

11 April 2014

Joint Standing Committee on Electoral Matters
Parliament House
Canberra ACT

Please find attached my submission to the Committee's inquiry into the conduct of the 2013 federal election.

In my submission I make suggestions for changes to political party registration under the Commonwealth Electoral Act. I also suggest major changes to Senate's electoral system given the evident problems at last year's election as well as this year's re-run of the Western Australian Senate election. I also make modest suggestions for changes to formality rules for House of Representatives elections.

I have attached a substantial appendix outlining past research on NSW Legislative Council Elections. This includes ballot paper surveys from 1999 and research on exhaustion rates under the new above the line optional preferential voting system used since 2003.

I can provide the committee with further research on the NSW Legislative Council system, as well as some ballot paper research I have been carrying out on the 2013 Senate election.

I am happy to discuss my submission with the Committee at a hearing.

Yours,

Antony Green
Election Analyst

**Submission to the Joint Standing Committee on Electoral Matters
Inquiry into the Conduct of the 2013 Federal Election**

Antony Green

Contents

| | Page |
|--|-------------|
| 1. Political Party Registration | 1 |
| 2. Changes to the Senate's Electoral System | 7 |
| 2.1 Allow Optional Preferential Voting below the line | 8 |
| 2.2 Above the Line Optional Preferential Voting | 9 |
| 2.3 Hare Clark | 10 |
| 2.4 Hybrid Group Ticket Option | 10 |
| 2.5 Full Preferential Voting Above the Line | 11 |
| 2.6 Threshold Quotas | 11 |
| 2.7 Optional Preferential Voting with a Re-calculating Quota | 12 |
| 2.8 Changes to Formula | 12 |
| 2.9 My Suggested Solution | 13 |
| 3. Changes to House of Representatives Formality Rules | 14 |
| | |
| Appendix | |
| 1999 NSW Legislative Council Ballot Paper Research | A2 |
| Preferences at the 2003 NSW Legislative Council Election | A5 |
| Preferences at the 2007 NSW Legislative Council Election | A7 |
| Preferences at the 2011 NSW Legislative Council Election | A9 |

Section 1: Political Party Registration

Recommendation 1: The registration of political parties should be tightened in line with tougher registration rules required under state electoral laws.

Political parties have been central to Australian politics since Federation, but it was not until 1984 that parties were formally recognised as part of the electoral process.

In 1984 party registration was required to permit the implementation of rules governing public funding, donations and expenditure declaration. In this submission I do not propose to deal with this aspect of party registration.

Registration has had two more direct impacts on the conduct of elections. The first concerns the printing of party names on ballot papers. The second is the central nomination of candidates by party registered officers. It is these two aspects of party registration that had an impact on the 2013 Federal election.

The registration procedures introduced in 1984 are largely unchanged. Parties require a constitution, an approved name and 500 members. The rules were introduced at a time when there were fewer parties and candidates contesting election. The rules have not been tightened despite tougher rules for party registration being introduced by states and territories.

Table 1 sets out the number of registered parties at elections since 1984, as well as the number of parties nominating candidates for House and Senate elections.

Table 1: Number of Registered Parties at Australian Election 1984-2013

| Election | Number Registered | Contesting House | Contesting Senate |
|-----------------|--------------------------|-------------------------|--------------------------|
| 1984 | 18 | 11 | 13 |
| 1987 | 23 | 12 | 16 |
| 1990 | 32 | 22 | 20 |
| 1993 | 27 | 16 | 22 |
| 1996 | 28 | 18 | 23 |
| 1998 | 41 | 25 | 30 |
| 2001 | 38 | 22 | 29 |
| 2004 | 34 | 26 | 30 |
| 2007 | 27 | 19 | 26 |
| 2010 | 25 | 22 | 25 |
| 2013 | 54 | 34 | 51 |

Source: Compiled from party registration data on AEC website and from past election results. Separate state Green parties at elections before 2001 have been counted as a single party.

The precise number of parties varies depending on whether parties are treated as separate or affiliated entities. Before the Australian Greens consolidated into a single party, different branches of the Greens were registered as separate parties. Today the Liberal National Party of Queensland is not a separate registered political party under the Commonwealth Electoral Act, merely a branch of the Liberal Party of Australia.

The increase in the number of parties at the 2013 election is shown clearly by the final line of Table 1. What is not shown is the late surge in registrations in the months before the 2013 election. Prime Minister Gillard's January 2013 announcement of a September election established a timetable for new party registration, and in the two months before the register was closed by the issue of writs, nineteen new parties were registered. This was an increase of around 50% between January 2013 and the issuing of the writ in August.

1,188 candidates were nominated for the 150 House contests, more than the previous record of 1,109 candidates for 148 divisions in 1998. This was an increase from 859 House candidates in 2010, much of this due to new parties. The newly formed Palmer United Party contested all 150 electorates, Katter's Australian Party 63 and the Rise Up Australia Party 77.

The rise in Senate candidates was more dramatic, a total of 529 candidates nominating, well up on the previous record of 367 in 2007. Record numbers of candidates contested every state. The New South Wales Senate ballot paper had 110 candidates and 45 grouped columns on a ballot paper one metre wide, with column widths reduced to two centimetres and font size to six points. In the larger states the AEC made magnifying sheets available to assist voters in reading their ballot papers.

Between 1949 and 1987 more than half of House electorates had been contested by four or fewer candidates. In 2013 more than half of all electorates had eight or more candidates and a general election record of 16 candidates contested Melbourne. Table 2 shows the average number of candidates per vacancy at House and Senate elections since 1974. The dramatic increase in Senate candidates at the 2013 election is clear.

Table 2: Average number of candidates per vacancy, Australian Elections 1974-2013

| Election | House | Senate | Election | House | Senate |
|-----------------|--------------|---------------|-----------------|--------------|---------------|
| 1974 | 3.9 | 4.1 | 1993 | 6.4 | 6.7 |
| 1975 | 3.8 | 4.2 | 1996 | 6.1 | 6.4 |
| 1977 | 4.1 | 4.4 | 1998 | 7.5 | 8.2 |
| 1980 | 4.0 | 5.4 | 2001 | 6.9 | 7.1 |
| 1983 | 4.2 | 3.8 | 2004 | 7.3 | 8.3 |
| 1984 | 4.2 | 4.4 | 2007 | 7.0 | 9.2 |
| 1987 | 4.1 | 3.4 | 2010 | 5.7 | 8.7 |
| 1990 | 5.3 | 5.6 | 2013 | 7.9 | 13.2 |

Source: Calculated from published Australian Electoral Commission statistics.

The rise in parties and candidates contesting the Senate election was an attempt to engineer a situation where preference 'harvesting' could take place, the corralling of preference within micro-parties on the ballot paper in an attempt to elect one of their number to the final seat in each state. Increasing the number of parties increased the pool of votes available for micro-parties, first by offering an interesting range of party names, and also by making it more difficult for voters to find the more established parties.

The rise in House candidates may also have been a consequence micro-parties jostling to improve their position in the Senate pecking order. Parties that can increase their Senate vote compared to other micro-parties gain an advantage in increasing their chances of finishing ahead of other micro-parties and benefiting from preference harvesting. Campaigning more vigorously in unwinnable House contests can play a part in improving a party's Senate vote.

The surge in parties contesting the 2013 election was in part due to knowledge of the election date. It was a similar surge in party registrations just before the 1999 NSW election that led to that state changing its party registration laws, including a change to prevent last minute registrations.

Drawing on the experience of party registration rules in each state, I would recommend the following changes to registration rules for the Commonwealth Electoral Act.

Recommendation 1.1: The number of members required to register a political party under the Commonwealth Electoral Act should be increased to 2,000.

Under the various state and territory electoral acts, party registration requires 750 members in New South Wales, 500 in Victoria, Queensland and Western Australia, 200 in South Australia and the Northern Territory and 100 in Tasmania and the ACT.

A national party trying to register in all states and territories would require close to 3,000 members, but to register a national party it currently requires only 500 members.

The sensible first step to tightening party registration procedures is to increase the number of members required to register a party in-line with state laws. My recommendation is 2,000 members, a figure roughly in line with the 750 members required for party registration in New South Wales.

Recommendation 1.2: Members of parties relied upon for registration should be required to be on the electoral roll.

There are differences between rules governing qualifications to be a candidate, to be a candidate nominator, or to be a member of a registered political party.

Nominators for Independent candidates are required to be eligible to vote, which means they must be on the electoral roll. Nominators are also required to be on the electoral roll for the contest where they are nominating a candidate. A nominator must be on the divisional roll for a House contest, or the state's federal roll for a Senate contest.

