

## **Some suggestions to further improve proposed how-to-vote, modernisation and other measures**

### **Submission to the Senate Standing Committee on Finance and Public Administration by the Proportional Representation Society of Australia June 2010**

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

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

Several of our Branches also advocate other reforms that strengthen voter understanding, participation and influence.

We acknowledge the positive intent behind both the *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010* and the *Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010* even though neither will do much to raise the levels of effective voting at House of Representatives elections from around one-half.

#### **how-to-vote material**

The Proportional Representation Society of Australia believes that voters should be empowered far more within our federal electoral system.

While the *Electoral and Referendum Amendment (How-to-Vote Cards and Other Measures) Bill 2010* removes one avenue whereby voters who are annoyed with a particular party may periodically be hoodwinked into expressing a key preference for it or be theatrically misled about the origins and purpose of how-to-vote material handed to them just before they enter a polling place, there are a couple of other areas to which prompt attention should be extended – potential Senate group voting ticket surprises and potentially-misleading “third party” material.

The first relates to the occasional startlement of voters who endorse a party box at a Senate election and find that their vote ends up contributing to an outcome that staggers them. During intense negotiations that take place immediately after close of nominations, 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 a flow of above-the-line votes when their final continuing candidate is excluded. However, because the relative standings of continuing candidates towards the end of a scrutiny usually cannot be anticipated with any confidence, there can be completely unanticipated outcomes when such calculations are unwound by reality.

The most recent example at the federal level was the misfiring of strategic decisions by both the Australian Democrats and Australian Labor Party to put Family First before the Greens in Victoria in 2004. Because Family First received greater support than the Australian Democrats and worked its way to a progress total above that of the last continuing Labor candidate, in each case it rather than the Greens benefited from party ticket votes for the Australian Democrats and Labor.

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

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

Western Australia's Legislative Council elections provide more frequent examples of breathtakingly-unintended consequences.

For instance, Labor supporters were required to mark all preferences to the right of the line in the North Metropolitan Region in 1993, and similarly Green supporters in the East Metropolitan Region that year, because the numbering in each lodged ticket was defective, and legal advice was obtained that a formal vote could not therefore be recorded through the party box.

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

In both of these electorates, the Greens started with around a quarter of a quota which was augmented as preferences from excluded candidates flowed in. One Nation obtained more than a quota in the Agricultural Region and its votes when the second candidate on their list was excluded made the difference between a second Liberal and a Green being elected. In the Mining and Pastoral Region, One Nation relied on preferences from former ALP MLC Mark Nevill who put the Greens last. As transfer value calculations then followed the Senate unweighted average model applied to all ballot papers for the successful candidate, One Nation's contribution was again just enough to put in a Green ahead of a second Liberal.

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

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

candidate in the South West Region, the Nationals handed them an extra seat and with it the balance of power in the Legislative Council after the May changeover! Family First began with a quarter of a quota and progressively picked up another half a quota as parties with lesser support sequentially dropped out. Its leading candidate was defeated only because of the flow of National party box votes to the Greens who started with nearly two-thirds of a quota.

To limit the prospects of particular party supporters being enraged in future because of similar faulty assessments by those given responsibility for determining group voting ticket numbering, the Proportional Representation Society of Australia suggests that *where voters are urged on how-to-vote material to mark just a Senate party box, there be an obligation to provide the full numbering(s) for all candidates in a legible font size somewhere on that material.*

This safeguard would put voters in a position to establish without delay how their vote would be interpreted and give them a chance of numbering below the line if they felt uneasy about some of the registered ordering. It is most regrettable that no steps are being taken to make it easier to vote formally below the line.

The availability of more comprehensive information when voters are being urged just to put a first preference in a party box however wouldn't however alert them to the curious attempts at savings provisions in sections 272 (4) and (5) of the *Commonwealth Electoral Act 1918* that were included in 1983 because of doubts about the constitutional acceptability of current provisions purporting to cover multiple group voting tickets when there is a requirement that Senators be elected "directly" by the people of a state.

#### *"third party" material*

While the proposed legislation prohibits the type of misleading at selected polling places in marginal electorates that provoked an outcry after the March 2010 elections in South Australia, it does not remove the possibility of similar mischief where "third party" proponents are not acting directly for or on behalf of a registered party or a group endorsing candidates.

