



PROPORTIONAL REPRESENTATION SOCIETY OF AUSTRALIA

A USEFUL STARTING POINT FOR DISCUSSIONS ABOUT VOTER-ORIENTED ELECTORAL REFORM

Submission to the Senate Finance and Public Administration Legislation Committee
following reference to it of the *Commonwealth Electoral Amendment (Above the Line Voting)*
Bill 2013

Proportional Representation Society of Australia

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Overview

While the Proportional Representation Society of Australia believes that the entire apparatus of party boxes should be dismantled as a long-overdue step towards increasing voter influence, we praise Senator Xenophon's attempt at voting reform because it clearly identifies the source of the problem with current Senate voting arrangements and makes a genuine effort to improve the lot of voters.

When introducing proportional representation for Senate elections in 1948, Dr Evatt would not heed the advice of several Liberal and Country Party MHRs and Senators including Dame Enid Lyons, that the compulsory marking of all preferences was not the practice in various systems of proportional representation that were working well and would be a ridiculous imposition on electors if fifty or more candidates nominated. High rates of informal voting continued at most subsequent elections, particularly when additional influxes of candidates occurred in years such as 1974.

Instead of the problem being tackled directly by removing burdens from voters and allowing them to readily express their real wishes, party boxes with an element of constitutional uncertainty surrounding lodgement of multiple group tickets were introduced in 1983 when the *Commonwealth Electoral Act 1918* was extensively overhauled.

Voters wishing to take charge of the order in which their single transferable vote was to help candidates were required to mark at least 90% of the squares alongside individual candidates' names with no more than three departures from sequential numbering. An attempt to introduce reducing quotas foundered when it was pointed out that confusion in the legislative drafting between non-transferable and exhausted ballot-papers meant there was no guarantee of the correct number of Senators being elected. A flawed definition of the transfer value that fails to take account of the different values at which elected candidates may have received ballot-papers regularly results in a distorted apportionment of surpluses.

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 state-wide basis. They also came into effect in regional aggregations of Legislative Assembly seats when Western Australia's and Victoria's Legislative Council became elected by proportional representation simultaneously with the respective Legislative Assembly. *None* of these four jurisdictions mimics the Commonwealth's approach to below-the-line formality.

Because quotas for election to the Legislative Council in South Australia and New South Wales are respectively around 8.33% and 4.55%, just as for Senate elections there has at times been a good deal of jockeying for preference flows through which one of the last few places might be gained. Some of the miscalculations in various jurisdictions by party operatives charged with negotiating and lodging voting tickets where these are permitted have had far-reaching consequences of which supporters would have had no inkling on polling day.

While the shepherding or hustling of voters towards party boxes initially suited the purposes of various parties as their officials sought to exercise leverage or hoodwink others in preference negotiations, as the level of strong support for the most established parties began to slip, others recognised opportunities to harvest and tightly circulate above-the-line preferences. When a quota or more of first preferences regularly goes to smaller groups or parties, a Senate place can become available for one of them if they all adopt preference orders that keep within a particular broad grouping for as long as possible.

From the 1990s, candidates of larger parties have more regularly been placed at or near the end of preference orders by many registered parties or groups of candidates even where policy similarities would make such a numbering unexpected. With sometimes two or more quotas not starting with Labor or the Coalition or the Greens, as the Western Australian Senate experience of 2013 shows, it is possible for more than one vacancy to be poised on the knife-edge of group-ticket preference flows about which few electors have any serious advance awareness.

In negotiations over preferences, 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 relative positions of individual candidates towards the end of the scrutiny are impossible to foretell as the major parties usually have several candidates elected at the start of the scrutiny and the next may initially have only a small portion of the quota, there have been regular instances of candidates with modest first-preference support being boosted on their way to a quota by others' strategic miscalculations that supporters of the assisting parties were flummoxed by after the event.

The *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* is a useful starting point for potentially productive discussions about genuine electoral reform because it seeks to give electors greater choice and influence. It raises a number of important questions of principle that have generally been skated over as various political parties have sought to tilt or restore the electoral playing field somewhat in their own favour. How much allowance should voters have to express their own firmly-held views, however inconvenient they may be? What adjustments to the distribution of surpluses are necessary or desirable as ballot-papers exhaust or become non-transferable, if the current draconian below-the-line requirements are eased? Should the quota also be reduced during the scrutiny in these circumstances?

As Senator Xenophon's Bill does not make any allowance for errors early in numbering, some ballot-papers that are currently accepted as formal would be rejected under his proposed formality rules, namely those where there are no more than three mishaps in numbering but at least one of these occurs before the elector gets as far as the number of vacancies to be filled.

