



Senate voting reform efforts intensify

As foreshadowed after the 2013 elections, Senator Nick Xenophon introduced legislation to allow voters much greater latitude in marking their own order of preference, either for parties above the line with complete freedom, or for at least as many individual candidates below the line as there were vacancies to be filled. His *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* was originally referred to the Senate Finance and Public Administration Legislation Committee, then transferred to the Joint Standing Committee on Electoral Matters and subsumed within its inquiry, whose initial emphasis on Senate voting reform involved group voting tickets as part of its customary post-election review.

PRSA welcomed Senator Xenophon's efforts to improve voters' lot even though his proposal was more complex than necessary by retaining party boxes while dispensing with group voting tickets. Electoral authorities would need to advertise the new arrangements extensively instead of concentrating on how electors can make the most of their single transferable vote. It would spur extra candidates nominating in groups to meet formality requirements, and would place at risk some currently-formal papers with early errors in numbering. The greater freedom allowed voters made even more important replacing the unweighted calculation of a single transfer value when candidates are elected with parcels of ballot-papers of different value.

PRSA's submission included a systematic examination of the circumstances of candidates' election and levels of informal and exhausted votes where the single transferable vote is in use. Lengthy experience in Ireland, Malta, Tasmania and the Australian Capital Territory has shown that where there are no party boxes, parties have needed around half a quota to stand much chance of having a candidate elected: informal levels remain around 1% in the first two places where there is a single column of names and voting is voluntary, and have tended to be around 3-5% in the other two, with half clearly deliberate.

Exhausted Tasmanian and ACT ballots have rarely amounted to half a quota except where no continuing candidates have remained from larger parties. Nearly all ACT MLAs have obtained a quota of votes. Tasmania's 1973 change to require at least as many preferences as there are vacancies, rather than the three stemming from the original criterion of at least half that number, followed several under-quota successes where a final transfer was not made straight away when an exclusion left exactly as many continuing candidates as unfilled vacancies.

The submission also demonstrated that the election of candidates with few first preferences only occurs with

group voting tickets that are often numbered quite differently from most corresponding below-the-line votes. It outlined the circumstances of the tablecloth ballot-paper for the 1999 NSW Legislative Council poll, and the continued large numbers of candidates and exhausted votes after changes tightening party registration procedures and instituting above-the-line marking of preference orders for parties. Exhausted votes at 7-8% have exceeded 1.5 quotas, and the last few successful candidates' final progress totals have been significantly below the 4.55% quota.

The submission also detailed the extensive national record of misadventure and miscalculation associated with group voting tickets, including where misjudgements have contributed to the election of candidates whose parties had gained relatively low first-preference support, or given the balance of power to rival parties in unusual circumstances.

The central thrust of the follow-up submission (No. 142) to the JSCEM on Senate voting issues was to respect voters' wishes in relation to marking of preferences, and remove party boxes in order to simplify the ballot-paper. A balance must be struck between accepting electors' views and minimising exhausted votes. The greater the initial imposition upon voters, the more of them will have their vote declared informal at the outset, so that their views about the merits of candidates are disregarded.

ACT voters overwhelmingly obey ballot-paper instructions to mark at least as many preferences as there are vacancies, even though a single first preference is accepted as formal. Other moderate formality possibilities would also constitute a major step forward. There is no logical reason for either the permitted maximum departures from sequential numbering (three), or proportion of squares allowed to be left blank (10%). After finding very high informal vote levels below the line at the first election with party boxes in 1984, the Australian Electoral Commission indicated that the JSCEM "might wish to consider reducing the requirement for the numbering of preferences still further".

The Barton Government's *Commonwealth Electoral Bill 1902*, passed by the House of Representatives but not the Senate, proposed proportional representation for Senate elections, with fully optional preferential voting applying. When Andrew Inglis Clark first succeeded in having the single transferable vote adopted in multi-member urban Assembly electorates covering Hobart and Launceston in 1896, an amendment resulted in at least half as many preferences required to be marked as there were vacancies.

