

SUBMISSION 62

16 May 2008

Mr Daryl Melham MHR
Chair
Joint Standing Committee on Electoral Matters
Parliament House
Canberra

Re: Inquiry into the Conduct of the 2007 Election

Dear Mr Melham,

Please find attached a brief submission to your Committee's current inquiry.

As in 2004, my main concerns are the level of informal voting, and also problems with the use of group ticket or 'above the line' voting in the Senate.

Other pressures have prevented me preparing a submission updating the detail of my submission to your committee's 2004 election inquiry. However, I would recommend that the committee review my work on ticket voting and informal voting as contained in Submission 73 to the 2004 inquiry. It can be found on the Committee's website at:

<http://www.aph.gov.au/house/committee/em/elect04/subs/sub073.pdf>

I am currently in the process of updating the tables on informal voting contained in my 2004 submissions, and would be happy to provide updated tables if I make an appearance before the Committee.

Yours.

Antony Green

Informal voting at the 2007 Election

The level of informal voting at the 2007 House of Representatives election declined, the first time informal voting has declined since the 1993 election. While informal voting in the House of Representatives was lower than at both the 2001 and 2004 elections, the following table shows that informal voting remains above levels recorded through the 1990s.

Informal Votes – House of Representatives Elections 1983-2007

Election	% Informal	Election	% Informal
1983	2.1	1996	3.2
1984	6.3	1998	3.8
1987	4.9	2001	4.8
1990	3.2	2004	5.1
1993	3.0	2007	4.0

Source: Australian Electoral Commission publications

A total of 510,951 informal votes were cast in the House of Representatives, and past research has shown that between a third and a half of these votes were informal because insufficient preferences were provided.

In my submission to the JSCEM's inquiry into the 2004 election, I provided detail of informal voting at all Federal, State and Territory elections over the last two decades. In analysing this data, it became clear that one of the main reasons for the increase in informal voting was the high rate of House ballot papers cast using only a single '1' with no further preferences. This rate of '1' only voting is higher in both New South Wales and Queensland, where optional preferential voting is used for state elections.

What was also evident from the state analysis is that the level of '1' only voting in lower house elections is higher where group ticket voting is used at upper house elections. So in every state at Commonwealth elections, and also at Western Australian elections, the level of informal voting in the lower house is higher than in the upper house.

Details of my analysis of informal voting is contained in my 2004 submission at:
<http://www.aph.gov.au/house/committee/em/elect04/subs/sub073.pdf>

Informal voting tables are on pages 21-34, and my discussion on the interaction between upper and lower house voting systems can be found on pages 9-11.

Since my 2004 submission, several state elections have provided further evidence on the interaction of electoral law and informal voting. In particular, the most recent elections in South Australia and Victoria have provided experience that the Committee should take notice of in its deliberations.

The Victorian Case

Until the 2002 state election, Victoria used the same single member voting system in both houses of parliament. At every election between 1985 and 2002, the level of informal voting was higher in the Legislative Council than in the Legislative Assembly.

As I wrote on page 10 of my 2004 submission:

"Informal voting is also higher in states where two chambers with different electoral systems are elected on the same day. There is a lower rate of informal voting in Victoria at state elections than occurs in Victoria at Commonwealth elections. The formality rules are the same in both jurisdictions, but Victoria is the only state to use the same electoral system in both chambers of Parliament. At state elections, Victorian electors are presented with two small ballot papers for single member electorates with the same voting instructions. Comparisons seem to indicate that upper house ballot papers with an instruction to use a single '1' seems to encourage the incorrect application of this voting method to the lower house of Parliament"

I then footnoted that the 2006 Victorian election would see proportional representation introduced for the Legislative Council, including Senate-style group ticket voting. As I wrote in that footnote:

"A prediction from this point is that when Victoria introduces its new multi-member Legislative Council election in November 2006, it is likely to produce an increase in informal voting in the lower house. This was certainly the experience when ticket voting was introduced in the Senate in 1984 and the Western Australian Legislative Council in 1989."

This was exactly what occurred at the 2006 Victorian election. Informal voting rose in both houses, from 3.42% to 4.56% in the Legislative Assembly, and from 3.67% to 4.28% in the Legislative Council. As I predicted, the new Council voting system increased the level of informal voting, and also resulted in Assembly informal voting being higher than the Council's, the reverse of previous Victorian experience, but exactly the same as every other jurisdiction to introduce a Senate-style ballot paper.

