

Submission to the Joint Standing Committee on Electoral Matters on the 2007 Election

This submission deals with the following matters: optional voting, optional preferential voting, “above the line” voting; primaries and branch stacking; proportional representation in the House of Representatives; fixed terms and the Prime Minister’s power to call an election short of term; “deliberative polling”.

The point of the suggestions made below is not to design a perfectly representative voting system—there is no such thing, given the multiplicity of functions elections perform—but to encourage a deeper public discussion of the issues facing Australia, and at the same time reduce the bitterness and scandal of partisan and factional conflict.

(1) The ballot paper should give the option of not voting.

At the top of each ballot paper there should be a box beside the statement “I do not wish to vote for any candidate”. (In election statistics these ballots should be distinguished from informal votes.)

This change would give more respect to the voters’ right not to make choices they do not wish to make and may not believe they are able to make. Going to the polling place should still be obligatory (i.e. voting should remain “compulsory”), but voters who do not really have any preference among the candidates should not be pushed into voting.

(2) The ballot paper should invite a comment.

On the ballot paper should be a box (large enough for a comment) with the caption: “You may write into this box any comment you wish to make. Comments may be read by candidates or their scrutineers and researchers.”

Voters’ opinions should be invited, as well as their votes, and citizens who choose not to vote should be given an opportunity to make their comment. Voters also may wish to “send a message” not simply by voting but explicitly; in fact, if they can send a message in this way they may vote more with an eye on who should govern.

(3) “Optional preferential voting”¹ should be adopted for both House of Representatives and Senate elections.

In federal elections at present we have “compulsory preferential voting” (i.e. the ballot is informal unless all the boxes are numbered – see below on “above the line” voting). Many voters resent the compulsion to order all the candidates, believing very reasonably that only their first few preferences have any real meaning.

¹ That is, the rule that a ballot is formal even if only the top preference or preferences is/are indicated. Elections for the legislative assemblies of NSW, Queensland and the ACT have optional preferential voting. The ACT electoral system combines optional preferential voting with proportional representation.

In some cases voters would rather vote informal than give their second or third preference, or any preference at all, to certain parties. Voters should not be put in such a situation. It should be possible to cast a vote that will be counted for one's preferred candidate without being compelled to give an alternative vote to someone else.

(4) “Above the line” voting in the Senate should be retained, but preferences should be allocated by the voters themselves, not by the parties.

If expression of a full range of preferences remains compulsory (which I hope it will *not*), above the line voters would be asked to number every above-the-line square in order of preference.² If expression of second and later preferences becomes optional, as I advocate, voters could choose to vote “1” for the one party, and then the vote should count as a vote only for that party's candidates, without any further flow on of preferences.

At present “above the line” voting allows the political parties to fill in all the preferences for voters who vote “above the line”. This leads to “preference deals” that distort the expression of voter opinion.³ Although it is in theory possible for voters to find out what the party's preference order is, and it is usually reported in the media, in fact most voters do not know how their party will transfer their vote.

Voters for major parties often do not realize that their party's “surplus” votes may go to a minor party (e.g. Liberal votes to Family First).

Preference deals have led (for example in the 1999 election of the NSW Legislative Council) to the election of candidates with very little genuine public support.

The point of proposal 4 is to take away from the political parties the power to fill in preferences for voters, and therefore the power to make preference deals. If a party wants its supporters to give a preference to another party, or if it wants to receive the second preferences of supporters of another party, it should have to persuade them by a public campaign. There might still be “deals” between parties agreeing to advocate such exchanges, but whether there was a preference flow would be up to individual electors.

(5) In Senate elections, for candidates to be “grouped” and qualify for an “above the line” box, the party should be required to nominate at least as many candidates as there are positions to be elected.

This requirement would give an incentive for the larger parties to field enough candidates for the preferential vote to be also a “primary” – see below.

(6) The “Robson rotation”⁴ should be adopted for the printing of ballot papers in both Senate and House of Representatives elections and for the distribution of “above the line” votes among each party's candidates.

