

CORRECTED EVIDENCE

ELECTORAL MATTERS COMMITTEE

Inquiry into the conduct of the 2014 Victorian state election

Melbourne — 11 August 2015

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Mr Antony Green.

The CHAIR — We might formally start, Mr Green. Thank you very much for your submission and indeed for your supplementary submission, which came in a bit later, which is not a problem. You did flag that in your first submission, but I think some of my members may not be completely all over your second submission for varying reasons. I am suggesting the timing of its submission may in fact be the reason for that.

Ms PATTEN — That is very kind of you.

The CHAIR — I just want to let you know, but you will know this, that these proceedings are covered by privilege; however, what you say outside is not covered by privilege, and I am sure you are aware of that. For the record, could you just state your full name and business address and indicate to the committee whether you are attending in a private capacity — I know you touched on this in your submission — or whether you are representing your organisation. Present to us what you would like to, and then we will follow up with some questions.

Mr GREEN — Yes, certainly. My name is Antony Green. I am appearing as a private citizen. I work for the ABC, but I must stress that while much of my experience in this area comes from working for the ABC, it is my own expertise and opinions I am giving, not a view of the ABC.

The CHAIR — That is a clever tactic to make sure that the Liberal Party does not have a crack at the ABC.

Mr GREEN — The alternative is that the ABC could ban me from providing my experience to the parliamentary committee! My business address is 700 Harris Street, Ultimo, which is the ABC's offices, though, as I said, I am appearing as a private individual.

I first thought I would go through some of the comments in my initial submission. I have a couple of comments on the electoral commission's submission, which bear two of those points, and then I will give more details of that supplementary submission, which is very complex, I agree.

I make a number of comments about the counting of early votes, which are covered in several submissions, and the Victorian Electoral Commission has given its opinion on the subject. I think anything which will assist in the counting of early votes will be of assistance at the next election, but clearly the way the act is written in Victoria means that they have to be more specific in ensuring that the correct ballot paper goes into specific boxes if you want to count early votes and if they wish to continue. The act as it is includes all early votes as early votes without a declaration. In other states votes cast outside of the electorate end up as absent votes, so that is a distinction in Victoria.

I mentioned an issue to do with check count, which is always an irritation where the polling booth does not add up to the eventual declaration of preferences. Again, I have raised this with the electoral commission, and they are having a look at it. It is a matter of resources on some of those things. I specifically mentioned the zeroing of the check counts in the post-election period. That did cause confusion. That is something they have probably always done, but nowadays everything is published on the internet. Something similar occurred with the New South Wales electoral commission about two or three elections ago, and they have just fixed it. It is just that as they zero a polling place, you only need to zero the polling place; you should not need to zero the electorate. They agreed that, with time, that is something they can fix for the next election.

Group ticket voting — I pointed towards the commonwealth electoral matters committee's views on that subject. It may well be that this committee does not go down the path of making a strong recommendation on that, because as yet we have seen no federal legislation flowing from that committee. Of course it would be better if the different levels of government could be corresponding with their legislation. Clearly the problem is not as dire in Victoria because people have an easier option of voting below the line. Still, the determination of the final seats in every region at this election was determined by the ticket votes, not by the voters themselves. The below-the-line vote was only about 6 per cent, and in every case it was the deals on the preferences that determined the final spots even though it was easier to vote below the line. It

strikes me that the larger the ballot the paper, the more likely it is that people are getting caught in these tickets rather than actually having a smaller ballot paper where they can consider options.

On the VEC submission, in their section on informal voting, on page 38 they refer to nearly half of the ballot papers having some form of first preference vote. This is a point I always make about Australian elections. There is a table there and nearly half of them have some identifiable first preference, whether that be a tick or a cross or a single number. What we know is that ever since the above-the-line voting option has been available in Australian elections, the minute that was introduced, there are increasing people who vote 1 in the lower house. Clearly people do not read all the instructions on both ballot papers, they do not read the acts and they do not understand the difference. So the ticket voting system induces no. 1s in the lower house.

There is also a reference to ticks and crosses. Ticks and crosses are the standard way of voting almost everywhere else in the world except Australia, so it is not surprising that electorates with a high migrant population have a high incidence of ticks and crosses. It is highly unusual to see any other form of voting in the rest of the world. Those explain some of the informal voting, and as I have always said, one of the problems with electoral laws in this country is that we have too many rules. We should define what cannot count rather than what can count. If we could find some way to include more of those votes with an identifiable first preference in the count, it would make our lower house elections better.

