

## Submission to the Joint Standing Commission on Electoral Matters:

### Inquiry into and report on all aspects of the 2022 Federal Election and matters related thereto

Dr Kevin Bonham, 7 Oct 2022

#### **Introduction**

This submission includes some general comments about the House of Representatives and Senate results, detailed discussion of some matters relevant to “one vote one value” and truth in electoral advertising and a few brief comments on other matters. I have had very limited time to prepare a submission this year and may comment on other matters at a hearing if so invited.

#### **Author background**

I am a Tasmanian-based political, electoral and polling analyst with 34 years' experience as a scrutineer and analyst of preference distributions including Senate counts and other multi-member systems (especially Hare-Clark). I am also the author of a blog-form psephology, poll analysis and political comment website located at <http://kevinbonham.blogspot.com.au/> and am frequently interviewed in the local and national presses regarding elections. I was an appointed scrutineer of the vote entry process for the 2016 Tasmanian Senate count, spending around 15 hours observing vote entry in order to successfully project the outcome.

My professional background has been mainly in an area of science unrelated to politics and elections, but my tertiary qualifications include a major in Political Science. About half of my paid work now relates to electoral and polling analysis, in the form of commissions (eg from electoral authorities, candidates, media and parties to electoral court cases) or public donations. I am writing this submission in a private capacity and am not a member of, associated with or strongly supportive of, any political party.

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## **Recommendations**

### **One Vote One Value**

1. That JSCEM make a finding that increasing the number of seats in the House of Representatives would improve the one-vote one-value situation in the House of Representatives by reducing the overrepresentation of Tasmania and the Northern Territory.
2. That JSCEM make a finding that while other arguments for such an increase might be made, any increase in the number of Senators for the ACT and Northern Territory at this time is clearly contrary to the principle of one-vote one-value as it would worsen the comparative under-representation in the Senate of the majority of Australian voters.
3. (Recurring and see 2016 submission) That the Inclusive Gregory system for surplus distributions be replaced by the Weighted Inclusive Gregory system, or with some other system that does not cause the undemocratic vote-value distortions that are caused by unweighted Inclusive Gregory and that violate the principle of one vote one value.

### **Truth In Advertising**

4. That any legislation for general truth in advertising (i) be not administered by the Australian Electoral Commission in order to preserve the AEC's independence and ensure that the AEC is not distracted by a need to develop broad expertise in the judgement of the truth of political claims (ii) be relatively narrow and apply to matters that can be clearly established as false or misleading.
5. That existing legislation around false and misleading claims about the electoral process be expanded to specifically outlaw claims of the type 'a vote for Party X is a vote for Party Y' at least to the extent that such claims may mislead voters about the federal preferential voting system.

### **Other Matters**

6. (Recurring – and see 2019 submission) That non-party groups contesting Senate elections with an above-the-line box be granted some form of above-the-line name so that it is clear that they are a group who a voter can vote for. An example format might be "Group N (Surname #1/Surname #2)"
7. (Recurring – see 2016 submission for reasons) That display of Senate results in the Virtual Tally Room be improved such that there is one display of votes for each state that only includes those booths that have been fully processed into both votes for parties and votes for individual candidates.
8. That the AEC reinstate (and be resourced to reinstate if necessary) the Informal Ballot Paper Survey that was conducted for House of Reps elections up til 2016, and to also publish an Informal Ballot Paper Survey for Senate voting.
9. That the Commonwealth Electoral Act be amended to either prevent use of the word "independent" and direct derivatives in party names, or else to add the word "independent" to Section 129 (5)(d).
10. (Adapted from 2019 recommendations – see 2019 submission for reasons) That a technical report be commissioned on options for savings provisions for the House of Representatives, especially those that would enable some votes with errors to be assigned as full sequences.

## **1. The House of Representatives Result**

I believe it is appropriate to make some broad comments about the House of Representatives result, partly for general interest and partly because following the election there has been an upswing in calls on social media for first past the post voting to be introduced. First past the post is a rudimentary voting system rightly discarded from Australian federal elections over 100 years ago. It is a discriminatory system that throws away information and imposes the burden of having to decide whether or not to make a strategic vote on voters who prefer unpopular parties, but not on voters who prefer the most popular parties in a state. I regard all advocacy of first past the post voting for Australia as an unacceptable attack on the rights of minority voters to be treated equally by the electoral system, an attack that is contrary to Australian values of fairness and should be condemned by all parties.