The quota-preferential allocation of seats remains the fairest way of determining Senate outcomes, purposely setting out to minimise wasted votes. Thresholds that candidates or parties must exceed if they are not to be

excluded at the start of the scrutiny are inherently unstable, and not a natural feature of the single transferable vote. Arbitrary thresholds generally between 2% and 5% often apply in overseas [party list systems](#) that are non-preferential and allocate seats on 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 ACT's [modified d'Hondt](#) outcomes of 1989 and 1992 exposed the arbitrariness of any 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 past Senate voting patterns reveals the potential for the same type of instability, especially at a double dissolution, depending on the exact level or nature of any threshold.

There is nothing amiss if candidates or parties gradually build a quota through voters' conscious marking of preferences. The potential for unexpected quotas arising from fortuitous flows of corralled above-the-line preferences has increased as combined support for Labor and the Coalition has increasingly fallen below five, or now sometimes even four Senate quotas.

A long climb to a fluke or lucky quota relates inherently to the availability in various Australian jurisdictions of group voting tickets, whose numbering can be misjudged or manipulated, as well as to the insistence by the largest parties on a fixed pre-selection order, which often needlessly puts a [candidate of theirs in a much weaker position](#) than necessary. Those endorsed at the top of the ticket are elected at or near the start of the scrutiny on a full quota of votes, while someone lower down may, as a result, begin with just a small fraction of a quota, and be prone to exclusion towards the end of the scrutiny, or be unable to attract sufficient further preferences to reach a quota.

[A bona fide constitution with financial and participatory safeguards](#) would be acceptable as a pre-requisite for party registration, but any strategy of primarily seeking to artificially deny groups and parties access to the political process at election time is muddle-headed. Greatly increasing deposits will not deter the wealthy who are determined to make their presence felt, while hundreds of signatures can readily be collected by those who are familiar with any restrictions on acceptance of nominations and do not leave their gathering to the last minute.

When party boxes were introduced in 1983, lodgement of [multiple group voting tickets](#) by individual parties or groups was permitted, despite official legal advice questioning whether that would meet the Australian Constitution's requirement that senators be [directly elected](#).

The unfairness of the current unweighted Senate transfer value definition was emphasised through a [simple example](#) showing its distortion of a surplus's composition, and the use instead promoted of the [weighted inclusive Gregory method](#) of [Western Australia's Legislative Council](#) or the [Meek STV method](#) used in certain New Zealand elections.

The submission also pointed to the desirability of [odd numbers of vacancies](#) so that majorities of votes translated into majorities of seats. Majorities were achieved by Labor or the Coalition on 36 of the 59 occasions when five or seven (in 1949 and 1984, to enlarge the Senate) vacancies were being filled by proportional representation, including just seven of the 22 occasions from 1970 (none in 1984). There has been a single majority when six vacancies have been filled: as Labor and Coalition support levels have usually been quite some distance apart, even 3-3 outcomes have been relatively rare, happening 13 times in 61 separate elections, of which five occurred in five elections to 1961 (appointments to fill casual vacancies used to last until the next House or Senate election) and another three in 2007.

Deficiencies in the party-replacement provisions for filling [Senate casual vacancies](#) adopted at referendum in 1977 rather than [countback](#) of the outgoing candidate's quota, which would always apply fairly, were highlighted when Steele Hall, re-elected as a Liberal Movement senator for South Australia in 1975, resigned in November 1977 to stand for the House of Representatives as a Liberal. With the Liberal Movement no longer in existence, and its second candidate from 1975, Michael Wilson, recently elected in South Australia as Liberal Member for Torrens, in December Premier Don Dunstan proposed its third candidate, [Janine Haines](#), by then an Australian Democrat, to be the replacement until mid-1981.