On the informal votes, on page 40 of the submission there is a note about the informal vote blanks being a higher rate in the Legislative Council. The raw numbers are not in this paper, but I suspect all that has happened there is that you will find the blank ballots in both houses are about the same — people have voted blank in both houses. The ratio increases in the Legislative Council because the no. 1 votes are generally included as formal in the Legislative Council. We allow a single one, tick, or cross in the Legislative Council but we call it informal in the lower house, and that explains the difference between the two houses.

I think there is a clear reason why more people voted below the line in Northern Metropolitan, with a single 1, and that is because there were two rows of candidates. There were two rows of party tickets above the line and there were two rows of candidates below the line. Someone has gone and dug up the party and voted for them below the line, not realising that they should have voted for the second line above the line, so I think the structure of the ballot paper has caused that anomalous figure.

There is reference to the Liberal Democrats. The Liberal Democrats polled higher in the three regions where they were to the left of the Liberal Party than in the five regions where they were to the right, and the difference is up to 2 per cent, and I can dig up those figures precisely.

The CHAIR — You are referring to the positioning on the ballot paper?

Mr GREEN — Positioning on the ballot paper — left and right — I should make that clear. Where they appear to the left on the ballot paper of the Liberal Party, they seem to do much better, and that was most clear at the last federal election where they polled 9.5 per cent with column A on the ballot paper in NSW. The fact that they also seemed to poll a much higher proportion of their votes above the line also suggests to me that there is some confusion with Liberal voters who are used to voting just 1 for the Liberal Democrats. That is a phenomenon which exists in the Senate elections as well. The Liberal Democrats seem to have a much lower rate of below-the-line voting than other minor parties, and it is quite unusual for that to occur.

I will go to my supplementary submission because that does need a fair bit of explanation. It is on the third page, Table 1. This is an excerpt of the actual distribution of preferences for Northern Victoria Region. At the end of count 151, Daniel Young from the Shooters and Fishers Party was elected. At that point his preferences were distributed, which was a total of 3256 votes, which corresponded to around 220 000 ballot papers. On the distribution of those, under the new totals under count 152, the Greens were a total of 161 votes behind Labor at that point, which resulted in O'Connor from the Greens being excluded and her preferences electing Labor at the next two counts. So the distribution of the surplus from Daniel Young

and the Shooters and Fishers left the Greens short of Labor and therefore resulted in Labor winning the final seat. I will explain how the formula used to determine the preferences impacted on that, but we have referenced the section in table 2 on the next page.

The formula for determining the preference flow at the point when Daniel Young was excluded is based on ballot papers. In table 2 you can see that the Liberal-Nationals ticket, which provided 31 000 votes towards Daniel Young's ticket, consisted of nearly 175 000 ballot papers. Therefore, of Daniel Young's ballot papers 79.5 per cent were Liberal ballot papers, but of his votes only 41 per cent were Liberal-Nationals votes. If he had been excluded and distributed as a normal exclusion, it would have all occurred at the vote value, but as it occurred on the election of Young, the determination of preferences from the surplus of about 3200 votes was done on the ballot papers, and because the Liberal-Nationals parties had so many ballot papers, the surplus of Young was heavily biased towards the tickets of the Liberals and The Nationals.

I have gone through and I have shown the exact calculation in table 3 on the next page, which shows that the votes transferred from that resulted in the Liberals and The Nationals having 2589 of their votes in the surplus. Both the Shooters and Fishers' and the Liberals-Nationals' preferences were to the Australian Country Alliance, while the Palmer United, Australian Sex Party and cyclists party preferences flowed to the Greens at that point. But because there were so many Liberal and Nationals party ballot papers in that bundle of votes, the preferences that flowed at that point were biased in favour of the Liberal and The Nationals party ticket.

In table 4, if I just turn to that, this is where I have applied what is called the Weighted Inclusive Gregory formula, which is based on the votes rather than the ballot papers. This is weighted down so the Liberal and The Nationals tickets are only 41 per cent of the votes. In this case we now have only 1348 Liberal votes in the bundle instead of 2589. There are more Shooters and Fishers Party tickets as well, but overall by applying this second formula there were 853 fewer preferences to the Australian Country Alliance and 738 extra preferences to the Greens. If applied to the actual preference count at this point, it would have resulted in the Greens getting enough preferences to pass Labor and at that point the Labor candidate would have been excluded and the country alliance candidate would have been elected.

