

Submission to the Joint Standing Commission on Electoral Matters:

Inquiry into and report on all aspects of the 2019 Federal Election and matters related thereto

Dr Kevin Bonham, 18 Sep 2019

Summary/Introduction

The 2019 federal election was the first half-Senate election since reforms to Senate voting were implemented prior to the 2016 Senate election.

Many negative predictions were made concerning this system, and all of those that I am aware of and that were testable in 2016 were disproven or shown to be exaggerated then. As noted in my 2016 submission, the new system was highly successful.¹

Some predictions could not be tested in 2016 as they related only to half-Senate elections. However, concerns about half-Senate elections under the new system have now also proved to be groundless.

However, the 2019 election has highlighted one important area that I was not previously aware of in which improvements should be made: the treatment of non-party Senate groups. There is overwhelming evidence that the use of blank boxes above the line for such groups disadvantages candidates running in such groups and confuses voters.

In general, I was very impressed with the AEC's performance in successfully turning around the 2019 election in the time frame available.

I have not commented on some current proposals for electoral changes (division of state Senate contests into districts and malapportionment of one or both Houses) to address perceived rural representation issues, as they are not strictly relevant to the 2019 election. However, I can do so on request if required. At this stage, I do not support any such changes and I utterly condemn any proposal to malapportion the House of Representatives or increase the malapportionment of the Senate. That is not to say the problems don't exist, but other solutions can and should be found.

I expect to be available to attend a sitting in Hobart if desired.

¹ Submission 74 <https://www.aph.gov.au/DocumentStore.ashx?id=e9047f62-a269-44d9-b46a-93d02761d902&subId=459553>

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Recommendations

1. 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)**”
2. (*Recurring – see 2016 submission for reasons*) 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.
3. That the display of electoral material that mimics Australian Electoral Commission material be banned under the Electoral Act. Material should be illegal if, given the appearance of the material and its contents, it is capable of confusing a reasonable person into incorrectly believing it is an official voting instruction from the AEC.
4. That savings provisions be adopted for the House of Representatives to save any vote on which all boxes are numbered in a clear order but with gaps in sequence.
5. That a technical report be commissioned on further options for savings provisions for the House of Representatives, especially those that would enable more votes with errors to be assigned as full sequences.
6. (*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.
7. That the accuracy of capture of Senate preferences be subject to a publicly released independent audit.
8. That consideration be given to creating a formal post-nomination withdrawal-of-endorsement process in a way leading to voters being officially informed that a candidate is no longer endorsed by the listed party.

Author background

I am a Tasmanian-based political analyst with 31 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 was widely interviewed in the local and national presses in the leadup to recent elections including the last three Australian federal elections and various state 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 is mainly in an area of science unrelated to politics and elections, but my tertiary qualifications include a major in Political Science. A substantial minority of my paid work now relates to electoral and polling analysis, for electoral authorities and sometimes candidates. I am writing this submission in a private capacity and am not a member of, associated with or strongly supportive of, any political party.

1. How did the new Senate system fare at a half-Senate election?

1.1 Falsified predictions of Senate reform opponents

In my 2016 submission I provided evidence that the new Senate system had addressed all of the problems I had identified in 2013, with the exception of oversized ballot papers. The 2019 election saw some improvement in reducing the number of Senate parties and candidates. However, it is not clear to what extent the improvement was caused by increased deposits and to what extent by parties realising that they cannot get elected from small vote shares.

I also provided a list of predictions about the new system that had been falsified in 2016. Some predictions that were made were specific to half-Senate elections, though half-Senate results for the 2016 election could be extrapolated. These predictions included:

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

Two minor parties – Pauline Hanson’s One Nation in Queensland and Jacqui Lambie Network in Tasmania – won one seat each, both very comfortably. This is less than the five seats that would have been won in 2016 but nonetheless shows again that minor parties can be competitive under the current system. One Nation also finished seventh in four states and would have been very competitive in Tasmania had Senator Lambie not contested.

**** 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***

The Coalition failed to win three seats in one state (Tasmania) even though it won the election. The Coalition won 19 seats and had the 2016 election been a half-Senate election it would have won 16-17 seats² in 2016. Taking into account that two Coalition Territory Senators retire at each election, it would have had 33-34 seats from two consecutive victories. It is hardly likely therefore that it would win 38 seats from two results that included a loss in the foreseeable future.