In addition, the Senate ballot-paper would likely become noticeably more cluttered as groups of two or three that currently dominate overall nominations at half-Senate elections expanded

to six to ensure that a single “1” in their group voting square was recognised as a formal vote: the situation at a double dissolution with greatly increased candidate numbers would most likely be quite diabolical without a change in the proposed formality conditions.

Anyone wishing to vote for ungrouped candidates (other than perhaps incumbent or recent Senators entitled to their own separate column) or include them in their customised preferential order would still have to do so entirely below the line.

The single transferable vote

The Senate voting and counting system uses the single transferable vote to fill multiple vacancies through quota-preferential counting. By not requiring elected candidates to pile up more votes than are strictly necessary to guarantee election, it limits the maximum possible number of ineffective votes (those not contributing to the election of any candidate) for a particular level of vacancies.

Each person has a single vote that is initially allocated to the candidate who is marked as first preference. The remaining preferences are an instruction about the order in which other candidates may have access to what remains unused of that single vote.

A search for the continuing candidate with earliest preference is instigated only if the candidate with first preference is either:

- elected after exceeding the quota calculated as the smallest integer that mathematically guarantees election (in which case normally a fractional surplus transfer value will be available for others); or
- excluded with lowest progress total among continuing candidates (in which case the value transferred does not change from what it was when received by the excluded candidate, and remains unchanged at one until the ballot-paper has assisted in electing a candidate).

Each time that the candidate with whom the ballot-paper currently rests is elected or excluded, a transfer is made to the next available continuing candidate (the one marked with the lowest number or highest preference), normally at a reduced or unchanged value respectively.

It is possible to accept a single first preference as formal, as has occurred in Ireland and Malta for over ninety years, and the Australian Capital Territory since the inception there of the Hare-Clark system in 1995. Electors who are informed and want to make the most of their opportunity will confidently continue to sequentially mark the preferences that they actually have because they understand that marking further preferences cannot harm the election prospects of the candidates whom they support most strongly.

Some citizens and commentators suggest that for a ballot-paper to be accepted as formal 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 some votes. That unusual theoretical situation can be disregarded as a realistic possibility in public elections.

A judgement must inevitably be made about the trade-off that exists between high or maximised levels of formal voting if requirements are not particularly 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: that may happen because a break in sequential numbering has occurred before the voter comes to any of the continuing candidates. The greater the initial imposition upon voters, the more of them that will have their vote declared informal at the outset, their views about the merits of candidates thus being completely disregarded.

If a surplus is involved when a ballot-paper becomes non-transferable, usually it will be possible to place the remaining value of that ballot-paper entirely in the quota of the candidate who has just been elected, by defining the transfer value (which of course should never increase) where just first preferences or other ballot-papers of full value are involved, as the surplus divided by the number of ballot-papers that have a further preference for one of the continuing candidates. However, if a candidate is being excluded, there is no alternative but for the remaining value of the ballot-paper to be exhausted in these circumstances.

This may lead to situations where, when one candidate is excluded, there remain as many continuing candidates as there are vacancies to be filled and none of them has a quota: all of those are declared elected in such circumstances and in some jurisdictions a transfer from the final excluded candidate is not made during the course of the actual scrutiny.

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. Drawing upon experience with the single transferable vote in different jurisdictions will usually be beneficial in informing judgements about what should be accepted as a formal vote.

Experience with fully optional preferential voting: Ireland, Malta and the Australian Capital Territory

A single first preference has been accepted as formal since the inception of the use of the single-transferable-vote form of proportional representation in:

- the Irish Free State in 1923 (the Senate amending legislation of 1948 that introduced proportional representation was largely based on Irish counting arrangements);
- Malta in 1921 (Sir Gerald Strickland, a long-time governor of colonies and states and later again a prominent public figure in his homeland, had experienced Tasmania's Hare-Clark system and extensive debate about the electoral system for the NSW Legislative Assembly); and
- the Australian Capital Territory in 1995 (for historical reasons, the ballot-paper asks that there be at least as many preferences indicated as there are vacancies to be filled).

In none of these jurisdictions has there been significant agitation for greater obligations to be placed upon voters in order to record a formal vote, or legislative steps initiated along those lines.

In Eire's constituencies returning three, four or five MPs, candidates are listed in a single column in alphabetical order with some particulars of party affiliation or independence. Parties tend to limit nominations to at most one or two more candidates than are likely to be elected and do not promote a particular order for marking preferences when nominating more than one candidate. By-elections are held to fill casual vacancies.