The reason the formula is written in terms of ballot papers is because when this system was introduced in the Senate in 1984 the count was conducted by hand. The difficulty of applying this formula with a weighting in terms of votes is you produce a lot more transfer values in the count, and the ballot papers are all bundled up by transfer values. There was concern that this would be too difficult to count by hand. The view was that it would rarely affect the count, and 30 years later this is the first count which I can find that is unambiguously affected by the use of that formula. This came up in Western Australia two elections ago and the commissioner for Victoria, Warwick Gately, was the commissioner in West Australia at the time. He instituted a report into this, and they have changed their formulas to reflect this value.

I simply raise this; this is not a system which is systematically against any one party. This can pop up at any point in the count. It usually requires more than one vacancy to be hanging around from the initial counts. Before, the vacancies were filled at the first count and only one remained, and so this was never a problem, but if you only elect two or three at the first count then these weighting issues start to turn up through the count. We are seeing more and more incidents where more than one vacancy is waiting to be filled, so that formula will become potentially more of a problem in the future. The problem with it is that it turns up rather surprisingly. People do not expect that to happen in the count. I only found out about it because of the calculators the ABC ran on the website after someone asked me why the transfer values on the output we published were all the same, and when I checked I found we were using the Western Australian formula not the Victorian formula. The minute I changed the formula the last candidate elected changed, so it can have an impact which is unexpected.

I have raised a number of matters there and quite a number of points. I am happy to take questions on any matters that I raised there or on other matters you wish to ask me.

The CHAIR — Thank you again for your willingness to, first of all, put in a submission and, secondly, to come along and walk us through your submissions, because you are a witness that I imagine everyone is particularly interested to hear from. My question — if I can exercise my prerogative as Chair to go first — is that the solution that you have to count pre-polls on the night seems, other than legislation, incredibly simple. Have you put this to the VEC previously and have they come up with any response?

Mr GREEN — The three points, which are in my original submission, to do with pre-poll voting, the preference counts and the zeroing checkers I have discussed with the electoral commission directly. In some senses I have found over the years, though often better to discuss with the electoral commission, they are worth raising at the committee because they would be raised otherwise. Yes, they are very keen to stay with the current legislation, which they consider as much easier for voters. There are manual methods they can use to try to ensure that only certain ballot papers go into correct boxes.

The AEC conduct pre-poll voting centres for multiple electorates, and each of the roll mark offs featuring those individual electorates are done separately. This mainly occurs in urban electorates — if you think of somewhere like Portland or Mildura, nearly all the ballot papers would be for that electorate and would be much easier to sort in those circumstances. If you have one in central Melbourne or St Kilda where it is likely to come across several electorates, it would take a bit more organisation of the office. If you come in to vote early and you are in the electorate of Albert Park or Prahran, you will be sent to an area where the rolls are, where the places to vote are and where the ballot boxes are, and that would hopefully ensure that you do not get confusion between the ballot boxes. They are the sorts of methods that I understand the electoral commission are proposing to look at.

The one thing I would say is that some of these pre-polling voting centres are enormous. They are taking 10, 12, 13 000 votes. It takes a long time to count those, especially when you also have to separate the upper house votes as well. You want people to be able to get home on the night, and many of the best staff working for the electoral commission on the day are actually running polling places, so you are having to get extra staff to count these votes. It is a long-term problem. I have advocated that if electronic voting is going to be introduced first in Australia, it was most likely to be with pre-poll voting, as it is in the ACT. That is something that can be trialled if the commission wishes to go down that path, but I think there is certainly an issue with the counting of pre-poll votes. But it is not a simple task.

One thing I always have to remind people who think it is easy to run an election of is that the sorts of skills that used to be had by people who ran polling places — people used to be clerks in local government, they used to be bank tellers, they used to be able to count the same document over and over again — are less and less evident amongst people. You do not find people counting cash all the time, you do not find people who are trying to balance a set of books at the end of the day the way they used to; the computer tells them whether they are balanced or not. To some extent the sorts of skills that are required to conduct an election are less available in the community than they used to be. I think those sorts of things are one of the restrictions the commissions has.

Ms SPENCE — There has been a suggestion in other submissions that, rather than doing the continual count of pre-polls, you do just a sample. Do you have a view as to whether a sample would be an appropriate way to go or whether the pre-polls should get split and just be counted as normal through to close?

