could alter seats won, parties and candidates were usually kept on their toes everywhere.

With electorates returning five members each, the quota rose to just under 16.7%, making it harder for the Greens and other smaller parties and independents to be elected. Larger parties would still strive for the majority of votes bringing three seats where that seemed possible, while usually being fairly sure of picking up two as soon as their first preferences reached the low 30s, so that there was no longer quite the same degree of uncertainty about party outcomes in an electorate as previously.

At the 1998 election, Labor obtained majorities in each electorate other than Denison, taking 14 of the 25 seats after achieving nearly 45% support statewide. The Liberals obtained 38% support and comfortably won two seats in each electorate. For the Greens, 8-10% support in four electorates was insufficient given how close Labor was to a third quota there, but in Denison, 13% of first preferences proved to be a big enough start towards a quota and election. Had seven-member electorates remained and these voting figures been repeated, the most likely outcome would have been a bare majority of eighteen for Labor.

Liberal support fell to 27% statewide at their disastrous 2002 election that saw the narrow defeat of both their new leader and his deputy. They won two seats in only the northern electorates of Bass and Braddon, and were left with just seven MHAs. Support for the Greens increased to 18% and they took a seat in every electorate except Braddon where Labor obtained a majority of first preferences.

Labor's increased first-preference vote to nearly 52% did not result in additional seats, but both government and opposition presence continued to closely reflect levels of voter support in each electorate and statewide.

Despite a lift in first-preference support to nearly 32% in 2006, the Liberals did not gain seats, while the Greens retained their four MHAs on a slightly reduced vote. After opinion polls had initially pointed to a likely hung parliament, Premier Paul Lennon campaigned relentlessly for a majority government that only Labor could achieve, and was rewarded with the status quo when 49% of voters gave Labor their first preference.

The strong Labor majorities in Tasmania achieved at the 2002 and 2006 elections would clearly have been replicated in seven-member electorates, while allowing for more opposition voices to scrutinise government performance.

Voters have mainly shown a preference for majority government in Tasmania since the change to odd numbers of MHAs from each electorate. However, in 1969, 1989 and 1996 they were somewhat dissatisfied with the government while not yet convinced enough about the opposition, to deliberately deny both of them Assembly control.

Under single-member electorates, at the elections of 1992, 2002 and 2006 in particular there would again have been very few or perhaps even no seats other than for the governing party.

ACT Hare-Clark outcomes have closely reflected the will of the people

Voters' wishes have also always been reflected closely in the composition under the Hare-Clark system of the ACT Legislative Assemblies for which elections occur on fixed dates. As is to be expected, the seven-member central electorate of Molonglo has shown closer alignment between seats and votes than have the two five-member electorates, and women have found it easier to be elected there.

About a third of the Assembly has been new after any election, generally less through incumbents not re-contesting and more through some of them being defeated at the polls.

With self-government unpopular, support for Labor and the Liberals was respectively 23% and 15% under the d'Hondt system imposed by the federal parliament and first used in 1989. A succession of government changes and other antics (for instance, the leader of the No Self Government Party briefly became Opposition leader at one point) brought that Assembly into further disrepute.

Two-thirds of voters chose the Hare-Clark option at the plebiscite of February 1992 held simultaneously with the second and last d'Hondt election. A shortlived minority Labor government attempt to white-ant Robson Rotation with party boxes when the ACT's electoral legislation was being enacted alarmed Hare-Clark supporters sufficiently for the key principles of the system to be entrenched at referendum in 1995, again with roughly two-thirds support from voters:

- preferential voting without party boxes, and quota-preferential counting;
- electorates each returning an odd number of members at least five;
- the specifics of Robson Rotation; and
- countback for filling casual vacancies.

Having achieved endorsement by all but one member of the Assembly and support from a majority of electors at referendum, the *Proportional Representation (Hare-Clark)*

Entrenchment Act 1994 came into effect. In future, a two-thirds majority in the Legislative Assembly or nearly 60% support from those voting formally at referendum (the national *Australian Capital Territory (Self-Government) Act 1988* specifies a majority of *electors* rather than voters) will be required for any departure of the electoral system from the entrenched Hare-Clark principles.

A minority Liberal Government with seven MLAs replaced Labor at the first Hare-Clark election in 1995 and after two terms (an Independent joined the Ministry in the second) during which stability was never a question, made way for a minority Labor Government in 2001. The governing party throughout this period had 38-42% first preference support and the opposition 28-32%.

In 2004, Labor support rose to nearly 47% and the party picked up an additional seat when the previous Australian Democrat MLA for Ginninderra failed in her attempt at re-election: Labor formed the first majority government in the ACT's history of self-government on the first occasion when support for one party approached majority levels. For the first time, the combined Labor and Liberal vote was above 75% and just one candidate from outside their ranks, a Green in Molonglo, was elected to the Legislative Assembly.

Beset by perceptions of arrogance in some quarters, Labor's first-preference support fell to just over 37% in 2008, costing it a seat in each five-member electorate. The Liberals, suffering from constant internal turmoil, with three leaders during the Sixth Assembly and another MLA leaving the party and starting his own, narrowly lost a seat in Molonglo to the Greens after a 3% drop in support to around 32% overall: half of their six MLAs were newcomers.

The ACT Greens picked up three extra seats, one in each electorate, as their support rose over 6% to nearly 16%. Among the new contestants, the Australian Motorist Party could have played a more significant role in shaping the Assembly had key personnel not made a decision to simply run as many candidates as there were vacancies and not to suggest further marking of preferences to its supporters.

Compulsory marking of preferences never a Hare-Clark feature

In House of Assembly elections, Tasmania requires at least as many preferences to be marked, without omission or duplication, as there are vacancies.

Until 1972, three preferences had been sufficient, but there was periodic concern about the levels of votes exhausting at the end of scrutinies, as a result of which some of those being elected last did not always obtain a full quota of votes.

Tasmanians such as Dame Enid Lyons had pointed to their state's successful experience when urging Dr Evatt not to insist on compulsory marking of preferences in Senate elections under the new system of proportional representation for which legislation was passed in 1948.

In the ACT, in accordance with descriptive particulars the Australian Electoral Commission put to electors in an official booklet mailed out before the 1992 plebiscite on the electoral system, instructions on the ballot paper tell voters to mark at least as many preferences as

there are vacancies. However, should errors be made, or voters simply fail to comply, their vote is still accepted as long as there is a clear first preference.

This liberal course was adopted unanimously by the Legislative Assembly in 1994 just after a minority Labor government had been doing its utmost to compromise the introduction of the Hare-Clark system's Robson Rotation feature, and expectations might have been that any of its suggestions of this nature would be treated with suspicion.

All MLAs agreed to respect the ballot paper instructions specified clearly by the Australian Electoral Commission in its official description of the Hare-Clark option while taking the further step of seeking to also maximise the number of formal votes.

No justification for compulsory marking of preferences in House of Representatives elections

The requirement that all preferences (with the exception of one square that may be left blank) be marked in House of Representatives elections is simply outrageous.

Seldom do Labor or single Coalition candidates fail to figure in a final two-candidate reckoning. In the vast majority of cases, Labor and Coalition supporters' second preferences are examined only for checking formality. No credible reason can be advanced for declaring large numbers of "incomplete" votes of this kind informal at the outset.

AEC Web data on preference flows indicate that at the 2007 elections, only 0.2% of votes for Labor candidates had a further preference examined once exclusions began, along with 1.1% of votes for Liberal candidates and 9.6% of votes for National Party candidates. Taken together, roughly only 1% of over 10.5 million formal votes for these three parties were transferred to other candidates. How many others were needlessly set aside as informal?

The corresponding proportions transferred at the 2004 elections were 0.5% of votes for Labor candidates, 0.4% of votes for Liberal candidates and 7.7% of votes for National Party candidates. Fewer than 0.5% of nearly 10 million formal votes with a first preference for one of these parties were transferred to another candidate.

In other cases where an omission (except of the final number) or repetition occurs, voters' views are also summarily rejected at the outset, even though there may be an unbroken numerical sequence to either of the last two candidates in contention for that particular seat.

This punitive approach is unlikely to obtain voters' respect or engagement, nor promote an understanding that their marking of preferences is simply an instruction about the order in which candidates are entitled to benefit from that particular vote.

At earlier times, it was argued passionately that the basis of democracy was a respect for voters' actual views, and that high rates of informal voting should be regarded as scandalous and tackled by making it easier for voters to have their wishes counted. Now, while registered party names appear helpfully on the ballot paper, unless those views fit into a particular mould, in some quarters it has been accepted almost without demur that they should be disregarded at the outset.

Two consequences of decisive leadership and ongoing campaigning on the earlier strong national ALP platform were the introduction of optional preferential voting for the Legislative Assemblies of New South Wales and Queensland in 1978 and 1991 respectively.

Levels of informal voting in Queensland had been relatively low throughout the twentieth century under the various electoral systems in operation, and only consistently exceeded 1.5% after the restoration of preferential voting in 1962. They rose to around 3% at the elections of 1986 and 1989 and subsequently have fluctuated around 2%, but fell as low as 1.45% in the keenly-contested election of 1998.

NSW informal rates have been affected greatly by changes centred on whether ticks or crosses are acceptable as a first preference, or only numbers. The most recent levels under completely permissive arrangements for ticks and crosses were 2.5% in 1999, 2.6% in 2003 and 2.8% in 2007.

Savings provisions existing in several jurisdictions mean that where voters make a mistake in numbering but could still possibly contribute to the election of one or more candidates, they do not automatically have their efforts ignored. In South Australia, certain incomplete papers are deemed to follow the order of numbering registered by the candidate receiving first preference, but it is an offence to advocate such markings during the campaign.