In contrast, candidates are only required to be eligible for enrolment; they do not have to be enrolled. Similarly, members of a political party supplied as a list to the AEC need only be eligible for enrolment, not actually enrolled.

All of the state and territory acts require that a member relied on for party registration must be enrolled in that state and territory. I recommend that the Commonwealth Electoral Act should apply the same test so that party members must be on the national electoral roll for the party to be registered.

One of the advantages granted to registered political parties is the ability to nominate candidates centrally under the signature of the registered party officer. While the concept of a national party means that local residency requirements need not be applied to party membership for nomination, the minimum test of enrolment should be applied to party membership so that centrally nominated candidates can be seen as relying on enrolled voters in the same way an independent candidate has to rely on enrolled voters.

Using enrolment rather than eligibility for enrolment would provide a useful first sieve in the party registration process. A party's membership could be checked for enrolment before moving on to the task of verifying membership of the party.

Recommendation 1.3: A more rigorous test of party membership should be applied

Under the provisions of the Commonwealth Electoral Act, the AEC writes to a sample of a party's supplied list of members. The members are asked to confirm that they are a member of the political party, and a threshold response rate is required for the AEC to grant registration.

Several of the states apply much tougher tests. New South Wales and South Australia require each member relied upon for registration to supply a signed statement. The Queensland Electoral Act requires parties to supply more documentation on a member's application to join and the party's acceptance of the application. Tasmania lists the names and location of the 100 members required for registration in the Government Gazette as part of the notification and objections process.

The legal cases that first convicted and later acquitted Pauline Hanson on fraud charges revealed a lack of clarity in the legal meaning of party membership under the Queensland Electoral Act. The provisions of the Queensland Electoral Act at the time were the same as those used by the Commonwealth Electoral Act.

The Queensland Electoral Act has been updated since the Hanson cases to apply tougher tests of membership, but the Commonwealth Electoral Act is largely unchanged. Applying a tougher test on membership would avoid cases similar to Hanson's occurring under Commonwealth law.

Recommendation 1.4: Toughen the test for registration but do not apply a post-registration qualification period.

New South Wales responded to the 1999 surge in state party registrations by implementing a twelve month qualifying period before the benefits of registration are available. The qualification period appears to be undemocratic, requiring any party wishing to contest to the 2015 state election to have been officially registered by the end of March 2014.

South Australia uses a different approach, applying a cut-off date for registration applications six months before the date set for the next election. South Australia's provision formalises the delay required to apply tougher verification rules on applications for registration.

The Commonwealth and other states and territories have delays caused by the registration process, but none have the precise timetable specified in South Australia and New South Wales. Implementation of a precise timetable would be more difficult under Commonwealth legislation because of variable date elections.

The New South Wales provision is distinctly undemocratic, denying the right of any party that has met the registration requirements to appear as a party. The New South Wales rule appears to have been a reaction to the emergence of the No Aircraft Noise Party shortly before the 1995 state election.

Rather than implement the New South Wales qualification period, dealing with the late registration of parties would be best left to the longer verification period required by tougher tests of membership. Parties will need to have their applications for registration in well ahead of the election, but once registered they should not further be disqualified from obtaining the benefits of registration.

Recommendation 1.5: Remove the right of Members or Senators to sponsor the registration of a party.

If one of the justifications of verifying membership is to permit the central nomination of candidates, then it seems anomalous to allow parties with potentially only one member to be registered. Those parties are those registered by sitting Members or Senators.

If the intent of changing party rules is to apply tougher tests to party registration, then allowing Members and Senators to register a party would mean the tougher test would apply only to non-parliamentary parties.

The current rules that allow an individual Senator the right to nominate with their own group name could be retained. Such a Senator would only be nominating themselves, not other candidates. At the 2013 election, Senator Nick Xenophon had the right to nominate for the Senate with his own column labelled the 'Nick Xenophon Group'. The inability to nominate a running mate saw Senator Xenophon instead register the Nick Xenophon Group as a party, a right he has as a sitting member. The change I propose would have required Senator Xenophon to create a party with a membership to nominate any candidate other than himself.

Recommendation 1.6: Introduce a requirement that applications for grouping on the Senate ballot paper must be accompanied by nominators.

One of the features of the 2013 election, and the 2014 Western Australian Senate re-election, was the number of candidates who were nominated for interstate Senate contests.

At the WA Senate re-election, eight interstate candidates nominated having contested interstate Senate contests last September.

At the 2013 Tasmanian Senate election, two of the candidates in contention for the final seat had little connection with the state. Robbie Swan of the Sex Party had long been resident in Canberra. Clinton Mead of the Liberal Democrats served on Campbelltown Council in Sydney, and indeed was elected Mayor of Campbelltown in the period after the election when he was still in the contest to be elected as a Senator for Tasmania.

Electoral law in Australia has never enforced a residential requirement on candidates, but it has always enforced a residential or enrolment requirement on nominators.

Since the introduction of registered parties, registered officers have been allowed to nominate candidates centrally. It was this process that permitted parties to nominate candidate in every state and territory without the need for local nominators.

The use of proportional representation as well as there being only eight Senate races has attracted more micro-party candidates than the 150 House contests. Large numbers of interstate candidates have been less of a problem for House contests.

The re-introduction of nominators for Senate groups would be the best way of preventing parties from abusing their power to nominate candidates centrally. A party wishing to nominate candidates for any state's Senate contest would be required to supply local nominators from the state roll in the same manner as required for Independents.

Antony Green – 2013 JSCEM Submission

Recommendation 1.7: De-register all current parties and require them to register under the new rules.

Application of new rules should not allow registrations to be 'grandfathered'. New rules should apply to all parties, including parties currently registered by having parliamentary representation.

Recommendation 1.8: Remove the right of an individual to be a registered officer for more than one party.

A person who is a member of more than one party can have their name relied upon for registration by only one of the parties. Yet a person is permitted to hold the important position of registered officer for more than one party.

Senator-elect David Leyonhjelm is currently the registered officer for two parties, the Liberal Democratic Party and the Outdoor Recreation Party.

This anomaly should be corrected.

Recommendation 1.9: Toughen the rules on the registration of party names to prevent voter confusion from similar names.

It is evident that the names of the Liberal Party and the Liberal Democratic Party were confused with each other at the 2013 election.

In New South Wales at the 2013 federal election, the Liberal and National Parties recorded their highest first preference percentage vote in the House since 1975. Yet in the Senate the joint ticket of the two parties recorded the lowest Liberal and National first preference votes since 1943. The gap between first preference support for the Coalition in the two chamber was substantially higher than at any election since the introduction of party names in 1984.

No doubt the size of the ballot paper and consequent reduction in column width played a part. The names 'Liberal' and 'Democrats' in column A were split across two lines, as were 'Liberal' and '& Nationals' in column Y.

The Liberal Party objected to the registration of the abbreviation 'Liberal Democrats'. The AEC considered that its hands were tied by past Administrative Appeals Tribunal rulings on the registration of party names.

The committee may need to consider legislative change to overcome problems with name confusion.

Section 2: Changes to the Senate's Electoral System

As outlined in Section 1, the relative ease with which political parties can be registered led to an upsurge in registered political parties and consequential enormous increase in candidates and parties contesting the Senate election. This in turn led to great difficulties with the printing of ballot papers, and even worse, led to confusion for voters trying to read an overly large ballot papers with inadequate print size.

While the proposals to tighten party registration set out in Section 1 will deal with some of the problems revealed in 2013, the 'sugar on the table' for prospective political parties is the group ticket or 'above the line' voting option used in the Senate.

Group ticket voting reduced the scandalously high rate of informal voting that existed prior to its introduction in 1984. The democratic deficit created by the high informal vote has been solved, but a new democratic deficit has grown as parties have learnt to manipulate the system, flooding the ballot paper with parties and engaging in exotic preference deals.

The principles I would adopt for any change are –

- Preferences should be put back into the hands of voters rather than determined by a party ticket.
- No formal vote under the current system should become informal under new rules.
- There must be an emphasis on simplicity for the voter, giving them an option that allows them to easily give their own preferences, or to simply continue voting as they do now.
- The AEC must be able to easily count the votes, especially when it comes to translating sequences of written preferences into an electronic format for counting.

It is important to emphasise that the problems of the current system are not created by the method of counting but by the ballot paper options offered to voters. There may be consequential changes to the counting system required by changes to the ballot paper options, but the counting system should not be altered to solve a problem created by the ballot paper.