The election saw the Australian Labor Party win majority government with 77/151 seats off 32.58% of the primary vote, by far the lowest winning primary vote in a federal election to date. But this was not a particularly low percentage considering, for instance, that Labor had won a majority at the 2017 Queensland state election off 35.4% of the primary vote. The effect of competition from “teal” independents on Labor’s primary vote has been much overstated and I estimate that it was not more than 1% (not all of this being strategic voting either). The increase in the One Nation primary vote caused by One Nation contesting almost every seat may have had a similar impact.

The election saw gains by six “teal” independents, one other independent and three Greens. In the last few decades, crossbenchers have gained seats from the major parties in federal elections only under restricted circumstances: the crossbencher had a very high local existing profile or was the incumbent, the incumbent had had an unusual amount of negative publicity, or the seat was vacant. While some of the winning “teal” candidates had existing high profiles, several of the “teal” and Green wins happened without ticking any of these boxes as part of a widespread pattern of support for non-major-party candidates in certain inner-city seats.

These gains by non-major-party candidates have led to false claims that the existing use of two-party preferred scores to model elections is “broken”. In fact, models based on two-party preferred votes and historic polling data were very successful in predicting that Labor would win a narrow majority of seats, while mainstream media commentators who focused too much on the history of winning primary vote shares embarrassed themselves.<sup>1</sup> The loss of several Liberal seats to “teal” and Greens candidates was a sideshow to the fact that the Coalition had lost the election based on two-party swing in typical “classic” seats, and had done so because its primary vote crashed while Labor’s was only down slightly.

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<sup>1</sup> Further discussion on my site at <https://kevinbonham.blogspot.com/2022/06/two-party-swing-decided-this-election.html> and <https://kevinbonham.blogspot.com/2022/07/2022-house-of-reps-figures-finalised.html>

It is in the nature of all single-seat systems that they can deliver majorities for major parties that have low primary votes, as has also happened in the UK under first-past-the-post. Labor recorded 52.13% of the two-party-preferred vote and won the two-party-preferred count in 84 out of 151 seats. Plainly and simply voters preferred Labor to the Coalition. It is useless to ask what the results would have been had voters cast the same votes at a first past the post election since voters would not have done so; many who voted 1 Greens 2 Labor (for instance) would have instead voted 1 Labor.

Anyone who does not think a major party should be able to win a majority on such a low primary vote when the other party's primary vote is also very low and when the first party has a clear advantage in preference flows needs to support proportional representation for their complaint to be credible.

## 2. Senate results

### 2.1 Falsified predictions of Senate reform opponents

I am continuing to track the predictions made during the unfortunate opposition to necessary Senate reform in 2016. This election was significant because this is the first Senate to be formed by two half-Senate elections under the new system, and it was also the first election under the new system with a change of government. Again, the following predictions proved false:

***\* That minor parties, other than the Greens, would only win seats at double dissolutions and not at half-Senate elections***

This prediction was already disproved in 2019 when non-Green minor parties won two seats. In 2022 four different non-Green minor parties won a seat, with one (albeit an eponymous party for independent David Pocock) even doing so in the two-seat contest in the ACT.

***\* That it would be too easy for the Coalition to win a blocking majority by winning three seats in every state, and hence obstruct incoming Labor governments***

After winning three seats in five out of six states in 2019 when it won the Reps election, the Coalition managed only two three-seat hauls in 2022 and also failed to win a seat in the ACT. This all left the Coalition six seats short of a blocking majority as a combination of two relatively close elections. Even if one considers "right" Senators from One Nation and the United Australia Party as potential blocking majority partners, the right still fell three seats short of the numbers to block government legislation alone.