Arrangements that maximise the level of formal votes recorded raise the possibility of some degree of exhaustion of ballot papers if voters for candidates that are excluded have not been sufficiently persuaded of the merits of the remaining continuing candidates, or do not have a good understanding of preferential voting. While the Proportional Representation Society of Australia regards single-member electorates as fatally flawed, there is no reason to make them still worse by disregarding many voters' legitimate views at the outset.

The House of Representatives formality criteria have gone from bad to worse

After some tolerance was shown in the 1983 amendments, mistakes or deliberate repetition of numbers at House of Representatives elections now result again in a vote being declared informal without further ado. Consequently an *artificially low* majority is asked of the candidate who subsequently is declared elected in any federal single-member electorate. That should not be a matter of any pride in a democracy.

A more open and sensitive approach would have involved stepping up efforts to increase voters' awareness of how preferential voting works and accepting inadvertent errors in numbering. There was also no threat to democracy in the misguided campaign of Albert Langer, who advocated that voters deliberately start repeating numbers so that major party candidates would be denied an absolute majority of all votes: he harboured a misapprehension that such candidates could be denied election through these means.

In a remarkable display after his imprisonment in 1996 for refusing to desist from his advocacy of such behaviour in contravention of the previous Section 329A of the *Commonwealth Electoral Act 1918*, only the Greens expressed parliamentary dissent from restoration of the previous unreasonable requirement for full marking of preferences without omission (other than in the final square) or duplication in order that a ballot paper be accepted as formal.

The argument that it is in some way *necessary* or even particularly virtuous to require full marking of preferences is specious. The more onerous the requirement upon voters, the greater will be the level of non-participation and deliberate informal voting among those who essentially turn up at polling places just to have their name marked off the roll.

There is no great merit in a winning candidate obtaining a majority of the votes accepted as formal if these numbers mask the extent of dissatisfaction by voters whose efforts were deliberately or inadvertently informal.

It is not at all clear that those who seek to impose compulsory indication of all preferences for a vote to be accepted as formal do so out of a sense of informed self-interest or a misguided assumption that the overall effect of forcing anyone wanting to have a formal vote to declare which large party is preferred can only be beneficial to their prospects.

A proper assessment would involve both:

- establishing the net effects of votes which are made informal but do not have to be because they indicate a clear first preference (something about which all electoral authorities should routinely produce summary information after each election); and
- estimating the net effect of ballot papers that might have become exhausted if voters hadn't been forced to mark preferences beyond those that they actually held or wanted to express (something that cannot be ascertained with certainty and therefore is best left to open public debate).

In a functioning democracy, questions about the level of satisfaction voters actually have with available candidates are not seen as some threat precisely because there is sufficient confidence in the demonstrable legitimacy of outcomes in all circumstances to accept however voters choose to express themselves and translate that fairly into representation.

The AEC's *Analysis of Informal Voting House of Representatives 2007 Election* indicated that of the informal rate slightly below 4.0%, 2.5% was deliberate, papers either being left blank or with scribble of varying types but no indication of a single first preference.

Informal rates had previously been rising, from 3.2% in 1996 to 3.8% in 1998, 4.8% in 2001 and 5.2% in 2004, well above the rates applying in New South Wales and Queensland state elections. As each percentage point represents over 100,000 voters whose attendance on or before polling day did not result in an extra vote being counted, there is ample reason to be alarmed about the consequences of applying an unreasonable standard for the acceptance of votes as formal in House of Representatives elections.

Incidentally, during his last term in Parliament, Sir William McMahon revealed that Sir Robert Menzies had been in favour of optional preferential voting and asked electoral officials to draw up a report on the matter. However, the status quo prevailed because Cabinet could not get the "satisfaction" it wanted before it would agree to a change.

Why sometimes a lottery for the closest House of Representatives contests?

A draw for places on the House of Representatives ballot paper replaced the previous alphabetical listing at the 1984 general elections. Very often, two or three close contests are

determined by who obtained the higher spot and benefited from what is usually a modest donkey vote advantage of between 200 and 500, say at most 0.5% of the formal votes.

Remarkably, at least seven narrow victories of less than 0.25% in 2007 had that assistance, in Bowman, Dickson, Herbert, McEwen, Swan, Solomon and Flynn: Swan was decided on donkey vote advantage in both 2007 and 2004.

These results and possibly another would quite likely have been reversed had the luck of the draw gone the other way. Most of these seven would have changed even if the donkey vote had been shared among all candidates in an equitable manner.

Reasonably prominent political careers have hung by a thread on this account: for instance, Peter Dutton and Fran Bailey just squeaked back in Dickson and McEwen respectively in 2007, David Cox lost Kingston in 2004, Cheryl Kernot just won Dickson in 1998, Michael Lee barely survived in Dobell in 1996, and Warwick Smith lost Bass by 40 votes in 1993.

One day government may be determined by which party has had (more of) the luck of the draw in key close seats. As party names appear alongside candidates' names on ballot papers, rotating the order in which they appear so any donkey vote advantage is minimised would be fair to all candidates. The Robson Rotation of names is used in Tasmania in Legislative Council elections where single-member vacancies come up in a regular periodic fashion. Circular ballot papers have also been proposed as a means of removing the donkey-vote advantage but are less satisfactory because relative positions of candidates are fixed.

The exact advantage from having a name higher in ballot paper order than that of the strongest competitor is impossible to determine in a particular instance as sometimes even an ordering straight down the list of names may represent the considered view of a voter.

Changing the luck of the draw would result in a swing of this magnitude to the candidate previously disadvantaged and therefore potentially reverse quite a few outcomes where a winning margin of less than 0.5% included the donkey vote.

The effect of Robson Rotation would be to share out the donkey vote among the last two candidates remaining in the scrutiny, and hence its introduction would result in a swing of half the net donkey vote effect, say at most 0.25%, against the candidate advantaged at the last election by the luck of the draw. It would however determine the candidate preferred by a majority of those who cared.

Allowing the futures of the candidates who have faced the toughest competition of all to potentially be determined by whether or not they received the luck of the draw might sound like an authentic Australian way of resolving a difficult problem. While that constitutes an improvement upon automatic alphabetical ordering, it is unsatisfactory if there are fairer possibilities such as removing as much as possible any potential advantage from the "don't care" factor that would largely manifest itself in non-voting were financial penalties not in operation for such inactivity.

Most House of Representatives vacancies now arise from resignations

The Electoral Reform Green Paper has done a service in pointing out the magnitude of the transition since 1970 from vacancies primarily because of the death of incumbents to

predominantly because of resignations, many of them fairly shortly after an election brings either a change of government or dashes the last hopes of long-serving MPs of getting back into government in the short term.

There is increasing public disquiet at candidates promising to serve their electorates before an election and then quickly moving on to another career or set of pursuits after individual success but an overall outcome that is not favourable. The possibility of requiring such candidates to pay for an unnecessary by-election through reduced superannuation entitlements in particular is gaining greater support among commentators, and among voters in various types of media polling.

At some point, it will become necessary for a government to commit to change because either a spate of departures at a difficult time will become too embarrassing to contain fallout or an opposition will make an announcement along those lines designed to tap into a wave of public indignation. The issue may occasionally quieten down but will not simply go away because such exit behaviour is ongoing and annoying and goes through periodic spurts.

An alternative approach could be taken to focus attention on an election being about representation and government over the life of the ensuing parliament. Countback could be introduced even for single-member electorates and be characterised as the election for which the Speaker is required by the Constitution to issue a writ. If need be, a referendum could be held to remove any doubt in these matters.

Parties striving for government would respond to the possibility of replacement by countback either by endorsing a second candidate in reserve, or accepting at least in some instances that there might be a replacement by a candidate from a smaller party or an independent with views likely to be aligned with theirs on a number of the most important policy matters.

The first approach would give voters greater choice but would be resisted by some incumbents or newly-preselected candidates apprehensive that the presence of even a token second candidate from their party might prompt their removal by voters who look differently at such matters if an opportunity arises.

There would be implicit pressure on MPs not to simply walk away to another career in the event of an evenly-poised parliament and uncertainty about what action a likely countback replacement not from the same party would pursue. The same would occur under any new requirement for them to contribute from their superannuation entitlements, and possibly other assets if necessary, to the cost of running a by-election to find their replacement.

The Senate party-box short-cut regularly backfires

There is an object lesson in Senate voting arrangements over a lengthy period about how it is preferable to listen carefully to voters rather than to insist on applying heavy-handed guidance to their polling-day participation.

The second defective "winner take all" majority-preferential method of electing the Senate was replaced by quota-preferential proportional representation in 1948 to avoid lop-sided ineffectual or hostile Senates previously elected. Our arrangements were based on those in Eire, where optional preferential voting applies to this day and informal voting rates remain less than 1% in an environment where there is no compulsion to vote either.

Once someone has understood that the marking of preferences is just a statement of the order in which candidates can have access to the unused portion of that vote, most of the confusion surrounding voting will disappear.

For instance, it becomes clear that a single first preference could be enough for a formal vote, and that voters should always be encouraged to mark at least as many real preferences as they have thereafter. By marking later preferences, they cannot diminish the prospects of election of those whom they most strongly support.

However, at the point of introduction Dr Evatt insisted on a full marking of preferences (with one square possibly left blank), citing the possibility of large numbers of ballot papers becoming exhausted otherwise, despite the cogent objections of numerous Liberal and Country Party MPs including those such as Dame Enid Lyons who had extensive experience of the Hare-Clark system.

As has often happened when a government fails to put respect for voters' wishes at the heart of amendments it makes to an electoral system, Labor continued to be noticeably disadvantaged by the exorbitantly high number of votes unnecessarily set aside as informal under the requirements that it had stubbornly imposed, and for decades was not in a position to effect change.