If a party wants voters to support the party organisation's preferred top Senate candidates, it should *persuade* them to do so, e.g. by an advertising campaign or by

² See Anthony Green's comments, <http://www.abc.net.au/worldtoday/content/2004/s1227221.htm>, and <http://www.smh.com.au/articles/2004/10/28/1098667909085.html>.

³ See “Above the line voting—how democratic?” at <http://democratic.audit.anu.edu.au/categories/auditpapersfrm.htm> and <http://www.prsa.org.au/viclc/submission/sub/node16.html>

⁴ For explanation see <http://www.prsa.org.au/viclc/submission/sub/node15.html>.

“how to vote” cards. It should not rely on the silent channeling of votes by an ordering of names on the ballot paper. Many voters support a party but do not have any particular preferences between its candidates. (Support for a party as such is perfectly reasonable: one of the most significant thing most voters can know from voting distance about a politician is who he/she associates with politically.) Voters who have no preferences among the candidates of a party and simply vote down the party list of Senate candidates should not be counted as if they had expressed a preference among those candidates. The “Robson rotation” distributes such votes equally among the candidates.

This would mean that voters who deliberately expressed an order of preference by voting “below the line” would decide which of the party’s candidates were elected. This would be a transfer of power from the party’s faction leaders, who at present determine the order of names on the ballot paper, to the electors who vote for the party, as in a primary.

(7) “Above the line” voting should be introduced into House of Representatives elections for seats in which any party nominates more than one candidate. And in House of Representatives elections a party identifying label should not be printed on the ballot unless the party does nominate at least two candidates for the seat.

This proposal would not compel parties to nominate more than one candidate for a seat, but would open to the parties the option of nominating more than one candidate for a House of Representative seat without splitting the vote and losing the seat. A party might adopt as one of its rules that any candidate who got 30% or more in the preselection ballot would be one of the nominees for the seat (this rule might apply only to safe seats). The party might also decide to recommend one candidate over the other(s), but it would be up to the electors to decide whether to follow that recommendation.

Suppose a party nominated two candidates in a certain House of Representatives seat. Party supporters who had no reason for preferring one candidate to the other would vote “above the line”, and (by virtue of Robson rotation) half of their first preferences would go to one candidate and half to the other, with their second preference then going to the other candidate—so far the two candidates would be running equal. However, those electors who did prefer one candidate to the other would vote “below the line” and express that preference. Thus the party’s candidate preferred by the greater number of the party’s voters would come out in the end ahead of the other.⁵

A safe seat would still be a safe seat for the party (since voters who vote for either of its candidates would normally give the next preference to the other), but not necessarily for the sitting member—members of Parliament would know that, no matter how safe their seat may be for their party, they would have to keep in close touch with their electors, at the risk of being replaced by the party’s other nominee. (In view of reduced job-security, there should perhaps be a review of Parliamentarians’ “termination” entitlements.)

⁵ What if one of the major parties nominated two candidates and the other only one? In that case one of the first party’s candidates might well be eliminated before the other party’s candidate, but the party’s other candidate would get all the eliminated candidate’s second preferences and would be as well placed as if the party had nominated only one candidate.

An objection that has been made to this proposal is that it would lead to an outbreak of “Wentworths”, i.e. to bitter contests similar to the one that occurred in 2004 in the Wentworth constituency between Peter King and Malcolm Turnbull. The truth is the opposite—the provision for nominating two candidates would keep conflict between rival aspirants to a moderate level and within the party.

This proposal would mean that an election would include an equivalent of the “primaries” of the US system. A primary “built-in” to the election itself is much better than a primary held before the election, for several reasons.