***\* That the exhaust rate would be much higher at half-Senate elections***

Effective exhaust (defined as exhaust before the point at which all seats are decided) did increase at this election, but not massively, from 4.8% to 5.7%, having been 5.1% in 2016 at the double dissolution. Exhaust increased sharply in South Australia (up from 2.3% to 6.6%) and Western Australia (up from 2.0% to 5.7%) and also increased in ACT (0.1% to 1.8%), NT

(0 to 0.5%), Queensland (3.9% to 4.4%), Tasmania (1.9% to 3.4%) and NSW (5.6% to 6.3%). It fell, from a high base, in Victoria (7.0% to 6.9%). An increase in exhaust is to be expected when the combined vote for minor parties increases, and can also reflect the structure of particular contests. However the average at the two half-Senate elections so far has been only very slightly higher than the 2016 double dissolution.

## **2.2 Proportionality**

Half-Senate elections often struggle to deliver a proportional outcome because of the low “district magnitude” of electing only six seats per contest, which advantages the larger parties. At this election Labor was the most advantaged, winning 37.5% of the seats off 30.09% of the vote, while the Coalition won the same number off 34.21%. In 2019 it was the Coalition that was most advantaged of the major parties. However the main reason for this is the Coalition’s failure to win a seat in the ACT (Labor won two seats to the Coalition’s one in the Territories despite Labor’s only outpolling the Coalition by 0.16% of the national vote.)

To look at the proportionality of the six-seat state contests I look at the average of the parties’ share of the state votes, since this takes away the impact of malapportionment and two-seat contests. On this basis both major parties overperformed as usual, as did the Greens, while One Nation underperformed somewhat (table on next page). The overperformance of the larger parties simply reflects that not all minor parties can win seats, and as minor parties are eliminated their preferences tend to help the “big three”.

Every party that averaged 1/36th of the primary vote per state won in a state, except for Legalise Cannabis which had too even a spread of votes across the state and had poorer preference flows compared to One Nation (and in Victoria's case UAP). The left vote is more concentrated among Labor and the Greens while the right vote is more dispersed, so what the left micro-parties miss out on is also Labor and the Greens' gain. One Nation was again, however, not fully rewarded for its vote and preference share, because of its habit of not quite getting over the line outside Queensland. At this election One Nation was within 0.5% of winning instead of the UAP in Victoria, a close seventh in WA, and also seventh in NSW and SA (by modest margins) and Tasmania (distantly). In Tasmania it would have won had the Jacqui Lambie Network not contested.

Had this election been a double dissolution, I estimate the result would have been Coalition 28 Labor 26 Green 12 One Nation 5 Legalise Cannabis 2 UAP 1 JLN 1 Pocock 1. Legalise Cannabis would have won in Victoria (very narrowly) on my estimates as well as Queensland. One Nation would have been over-represented and UAP under-represented because One Nation outpolling UAP in five states to one. Labor and the Greens would have had no more seats from this double dissolution than from the combined 2019 and 2022 half-Senates, but would have had more potential helpers.

Overall it could be argued that the actual 2022-5 Senate with 38 “left” Senators, 35 “right” Senators and three who may or may not be easily allocated as either is slightly generous to

Labor, but this highlights the significance of the ACT Senate contest and indicates why expansion of the ACT's Senate rights should be handled with care.