Informal voting levels in recent decades have been around 1% and turnout often around 60-70%. Fianna Fail, Fine Gael and Labour have had consistent representation among the Dail's 166 TDs over the past 25 years, but other parties and independents with a strong local following have also been elected. Each time, only a handful of elected candidates start without one-half of a quota and most of these are beyond 0.4 of a quota on first preferences.

In Malta's thirteen five-member districts that have operated since 1976, candidates are listed alphabetically within party groupings that descend in alphabetical order, and independents appear at the bottom of the single column. Informal levels are now exceeding 1% at times after being well below that level in the 1970s and 1980s. Though voting is voluntary, turnout was for long generally in the mid-90s until a slight decline occurred at the last two elections.

Casual vacancies are normally filled by countback of the quota of the vacating candidate: the two major parties tend to nominate more than 100 candidates overall, most likely on the basis that additional votes attracted to the party grouping tend to remain there throughout the scrutiny. It has been a sharply two-party system in the modern era with no other candidates elected since 1966, and an aggregate vote for candidates other than for the Malta Labour and Nationalist parties still consistently less than 2% at any election.

Parties do not ask supporters to number candidates in a particular order. In some cases where a prominent candidate achieves several quotas of first preferences, others in his (to date) party will be elected after starting with perhaps just 0.1 or 0.2 quotas of first preferences. Otherwise, elected candidates tend to start with at least 0.4 of a quota.

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 persistent low informality rates of these two countries using the single transferable vote for nine decades will not be emulated in our different environment, though at times similar low levels were recorded here at the start of the twentieth century.

Australian Capital Territory

Since 2008, only registered parties have been eligible for their own group column in the Australian Capital Territory's five-member and seven-member electorates: independents and the remaining candidates are listed at the right-hand end of the ballot-paper in columns formed by lot and rotated internally. As casual vacancies are filled by countback, Labor and Liberal tend to endorse as many candidates as there are vacancies, though one extra sometimes.

The ballot-paper asks electors to indicate at least as many preferences as there are vacancies, in accordance with material prepared by the Australian Electoral Commission in the official

Hare-Clark description for the 1992 plebiscite at which two-thirds voted in its favour: however, by unanimous decision of the subsequent Legislative Assembly, ballot-papers are accepted as formal as long as there is a single first preference, all MLAs having agreed to take the further step of seeking to also maximise the number of formal votes.

Informal levels have been around 4-5%, with a fair proportion deliberate as a protest against self-government, the compulsion to vote or the overall quality of candidates. There has been no proliferation of parties or even grouped candidates when party registration was not a pre-requisite for obtaining a separate column on the ballot-paper. Voters for a candidate within a particular party column tend to at least number everyone else in that column.

Elected parties or candidates since 1995 have always started with at least half a quota whereas there have been instances of parties with that level of strong support failing to have anyone elected as Robson Rotation within columns on the ballot-paper means that usually there are continuing Labor and/or Liberal candidates towards the end of the scrutiny.

As distinct from Tasmania, where a candidate's exclusion has guaranteed the election of one or more others who have not yet attained the quota, further transfers have always been made with a view to immediately establishing the quota of each elected candidate should a countback later be required. At the point of the final exclusion, exhaustion of votes has varied considerably depending on whether or not all parties with strong support have still had continuing candidates: sometimes the level has exceeded half a quota, without causing any consternation or feeling that anyone was being elected too easily.

Experience with partial optional preferential voting: Tasmania, New South Wales, Victoria and the Senate

Tasmania's first House of Assembly experience of proportional representation in Hobart and Launceston was established in the *Electoral Act 1896* of Attorney-General Andrew Inglis Clark: a formal vote required at least as many preferences as half the number of vacancies. This is also why at least three preferences were required when the Hare-Clark system began on a permanent basis state-wide in six-member electorates in 1909.

A change was made in 1973 to insist on at least as many preferences as the number of vacancies (then seven, but subsequently five from 1998). As House of Assembly scrutinies ended without further transfer from the final excluded candidate when the number of continuing candidates equalled the number of vacancies still to be filled, there may have been a false perception that those candidates were being elected with noticeably less support than the others, whereas they often would have exceeded a quota had transfers arising from the exclusion been carried out and possibly further transfers of surpluses also been made.

Informal rates have been around 4-5% most of the time since 1989, with extensive Tasmanian Electoral Commission research published after every general election since then showing that at least 2% was deliberately blank or just with scribble each time. No allowance is made for any omission or duplication before the number of vacancies is reached, typically adding around 0.5% to the level of informal voting.