In the middle of 1997, [20% of senators](#) had not been elected by the people of their state. After the [July 2011](#) changeover, over one-quarter of sitting senators had originally taken their seats through appointment: at [March 2014](#), that portion had climbed to over one-third following eleven new appointments in the intervening period.

Fresh WA Senate election in 2014 shows need for Court of Disputed Returns changes

The extremely close [2013 Western Australian Senate outcome](#) apparently altered, after a recount of informal and above-the-line votes was eventually [granted](#) on 10 October by the Australian Electoral Commissioner, upon appeal by Senator Scott Ludlam and candidate Wayne Dropulich.

However, 1,370 ballot-papers from two polling places could not be located, and were effectively treated in the recount as all being informal, altering the relative standing of when one of either the leading Australian Christian or Shooters and Fishers candidates [had to be excluded](#). Consequently, instead of Palmer United's Zhenya Wang and Labor's Louise Pratt, the Australian Sports Party's Wayne Dropulich and Green Scott Ludlam were [declared elected](#) to the fifth and sixth vacancies on 2 November.

On 15 November, the [AEC petitioned](#) the Court of Disputed Returns to void the entire election, whereupon under [Section 367A](#) of the *Commonwealth Electoral Act 1918* a decision was required within three months.

Justice Hayne [summarised](#) the issues to be settled as follows:

“Was the result of the election likely to be affected by the loss of the ballot papers? Can this Court now decide who should have been elected? Can it do so by looking at records of earlier counts of the lost ballot papers? And need it now examine ballot papers whose formality is disputed? Or must it instead declare the election absolutely void?”

Because the legislation requires that ballot-papers be [examined afresh](#), Justice Hayne found that the electors who placed the lost ballot-papers into ballot boxes were prevented from voting and that their number was far greater than the smallest gap in progress totals determining an exclusion during the incomplete recount. Consequently an illegal practice as defined in the *Commonwealth Electoral Act 1918* had occurred that could have prevented two different candidates from rightly being declared elected.

The candidates declared elected to the fifth and sixth vacancies were therefore not duly elected, and it was in this instance not possible to say who was duly elected. As a result, the entire election was voided and a fresh one ordered based on an updated electoral roll and a renewed call for nominations. Both the [Australian Electoral Commissioner](#) and the [Australian Electoral Officer for Western Australia](#) subsequently resigned.

This outcome highlighted the fact that the 1948 change to proportional representation for electing the Senate was not accompanied by any extension of flexibility in powers and remedies available to electoral officials or the Court of Disputed Returns because election of candidates was now primarily on the basis of achieving a quota.

PRSA’s further submission on Senate voting and related arrangements to the Joint Standing Committee on Electoral Matters emphasised the desirability of obtaining as contemporaneous a nation-wide expression of views as possible without sending all voters back to polling places. This would usually be possible in accordance with sound quota-preferential principles if amendments were made.

For instance, ideally substitute votes could have been obtained from the two polling places where ballot-papers went missing, in the absence of suitable scanned or other reliable electronic evidence about their markings. Other mechanisms for immediately correcting errors of procedure could ensure as many as possible of those entitled to vote had their ballot-papers counted in various situations.

The bypassing on ballot-papers of names of disqualified candidates should be automatic, and a fresh call for nominations extremely unusual. For instance, the fact that four senators had definitely been elected with quotas in Western Australia in September 2013 should have been recognised, and the Western Australian [recount principles](#), under which all ballots are re-examined and available vacancies are filled by the first (and subsequent) non-successful candidate(s) to achieve a quota, or otherwise be elected, could have been applied to completely fresh balloting. In some circumstances, such as when columns of party or group candidates’ names are fixed, specific orders might be necessary to prevent the possibility of gaming in pursuit of the vacancies still to be filled.

Emphatic change of government in Tasmania

On 16 January 2014, Tasmanian Premier Lara Giddings, announced that she would dismiss the two Greens from her Ministry the next day, and said Labor would only ever govern alone in future. There would be a one-day parliamentary sitting on 28 January to pass legislation validating permits for Bell Bay Pulp Mill before the House of Assembly was prorogued for an election on 15 March.