Mr GREEN — The problem with pre-polls is that once you alter a ballot box you have to know how many ballot papers are in that box. If you open a ballot box, you have to validate that the correct number of ballot papers are there. If you open the ballot box and then just count every the fifth ballot paper, you have not validated against the roll. It is one of the issues with pre-poll. I do not run these centres, but I understand that with electronic mark offs there may be better ways to batch this information. If you pre-poll voting for a day and you have been running electronic mark offs for the day, at the end of each day you know how many ballot papers you have taken. You may be able to separate out the ballot boxes by day, for instance, so that you can count three or four of the boxes — but you cannot sample from one ballot box. You may be able to count some of the ballot boxes, but you would have to be able to authenticate what you expect to see in the ballot box against what you have marked off on the roll.

If you remember what happened in West Australia with the Senate count, one of the problems the electoral commission had was that their staff made mistakes. There were no scrutineers to watch this process. I would hate to see a close election where the electoral commission without scrutineers present had been engaging in that sort of activity and made a mistake. As one electoral commissioner always said to me, scrutineers are part of the electoral process, they are part of the counting process. The electoral commission can do the best it can, but one of the democratic checks we have in this process is that people are scrutineering and watching. There have been proposals to get around the Western Australia situation by asking scrutineers to sign off that these documents were counted. None of the scrutineers so far have been very keen on that process.

The CHAIR — I do not think the suggestion has been that there would not be scrutineers present in this process.

Mr GREEN — It has to be worked out so that it can be done. Prahran is the sort of electorate where you have a lot of early votes and a lot of postal votes. That was a very close count. If, in your attempt to count more votes on election night, you created uncertainty that at the end of the count where there was a separation of only 40 votes between two candidates to determine the result, if you have had some confusion over opening pre-poll boxes early and it results in the count being unclear at the end, then you have not really advanced the process of knowing the result. In the end it is the commissioner's job to get the result right and accurate. Sometimes that can cause delays.

Ms PATTEN — Thanks, Mr Green. I felt like I almost got the Gregory method just then, so thank you for that. I was unclear, because you were saying that WA had changed its count. Have they moved to the Gregory count?

Mr GREEN — The method that is used in Victoria is called the inclusive Gregory. West Australia has moved to what is called the weighted inclusive Gregory, where the ballot papers are weighted to their vote value. This happened after the 2001 election in West Australia. One Nation got more than a quota in several regions and their small number of votes as preferences flowed on to other candidates. One of those other candidates then reached a quota, and in the determination of that second candidate's surplus suddenly all these ballot papers from One Nation came back at a huge value and distorted the count. This is the sort of thing that, as I said, only occurs when you have more than one vacancy. It technically occurs at every point in the count, but when you are running down the Labor ticket, all it does is slightly weight the votes in favour of the ticket votes as opposed to the tickets of the second and third candidates. It really only matters when it starts to flow between parties and there are a lot more votes involved. As I said, if you get more than one candidate at the end of the count, then something that is happening with these tickets could change the count. I think it is the better way to go.

Another matter in this area is that — I did not include it in the submission this time — currently in Victoria there are exhausted ballot papers, because you are allowed 1 to 5 below the black line. If, when you are calculating a transfer value, the exhausted ballot papers are included in that formula in Victoria, in the ACT and New South Wales they are not, all the exhausted ballot papers are left with the candidate who has just been elected and the only ballot papers that move on are the ones with preferences. That would be another change I would suggest for Victoria, but that would mainly become a problem if there are a lot more exhausted ballot papers appearing in a count.

Ms PATTEN — Meaning a lot more people vote below the line?

Mr GREEN — Or if you move to the proposed federal system, where there is just one, if you adopted that system of there are no tickets between parties any more above the line and voters can fill in their own preferences. In New South Wales, 83 per cent of the ballot papers are filled in with just a '1' above the line, so there are a lot more exhausted preferences at every count. You would not want to be sampling a whole bunch of exhausted ballot papers when there are ballot papers with preferences. That is something else to consider. But if you go down the path of looking at this formula problem, that is another matter I would raise, yes.

Ms BLANDTHORN — In relation to what you were saying before that we concentrate more on what we do not allow rather than on what we do allow to count as a vote, your suggestion, if I am correct, was that you think that we should be counting ticks and crosses where there is a clear intention as a vote? Are you suggesting that is something that should be looked at?

