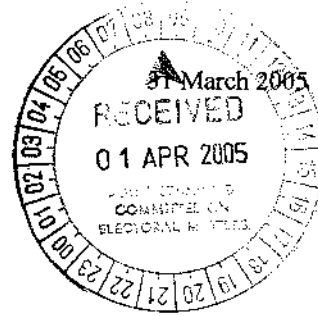


SUBMISSION NO. 115

Joint Standing Committee on Electoral Matters
Submission No. 115
Date Received 1-4-05
Secretary <i>[Signature]</i>



Chair and Members  
Joint Standing Committee on Electoral Matters  
Parliament House  
Canberra ACT

### Submission by John Pyke, QUT Law School, re the Counting of Senate Votes

Not at all confidential - authorise publication as you please!

Honourable Members and Senators,

I want to make a submission on just one aspect of the 2004 election – it seems to me that the way in which the Senate vote count was conducted and progressive figures were reported by the AEC was confusing, and indeed different people within the AEC seemed to have different ideas as to what they had to do on election night. I recommend some changes to the Act, and a reminder to the Commission that it should observe the Act more closely, so that it will conduct and report the count in a more consistent and informative way in future.

I was very puzzled by the way the Senate votes were reported for the 2 or 3 weeks after the poll. For each party the AEC listed “ticket” votes, then below-the-line votes for each candidate, and then a number of “unapportioned” votes. Ungrouped candidates seemed not to exist. Inquiries to the AEC received fairly meaningless answers, and eventually it was Antony Green who explained to me that “on election night, the AEC simply totals all votes by group. No distinction is made between above and below the line votes, or between votes for individual candidates. Minimal attention is paid to formality rules.” He explained that after election night the “unapportioned” figure represents “a calculated difference” between the group totals reported from the booths and the number of votes assigned, after better scrutiny, to the various candidates for the group. (I can provide copies of my correspondence with the unhelpful AEC and the much-more-helpful Mr Green if you’re at all interested.) This helped to make some sense of the numbers, but it still made it harder than it should have been to work out whether Barnaby Joyce was going to get elected, and impossible to track how the ungrouped candidates (one of whom I had voted for) were going.

It seems to me that at least some officers of the AEC are quite misreading the Act and are ignoring the requirements of s 273, perhaps influenced by a misreading of s 273A. Under s 273 section the AROs are supposed, under para (2)(b), to reject all informal papers and then arrange them into parcels and (para (c)) count the first preference votes for each candidate. S 273A(2) says that, even with computerised scrutiny, this should *still* be done by AROs, though sub-s (3) does provide for a more rough-and-

ready treatment by DROs of any ballots received by them. It seems, from the figures I read and from Antony Green's explanation, that in some polling places they simply do a rough count and forward bundles and numbers sorted only by groups – and ungrouped candidates get little or no mention at all until the final counts appear. I guess what they are doing is reading s 273A(3) – which says that a DRO should reject only those below-the-line papers that are obviously informal, and report only the number of first preferences on above-the-line ballots – as if it applies to each polling place. I say “in some polling places” because I know other officials take a more pedantic approach – I heard two officials quite improperly discourage voters from voting below the line because, they said, they have to check all votes for formality on election night and that keeps them there far too late! [Which is nonsense - I was a habitual scrutineer in the late 70s and early 80s, before above-the-line voting existed, and I can report that though it was tedious we complied with the requirements of s 273 and still got to bed well before midnight.]

Now I want to suggest that the rules in s 273 are indeed rather too strict, but those under s 273A, and the odd amalgam of the two sections that the AEC seems to be actually following, are too lax. Since there is going to be a computer-assisted check of formality later, I suggest that the requirement of rejecting only papers that are *obviously* informal could well be copied into para 273(2)(b). However, I submit that voters and candidates have a right to know what is going on as the count progresses, and not to be kept in the dark for three weeks or so. It would really help voters and candidates to do that – *to know what is going on* – if the above-the-line vote for each group *and* the below-the-line vote for each individual candidate was counted and reported in time to be printed in the Sunday paper, and then to be updated as later votes were counted, as s 273 in fact requires. From my scrutineering experience, I can recall that it doesn't take long to find the number “1” on each paper – that's far less arduous than checking whether all numbers from 1 to 60-something appear once each.

Perhaps ss 273 and 273A need a bit of tidying up, but the basic requirement to report where each first-preference vote lies should remain there, *and the Commission should be reminded to observe it*. I know that some votes that have not been rejected for obvious informality may later be rejected for “subtle” informality (and I endorse any submissions that you are going to receive suggesting relaxation of the formality requirements), so perhaps counts ought to be issued with a warning of that possibility, but the most informative count that is possible should be issued.

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