	<b>%</b>	<b>Seats</b>	<b>Seats%</b>
<b>Coalition</b>	<b>33.65</b>	<b>14</b>	<b>38.9</b>
<b>Labor</b>	<b>30.07</b>	<b>13</b>	<b>36.1</b>
<b>The Greens</b>	<b>13.23</b>	<b>6</b>	<b>16.7</b>
<b>Pauline Hanson's One Nation</b>	<b>4.3</b>	<b>1</b>	<b>2.8</b>
<b>Legalise Cannabis Australia</b>	<b>3.28</b>	<b>0</b>	<b>0</b>
<b>UAP</b>	<b>3.06</b>	<b>1</b>	<b>2.8</b>
<b>Liberal Democrats</b>	<b>2.18</b>	<b>0</b>	<b>0</b>
<b>Animal Justice Party</b>	<b>1.5</b>	<b>0</b>	<b>0</b>
<b>Jacqui Lambie Network</b>	<b>1.44</b>	<b>1</b>	<b>2.8</b>
<b>Unendorsed/Ungrouped Amalgamated</b>	<b>1.1</b>	<b>0</b>	<b>0</b>
<b>Shooters, Fishers and Farmers Party</b>	<b>0.85</b>	<b>0</b>	<b>0</b>
<b>Sustainable Australia Party - Stop Overdev</b>	<b>0.55</b>	<b>0</b>	<b>0</b>
<b>The Great Australian Party</b>	<b>0.53</b>	<b>0</b>	<b>0</b>
<b>FUSION: Science, Pirate, Secular, Climate E</b>	<b>0.36</b>	<b>0</b>	<b>0</b>
<b>Australian Democrats</b>	<b>0.35</b>	<b>0</b>	<b>0</b>
<b>Rex Patrick Team</b>	<b>0.35</b>	<b>0</b>	<b>0</b>
<b>Indigenous - Aboriginal Party of Australia</b>	<b>0.32</b>	<b>0</b>	<b>0</b>
<b>Reason Australia</b>	<b>0.31</b>	<b>0</b>	<b>0</b>
<b>FUSION: Science, Pirate, Secular, Climate E</b>	<b>0.3</b>	<b>0</b>	<b>0</b>
<b>Informed Medical Options Party</b>	<b>0.3</b>	<b>0</b>	<b>0</b>
<b>Australian Federation Party</b>	<b>0.29</b>	<b>0</b>	<b>0</b>
<b>WESTERN AUSTRALIA PARTY</b>	<b>0.29</b>	<b>0</b>	<b>0</b>
<b>The Local Party of Australia</b>	<b>0.28</b>	<b>0</b>	<b>0</b>
<b>Others</b>	<b>1.11</b>	<b>0</b>	<b>0</b>

*Table showing (left to right) average primary vote per party per state, state seats won per party, share of state seats won per party, for the 2022 half-Senate election.*

### **3. One Vote One Value**

#### **3.1 State and Territory Senators**

One of the points of reference of the inquiry is “(g) *proportional representation of the states and territories in the Parliament, in the context of the democratic principle of 'one vote, one value'.*”

Firstly, I have long found the malapportionment of the Senate, in which Tasmanian voters have as many Senators as New South Wales voters, to be inexcusable. Yes it was the price of Federation, but that doesn't mean it's fair, or that small states are special compared to other minority interests that might want similar representation. It is fortunate that because voters in different States tend to vote similarly to each other, the relatively high degree of malapportionment has so far not had that much impact. I would strongly support replacing the current Senate system with one that allocated Senators between the States more proportionally to their population. However, this requires a referendum to be passed by a nationwide majority, by a majority of states *and* by every state that would have its representation reduced so I do not believe there is any prospect of this severe malapportionment being fixed.

Some attempts have been made to argue that increasing the Senate representation of the Territories would be a measure consistent with “one vote, one value” because it would bring the ACT's representation closer to Tasmania's. The problem with this argument is that Tasmania is already the most overrepresented State and therefore the argument is cherry-picking. The ACT with two Senators (2.63% of Senators) for 1.76% of the national population is already overrepresented in the Senate compared to the average Australian voter. The NT with 2.63% of Senators and 0.97% of the population is even more over-represented. Tasmania with 15.79% of Senators and 2.21% of the population is of course the most over-represented, but NSW with 31.42% of population, Victoria with 25.46% and Queensland with 20.43% are all under-represented in the current Senate. To increase the number of Territory Senators without an enormous increase in the number of Senators per State would move the population of all of NSW, Victoria, Queensland, the ACT and NT (80.04% of all Australians) further away from “one vote one value”.<sup>2</sup>

Any claim that Labor's platform commitment to “one vote one value” gave it a mandate to expand Territory Senate representation in any realistic way would therefore be absurd.

Might there be valid arguments for expanding Territory representation anyway? There might, but they are different and Labor does not have a mandate for them. The principle

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<sup>2</sup> I note here that I am using population to calculate representation as is done for the House of Representatives – broadly similar results will follow if using the number of voters or votes save that in those cases the NT is already even more overrepresented.



issue with the representation of the Territories in the Senate is that they have less finely-grained representation than the States and hence an impoverished Senate electoral experience that can increase interest in tactical voting. Even counting the Coalition as one party, each State currently has three or four parties representing it (and the number can increase after double dissolutions) while each Territory can only ever be represented by two parties. This has led to the situation that the ACT now has no Coalition representative in either House, which could be avoided (for the time being at least) by increasing the ACT's number of Senators to three.