There had been informal rates of 2-3% in the first half of the twentieth century, particularly when there was no obligation to be marked off the roll as having voted, while the introduction of party columns resulted in a temporary doubling beyond 10% in 1946 of levels of informality. They were slightly above 5% during the 1980s and slightly below 4% during the 1970s.

While the Tasmanian Greens and their predecessors have been successful at each election since 1982, that has always been with a sizeable proportion of first preferences in the electorates concerned, and there have been multiple occasions where even half a quota initially proved insufficient. As in the ACT, Robson Rotation of places within group or party columns means that Labor and/or Liberal continuing candidates usually have large progress totals towards the end of the scrutiny.

Aside from the Greens, only Independent Bruce Goodluck (formerly a Liberal MHR) in 1986, Australian Democrat Norm Sanders at the Denison by-election of 1979 (after the election of three candidates was invalidated on the grounds of campaign over-expenditure) and again in 1982, Independent Doug Lowe (formerly a Labor Premier) in 1982 and Kevin Lyons (Centre Party) in 1969 have been successful in the past fifty years, all of them with at least a considerable fraction of a quota of first preferences.

There is significant variability within electorates and from one election to another in the amount of exhausted votes. If the Greens, Liberals or Labor have their last continuing candidate excluded before the final count, quite often a large proportion of those ballot-papers proves to be non-transferable. Nevertheless, instances of more than one-quarter of a quota being exhausted are unusual and were so even before the change in formality requirements.

New South Wales

New South Wales adopted proportional representation along Irish and Senate lines (with a surplus actually consisting of a matched sample from the last parcel of ballot-papers received by an elected candidate) when the Legislative Council moved to direct election by the people in 1979. It has always required fewer preferences than there are vacancies to be filled for a vote to be formal, and (deliberate or accidental) errors in numbering after a unique first preference have been overlooked for the purposes of assessing whether a vote is formal: currently, there are 21 vacancies each time (so the quota is around 4.55%) and at least fifteen numbers starting with “1” must appear if a below-the-line vote is to be accepted.

Because detailed aspects of voting arrangements are entrenched under the *Constitution Act 1902*, it has not been straightforward to tackle various problems that have arisen. For instance, it became clear that even 1% support could readily lead to a Legislative Council place when group voting tickets were available to deliver flows of above-the-line preferences. This regularly occurred because of the rather small quota and the insistence of the largest parties upon determining the order in which their candidates are elected, mainly each with a full quota of votes at or near the start of the scrutiny.

The unexpected success of the leading “A Better Future for Our Children” candidate in 1995 starting with 1.3% of first preferences, led to a deliberate proliferation of micro-parties with catchy vote-harvesting names and a group-voting-ticket strategy 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.

At the infamous tablecloth election of 1999 with 264 candidates from 80 parties and other groupings, the sixteenth candidate to be elected, from the Outdoor Recreation Party, started with just over 7,000 votes or 0.2% of first preferences. He became the unintended beneficiary of a web of preference deals that had been designed to put its organiser into the Legislative 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’d confidently anticipated.

The eventual response of the Carr Government was to make party registration much harder and require it to be completed at least twelve months before an election. Group voting tickets were abolished and instead voters could order party columns above the line through group voting squares: once there were no more continuing candidates within a voter’s party or group of first preference, the ballot-paper would become available to the continuing candidate highest in column order of the party (if any) with next available group-voting-square preference, and so on.

The combination of requiring voters to consciously indicate any order of preference among parties or groups, and more rigorous procedures for registration and eligibility to have a party name appear on the ballot-paper, curbed the previous frenzied 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 requirement for expressing a formal vote, that at least fifteen candidates be nominated in order that a group voting square become available as a short cut. While the number of groups has fallen dramatically because there is no last-minute way of getting a catchy name onto the ballot-paper, the number of candidates contesting has continued to be several times the largest-ever field in a Senate election: at the last three Legislative Council elections, there have been 277 candidates in fifteen groups, plus seven others, in 2003, 326 candidates in nineteen groups, plus seven others, in 2007, and 293 candidates in sixteen groups, plus eighteen others, in 2011.

But for the constitutional change involved requiring approval at referendum, it would have been easier to abandon above-the-line voting entirely and simply move to optional preferential voting or insert a different provision for numbering at least a modestly small number of squares. Administrative effort could then have focused clearly on informing voters about how to make the most of their single transferable vote once they have formed their views before an election.