For instance, a deliberate proliferation of nominations at the double dissolution election of 1974 led to 12.3% informal votes when the names of 73 candidates appeared on the ballot paper in New South Wales and resulted in Labor narrowly failing to turn its unusually strong support into the election of a sixth Senator out of the ten places available. Its subsequent legislation to introduce optional preferential voting for both the House of Representatives and Senate was opposed by both the Liberal and Country Parties.

In 1983, by which time the Australian Democrats held the balance of power in the Senate, the long-standing problem of high levels of informal voting in Senate elections was tackled after a joint parliamentary inquiry into electoral matters. Unfortunately it was not done directly by being much more liberal in admitting ballot papers to the scrutiny when there is a clear first preference and possibly a further small mandatory sequence of at least a particular magnitude.

Instead, party boxes were introduced, with associated registered group voting tickets that made it straightforward for voters to endorse lists of preferences authorised party representatives had officially lodged with the Australian Electoral Commission, often after extensive and frenetic negotiation or horse-trading. Electors accepting such guidance could easily vote formally by endorsing a single party box whereas those still choosing to do their own numbering were given precious little latitude.

Those numbering squares opposite the names of individual candidates "below the line" under the new arrangements would cast a formal vote provided they had expressed a clear first preference, marked at least 90% of the squares, and made no more than three omissions or duplications. There is no logical reason for either the accepted maximum level of departure from sequential numbering or the maximum proportion of squares allowed to be left blank.

By 1987, the two separate group voting tickets that any registered party or group could lodge had been increased to a maximum of three, and the right to lodge tickets was extended to a sitting Senator not nominating together with anyone else. After some groups submitted multiple tickets that differed in numbering their own candidates in 1984, it also became a requirement that all of them be numbered the same way within that column, ahead of any other candidate.

Although little emphasis has been placed on voting below the line when the Australian Electoral Commission advertises, in the territories and Tasmania where there are usually reasonably small numbers of candidates, and in two instances fairly high awareness remains of voters' influence under the Hare-Clark system, up to 20% of ballot papers are marked below the line. Very few electors would be able to indicate accurately the flexibility allowed in the recording of a formal Senate vote that way.

In the remaining states, fewer than 5% of voters take what can be a relatively onerous (and in large part, irrelevant or meaningless) below-the-line route after the Coalition quickly set aside its initial misgivings about the new arrangements. Much higher proportions of voters for smaller parties or groups, often three to six times as large, use the below-the-line option than do Labor or Coalition voters.

Voters for independents without a running mate or other ungrouped candidates who are not sitting Senators (or were immediately before a double dissolution) have no alternative other than to vote below the line. This double standard does not apply in Legislative Council elections in South Australia where individual ungrouped candidates get their own columns at the right-hand end of the ballot paper and are permitted to lodge one or two voting tickets.

Apart from the necessity in some instances, much of the difference in below-the-line incidence can be attributed to the degree to which some voters want to be certain about the way that their ballot paper will be treated if a transfer is necessary beyond their preferred party or group. AEC research and that of state electoral administrations has shown disturbingly high proportions of attempted below-the-line votes, as large as one-fifth or one-quarter, being rejected as informal.

Quite a deal of time is spent on checking below-the-line numbering and typically noting any first break in sequence when they are accepted, whereas often in the remainder of the scrutiny no number beyond the first or second dozen will need to be inspected or otherwise invoked. This waste of effort and some of the unintended consequences that have followed would have been averted had the parliament shown an interest in making it easy for voters to record their views irrespective of how these compare with the recommendations of parties.

Lowering rates of informal voting depends in part on making it easy and worthwhile for voters to express their views. While informal rates under 1% have been the norm in Eire and Malta's multi-member electorates with optional preferential voting, an important factor in that achievement has been the absence of any compulsion to attend a polling place.

There will always be a noticeable level of protest from those Australians who see no point in voting but have their name marked off the roll to avoid a fine. Hence the low informality rates of these countries using the single transferable vote, or others where some form of list system is used and voting is also not compulsory, will not be emulated.

While rates of Senate informal voting have declined through the availability of party boxes and are lower than those in House of Representatives elections, a variety of new problems have arisen on potential constitutional grounds and through the massive leverage given to those entrusted with concluding the orders of preferences for their group voting tickets.

However, before these manifested themselves, the Special Minister of State was severely embarrassed on election night in 1984 when House of Representatives informal votes skyrocketed. Large numbers of voters absorbed only part of the advertising about a simple way of voting in the Senate through party boxes and, not altogether unreasonably, assumed that similar arrangements applied for the House of Representatives.

Most voters who mark a party box are unaware of the associated registered preference list(s). Sometimes they later discover that they have contributed to a startling outcome, for instance Australian Democrat and Labor voters assisting in Senator Fielding's election in Victoria in 2004: party operatives there, mesmerised by the prospect of their last continuing candidate benefiting from an anticipated flow of Family First preferences, were prepared to make numbering changes they wrongly assumed would have no relevance during the scrutiny.

The Proportional Representation Society of Australia is certain that increasing numbers of voters will demand publicly that it become much easier to register a formal vote according to their conscience even if their wishes do not align with the recommendation or group voting ticket of any specific group or party.

At the South Australian Constitutional Convention in August 2003, the participants selected at random from each electorate to undertake intensive informed deliberation on specific aspects of democratic arrangements in the state made their strongest recommendation by being overwhelmingly in favour of optional preferential voting.

Election directly by the people

Were it not for uncertainty about whether the constitutional requirement that Senators be elected *directly* by the people would be met if the names of individual candidates were removed from the ballot paper, efforts might have been made in the past to give voters just a choice of party lists.

The respective constitutions of Western Australia and the Commonwealth require members of parliament to be elected *directly* by the people, though the 1977 federal constitutional amendments brought in a scheme whereby vacating Senators would have to be replaced by someone nominated by their party at the time of election were it still in existence.

Western Australia allows only one voting ticket for each party or group, whereas two or three are possible in Senate elections. Sections 272 (4) and (5) of the *Commonwealth Electoral Act 1918* are a curious attempt at a savings provision in the event that the High Court declares that multiple tickets lodged by groups or parties currently violate the mandatory principle of direct election.

At some point, a candidate denied election through the application of the standard scrutiny provisions will recognise the legal uncertainty surrounding multiple registered tickets within the time permitted to lodge disputes and challenge their validity. Kath Venn might have been

able to bring a case against the election of John Coates in Tasmania in 1984 had she been aware of this matter that caused drafting anxiety back in 1983.

Constitutional uncertainty about multiple group voting tickets cannot be avoided if voters do not have a direct means of showing their endorsement of a particular preference order. A possible approach involving placing a separate box on the ballot paper corresponding to each group voting ticket is unlikely to win support among parties that normally register a single list of preferences as the additional boxes associated with some columns would be likely to draw greater visual attention.

The upshot is that the parties and groups lodging multiple group voting tickets are required to run the not-altogether-negligible risk that they may be valid only as far as the numbering on each is identical. That is the optimistic scenario if the High Court rules in favour of a plaintiff by invalidating the standard provisions regarding multiple tickets.

However, past experience indicates that divergence in numbering usually occurs fairly early and therefore such deemed preferences are unlikely to comply with the ordinary formality provisions. It is therefore possible that the savings provisions will also be rejected and such votes ruled informal (with possibly significant consequences for the composition of the Senate), or the entire Senate election in particular jurisdictions will be voided.

Maintaining such an unnecessarily complex structure in these circumstances would be an act of foolhardiness rather than machismo as some have assumed in the past.

Lack of awareness of group voting tickets

Voters find it hard to download particulars of all potentially-relevant group voting tickets from the AEC Web site after the time for lodgement has passed and, despite the specific requirements of Section 216 of the *Commonwealth Electoral Act 1918*, often experience great difficulty in locating their particulars if they ask officials at individual polling places on election day. That material is too voluminous to be displayed in a manner likely to last long in each voting compartment in pristine condition.

Therefore it is not surprising if very few electors become aware in advance that party operatives may have made some strategic decisions related to preferences that are capable of backfiring, or at least causing widespread disquiet when their consequences become known.

In 1990, the last Senatorial place in New South Wales was in practice determined by the decision of powerbrokers within two groups to blackball Liberal Senator Chris Puplick in their registered voting lists. Few Grey Power and Citizens' Electoral Councils Group supporters who marked those two party boxes would have ever become aware that they were responsible for putting in a third Labor rather than a third Coalition Senator.

Tasmania and Victoria in 2004 provided an interesting contrast in what happened when Labor and the Australian Democrats placed Family First ahead of the Greens in the hope of themselves attracting votes after the exclusion of the last Family First continuing candidate towards the end of the scrutiny.

Because Family First received greater support than the Australian Democrats and worked its way to a progress total above that of the last continuing Labor candidate, in each case it rather than the Greens benefited from party ticket votes for the Australian Democrats and Labor.

In Victoria, Stephen Fielding was elected as a Family First Senator after starting with 1.88% of first preferences, whereas in Tasmania because a significant proportion of Australian Democrats and Labor voters chose to vote below the line and did not follow the strategic miscalculation of the registered tickets in their numbering, Christine Milne was elected as a Green Senator.

Group voting tickets are now allowed to be lodged up to 48 hours after the declaration of candidates who have successfully nominated for the Senate. In Western Australia they must be submitted within 24 hours of Legislative Council nominations closing, and within 72 hours of those nominations closing in South Australia.

During the nerve-racking negotiations that take place, party operatives are essentially often trying to outmanoeuvre other groups or parties by agreeing to aspects of numbering not expected to be material, with a view to benefiting from their above-the-line votes when their final continuing candidate is excluded.

