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JOINT COMMITTEE ON ELECTORAL MATTERS

**Reference: Conduct of the 1998 federal election and matters related
thereto**

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JOINT COMMITTEE ON ELECTORAL MATTERS

Tuesday, 21 September 1999

Members: Mr Nairn (*Chair*), Senators Bartlett, Boswell, Faulkner, Mason and Murray and Mr Danby, Mr Laurie Ferguson, Mr Forrest and Mr Somlyay

Senators and members in attendance: Senators Bartlett, Faulkner and Mason and Mr Laurie Ferguson, Mr Forrest, Mr Nairn and Mr Somlyay

Terms of reference for the inquiry:

To inquire into and report on all aspects of the conduct of the 1998 federal election and matters related thereto.

WITNESS

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Committee met at 12.48 p.m.**GREEN, Mr Antony John (Private capacity)**

CHAIR—I declare open this hearing of the Joint Standing Committee on Electoral Matters inquiring into the 1998 federal election and matters related thereto. Today we are hearing from Mr Antony Green, who is an election analyst with the Australian Broadcasting Corporation. He is widely respected for his knowledge of electoral issues. In his submission Mr Green has raised the issues of both optional preferential voting and the voting system in the Senate. The committee welcomes Mr Green's input into these two issues, both of which have attracted a great deal of interest during this inquiry.

Welcome, Mr Green, to today's hearing. The evidence that you give at the public hearing today is considered to be part of the proceedings of parliament. Accordingly, I advise you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. The committee has received your submission, numbered 79, and a supplementary submission today, which is numbered 231. They have been authorised for publication. Are there any corrections or amendments that you would like to make to your submission?

Mr Green—No.

CHAIR—Would you make a brief opening statement before I invite members to ask questions.

Mr Green—I am essentially addressing two different aspects. I will try to address the two matters separately in my opening remarks. My interest in optional preferential voting is because of the previous disputes that have occurred over the so-called Langer style of voting, which the committee has looked at in previous reports, and also because of your comments in your report on the 1996 election. The majority report recommended voluntary voting but maintaining the system of compulsory preferential voting, so that partly inspired me to write the initial submission, pointing out that I thought it was logically inconsistent to have that combination.

It is logically inconsistent to have compulsory preferential voting, in which people are forced to express preferences, and have voluntary voting, where you do not have to turn up. If someone turns up and faces two candidates on a ballot paper, they do not actually have to vote under voluntary voting. But, if you add a third candidate whom they want to vote for, to actually have a valid vote they actually then have to express preferences for those two candidates. So, in fact, having compulsory preferential voting and voluntary voting works against the interests of people who do actually want to vote and who are forced to express votes for candidates to have their vote counted.

Voluntary voting does deal with the problem of people who do not want to vote, by allowing them to opt out. But maintaining compulsory preferential voting and that system creates a new inequity in that people who do actually want to vote are actually unable to cast a formal vote without expressing a preference for the final two candidates. I thought that the committee, before dismissing compulsory preferential voting, should look at the experience

of its occurrence in two states, in New South Wales and Queensland. In the original submission, I included a table of the incidence of candidates winning with less than 50 per cent of the vote. I have updated that in this second submission to include evidence from the 1999 New South Wales election. Twenty-one of the 93 seats were decided by candidates with less than 50 per cent of the vote.

CHAIR—That is a big shift.

Mr Green—The candidate with the lowest vote elected was 38.8 per cent. That candidate was an independent in Dubbo, who was elected with about 21 per cent of the primary vote. Because of a very high exhausted vote by a One Nation candidate—and from Labor Party preferences—he was elected with only 38 per cent of the total formal vote.

The reason that there were so many seats decided by less than half the vote is that the figure was created by the number of exhausted preferences from different parties. Tables 2 to 4 cover some information on the distribution of preferences at the point when candidates are excluded. Worth a mention from the 1999 New South Wales election was the very high proportion of One Nation voters who did not express preferences. In the three different types of distribution of preferences, there was one between the Labor and Liberal parties, one between Labor and the Nationals, and three-way contests there. You can see that the proportion of exhausted votes was above 50 per cent for all One Nation candidates. That does include some votes for other minor party candidates and independents along the way, because you cannot get an exact count. But, at the point where the One Nation candidate was excluded, that was a very high proportion. But it was also very much higher than at previous elections for the Democrats and the Greens.

I will push forward to what I call page 3, where there is a table. This is from a paper that I have done for the New South Wales parliament, trying to assess the impact of optional preferential voting. I have excluded all three-cornered contests and seats where independents finished first or second. Roughly, the proportion of voters not expressing preferences for either of the major parties rose to 55 per cent at the 1999 New South Wales election; that was roughly double at the previous election.

My interest in optional preferential voting is that I think there is a great deal of resentment out there in the electorate against the major parties. That is part of the reason why One Nation has done so well at the last couple of elections. I think that resentment is made worse by the continuing operation of compulsory preferential voting where people are forced in the end to give preferences to one of the major parties.

The operation of compulsory preferential voting can tend to produce the situation where minor parties are treated as irritants by the major parties because they know that in the end voters must give preferences back, whereas optional preferential voting forces the major parties to deal a bit more with the minor parties. As the defeat of the Goss government in 1995 in Queensland showed, the Greens were disenchanted with the Goss government and the Labor Party were forced in the end to try to get those people to give preferences back to them. In the end, many Green voters did not do that and that led partly to the defeat of the Goss government.

Similarly, in the 1999 New South Wales election, the Liberal Party and the National Party were forced to try to deal with One Nation supporters, because it was substantially the movement of support away from the coalition and towards One Nation that cause some of their difficulties. I did not include the 1995 Queensland election in these tables, unfortunately, but the Queensland election was also an interesting case because there were many seats where One Nation preferences were distributed but also many seats where coalition preferences or Labor preferences were distributed.