The Senate's electoral system is one variant of a group of systems called Proportional Representation by Single Transferrable Vote, or PR-STV. The system can be a candidate based, as with Hare-Clark variant of PR-STV used in Tasmania and the ACT, or party based as with the Senate and mainland state Legislative Councils.

PR-STV assumes that voters are filling in preferences for candidates that reflects their preferred ordering of election. Under the Senate's system of group tickets and full preferential voting, electors are given a ridiculous choice to exercise their franchise. They can

- Vote '1' above the line for a single group which adopta a preference ticket the voter is highly unlikely to be able to inspect. Even if they could inspect the ticket, few electors would be able to sensibly understand how preferences might flow given the large number of assumptions that need to be made about the order candidates would be excluded from the count.
- Vote for all candidates below the line, to express vast number of preferences for barely known candidates just to allows the voters more significant preferences to be counted.

These two options break the principles of PR-STV in several ways.

- Parties are clearly lodging strategic deals with their preference tickets, which breaches the idea that the numbers represent a preferred ordering of candidates.

Antony Green – 2013 JSC EM Submission

- Parties can engage in game theory. Control of preferences provided by ticket voting gives parties the ability to gamble on the chance to maximise their own representation by trading off their ability to influence the election of other parties. The best example of this was the 2004 Victorian Senate election when the Labor Party tried to maximise its chance of electing a third Senator in a contest with the Greens by engaging in a preferences swap with Family First. The deal backfired when a low vote for Labor and some other minor parties resulted in Labor preferences electing Family First to the final seat ahead of the Greens. Such a preference deal would never have been attempted under a system where parties could not control preferences.
- Very small parties can engage in preference 'harvesting', swaps of preferences engaged in for no other reason than to increase their random chance of election.
- If voting 'below the line', voters are required to give vast lists of preferences for candidates that are unknown or equally disliked, simply to permit the voters initial preferences to count. The counting system used by PR-STV treats all these preferences equally, when clearly voters themselves do not treat the preferences equally.

There are three broad solutions to these problems. These are

- Introducing some degree of optional preferences into the system, providing an opportunity for voters to only express only the preferences they have.
- Retain full preferences and group tickets but create a distinction between first preferences and all other preferences by changing the counting system to implement threshold quotas on first preferences.
- Going beyond basic changes to party registration rules and making it very much more difficult to get on the ballot paper, perhaps with major increases in deposit laws.

I will outline several options that provide different mixes of optional and full preferential voting, as well as an option to apply a threshold quota.

2.1 Allow Optional Preferential Voting below the line

End the requirement for full preferential voting 'below the line'. At Victorian Legislative Council elections, voters are only required to give five preferences, equal to the number of members. If applied to Senate elections, this would mean six below the line preferences for a half-Senate election or 12 for a double dissolution election. Alternative, given the use of proportional representation, half the number of vacancies plus one could be the minimum number, meaning four preferences at a half-senate election or seven at a double dissolution election.

Advantages

- Retains the current ballot paper.
- It is like the current system but gives voters a more reasonable option to give their own preferences for parties

Disadvantages

- By retaining ticket voting, deals over preferences will continue
- Ending the current problems with group ticket voting would fall most heavily on changes to party registration rules. These rules would not be enough to stop a party backed by a wealthy individual getting around the registration laws.
- Will be less likely to reduce the number of candidates and parties than other OPV methods.

2.2 Above the Line Optional Preferential voting.

This option adopts the method used since 2003 for electing the New South Legislative Council. It retains the current ballot paper structure with above and below the line votes, but does away with lodged group voting tickets with preferences between parties. Electors can use optional preferential voting for parties above the line, or optional preferential voting for candidates below the line.

There are no between-party preferences on a group ticket, but voters have the option to number squares above the line to indicate their preferences for parties. So if a voter filled in their ballot '1' for Party A, then '2' for Party B, preferences would flow to all candidates of Party A, and then if required, for candidates in Party B.

Note that there are several state constitutional restrictions on how New South Wales has implemented this option. The New South Wales constitution requires that 15 preferences must be marked on a Legislative Council ballot paper. To avoid group ticket voting breaching this provision, parties are forced to nominate 15 candidates, creating a particularly unwieldy ballot paper. This limitation would not apply to Senate elections.

Advantages

- The current ballot paper structure familiar to voters is retained.
- Ends ticket voting rorts by putting the power over preferences back into the hands of voters.
- Like House elections, parties and candidates could try to influence preference flows with how-to-vote material, but the choice over preferences would still be in the hands of voters.
- Without ticket votes, the order in which candidates are excluded would be less critical. The 2013 WA Senate case where the divergent ticket preferences of the 9th and 10th placed candidates determined the final two Senators elected would be considerably less likely to recur.
- A party would need a higher first preference vote to win election, but this would be achieved without the need for an arbitrary threshold quota or vast increase in deposits.
- Will produce a smaller ballot paper as candidates with little chance of being elected may opt not to nominate.
- Preference harvesting would be impossible as micro-parties would not have ticket preferences to control and trade.
- Flooding of the ballot paper to increase the informal vote would be ineffective because of optional preferential voting.
- The system should produce a smaller ballot paper which will encourage voters to give their Senate vote more consideration.

Disadvantages

- Exhaustion rates on the exclusion of party tickets have been above 80% at the three elections where it has been used in New South Wales. This has not mattered at NSW Legislative Council elections where the quota is 4.55%, but may be a concern at Senate elections with a quota of 14.28%. The possibility of a high exhaustion rate may encourage Federal parties to put greater effort into encouraging voters to use the new option.
- Only around 20% of voters have been using the new method of giving preferences in NSW, though parties that actively campaign for preferences to be given have encouraged higher rates of usage for the new system.
- The AEC would be required to data enter more ballot paper, though this would be compensated by the average number of preferences per ballot paper falling drastically.

Antony Green – 2013 JSCEM Submission

- There may be confusion with how voters should complete their House ballot paper if full preferential voting continues to be used in the House. This problem may be no worse than the impact '1' only Senate voting already has on informal voting at House elections.

2.3 Introduce Hare-Clark

Abolish 'above the line' voting and go for optional preferential voting for candidates, as is done under the Hare-Clark system in Tasmania and the ACT. The use of Robson rotation could also be used to randomise the order candidates are listed.

Advantages

- Ends ticket voting by putting the power over preferences back into the hands of voters.
- Robson rotation might encourage parties to stand better candidates.

Disadvantages

- Hare-Clark may be good for the Tasmanian and ACT Assemblies where the quota is around 10,000 votes, but the system will not scale well to a NSW Senate election where the quota is 600,000. In the larger states, the simultaneous House election means it is nearly impossible for voters to know any information about Senate candidates.
- Unless a minimum number of preferences is specified, parties may only stand as many candidates as they can elect, reducing the range of party candidates available to voters.
- By removing above the line voting, voters will be presented with an unfamiliar ballot paper.

2.4 Hybrid Group Ticket Option

The worst abuses of group ticket voting have been perpetrated by political parties registering tickets that are strategic or designed to direct votes into a preferencing harvesting circle. In conjunction with tighter party registration rules, another option would be to keep party tickets, but limit the number of preferences a party can give, probably to only '1' preference. This would discourage parties from wasting their single preference by giving it to a party with no chance of election. It would be more likely a party would give its preference to a like minded parties they can work with.

Advantages

- Avoids the high exhaustion rate that has occurred with the NSW Legislative Council system
- Discourages parties from giving strategic preferences.

Disadvantages

- Will create a new form of preference haggling in that micro-parties will have a preferences they can bargain with larger parties about directing.
- Only makes sense in conjunction with full preferential above the line voting. If optional preferential voting above the line is adopted, then having a default party preference ticket may be unnecessary except to minimise the exhaustion rate.

2.5 Full Preferential Voting Above the Line

This option was proposed by the 2004 Joint Standing Committee but never implemented.

Advantages

- Ends ticket voting.
- Retains the current ballot paper structure.

Disadvantages

- 95% of people who currently vote '1' would have to be taught to give preferences
- Would be a disaster for parties trying to produce sensible how-to-vote material.
- Leaves the system open to ballot paper stacking as occurred with the 1974 NSW Senate election
- Would increase the informal vote.
- Would be a nightmare for the AEC in having to data enter 100% of ballot papers.

2.6 Threshold Quotas

Threshold quotas would allow the current existing group ticket voting system to be retained, perhaps in conjunction with a minimalist below the line optional preferential voting option. Parties would have to meet a minimum threshold of first preference votes or be excluded.