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

The effective exhaust rate nationwide was slightly down (from 5.1% to 4.8% as a total of vote values in each case) after taking into account cases where counts were thrown beyond the point necessary to determine the result. Effective exhaust rose in Victoria (5.2% to 7%) and South Australia (2.0% to 2.3%, 3.2% after an irrelevant exclusion)

² In my 2016 submission I suggested the 2016 results at a half-Senate election would have been those of the s282 recount, in which the LNP would have won three seats in Queensland, Labor 2 and One Nation 1. However, in further modelling of this, I found that the impact of excluding votes that preferred no winning candidate on the quota in the s282 recount was such that in an election without that feature, the Greens might have very narrowly won at the expense of the third LNP seat.

and fell in NSW (7.3% to 5.6%), Queensland (4.2% to 3.9%), Tasmania (2.8% to 1.9%) and WA (3.6% to 2.0%, which became 3.4% after an irrelevant exclusion). It was 0.1% in ACT and zero in the NT.

1.2 Proportionality

Half-Senate elections are by their nature somewhat less proportional than full-Senate elections. As noted in my 2016 submission, the 2016 election delivered an incredibly proportional result after accounting for state-based malapportionment and excluding the Territories (which by returning only two Senators each, are skewed to the major parties.)

The following table shows the distribution of State seats as compared to each party's average of state vote shares. This measure, which I also used in my 2016 submission, compensates for the Senate's state-based malapportionment:

	%	Seats	Seats%
Coalition	37.69	17	47.22
Labor	28.68	11	30.56
The Greens	10.76	6	16.67
Pauline Hanson's One Nation	5.38	1	2.78
United Australia Party	2.49	0	0
HEMP	1.73	0	0
Shooters, Fishers and Farmers	1.57	0	0
Jacqui Lambie Network	1.49	1	2.78
Animal Justice Party	1.34	0	0
Liberal Democrats (LDP)	0.96	0	0
Australian Conservatives	0.85	0	0
DLP - Democratic Labour Party	0.68	0	0
FACN	0.64	0	0
Derryn Hinch's Justice Party	0.47	0	0
Centre Alliance	0.43	0	0
Christian Democratic Party	0.35	0	0
Others	4.49	0	0

The result is not as remarkably proportional as the 2016 result when measured in this way. However, the result is still reasonably fair overall:

* The overall result is fair in a left-right contest sense, in that the right (Coalition plus One Nation) won 18 state seats to the left's 17 (Labor plus Greens) with one Senator not easily classifiable as either (Lambie), as a result of an election at which the Coalition narrowly won the House of Representatives 2PP.

* No party that averaged more than 1/36th of the state vote failed to win a seat and only one party that averaged less than that won one. (Jacqui Lambie Network only contested one state.)

* The Coalition is slightly more over-represented as a difference than Labor and the Greens combined, but this is offset by One Nation being under-represented and also by more votes going to right-wing parties that won no seats than left-wing parties that won no seats.

* One Nation are under-represented, but this is partly because Senator Lambie, who has a strong appeal to One Nation voters, won a seat they may have won had she not stood.

* Labor has overperformed its average vote share to a smaller degree than the Coalition and the Greens (all these parties are expected to overperform compared to primary vote share because they gain preferences from excluded micro-parties.) The reason for this is that in this case Labor tended to have small excesses over quota, which they then failed to convert to an extra seat. In one case where their excess over quota was reasonably large (Queensland) there happened to be three competing parties ahead of them, and their preferencing performance was not strong enough to overtake other parties.

* Most critically, no party won a seat off a trivially small primary vote share, as parties can do by backroom preference trading under Group Ticket Voting systems. Every elected candidate won based on serious primary (and where necessary, preferential) voter support for their party in their state.

Had the 2019 election been a double dissolution, I estimate the results as follows: Coalition 31 seats (29 state seats), Labor 25 (23 state seats), Greens 8-11, One Nation 5-7, Lambie 1, Shooters Fishers and Farmers probably 1, United Australia 0-2, Hinch Justice 0-1, Centre Alliance 0-1. In this scenario all of the Coalition, Labor, Greens and One Nation would probably receive a few percent more state seats than their average state vote share, all parties averaging at least 1/72 of the vote per state would probably win seats, and very few parties averaging below that level would win seats. This outcome would repeat the remarkably proportional nature of the 2016 result.

2. Other Senate issues

2.1. Unlabelled group boxes for non-party groups

Candidates can run in groups for the Senate without belonging to parties in order to gain an above the line box and obtain above-the-line preferences, which are very important to success in the new Senate system. The ability to run such campaigns is important because (i) candidates should be able to campaign for the Senate without being part of a political party (ii) in some cases a specific issue, or an expulsion from a party, might cause a candidate to want to run, but to be motivated to do so at a time too late for a party to be formed as a vehicle for them.