The point about optional preferential voting is that it does not force major party voters to give preferences if they do not want to. Looking at the Queensland election, table 3 shows that almost one-third of One Nation voters did not direct preferences to the major parties. One-quarter of Liberal voters did not, in the end, choose between the Labor Party or One Nation. One in five National Party voters did not choose between One Nation and the Labor Party. Of Labor voters, in the 12 seats where their preferences were distributed, more than one-third of Labor voters did not choose to distribute preferences between One Nation and the National Party.

My view is that I do not see why you should have an operation of an electoral system which forces those people to direct preferences if, given optional preferential voting, they clearly did not do that. I presented some of this information because I think there have been a lot of conspiracy theories in many of the submissions to the committee on the issue of optional preferential voting and so I thought it would be worth while to present some of this evidence. My concern is more on the principled issue that it is important that voters not be forced to direct preferences if they do not want to. However, I well understand that there may be a lot of interest in the political impacts, and so I have included several other tables.

Tables 5 and 6 are from a publication I prepared on Queensland elections, showing what happens to coalition preferences in the swap between the Liberals and Nationals at Queensland elections before and after optional preferential voting was introduced. In the case of Liberal Party preferences—and, admittedly, there has been a coalition since the 1992 election in Queensland between the Liberals and the Nationals—the big number of exhausted preferences was of Liberal voters who chose not to therefore direct preferences to the National Party. They would not direct preferences to the National Party. They did previously direct preferences to Labor but, when they did not have to direct preferences, they chose to exhaust. Some evidence in the Liberal Party in Queensland elections is that Liberal Party voters who are exhausting preferences are those who do want to choose between the Labor Party and the National Party.

There is a slightly different pattern with National Party preferences. The proportion leaking to Labor has stayed roughly the same as shown in table 6, but there has been a drop in the numbers directed to the Liberal Party. I think that tends to show that the flow of preferences between the liberal parties in Queensland state politics has tended to not be a mirror image of each other. Liberals tend to be less likely to direct preferences to the Nationals, whereas the Nationals are much stronger at directing preferences back to the Liberals—although, again, the fact that there has been a coalition agreement since 1992 may affect those trends.

Senator FAULKNER—In table 6, that column should be marked 'Liberal', shouldn't it?

Mr Green—Yes, it should. I am sorry. I should correct that. It should be marked ‘Liberal’ in table 6 and not ‘National’.

CHAIR—What is table 5, then?

Mr Green—Table 5 shows the direction of Liberal preferences to Labor and National; whereas table 6 shows the direction of National preferences to Labor and Liberal. The subheading should have Labor and Liberal in it. The three-cornered contest came up as very important in the New South Wales election, because there was a great increase in the proportion of Liberal and National Party voters who did not direct preferences to each other in New South Wales. This is shown at table 2 on page 3. I am sorry about the numbering of the tables, but they were from two different documents. At the 1999 election, there was a huge increase in the proportion of Liberal and National Party voters who did not direct preferences towards each other. Previously, in three-cornered contests, they had been disciplined but, certainly, at the 1999 election there was a great decline in that discipline. Certainly, in the North Coast seat of Clarence, the Labor Party sitting member, Harry Woods, was elected almost purely because of the exhausted preferences between the Liberal and National Party candidates.

CHAIR—Can I ask you whether one was greater than the other?

Mr Green—Most of the preferences were Liberal. I think there was only one seat where National Party preferences were distributed—I am prepared to correct myself on that. But in most cases it was Liberal Party preferences in rural seats. I should point out that in the last page of my document I include a reference to a *Sydney Morning Herald* article of 3 September where the deputy Liberal leader in New South Wales, Barry O’Farrell, has said that he will support reform of the Legislative Council if optional preferential voting is done away with. I would say there was a fair degree of self-interest in that deal, because it is clear that the Liberal and National Parties would be greatly disadvantaged by this failure of preferences to flow between the two parties. But that was created as much by disputes in contests between the two parties rather than through optional preferential voting. The parties had been able to discipline their supporters beforehand, and there was a series of disputes in a number of electorates at the state election which created this marked weakening of flow.

The document headed ‘The Impacts of Optional Preferential Voting’ was taken from a publication I had done on the New South Wales election for the state parliament. It tried to assess the political impacts of optional preferential voting. The key thing is that optional preferential voting nearly always works in the interests of the party with the highest vote. Whoever is the leading candidate in an election will almost always be advantaged by the operation of optional preferential voting. In 76 of the 93 contests—on the measure I have used to try to measure advantage, as detailed in the document—the leading candidate was advantaged.

In most cases where there was a three-cornered contest, that resulted in the advantage going towards the Labor Party. The loss of preferences between the Liberals and the National Party and the failure of One Nation voters to direct preferences tended to disadvantage the coalition candidates and advantage the Labor Party candidate. However, it is not always the Labor Party that is advantaged. As I said, the evidence from the 1995

Queensland election was that the failure of Green voters to direct preferences back to Labor hurt the Labor Party under the operation of optional preferential voting.

My argument is not really this issue of the party advantage. It is really that the voters are choosing to vote that way, and I do not think it just that voters should be forced to direct preferences if they do not choose to do so.

I move now to my second point, which is about reform of the Senate voting system. I have done a number of publications on the New South Wales Legislative Council and in my original submission I pointed out, on page 70, some issues to do with the election of Alan Corbett at the 1995 New South Wales election, representing A Better Future for Our Children and also, in table 3, the election of Mr Nick Xenophon of the No Pokies Party at the 1997 South Australian election. Both of them were elected from an extremely low first preference vote. In the case of A Better Future for Our Children, Mr Corbett had roughly 1.3 per cent of the vote, but he managed to get up on the distribution of preferences from other parties. Mr Xenophon got up from 2.5 per cent of the vote, or roughly one-quarter of a quota, and managed to get preferences from every other party along the way.