However, because the relative standings of continuing candidates towards the end of a scrutiny usually cannot be predicted with any confidence, as was the case leading to the election of Senator Fielding in 2004, the consequences may be flows of votes that surprise, disturb or dumbfound those who acquiesced in innocent ignorance and trust, or because the alternative of marking (almost) all the individual squares seemed too demanding.

At the height of her own public recognition and influence following the 1996 elections, then Australian Democrat leader Cheryl Kernot stated that the period for registering ticket votes was probably her worst time in politics because "it has become the darkest kind of auction which denies the democratic rights of people who vote, and entrenches it in the hands of a few party officials".

Senator Kernot said that the major parties had tried to play off the Democrats and the Greens and that in Western Australia, the ALP had registered a single ticket placing the Greens ahead of the Democrats even though Labor had complained about the difficulty of working with their two Senators.

There has been a growing tendency among many of the smaller groups to deliberately put Liberal and Labor last or nearly so, opening up greater possibilities for one of the them to harvest the final quota of votes.

For instance, at the NSW Senate elections in 2004, the leading liberals for forests candidate began with just over 20,000 first preferences and reached nearly 250,000 votes or just under half a quota at the point of exclusion. This was fewer than 2,000 votes short of the Christian Democrat progress total, and had these been the other way round, he'd have obtained a further boost of more than 200,000 votes and become the last remaining non-elected candidate, losing only because the Greens had refused to give him an early preference.

Major party machines prefer to control the order of election in Senate elections as a internal matter that can be determined by the relatively few party members eligible to vote in the

preselection. At times various operatives or party dignitaries then complain about it being too easy for smaller parties to get elected despite starting with relatively few first preferences.

If parties instead concentrated on endorsing candidates of high calibre and public standing and let voters sort out who gets elected by having names in their party columns rotated and allowing the purely party vote to be spread out, they would make the most of their supporters' efforts.

For instance, currently if Labor or Liberal achieves 2.2 quotas, in practice its third candidate starts with 0.2 of a quota and will be excluded towards the end of the scrutiny. With the application of Robson Rotation, there could instead be three candidates with 0.9, 0.7 and 0.6 of a quota respectively, all of them with prospects of picking up preferences from elsewhere: two would still definitely be elected and the third might have a real show if there were significant favourable flows as the last continuing candidates of smaller groups or parties were excluded.

The best way forward with reform

The view of the Proportional Representation Society of Australia has consistently been that *party boxes should be abolished and simpler formality provisions introduced instead*. The ACT example of ballot papers instructing voters to mark at least as many preferences as there are vacancies but any vote with a single first preference being accepted as formal is entirely workable, particularly if more voters come to understand that the marking of further preferences cannot disadvantage those whom they support most strongly.

We do not endorse the more complex New South Wales approach of retaining party boxes, abolishing group voting tickets and requiring voters taking the above-the-line option to mark party boxes sequentially. While below-the-line formality provisions in NSW are far less onerous than those in Senate elections, such a desirable change would not necessarily be made federally and yet it is really the key to more sensible arrangements.

To avoid local problems about the meeting of constitutional formality requirements, minimum column lengths have been introduced in NSW for parties wanting to have boxes above the line. A consequence has been the appearance on the ballot paper of far more candidates' names than would have occurred naturally.

It can be argued that the NSW approach restores control over preference flows to voters, but that does not occur in the simplest-possible manner which would entail voters having complete or reasonable freedom in dealing with just the squares alongside candidates' names. In addition, unless current arrangements for Legislative Council elections were altered elsewhere on the mainland, above-the-line voting would have quite different connotations at federal and state elections in some cases.

After the missed opportunities in 1948 and 1983, Senate voting arrangements should now be returned to a straightforward path instead of becoming yet more complicated to combat problems that have always been avoidable. Getting the basic principles right would create an atmosphere in which voters can be convinced that their engagement and participation are worthwhile because their views matter.

Party boxes in tandem with punitive below-the-line requirements have transferred power to party operatives who have not used it particularly wisely, leading to the proliferation of small parties with catchy names whose creators hope to benefit from the aggregation of small slivers of voter support.

Restoring voters' influence through liberal formality provisions and the use of Robson Rotation to spread out the purely party vote would increase the exclusion thresholds for candidates and parties with limited support, and dash their hopes of cobbling together a quota.

There is room for debate about whether more than one preference should be *required* rather than just *encouraged*, but it is clear that a high threshold for acceptance of ballot papers is an unwarranted imposition on voters.

Some voters and commentators suggest that there should be at least as many preferences as there are vacancies as that way there is a guarantee that no candidate will be elected without receiving any votes. That unusual prospect can be disregarded as a possibility in public elections, and instead a judgement made about the trade-off that exists between maximised levels of formal voting if requirements are not onerous, and the prospect of large numbers of votes occasionally being exhausted towards the end of the scrutiny because on many ballot papers there are no further preferences for continuing candidates.

The Proportional Representation Society of Australia's view is that it is preferable to have more formal votes rather than unnecessarily deny electors a vote if they fail to mark some arbitrary number of preferences. It is for instance possible to introduce the concept of a reducing quota as ballot papers become exhausted, and to place as much as possible of the remaining value of non-transferable papers within the quota of the candidate they just helped to elect, by carefully defining the transfer value when dealing with that candidate's surplus.

The ACT approach of asking for at least as many preferences as there are vacancies, but accepting fewer, would be perfectly satisfactory. The Victorian and Tasmanian criteria of requiring at least as many preferences as there are vacancies would also constitute a major advance over current arrangements, and pave the way for voters to exercise greater influence without being daunted by the nomination of candidates whom they are happy to disregard for one reason or another.

In a functioning democracy with proper educational materials and promotional effort in place, it can be left to informed electors to assess the risk of wasting their vote if it is not certain their first-preference candidate (or ones shortly thereafter) will either be elected or become the last to be excluded.

Information that should be sent to all electors if party boxes remain

If party boxes continue as a feature of the Senate electoral system, voters are entitled to have accurate information about:

- the detailed operation of arrangements such as sequential above-the-line marking that would apply for the New South Wales Legislative Council if a decision were made to pursue that initiative;

- how each group voting ticket is numbered and therefore how their vote will be treated if the current arrangements persist and they endorse a party box; and
- the uncertainties associated with multiple group voting tickets that are lodged by particular groups or registered parties if steps are not taken to clean up the web of arbitrary provisions associated with them.

In the light of increasing instances of major strategic miscalculation by party operatives:

- complaints by various candidates and parties of poor treatment in group voting tickets lodged by others;
- independent media scrutiny of group voting tickets and their possible consequences; and
- the posting of such information on the Web by electoral authorities as soon as possible before polling day

do not constitute adequate means of disseminating such important information.

Internet sites currently tend not to be attractive to those seeking to download lots of detailed information, especially as lodged group voting tickets are usually presented in a manner that takes a long time to view and download, rather than appearing in some database or flexible format permitting electors to save and re-use whatever material is important to them.

While the media will run stories based on complaints by parties or groups thought to be in contention for places, typically anything other than superficial analysis of lodged group voting tickets is usually left for the final week of the campaign when some attention falls on Senate prospects. Such material may not appear until publication of the special election watcher's liftout in the last few days before the election date.

Although time frames may be tight if group voting tickets are retained, a far better approach would be to automatically include full particulars of them in a mailout to all electors that would also serve as the basis for a major roll-updating operation. Such action would be guaranteed extensive media coverage.

Some of the relevant associated descriptive material could be prepared well before the rush associated with campaign periods and also prove useful well before election day to reporters and others in the public spotlight who may not be very familiar with such important matters. Most electors would be inclined to look at least briefly at what was in their official mailout, and therefore many misconceptions about preferential voting could be cleared up and rates of unintentional informal voting should decrease.

There should be funding available or set aside for such direct communication with all electors at every election rather than exclusive or excessive reliance on trying to reach them through very brief electronic media spots that have often not worked very successfully.

In making a much-needed assessment of how to change the current unsatisfactory arrangements for casting a formal Senate vote, it is worth also bearing in mind unusual and even disturbing experiences with party boxes in several states where there have also been varying degrees of reluctance to put voters' wishes at the forefront of Legislative Council electoral system design.

Experience with party boxes in Legislative Council elections

After their adoption for the Senate, hybrid party-box methods were fairly quickly introduced for electing the Legislative Councils of New South Wales and South Australia whose MLCs serve for multiple Assembly terms on a rotational statewide basis.

They also came into effect in regional aggregations of Legislative Assembly seats when the Burke Government eventually succeeded in its long public campaign to have Western Australia's Legislative Council elected by proportional representation simultaneously with its Legislative Assembly. Party boxes were used for the first time in Victoria in 2006 in eight five-member Legislative Council regions whose seats were determined by quota-preferential proportional representation.

Interestingly, *none* of these four jurisdictions mimics the Commonwealth's approach to below-the-line formality:

- at one end of the spectrum, in South Australia and Western Australia no error in numbering respectively below or to the right of the line is tolerated, but one square may be left blank;
- Victorians must number without omission or duplication at least as many squares as there are vacancies in each region (later errors are acceptable); whereas
- in New South Wales, where 21 vacancies are being filled, fifteen numbers are enough for a formal vote, and if at least that many are present, omissions or duplications after the single first preference do not invalidate a ballot paper.

As in Senate elections, voters generally find it difficult to obtain key information about registered voting tickets or assess the chances of strange events being liable to occur if they take the simple option of marking a party box in South Australia or Western Australia, or choose to do so in Victoria where it is much easier to vote formally below the line.