Informal levels remain relatively high, being respectively 5.3%, 6.1% and 5.4% in the past three elections, in part because optional preferential voting applies for the Legislative

Assembly, introduced by the Wran Government when optional preferential voting was part of Labor's national platform.

In addition, because many voters do not go outside a single group or party column, there tends to be a gradual pile-up of exhausted votes in the latter part of the scrutiny, making it possible for several candidates to be elected for the last few places without their individual progress totals being anywhere near a quota. With exhausted votes standing successively at around 1.7, 1.6 and 1.7 quotas (between 7 and 8 per cent of first preferences), the last candidate elected each time since 2003 has had between 50 and 60 per cent of a quota when the final exclusion occurred without further transfers being made.

In 2011, 65 Legislative Council candidates failed to reach 10 votes and 222 were excluded with under 100 votes, while only 16 unsuccessful candidates reached 1,000 votes during the scrutiny. The previous year, when the quota for election was just half as big, every surviving South Australian Legislative Council candidate reached at least 10 votes, only 27 failed to attain 100 votes and 27 unsuccessful candidates exceeded 1,000 votes.

Victoria

In Victoria, the first elections for the Legislative Council using proportional representation were in 2006, in eight five-member regions. Those voting below the line are required to mark at least five preferences without omission or duplication. Informal levels were respectively 4.3% in 2006 and 3.4% in 2010.

Though Victoria has not seen the same proliferation of parties that NSW has experienced in the 1990s or more recent years, the success in Western Victoria region in 2006 of DLP candidate Peter Kavanagh, starting with 2.6% of first preferences, highlighted one of the ever-present possibilities of group voting tickets, a startling run to a quota based on a number of fortuitous flows of above-the-line preferences.

Mr Kavanagh's success was at the final count decisively attributable to Labor's having placed the DLP ahead of the Greens, perhaps in the expectation that their own last continuing candidate would benefit from a flow of DLP preferences rather than the other way around as actually occurred: earlier, above-the-line flows at the last moment had pushed Mr Kavanagh's progress total beyond that of the leading Family First and Nationals candidates, enabling him to stave off impending exclusion and pick up vital sizeable transfers from the candidate whose progress total he'd just overhauled.

With the quota at just under 16.7% in each region, the Greens won three seats in each of 2006 and 2010, starting in the former with 9, 15 and 16% of first preferences in those instances. and in the latter with 12, 15 and 19%. They were unsuccessful in the other five regions on each occasion, after receiving between 7 and 11% of first preferences there.

Senate arrangements

After Dr Evatt's misjudgement in 1948, informal levels for the Senate remained very high except for brief declines to 7% or lower in 1951 and 1953, and again in 1964 and 1967, but

for a long time Labor was in no position in the federal parliament to do anything about levels persisting at around 9-10%. 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: only in Queensland was the rate of informal voting under 10% in that year. Labor's subsequent legislation to introduce optional preferential voting for both the House of Representatives and Senate was opposed by both the Liberal and Country Parties.

After a major public inquiry by the initial Joint Select Committee on Electoral Reform in 1983, instead of the voter's unnecessary burden simply being lifted in Senate elections, party boxes and associated group voting tickets were introduced. Following an Australian Democrat amendment, anyone wishing to vote below the line would have to mark at least 90% of the squares alongside individual candidates' names with no more than three departures from sequential numbering: there is no logical reason for either the permitted maximum level of departure from sequential numbering or the maximum proportion of squares allowed to be left blank.

While the rate of Senate informal voting dropped immediately and has now settled at around 3-4%, there was initial embarrassment for Special Minister of State Mick Young in 1984 when large numbers of voters misunderstood the Australian Electoral Commission's advertisements about a simple way of voting for the Senate through party boxes, and just used a "1" in House of Representatives seats also, contributing to a trebling in that informality rate to 6.8%.

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.

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, on legal advice. 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.

Little emphasis has been placed on voting below the line when the Australian Electoral Commission advertises, and in the light of the imposition upon voters where large numbers of candidates nominate, it is not surprising that fewer than 5% insist on marking their own preferences rather than trusting others to do the job (they hope properly) on their behalf.

Nevertheless, 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, at times 20% of ballot-papers are marked below the line and some results have been determined by that persistence of voters.

In 2013, electors in NSW, Victoria, Queensland and South Australia voting below the line had to mark respectively at least 99, 88, 74 and 66 preferences, in large part irrelevant during the subsequent scrutiny, in order for their vote to be accepted as formal. The first two instances surpassed previous Australian records for unreasonable burdens being placed on electors.

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.