There has been a lot of talk of reforming the Senate voting system, and much of it tends to have been about the problems of minor parties in the Upper House. I do have the suspicion that some of this is about beating the Democrats into submission on a number of legislative bills that were coming before the parliament. But I do not think it is the Democrats that are the problem in this issue. It is not the minor parties that are there currently. My concern is that, if a double dissolution were held in the Australian parliament and the quota were cut to about seven per cent, you would see repeated in each state the situation that occurred in New South Wales and in South Australia whereby, because there are large numbers of very small parties all now swapping preferences ahead of all the other parties, one of those parties could get elected from every state and reduce the effectiveness of the Senate to the position of the New South Wales Legislative Council, where the balance of power is so divided between minor parties that the role that the Senate has carried out over the past two decades as a house of review would be greatly diminished. I think the Senate has taken the balance of power very seriously, and the role of the Democrats and individual senators such as Senator Harradine has been very responsible. They have sent legislation to committees; they have discussed issues.

My concern is that, if the balance of power in the Senate fell to large numbers of very small parties or to Independents, the legitimacy of the Senate in its current role would be undermined. So, rather than reforming the Senate to deal with the minor parties—which a number of senators, including Senator Coonan, have been talking about—my concern is that the legitimacy of the current Senate would be undermined by the election of large numbers of small parties.

In my extra submission I have included some information from the 1999 New South Wales election for the Legislative Council, in table 7. The first 15 vacancies were filled by the eight Labour Party members, the six coalition members, plus David Oldfield from One Nation. They were all elected by the distribution of surpluses from parties that got more than one quota. Three other parties got a significant vote: the Greens, the Democrats and Fred Nile from the Christian Democratic Party.

However, the 16th candidate elected was Malcolm Jones from the Outdoor Recreation Party, who had only 0.2 of one per cent of the vote and 0.04 per cent of a quota. He was the candidate thrown up by this extraordinary swap of preferences between minor parties on that giant ballot paper. There were 267 candidates and 81 columns on the ballot paper. I have not been through the full detail of the count, because it is not readily available but, because of the complex flow of preferences from something like 40 parties who directed preferences to him, he was actually elected before any of the other minor parties—before the Democrats and the Greens, for instance—despite his very low primary vote.

The Democrats were then the 17th elected and the Greens were the 18th. Mr Peter Wong from Unity was then elected. He had less than one per cent of the vote—0.98 per cent. Peter Breen from Reform the Legal System was elected with one per cent of the vote. He had the advantage of the donkey vote on the ballot paper: he had the first column. The last candidate who was elected was Fred Nile of the Christian Democratic Party.

My concern with this is that a similar thing could occur in the Senate. It is less likely in a half Senate election, because the high quota makes it rather difficult. But what if you get another election where there is a large amount of the vote split between small parties? For instance, we had over 20 per cent of the vote in most states going to minor parties at the recent Senate election but, because most of that was concentrated in the Democrats or One Nation, the situation did not occur that had occurred in New South Wales. If that vote were more fractured, there would be more difficulty.

My concern is that, before the introduction of ticket voting, parties that ran separate tickets and could not resolve internal differences or agree on one candidate—like-minded parties that could not agree on one candidate or on common platforms—were disadvantaged because they could not readily swap preferences. Since ticket voting has been introduced, if several Green parties or small right-wing parties who cannot resolve internal differences and cannot agree on one ticket and one policy platform can still run several tickets and swap preferences, the lottery of the ballot paper can actually deliver one of them into parliament.

My argument is this: once elected, what legitimacy does someone in that situation have with only a very small proportion of the vote actually going to them? Who do they turn to and say, 'These are the people that elected me'? My concern is that at a double dissolution you could get between three and six of these people elected and they would have the balance of power in the Senate. If you want to see how that would operate, look at the New South Wales Legislative Council, which has spent most of its time with the crossbenchers dealing with their own issues rather than actually reviewing legislation and calling for committees.

As an illustration, I point out the second last page, which has a clipping from Saturday's *Sydney Morning Herald*. There is great concern about the operation of the actual system in the Legislative Council. What is going on is horse-trading between the major parties and all the different minor parties about what they are going to do. Instead of having a committee of inquiry to actually discuss the issue and call for submissions, it is just a deal that is going on in the background. The importance of the Joint Standing Committee on Electoral Matters is that some of these issues are actually being discussed a bit more in the open.

The importance of the current Senate is that, if such a change were to go ahead, it is more likely that a committee would look at the issue. That is important because the Senate does perform an important role and, to see it reduced to the sort of horse-trading that goes in the New South Wales Legislative Council would be a bad thing for the operation of the Senate.

I would prefer that some minimum quotas be introduced. I have no recommendation on a particular value, but I see nothing wrong with putting something into the system which encourages parties to coalesce and put up one candidate and one platform and agree on issues, as to go through the process of policy and candidate compromise is to actually learn how to be a senator. What is the advantage of having the electoral system that operates at the moment, where candidates who cannot compromise with parties they agree with can get elected to a Senate where they have to compromise with parties that they do not agree with? I think that is the way the current Senate system operates.

The alternative to this is to go down the path for the Senate that the Australian Electoral Commission has put forward, which is about making much tougher the registration of parties, having deposit fees to register a party, increasing the number of members that there must be and putting greater specification on what it is to be a party member. That is a good thing, but it does not really address this issue. You can still register multiple parties; you just have to do a lot more work for it.

I would also like to point out that the Australian Electoral Commission, in submission No. 176, responded to my point. They said two things which I disagree with. One, they referred to the modified d'Hondt system for the ACT and the minimum quotas. I do not think that is a valid comparison. D'Hondt should work without a minimum quota. In the process of it getting through the Senate, they came up with a terrible electoral system which makes it very difficult to count. I do not think there is a comparison between that and the Senate. The committee has made a substantial report in the past on that.

The other thing is paragraph 27, point 7 of their submission. They say:

It could be argued, however, that even if voters do not know the specific policies of a micro party, they have at least made one clear decision, namely not to support the major parties. The election of a micro party representative in such cases is to that extent in keeping with the motivations of those who support such parties.