Advantages

- Retains the current ballot paper structure
- Simplifies the count in that there is a bulk exclusion of candidates at the start of the count.
- Weights votes in favour of first preferences.
- Would discourage some parties with little chance election from running.

Disadvantages

- Threshold quotas are common in list systems of proportional representation, such as those used in Germany and New Zealand, but very rare in PR-STV systems. Thresholds have perverse outcomes in countries such as Germany where the arbitrary nature of the threshold can deprive a major party of a potential coalition partner.
- Design issues. At which point of the count should parties be excluded? Before the initial election of candidates so over-quota candidates can attract votes, or later in the count after initial elections? Should parties below the threshold be excluded and the quota re-calculated, or should the quota be retained and the excluded parties have their preferences distributed?
- Potential constitutional problems over the meaning of 'direct election' if candidates are excluded from the count based on a threshold applied to the first preference vote for parties.
- Thresholds only weight first preferences.
- The arbitrary nature of the threshold, 1%, 2%, a quarter of a quota, half a quota? Too low a quota would create exotic new methods of preference harvesting, too high a quota would arbitrarily exclude relatively high polling candidates.

2.7 Optional Preferential Voting with a Re-Calculating Quota

The New South Wales Legislative Council system has defaulted to being like a 'list' system of proportional representation system with a highest remainder method for filling the final vacancies.

The problem with this system is that parties that get in excess of the quota on initial counts elect representatives with the fixed quota set at the start of the count, but candidates elected at the end with the highest remaining votes effectively face a lower quota for election. This disadvantages the largest parties in the count compared to small parties with less than a quota of votes.

An alternative would be to vary the quota as votes exhaust from the count. Rather than a single pass count that begins with a fixed quota, the count would become iterative, re-started with a new quota calculated each time votes are exhausted in the count.

Advantages

- Puts large and small parties on an equal footing by averaging votes required to elect Senators rather than relying on a fixed quota.

Disadvantages

- The system does not currently exist
- Would be impossible to count by hand.

2.8 Changes to Formulas

The current system operates with a small number of exhausted preferences produced by the formality rules for below the line votes.

Any introduction of optional preferential voting would greatly increase the number of ballot papers that exhaust their preferences. Under the current formulas dealing with distributing the surplus to preference votes of candidates, this would result in the counting system trying to distribute ballot papers with no further preferences.

Under the current system, the transfer value calculated to distribute surplus to quota preferences is

Transfer Value = (Surplus Votes) divided by (Total Ballot Papers)

The division by 'ballot papers' creates some unusual weighting issues that have been pointed out previously to the Joint Standing Committee. This should be changed to a formula that has already been introduced for the Western Australian Legislative Council.

Transfer Value = (Surplus Votes) divided by (Total Votes)

With optional preferential voting, this should be amended to

Transfer Value = (Surplus Votes) divided by (Total Votes minus Exhausted Votes)

This latter formula will ensure that only ballot papers with preferences end up in the surplus for transfer. This is similar to the system used in the ACT and for the NSW Legislative Council.

One caveat in applying the above formula is that no ballot paper should ever increase in Transfer Value. With high preference exhaustion rates, it is always possible that the surplus can be greater than the total votes less exhausted ballots. It is important to prevent ballot papers increasing in value.

2.9 My Suggested Solution

As well as implementing tighter rules on party registration, I would recommend the following package of changes to the Senate's electoral system

1. Retain the current ballot paper structure involving above and below the line voting.
2. Abolish group ticket votes that have preferences for any candidate other than those in the group below the group ticket voting square. There would be no group ticket preferences between parties on the ballot paper.
3. As in the current system a voter can vote with a single '1', but that vote would only apply to the candidates in the selected group.
4. A voter can then vote '2', '3' etc for groups above the line indicating their preferences. Parties can try to influence these preferences by distributing how-to-vote material.
5. The minimum two candidates for a group can be retained, avoiding the complex ballot paper used in New South Wales.
6. Ballot paper instructions should indicate a minimum number of preferences below the line. My suggestion is half the number of vacancies plus one.
7. However, I would permit fully optional preferential voting below the line. Even a single '1' would be formal.
8. Change the formulas to weight out exhausted preferences when distributing the preferences of candidates elected with more than a quota of votes.

The above package puts control of preferences back into the hands of voters, ensures no vote that is currently informal will become informal, and provides a simpler system both for voters to understand and for the Electoral Commission to count.

It makes it much more difficult for candidates of parties with low votes to win election, but does so without the imposition of arbitrary threshold quotas or punitive deposit laws.

2.10 Attached Appendix

I have attached an Appendix which extract past research I have conducted on NSW Legislative Council elections for the NSW Parliamentary Library.

The Appendix includes a summary of research I carried out on below the line ballot papers at the 1999 NSW Legislative Council election, infamous for the 'tablecloth' ballot paper with 81 columns and 264 candidates. The appendix also includes summaries of the distribution of preferences at the three elections since 2003 using the above the line optional preferential voting option.

The two key points I would make from this research are –

- In 1999, voters who gave their own preferences below the line universally gave fewer preferences than parties that lodged tickets.
- That the take-up rate for the new above the line option has been low, with exhaustion rates at the end of the count of 84.76% in 2003, 83.44% in 2007 and 82.66% in 2011.

I am happy to provide further research on how the system has operated if asked by the Joint Standing Committee.

Section 3 Changes to House of Representatives Formality Rules

The rate of informal voting continues to be scandalously high at House of Representatives elections. One of the reasons is that we continue to set rules on House ballot papers that define what can't count rather than what can count.

The classic example of this was the 2009 Bradfield by-election. In a contest with 22 candidates, 77,524 ballot papers were checked for formality to ensure all had a sequence of 1 to 22. Yet as the leading Liberal candidate had 56.44% of the first preference vote, no preferences on ballot papers needed to be examined to determine the winning candidate. Every ballot paper with a valid first preference vote could have been admitted to the count with no impact on the result.

I would make the following recommendation

Recommendation 3.1 All votes with a valid first preference vote be admitted to the initially tally of votes. Ballot papers with incomplete further preferences should only be excluded if the ballot paper needs examination to determine its preferences.

The effect of the above change is that all '1' votes would be formal for all candidates in any contest where the leading candidate polled more than 50%, meaning preferences did not need to be examined to determine the winning candidate.

In contests where ballot papers did need to be examined for preferences, then all '1' only ballots for the leading candidates in the contest would still be formal because they would not need to be examined for preferences.

This provision would change the way that preference distributions are conducted, but would radically cut the rate of informal voting by permitting most ballot papers with a valid first preference to remain in the count.

Recommendation 3.2 All ballot papers with an ordered listing of preference numbers should be formal, even if there is a break in the precise sequence.

A ballot paper that is filled in '1', '2', '3', '99', '100' is currently informal because the numbers are not sequential. The order of the preferences is clear, and I do not think it appropriate that such a sequence should be declared informal simply because it does not meet the strict rules set down in the Commonwealth Electoral Act.

Appendix - Ticket Voting at NSW Legislative Council Elections 1999-2011

The following pages outline the performance of group ticket voting at NSW Legislative Council elections from 1999 to 2011.

The first section on the 1999 NSW Legislative Council election deals with the famous 'tablecloth' ballot paper and includes research on how voters below the line filled in their ballot papers differently to the lodged group ticket votes.

The subsequent sections deal with the 2003-2011 elections under the new electoral system that abolished group ticket votes with inter-party preferences.

Under the new system, parties can still have access to an 'above the line' or group voting ticket square, but they are required to nominate at least 15 candidates. The 15 candidate minimum is a consequence of the NSW Constitution, which specifies that 15 preferences are required for voting at Legislative Council elections. Requiring 15 candidates be nominated for each party ensure that any vote cast using the above the line option meets the constitutional requirement of having 15 preferences for candidates, while ensuring there are no preferences flowing between parties.

Under the new system voters can give their own preferences for parties by numbering squares above the line. The only preferences that exist under the new system are those filled in by voters themselves, either for parties above the line or for candidates below the line.

The take up-rate for the new system has been low, with only around one in five voters giving preferences above the line. This has resulted in a high rate of ballot papers with exhausted preferences at the final exclusion of parties, 84.76% in 2003, 83.44% in 2007 and 82.66% in 2011.

The lack of preference flows has resulted in the system behaving very much like a list system of proportional representation with a highest remainder method of filling the final vacancies.

However, the defeat of Pauline Hanson at the 2011 election showed that the system is not entirely list proportional representation, and that preferences can still play a part in the filling of final vacancies.

The table below summarises the take-up rate for the new system, based on data supplied by the NSWEC for 2011, and my own research of ballot papers for 2003. 'SATL' means a 'Single Above the Line' vote, 'RATL' a 'Random Above The Line' vote.