The extensive research undertaken on Senate informal votes after the 2001 general election showed that nearly one-half of informal votes could be attributed to problems with below-the-line attempts, over half of these being the placement of a first preference only and a further one-fifth otherwise failing to mark 90% of the squares alongside individual candidates' names. If this pattern has persisted, around one-quarter of attempts to vote below the line are unsuccessful, sometimes because of a basic misunderstanding on the elector's part, and at others because the requirements for numbering to be accepted are simply unreasonably onerous.

Complaints during and after the 2013 campaign about pressure applied when group voting tickets were being prepared for lodgement have long-standing precedents. For instance, at the height of her own public recognition and influence following the 1996 elections, Australian Democrat leader Cheryl Kernot stated that the period for registering group voting tickets 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.

Most voters who mark a party box are unaware of the associated registered preference list(s) or their potential implications: unusual outcomes due to twists in group preference orders that would surprise many of those who perhaps reluctantly went above the line have been occurring or nearly so for over twenty years. In 1990, the last Senatorial place in New South Wales was in practice determined by the decision of power-brokers within two groups to blackball Liberal Senator Chris Puplick in their registered voting lists. Few Grey Power or 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.

Sometimes through media publicity electors 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 or hoped-for flow of Family First preferences, were prepared to make numberings they wrongly assumed would have no relevance during the scrutiny. While Senator Fielding was elected after starting with 1.9% of first preferences, in Tasmania because a significant proportion of Australian Democrat 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 instead elected as a Green Senator.

There has been a growing tendency from the early 1990s among many of the smaller groups to deliberately put Liberal and Labor, and now also the Greens, last or nearly so, opening up greater possibilities for one of them to harvest sufficient preference flows to eventually achieve the penultimate or final quota of votes. This has become more pronounced as the combined Labor and Coalition vote has continued to decline, reaching two-thirds of first preferences in 2013.

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.

Because major party machines prefer to control the order of election in Senate elections as a purely internal matter that can be determined by the relatively few party members eligible to vote in the pre-selection, 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 begin with just a small fraction of a quota and be unnecessarily prone to exclusion towards the end of the scrutiny, or unable to attract sufficient further preferences to reach the quota. While more than a quota of first preferences lies outside the major or established parties, group voting tickets make it quite feasible for candidates starting with modest first-preference support to gradually inch and then jump their way to a quota from flows of above-the-line preferences.

Experience with compulsory marking of all preferences: South Australia and Western Australia

Just as Senate arrangements do not apply in either New South Wales or Victoria, neither do they in South Australia or Western Australia, where the most draconian provisions surrounding formality are in place: no error in numbering respectively below or to the right of the line is tolerated, but one square may be left blank.

With its unforgiving compulsory marking of preferences and a state-wide Legislative Council electorate, until the 2013 Senate elections South Australia held the dubious distinction of having imposed the most demanding requirement in practice for the recording of a formal vote in public elections in Australia, after 76 candidates nominated in 2002. 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.

In South Australia, until 2013 individual ungrouped candidates were entitled to their own separate above-the-line boxes at the right-hand end of the ballot-paper and were permitted to lodge one or two voting tickets. However, a late flurry of legislative activity brought on by the election of Senators who started with less than 1% of first preferences saw a major increase in candidate deposits and requirements for supporting signatures if they were not from a registered political party. Registered parties will now be placed on the ballot-paper before other grouped candidates (who must contribute distinct supporting signatures to meet the new conditions), and independents and other individuals nominating will no longer be able to lodge voting tickets.

The proportion of aggregate first-preference support for Liberal and Labor has not been above 80% since 1989 and fell below 70% in both 1997 and 2006. In the second instance, Mr Xenophon benefited from extensive publicity over Labor and the Liberals' refusal to give him an early preference on their voting tickets, 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: the second person in his group was also elected, and nearly the third.

Dignity for Disability, whose lead candidate died days before the 2010 election and was therefore bypassed on ballot-papers, won the last vacancy after starting with 1% of first preferences. Though not in imminent danger of exclusion at any point in the scrutiny, the party's second candidate, Kelly Vincent, received several large flows of above-the-line preferences, the last being nearly half a quota from Labor's final continuing candidate.

Over the past five elections, rates of informal voting have gradually increased from 3.5% to 5.8%, particularly when the numbers of groups and candidates nominating have increased markedly. The official report on the 2010 elections indicated that around three-fifths of informal votes were either blank or had disparaging marks or scribble, and one-quarter resulted from a failure to number all squares but one: nearly one-third of attempts to vote below the line were unsuccessful.

Western Australia

Originally a mixture of five-member and seven-member regional electorates (where a majority of votes translated into a majority of seats), Western Australia's Legislative Council now has six six-member regions.