I do not agree with that. That is a mechanistic view of electoral systems. Electoral systems are also about electing representatives to parliament who represent the people who voted for them. This is a view that the electoral system is just there to toss someone up because lots of people voted for micro parties. If you are going to go down that path, I think the senators' terms should be divided between those minor parties. Why should we have an electoral system which by chance produces one of those candidates to represent all the people who voted for different micro parties?

Referring to my original submission and Nick Xenophon in South Australia, some of the people who were involved in this Senate swap for him—Grey Power, United Australia Party, the National Party, Australia First, the Over-taxed Drinkers, Smokers and Motorists Party, National Action, and Smokers Rights—had very little in common with each other, but they

have done an unprincipled swap of preferences. That was occurring in New South Wales as well. The same thing would occur if a double dissolution election of the Senate were held.

CHAIR—I notice a lot of drinking and smoking goes on with poker machine playing around the clubs. Maybe that is the connection.

Mr Green—Perhaps.

CHAIR—Thank you. I will start on optional preferential voting. Your latest submission included New South Wales 1999. There has been a huge shift in exhausted vote from 1995, which has thrown up the lowest winning margin. Previously the lowest winning percentage went from 49 per cent down to about 45 per cent. Now we are down below 39 per cent—that is the lowest winning margin. In that particular case, do you think there are other reasons why that occurred in the New South Wales election?

Mr Green—I think there are reasons for it. There was an increase in the number of candidates, which meant people had to fill in a lot more numbers on the ballot paper. You do tend to get a bit more optional preferential voting the more candidates there are on a ballot paper. Secondly, One Nation did not direct preferences, and took quite a stand doing that. To prove their independence, many Independents who stood in seats in New South Wales also tended to issue how-to-vote cards without preferences. With the increase in candidates, that produced a lot more exhausted votes.

The case of the 38.8 per cent is Dubbo. Basically what happened in Dubbo is that the vote was split very evenly. I have the figures here. The National Party got 31.8 per cent of the vote and they led on primaries. The Independents, who eventually won, got 22.7 per cent. There was an ALP candidate with 20.3 per cent and a One Nation candidate with 18.1 per cent. In other words, there were four candidates with between one-fifth and one-third of the vote. In such a situation, under optional preferential voting it is quite likely that someone is going to get elected with fewer than half the votes if there is a high exhausted vote.

Under the alternative of compulsory preferential voting, you may get the situation where a candidate with a very low vote can also get elected. There is a situation in the current Victorian election in Polwarth. The Liberal Party have 40.6 per cent, the Labor Party have 23.6 per cent, the Nationals have 16.7 per cent, an Independent has 15.8 per cent and a Green has 3.4 per cent. The result in that election will be determined by the candidate that is running fifth, the Green. If his preferences flow to the Independent, the Independent will get ahead of Paul Couch, the National Party candidate, and the National Party preferences will elect the Liberal. However, if the Green preferences do not get Mr Croke ahead of the National Party, then his preferences will flow to the National Party which will get him ahead of the Labor Party, which will get him ahead of the Liberal Party. Any form of preferential voting can produce peculiar results because of the old political science principle called the 'paradox of voting,' which is one of those peculiar theoretical things that political scientists look at. It rarely occurs in reality, but it means that under any form of preferential voting you can get a majority who oppose someone, but you cannot get a majority who support someone. What you are seeing in the situation at Polwarth or even at Dubbo under optional voting is that there is no clear answer as to who has majority support in the electorate, and it

will in fact be determined by the simple accident of who finishes first, second, third, fourth and fifth.

It is not optional preferential voting that does that; in fact, optional preferential voting in the case of Dubbo advantaged the candidate with the highest primary vote. Compulsory preferential voting gives no advantage to the candidate with the highest primary vote.

CHAIR—In the New South Wales election, though, one of the other influencing factors was the upper house ballot paper, which was huge and difficult to manage, but people could just stick a ‘1’ somewhere. That was easy, and therefore a lot of people then stuck a ‘1’ somewhere on the other paper as well. From speaking to a lot of people, I saw that a lot of people did not realise that they were voting optional preferential.

Mr Green—I would agree with that. I would say that there is probably a degree of that going on, particularly if people used that upper house ballot paper first. As I described it in a newspaper, you needed the flexibility of a contortionist and the dexterity of an origami artist to vote on that ballot paper and then fold it up and stick it in the ballot box. It was an extraordinarily difficult thing to do. Having to vote pre-fold, it was also very difficult to have a secret vote because people could see which end of the ballot paper you were filling in.

I think the biggest influences were two things. One was this issue of One Nation not directing preferences, and they did get a high primary vote, and, second, some dispute in coalition seats between the Liberal Party and the National Party. In a number of those seats where the Liberals ran for the first time in many years, a lot of Liberal Party supporters viewed the National Party as the enemy rather than the Labor Party. That tended to occur in a couple of seats.

CHAIR—In Monaro in my electorate, it was a little like that. Probably over 40 per cent of National Party preferences were not flowing to the Liberal Party and about 35 to 40 per cent of Liberal preferences did not flow to the National Party.

Mr SOMLYAY—What seat was that?

CHAIR—Monaro.

Mr SOMLYAY—Is that right?

CHAIR—Yes. As it turned out, the National Party got up on the Liberal Party preferences. Fortunately, the Liberal Party preferences flowed slightly higher than what the National Party ones were. If it had been reversed, the Labor Party would have won.

Mr Green—In terms of the proportion of the vote, the National Party got up with only 39 per cent of the formal vote. There was a 20.7 per cent exhausted rate. That was the second lowest. The Labor Party got as close as it did in both Monaro and Burrinjuck because of the exhausted vote between the Liberals and the Nationals, and the Labor Party won Clarence because of the exhausted vote. I very much doubt whether the Labor Party could ever have got up under compulsory preferential voting, but alternatively the Liberal Party

only won Albury because of optional preferential voting. The Independent would have won on a stronger flow of Labor preferences. The Independent in Dubbo who got up with such a low vote only just got there, again because of exhausted preferences.