Categories of Ballot Papers – NSW Legislative Council Elections 2003 and 2011

| Party | 2003 Election | | | 2011 Election | | |
|----------------------|---------------|------|------|---------------|------|------|
| | SATL | RATL | BTL | SATL | RATL | BTL |
| Coalition | 89.3 | 9.7 | 1.0 | 82.9 | 16.1 | 1.0 |
| Labor | 74.1 | 25.1 | 0.8 | 88.6 | 10.0 | 1.4 |
| Greens | 70.1 | 26.3 | 3.6 | 77.6 | 19.7 | 2.7 |
| Australian Democrats | 75.3 | 20.6 | 4.1 | 76.5 | 18.8 | 4.7 |
| Christian Democrats | 57.7 | 37.6 | 4.7 | 67.5 | 29.8 | 2.7 |
| One Nation | 82.8 | 15.0 | 2.2 | .. | .. | .. |
| Shooters Party | 70.2 | 26.0 | 3.8 | 82.6 | 15.8 | 1.6 |
| Pauline Hanson | 72.8 | 9.5 | 17.7 | 68.2 | 11.2 | 20.4 |
| Unity | 77.9 | 20.6 | 1.5 | .. | .. | .. |
| Family First | .. | .. | .. | 78.1 | 19.4 | 1.9 |
| John Hatton | .. | .. | .. | 69.5 | 15.0 | 14.6 |
| All Parties | 78.6 | 19.6 | 1.8 | 82.2 | 15.6 | 1.6 |

Appendix - 1999 NSW Legislative Council Election

1999 NSW Legislative Council Ballot Paper Research

(Excerpt from Antony Green, "Prospects for the 2003 Legislative Council Election", NSW Parliamentary Library Research Service, Background Paper No. 3/2003, pages 27-30)

4.4 Lessons from the 1999 Election

The 1999 election was the first at which all below the line votes for the Legislative Council were entered into a data entry system, and the count then conducted using computerised scrutiny. As a result, it has been possible to analyse the ballot papers used in 1999, to assess the way people voted, and how much difference there was between the preferences of below the line votes and the preferences on group ticket votes. The data set consists only of valid preferences on formal ballot papers. Why certain votes were informal, or why sequences of preferences exhausted cannot be assessed.

Table 12 provides a simple summary of the number of valid preferences on all ballot papers above and below the line. Note that with group ticket votes, a number of parties lodged preference tickets with numbering problems, and as with below the line votes, only valid preferences are counted from these tickets.

In excess of 85 percent of above the line votes had more than 30 preferences, the reverse of below the line votes where more than 85% had 30 valid preferences or less. Most below the line voters only numbered the minimum number of 15 preferences. Of votes with only 15 preferences, 10,115 were block votes for the three groups that stood a full ticket of 15 candidates. It appears that many more voters attempted to fill in all 264 squares than actually achieved the feat. Of the 649 votes with a correct sequence of 264 preferences, one was a donkey vote, starting at the top left with Peter Breen, then dutifully filling in all the remaining squares across and down the ballot paper.

Table 12: Valid Preferences per ballot paper, 1999 Legislative Council election

| Valid Preferences | 'Below the line' Votes | | 'Above the line' Votes | |
|---------------------|------------------------|------------|------------------------|------------|
| | No. of Votes | % of Votes | No. of Votes | % of Votes |
| Less than 15 | 3 892 | 3.10 | 2 669 | 0.08 |
| 15 | 68 880 | 54.84 | 55 968 | 1.64 |
| 16 – 20 | 19 873 | 15.82 | 99 319 | 2.90 |
| 21 – 30 | 16 797 | 13.37 | 373 992 | 10.93 |
| 41 – 40 | 8 020 | 6.39 | 132 671 | 3.88 |
| 41 – 50 | 2 760 | 2.20 | 34 020 | 0.99 |
| 51 – 100 | 2 920 | 2.32 | 1 475 404 | 43.11 |
| 101 – 150 | 767 | 0.61 | 114 606 | 3.35 |
| 151 – 200 | 436 | 0.35 | 165 189 | 4.83 |
| 201 – 250 | 287 | 0.23 | 0 | .. |
| 251 – 260 | 133 | 0.11 | 7 259 | 0.21 |
| 261 – 263 | 180 | 0.14 | 0 | .. |
| 264 | 649 | 0.52 | 960 956 | 28.08 |
| Totals Votes | 125 594 | | 3 422 053 | |
| Average Preferences | 23 | | 125 | |
| Median Preferences | 15 | | 81 | |

SOURCE: Calculations by author based on ballot paper data provided by State Electoral Office, and by analysis of group ticket votes lodged at the 1999 election. Includes only valid preferences, excluding duplicate and omitted numbers.

On average, below the line voters filled in only 23 preferences, though the median figure of 15 preferences may be a more meaningful measure. Amongst above the line votes, where all votes carried the number of valid preferences from the registered ticket, the average number of preferences per vote was 125. Two groups, the Communist Party and the Liberal / National Party had tickets of 264 preferences, while Labor's ticket had only 81 preferences, the Greens 101, Australian Democrats 161, One Nation 25 and the Christian Democrats 114, though this cancelled at preference 76 due to a numbering error. The registered ticket for the Responsible Gambling Party finished at the 8th preference due to a duplicated 9th preference.

Appendix - 1999 NSW Legislative Council Election

A full analysis of below the line votes for all parties can be found in Appendix 2. Explanatory notes on the terms used can be found at the start of the Appendix. However, a number of broad comments can be made on the preference strategies of different parties, and the differences between those strategies and the behaviour of below the line voters.

- The smaller the vote for parties, the more widely the preferences of below the line votes were distributed. Also, the smaller the vote, the more likely that immediate next preferences were influenced by position on the ballot paper. The Australian Democrats and Greens both received strong flows of preferences from minor parties on the top line of the ballot paper. Position on ballot paper must explain the strong leakage of Reform the Legal System preferences to the Marijuana Smokers Rights Party. This leakage almost certainly represents donkey votes. Another form of donkey voting assisted Reform the Legal System, where many voters having filled in a series of preferred parties, then appeared to start numbering remaining candidates from the top-left of the ballot paper.
- Preferences from most of the larger parties formed logical preference clusters. There was a strong swap of below the line preferences between the Greens and Australian Democrats. Both Labor and Coalition voters showed preference for the Australian Democrats over the Greens. Coalition and Christian Democrat voters showed strong preferences for each other above all other groups, though both One Nation and the Shooters Party had some appeal as preferences for more conservative voters. Most parties of the left showed strong preferences for the Greens in line with group ticket votes.
- Some parties clearly made tactical decisions on preferences that were not known to below the line voters. The Labor group ticket votes gave first preferences to Unity ahead of the Greens and Australian Democrats. Few below the line voters used such a sequence of preferences, most going directly to the Greens and Australian Democrats.
- The Australian Democrats may lodge a split ticket of preferences between Labor and Liberal, but a higher proportion of their below the line votes listed Labor ahead of the Coalition.
- There were 19 tickets with first effective preference for the Outdoor Recreation Party. One Nation, Marijuana Smokers Rights, Gun Owners and Sporting Hunters Rights, Country Party, Three Day Weekend Party, Australians Against Further Immigration, Gay and Lesbian Party, Animal Liberation, Four Wheel Drive Party, Riders' and Motorists' Party, Seniors Party, Marine Environment Conservation Party, Wilderness Party, Women's Party/Save the Forests, Australia First, Republic 2001/People First, Outside Sydney Newcastle Wollongong Party, No Privatisation Peoples Party, No Badgerys Creek Airport, Elect the President and Reclaim Australia
- Of these groups, Marijuana Smokers Right, Gay and Lesbian Party, Wilderness Party, Women's Party/Save the Forests, Australia First, Outside Sydney Newcastle Wollongong and No Badgerys Creek Airport had actually given first preference to Glen Druery of People First. Druery had also received the effective preferences of the Responsible Gambling Party, Godfrey Bigot People Before Politics and the Hotel Patrons Party. As outlined below, a number of the parties directing preferences to Jones and Druery seemed to have names that may have confused voters, with below the line votes for several heavily favouring the Greens and other parties on the centre-left.

Full details of effective preferences on ticket and below the line votes can be found for each party in Appendix 2. However, it does appear that below the line voters for some parties had very different views of what those parties stood for, compared to the registered ticket votes. The following parties displayed a considerable variation between the direction of ticket votes, and the direction of preferences for people voting below the line.