Material on Electoral Commission Web sites is usually difficult to grasp without extensive note paper at hand and generally takes a long time to download. It is not made available to voters in a format where the possible implications in practical reality can be conveniently studied by those with that inclination.

Because quotas for election to the Legislative Council in South Australia and New South Wales, respectively around 8.33% and 4.55%, are much lower than for the Senate, there has been a good deal of manoeuvring for preference flows through which one of the last few places might be gained.

In addition, some of the miscalculations by party operatives charged with the responsibility of negotiating and lodging voting tickets have had far-reaching consequences of which supporters would have had no inkling on polling day.

The micro party phenomenon in New South Wales

The unexpected success of the leading "A Better Future for Our Children" candidate in New South Wales in 1995 starting with 1.3% of first preferences, led to a deliberate proliferation of micro parties with catchy vote-harvesting names designed to gradually aggregate small

slices of votes in the hope of someone building to a quota or outlasting other continuing candidates at the end of the scrutiny.

Success this way has been achieved regularly in New South Wales because of the rather small quota. Because the largest parties insist on determining the order in which their candidates are elected, mainly each with a full quota of votes at the start of the scrutiny, experience at several elections shows that even 1% of first preferences offers reasonable hope of election if some preference flows from candidates with lesser support are available.

In fact, Malcolm Jones of the Outdoor Recreation Party started with just over 7,000 votes or 0.2% of first preferences in 1999 and was actually the sixteenth of 21 candidates to be elected. He became the unintended beneficiary of a web of preference deals that had been designed to put its organiser into the Council, except that the latter started with only 3,000 first preferences and couldn't get his progress total high enough in time to reap all the flows he confidently anticipated.

The notorious tablecloth ballot paper that arose in New South Wales in 1999, when 264 candidates, either independents or representing 80 different groupings, nominated, promptly led to extensive amendments:

- greatly tightening the criteria for registration (and therefore the prospect of an appealing name appearing on the ballot paper) and insisting that registered parties be in existence for twelve months before they become eligible to have their name at the top of a column;
- abolishing registered voting tickets entirely; and instead
- requiring voters not wishing to number squares alongside individuals' names to place numbers in boxes (called group voting squares) above the line to indicate an order of preference for parties.

Once there were no more continuing candidates within a voter's party of first preference, the ballot paper would become available to the continuing candidate highest in column order of the party with next available group voting square preference, and so on.

The combination of the step of requiring voters to consciously indicate any order of preference among parties, and more rigorous procedures for registration and eligibility to have a party name appear on the ballot paper, curbed the previous deliberate creation of front parties in the period just before any election.

However, additional names appeared in columns on the ballot paper because of the provision, related to the entrenched minimum requirement for expressing a formal vote below the line, that at least fifteen candidates be nominated in order that a group voting square be available as a short cut.

It would have been much easier to simply move to optional preferential voting or retain a requirement for numbering at least a modestly small number of squares, and put more administrative effort and creative imagination into informing voters about how to make the most of their vote once they have formed their views.

Compulsory marking of all squares in South and Western Australia as the alternative

With its compulsory marking of preferences and statewide Legislative Council electorate, South Australia holds the dubious distinction of having imposed the most demanding requirement in practice for the recording of a formal vote in public elections, when 76 candidates nominated in 2002.

In 1997, lawyer Nick Xenophon triumphed as an “Independent No Pokies Campaign” candidate starting with 2.9% of first preferences and drawing ticket votes from a range of excluded groups, including the National Party that put him before the Liberals.

A candidate standing for the ‘Nick Xenophon Support Group’ drew barely 1% of first preferences in 2002 and was excluded relatively early in the scrutiny.

When the major parties both moved against him in their lodged voting tickets in 2006, Mr Xenophon was given an additional platform to question their motives for suddenly doing so. In the public eye regularly, he successfully portrayed himself as always fighting for the ordinary person, to the extent of outpolling the weaker of the major parties in nearly every electorate, and finishing with 21.5% of first preferences, well over two quotas, so that the second person in his group was also elected, and nearly the third.

The most spectacular immediate misfires or miscalculations in relation to registered voting tickets have been in Western Australia. For instance, Labor supporters were required to mark all preferences to the right of the line in the North Metropolitan Region in 1993, and similarly Green supporters in the East Metropolitan Region that year, because the numbering in each lodged ticket was defective, and legal advice was obtained that a formal vote could not therefore be recorded through the party box.

A more remarkable occurrence arose in 2001 from One Nation voting tickets in the Agricultural and Mining and Pastoral Regions. Elsewhere in the state, the Liberals were placed ahead of the Australian Democrats and WA Greens, but not in these regions where the Nationals were placed last.

In both of these electorates, the Greens started with around a quarter of a quota which was augmented as preferences from excluded candidates flowed in. One Nation obtained more than a quota in the Agricultural Region and its votes when the second candidate on their list was excluded made the difference between a second Liberal and a Green being elected.

In the Mining and Pastoral Region, One Nation relied on preferences from former ALP MLC Mark Nevill who put the Greens last. As transfer value calculations then followed the Senate unweighted average model applied to all ballot papers for the successful candidate, One Nation’s contribution was again just enough to put in a Green ahead of a second Liberal.

By assisting the Greens to win the last place in both the Agricultural and Mining and Pastoral Regions, One Nation let slip the possibility of holding the balance of power in the Legislative Council in its own right and handed it to the Greens instead.

At the 2005 elections, by placing the Greens above the Liberals in the hope that they might actually draw their ticket votes after the exclusion of the last continuing Green candidate in

the South West Region, the Nationals handed them an extra seat and with it the balance of power in the Legislative Council after the May changeover.

Family First began with a quarter of a quota and progressively picked up another half a quota as parties with lesser support sequentially dropped out. Its leading candidate was defeated only because of the flow of National party box votes to the Greens who started with nearly two-thirds of a quota.

Before the changeover in May, through the support of a former Liberal MLC who had not stood again after party infighting, there was briefly an absolute voting majority in the Legislative Council for ending the entrenched vote weightage arrangements from the Burke era.

The Greens were in a position to place conditions on their support for the virtual elimination of enrolment imbalances in Legislative Assembly seats, a step opposed bitterly by Liberal and National MPs. In insisting on six six-member regions for the Legislative Council, half in metropolitan areas and half in rural, they may in turn have set the scene for renewed dominance of that chamber by the Liberals and Nationals who obtain sufficient support in some rural areas to have four of six seats there regularly in their grasp.

Senate transfer value definition untenable in the computer age

Although its attempt to introduce a reducing quota for the Senate in 1983 failed because of confusion over the difference between non-transferable and exhausted ballot papers, the Hawke Government persisted with its officials' flawed technique for making an unweighted calculation of transfer values using all ballot papers contributing to a candidate's election rather than, as previously, just those received in the parcel taking the progress total beyond the quota.

Surpluses have simply been divided by the total number of ballot papers contributing to a particular candidate's election and all papers then transferred at that value or exhausted. Anyone with basic mathematical training will immediately recognise that this approach can lead to some transfer values increasing during the course of a scrutiny and therefore some voters exercising more than a single vote worth of influence: such a possibility is hardly compatible with the usual concept of the single transferable vote.

This flaw, which in all circumstances allows ballot papers of relatively low remaining value more than their due influence when a surplus is being transferred, has been criticised from the outset by the Proportional Representation Society of Australia and others familiar with quota-preferential principles.

While the unweighted method was quickly adopted in the 1980s to calculate transfer values at elections for the Legislative Councils of South Australia and Western Australia, there was never any chance of it being approved and applied overseas as a legitimate form of the single transferable vote. It is now progressively being abandoned or recognised as deficient around the nation.

The quota is the smallest number of votes at which candidates are mathematically certain of election. It is the first integer greater than the result of dividing the formal votes by one more than the number of vacancies.

If there is a simultaneous desire to make it easier to record a formal vote while keeping exhausted votes as low as possible, beyond making electors more aware that marking more preferences can only increase the chances of making their vote fully effective, the quota can be reduced as votes are exhausted, and non-transferable ballot papers placed as much as is possible within the quota of the candidate they last helped to elect.

Ballot papers for candidates who cannot be elected and are being excluded are transferred at their prevailing unused value to others who remain as continuing candidates. This step and the transfer of surpluses of elected candidates with more than a quota ensures that wasted votes are kept to a minimum.

To avoid creating additional anomalies, every ballot paper being transferred to continuing candidates should have the same proportion of its remaining value contribute to the election of the successful candidate, and the remainder available for continuing candidates. In other words, a surplus fraction or transfer factor should be applied to multiply the value at which the elected candidate received each ballot paper, and that then would become the unused transfer value still available for continuing candidates.

The Australian Electoral Commission has made regular statements that the transfer value has no normative significance and that no set of scrutiny rules can attain perfection. These observations avoid the inconvenient fact of how the single transferable vote has always been intended to work (as can be gauged from its name) and neglect to face up to some basic points about good electoral practice:

- obvious anomalies are usually avoided in counting or seat allocation rules because they undermine public confidence in the fairness of outcomes;
- it is legitimate to calculate the contribution of each ballot paper to a particular candidate's election as the difference between incoming and outgoing transfer values; and
- if some electors end up getting more than a single vote worth of influence through their contribution to candidates' election, we cannot claim to be implementing a form of the single transferable vote.

The defect was recognised by the Western Australian government after a thorough review by Dr Narelle Miragliotta of underlying principles and the research literature following controversy over transfer values in the Mining and Pastoral Region following the 2001 Legislative Council elections. After the release in 2002 of her comprehensive report *Determining The Result: Transferring Surplus Votes in the Western Australian Legislative Council*, Attorney-General Jim McGinty proceeded with amendments that introduced the Weighted Inclusive Gregory method for both Legislative Council and local government elections, particularly as the prospect of a transfer value increasing during the course of a scrutiny was unacceptable.