Mr LAURIE FERGUSON—When we talk about the Senate and minimum requirement, how do you work it? I have not had a chance to read the submission, sorry. Do you eliminate the person? There are options, aren't there?

Mr Green—There are options. Malcolm Mackerras has put great faith in the argument that the Constitution says that senators must be elected directly by the people and therefore this excludes your ability to add up the votes for a ticket because that is party voting and not individual voting. I do not agree with that. That is a case for the High Court. There are other ways you can do that.

My view on what you would do is that, in all the parties with more than a quota, you would go through the process of electing all those candidates and distributing the surplus quotas. At the point where you had no candidate with a full quota to be elected, you would apply some form of minimum quota to the party groups. If the High Court were to rule that that was invalid because you were not voting directly for parties, the other way to do it would be to apply that rule to the candidates. If you put, say, a half quota—a half quota is a minimum—before you had the right to receive preferences and get elected and if that were applied to individual candidates, that could in fact disadvantage the Labor and Liberal parties and cause their third candidate to be excluded. If it were applied to the party's vote, it would not exclude a Liberal Party, National Party or Labor Party candidate. That will be determined by the legislation.

It depends on what you want to do. Wilson Tuckey has been talking about getting a full quota or 80 per cent of a quota. I do not think that is an answer because that just cuts down the number of minor parties in the Senate. If they are complaining about the Senate powers and saying that the Senate is being obstructionist, that is an issue to do with the powers of the Senate and I do not see that changing the electoral system to deliver just a government majority or even an opposition majority is going to make the Senate any less obstructionist. It is not the minor parties that are causing the problem.

What you could do is put a lower quota—a quarter of a quota, a third of a quota, half a quota—which is an attempt to cut out these very small parties. In my original submission, I showed that there are four candidates who would not have been elected on a half quota. Senator Sanders, the Democrat for Tasmania in 1984, got less than half a quota. Senator Woods from the NDP in 1987 got less than half a quota. He got only 0.2 of a quota—1.53 per cent. In 1993, we also have Senator Woodley for the Democrats in Queensland and Senator Margetts, the Green from WA. I think it is significant, particularly with Senator Sanders and Senator Margetts, that in both of those states it was an issue of an even split between the Democrat and the Green vote, which is why they were under the quota. If parties do have similar stands and similar policy agendas, my argument for a minimum quota is that they should be encouraged to be running joint tickets in those situations. If they have personal differences, I do not see why political parties should have an electoral system which advantages them for being unable to resolve personal and policy differences.

Mr SOMLYAY—I am stunned by that last statement. You are quite right about the National Party preferences being before discipline. When I was elected in 1990 and won a National Party seat, almost every seat went against the coalition at the election, but my majority was increased because National Party preferences were being distributed for a change instead of Liberal Party preferences. I was going to ask a question, but you have answered it for me. I do not have anything further to ask. Perhaps you might like to comment on Victoria. Has anything come out of Victoria which could be relevant?

Mr Green—On the public record? No, except there are a couple of seats there where, for people who are concerned that optional preferential voting will elect candidates with less than half the vote, I would point to Polwarth, as I mentioned earlier, Gippsland East and potentially Swan Hill. They are seats where candidates with very low primary votes can end up being elected by this cascading of preferences through candidates. Traditionally, preferential voting in Australia has tended to either cause a simple swap of preferences between the Liberal and National parties or involve a swap of preferences between one of those candidates and the Labor Party. It has been a matter of haggling over the 10 per cent of votes for minor parties. But, as the vote for minor parties has increased, it has become more of a peculiar system, because candidates on a very low vote can get elected. I do not see that the operation of compulsory preferential voting in those systems, where a candidate gets up with a very low primary vote, is actually any more just than a candidate being rewarded for having a high primary vote and getting elected under optional preferential voting.

Mr SOMLYAY—Have you got any evidence in Queensland or New South Wales that optional preferential voting at the state level confuses voters at the federal level? Quite a lot of votes in my electorate were exhausted where people just voted 1 and did not pursue the preferences.

Mr Green—I have not had a look at this election's figures. I have a vague memory that the informal vote was slightly higher in New South Wales and Queensland but not hugely. We can get those figures exactly, but—

CHAIR—We have got those figures in the AEC submission. My recollection is that the informal vote in October was not grossly different.

Mr Green—People are not confused. They are quite good at following instructions. The 1991 New South Wales election was a classic example where voters were given confusing ballot papers, where you were instructed to use a cross on one ballot paper for the referendum and then when you went to the Legislative Assembly ballot paper, which looked the same, if you used a cross you were informal. The New South Wales referendum ballot paper has two boxes marked 'yes' and 'no' and you cross one of them. At that election there were four lower house electorates with only two candidates and therefore two boxes. The informal vote in those electorates reached as high as 25 per cent for that reason. There were booths in the electorate of Blacktown at that election where the informal vote passed 30 per cent, with people using ticks and crosses because they had used one ballot paper where it was formal and another where it was not.

In terms of swapping federal and state elections, I think they are far enough apart for people not to be confused by several bits of paper. The instructions are also clear and not confusing between the different ballot papers. But certainly the New South Wales 1991 election is always a warning to all people who pass legislation to make sure that the rules are not confusing or contradictory.

Mr FORREST—I am listening to the argument. I was wondering if you could tell us what countries in the world have a non-compulsory voting system in conjunction with an optional preferential system.

