Formality rules, not prerequisites for nomination, leave electoral arrangements the most exposed

Submission to the Joint Standing Committee on Electoral Matters
Proportional Representation Society of Australia
July 2012

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.

The Society will always support efforts at modernisation and innovation, including amendments facilitating some degree of technological or administrative flexibility, as long as they are likely to increase voter influence, convenience or confidence and are demonstrably fair to all candidates and parties.

In that regard, recognising that websites have long ago taken over from the *Gazette* as individuals' most convenient way of accessing official information, and basing some wording on legislative eligibility rather than current enrolment status, are modest but worthwhile steps forward.

In the case of Senate elections, as part of any steps towards modernisation in the computer age, it would also be sensible to follow Western Australia in adopting the weighted inclusive Gregory transfer value instead of continuing with the embarrassing, anomaly-riddled unweighted approach to transfer values adopted in 1983 primarily to simplify calculations.

We will however concentrate in this submission on the proposals to significantly increase deposits, tighten some nomination procedures and place restrictions on when non-party candidates can run in grouped fashion, as these prescriptions are not derived from fundamental voting principles and therefore appear to be tackling potentially-troublesome situations as manifestations of electoral malaise to be discouraged rather than addressing the underlying causes in a voter-oriented manner.

Nomination of candidates should be encouraged in a functioning democracy because voters then have an opportunity to openly pass judgement on the different selection possibilities put before them. In that way, extremist elements are denied the weapon of convincingly claiming that repressive techniques are being used against them and their policies, while those seeking primarily to obtain publicity or simply poke fun at politics or elections can try to make their point without any risk of their creating electoral havoc.

Arguments based on the size of ballot papers or the font necessary to fit all nominations onto a single sheet are generally fairly weak if opportunities for calculating or sharp electoral practice, or other actions that could bring the electoral process into disrepute, have been sensibly limited and reasons for voter dissatisfaction addressed.

The amendments being advanced in the *Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012* on these matters are all about increasing the hurdles potential candidates must jump in order to get their name on the ballot paper in a legislatively-approved way. Their emphasis should however have been on the requirements for casting a formal vote because that is where the most alarming possibilities for acute electoral embarrassment lie: regrettably, they are simply not tackled in this proposed legislation, leaving the electoral process exposed to the whims of the wealthy.

Far too many House of Representatives votes invalidated

After some tolerance was shown in the extensive 1983 amendments to Commonwealth electoral legislation, mistakes or deliberate repetition of numbers at House of Representatives elections now result again in a vote being declared informal at the outset: an *artificially low* majority is asked of the candidate who subsequently is declared elected, something that should not be a matter of any pride in a democracy.

The argument that it is in some way *necessary* or even particularly virtuous to require full marking of preferences is specious. The more onerous the requirement upon voters, the greater will be the level of non-participation and informal voting among those who do turn up at polling places.

There is room for vigorous debate about whether more than one preference should be *required* rather than just *encouraged* to avoid high levels of exhausted votes in both House of Representatives and Senate elections, but a high threshold for acceptance of ballot-papers clearly places an unwarranted imposition on electors who each have a single transferable vote.

While there will always be temptation for someone seeking fairly cheap publicity for a commercial purpose or its own sake to nominate or sponsor even quite a few others as candidates, such machinations will not have a marked effect on voting if electors are allowed to sort out how they express their views with minimal external impositions.

A far better approach would be to remove the source of the original perceived or potential problems driving these proposed amendments by not requiring voters to mark large numbers of preferences for individual candidates just in order to cast a formal vote, and by increasing community understanding that the marking of preferences is simply an instruction about the order in which candidates may be assisted by (what remains unused of) each person's vote.

As soon as there are unreasonable or authoritarian conditions for marking a formal vote, the presence of a plethora of candidates can take on a disconcerting perspective. Published Australian Electoral Commission data indicate that anywhere between one-third and two-thirds of those whose marking (or not) of the ballot paper is rejected, succeed in indicating a clear first preference in House of Representatives elections.