In September 2005, the NSW Joint Standing Committee on Electoral Matters recognised that there were problems with the old Senate sampling procedure for transfer of surpluses still used at Legislative Council elections.

This method, under which only ballot papers in the final parcel taking a candidate's progress total beyond the quota are eligible for transfer, was copied from Eire where a variant still remains in place. It has survived because it was entrenched as part of the guarantee of direct

election for what has been an appointed or indirectly elected body for most of its existence, and not considered for amendment when the size of the Council and the lengths of individual terms were both reduced through referendum in 1991.

In its *Report on Inquiry into the Administration of the 2003 Election and Related Matters*, the Joint Standing Committee stated that it “considers that if a new system for the counting and transferring of votes for the Legislative Council is adopted that it would be appropriate to adopt a system that does not have anomalies, no matter how small such anomalies may be”. After mentioning the Senate approach as a minimum possibility, the Committee indicated that “consideration should be given to adopting the Weighted Inclusive Gregory method” that has gained acceptance in Western Australia.

The July 2009 report of the Victorian Standing Committee on Electoral Matters *Inquiry into voter participation and informal voting in Victoria* indicated support for a change to Weighted Inclusive Gregory methodology for dealing with surpluses at Legislative Council elections and recommended that the government consider making this change.

After extensive documentation had been obtained from the Western Australian Electoral Commission, the Victorian Electoral Commission expressed the view that the approach of multiplying each ballot paper’s previous transfer value by the same surplus factor after a candidate’s election “may be a ‘purer’ form of proportional representation than that currently in use in Victoria” as it avoids the possibility of a ballot paper’s transfer value rising during the course of the scrutiny.

Qualifying thresholds for the Senate would be inconsistent with single-transferable-vote principles

If multiple vacancies are to be filled, transferring surpluses of elected candidates with more than a quota and transferring the votes of excluded candidates at their current value ensures that wasted votes are kept to a minimum. No other intervention is necessary for the proper operation of the single transferable vote.

In particular, there is no need for artificial exclusion thresholds of the type:

- used in South Australia during the 1970s and which showed how easy it is for such arrangements to produce outcomes not in keeping with voters’ expressed wishes; or
- which operated under the disastrous modified d’Hondt scheme inflicted on the Australian Capital Territory in its first two self-government elections of 1989 and 1992 and which highlighted the instability that can arise when groups or parties receive support levels close to the threshold.

Artificial thresholds are often part of non-preferential list systems overseas that allocate seats in some way according to an average-votes-per-elected-member criterion that pays no heed to the aggregate numbers of wasted votes, nor necessarily to the distortions of voters’ views that may arise because of this. The existence of a variety of allocation rules attests to how problematic such schemes have been in practice, requiring modification to avoid outcomes seen as unfair or inappropriate in particular countries’ circumstances.

In the case of South Australia, the exclusion threshold was set at half the quota guaranteeing election for one of eleven places. Parties or independents obtaining fewer votes were

excluded and a *single transfer* made to the eligible party or independent left that had each of those voters' highest preference.

Seats were then allocated for each quota obtained (just over 8.3%) and finally in order of descent of the fractional parts of a quota until all vacancies were filled.

After the 1975 election, the assessed support levels for qualifying parties, after transfers from excluded candidates, were Labor 48.6%, Liberal 30.9% and Liberal Movement 20.5%: they were therefore allocated respectively six, three and two seats. Not only did Labor win a majority of seats despite having a minority of the vote, but also there was a major discrepancy in the ratios of votes to seats for the three parties.

In 1979, after the distribution of votes from excluded groups, the Liberal Party had 52.0% support, Labor 40.5% and the Australian Democrats 7.4% and obtained respectively six, four and one seats. On this occasion it was Labor with a noticeably unfavourable votes-to-seats ratio, having just failed to match the fractional part of a quota received by the Australian Democrats. This outcome highlighted the inbuilt advantage for qualifying parties with less than a quota of votes and also drew attention to the importance of the exact nature of any arbitrary threshold lower than the quota for election.

By 1982, this party list system had been replaced by the single transferable vote that has remained in place ever since without controversy about its inherent fairness. Had there been no transfer from parties and candidates with support below the exclusion threshold, much greater distortions of the people's will could have occurred.

Under the modified d'Hondt scheme imposed upon the Australian Capital Territory for the transfer of self-government responsibilities in 1989, seventeen members were elected at large, and the level of support guaranteeing election (just under 5.6%, in fact the first integer greater than one-eighteenth of the formal votes) was also the qualifying threshold.

On the first occasion, the Fair Elections Coalition fell just 117 votes short of the threshold while others excluded received first-preference support levels of 4.8%, 4.1% and 4.0%. Their votes and those for other excluded candidates were transferred once, to the highest-ranked successful party on each ballot paper, to establish seat allocation to parties and groups. This helped the Residents Rally to get four members elected despite starting with 9.6% of first preferences, less than two full quotas, whereas had support for the Fair Elections Coalition instead risen just above the threshold, both it and the Residents Rally would each have secured two seats.

Despite intense public dissatisfaction after the prolonged count to determine which candidates within groups or parties were elected and the antics of some of the elected parties that followed, the same system was imposed again by the federal parliament in 1992, at the same time as there was a plebiscite about the electoral system to be used in future. On this occasion, the Michael Moore Independent Group obtained 73 votes more than the quota and picked up two seats on this account, whereas two parties with 4.6% and 4.5% support respectively were excluded at the outset.

The two ACT outcomes again exposed the arbitrariness of the qualifying threshold and illustrated how a handful of votes determining whether a party, group or candidate falls just above or just below it can affect the allocation of several seats. An examination of Senate

voting patterns reveals the potential for the same type of instability depending on the exact level of the arbitrary threshold that might be nominated in practice.

Such instability is not present when the single transferable vote is used as at most one seat will depend on whether a particular party, group or independent has a particular handful of votes or not. If Robson Rotation is used to share out the “purely party” vote in its column among the continuing candidates remaining there, no easy ways are left open for candidates with limited first-preference support to cobble together a fortuitous quota.

Countback preferable for filling Senate vacancies

The 1975 constitutional crisis could not have happened without the replacement in New South Wales and Queensland that year of resigning or deceased Labor Senators with respectively an independent and a self-declared “Labor man”, rather than ALP members endorsed by the relevant state branches as would have happened under the convention that had previously been respected since the introduction of proportional representation.

In 1977, the Fraser Government successfully sponsored a new constitutional requirement that the replacement for a Senator “publicly recognised by a particular political party as being an endorsed candidate” at the time of election, be a member of that party in normal circumstances. Rogue appointments would not be possible because the party in question could and would immediately move to expel anyone seeking to take up a particular vacancy without proper endorsement.

However the amendment does not deal with the replacement of Independent Senators or Senators from groups that are not political parties, or situations where a party goes out of existence or perhaps amalgamates with another or undergoes a name change.

As often happens with electoral proposals that are not comprehensive, the amendment did not provide conclusive guidance when the need for a replacement first occurred subsequently.

Steele Hall, elected for the Liberal Movement in 1975, resigned in November 1977 in order to stand for the Liberal Party in the House of Representatives electorate of Hawker. With the Liberal Movement no longer in existence, and its second candidate from 1975, Michael Wilson, recently elected to the South Australian Parliament as Member for Torrens, in December Premier Don Dunstan proposed its third candidate, Janine Haines, by then an Australian Democrat, to be the replacement until June 1981.

Subsequent appointments have shown that state governments are able to delay agreeing to a particular nominated replacement for some time after a casual vacancy has occurred, to signal dissatisfaction with an endorsed party member whom they are unable to block. In some circumstances, such a delay could also determine whether contentious legislation passed or not, or was referred to a committee.

The Proportional Representation Society of Australia believes that countback, along the lines of the Hare-Clark system rather than the complete recount set out in Western Australian legislation with special provisions to ensure that all continuing incumbents are unaffected, should take the place of the 1977 amendments. It would have universal applicability, tend to result in additional polling-day choice for electors, and most likely maintain the stability of representation.

First, the adoption of countback would mean that every Senator had been before the people at the previous election and reinforce the importance of voters relative to party machines, as those who had lost their representative would determine the replacement through the re-examination of the quota for the vacating Senator (or ultimate predecessor successful at the previous general election or the one before). In the middle of 1997, just under 20% of Senators had their places without having been elected by the people of their state.

Parties hoping for or anticipating some success would be inclined to endorse more candidates than currently to ensure that one or more was available to fill any casual vacancy that subsequently arose. If there were doubts on this score, incumbents would be less likely to resign whereas under the current arrangements frequently handing control over replacements to party machines, some Senators have departed within weeks of being re-elected.

Examining the quota of the vacating candidate or ultimate predecessor would emphasise the point that each election produces an outcome over the full term at stake. There is far less likelihood of a change in the balance of the Senate through this approach than through a full recount where changes in the order of exclusion can trigger unusual preference flows and lead to unexpected outcomes.

Replacements would also occur within a predetermined time period through indication of consents to serve by unsuccessful candidates at the election by a specified date, and subsequent administrative action to then quickly re-examine the relevant quota of votes, in practice by running a computer program, without any scope for delay by a state or territory parliament.

Trying to elect an odd number of Senators wherever possible

When the House of Representatives was enlarged in 1983 following the combined vote of the Labor and National Parties, at future half-Senate elections the existence of six vacancies meant that normally half the seats (guaranteed by 42.9% support) rather than a majority (requiring just over 57.1% after distribution of preferences) could be aspired to by the largest parties in any state.