The danger in increasing the number of Territory Senators to four is that given the ACT's strong leftward leaning, this could lead to routine 3-1 left-right results which would significantly skew the political balance of the Senate and could be seen as akin to deliberate malapportionment. The 2016 and 2019 ACT Senate contests would have each led to a 2 Labor 1 Liberal 1 Green result if the ACT had had four seats<sup>3</sup>. The 2022 contest would have been 2 Labor 1 Liberal and David Pocock (whose voting pattern over the term has yet to be seen but who at least appealed mostly but not entirely to voters who would normally support the left parties.)

### **3.2 House of Representatives**

While malapportionment in the House of Representatives is low, Tasmania and the Northern Territory are significantly over-represented. In Tasmania's case this is because of the minimum of five Representatives that is guaranteed to the state, and in the NT's it is because the NT would be underrepresented with a single seat but is overrepresented with two.

The overrepresentation of Tasmania and the NT could in theory be reduced without breaking the nexus between Reps and Senate seat numbers by expanding the Parliament, increasing the number of Senators per state with a resultant increase in the House of Representatives. This would also improve representation in the House of Representatives, which has not had an increase in size since 1984, meaning that members represent larger and larger numbers of constituents and the connection between members and their communities is weakened. Two possible expansions are discussed below: expansion by one-sixth (to 14 Senators per state and around 175 MHRs), and expansion by one-third (to 16 Senators per state and around 200 MHRs). I am not necessarily saying an expansion should occur, but I am saying that it would improve proportionality and should be seriously considered.

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<sup>3</sup> Simulations in this section were conducted using Andrew Conway's website at [vote.andrewconway.org](http://vote.andrewconway.org)

**(i) Expansion by one-sixth**

The following would have been results of the last three elections if contested with the same voting results with 14 instead of 12 Senators per state and on the assumption that the (unsound) order of election method was used to allocate long-term and short-term seats, and ignoring defections:

**2016 long-term seats:**<sup>4</sup> Coalition 17 Labor 16 Green 5 ON 1 NXT/CA 2 JLN 1

**2016 short-term/territory seats:** Coalition 17 Labor 13 Green 4 ON 4 NXT/CA 1 FF 3 Hinch 1 LDP 2 WA Nat 1

**2016-19 Senate:** (majority 45): Coalition 34 Labor 27 Green 9 ON 5 NXT/CA 3 JLN 1 FF 3 DHJP 1 LDP 2 WA Nat 1

**2019 half-Senate plus territories:** Coalition 21 Labor 15 Green 6 ON 3 JLN 1

**2019-22 Senate:** (majority 45): Coalition 38 Labor 31 Green 11 ON 4 NXT/CA 2 JLN 2

**2022 half-Senate plus territories:** Coalition 19 Labor 18 Green 6 ON 1 JLN 1 Pocock 1

**2022-25 Senate:** (majority 45): Coalition 38 Labor 31 Green 12 ON 4 JLN 2 Pocock 1

There is some reason to suspect an expansion to 14 seats per state would be unfavourable for the “right” at current vote share levels. In the above model, the 2019-25 Senate is evenly balanced between “left” (ALP/Greens) and “right” (Coalition/One Nation) despite arising from two elections that the Coalition won. The reason for this is that it is relatively easy for Labor and the Greens combined to receive four seats even in states where the Coalition might have narrowly won the two-party preferred House of Representatives vote: this happens in three of the six long-term slates in 2016 (including Tasmania after disqualifying Lambie), one out of six in 2019 and four out of six in 2022.

**(ii) Expansion by one-third**

An option that would just about eliminate the overrepresentation of Tasmania and the Northern Territory in the House of Representatives would be to increase the size of the House of Representatives to about 200 members and the Senate to 16 Senators per state. While such an increase might appear large (and may well be politically unpalatable), it would still represent only about half the growth in population since 1984.

I have only modelled the 2019-22 and 2022-25 Senates under this option, because there are difficulties modelling the short-term seats for 2016-19 from the existing results, caused by parties running out of candidates.