For instance, "third party" how-to-vote material might be headlined "Make the House Green", "Put Your Family First", "Support the Environment", "Protect Workers' Rights" or "Encourage Investment and Job Creation" while advocating a numbering at odds with that being suggested by an implied party or one that most people on reflection would judge to be inconsistent with particular striking headings. Typically, attempted deceptions along these lines have involved the use or invocation of colours or insignia associated with the political party whose unfavourable how-to-vote advice is being countered.

While the *Commonwealth Electoral Act 1918* contains protection against misleading voters in relation to the casting of their vote, if the mischief is carried out by people who cannot be linked directly to candidates or parties, it is not clear that any effective remedies exist after the event, particularly if the wording used in the how-to-vote material is kept crafty or ambiguous enough for any "third party" involved to plead

that something objected to has been misinterpreted or an expressed opinion is honestly held.

The Proportional Representation Society of Australia believes that there is scope for *specific prohibition of interventions by “third parties” not associated directly with candidates or parties that clearly conflict with recommendations being made by direct participants with whom they might reasonably be confused, or otherwise use potentially-misleading language.*

An alternative means of stopping hit-and-run mischief on election day particularly that has been adopted in some states would be to set standards for the content of how-to-vote cards and require their pre-registration with the Australian Electoral Commission. Transgressors could then be ordered to desist immediately instead of complaints sometimes having to find effective expression through an emergency grant of a court injunction.

The Society believes that voters would be much better assisted in coming to their decisions if there were always a mailout of official material about rights and responsibilities associated with voting, including in relation to the workings of the single transferable vote. Material from candidates conforming to a particular template or set of guidelines and submitted by a specified deadline could also be enclosed, as occurs in local government elections in several states.

Apart from assisting with roll updating, such arrangements would set the scene for voters to determine what helpful material to take with them to polling places, and to eliminate the last-moment frantic thrusting of papers at electors as they make their way to vote.

We applaud the arrangements that apply in this regard in the Hare-Clark systems of Tasmania and the Australian Capital Territory whereby on election day voters can seek material at some distance from polling places or obtain any assistance they require with recording their vote, but are not subjected to the ministrations of a phalanx of party supporters just outside the entrances to polling places.

### **modernisation**

As already indicated, the *Electoral and Referendum Amendment (Modernisation and Other Measures) Bill 2010* also seeks to make positive changes that inject greater flexibility into procedures or otherwise take up past recommendations of the Joint Standing Committee on Electoral Matters, even though taken as a whole it will not necessarily increase levels of effective voting.

In particular, the proposed additional consideration shown to the homeless and to electors who have reasonable fear for their safety if they were to attend a polling place is admirable as is the proposed allowance of provisional registration at 16 years of age, and there are many positive features in the individual steps being taken to modernise procedures or at least permit better arrangements when technology permits.

The Proportional Representation Society of Australia suggests that the provisions relating to postal voting be amended to *require that any mailout material not part of a*

*postal vote application be required to sit in a separate envelope on which there is a clear authorisation and identification of candidate or party.*

If an incumbent's postal entitlements were being used to send out the applications, the campaigning material would have to be despatched separately, but otherwise it could all be included in a single mailing.

Those steps should stop any abuse of current postage entitlements and minimise occasional campaign claims that the Electoral Commission has included party propaganda in material of this nature: invariably such mailouts criticised on the grounds of perceived official bias have been from political parties.

We are also somewhat uneasy about the privileged ease of access that elected candidates have to roll information free of charge even though we can see how it can assist with legitimate functions of a representative, and surprised to find that all registered parties without anyone elected have a post-election entitlement and can thereafter make requests at other times provided that they pay any prescribed administration charge.

Perhaps it is time to specify that such requests for rolls or habitation indexes should not be made more than, say, once every six months immediately after election day nor more than quarterly after the elapse of two years. Instead of making registered parties without MHRs and Senators pay for roll updates that they request, perhaps they should be obliged to provide electoral authorities with confidential evidence that they have used their previous update to help make appropriate contact with voters or have specific plans to do so once they receive an updated version.