In the 2016 Senate election there were no significant non-party groups, but in the 2019 election there were three significant highish-profile non-party group candidates: Anthony Pesec (ACT), Craig Garland (Tas) and Hetty Johnston (Qld). The latter two polled conspicuously poorly on primary votes, but there was much more evidence that these candidates were all disadvantaged than just that:

* There were several anecdotal reports by ACT voters that they were told by AEC staff that they could not vote for Pesec above the line, although they could.

* There were some anecdotal reports of voters in Tasmania looking for Garland above the line, not finding him and therefore not voting for him.

* All three candidates recorded a very high share of their vote in BTLs - 48% for Johnston, 66% for Pesec and 80% for Garland. While they would have all had some appeal to voters likely to vote BTL, this is also compatible with voters avoiding their boxes above the line because they did not think those boxes could be used. Some such voters may then have voted for them below the line, but others may not have voted for them at all.

* 54% of ACT above the line voters left the Pesec box blank, although there were only seven boxes in the ACT. Of these, 40% had Fraser Anning's Conservative Nationalists 6th – a popular choice for last place nationwide - suggesting that many voters thought they were putting FACN last but didn't think the Pesec square could be numbered.

* ACT above-the-line Greens voters "preferred" the Liberals to Pesec 62.4-35.9, and above-the-line Labor voters "preferred" the Liberals to Pesec 64.6-32.3. (This was typically because they left Pesec's box blank.) But below the line voters for the Greens' Penny Kyburz preferred Pesec to the Liberals' Zed Seselja 85.5-13.3 and those for Labor's Katy Gallagher did so 75.1 to 22.7. Clearly many above the line left-wing voters left the Pesec box blank only because they did not think that they could number it.

* In Tasmania, Garland was preferenced #2 above the line on both Labor and Green how-to-vote cards, and Garland was a natural preference destination (maybe not as high as 2 necessarily) for supporters of both parties. However only 12.3% of Labor ATL voters preferenced Garland anywhere at all, including last, and only 24% of Greens voters - who one would expect to be able to work this out especially in Tasmania - did. Overall only 10.3% of ATL voters numbered the Garland group box at all, compared to FACN and the obscure Citizens Electoral Council in the high teens and all other parties over 30%.

* Although the Garland/Duncan group was placed last by only 1.7% of below the line voters who voted all the way, it was placed last by 20% of the 6884 voters who numbered all boxes above the line. (There was remarkably little ideological skew among voters doing this.) Another 6645 voters numbered all boxes bar one above the line, and in 81% of these cases it was the unnamed Garland group that was omitted.

It is completely obvious from these matters that many voters are skipping the blank above the line boxes for these candidates because they don't look right compared to the others, and hence the voters do not realise they can be numbered.

This should be fixed by allowing such candidates to have some kind of group label. I don't think it should be a label that sounds like a party name (lest this imply that the candidates are a party when they are not) or that it should contain the word "independent" (since many "non-party" groups actually represent unregistered

parties.) Rather, a neutral description such as, in the Tasmanian case, GROUP O (GARLAND/DUNCAN), would enable non-party groups to have a clearly labelled above the line box and would give them a better chance of getting a reasonable preference flow.

2.2 Senate auditing

JSCEM previously made recommendations about auditing of the Senate ballot capture process, on which no action was taken. In the end, this Senate election was not close in any State and as a result the accuracy or otherwise of ballot capture would not have made any remotely significant difference to the margins. However, we should know if possible that the system would be robust enough to withstand challenge in the event of a seat someday being decided by a very small number of votes. In this regard, on studying the files of recorded votes I was intrigued to find that some voters were apparently casting votes that followed a party's how-to-vote card, except for omitting one party. It is entirely possible voters did this deliberately because they did not like that party (and unaware it would cause their vote to exhaust), but I also wondered if such votes may ever have contained a character that did not scan or was not recorded properly.

2.3 Voters voting both above and below the line

Some voters continue to vote both above and below the line. In the Group Ticket system some voters did this as a reserve option so that if their below-the-line vote was informal because of a mistake, their above-the-line vote would be saved. Now this is no longer necessary.

However, study of these votes reveals some interesting patterns. In Tasmania, about 2.6% of Senate voters voted formally both above and below the line, with the below the line vote overwriting the above the line vote. A further 1.0% voted formally above the line but informally below the line. Of those who vote formally both above and below the line, a substantial percentage vote 1 for candidates from different parties above and below the line.

A particular quirk of the rules regarding double-marked votes as applied to the new Senate system is that a voter can overwrite their above the line vote with a less informative below the line vote. For instance, a voter may vote for six parties above the line but 1-6 for candidates of a single party below the line. The outcome is that the vote could exhaust earlier. 79 Tasmanian voters who voted 1-6 for the six Labor candidates in order below the line (and then stopped) did this.