The most spectacular immediate misfires or miscalculations in relation to registered voting tickets have been there. 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 regions, the Greens started with around a quarter of a quota which was augmented as preferences from excluded candidates flowed in, and assistance from One Nation made the difference between a Green or a second Liberal being elected: the unusual strategy let slip the possibility of One Nation 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.

Informal levels have been around 3% at each of the past five elections, reflecting the moderate number of parties and candidates (typically 20-30 altogether) appearing on each region's ballot-paper. About two-thirds of informal ballot-papers in 2013 were blank or had scribble on them.

Altering the transfer value and quota definitions to eliminate avoidable anomalies

The Droop quota in use for Senate and other single transferable vote elections in Australia and elsewhere is the smallest number of votes at which candidates are mathematically certain of election. As a simple application of the pigeon-hole principle, it is the first integer greater than the result of dividing the number of formal votes by one more than the number of vacancies to be filled.

To avoid needlessly creating anomalies, every ballot-paper being transferred to continuing candidates after someone's election should have the same proportion of its remaining value contribute to the election of the successful candidate, and the rest be available for transfer to 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 would then in each case become the unused transfer value still available for continuing candidates.

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. The non-transferability in 1974 of ballot-papers with first preferences for Neville Bonner, third on the Coalition list, followed immediately by numbers for Labor candidates, had drawn attention to the desirability of all ballot-papers helping elect a candidate to be eligible for further transfer, rather than just those received in the parcel taking the progress total beyond the quota.

Surpluses have since 1984 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 if non-transferable. Anyone with basic mathematical training will immediately recognise that this approach can lead to some (usually very low) transfer values increasing during the course of a scrutiny and therefore some voters exercising more than a single vote's worth of influence: such a possibility is hardly compatible with the standard concept of the single transferable vote.

This flaw, which in all circumstances allows large numbers of ballot-papers of relatively low remaining value far 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. There was never any chance of it being approved and applied overseas as a legitimate feature of counting following use of the single transferable vote, and it is now progressively being abandoned or recognised as deficient around the nation.

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's 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 after the 2001 Legislative Council elections. Her comprehensive report *Determining The Result: Transferring Surplus Votes in the Western Australian Legislative Council* was released in 2002 and is available at http://www.elections.wa.gov.au/sites/default/files/content/documents/Determining_the_result.pdf.

Attorney-General Jim McGinty proceeded with amendments that introduced the Weighted Inclusive Gregory method for both Legislative Council and local government elections, applying a surplus factor to each previous transfer value of ballot-papers received by an elected candidate, particularly as the prospect of a transfer value increasing during the course of a scrutiny was completely unacceptable.

In September 2005, the NSW Joint Standing Committee on Electoral Matters recognised that there were problems with the old last-parcel Senate sampling procedure for transfer of

surpluses still used at Legislative Council elections because that detail was entrenched as part of the guarantee of future direct election.

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.

If, in addition to Senator Xenophon’s efforts to make it easier to record a formal vote, there is a simultaneous desire to keep the number of 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 can be placed as much as is possible within the quota of the candidate they last helped to elect.

The latter involves dividing the surplus by the number of ballot-papers with a next available preference for a continuing candidate if a candidate is elected on first preferences alone: of course, if this quotient is greater than one, the transfer value remains at one and some votes are unavoidably exhausted. This approach is taken in the Australian Capital Territory.

When voters are given some real latitude in the marking of preferences, there needs to be a slight modification of the surplus fraction concept to successfully apply the Weighted Inclusive Gregory method. First, the total transferable vote weight for continuing candidates needs to be established: if, in the normal run of events, it exceeds the surplus, the previous transfer values are all multiplied by the surplus divided by the total transferable vote weight when the surplus is transferred to continuing candidates; otherwise all of the previous transfer values remain unchanged and some exhaustion of votes is unavoidable in the transfer.

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. Where they are

not transferable, exhaustion of the remaining value of the ballot-papers involved is unavoidable.

Whenever exhaustion of ballot-papers occurs, there are essentially two approaches possible for making adjustments to recognise that the number of votes at which election is now guaranteed has fallen during the course of the scrutiny. One only looks forward and considers just the number of votes for continuing candidates and the number of unfilled vacancies to establish a new quota for the remaining vacancies: this method accepts that candidates already elected have more votes than will be required of those still to achieve success.