- All of the party’s voters participate, without having to register or do anything but vote.
- In a separate primary voters often vote not according to their own preference but according to their idea of which candidate swinging voters are more likely to vote for in the real election (the “electability” criterion).
- Separate primaries are held before the election campaign proper gets under way, when the issues are not yet clear.
- After a separate primary the defeated candidates and their supporters may sit on their hands, whereas if the primary is built into the election itself the party’s nominees will put their full weight behind the party’s campaign---given the flow of preferences to the party’s other candidate(s), the effort each candidate makes to get elected will in the end benefit whichever candidate turns out to have most support.
- A separate primary increases the total cost of the election, thereby increasing the influence of wealthy donors.
- Separate primaries are open to manipulation.⁶

The main argument for an built-in primary is that it gives the voters who support a party (not just the miniscule fraction of them who are members of the party) a say in the selection of the candidate. This should lead to an improvement in the quality and representativeness of candidates and members of Parliament. A candidate who had become known to the electorate as a public spirited person with good ideas would be able to replace a non-performing sitting member without a great pre-selection battle. It would also open the way to the nomination of women and minority candidates for winnable seats.

Built-in primaries would repress behaviour that the party’s voters regard as ugly and dysfunctional, such as narrow factionalism, branch stacking, backroom dealing and the other incidents of preselection contests. Both major parties have scandals of this sort from time to time. If a candidate became notorious for ruthless behaviour, many of the party’s voters would vote “below the line” for the other candidate.

It would be up to each political party to choose its candidates by the party’s own internal processes. If the party decided to run several candidates in a seat, there would be contests within the party for endorsement (i.e. for the several positions on the ballot paper), not only when a sitting member in a safe seat is retiring (as is generally the case now) but before each election. Presumably such contests would not be

⁶ Cf. Rush Limbaugh’s “operation chaos”; see <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/07/AR2008050703932.html?hpid=topnews>

serious if the incumbent is considered to be doing a good job, and in normal circumstances the second candidate would not be trying to replace the incumbent; but at any time a serious contender might emerge.

The effect of proposal 6 would be similar, to make the Senate election also a primary for choosing among the candidates nominated by a party.

One effect of proposals 6 and 7 would be to weaken the influence of factions (which is based on patronage) and give more say to ordinary voters. A faction could no longer guarantee a Parliamentary job to faction members by nominating them to “safe” House of Representatives seats or by putting them at the top of the Senate list. Factional players could win and keep a place in Parliament only if they also established a positive public profile.

(8) Consideration should be given to the introduction of proportional representation into the House of Representatives.

I do not ask the Committee to recommend PR for the lower house, but to recommend to the Parliament that it should commission research to determine how much public support there would be for such a move.

The case in favour of Proportional Representation is well known and very strong (for a statement see <http://www.prsa.org.au/earc/>). The usual objections against it are (1) that it would lead to some very large electorates, putting too much distance between representative and voters, (2) that it would lead to weak government, and (3) that it would lead to shifting coalitions.

The remedy to the first problem is to prescribe maximum and minimum geographic areas for an electorate, and adjust the number of members to be elected by an electorate according to its population—there is no reason why all the electorates must return the same number of members. Existing urban electorates might be consolidated into fewer electorates each returning, say, five members, whereas at the other extreme the least densely populated electorates might keep their present boundaries and return just one member, as at present.⁷ The presence of some single member electorates would somewhat reduce the representativeness of the election outcome, but a moderate number of single-member constituencies would be an acceptable price to pay provide for the low population density of some areas of the country. The consolidation of urban electorates would not make members of Parliament appreciably “more remote” from their electors: as it is, each member of the House of Representatives represents tens of thousands of people.

The second objection to Proportional Representation in the lower house (which determines government) is that it might lead to weak government. The answer to this objection is that as long as the Prime Minister has the power to call an election if vital government legislation is defeated or there is a vote of no confidence (see point (9) below) or a deadlock between the Houses, there will be no weakness in government. “Balance of power” parties will be cautious if they may have to face a short-of-term election. A minority government should press boldly ahead with the program it

⁷ The vote would be counted in the election of a single member by the same rules as apply if there are several members to elect. The quota would be one vote more than the total number of votes divided by the number to be elected (i.e. one) plus one: that is, one vote more than 50%. (The present preferential voting system for the House of Representatives is mathematically equivalent to the proportional representation system used for the Senate.)

believes the public supports, with the threat of an appeal to the electorate if its program is blocked. If it does call an election and its program indeed has public support and the minor parties have been obstructive (in the opinion of the electors), then it may be returned as a majority government.