While the decrease of the quota from just under 16.7% to just below 14.3% can be portrayed as potentially opening the door for the election of more candidates or parties with under a quota of first preferences, the new arrangement was clearly inferior to the previous one whereby a majority of the votes in a state led to a majority of the seats while other significant bodies of opinion could also secure representation.

With voting for candidates not from either the Labor Party or the Coalition continuing on a longstanding upward trend, it took twenty years for either of those entities to win a majority of seats in any state. At the half-Senate election in Queensland in 2004, a quota of votes held by the last continuing candidates for three groups (One Nation, Pauline Hanson and Family First) at an advanced stage during the scrutiny flowed to the separate continuing candidates of the Liberal and National Parties who were both elected as a consequence.

Had there been a combined Coalition team on that occasion, on the aggregate levels of support shown by voters for the Liberals or Nationals, only three of their number would have

been elected because there wouldn't have been two continuing candidates available to attract available preference flows in the final counts.

Apart from having to lift its levels of voter support significantly from those applying in recent years, to achieve a half-Senate majority in any state, Labor would have to run separate metropolitan and regional/rural lists or otherwise arrange to have more than one team in order to have a chance of capturing four of the six seats.

While the sizes of the Senate and House of Representatives are linked constitutionally, and an attempt at breaking the nexus failed in the 1960s, voters might be prepared to accept a properly-explained amendment under which, while there are twelve Senators for each state, seven and five Senate vacancies would alternate in normal circumstances.

Such a proposal of always electing odd numbers of Senators except at a double dissolution would not lend itself easily to a negative campaign seeking to exploit distrust or fear, except if it were advanced at a time when expansion of the parliament was being proposed simultaneously. Nevertheless, a prerequisite for success would be a good deal of persistent effort over an extended period of time put into explaining to voters why such a change recognising and rewarding majorities of votes at half-Senate elections would be beneficial for our democracy.

After the deadlocked parliaments of 1955 and 1956 when six-member electorates were in use under the Hare-Clark system, the Tasmanian House of Assembly Select Committee on Electoral Reform noted that "Since the system was first used in 1909, the only real complaints made about it have been voiced when electorates have returned an even number of members from each of the two main parties."

It stated its conviction that "a majority of electors within an electorate should be guaranteed the right of returning a majority of elected members" and recommended "the election of seven instead of six members from each of the five existing Commonwealth-State electorates".

This recommendation was adopted by the Tasmanian Parliament in 1958 in which year was also published George Howatt's Tasmanian Parliamentary Paper, *Democratic representation under the Hare-Clark system*, a thorough analysis of past voting behaviour. It too concluded that having seven rather than six vacancies was the best-available reform option.

In the Australian Capital Territory one of the Hare-Clark principles overwhelmingly entrenched through referendum in 1995 is that each electorate return an odd number of members no fewer than five.

National goals for electoral education and promotion and development of suitable materials

Success with electoral education and promotion won't come easily without the question being raised and discussed frankly of the extent to which citizens are able to participate effectively in our national or state/territory democracies given particular electoral arrangements and dominant local political behaviour. Much will depend on the influence voters perceive they have and their view of whether the important political questions are being addressed.

It would be desirable to always set goals for voter participation and engagement and for levels of improvement in certain performance indicators for those matters at the next election, as well as in various aspects of administrative efficiency. This is routine procedure in the ACT after each election.

A modest initial practical set of fundamental national goals well worth aiming for in relation to electoral systems and voting, and which could usefully form the basis of a good deal of co-operation and harmonisation among electoral authorities, is:

- every Australian is familiar with what the marking of preferences means;
- every primary and secondary school student is exposed to at least one mock election and some exploration of the specific impact of different ways of counting;
- every person working in the media and reporting on political matters has an accurate grasp of how different electoral systems work;
- before every election, voters can expect to receive a mailout of helpful materials as well as being exposed to electronic messages about the freedoms available when they vote; and
- after every election, voters can expect to have straightforward and timely Internet access to all key statistics and other important summaries arising from the voting and counting.

Such goals would aim to ensure that electors, current and future, have the experience and understanding to make the most of voting, as well as being in timely possession of the information and knowledge to be involved as effectively as possible at a particular election. They should result in the levels of informal voting dropping markedly as long as the design of our electoral systems doesn't seek to overly circumscribe the impact that voters' views can actually have.

The establishment of an *Australian Democracy Web* presence would complement in a systematic educational, authoritative and entertaining manner the work of current electoral authorities, political parties, academics and other analysts and interest groups and become widely known over time in Australia and overseas as the best starting point for those wishing to pursue an interest in the workings of some aspect of our democracy.

Beyond matters surrounding voting and counting:

- basics of our constitution and national values;
- the way in which important Australian institutions work;
- what parliamentarians do and the quality of interaction of citizens with elected members; and
- people's influence through community groups and other organisations working for particular ends, or voicing of views in the media

could be readily taken up through such an initiative.

Despite a number of praiseworthy local initiatives and the presence of material about how to conduct mock elections for instance on the Elections ACT Web site (<http://www.elections.act.gov.au/education/ryoeinfo.html>), there does not appear to have been a systematic attempt to put together materials about voting systems suitable for both subject electives and core curricula in primary and secondary schools.

There are both mathematical and social study aspects that can be successfully pursued. Further, with the evolution of social choice theory as a discipline in its own right following the pioneering work of Nobel laureate Kenneth Arrow and others, there is a wealth of more advanced material that could usefully be made accessible to more sophisticated audiences.

Ongoing advances in computer software and delivery platforms make it possible to present and illustrate the consequences and paradoxes surrounding various voting systems very graphically, and through those means to challenge audiences to think more about the purposes of voting and at what point they would regard electoral arrangements as being reasonable or fair.

It is straightforward to illustrate the process of conducting a quota-preferential election, both in words about the principles involved and available viable options, and through flow charts and simulated counting. Using different presentation media and formats, graphic designers and other communication specialists could put together a number of lively, easy-to-follow explanations based on answering the question, "Is anyone ready for election?"

An Australian Democracy portal

In developing suitable materials for an *Australian Democracy* site, it would be necessary to grapple first with the relevant democratic concepts and underlying principles, rather than be tied closely to the words of existing legislation for fear of offending those who would not wish detailed consideration to ever be given to alternatives that would enhance the role of voters, or might remove what is perceived to be a partisan advantage being derived from current arrangements.

The presence of a designated *Australian Democracy* portal where a wide range of useful material could be downloaded or ordered would tend to result in both ongoing submission of worthwhile new material from various quarters, and the appearance there of more comprehensive links to a much wider range of content appearing elsewhere and meeting quality standards that have been agreed and are explicitly set out.

Election authorities would gain much from co-operating and being able to place a deal of available historical material on such a site with suitable links to and from their own and could at times be persuaded to make some resources available for regular upgrades of such a presence. Some of the material would save others from having to re-invent the wheel and free resources for further important developmental work that would benefit everyone.

Others in academia and the community are also likely to volunteer specialist material and links that would most likely meet the set quality guidelines for the acceptance and display of contributions. An example of how this has been done quite well in providing reliable information about health from a variety of sources on a host of topics is the site <http://www.healthinsite.gov.au>.

Materials should be available at three different basic levels:

- conceptual, suitable for media or other presentations where space or time is at a premium;
- intermediate, going through the different interactive stages suited to primary and secondary students; and

- advanced, for those who want a wealth of detail or to canvass questions at the cutting edge of practice or knowledge.

All organisations providing a range of information such as that mentioned above serve a healthy purpose and their continued individual efforts should be encouraged.

An *Australian Democracy* portal would act as a reliable entry point for people uncertain of exactly what they're after or where to start looking, as well as those wanting to maximise their chances of finding specific or even arcane information quickly. It would also become an acknowledged clearinghouse for interesting research and analysis and avert much duplication of effort.

The readily-anticipated availability of suitable materials on the basis of which people can ask questions, obtain access to differing points of view and make their judgements on matters they regard as important would play an important role in the promotion of democratic ideals both in relation to voting and more broadly. There would also be an international aspect to this activity because of the pioneering role that Australia has played in many facets of electoral administration and facilitating expression of our democratic spirit.

The initial development of the *Australian Democracy* portal is clearly a task that the Electoral Council of Australia could undertake, with all jurisdictions contributing their best materials and judgements on the basis of past experience, and combining to commission additional material of use to them all in areas where nothing suitable already exists. Nothing done to a high standard in this manner could be seen as inherently questioning the appropriateness of current arrangements in a particular jurisdiction. However it may be difficult to arrange the desirable level of timely co-ordination, secondment of available staff and contractual employment necessary to achieve such ambitious goals through that avenue.

The Parliament House Library, which provides briefing and other often-sensitive research materials to Senators and MHRs, could manage the initial development work also. It is used to working collaboratively with other organisations under considerable pressure. While it would be capable of organising the delivery of such a complex task if given sufficient additional resources, there might be resistance on the grounds that an enterprise of this nature would be a little too far removed from its *raison d'être* and day-to-day mission.

An alternative approach that might be favoured also on competitive neutrality grounds would be to have the initial task of establishing an *Australian Democracy* portal thoroughly scoped with opportunities for public comment, and then put out to tender for say an initial period of three to five years, at the end of which there would be another open selection exercise.

Provided that sufficient advance notice of such an initiative were available, it is foreseeable that a number of consortia of academics, web designers, and other professionals would form in anticipation of bidding for this exciting work, and many innovative ideas would be brought forward in response to the initial tender.