The alternative approach, first set out by English mathematician Dr Brian Meek in the late 1960s, involves retrospectively adjusting downwards the quotas of those already elected, which means increasing their surpluses and the values at which the ballot-papers involved are transferred to continuing candidates. It also allows transfers to candidates already elected who under more traditional counting rules are normally bypassed once they have reached the quota.

Further particulars of Meek's approach and helpful associated references are set out in Dr Miragliotta's research paper *Determining The Result: Transferring Surplus Votes in the Western Australian Legislative Council* that led to the changes in transfer-value definitions in Western Australia outlined above. This sophisticated process requiring computerised calculations is in use as part of the single-transferable-vote methodology for electing local governments and district hospital boards in New Zealand.

Simpler reform options are available and more desirable

Party boxes in Senate elections have transferred power to party functionaries involved in negotiating preference deals and trying to maximise above-the-line preference flows that they hope will benefit their final continuing candidate. Periodic miscalculations on their part have led to outcomes that have later alarmed many voters who unwittingly contributed to them.

The view of the Proportional Representation Society of Australia has consistently been that *party boxes should be abolished and simpler formality provisions introduced and extensively promoted instead.*

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 New South Wales are far less onerous than those in Senate elections, the ballot-paper continues to be so large and intimidating that many voters do not mark all the preferences that they actually hold and quite large numbers of votes become exhausted towards the end of the scrutiny.

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 in a further doomed attempt 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.

If group voting boxes are introduced so that electors can order group or party columns above the line, there is still the question of how many preferences should be required below the line for such a vote to be formal.

The Proportional Representation Society of Australia's view is that it is preferable to err on the side of having more formal votes rather than unnecessarily denying 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.

The Australian Capital Territory 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.

The Victorian and Tasmanian criteria of requiring at least as many preferences as there are vacancies that Senator Xenophon has put forward 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.

Andrew Inglis Clark's original criterion insisting upon at least as many preferences as half the number of vacancies to be filled would have the merit of limiting the extent to which additional candidates would nominate within group or party columns just in order to secure the immediate formality of all votes marked first in their group voting box.

In a functioning democracy with proper educational materials and targeted 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 possibly become the last to be excluded.

Senator Xenophon is correct about the degree to which group voting tickets are completely compromised because of the opportunities that they provide for registered parties with a catchy name to benefit from extensive harvesting of above-the-line votes and tight circulation of preferences in ways that ideological similarities or differences cannot coherently explain. His call that "candidates and parties should have to campaign to win votes, not count on a confusing and labyrinthine preferencing system to win a seat" resonates with everyone who would like transparency restored to the fairest method available for achieving effective voting.

It is a major step forward to reject the operation of preference deals about the consequences of whose workings neither electors nor expert analysts can generally make assessments in anything but strategic overview before first-preference relativities first become known on election night.

It would be a further major step forward to do away with party boxes altogether, at a stroke greatly simplifying the look of the ballot-paper and removing incentives for nomination of unnaturally large numbers of candidates. In addition, official information about voting opportunities and obligations could simply focus exclusively on the workings of the single transferable vote and thereby levels of informal voting be kept as low as possible.

If the parliament is not prepared to take this principled step, it needs to carefully consider how to avoid the number of candidates becoming bloated because party and group columns increase unnecessarily in size to automatically comply with changed formality provisions.

It is also important that a generous savings provision be inserted so that electors who make an error early in their numbering are not automatically robbed of their vote, as it would be a cruel irony for a genuine attempt to increase voters' influence to set aside as informal some ballot-papers that are currently accepted under unjustifiable below-the-line provisions.

Once voters are given greater freedom, the questions also arise as to how best to define transfer values in this new environment and whether the quota should be reduced. First, it is possible to keep exhausted votes to a minimum without introducing new anomalies by using the number of transferable ballot-papers or transferable vote weight to determine a transfer value or surplus factor under the Weighted Inclusive Gregory method that has been adopted in Western Australia. Second, it is possible to introduce a reducing quota to reflect the exhaustion of particular ballot-papers and to consider applying the Meek approach as the most sophisticated method available for dealing with transfers of ballot-papers from elected or excluded candidates.

Whatever happens, it is important to abandon the discredited current unweighted approach to defining transfer values that regularly distorts the way in which surpluses are distributed. A number of Senate elections in 2013 where very narrow margins determined exclusions at critical junctures highlight the need to move without delay to a more careful definition that cannot be readily impugned.

The Proportional Representation Society of Australia welcomes the debate that has been initiated by Senator Xenophon in good faith, and looks forward to an augmentation of voters' electoral influence as principles rather than perceived short-term advantage become the driving force behind discussions and decisions on electoral reform that is long overdue.