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<sup>4</sup> The disqualification of Jacqui Lambie causes one Liberal long-term seat to flip to Labor, which has been reflected in these totals

**2016 long-term seats:** Coalition 22 Labor 19 Green 6 NXT 2 JLN 1 ON 1 Hinch 1

**2019 half-Senate plus territories:** Coalition 24 Labor 19 Green 6 JLN 1 ON 2

**2019-22 Senate** (majority 51): Coalition 44 Labor 36 Green 12 JLN 2 NXT 2 ON 3 Hinch 1

**2022 half-Senate plus territories:** Coalition 19 Labor 19 Green 6 JLN 1 ON 4 UAP 1 Legalise Cannabis 1 Pocock 1

**2022-25 Senate** (majority 51): Coalition 41 Labor 36 Green 12 JLN 2 ON 6 UAP 1 Legalise Cannabis 1 Pocock 1

Under this system, it appears to be rare for either the right or left to win five seats in a state; many of the current 3-3 splits become 4-4 splits. The Coalition government has a somewhat difficult Senate to deal with for the 2019-22 term (needing the votes of all of One Nation, JLN and NXT to pass bills) though it is worth noting that the actual 2019-22 Senate became easier for the Coalition than it would otherwise have been through the fortune of gaining an extra long-term seat when Senator Lambie was disqualified.

### **3.3 Unweighted Inclusive Gregory Distortion**

I have repeatedly flagged the need for the unweighted inclusive Gregory distribution method for Senate surpluses to be replaced before the wrong Senator is someday elected by it in a very close count, rather than after. An inquiry that has raised one vote one value as a term of reference, albeit in the different context of state and territory representation, seems as good a time to do it again.

The unweighted Gregory method is a relic from the days of paper ballot counting and hand calculation. When a Senator is elected with votes that arrive with a variety of previous values, all these votes are changed to the same value as each other for the purpose of transfers to other candidates. This favours votes that have already been reduced in value more than others, meaning that those votes have a total effective value in the count exceeding 1 vote. On the other hand, votes that had been transferred to the winning candidate at full value have their total effective value in the count reduced below 1 vote. In some cases (as discussed in my 2016 submission) votes can actually increase in value through the count. The current Inclusive Gregory system should be replaced by the Weighted Inclusive Gregory system in which all votes have their existing values proportionally reduced, as is done in Western Australia.

## **4. Truth In Advertising**

### **4.1 Preferencing Misinformation**

At this election, claims that misinformed (and in some cases disinformed) voters about the preferential voting system were rampant, especially on social media. Some of the more prominent examples of such misinformation/disonformation included:

- An advertisement for the United Australia Party that said “Labor are preferencing the Liberal Party. Labor is preferencing Liberals over the United Australia Party. A vote for Labor is a vote for the Liberal Coalition”.
- A National Party MP’s advertisement that said “Palmer preferenced Labor above the ALP. A vote for a minor party is a vote for Albanese”.
- A tweet by a former Prime Minister that said “[Palmer] issues how to vote cards preferencing the Libs in all the seats that will determine the election. A vote for Palmer is now a vote for Morrison”
- An ALP supporter social media meme image that depicted all parties other than Labor as peas in a pod and suggested that a vote for anyone other than Labor was a way to return Morrison.
- A tweet by a defeated Labor MP that presented two flowcharts “Want to change the government? If you vote ... Labor -> Labor wins 76 seats -> Albo becomes PM. If you vote ... Greens/LNP -> Labor doesnt [sic] win 76 seats -> Morrison stays PM”

The first three examples above all wrongly imply that a voter’s preferences will be distributed as per their party’s how to vote card. In fact a vote for any party can imply any choice between any other pair of parties that the voter chooses to make. The majority of voters – and the large majority of voters for minor parties – do not copy how to vote cards.

The fourth and fifth examples not only implied various implausible things about the consequences of voting for the Greens but also in effect implied that even in a seat where the Greens were going to be excluded, voting for them could still in some way harm Labor’s chances even if the voter preferenced Labor.