The third objection is a version of the second -- coalition government is supposed to be weak government. Australian experience shows that this is not true. As it is, the major parties are unacknowledged coalitions. Proportional representation might lead to the coalitions becoming explicit, making the relations between the cooperating groups more transparent and more open to the influence of electors. There would be no loss to the effectiveness of the parliamentary system if there were one day explicit coalitions on both sides of politics.

(9) If fixed Parliamentary terms are adopted, there should nevertheless be provision for an election short of term under two circumstances: (a) If some piece of legislation that the government designates (beforehand) as an issue of confidence is defeated, either in the House of Representatives or in the Senate; and (b) if the House of Representatives carries a motion of no confidence in the Prime Minister.⁸

In the first case, there should be a time limit, so that an election can be called only within a definite short period of time after the defeat of the legislation (to prevent a government from nullifying the fixed term by arranging a “dissolution trigger” to hold in reserve).

Failure to provide for some short-of-term elections under these circumstances would weaken important virtues of the Australian political system (e.g. in comparison with the US political system)—namely that a government can be removed by a parliamentary vote, while on the other hand legislative gridlock can be resolved by an appeal to the electorate. The possibility of appeal to the electorate helps make our system democratic.

(10) In both of these cases, it should be up to the Prime Minister personally to decide to call an election (i.e. to recommend the calling of an election to the Governor-General).

Even a Prime Minister who has just lost the confidence of the Parliament or of his/her party room should **personally** have the power to call an early election. This is the existing convention, and it should continue. The argument for this convention is that it makes sure that a party does not win an election under one leader and then replace that leader by someone the public would not have supported. It means that the electorate is arbiter not only of conflict between government and opposition, but also of conflict within the governing party.

⁸ The legislative assemblies of NSW, Victoria, South Australia, Tasmania and the ACT all have either fixed terms or some restriction on the government’s power to call an early election. However, all of them (except the ACT) have provided for the possibility of an early election if the government loses the confidence of the assembly and in certain other defined circumstances. For a survey see <http://www.aph.gov.au/library/pubs/cib/1998-99/99cib08.htm>. In the ACT an early election can be called by the Governor-General on the advice of the Federal government. One day this may lead to the politically-motivated dissolution of an ACT legislature by a federal government of the opposite political persuasion.

(11) Consideration should be given to the regular commissioning of “deliberative polling”⁹ on issues suggested by the government, the opposition, and public organisations.

Deliberative polling polls a representative sample of citizens before and after discussion, in which the members of the sample hear and discuss the views of advocates of various positions. The discussion may involve several sessions (and perhaps an email discussion group), with a face-to-face meeting at the end. The proceedings may be broadcast on radio or television, but in any case the “before” and “after” poll results are published. There is often a measurable shift of opinion as a result of the discussion.

The benefits of this process are: (a) the advocates of the various positions get an attentive audience for their views and find out how citizens react; (b) some members of the public are motivated to look carefully into the issues, exchange views with one another, and gain a sense that someone cares what they think; (c) people who watch or listen (if the process is broadcast) or read of the results are alerted to issues on which things are not as they seem, i.e. issues on which people like themselves change their minds when they look carefully into the matter.

A deliberative poll is in some ways like focus group research, except that the information gained is not restricted to the people who commission the research, and it gives information on how people think when they look into a matter carefully, not just on their “off the cuff” opinion.

The Parliament should commission deliberative polling and should make money available to defray the cost of conducting frequent between-election deliberative polls.¹⁰ Parliament, the government, the political parties and individual parliamentarians should refer matters to deliberative polling, and members of parliament should take part as advocates. It would be good if polls took place often enough that a significant proportion of the electorate could at some time take part.