Mr GREEN — In New South Wales and Queensland, where optional preferential voting applies, the savings provision is always that the voter's intent is clear. In New South Wales and Queensland a tick and a cross is a clear intent. If you have one tick or one cross or a single '1', that is a clear intent. That is also the rule we apply to above-the-line votes in Victoria and federally. If it is a 1, a tick or a cross, it is a single mark and is treated that way. Of course the case law in criminal cases is full of the meaning of what a tick and a cross are when you fill in a form — an intent is implied. The question that comes up is, 'What do you do when you have compulsory preferential voting? What do you do with votes like that?'. If it is a tick, 2, 3, 4, 5, I think it is formal. It certainly is federally. I think it is in Victoria. But if someone has just gone 1, tick or a cross, what does it imply?

In South Australia they have a special provision so if you vote with just a 1 or a tick or a cross it is implied to be a valid first preference and it defaults to a party tick and a preference, so they keep the full preferential voting system. I would like to refer back to the Bradfield by-election in 2009. There were 22 candidates, including nine Christian Democrats.

There were 77 000 ballot papers. The Liberal candidate got 56 per cent of the vote, but all 77 000 ballot papers were examined for a full sequence of 1 to 22 before they were admitted to the count. Not one preference of any ballot paper needed to be checked to determine the winning candidate, but every ballot paper was checked and any one that did not have the sequence 1 to 22 was rejected. To me that is bureaucracy gone mad. My view, in an ideal world, is something that is called progressive informality — that a ballot paper counts if its first preference is examined. If it has to be examined later for preferences, at that point it is excluded.

The 1987 federal AEC report into informal voting looked at all the 1-only votes, and it found that roughly 85 per cent of them were for a candidate who never had to have their ballot papers examined for preferences. Its conclusion was that we were rejecting 85 per cent of ballot papers which could count to protect compulsory preferential voting. In my view, if you are voting 1 in Hawthorn or Nepean or —

The CHAIR — Brighton.

Mr GREEN — Brighton — does it matter who your other preferences are for most of the time? Most of the time it does not. I remember there was a very high informal vote in the federal seat of Greenway a couple of years ago. I think there were 14 candidates, and the informal vote got to about 11 or 12 per cent. Now, 80 per cent of the votes were for the Labor and Liberal parties, and somewhere down the bottom of that ballot paper they had to choose between two different strands of socialists — a spelling reformer and a One Nation candidate. If somebody has voted for a candidate at the top of the list, why do they have to give preferences to all those other candidates? You could rightly act so that all first preferences count and then the preferences, when they come to be examined and there is not a preference, the vote becomes informal.

That has not been tried in Australia. If you look around the world where alternative voting is suggested, preferential voting is suggested, or as we say in Queensland and New South Wales, the ballot paper counts for the first preference. If it subsequently becomes informal, it just exhausts. There is a view that if you have compulsory preferential voting, you cannot allow the ballot paper to exhaust because that would basically become a de facto form of optional preferential voting, but if you had to go down that path, you could exclude those ballot papers and make them informal so that they get knocked off for the first preference vote for candidates as well. That would take a bit of changing the counting procedures. It would mean the two-party preferred count would not always add up to the actual distribution of preferences, but I do not think that is a major problem. That would be one way to save those ones.

The other one is optional preferential voting. I am doing some work on that in New South Wales at the moment, because the New South Wales lower house results, the ballot papers, were all data entered at this election for the first time, so all the individual lower house ballot papers were data entered. Over half of them had only a single preference, and for the Liberal Party more than 75 per cent of them had only a single preference, so the data entry job was quite simple. Queensland saw a dramatic increase in people giving preferences at this election. People called optional preferential voting 'de facto first past the post', but as the recent New South Wales and Queensland elections show, it is not de facto first past the post — the result can be changed by optional preferential voting. I happen to think it is a fairer system: more votes count, and you have a lower informal vote. I can understand though why parties are always very nervous about moving to optional preferential voting.

Mr SOMYUREK — It depends on the cycle.

Mr GREEN — It does depend on the cycle. In the current cycle, the Labor Party probably would do worse under optional preferential voting. If you wind the clock back three decades, when ticket voting was introduced to the Senate, it was the Liberal Party and the Australian Democrats who were violently opposed to optional preferential voting in the Senate and it was the Labor Party that was proposing it. Nowadays those sorts of arguments are the opposite way around.

Mr SOMYUREK — Queensland.

The CHAIR — Do you want to walk us through the ballot papers that you brought with you?