With Liberal, Labor and the Greens nominating five [candidates in each electorate](#), and the Palmer United Party, registered on 31 January, 22 overall, there were [126 candidates state-wide](#), ranging from 22 in Bass to 30 in Denison, well up on numbers at recent elections. Turnout was 94.5%, and 4.7% of votes were set aside as informal.

A 12% swing took Liberal first preferences to 51.2%, ranging from 38% in Denison to nearly 59% in Braddon. Labor’s vote fell 9.5% to 27.3%, its lowest support since 1906, with 23% in both Bass and Braddon, and up to 34% in Denison. The Greens polled 13.8%, down about 8%, achieving 7% in Braddon through to 21% in Denison. Palmer United obtained 5.0%, topped by 7% in Braddon.

The change of government to Liberal after sixteen years was clear early on election night. When all postal votes were in, Liberals won 15 of the 25 available seats (60%), four in Braddon (the first time in five-member electorates), two in [Denison](#) and three elsewhere. Labor lost a seat in each of [Bass](#), [Braddon](#) and [Franklin](#) to emerge with seven (28%), and the Greens one in each of Braddon and [Lyons](#) to finish with three (12%). With two Labor MHAs retiring, there were seven new members. Nine women were elected.

Eight candidates achieved a quota of first preferences, Will Hodgman highest with over 35%, and another candidate was elected after the incoming Premier’s surplus transfer. Of the seven elected candidates with less than a quota, at least four would have exceeded it had another transfer from the last excluded candidate been made immediately.

In [Bass](#), over two-thirds of nearly half a quota of exhausted votes arose when no continuing Liberal candidates remained. Two elected candidates were over 1,000 votes short of a quota when the last Labor candidate was excluded. In [Braddon](#), Palmer United’s leader was nine votes behind the Green incumbent when excluded with almost half a quota, of which over half became exhausted. Next, some 40% of Green ballots were exhausted. Liberals won the last two seats without a quota, one 2,000 votes short, but 450 ahead of the last excluded Labor candidate.

Nearly two-thirds of a quota was exhausted in [closely-fought Denison](#), 75% of that when the last Liberal and Green candidates were excluded. The last person elected had just under three-quarters of a quota, 331 votes ahead of another Labor candidate. In [Franklin](#), the last Liberal elected was about 250 votes under a quota and over 1,750 votes ahead of a Labor candidate previously widely seen as the next leader. Only about 20% of a quota was exhausted.

The Greens started with about three-quarters of a quota in [Lyons](#), double the support for the Palmer United Party. Around one-third of a quota was exhausted, well over half of this when Palmer United's final exclusion increased by over 1,000 votes the lead the last continuing Labor candidate had over the previous Green incumbent.

Some [controversy arose](#) when Palmer United and Liberal Party campaign literature used the names of opponents without their permission. When 163 of 2,338 postal ballot-papers damaged by faulty operation of letter-opening equipment were [beyond repair](#) in Denison, it was fortunate that exclusion margins were not so narrow that the whole election may have been thrown into question.

New party leaders, [Bryan Green](#) for Labor and [Kim Booth](#) for the Greens, were soon elected unopposed.

A minority-support minority SA government again

South Australia went [to the polls](#) on the third Saturday in March 2014 as legislated. Overall, there were 204 candidates in the 47 electorates, well down from a peak of 302 in 2002, and the lowest number since 197 in 1997. Labor, Liberal and the Greens nominated in each electorate, and Family First in 42. There were 31 four-candidate and 13 five-candidate contests, plus two sixes and one three.