Australia would benefit from more communication between professional politicians and public-spirited non-politicians who try to inform themselves on public affairs and try to form a realistic assessment of the performance of governments. As it is, election campaigns are too much focused on undecided voters in marginal seats, many of whom are undecided largely because they are uninterested, and uninterested largely because they do not believe that politicians will take their views seriously. Such voters are often very distrustful of politicians and are unwilling to spend much effort in trying to get to the bottom of the parties’ rival claims and proposals, which are therefore often deceptive (or are alleged to be deceptive by opponents).

(12) There should be a “parliamentary jury”, consisting of citizens selected at random, to attend Parliamentary debates and to vote from time to time on

⁹ On deliberative polling see <http://cdd.stanford.edu/>

¹⁰ How much would it cost? I understand that the cost of such polls has varied from \$200,000 for a local poll to \$600,000 for a national poll. Some of the money could come from MPs’ “communications allowance” (and the organizing of the poll could involve the MPs and their staff – communications in this context would be likely to be more productive of good will than conventional campaign materials). Money could be found from existing public election funding. Deliberative polling would be a worthwhile investment in public education.

questions chosen by them or put to them by the Parliamentary leaders of parties.¹¹

Citizens would have to be paid adequately and accommodated properly in Canberra for the duration of their service, which should be reasonably short. It should be possible to people selected to decline.

The jury's vote would have no binding effect, but it would influence public opinion. Members of Parliament would have an attentive audience worth convincing, so the standard of Parliamentary debate should improve.

Proposals (11) and (12) are along similar lines to the recent "TwentyTwenty" meeting, except that they would not be one-off occasions, and the participants would be more representative of the general public.

Conclusion

If voters who remained undecided were clearly invited not to cast a vote (proposal 1), parties would have reason to direct their message not only to uninterested voters but also to voters who seriously follow policy debates, since those less interested in politics might well choose not to cast a vote. Proposals 3 and 4 on optional preferential voting would end preference deals; this would mean that parties would have to try to appeal to supporters of other parties who might be persuaded (but would no longer be compelled) to give their second preferences. Proposals 5, 6 and 7, establishing the equivalent of "primaries", would give sitting members a reason to campaign even in safe seats, and to address not only swinging voters but also their own party's regular supporters (since if dissatisfied they might vote for another candidate from the same party)—at present the parties' surest supporters feel that their opinions don't count for much. Proposals 1-7 would correct the present narrow focus in election campaigns on undecided voters in marginal seats. Proportional representation in the House of Representatives as well as the Senate (proposal 8) would do away with the distinction between marginal and safe seats, and would ensure that every vote would count fully and equally. Proposals 9 and 10 are meant to make sure that a move to fixed terms would not reduce the influence of the electorate as arbiters of conflict among politicians. All these measures would broaden political campaigning, so that messages would be addressed to the whole electorate, with attention to the views of people who take public affairs seriously as well as to those of swinging voters in marginal electorates. Such a broadening, together with proposals 11 and 12, would raise the quality of political discussion in Australia.

From now into the future Australia faces some serious issues, some of which may require large changes of attitude and way of life – for example, **terrorism**, which raises difficult questions about the balance between security and traditional guarantees of personal liberty, and **global warming and other environmental problems**, which raise difficult questions about lifestyle. There are many others. Elections campaigns focused on undecided voters in marginal seats do not form a good framework for the public discussion of challenging issues. Politicians will not be able to risk proposing policies on difficult questions unless there is a strong framework that supports voters' serious engagement with one another in thinking such questions through. The

¹¹ Cf. Gordon Brown on citizens' juries, http://news.bbc.co.uk/2/hi/uk_news/politics/6979825.stm . But these are not parliamentary juries, as I am proposing.

character of the electoral system has a major influence on the quality of political decision making.

[Note: See also my survey of the submissions made to the inquiry into the 2004 election, many of which are still relevant:

<http://www.humanities.mq.edu.au/Ockham/SubmissionsSurvey.html>]

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