Supplementary Submission to the Joint Standing Commission on Electoral Matters:

Inquiry into and report on all aspects of the 2016 Federal Election and matters related thereto

by Dr Kevin Bonham, submitted 25 November 2016

Introduction

At my appearance at the Hobart JSCEM session on Monday November 14 I was asked to submit some more material on some of the issues raised. Original comments on these issues were made either in my previous submission (Submission 74 dated 1 Nov 2016) or in person at the Hobart hearing. Recommendations and author background can also be found in that submission.

Additional Recommendations

9. That prior to any further double dissolution election, the AEC publish a document clearly stating what standards it will employ to determine which preferences will be countable in the Section 282 advisory recount. This document would contain sufficient detail for a voter equipped with the preference allocation on the ballot paper and the election result, to know which preferences would be usable in the advisory recount.

10. That recommendation 4.2 of submission 30 by Antony Green (formality of votes with a simple ordered sequence of preferences) be adopted.

Section 282 Recounts

Following a double dissolution, Section 282 of the Electoral Act requires an advisory recount of all Senate ballots to determine which of the twelve elected candidates would most likely have been the first six elected had the election been for six places only. These six might be argued to be the most worthy of a six-year term rather than a three-year term. At both the double dissolutions since the advisory recount was introduced, the Senate has preferred instead to allocate Senators using the order-of-election method.

While there is no perfect solution to the question of which Senators should receive six-year terms, the order-of-election method is absurdly granular and is capable of delivering unfair outcomes that might unduly advantage parties with relatively little support.[1] Even if it is considered that most of the time it is better to use the order-of-election method, there is still the potential that it will one day deliver an obviously

[1] See my more detailed coverage at http://kevinbonham.blogspot.com.au/2016/08/majors-stitch-up-senate-term-lengths.html

unfair or unrepresentative result and create an overwhelming case for using the Section 282 recount result instead.

Should this occur, a serious problem with Section 282 recounts is that rules concerning how far a ballot paper remains formal are unclear. These ambiguities were discussed in some depth by Michael Maley, Dean Ashley, Grahame Bowland and me before the recounts were conducted. See for instance Ashley's detailed post on the issue at http://deanashley.blogspot.com.au/2016/07/questions-regarding-section-282-senate.html .

Ashley and Bowland found that they came up with significantly different results based on differing interpretations. The preference distributions eventually produced by the AEC had different results to any of Bowland's simulations[2] and seemed to have included more votes as fully formal than I would have expected.

The main issue is that some ballot papers include repeated or omitted numbers, which in some cases cause the ballot paper to become informal and in some cases cause it to be formal but to be only "good to" a certain number of squares. Ambiguities in Section 282 were already known under the old Senate voting system. The AEC recommended clarifications in 2011[3] but none occurred. The scope for ambiguities under the new system has increased.

Examples of possibly ambiguous points in Section 282 recounts include:

1. A vote originally included a duplicate number (whether this was above or below the line) but was still formal. In the Section 282 recount, one of the parties that was involved in the tie created by the duplicate number is not contesting because no-one from that party was elected. Can the vote flow to the other candidate/party involved in the tie in the recount? Can it also flow beyond them?

2. A vote originally included a skipped number, meaning that it could not flow to any candidate below the point at which the skip occurred. Can this vote flow beyond the point of the original skip in the Section 282 recount, given that many votes have skips in them after candidates not elected in the original recount?

3. A vote was originally treated as formal below the line, but none of the candidates voted for were elected. The voter also voted above the line. Can their above the line preference be used in the recount?

Having a clearly defined standard for these questions is more important than what that standard is. In advance of any further double dissolution, it would be highly desirable for the AEC to publish a technical document fully explaining what rulings would apply to such cases. This would prevent a situation in which different interpretations of Section 282 allowed for different winners, as a result of which the AEC might be accused of post-hoc bias in its selection of one interpretation rather than another.

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[2] see https://angrygoats.net/senate2016/#/index for these simulations

[3] AEC, Second Supplementary Submission to the Joint Standing Committee on Electoral Matters on the Conduct of the 2010 Federal Election, 24 May 2011.

Informality On House Of Representatives Ballot Papers

I was asked to present further evidence on informal voting in the House of Representatives and the extent to which a savings provision allowing for breaks in sequence might save votes from being counted as informal. The advantage of such a provision is that all formal votes would retain a full order of preferencing and there would still not be any exhaust.

The AEC routinely evaluates informal voting in the House of Representatives and publishes results (comparable publications for the Senate are less common). The 2013 review (http://www.aec.gov.au/about_aec/research/files/analysis-of-informal-voting.pdf) states that 14.4% of all informal ballots contained non-sequential numbering, but does not differentiate between ballots containing only breaks in sequence and those containing duplicate numbers instead (or as well). Previous reports show that this figure is volatile (17.9% in 2007, 9.2% in 2010).

In the 2010 report (http://www.aec.gov.au/About_AEC/research/paper12/files/informality-e2010.pdf) ballots containing only breaks in sequence are clearly identified as Code E-5. These comprised **2.3%** of all informal ballots or **0.13%** of the entire national vote (almost 14,000 votes nationwide), in an election which had a low rate of non-sequential voting. While allowing such votes would therefore cause only a modest reduction in informal voting overall, the case for accepting them is strong. (Antony Green in his submission does not say whether he would accept votes with a clear sequence of numbers but no number 1; these are identified as Code E-4 which in 2010 made up a further 0.03% of the entire national vote or 0.6% of all informal votes.)

Inclusive Vs Weighted Inclusive Gregory

In my submission I argued the case for replacing the Inclusive Gregory system for distributing surplus preferences with the Weighted Inclusive Gregory system or some other sound method.

The key principle difference between the two systems is that Weighted Inclusive Gregory (WIG) **preserves the relative values of votes**. If an elected candidate's votes include one ballot paper that has not helped elect any candidate yet, and one ballot paper that has already left half its value with an elected candidate, then it stands to reason that the first ballot paper should continue to retain double the value of the second when they flow on to other candidates.

Under the current unweighted system, they flow on at the same value as each other irrespective of how much they have already given up to other candidates. A vote that has used nearly all of its value electing someone and a vote that has not elected anyone are treated exactly the same way in terms of their future value.

Rather than reinvent the wheel on this issue I think it is most useful if I refer the Committee to an excellent existing report:
https://www.elections.wa.gov.au/sites/default/files/content/documents/Determining_t

he_result.pdf (Western Australian Electoral Commission, 2012, "DETERMINING THE RESULT: Transferring Surplus Votes in the Western Australian Legislative Council"). Following this report, Weighted Inclusive Gregory was adopted for the WA Legislative Council. Concerning the two "disadvantages" of WIG stated by the report, I submit that the Senate electoral system is so far beyond effective manual calculation that the need for computers is now a non-issue. Also, far from the WIG system being more complex to convey to stakeholders, I find that most stakeholders intuitively expect that something like the WIG system would be used and are shocked to discover what the system actually is and the distortions it creates.

Interstate candidates in Tasmania

I was asked which candidates in the Tasmanian Senate race I considered to be interstate candidates. I understand that official information on this point will be obtained and I don't wish to name candidates in this submission. However I should clarify that my count of four lead candidates included one candidate who was known to have moved to Tasmania just prior to the election and who in my view had done so specifically to contest the election. In my experience, politically active Tasmanian voters often have strong views about candidates from out of the state contesting the Senate race, on the grounds that such a candidate would not have the state's interests at heart if elected.

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