A ballot paper survey conducted after the election showed that 26% of informal Assembly ballot papers had been filled in with a single '1' only preference. The Victorian Electoral Commission noted the increase in '1' only voting compared to previous elections, and concluded that voters had been induced to vote with a '1' after being presented with that option on the Legislative Council ballot paper. The Commission also noted that 41.47% of the informal votes indicated a clear preference but could not be included in the count because of incomplete preferences. (See the Victorian Electoral Commission's 'Report to Parliament on the 2006 Victorian State election, pages 88-96)

The South Australian case

South Australia uses a system of registered ticket votes as a savings provision to allow House of Assembly votes with insufficient preferences to remain in the count. I explain the system on pages 13-15 of my 2004 submission.

The South Australian State Electoral Office publishes a large amount of detail on the ballot papers saved by the ticket votes. A full breakdown by candidate and electorate is provided on page 217 of the SA SEO's election statistics on the 2006 state election.

In summary, at the 2006 South Australian election, a total of 35,029 informal votes were recorded, a rate of 3.6%, compared to 5.2% in the Legislative Council. Compared to Victoria, Western Australia, and Commonwealth elections in every state, South Australia is the only state using compulsory preferential voting where lower house informal voting is less than upper house informal voting.

In total, 43,553 votes were admitted to the count after being 'saved' by the use of registered ticket votes. All of these votes would have been informal under the Commonwealth Electoral Act. Under Commonwealth formality rules, the South Australian lower house informal vote would have been 8.1%, not 3.6%.

I personally have reservations with the use of South Australian ticket votes. I do not believe a vote should be saved by having its preferences 'captured' by a candidate or political party.

However, the table on page 217 of the South Australian election statistics can be interpreted in another way. I have taken the table and extracted all votes where the primary vote was cast for one of the two candidates that remained in the count after the distribution of preferences from all other candidates.

On this basis, 34,986 of the 'saved' ballot papers had a first preference for one of the final two candidates in the count. That represent 80.2% of all the votes saved by ticket voting, four out of five votes that had incomplete preferences. Even without ticket voting, these ballots could have remained in the count as their preferences never needed to be counted.

The AEC made a similar observation in analysing informal voting at the 1987 Federal election. It noted that around 285,000 ballot papers that could have counted on the valid first preference were excluded from the count by formality rules that were designed to exclude a total of 13,000 incomplete ballots where preferences did need to be examined.

Conclusion

In my 2004 submission, I pointed to the case of Greenway at the 2004 election, contested by 14 candidates and recording an 11.83% informal vote. As I wrote in 2004:

"The inanity of compulsory preferential voting is that any vote for the Liberal or Labor candidates in Greenway had 13 further preferences that were not necessary. Yet these further preferences were required to be filled in correctly for the first preference to be counted. An error with any lower preference would see the valid first preference excluded from the count. Any Liberal or Labor ballot paper could be excluded because at the 12th preference it did not have a clear distinction between candidates from the Fishing Party, the Citizens Electoral Council or the Independent campaigning for spelling reform. No logic or reason is attached to such an exclusion, it is simply a provision of the act that all preferences must be correct for any preference to count."

In lowering the informal vote rate, I would prefer to see optional preferential voting introduced. However, if the Parliament chooses to retain compulsory preferences, the South Australian data illustrates that steps can be taken to retain compulsory preferences while lowering the rate of informal voting.

As I have outlined, the incidence of '1' only voting is increased by the use of Senate Group Ticket Voting, and by confusion with optional preferential voting. However, as the South Australian data makes clear, many of the votes that Commonwealth law declares to be informal, could be included in the count without in any way threatening the continued use of compulsory preferential voting.

Informal voting at House of Representatives is higher than it should be, not because voters are sending a message, but because voters who turned up to vote, and in good faith indicated a first preference that could be counted, have their votes excluded because of errors in preferences that would never be counted.

The AEC's 2004 research on informal voting found that one-third of informal votes were '1' only ballots. Based on the South Australian experience where four out of five '1' only votes could be included in the count, and applying these ratios to the 2007 election, the rate of informal voting could be cut from 4.0% to 2.9% simply by allowing more votes with entirely valid first preferences to remain in the count. That is an extra 140,000 Australians having their vote counted.

Admitting these votes into the count does not re-open the possibility of 'Langer' voting, as any ballot paper with incomplete preferences that are required to have their preferences counted would still be informal. Some provision may be required to prevent parties adopting a 'just vote 1' strategy with how-to-vote material, as this could increase the level of informal voting amongst minor party and independent voters.

The Parliament can choose to amend legislation to lower the rate of informal voting by simply admitting more votes to the count. It is my belief that the Committee should recommend such a change be adopted.