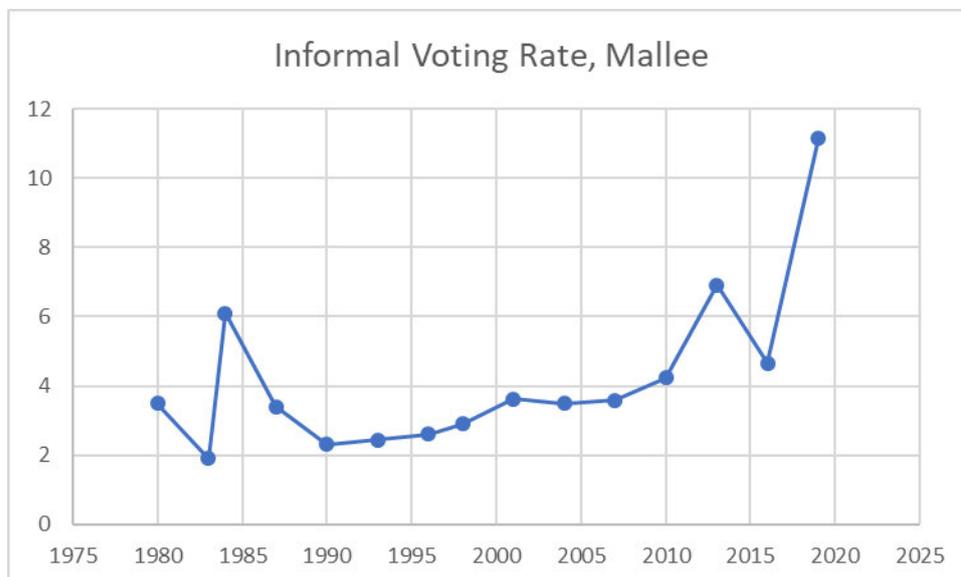
Inefficient below the line voting by some voters was also noted. For instance Tasmanian voters often cast votes that stop at 12 and that run down the order of the candidates from two or three different parties. Such a voter could cast a more effective vote by voting above the line 1-2 or 1-3 for their chosen parties and then preferencing other parties as well to the extent they wish to do so. There were at least several hundred such Tasmanian Senate votes, but very probably thousands if not tens of thousands.

I note these matters without any specific recommendation. Further voter education may be justified, or it may be that a lot of voters will never pay attention to it no matter how much money is spent.

3. House of Representatives issue: informal voting

The rate of informal voting for the House of Representatives, as a product of a lack of even remotely adequate savings provisions, remains a national disgrace. Of particular note are the very high informal votes in the conventionally problematic NSW electorates (Blaxland 13.3%, Fowler 13.11%, Watson 12.61%, McMahon 12.08%, Werriwa 11.57%, Lindsay 11.08%) but also the huge informal rate in Mallee, Vic (11.16%), which attracted the largest number of candidates in the nation (13).

As the following graph shows the informal rate in Mallee is unprecedented in this electorate:



I am much impressed by the view sometimes expressed by Antony Green along the lines that Australians did not fight in wars for the freedom to have their vote disallowed because of numbering errors involving irrelevant candidates.

The informal rate in the House of Representatives results from inflexibility – any vote that contains any error in sequence other than leaving the last square blank is invalidated entirely even if the error would have had no impact on the outcome.

There is some reluctance to support savings provisions that would allow a vote to exhaust. However, some progress could be made without allowing any votes to exhaust by:

1. Treating a vote with gaps in sequence but no other defects (for instance if there are six candidates and the voter has numbered 1, 2, 4, 6, 7, 8) as if there was no gap in sequence (this vote would be treated as 1, 2, 3, 4, 5, 6)
2. Finding a method to arbitrarily assign an order in cases where a voter had expressed tied preferences. For instance, if there are six candidates and the

voter has numbered 1, 2, 3, 3, 5, 6, the vote might be arbitrarily assigned as either (1, 2, 3, 4, 5, 6) or (1, 2, 4, 3, 5, 6).

3. Finding a method to arbitrarily assign an order for remaining candidates in cases where a voter had numbered at least six boxes correctly but omitted at least two boxes. (Such a voter has probably been confused into voting in the same way as the Senate).

An example of an arbitrary procedure for breaking ties caused by duplicated numbers or excessive blank boxes would be to break ties from the top down in a booth that has an odd number and from the bottom up in a booth that has an even number. However the constitutionality of this method would have to be considered. Another option for addressing informal voting without creating exhaust is the South Australian lodged-ticket method.