Mr GREEN — I may have to stand up for some of this. I think these ballot papers are examples of what happens when problems which were emerging are not dealt with and the law is left to atrophy. In 1995 there was an instance where a gentleman from A Better Future for Our Children was elected to the Legislative Council in New South Wales. It became evident at that point that the ticket voting system and a very easy party registration process were creating problems. You only needed 200 members and the commission had no real rights to check the validity of whether these people were members of the party or not. The result of that was, before the 1999 New South Wales election, a surge in the number of registered parties. I will have to stand up for this. Is anyone interested?

It produced a ballot paper with 264 candidates and 81 columns, with a vast interplay of parties which seemed to be stalking horses for each other. Across the top line of the ballot paper we had the Marijuana Smokers Rights Party in column two, who got a substantial number of votes because of their position on the ballot paper and prevented a gentleman called Glenn Druery getting elected to the upper house. Of course he has become better known in recent years as the preference whisperer. There is also a party called the Gay and Lesbian Party in column three, who, as far as we understand, may have been four-wheel drive activists or something or other, but they did not appear to be gays and lesbians.

Ms PATTEN — Three Day Weekend Party.

Mr GREEN — Three Day Weekend Party, the Party Party Party. There was a party called the Wilderness Party, which again was not a green party, it was a front for the Outdoor Recreation Party.

The replacement for it in New South Wales was this ballot paper, which is from March this year. This is not an attractive ballot paper. I like to call it a mutant lotto form, because every group has to have 15 candidates to have access to a ticket. That is a constitutional requirement. Some of the reforms to the Senate in 1984, and the introduction of proportional representation in South Australia in 1975 and New South Wales in 1978 for their upper houses, were heavily influenced by the 1974 Senate election under full preferential voting, when 73 candidates nominated in New South Wales and it produced a record informal vote. When the Labor Party got proportional representation in those two states they were determined that it be optional preferential, and the New South Wales Labor government at the time wrote all the provisions to do with the electoral act and the upper house count into the constitution, including showing a minimum number of preferences. When they got rid of the group ticket voting system, so you vote 1 above the line in New South Wales if only for that party, they had to ensure there were 15 candidates for every group, and that is why they have such an awkward-looking ballot paper. They have no other alternative.

The federal ballot paper, which I will hold up here, which was for New South Wales and was the one with 110 candidates, of course had to be reduced to 6-point type because of the sheer number. The Commonwealth Electoral Act does not have a provision like Victoria, which allows you to double-deck the candidates. I think the double-decking of the candidates, which you saw in Northern Metropolitan Region, has its own problems. If you have to make a choice between people's inalienable right to stand as a candidate as opposed to the ability of a voter to be able to read the ballot paper and understand it, I would go for having a ballot paper which voters can read as being the more important principle to sustain. All electoral systems around the world have minimum standards to get on the ballot paper, whether that be nominators' deposit fees. I would rather see a tougher test to get on the ballot paper by first testing support for a party by requiring nominators than I would higher deposits.

A point on that, and this is something I have suggested at the federal electoral committee, is once you are a registered party you get the ability to centrally nominate candidates. That was one of the reasons why there were so many groups at the federal election. Once registered a party could nominate candidates for every state, and parties did nominate for every state, which created the gigantic ballot papers. Often candidates who were nominated for a state had nothing to do with that state, but they were allowed to be nominated centrally. If you wanted to be an independent standing in any of those states, you had to have nominators. If you wanted to stand as an independent at the Legislative Council election, you needed nominators. If you were from a registered party, you did not. One of the reasons why parties nominate for every region now is that the central nomination allows them to. Perhaps we should bring back nominators for upper house elections, which would put a slightly higher test on parties. If they wanted to get on the ballot paper, they would have to get organised in a region. That may be one way to sieve out the process. There are a number of suggestions in that area.

I do think that as long as the current preference harvesting tactics exist there is nothing to encourage these parties to merge and grow. For instance, we saw three different Christian morals parties at this election: Rise Up Australia, Family First and the Australian Christians. Why are there three different parties covering roughly the same area? There is no reason for them to amalgamate under the current system. They can all run and they can swap preferences. If they were standing under a system where they had to try to encourage people to give preferences, then they would be cutting each other's throats, because their preferences would not flow. That would be the main point I would make in that area.

I would hate to see it done with deposit fees, would be the one thing I would say. The one advantage that comes out of the proposal that the Joint Standing Committee on Electoral Matters in Canberra has suggested is that it puts the emphasis back on parties to campaign for votes, and if they want to influence their preferences, they have to campaign with how-to-vote material and encourage people to give preferences.