Shooters Party

Preferences on Ticket vote: (12) Australian Family Alliance, (17) Unity, (22) Registered Clubs, (28) Christian Democrats.

Below the line votes: 42.4% to One Nation, 15.3% Christian Democrats, 13.5% Liberal/National

Marijuana Smokers Rights Party

Preferences on Ticket vote: (3) Glen Druery, (8) Outdoor Recreation party

Below the line votes: 41.0% Greens, 14.0% Reform the Legal System, 11.9% Australian Democrats

Country Party

Preferences on Ticket vote: (5) Outdoor Recreation Party

Appendix - 1999 NSW Legislative Council Election

Below the line votes: 24.0% Australian Democrats, 20.9% Liberal/National, 12.4% Reform the Legal System, 10.1% One Nation

Australians Against Further Immigration

Preferences on Ticket vote: (9) Outdoor Recreation Party

Below the line votes: 42.0% One Nation, 10.1% Greens

Gay and Lesbian Party

Preferences on Ticket vote: (3) Glen Druery, (6) Outdoor Recreation Party

Below the line votes: 33.2% Greens, 28.8% Australian Democrats, 12.4% Labor Party

Animal Liberation

Preferences on Ticket vote: (11) Outdoor Recreation Party

Below the line votes: 44.3% Greens

Seniors Party

Preferences on Ticket vote: (6) Outdoor Recreation Party

Below the line votes: 20.3% One Nation, 12.6% Australian Democrats, 11.6% Christian Democrats, 10.6% Greens, 10.1% Australians Against Further Immigration

Marine Environment Conservation Party

Preferences on Ticket vote: (8) Outdoor Recreation Party

Below the line votes: 58.9% Greens, 11.3% Australian Democrats

Wilderness Party

Preferences on Ticket vote: (3) Glen Druery, (5) Outdoor Recreation Party

Below the line votes: 51.2% Greens, 12.7% Australian Democrats, 11.7% Australians Against Further Immigration

Women's Party / Save the Forests

Preferences on Ticket vote: (5) Glen Druery, (7) Outdoor Recreation Party

Below the line votes: 47.7% Greens, 11.9% Australian Democrats

Australia First

Preferences on Ticket vote: (9) Glen Druery, (10) Outdoor Recreation Party

Below the line votes: 32.4% One Nation, 21.9% Australians Against Further Immigration, 12.4% Christian Democrats

Appendix - 2003 NSW Legislative Council Election

Preferences at the 2003 NSW Legislative Council Election

(Excerpt from Antony Green, "2003 New South Wales Election – Final Analysis", NSW Parliamentary Library Research Service, Background Paper No. 6/2003, pages 53-54)

SUMMARY OF PREFERENCE DISTRIBUTIONS – LEGISLATIVE COUNCIL

The following table summarizes the distribution of preferences in the Legislative Council. Votes have been accumulated by party. The first column shows the change in party totals between Count 1 and Count 270. The final three columns show the distribution of preferences from final party candidates between Count 270 and Count 280.

Summary of Preference Distributions

| Group | Change to Count 270 | Totals at Count 270 | | Preferences Count 270 - 280 | | |
|-----------------------------------|------------------------|---------------------|--------|-----------------------------|---------|--------------------|
| | | Votes | Quota | Prefs | % Prefs | Quota |
| Greens | +164 | 151016 | 0.8928 | +17180 | 5.14 | 0.9943 |
| Christian Democrats | +426 | 113291 | 0.6697 | +7819 | 2.34 | 0.7160 |
| Labor Party | -1256 | 96512 | 0.5705 | +16802 | 5.03 | 0.6699 |
| Shooters Party | +360 | 76493 | 0.4522 | +7330 | 2.19 | 0.4955 |
| Pauline Hanson (IND) | +844 | 72212 | 0.4269 | +1773 | 0.53 | 0.4374 |
| Australian Democrats | +688 | 59182 | 0.3499 | | | Excluded Count 280 |
| One Nation NSW | +141 | 55537 | 0.3283 | | | Excluded Count 278 |
| Liberal/National Party | -1344 | 53657 | 0.3172 | | | Excluded Count 279 |
| Unity | +171 | 53150 | 0.3142 | | | Excluded Count 277 |
| Fishing/Horse Riding/4WD Party | -192 | 39123 | 0.2313 | | | Excluded Count 276 |
| Aust. Against Further Immigration | +122 | 33531 | 0.1982 | | | Excluded Count 275 |
| Save Our Suburbs | +62 | 18095 | 0.1070 | | | Excluded Count 274 |
| Reform the Legal System | +79 | 9723 | 0.0575 | | | Excluded Count 273 |
| No Privatisation People Alliance | -133 | 6519 | 0.0385 | | | Excluded Count 272 |
| Socialist Alliance | +29 | 5457 | 0.0323 | | | Excluded Count 271 |
| Ungrouped | -2434 | | | | | |
| Exhausted | +2273 | 2273 | 0.0134 | +283070 | 84.76 | 1.6868 |

Counts 1-18

After the tally of primary votes and determination of the Quota at Count 1, the next 17 counts distributed the surplus votes of candidates elected at the first count. This process elected 9 Labor members, 7 from the Liberal/National Party group and one Green, as shown below.

Counts 19-270

These counts excluded 252 candidates, including all ungrouped candidates in the final column of the ballot paper, and all but the final remaining candidate from each group. After Count 270, only 15 candidates remained in the count, representing one candidate from each group on the ballot paper.

Counts 271-280

These counts excluded the last candidate from party groups in the order shown in the table on the previous page. As can be seen, the consequence of the new group ticket voting system was that the number of preferences flowing between groups fell dramatically. Between Counts 271 and 280, 84.76% of all votes exhausted. The proportion of exhausted preferences by party at each count ranged from 62.42% for the Socialist Alliance to 85.05% for the Liberal/National Party.

24.7% of Socialist Alliance votes flowed to the Greens as preferences, 10.8% of Unity votes flowed to Labor, and 14.2% of Australian Democrat preferences flowed to the Greens. No other preference flows exceeded 10%. This is a dramatic reversal of previous elections, where the previous method of implying preferences from group ticket votes resulted in preference flows of 80-90%.

As predicted, the new voting system clearly favoured parties with the highest remaining vote after the initial election of candidates with full quotas. The order of the parties at Count 270, shown in the table

Appendix - 2003 NSW Legislative Council Election

on the previous page, is the same as when ordered by surplus quota at Count 1. Between Count 271 and Count 280, the only change to order that occurred was that the Liberal/National candidate Gerald Anderson passed the total for One Nation's Brian Burston.

Count 281

Pauline Hanson was excluded at Count 281, leaving just four candidates in the count. With four vacancies remaining to be filled, no preference distribution was required, the remaining candidates simply declared elected.

| Order Elected | Candidate | Party |
|---------------|------------------|---------------------|
| 18 | Sylvia Hale | Greens |
| 19 | Gordon Moyes | Christian Democrats |
| 20 | Tony Catanzariti | Labor Party |
| 21 | John Tingle | Shooters Party |

Unlike the 1995 and 1999 elections, preferences played almost no part in the determining the result of the election. Instead of 80-90% of preferences flowing between parties, 80-90% of votes exhausted. The election of the final vacancies was determined entirely by the number of primary votes received by each party, not by the distribution of preferences.

(Excerpt from Antony Green, "New South Wales Election Legislative Council Election 2003", NSW Parliamentary Library Research Service, Background Paper No. 7/2003, page 16)

Table 1.5 below shows that the incidence of ticket voting in 2003 was essentially the same as in 1999. The decline in the number of votes distributed as preferences came about entirely due to the change in the way group ticket votes were implied as votes for candidates on the ballot paper, not because of a change in the way people voted.