Whether any of the above claims were illegal under current law concerning material that misleads an elector in relation to the casting of their vote is not that clear. *Evans* found that arguments of the form “If there is a hung parliament, candidate/party X will support party Y to govern, therefore a vote for X is a vote for Y” were legal, but the above examples all carried different implications. The AEC is understandably reluctant to act against such material in the absence of a clear legal precedent, though in at least one case a tweet by a social media user was deleted after I reported it to the AEC who responded.

I would like to at least see an explicit ban on material that states or would be read as claiming that because a party X had recommended a preference for party Y on its how to vote card, a vote for party X was a vote for party Y. Such claims are clearly false and serve only to damage understanding of the preferencing system.

In my view, any broader push for truth in electoral advertising will be worthless and phoney unless it effectively tackles such misinformation about our preferencing system.

#### **4.2 Truth in Advertising Generally**

The incoming Government has a clear mandate to pursue broader truth-in-electoral-advertising laws.

However, firstly I strongly endorse the view expressed by the Australian Electoral Commissioner that the AEC should not be charged with being the body to administer these provisions. I'm very concerned about the potential impact on the image of the AEC if the AEC is required to be an arbiter of political truth as well as a conductor of elections.

Secondly, and I may have more to say about this at a hearing if invited, I would like to express a general view that caution should be exercised in ensuring that whoever is the arbiter of truth in electoral advertising is not required to be a judge of broad and complex scientific and theoretical matters (like debates about climate change or the effectiveness of COVID vaccines). It should be aimed only at statements that with relatively little investigation can be clearly determined to be either false or misleading, especially false attack claims made by parties against each other. Also, I would not like a truth in advertising assessment process to become something like the fact-checker columns conducted by newspapers, in which a common failing is that articles are found to be incorrect on the basis of claims they are said to have made but did not actually make. I have no view concerning who should administer such laws provided that it is not the AEC.

## **5. Other Matters**

### **5.1 Informal Ballot Survey**

It was a relief and a surprise that at this election the informal vote fell slightly at the House of Representatives despite an increase in the average number of candidates. It was fortunate that the increase in candidate numbers often fell outside the divisions with high natural informal voting rates. It is disappointing however that no informal ballot paper survey was produced for the 2019 federal election, as the informal ballot paper survey is a crucial health check on the causes of levels of informal voting in different areas. I do not know if the survey has been stopped temporarily or permanently, and whether the reason for the lack of a survey in 2019 was funding-related, COVID-related, both, or other. However I would like to see the survey reinstated and I also think it would be useful to see a similar survey for the Senate.

### **5.2 Unlabelled Boxes For Non-Party Groups**

In my 2019 submission I commented at length about how unlabelled boxes above the line for non-party groups cause confusion to many voters, with many voters leaving them blank because they do not realise the unlabelled box relates to a group that they can number. Similar observations to those made in 2019 applied this year to the Xenophon ticket in

South Australia, which received very poor above the line preference flows while doing very well on below the line flows.

Following the increase in the member threshold to 1500 members I was impressed by how easily many completely new parties with small followings managed to meet this threshold, so I suspect that if any competitive party cannot reach 1500 members in time for the election it will have only itself to blame. But there remain two good reasons to label above the line boxes. Firstly, the non-labelling of such boxes continues to be used as an argument against the integrity of the electoral system and the AEC by some conspiracy-theory-prone elements (especially in the anti-vaccine-mandates movement.) Secondly, I identified a scenario in which Xenophon's ticket – had it polled better – could have caused One Nation to win the final South Australian seat by doing well enough to eliminate the major parties while being unable to compete effectively with One Nation for preferences.

### **5.3 "Independent" In Party Names**

At the time of writing the party called Voices for the Senate, which did not register in time for the 2022 federal election, has applied to change its name to Independent Voices of the Senate. If this application succeeds, then no other party will be able to use the word "Independent" (or any close derivative) in its name without the written consent of this party. I find it bad enough that parties are able (with minor restrictions) to use "Independent" in party names in a way that implies that their candidates are "independents", but for the word "Independent" to be the property of a single such party would be farcical. The word "democratic" is already exempt from being claimed by any party; I suggest either that "independent" be also so exempted or that use of "independent" in party names be prohibited.