Mr Green—I do not have it off the top of my head, but I think preferential voting is very rare in the world. As far as I know, we are the only ones that use it in single member electorates, although I could stand corrected. I think we are rare in using it. Ireland uses a variant of the Hare-Clark quota preferential system, but it is with optional preferential voting. You only have to mark one candidate and then beyond that it is optional. I think Malta uses the same—though, again, the Electoral Commission would have better information on that. I do not think anyone who proposes using preferential voting—or ‘the alternate vote’ as they tend to call it overseas—proposes using compulsory preferential voting. It is a peculiarity here. What was the second part of that question?

Mr FORREST—I am really after which countries do that both together. What you are saying is that in your view you cannot do one without the other—make it non-compulsory without making it optional.

Mr Green—Very few countries use compulsory voting and I would be pretty sure from the list that none of them uses preferential voting at all. They are all either first past the post or PR systems. I should point out that, in relation to the Senate, the system we use of quota preferential voting is only one form of preferential voting. The difficulty of filling any system of proportional representation is filling the final vacancies. In the case of six Senate vacancies, you can always fill four or five of the vacancies pretty quickly with full quotas. The difficulty is always how you fill the last quota. In many countries in Europe they elect 20 to 30 members in an electorate and therefore it is easy to use straight proportionality based on the proportion of primary votes. For the New South Wales upper house, I would recommend doing away with preferences altogether and make candidates campaign for primary votes and do the proportionality that way.

But if you are only electing a small number like six, I think you have to use preferences as a way of determining the last seat, which means it is not fully a proportional system. If it was a proper proportional system, then One Nation would have won five Senate places at the last election, not the Democrats. We use a system which is using a preferential form of voting. The proportional representation societies always greatly advocate Hare-Clark and the Senate system for its proportionality. We always have to remind them that it is not fully proportional and that most of the literature that supports quota preferential voting is really supporting minimising the number of wasted votes that do not actually elect a candidate. That is its advantage: it minimises the number of votes that do not elect a candidate.

CHAIR—In your submission, you say that you should not have non-compulsory voting without optional preferential, but do you say that you should not have optional preferential without non-compulsory?

Mr Green—I think you can have voluntary voting and optional preferential voting. That is fine.

CHAIR—No; I am asking you: if you are advocating to go to an optional preferential system, in that case do you also then advocate voluntary voting? Because I believe you cannot have it both ways.

Mr Green—You can have it the other way. You can have it that way in New South Wales. You can have optional preferential voting and compulsory voting. The arguments are the same.

CHAIR—You can have it, but I do not believe it is—

Mr Green—The argument is the same.

CHAIR—For the reasons that you argue that you cannot go to voluntary voting without looking at optional preferential, I believe the same argument applies.

Mr Green—You could put that argument. The arguments for both are the same—that voters should not be forced to put a preference they do not have. Turning up and voting is forcing people to express a preference they do not have. Compulsory preferential voting is forcing people to express a preference they do not have. However, the argument for compulsory voting is usually an argument about civics and public involvement—minimum involvement in civic society. That is an argument for compulsory voting. I do not see that that argument would apply to compulsory preferential voting, though. I do not think there is any civics argument to force people who vote for a minor party also to express a preference for one of the major parties.

Senator BARTLETT—In relation to the Senate voting system, do you suggest or support an optional preferential system for the Senate? As I understand it, New South Wales has optional or limited preference. In ACT—and the Tasmanian lower house as well, I think—you only need to fill as many squares as there are candidates.

Mr Green—That is right. The ACT is completely optional. You only need to put one number on the ballot paper for formality. Tasmania makes you fill in as many numbers as there are vacancies. New South Wales lets you fill in two-thirds—currently 15 or 21—and the simple reason for that is that the major parties do not stand full tickets and they could not possibly win more than 15 of 21, so that was the deal that was done years ago.

Senator BARTLETT—But it also means that when you register your ticket vote, these micro parties only need to register 15 out of 21 numbers on their ticket vote as well. They do not have to fill in the whole lot.

Mr Green—That is right. Effectively, that means that the last candidates can get elected with less than a quota. I think that occurred with Fred Nile at the New South Wales election. I would have to check on that. But, effectively, because of ticket voting most minor parties pulled enough preferences that are effective all the way. Because of the operation of ticket voting, the difficulties that optional preferential voting can produce in terms of the last candidate getting elected with less than a quota do not really come into play much. You could introduce it for the Senate. That would be one way of making it easy for people to vote below the line but, given the way ticket voting works, I think it is not essential. But if you introduce it for the lower house I do not see why you would not introduce it for the upper house.

Senator BARTLETT—I cannot remember who I heard this suggestion from; I saw it somewhere or other. What do you think about people being able to just register their preferences above the line, as an alternative to or in addition to having registered party tickets,?

Mr Green—I think that is a valid option. That allows people to vote in a slightly easier manner than having to number all the candidates below the line. They can just number across the top. I think that a system like that which allows you just to vote for parties or candidates—open list systems—has been used in other countries. It is not used often, because most other systems tend not to use preferential voting. I think that is one alternative, but you would have to give serious consideration as to whether it would be confusing for people. I think the Electoral Commission—who do research on how people vote—would tell you that there are people who already do that above the line. They just do not count them that way. I think that, for the sort of people who want to vote below the line but do not want to vote all the way, that is a valid option. I would consider that, if the committee was looking at those issues. I certainly know of it being looked at for New South Wales.

Senator BARTLETT—But you would still support retaining the ticket vote, despite the extra power it gives to political parties to determine outcomes?

Mr Green—There are a lot of purists who object to it. If you talk to the people in the proportional representation societies, the advocates of Hare-Clark with full Robson rotation, you find that they are also anti-party people. I think the difficulty with a Senate election is that they are nearly always held in conjunction with a House of Representatives election. People do not know who the candidates are, but they do know who the parties are, and most people are voting for parties. To be honest, you cannot get proportional representation if you are talking about Independents. An Independent can only elect one person. If they get two quotas, where does their quota go? It has to go to someone else. At the Constitutional Convention election in New South Wales, Ted Mack got enough votes to elect three candidates, but he only had two on his ticket. So he elected, I think, Andrew Gunter, who stood on another ticket and got very few votes. That is what happens when you are talking about Independents and proportional representation; they cannot elect more than one of their own. You can only have one Ted Mack.