Table 1.5 - Incidence of Ticket Voting

| 2003 | No. Cands. | % Vote | % of Party Vote for | | |
|-----------------------------------|------------|--------|---------------------|---------------|---------------|
| | | | Ticket Vote | 1st Candidate | Rest of Group |
| Labor Party | 18 | 43.54 | 99.2 | 0.5 | 0.3 |
| Liberal/National Party | 19 | 33.30 | 99.0 | 0.7 | 0.3 |
| Greens | 21 | 8.60 | 96.4 | 3.1 | 0.5 |
| Christian Democratic Party | 15 | 3.03 | 95.3 | 4.1 | 0.6 |
| Shooters Party | 21 | 2.05 | 96.2 | 3.4 | 0.4 |
| IND - Pauline Hanson | 17 | 1.92 | 82.3 | 17.5 | 0.2 |
| Australian Democrats | 19 | 1.57 | 95.9 | 3.0 | 1.1 |
| One Nation NSW | 16 | 1.49 | 97.8 | 1.6 | 0.6 |
| Unity | 18 | 1.42 | 98.5 | 1.1 | 0.3 |
| Fishing/Horse Riders/4WD | 21 | 1.06 | 96.6 | 1.5 | 1.9 |
| Aust. Against Further Immigration | 15 | 0.90 | 97.2 | 2.0 | 0.8 |
| Save Our Suburbs | 21 | 0.48 | 95.8 | 2.6 | 1.6 |
| Reform The Legal System | 15 | 0.26 | 93.7 | 4.7 | 1.6 |
| No Privatisation People's Party | 20 | 0.18 | 91.1 | 3.2 | 5.8 |
| Socialist Alliance | 21 | 0.15 | 91.0 | 5.8 | 3.3 |
| Ungrouped | 7 | 0.07 | 0.0 | 35.9 | 64.1 |
| 2003 Total | 284 | | 98.16 | 1.41 | 0.42 |
| 1999 Total | 264 | | 96.19 | 3.29 | 0.52 |

Appendix - 2007 NSW Legislative Council Election

Preferences at the 2007 NSW Legislative Council Election

(Excerpt from "New South Wales Legislative Council Election 2007", NSW Parliamentary Library Research Service, Background Paper No. 1/2009, pages 18-19)

Summary of Counts 317-330

As explained in the description of the counts provided on the preceding pages, the last candidate from each party group was excluded between Counts 317 and 330. The consequence of the voting system introduced after the 1999 election is that the number of preferences flowing between groups has fallen dramatically at the 2003 and 2007 elections. Table 1.5 summarises the overall flow of preferences between Count 317 and Count 330. In total, 83.44% of all votes exhausted during these counts, with no single party receiving more the 5% of preferences distributed.

Table 1.5 - Summary of Preference Distributions

| Group | Change to Count 316 | Totals at Count 316 | | Preferences Count 316-330 | | |
|--------------------------|------------------------|---------------------|--------|---------------------------|---------|--------|
| | | Votes | Quota | Prefs | % Prefs | Quota |
| Christian Democrats | +440 | 168985 | 0.9754 | 5510 | 1.70 | 1.0073 |
| Labor Party | -1041 | 104766 | 0.6047 | 14901 | 4.60 | 0.6908 |
| Shooters Party | +76 | 106589 | 0.6153 | 9546 | 2.94 | 0.6704 |
| Liberal/National Party | -948 | 90545 | 0.5227 | 14956 | 4.61 | 0.6090 |
| Australian Democrats | +584 | 68578 | 0.3959 | 8800 | 2.71 | 0.4467 |
| A.A.F.I. | +75 | 62461 | 0.3605 | | | |
| Fishing Party | -45 | 58295 | 0.3365 | | | |
| Unity | +35 | 46088 | 0.2660 | | | |
| Restore Worker's Rights | +93 | 35311 | 0.2038 | | | |
| Group A (Carers Care) | -519 | 25423 | 0.1468 | | | |
| Horse Riders/Outdoor Rec | -64 | 21505 | 0.1241 | | | |
| Group F (Climate Change) | +89 | 19088 | 0.1102 | | | |
| Human Rights Party | +133 | 16905 | 0.0976 | | | |
| Socialist Alliance | +45 | 15187 | 0.0877 | | | |
| Save Our Suburbs | +22 | 11973 | 0.0691 | | | |
| Ungrouped | +118 | 5443 | 0.0314 | | | |
| Group M | -18 | 3446 | 0.0199 | | | |
| Group H | +6 | 3149 | 0.0182 | | | |
| Greens | -1070 | 0 | 0 | | | |
| Group D | -456 | 0 | 0 | | | |
| Exhausted | +2445 | 2445 | 0.0141 | 270561 | 83.44 | 1.5759 |

Note: Change in vote total in the first column includes the quotas for elected candidates.

This is a dramatic reversal of pre-2003 elections, where the old group ticket voting method resulted in preferences flows of 80-90%. (See NSW Parliamentary Library Research Service Background Papers, "NSW Legislative Council Election 1995" (1996/2)" and "NSW Legislative Council Election 1999" (2000/2).)

As predicted, the new voting system clearly favoured parties with the highest surplus to full quota votes after the initial election of over-quota candidates. (See Library Background Paper "Prospects for the 2003 Legislative Council Election" (2003/3)) The order of the parties at Count 316 was the same as when ordered by surplus quota at Count 1. Between Count 316 and Count 330, the only change to order that occurred was that Labor's Mick Veitch pass the Shooters Party's Roy Smith.

Unlike the 1995 and 1999 elections, preferences played almost no part in determining the result of the election. As had occurred in 2003, around 80-90% of preferences exhausted at the exclusion of each candidate. The election of the final four vacancies was determined essentially by the number of primary votes received by each party, not by the distribution of preferences.

The data in Table 1.6 below shows that the incidence of ticket voting in 2007 and 2003 was essentially the same as in 1999. The decline in the number of votes distributed as preferences came

Appendix - 2007 NSW Legislative Council Election

about entirely due to the change in the way group ticket votes were implied as votes for candidates on the ballot paper, not because of a change in the way people voted.

The one caveat on this observation is that the top six polling parties never had a candidate excluded who at that point held the balance of the group ticket votes. When other parties were excluded, only 10-20% of voters had directed preferences. The top six parties all distributed how-to-vote material recommending preferences, so it may be that a higher proportion of Labor, Liberal/National, Green Christian Democrat, Shooters Party and Australian Democrat voters would have used the new voting option.

There was little difference between the incidence of ticket voting in 2007 and its incidence at previous election.

Table 1.6 - Incidence of Ticket Voting

| 2007 | No. Cands. | % Vote | % of Party Vote for | | |
|-----------------------------------|---------------|--------|---------------------|---------------|---------------|
| | | | Ticket Vote | 1st Candidate | Rest of Group |
| Labor Party | 18 | 39.14 | 99.01 | 0.60 | 0.39 |
| Liberal / National Party | 15 | 34.22 | 99.10 | 0.57 | 0.33 |
| Greens | 21 | 9.12 | 97.05 | 2.45 | 0.50 |
| Christian Democratic Party | 21 | 4.42 | 96.69 | 3.00 | 0.31 |
| Shooters Party | 19 | 2.79 | 97.77 | 1.86 | 0.37 |
| Australian Democrats | 16 | 1.78 | 95.04 | 4.17 | 0.79 |
| Aust. Against Further Immigration | 15 | 1.64 | 96.82 | 2.42 | 0.76 |
| Fishing Party | 20 | 1.53 | 97.69 | 1.59 | 0.72 |
| Unity | 18 | 1.21 | 98.55 | 1.02 | 0.43 |
| Restore Worker's Rights | 18 | 0.92 | 97.63 | 1.58 | 0.80 |
| Group A (Carers Care) | 16 | 0.68 | 91.50 | 5.05 | 3.45 |
| Horse Riders/Outdoor Recreation | 15 | 0.57 | 96.97 | 1.49 | 1.54 |
| Group F (Climate Change Coal) | 21 | 0.50 | 89.99 | 7.85 | 2.15 |
| Human Rights Party | 15 | 0.44 | 95.99 | 2.74 | 1.27 |
| Socialist Alliance | 16 | 0.40 | 96.72 | 2.27 | 1.01 |
| Save Our Suburbs | 17 | 0.31 | 96.13 | 2.55 | 1.31 |
| Ungrouped | 7 | 0.14 | 0.00 | 83.76 | 16.24 |
| Group M | 15 | 0.09 | 94.00 | 2.60 | 3.41 |
| Group H | 15 | 0.08 | 95.04 | 2.13 | 2.83 |
| Group D | 15 | 0.01 | 0.00 | 74.12 | 25.88 |
| 2007 totals | 333 | | 98.28 | 1.24 | 0.47 |
| 2003 Total | 284 | | 98.16 | 1.41 | 0.42 |
| 1999 Total | 264 | | 96.19 | 3.29 | 0.52 |

It is not known how many people in 2007 used the 'above the line' preference option introduced before the 2003 election. Given the high rate of exhausted preferences, it seems unlikely that its use could have been above 20% for any of the parties that were excluded during the count. It may have been higher for the six highest polling parties, but it is impossible to know as no remaining lead candidate of these groups has their preferences distributed.