The giant ballot papers we are getting are all built upon the fact that group ticket voting exists. Group ticket voting means a party can stand. It can do deals with other parties. As I said, in relation to the western Victoria result, with the victory for the gentleman from Vote 1 Local Jobs, why did he get elected rather than someone from the seven parties who got more votes than him?

You can add up all the micro-party votes and say, 'They had enough votes for a quota, so they should have got elected'. There are two arguments I would put against that. If you look at South Eastern Metropolitan Region, you can see there were more than enough votes to elect a micro-party ahead of the Greens in that region. Why didn't one of them get elected? Because the micro-parties chose not to direct preferences to each other. They split in different ways in that region. The people who argue that the micro-parties deserve representation and just add up minor party votes to prove that point are ignoring the fact that these micro-parties are not necessarily directing preferences to each other anyway, so why are you adding them up to say that?

The second point I would make is that you can argue that yes, these micro-parties are being elected and that people are actively voting against the major parties. Well, in a country like the Netherlands or Israel they have a very proportional electoral system. If you vote against a major party, you are voting actively for someone. Under the Australian system, if you are voting against a major party by voting for a

micro-party, who are you actually voting for, because when you do that your preferences end up directed to somebody else? So I do not agree with this argument that you are voting against the major parties.

The other thing I would say is that it is rather random in terms of which micro-party gets elected. It is determined by whichever smart preference deal is done. The gentleman from the Australian Motoring Enthusiast Party, whose name momentarily — —

The CHAIR — Muir.

Mr GREEN — Mr Muir. Why did he get elected rather than someone from any number of parties who had more votes than him? Why did the gentleman from Vote 1 Local Jobs get elected rather than all the people who got more votes than him? That is where I think there is some unfairness in the system. It seems to be randomly rewarding one micro-party over another, and it is not on the basis of how people voted; it is often on the basis of what smart deal has been done.

Mr SOMYUREK — Another option, which is done in other parts of the world and is a bit of a blunt instrument, I think, and it disenfranchises voters, is the threshold method. What is your view on that method?

Mr GREEN — The problem with threshold is that voters might start to have to work out a strategy for how they vote. ‘If I vote for this party, will it matter where my vote ends up?’. I will compare it to the last German election. Angela Merkel’s party clearly was the highest polling party, but her two potential partners that could have formed government with her both fell short of their 5 per cent threshold. So instead of Angela Merkel and the votes from those other conservative parties, which were clearly the majority at that election, forming a coalition, because they did not reach a threshold she missed her majority and had to go into coalition with a different party. You get those sorts of incongruities out of threshold.

If you wanted a messy method, it would be to limit the preferences that a party can give above the line. So if a party lodges its ticket, it cannot lodge a ticket for every party on the ballot paper. That would encourage parties to direct preferences to like-minded parties rather than to order every other candidate on the ballot paper. It was a proposal I put to the 2004 Joint Standing Committee on Electoral Matters.

The worst problem with the threshold is that it may help the party that has the highest profile. If you looked at, say, the last federal election, it might have had a huge advantage for the Palmer United Party, which could get above a 3 or 4 per cent threshold. It might have resulted in everybody else directing their preferences to him. There is also the point where it should be applied, and I think this comes up under the commonwealth because of the way the High Court might rule on the constitution; I do not know if there is a constitutional issue in Victoria. If you just excluded those votes and did not count preferences and reweighted the quota, it could have perverse outcomes. If you actually included them as preferences, the question you get is whether all those preferences end up flowing to one party or not. It also means that a party that knows it is going to be over the quota — one of the major parties — goes to every other micro-party. You still have to end up doing deals with other parties with threshold.

I prefer the proposal for the commonwealth, which encourages the parties to encourage voters to give preferences, and if it were a more widely used system than just the New South Wales upper house, then parties would actively encourage people to do deals on preferences. I think a fallback would be limiting the number of preferences above the line, although that has not been used elsewhere. Above all else, a lot of people would like to get rid of the above-the-line option. I think the difficulty is that people generally do not know the candidates.

There is a great concern that in our system voters do not pay enough attention to candidates and they should. There are plenty of working democracies in Western Europe that do not allow choice of candidates. Choice of candidate is not one of the defining characteristics of democracies that we use. Many systems work without a choice of candidate. You do get a choice of candidate here. It is weighted towards parties, but I think that people do tend to know the parties better than they do the candidates. That is why the system tends to work the way it does.

Ms PATTEN — In looking at your submissions around this and looking at the New South Wales upper house model, where you are voting for — is it 22?