Turnout was 91.9% and 3.1% of votes were informal. Liberal first preferences were up 3% to 44.8%, Labor's down 1.7% to 35.8%, and those for the Greens and Family First both rose slightly, to respectively 8.7% and 6.2%. The Liberals gained 1.4% to reach 53% in two-party-preferred terms, winning four extra seats, three metropolitan, plus [Mount Gambier](#) from an independent, Don Pegler. Seven Labor and one Liberal MHA had retired, and all those seats were retained. Twelve women were elected.

The donkey vote favoured the victor in the thirteen closest results, starting with one 505 votes apart. Labor won four of the seats with buffers less than 2%, and Liberal one, and both parties had four others that swings under 4% could reverse. Nine Liberal and six Labor MHAs had 60-65% two-party-preferred support, and two Labor members slightly more, while five other Liberals reached up to 80% of the vote. The 11 Liberal majorities in 13 rural seats, following 66.3% two-party-preferred support, were huge.

After a week's counting, there were 23 seats for Labor and 22 for the Liberals, with Independents [Bob Such](#) and [Geoff Brock](#), both fiercely opposed by Liberals when Labor first-preference support was just above 10%, also re-elected. [Dr Such](#) took two months' medical leave for a brain tumour without indicating whom he would support: after intensive contact including a night dash to Port Pirie by Premier [Jay Weatherill](#), [Mr Brock](#) quickly decided to support the ALP to ensure a government was formed, the seventh minority outcome since 1960. He [signed an agreement](#) on supply and confidence motions foreshadowing a Select Committee inquiry into electoral provisions dealing with campaign conduct of parties and candidates, and was sworn in as Minister for Regional Development and Local Government.

Under [Section 83](#) of SA's *Constitution Act 1934*, the Electoral Districts Boundaries Commission is supposed to ensure that a party with over 50% of the two-party-preferred vote wins a majority of seats, an impossible task as the [Electoral Reform Society of SA](#) has always argued, starting vigorously at the [1991 referendum](#). After minority-support failures in both 2002 and 2010, the Society also almost anticipated the distorted result this time when it made the following comments on the proposed boundaries of the Draft Order that had Labor winning 26 seats and Liberal 21 based on Labor's 48.4% of the vote in 2010:

“Surely the boundaries should have been re-drawn to reflect this vote? At the next election, there could well be a swing back to the Labor Party. If this swing was less than 1.6%, the Liberal Party could still have more than 50% of the vote and still not win a majority of seats. Alternatively there could just as easily be a small swing to the Liberal Party that keeps Labor in office with only 47% of the two-party preferred vote. While the Society does have difficulties with the “electoral fairness criteria,” the question should still be asked – **where is the fairness in the proposed redistribution?**”

ERSSA's quota-preferential simulation showed that in seven seven-member electorates (the *Constitution Act 1934* requires equality), there could have been 24 Liberal, 19 Labor, 3 Green, 1 Family First and 2 Independent MHAs, making a change of government almost certain.

Before the election, there had been [several pieces of legislation](#) in relation to the Upper House, mainly making it more difficult for micro-parties to register, and relegating groups and independents to the right-hand end of ballot-papers. There were 63 candidates from fourteen parties, ten groups (some where previously just an individual might have nominated), and one ungrouped candidate ineligible for above-the-line voting.

Independent Senator Nick Xenophon endorsed two candidates, including former Valuer-General John Darley. His group's 12.9% of first preferences led to declines from Assembly support levels for parties, Labor obtaining 31%, Liberal 36%, the Greens 6.5% and Family First 4.4%. Both Labor and the Liberals won four places and the Greens, Family First and Xenophon Group one each. Only the last, attracting limited transfers from excluded candidates, had higher support than the level of representation achieved.

There was over a quota of first preferences for others, but no party or group successfully aggregated those votes. The discovery, after the [declaration of the poll](#), of one 1,000-vote transposition ([see 10 April 2014 statement](#)) at Liberal expense in published polling-place data altered the last few exclusions, but not Labor's taking of the final position. The Independent Palmer Group [did best](#), with nearly half a quota, instead of the Shooters and Fishers having emerged with some 0.7 of a quota.