CHAIR—Indeed; that is enough.

Mr Green—If you get rid of ticket voting, you are going to make it harder for people to vote. They are going to have to vote all over the place. They are going to have to vote for candidates, and they are basically going to go straight down the ticket anyway. The only parties it would disadvantage are the minor parties. They would vote for their minor party, but their preferences would flow all over the place. So you could get rid of it, but what would come out of that would be an increase in informal voting again, and I do not see that that is an advantage in the system.

Senator BARTLETT—One of the questions is where do you set the threshold. You are always going to have arguments about that; a fairly political question, obviously.

Mr Green—I tend to settle on half a quota, because you can at least say, ‘Half of the people who ended up being part of my final quota actually voted for me.’ That is why I would tend to settle on half a quota. What is the point of going 0.8 or 0.9 or a full quota, because in nearly every case where you exclude a minor party in that situation you just elect another opposition member. So if your concern is about the balance of power in the Senate, you are in fact not resolving the issue at all. The balance of power in the Senate has to be resolved by resolution of the powers in the Senate or by changing to electing an odd number of members again at each half-Senate election.

Senator MASON—I was going to raise that, actually.

Mr Green—There are several ways of doing it, which I will raise afterwards. I think we will deal with that separately. You can go for a lower quota—one-quarter of a quota; one-third of a quota. What you are doing there is cutting out the very small parties. You are also dealing with the fact that in a double dissolution election whoever draws the No. 1 position on the ballot paper can probably manage to get one-third of a quota just on the donkey vote.

Senator FAULKNER—So what you are proposing is a totally arbitrary manipulation of what already is an unrepresentative federal upper House chamber.

Mr Green—Yes, but I am actually trying to address the issue of how the current system operates to allow rorts to go on between parties for the simple swapping of preferences when they are unable to resolve to run one ticket.

Senator FAULKNER—Can you identify for us any of the rorts in a Senate election?

Mr Green—It has yet to occur at a Senate election; that is what I am saying. If a double dissolution were to occur, it would become a series issue, for the same reasons for which it has occurred in both New South Wales and South Australia. The Electoral Commission has put up proposals to make it more difficult to register parties, to put a higher threshold on the registration of parties. Issues to do with higher deposits will address the issue as well. It will address it in a different way. It will just make it more difficult for someone trying to fiddle the system. Minimum quotas actually address the issue by forcing parties to try to get more votes. I do not see that there is anything wrong with altering an electoral system to encourage parties to campaign for votes.

Senator BARTLETT—Can I just explore one more question about the operation of the threshold. It is a marvellous mechanism to bring the Democrats and the Greens together in one fell swoop.

Mr Green—In two states at least.

Senator BARTLETT—This is something that we have been unable to achieve over many years. Your suggestion of distributing your surpluses first and then knocking out every party or candidate that is below half a quota, for example, may lead to another one of your theoretical ‘weird outcomes’—I think that was the term you used. For example, in the New South Wales upper house—I realise it is a lower quota—I think about 16 per cent went to the micro parties scattered all over place. If they were all wiped out, you would have three or four quotas worth of votes there and, in effect, you could have a situation where, say, the Democrats had less than the quota and could end up getting two seats.

Mr Green—That is right. What I am proposing in excluding all of those minor parties is that their preferences still count but they get distributed to the parties that have enough votes to get above the quota. You would elect all of the candidates on the initial quotas, as you do currently. The reason I say do that first is that people have voted for that party and I see no reason to devalue their preferences if they had gone on to another party. If the Democrats got 0.48 of a quota and, say, the Labor Party got a quota and some of their votes leaked over to the Democrats along the way and put them over the half quota, I do not see any reason why I should have excluded the Democrats in the first place if someone who was elected had their preferences distributed. I do not want to devalue the preferences of anyone who was elected in the initial phase.

At the point where you have elected people you do this culling based on quotas. It is quite true that you would exclude all of those candidates at once. It is possible, for instance—as in the New South Wales example—that that may have resulted in the Democrats going beyond the first quota and on to the second. The current operation of the system is such that—this applies particularly in New South Wales—the major parties are disadvantaged, because they can never get beyond one extra quota. For example, if they have 8.3 quotas they can build up to a ninth, but they cannot get beyond a ninth, because the minute they fill the ninth quota their votes have all gone. That is their fill. If you exclude these minor parties you can in fact advantage the parties in the count, because it gives them the opportunity to go one beyond. That is unlikely in the Senate, because they are only electing six. But, again, it would come more into play in a double dissolution. I know that this committee is examining the conduct of the 1998 election, but I think it is also within its powers to consider the effect of the operations of the system on possible future elections, and I fear that double dissolutions are where this sort of issue would become more important.

Senator BARTLETT—Wouldn't that leave you with the same concern that you had with the No Pokies guy as to who the hell he actually represents? If you are No. 2 on the Democrat or Green ticket your entire quota is made up of a myriad unknowns, and who the hell do they represent?

Mr Green—Yes, but you at least have a fair vote of your own. That is what I am saying.

Senator BARTLETT—The party did, I suppose.

Mr Green—I think that you are giving more legitimacy to the minor party members who do get elected. The problem with the current system is, if you have a double dissolution, there is a large number of senators—five or six—who are elected with a very low quota. The legitimacy of the Senate as a house a review will be questioned, as it is seen as becoming a chamber where you horse trade to get legislation through. That was much of the complaint—

Senator FAULKNER—What about the Senate in the last parliament?

Mr Green—Exactly.

Senator FAULKNER—You are looking at it through rose coloured glasses. You talk about the New South Wales Legislative Council, but what about the Senate in the last parliament, where you had the balance of power—to use your terminology—comprised of seven Democrats, one Greens (WA), one Australian Green and one Senator Harradine, not to mention the abominable Mal Colston.