Appendix - 2011 NSW Legislative Council Election

Preferences at the 2011 NSW Legislative Council Election

(Excerpt from Antony Green, "New South Wales Legislative Council Election 2011", NSW Parliamentary Library Research Service, Background Paper No. 3/2011, pages 45-46)

Incidence of Ticket Voting

| Party/Group | No. Cands. | % Vote | Above the Line Votes | | Below the Line Votes | |
|----------------------------------|------------|--------|----------------------|------------|----------------------|--------|
| | | | No Prefs | With Prefs | No.1 Cand | Others |
| Liberal/National (A) | 15 | 47.68 | 82.88 | 16.12 | 0.65 | 0.35 |
| Labor/Country Labor (H) | 18 | 23.73 | 88.58 | 9.99 | 0.60 | 0.83 |
| The Greens (I) | 21 | 11.12 | 77.60 | 19.68 | 2.12 | 0.61 |
| Shooters and Fishers (P) | 18 | 3.70 | 82.56 | 15.80 | 1.31 | 0.33 |
| Christian Democrat Party (F) | 20 | 3.12 | 67.54 | 29.76 | 2.17 | 0.53 |
| Independent - Pauline Hanson (J) | 16 | 2.41 | 68.21 | 11.27 | 20.40 | 0.12 |
| Family First (G) | 19 | 1.46 | 78.12 | 19.36 | 1.86 | 0.67 |
| The Fishing Party (O) | 21 | 1.33 | 80.19 | 18.24 | 1.18 | 0.39 |
| Independent - John Hatton (C) | 21 | 1.29 | 69.54 | 14.96 | 14.60 | 0.90 |
| No Parking Meters Party (B) | 18 | 1.21 | 74.80 | 22.95 | 1.43 | 0.82 |
| Australian Democrats (L) | 18 | 0.84 | 76.52 | 18.77 | 3.61 | 1.11 |
| Outdoor Recreation Party (D) | 16 | 0.77 | 76.65 | 21.38 | 1.04 | 0.93 |
| Restore the Workers' Rights (N) | 15 | 0.43 | 80.19 | 17.71 | 1.22 | 0.89 |
| Save Our State (E) | 18 | 0.33 | 79.03 | 17.61 | 1.70 | 1.66 |
| Socialist Alliance (K) | 21 | 0.26 | 66.08 | 28.17 | 3.51 | 2.24 |
| Building Australia (M) | 18 | 0.22 | 79.72 | 17.13 | 1.42 | 1.72 |
| Ungrouped candidates | 18 | 0.11 | 0.00 | 0.00 | 14.18 | 85.82 |
| Election Totals | 311 | | 82.16 | 15.59 | 1.62 | 0.62 |

Comment: 2.24% of formal votes were completed below the line and 97.76% above the line. Only 15.59% of votes were above the line votes with preferences. The highest rate of below the line votes was for the Independents groups headed by Pauline Hanson and John Hatton. The highest incidence of above the line votes with preferences was 29.76% for the Christian Democratic Party, while only 9.99% of Labor votes were above the line votes with preferences, 88.58% of Labor votes being single '1' above the line votes.

Summary of Legislative Council Preference Distributions

| Party/Group | Change to Count 296 | Totals Count 296 | | Counts 297-307 | | Totals Count 307 | |
|--------------------------|---------------------|------------------|--------------|----------------|-------|------------------|--------|
| | | Count 296 | Votes Quotas | Prefs | % | Votes | Quotas |
| Shooters and Fishers | +419 | 151,160 | 0.8159 | +14,952 | 4.00 | 166,112 | 0.8966 |
| Christian Democrat Party | +175 | 127,408 | 0.6877 | +7,396 | 1.98 | 134,804 | 0.7276 |
| Ind - Pauline Hanson | +853 | 98,896 | 0.5338 | +4,139 | 1.11 | 103,035 | 0.5561 |
| Liberal/National | -1,330 | 89,176 | 0.4813 | +15,165 | 4.06 | 104,341 | 0.5632 |
| The Greens | -273 | 82,304 | 0.4442 | +23,168 | 6.20 | 105,472 | 0.5693 |
| Family First | +127 | 59,767 | 0.3226 | | | | |
| The Fishing Party | +71 | 54,324 | 0.2932 | | | | |
| Ind - John Hatton | +657 | 53,171 | 0.2870 | | | | |
| No Parking Meters Party | +183 | 49,612 | 0.2678 | | | | |
| Labor/Country Labor | -646 | 40,226 | 0.2171 | | | | |
| Australian Democrats | +327 | 34,373 | 0.1855 | | | | |
| Outdoor Recreation Party | -14 | 31,265 | 0.1688 | | | | |
| Restore Workers' Rights | +22 | 17,683 | 0.0954 | | | | |
| Save Our State | -7 | 13,572 | 0.0733 | | | | |
| Socialist Alliance | +43 | 10,662 | 0.0575 | | | | |
| Building Australia | +30 | 9,088 | 0.0491 | | | | |
| Ungrouped | -4,316 | 0 | | | | | |
| Exhausted | +3,679 | 3,679 | 0.0199 | +308,923 | 82.66 | 312,602 | 1.6872 |

Appendix - 2011 NSW Legislative Council Election

Comment: Counts 12-18 distributed the preferences of the leading candidates on the Coalition, Labor and Green tickets, electing 10 Coalition, five Labor and two Green MLCs. Four vacancies remained to be filled, the count continuing by the successive exclusion of the lowest polling candidates in the count and the distribution of each candidate's preferences.

By the end of Count 296 only 16 candidates remained in the count, one from each group on the ballot paper. These candidates were the 11th Coalition candidate, 6th Labor candidate, 3rd Green candidate and the lead candidate for the other 13 groups on the ballot paper. The total votes for each candidate at the end of Count 296 includes a total of above the line ballot papers for each group.

In the above table, the column headed 'Change to Count 296' shows the change in vote tally for the remaining candidate in each group compared to the initial tally of first preference votes for each group, taking account of the quotas set aside for elected candidates. This column represents the leakage of below the line votes from the total first preference votes for each group.

The table lists parties in descending order of votes at the end of Count 296. The table shows the total of votes for each candidate as well as the fraction of a quota those votes represent.

Counts 297 to 307 excluded 11 candidates beginning with Ray Brown of Building Australia and finishing with Gordon Moyes of Family First. How the preferences on ballot papers distributed in these counts flowed is shown in the column headed 'Counts 297-307'. A total of 373,743 ballot papers were distributed in this period, 82.66% of ballot papers exhausting preferences before reaching one of the five candidates remaining in the count at the end of Count 307.

Of the ballot papers distributed between Counts 297 and 307, 6.20% flowed to the final Green candidate Jeremy Buckingham, 4.06% to the remaining Coalition candidate Sarah Johnston, while Independent Pauline Hanson attracted only 1.11% of preferences.

Hanson was in 20th place until the final distribution at Count 307 when she was passed by Buckingham and Johnston. At the end of Count 306 Hanson had led Buckingham by 190 votes and Johnston by 1283 votes. The exclusion of final Family First candidate Gordon Moyes saw 64,738 votes distributed. Of these 52,101 (80.48%) exhausted, 3158 (4.88%) flowed to Johnston, 3196 (4.94%) flowed to Buckingham but only 569 (0.88%) to Hanson.

This was just enough preference flows to change the order of the three remaining candidates. After leading throughout the count, Count 307 left Hanson 2437 votes behind Buckingham and 1306 behind Johnston. Hanson was now in 22nd place and excluded at Count 308. With only four candidates remaining and four vacancies to fill, the remaining candidates were declared elected without Hanson's preferences being distributed.

The current Legislative Council group voting option has now been used for three elections. At all three elections it has seen a massive exhaustion of preferences during the final stages of the count, 82.66% in 2011, 83.44% in 2007 and 84.76% in 2003.

In 2003 and 2007 the high rate of exhausted preferences meant that preferences played no part in determining the final result. At both elections it was possible to determine the order of election for candidates from the first preference votes.

In 2011 the race for the final seats was determined by preferences. There were just enough preferences to change the order of final candidates, Jeremy Buckingham and Sarah Johnston passing Pauline Hanson on preferences, but not until the very last distribution of preferences.

As in 2003 the final four candidates were declared elected with less than a quota of votes. Three candidates were elected in this way in 2007. In 2003 the Shooters Party won the final seat with 0.4955 quotas, leading Pauline Hanson by 0.0581 quotas. In 2011 Hanson polled more votes with 0.5561 quotas before falling short of the final seat by 0.0071 quotas.

Hanson lodged a case before the Court of Disputed Returns challenging the result, but the case was dismissed after documents claiming impropriety by the Electoral Commission were found to have been concocted.