



Self-interest again to dictate who will take up long-term Senate terms

When the Senate meets after a double dissolution, an early duty is to determine who are the long-term and short-term senators in each state. Section 13 of the Australian constitution provides no guidance about the criteria to be applied.

“Who gets first to the 7.7% quota at which a candidate becomes mathematically certain of election doesn’t reveal anything special about which six candidates were supported most,” said Bogey Musidlak, president of the Proportional Representation Society of Australia.

“To tackle that question, a quota of 14.3% used at an ordinary Senate election will need to be invoked.

“An appropriate way is to conduct a fresh scrutiny for six vacancies in each state with only those elected eligible and each ballot paper initially credited to the senator with highest preference, if there is one. The Australian Electoral Commission is required to obtain that information under section 282 of the *Commonwealth Electoral Act 1918* that the Hawke government inserted in 1983 when overhauling that legislation after a major fundamental review of electoral matters.”

After the 1987 double dissolution, Labor and the Australian Democrats combined to translate their Senate majority into a declaration for their mutual advantage. They chose to award long-term places to those elected earliest rather than on the basis of the AEC’s additional count.

“Despite Senate resolutions in the interim that the section 282 recount provides a sounder basis for establishing which six Senators had greatest support, the announcement that the Coalition and Labor will both vote to allocate long-term places to those who reached the 7.7% quota first during the scrutiny again highlights self-interest as the proposed guiding principle on this occasion,” said Mr Musidlak.

“Consider a state where three parties had respectively 40% (5 senators), 30% (4 senators) and 20% (at least two senators) of first preferences and another party’s candidate was also elected starting with under a quota of first preferences.

“Under the criterion to be applied by Labor and the Coalition when parliament resumes, there would be two long-term senators from each of the parties with first-preference support varying between 20% and 40%, an outcome that clearly highlights the unsuitability of a twelve-candidate quota for nominating which six candidates had greatest support.

“On the other hand, a restricted recount with a quota of 14.3% would most likely allocate three long-term places to the party with 40% support, two to that favoured by 30% of voters

and one to that achieving 20%, an outcome far more in keeping with public expectations in such circumstances.

“An even more incongruous outcome of two long-term senators each would arise under the Labor-Coalition agreement if the three largest parties obtained respectively 44% (possibly six senators if there was a flow of preferences from smaller parties), 30% and 16% of first preferences.

“Further examples can be generated at will by taking the party to be treated most generously to start with little more than an exact number of 7.7% quotas.

“For instance, it’s possible to secure a majority of senators (as you might with 52% of first preferences) and find five of them up for election next time (if other parties secured 26% and 16%, say). Put another way, a combined 42% of strong voter support can be deemed worthy of four long-term places, double what an actual outright majority is allocated!

“The party with greatest support will be restricted to just two long-term places if two others get beyond 15.4%, unless someone in its ranks gets a below-the-line quota of first preferences. At the same time, a party achieving 15.4% will obtain two long-term senators unless there are at least four such groupings or some quotas of first preferences are achieved by other parties below the line.

“The re-election of Senator Singh and near-miss for former Senator Richard Colbeck in Tasmania after each was relegated in their party’s column order shows that contemplating strong below-the-line support for individual candidates is not far-fetched.

“To see how silly things can actually get under the criterion being applied by the major parties, suppose that a party with 30% support manages to break that into roughly 13% above the line and 9% and 8% respectively below the line for two of its candidates not at the top of the submitted order (perhaps by running separate concerted campaigns in specific parts of the state). This could lead to three long-term senators, even in the face of 40% and 20% support respectively for parties not attracting strong below-the-line support, because its candidates with a quota of first preferences would be the third, fourth and fifth declared elected.

“Were it necessary to rank all senators for some purpose rather than just seek to pick out the six with greatest support, the soundest procedure free of potential anomalies arising from exclusion processes would be to start with a recount for eleven places with only the twelve elected senators eligible, to determine who had twelfth place.

“Next you would conduct a recount for ten places with just the eleven unranked senators eligible, and then proceed sequentially with one fewer vacancy each time to be filled from among those not yet ranked, “ concluded Mr Musidlak.

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