Maximising leverage from available educational and promotional resources

Through some seed funding, a variety of high-quality, engaging materials could also be developed specifically for teachers at primary and high schools, either through groups of subject-matter teachers who have the encouragement of their public or private education

systems, or through promising proposals of wider applicability made and brought to fruition by individual teachers or groups of them. Greater expectations could be held for the effectiveness of in-service training of teachers once a body of first-rate resources had been built up, and there would be spin-off availability of the most impressive materials to the wider community.

A key goal should be to have every primary school student participate in a mock election, and for every secondary school student to be involved in a more detailed hands-on examination of all the things involved in the conduct of an election. Suitable material with interactive graphics needs to be made available and effort should be put into compiling interesting presentations through comics or other attention-grabbing communication modes.

Attractive materials aimed at young folk who are less likely to be enrolled, or to vote if they are, should also be routinely placed in motor registries and Centrelink offices, presented at tertiary institutions at strategic times such as orientation week, and occasionally be available at major sporting venues.

Those in the community wishing to conduct elections for organisations or clubs through fair methods would be more likely to come across available resources and assistance if such outreach occurred systematically, and suitable material and links appeared on the site of the registrars' offices dealing with incorporated associations.

Through such active presence in the community and where there are known needs, there would also be a greater public awareness of the extent to which electoral authorities in any jurisdiction work on elections other than their primary public ones, or are able to provide advice or assistance in particular circumstances either gratis or for fees able to be accurately estimated in advance.

In North America, where the concept of a continuous roll has not yet taken universal hold, pop and rock concerts have been held to encourage people to enrol or otherwise take an interest in a particular election. Australian electoral authorities would do well to commit more than a token part of their budgets to such innovative and contemporary means of trying to make contact with youth or ethnic communities, as well as through presence at festivals or educational or cultural activities that attract sizable crowds.

Such an energetic approach of public engagement at times of celebration or major community activity would become more feasible if they could rely on free-riding on or adapting excellent material that others had already developed.

While targeted outreach activities require staff involvement and time, they perform a useful role in informing or reminding the general public or segments thereof of important aspects of democracy away from election campaign environments. Extensive television advertising in the lead-up to elections has not been particularly successful in conveying critical information to electors and more creative attempts need to be made to reach particular alienated, unconvinced or unaware audiences that are currently missed.

The importance of lifting media performance

Public perceptions of the political process are largely shaped through the filter of media treatment. If there is excessive concentration on personalities at the expense of policy

substance and remedial mechanisms, the chances of achieving responsible and accountable decision-making diminish. Carefully contrived images may well be enough to triumph in the short term until a stack of unavoidable facts becomes too prominent to be widely ignored any longer.

The performance of the media in relation to coverage of voting and elections more broadly is patchy, and regrettably often misleading or liable to be misconstrued when short-hand descriptions are routinely used without careful thought. References to candidates or parties "directing preferences" can only serve to confuse less engaged voters without a understanding of the mechanics of the single transferable vote, and the role they can play in fashioning the composition of a parliament.

Whether because of space constraints, sloppiness or plain ignorance, other unhelpful descriptions are also continually parroted. For instance, the word "complex" is routinely inserted before mentions of the Senate or other multi-member quota-preferential systems, even though we are basically dealing with several simple iterations of the process for filling one vacancy through preferential voting.

The preparation of a compendium of simple materials with tight wording, good audio and keen visuals may help clear one unnecessary obstruction to the empowerment of voters. At least journalists would have no excuse for botched descriptions once the availability of such useful material was widely publicised within their ranks. They could also make suggestions about what else on these matters would be useful in their craft.

The inclusion of a mandatory generalist core of Australian history and political science in tertiary communications and journalism courses would also be very worthwhile. It should help avoid the occasional embarrassment of young journalists with such an educational and training background simply not having a clue about the meaning of basic expressions related to voting and asking ridiculous questions that test the patience of those in public life or managing election processes.

Some useful material is already available before elections but not enough

Electoral authorities tend to become somewhat jittery in the lead-up to elections, wishing to avoid controversy or any accusation of bias in what may become a combative campaign environment where some political players are happy to buy a day or two of lessened pressure by alleging that supporters have reported irregularities such as partisan material being included with official documents sent to them.

At a time when there are severe workload pressures and the consequences of serious mistakes will be at least a media frenzy and possibly attempts to seek a fresh election if there may be an impact on the outcome, it is understandable that electoral officials should want to draw as little unnecessary attention to themselves as possible. Various kits that are produced stick closely to the wording of the electoral legislation that applies and advise people to get their own legal advice on matters of substance.

As a particular poll must be held in accordance with specific terms within electoral (and perhaps related) legislation that is in place, it is possible to prepare a range of useful explanatory materials well in advance. Dreading the prospect of overt or covert political pressure or possible legal disputation does not excuse timidity or sloppiness in presenting

voters' options thoroughly so that they are likely to be aware of their rights and responsibilities.

There should be an underlying ethos of proud assistance to voters in locating helpful material even if some politicians and aspirants might prefer greater ignorance or confusion, for instance in relation to the marking of preferences, in which to ply their wares. The success of preparations and subsequent interaction with the public can usually be judged by how quickly voters are able to find particular material or assistance that is useful.

Changes in electoral legislation since the previous general election, and any significant differences from what applies in corresponding national or state elections must be set out clearly, particularly if memories are likely to remain of another election held recently. Summary material about what happened in at least the previous two (and preferably many more) general elections should also be straightforward to locate on each authority's Web site through a small number of clicks, and be easily saved as a file that can be exported to other applications for analytical purposes.

Official booklets go out before many elections, but they tend not to spell out the influence voters can have if they want. It is rare to have a simple explanation of preferential voting that the media would pick up on and give free publicity to. It is rare for presentations about voting formally in elections where multiple vacancies are being filled through quota-preferential methods not to be skewed towards party boxes where voters have the alternatives of voting above or below (or in Western Australia, to the left or right of) the line.

Under federal referendum machinery legislation, there is a formal obligation for the authorised *yes* and *no* cases of parliamentarians of up to 2,000 words to be sent to electors whenever they are to vote on a proposal to change the Australian Constitution.

The ACT example of official booklets with a range of helpful background information, as well as the authorised cases of either side of the electoral system argument going out to all electors prior to the plebiscite and referendum of 1992 and 1995 respectively, was a splendid one. In the second instance, useful background information was included on the initiative of the Electoral Commissioner.

Similarly, the despatch of information about candidates and their voting tickets for the postal voting through which half of the last federal Constitutional Convention was elected in 1997 worked very well.

Where there is an official mailout to all electors, including details of all group voting tickets if party boxes are retained, a well-designed pamphlet setting out the freedoms and obligations associated with voting and dispelling some of the common misconceptions should be an automatic inclusion.

This approach would also be helpful to voters when local government elections are conducted exclusively through postal voting by state or territory electoral administrations and candidates' policy statements of a specified format and length are required to be forwarded to all electors by the returning officer.

Often not enough information is readily available after an election

Events move quickly once counting of votes starts. Media attention on election night and for a few days afterwards is strongly on the formation of the new government and likely winners and losers in individual electorates before other stories begin to take precedence. This often means that there is a concentration on updates in marginal electorates still in doubt, perhaps at the expense of other important information about emerging Senate or Legislative Council patterns that are still of interest to quite large numbers of electors.

In these circumstances when elector interest is heightened, ideally electoral officials should have a published plan that clearly sets out the broad levels of useful information to be routinely available and updated on their Web sites. Much would be gained from sharing experiences through the Electoral Council of Australia and agreeing on minimum levels of service and helpful information that all voters should be confident of receiving before and after polling, irrespective of where an election is being held.

This level of harmonisation would not preclude a particular jurisdiction from openly aiming to achieve much higher degrees of excellence. Post-election areas in need of special attention in many jurisdictions involve timely publication of information about preference distributions and summary particulars of the causes of informal voting.

Elections ACT, which has been a global pioneer in terms of facilitating electronic voting, has excellent Excel files relating to all preference distributions and its information about all aspects of an election that is updated at least once daily after polling day is easy to find or navigate. This is no accident and clearly arises from a familiarity with what is possible with available technology, and a determination to put it into practice.

The Australian Electoral Commission has improved the range of research files that are now routinely posted on its Web site, and is usually responsive to reasonable and manageable requests for additional information that can be extracted from its various databases.

In keeping with what is asked of officials at polling places on election night, initial reporting of Senate particulars has just been of aggregate votes for each grouping and it has taken a while for this to become disaggregated into ticket votes and first preferences below the line for individual candidates. While it is necessary to wait for postal and absentee votes to be processed before the quota can be struck, if party boxes are retained greater priority should be accorded to the earlier availability of at least summary disaggregated information that will facilitate analysis. It should certainly appear well before all the below-the-line particulars have been captured electronically in order that those to be declared elected can be determined quickly through the running of a software program.

Some jurisdictions provide limited information about distribution of preferences and may not even present it in a convenient format for those who wish to undertake further analysis. For instance, the Northern Territory Electoral Commission used only pdf files after the 2004 and 2008 elections so anyone wanting to examine what might have happened under a different set of boundaries or some other electoral system geared towards fair representation for all parties and candidates was forced to retype all the entries of preference distributions.

Queensland's detailed preference distributions following the 2001 elections only became generally available months after polling day, and then in book form only rather than also

through electronic files capable of greatly reducing the time necessary to undertake particular types of analysis.

Legislative Council particulars by electorate were available in the South Australian tally room on election night in March 2006 but such material was never presented in that detail on the Web site.

Even though resources at particular elections may be stretched and not permit publication of everything that is potentially of interest, there should be open discussion about priorities, and national attempts to reach agreement on at least what basic levels of information will be provided following an election.

After such efforts, prior to a specific election a draft plan of action relating to official information flows should always become available for public comment and then, after due consideration of the responses prompted, become visible to the general public in amended form before polling begins.

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