Anyone truly concerned about encouraging elector engagement and participation should see it as especially perverse to reject a vote at the outset if it contains enough information to be able to contribute to the progress total of either of the candidates involved in two-candidate preference flows.

In particular, supporters of the Labor, Liberal and National Parties rarely have any preferences other than the first inspected in the course of a scrutiny, except to establish formality at the outset. Even though their levels of effective voting will be low overall, why should any of them be robbed of their voice in such circumstances if they have indicated a clear first preference?

For example, Australian Electoral Commission Web data on preference flows indicate that at the 2010 elections, only 1.0% of votes for Labor candidates had a further preference examined once exclusions began, along with 2.0% of votes for Liberal candidates and 5.2% of votes for National Party candidates. Taken together, fewer than 1.5% of nearly 10 million formal votes for these three parties were transferred to other candidates.

At the 2007 elections, just 0.2% of votes for Labor candidates had a further preference examined once exclusions began, along with 1.1% of votes for Liberal candidates and 9.6% of votes for National Party candidates. In aggregate, roughly only 1% of over 10.5 million formal votes for these three parties were transferred to other candidates.

The corresponding proportions transferred at the 2004 elections were 7.7% of votes for National Party candidates, 0.4% of votes for Liberal candidates, and 0.5% of votes for Labor candidates. Fewer than 0.5% of nearly 10 million formal votes with a first preference for one of these parties were transferred to another candidate.

Those expressing alarm at the growing numbers of potential electors in House of Representatives districts who are not participating in elections should think long and hard about the appropriateness or reasonableness of the current legislative requirements for casting a formal vote before deliberately discouraging any potential nominations.

Just as the limiting of parties to nominating a single candidate was an unfortunate over-reaction to one obvious abuse at the 2009 Bradfield by-election (multiple candidates from a party nominated for perfectly legitimate reasons from time to time until the 1990s, such as covering all parts of a fairly large electorate, without previously creating a significant issue, so a limit of two or three might have been imposed instead), deposits and numbers of electors as signatories can be continually increased without ever taking election proceedings decisively out of harm’s way.

Increasing deposits significantly discriminates against those with limited resources who may wish to campaign on matters important to their wellbeing, such as the homeless (if they are enrolled), or someone on a disability pension or dependent upon carer support payments. A wealthy person wanting publicity or to mock the electoral system could still fund a field of fifty or one hundred candidates that would greatly increase informal levels in a particular (or several) House of Representatives contest(s), and thereby automatically draw extensive ongoing media interest.

Additional Senate obstacles to nomination and grouping also not the right prescription

It is also disappointing to find provisions starting down the path of unfortunate ACT legislation that was the first to place major obstacles in the way of grouping of candidates in quota-preferential elections to fill multiple vacancies.

There are circumstances in which elected and larger hopeful party stands on particular issues might be deliberately obfuscated beyond the point at which registration of a new party can be achieved, or several organisations (including perhaps trade unions or smaller parties) might wish to emphasise a particular policy platform during the impending campaign (for instance, improved facilities and recurrent funding for mental health) without entering into any wider or more enduring alliance.

While the requirement to find one hundred unique electors as nominators for each prospective candidate to achieve non-party grouped status can be portrayed as reasonable, if this proves ineffective in curbing the proliferation of such groupings, there will inevitably be urgings or pressure to increase that number of electors or impose further restrictions, all in the name of keeping the ballot paper manageable.

The deliberate bias of Senate voting arrangements towards party boxes and the discrimination against ungrouped candidates whose supporters must fill in at least 90% of the squares alongside individual candidates' names below the line with no more than three departures from sequential numbering, may not survive challenge if say more than one hundred candidates nominated and that particularly savage disadvantage was then made the focus of an emergency High Court complaint about an alleged denial of political freedom.