Mr Green—I agree with you entirely that actually some of the questioning of the Senate's role was brought about because in the end much of the dealing with done with Senator Harradine and Senator Colston. I would agree that that caused a few problems in terms of people's perceptions of what the Senate was for. You would hear people saying, 'Why is Senator Harradine managing to get all of this money for his state? The Senate must be a terrible place.' I would argue that Senator Harradine is doing no more than what the Constitution allows him, as a senator from the smallest state, to do. He does get a very low vote—that is true—compared to any senator elected from New South Wales. But if your objection is about that, then your objection is with the make-up of the Senate described in the Constitution.

Senator FAULKNER—But your argument goes to your concern about favouring a situation where there is one party that provides balance between the two major parties in the Senate. We do not even have that in this parliament, although there is a lot of spin out there that that is the case. The opposition and the Democrats, between them, cannot provide sufficient votes to proactively pass anything in the Australian Senate now. It still requires the opposition, the Australian Democrats and one other. No-one hears that, because it does not suit people to say these sorts of things. But it is, nevertheless, the truth. Let us not operate under any misunderstanding about how the show works.

Mr Green—I agree with you entirely, but I would compare it to the New South Wales Legislative Council, which has nine individuals, two members of Call to Australia and two members of the Greens. Those crossbenchers, who all represent their own particular interests—they were elected on a very small vote and that tends to be what they concentrate on—are constantly duced by the government to build a majority to get their legislation passed. They do not perform the review role that the minor parties in conjunction with the opposition have tended to perform in the Senate. It is because they are too fractious, too

divided and too broken up among multiple parties, and that is created by the operation of the electoral system. I would hate to see the Senate in that same position, which could occur after a double dissolution.

Senator FAULKNER—Yes, but there is a very different democratic tradition in the Senate, albeit only 50 years of proportional representation. You have had effectively a chamber elected at large for the last 99 years, and that is a very different situation from the history in relation to the New South Wales Legislative Council, for example. I think the problem with what you are putting to us is that you are perfectly happy to have an arbitrary manipulation in terms of a threshold imposed upon what is already a very unrepresentative chamber. I sign up to the principle of one vote, one value and I know what it takes to elect a senator in my state, the state I represent, New South Wales, in terms of votes and I know what it takes to elect one in the state of Tasmania, and it is very different—literally one-tenth of the number of votes. That is the situation we face under our Constitution which I expect will never change, but it is unrepresentative in that sense.

On top of that you are proposing to pollute the electoral system that we have with an arbitrary manipulation, namely, a threshold which may or may not be at the level of half a quota. Frankly, it is a big call, and it is no wonder that the parliament has not determined to go down that track. There are a range of other considerations. You accepted my view that it was an arbitrary manipulation. It may be better, and I think it is better, than that approach to look at the AEC's preferred option in this case, and something that I gather is being looked at in New South Wales, which is the issue you canvassed in relation to nomination procedures, registration of parties and a range of other administrative measures which can be brought to bear and have an impact on the sorts of issues that you raise, which are serious concerns and do genuinely have an impact on the integrity of our electoral system. I do not in any sense sweep these under the carpet. They are important issues and I think there is a lot of concern community wide about, for example, the tablecloth ballot paper and the impact of the process and the outcomes of the process in New South Wales, but there are other ways of approaching it.

I do not know what the New South Wales government or parliament approach is going to be, but I must say that on balance at the moment I am not persuaded to move away from the AEC's preferred approach compared to something that I think is very manipulative, very arbitrary and really out of character with the way that Australian electoral politics has worked over a very long period of time. That was not really a question.

CHAIR—Do tell. I am conscious that Senator Mason has not had a turn.

Senator MASON—You spoke before about balance of power and reducing it, let us say, back to five senators for a half-Senate election. If that was the case in the 1996 and 1998 elections, if there had been five elected at each half-Senate election, would the government now have a majority in the Senate?

Mr Green—I at some stage did this calculation, and from my estimates it would not have produced a government majority. It would still probably have been one seat short. But I do think that is the resolution of the issue of it being almost impossible for a government to get a majority in the Senate, and that would be a move towards electing an odd number

again. In fact, moving to an odd number would probably advantage the Democrats as well. For technical reasons it is easier for them to get the balance of power seat than to get the sixth of six.

Senator MASON—What if we take a few people out of the House of Representatives and get rid of a few senators?

Mr Green—You can alter the numbers, which means changing the size of the House, or the other way is to change the nexus provision between the two houses or to alter the clause which states that half go up for election. You alter it so that you had something about it being an odd number and then deal in legislation with the rotation of senators. There are those three different ways, but I think the only realistic way you are going to do it is with some form of constitutional change.

Mr SOMLYAY—You know there is constant debate within the coalition in Queensland on whether or not there should be a joint Senate ticket. Queensland does not have one and the National Party lost a senator. New South Wales does have one and the National Party lost a senator. Have you done ever any work on that?

Mr Green—The National Party lost a senator because of the rise of One Nation.

Mr SOMLYAY—In both cases?

Mr Green—Yes. In the case of Queensland I am not quite sure, but if you sat down and looked at minimum quotas it might have some effect on it. It just causes the preferences to flow slightly differently. As I said, the situation has not occurred, apart from Senator Woods in 1987, where someone got up with a very low vote, but that was very much to do with the direction of Labor Party preferences. He got enough preferences from the tiny minor parties to stay in the count but it was the Labor Party that put him over the line in the end.

CHAIR—Parliament is starting very shortly. The additional submission is very good to receive too. Thank you very much for that. I will be interested to have a closer look at that.

Mr Green—There are many people in New South Wales who have taken a great interest in my work on optional preferential voting and whom it advantages.

CHAIR—Thank you very much for appearing before the committee today.

Resolved (on motion by **Senator Mason**):

That this committee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 1.51 p.m.