Method 1 was recommended by Antony Green in the previous cycle and should be adopted at the very least.

4. General Issues

4.1 Material that mimics AEC signage

Court challenges are pending against the use of Liberal Party signs in Mandarin that were placed close to AEC signage and adopted a similar colour scheme. The Court of Disputed Returns will determine whether the posters contravened the Electoral Act and if so whether the results in Chisholm and Kooyong should be voided.

Signs that mimic official electoral signage are a problem in many jurisdictions. They may in theory be covered by existing legislation, but the law regarding misleading electors in relation to the casting of their vote is both narrow and somewhat vague. Furthermore, challenges may fail if there is doubt about whether the result would have been affected.

Without expressing any view on whether the signs in this case did breach the Electoral Act, I would like to see a specific provision in the Electoral Act preventing signage that could reasonably be mistaken for an official instruction from the AEC. Especially we should bear in mind that some voters come from countries that do not have strong and independent democratic institutions.

4.2 Ineligible candidates

It was obvious that dozens (at least) of uncompetitive candidates at this election were likely to be ineligible to serve as Members of Parliament under Section 44. Examples include candidates whose only submitted evidence of renunciation of citizenship was an application made too late to be processed.

While the new questionnaire system has the advantage of encouraging candidates to put material on the public record based on which voters can consider a candidate's eligibility, I also think that an election is trivialised and brought into some disrepute when so many candidates are obviously ineligible. I have no specific

recommendation but hope this will be taken into account in the broader debate about reforming Section 44 and/or nomination processes.

4.3 Withdrawn candidates post-nomination

At this election, ten candidates lost the informal endorsement of the parties that nominated them after the close of nominations. Such cases were variously described as the candidate withdrawing, resigning or being disendorsed. Mostly this happened as a result of candidates being found to have made embarrassing social media posts, sometimes many years previously. At the last few decades of elections combined there have only been a few such cases to my knowledge, with the most notable one involving now Senator Hanson who was elected MHR for Oxley after being disendorsed by her party in 1996.

Only one of the 2019 cases involved an ostensibly competitive candidate in a marginal seat (Lyons). Based on the results in that seat compared with the other seats taking in northern Tasmania there is strong evidence that the disendorsement of the candidate and/or the circumstances surrounding it damaged the candidate's vote.

Nonetheless, the fact that Lyons was still reasonably close on a 2PP basis (55.2% to Labor, a 1.35% swing) does make me concerned that potentially a disendorsed candidate could in the future "do a Hanson" and be elected, without a true mandate from voters because many voters would have mistakenly thought the candidate was still endorsed by a major party. This risk is increased by the high level of pre-poll voting.

Obviously, reprinting ballot papers is impractical. However, I think it is worthwhile considering whether there should be an official process for parties to formally withdraw their nomination of a candidate after the close of nominations and for this to be communicated to voters by the AEC in some cost-effective manner.

4.4 Polling failure

I make some brief comments about the failure of opinion polling at the 2019 election in case they are of interest. More detail can be found in several articles on my website.³

All public national opinion polls at the 2019 election failed. They failed primarily by having the Coalition primary vote too low and the Labor (or in Ipsos' case Greens) primary vote too high. A review is underway in which I am not currently involved. I consider the following to be the most likely factors to have contributed to the polling failure:

- Oversampling of respondents who were either highly educated or unusually politically engaged, and failure to scale for this.

³ See especially <http://kevinbonham.blogspot.com/2019/05/the-miracle-is-over-2019-australian.html> and <http://kevinbonham.blogspot.com/2019/05/oh-no-this-wasnt-just-average-polling.html>, also other site articles with the tag "#auspollfail".

- An unusually strong break to the Coalition of respondents who are disengaged from politics and who will not be reached by pollsters by any means.
- Herding and/or self-herding, in which subjective decisions made by some pollsters may be influenced (including subconsciously) by 2PP results from other polls, 2PP results from previous polls by the same pollster and general expectations.

I generally discount various other claimed explanations including “late swing” and “shy Tories” as inconsistent with the evidence of this and other recent elections.

Australian polling is remarkably opaque compared to polling in, for instance, the UK. It is too early to say whether the failure will result in much more improvement in transparency, but so far I have seen encouraging signs only from one published poll (YouGov Queensland poll for the Courier-Mail) and all other published polls so far, including Newspoll, have shown either no progress or grossly inadequate progress towards greater transparency.

If pollsters, the political media, and sources who commission polls, do not greatly improve polling-related transparency by the next federal election then I would support legislation to require them to do so.