In seeking to highlight unfairness, a challenger could point to the South Australian example of giving every ungrouped Legislative Council candidate a separate column and thereby even allowing the registration of a voting ticket order that avoids automatically having two classes of candidates. The argument advanced could also make comparisons with arrangements in other jurisdictions or concentrate on the absence of a reasonable ceiling for such numbering impositions once the total number of candidates becomes very large.

While an analysis of Senate voting patterns is necessarily more complicated than that for the House of Representatives because multiple vacancies exist, typically votes cast in accordance with preferences shown on group voting tickets of the most prominent parties do not get inspected beyond two or three dozen numbers in the course of the exclusions and surplus transfers, yet the existence of sometimes many more below-the-line numbers is painstakingly checked at the start of the scrutiny to determine formality or otherwise. As some of the smallest parties or groupings routinely put Labor and the Coalition at the end of their registered order(s), the same cannot be said of them on account of their deliberately symbolic actions.

If there were no prospect of significant rewards from capturing a particular spot on the left edge of the ballot-paper and from associated back-room dealing about registered preference orders in such circumstances, or if voters were completely or largely free to disregard those candidates, groups and parties on the ballot-paper about whom they remain ignorant or could not care less, the Senate electoral process would not be nearly as vulnerable to the possible strategic emergence of a plethora of nominations.

After the infamous tablecloth ballot paper to accommodate 264 candidates in 80 different Legislative Council groupings in 1999 plus a separate final column for the ungrouped, New South Wales achieved marked reductions in numbers of groups through removal of group voting tickets entirely and introduction of rules about the latest time for registration of party names that would appear on the ballot paper. While these steps have limited the prospects of schemers being able to cobble together a quota of 4.55% or secure election at the final count

from a very modest first-preference start, another complication has arisen because of the maintenance of party boxes when there are constitutional requirements for at least fifteen preferences to be indicated if a vote for filling 21 vacancies is to be accepted as formal.

Unless steps are taken to increase voters' freedoms in an atmosphere of increased publicity about what the marking of preferences means, the size of the Senate ballot paper will remain a potential area of practical concern and vulnerability to concerted challenge.

Restrictions on nominations are likely to be expanded over time under the guise of attempting to avoid unwieldy ballot papers, even though the determination at any time of a wealthy sponsor or organisation to create ballot-paper chaos through nomination of numerous non-party groups or independents could expose the voting process and perhaps even the outcome to widespread public ridicule.

There are other approaches available such as having a helpful statement on the ballot paper in relation to electors making the most of their single transferable vote, but not rejecting individuals' attempts if they decide otherwise. For instance, ballot-paper instructions under the ACT's Hare-Clark system call for the marking of at least as many preferences as there are vacancies for historical reasons associated with the official outline drawn up by the Australian Electoral Commission prior to the 1992 plebiscite, but a single first preference suffices for a formal vote as a result of an enlightened approach taken unanimously by the Territory's second Legislative Assembly.

Instead of imposing gradually more demanding or authoritarian constraints on candidates nominating, the parliament should increase voters' freedoms to express the opinions that they actually hold in circumstances that encourage their engagement with the political process. If the Committee is unwilling to recommend leaving such matters entirely or largely in voters' hands (in which case the original perceived need for party boxes as an antidote to high rates of informality also vanishes), it should articulate why such avoidable complexity is good for Australian democracy.

If the Committee and the parliament wish to deal with the real issues surrounding the potential size and manageability of ballot papers, the focus should be squarely on what is required to cast a formal vote. Arbitrary acceptance conditions should not be imposed, particularly when it is known that large numbers of ballot-papers will not be looked at beyond the first or a small number of preferences once counting goes beyond the determination of first-preference tallies.

Regrettably, it currently appears that only an avoidable disaster arising because someone or some organisation is motivated and cashed up sufficiently to seek to bring the whole electoral system into disrepute, is likely to push those seeking to maximise tight control over potential outcomes into a long-overdue principled consideration of the fundamentals of voting.