Mr GREEN — Twenty-one.

Ms PATTEN — Twenty-one representatives over the whole of the state, whereas in Victoria in our Legislative Council we are voting for five in our regions. I wonder if that does impact on using the New South Wales model because in the New South Wales model you are using it for a large number of candidates, versus Victoria, where you are using it for a smaller number of candidates. There is a difference in it because of the number of candidates we are electing.

Mr GREEN — There are several points there. When the system was introduced in 2006 there was great concern to ensure that there was some sort of sense of region, and so where candidates live is put on the ballot paper — this is in the Council. I like to point out that at one stage there was a married couple for the Shooters and Fishers Party who were likely to be elected in Western Victoria and Eastern Victoria, and they both lived in Melbourne at the time. So I do not think the issue of where people live is something that is at the top of people's minds when they vote. I think people are probably less aware of the region they are in than the state they live in, which occurs at state elections.

It is certainly the case that the quota is much lower in New South Wales: it is only 4 to 4.5 per cent. Therefore the number of wasted votes does not affect this system. It is proportional.

Ms PATTEN — And someone like Fred Nile gets voted on at 2 per cent.

Mr GREEN — It is not entirely a list system, as Malcolm Mackerras calls it, because at the last two elections the last position has not gone by the list; it has been changed by the preferences, so the preferences can matter. Simply, if you went to a system without the ticket voting, many groups would not stand. You would have smaller ballot papers. It would be easier for parties to encourage people to give preferences if many of the parties that view they have no further chance of getting elected did not stand.

Although even with the New South Wales ballot paper at the last election there was a problem. There were six groups that did not have a party name, including three others that did not have a box above the line. A quarter of the candidates, nearly 110 candidates, only got 0.5 per cent of the vote. There does seem to be a case sometimes where people just like having their name on the ballot paper, having no serious chance of getting elected, and an electoral system should be able to sieve them out. The rules should sieve out people who are not serious candidates in my view. There is nothing wrong with a set of rules that does not.

This system that is used in New South Wales is better suited for the lower quota because the votes will more likely end up around the proportion of first preference votes. It does raise the case for the last seat; if one party gets 8 or 9 per cent of the vote in the race for the last seat, they have got a reasonable chance of getting elected. If you had three parties on 3 or 4 per cent of the vote, then they could still get elected from a very low count if there is a high exhaustion rate. It does not stop someone from getting elected from a low vote, but it does stop them getting elected from 1 per cent of the vote. That would be too low to get elected.

There are several ways of doing this. I think something needs to be done about it. I think the ticket voting system has done a lot in terms of saving informal voting, but every time the ballot paper gets bigger in the upper house the informal rate goes up in the lower house. If people are given a ballot paper that is a metre long and then they are given a little tiny lower house ballot paper, which one are they reading? Are people just getting these two ballot papers and getting confused? That is why we are getting increases in informal voting in the lower house.

There are problems created by the size of this ballot paper. We know that the position on the ballot paper is creating difficulties. Computerising the count is not going to do anything. You could experiment in the Victorian upper house by randomising the order of the columns.

Ms PATTEN — Sort of a Hare-Clark?

Mr GREEN — If you have 11 lower house electorates, you can change the columns from electorate to electorate within the region. The difficulty you get with that is if someone turns up to pre-poll vote and they get given a how-to-vote card; its columns may not line up with the way the columns are in their region. That would be the one thing against that. It would randomise that donkey vote issue but would create problems for parties on the how-to-vote cards.

Solving the issue of the ballot paper shape does have a solution but it does not help parties in trying to assist people to know which candidate to vote for, and parties prefer fixed columns on their ballot papers.

The CHAIR — We have gone 10 minutes over.

Mr GREEN — I am sorry.

The CHAIR — We had some capacity, and given your knowledge of this, I thought it was good we could go over. Thank you very much for coming before the committee. I am sure we may ask for further discussion at some stage if you are able to assist us.

Mr GREEN — I usually have quite an amount of information. I am doing some work on the New South Wales ballot papers at the moment. I can provide that, and I will chase up those figures on the Liberal Democrats for you.

The CHAIR — Thank you. You will receive a transcript from Hansard — you have done this before — in around about a fortnight's time. Feel free to amend any error should Hansard do what we do not expect it to do. Obviously you know the rules about Hansard, so there is no point me going over them. Again, thank you so much for coming to present before the committee and for your two submissions.

Mr GREEN — Thank you.

Witness withdrew.