

ELECTORAL MATTERS COMMITTEE

Inquiry into the Conduct of the 2022 Victorian State Election

Melbourne – Friday 11 August 2023

MEMBERS

Will Fowles – Chair

Evan Mulholland – Deputy Chair

Brad Battin

David Ettershank

Sam Hibbins

Emma Kealy

Nathan Lambert

Lee Tarlamis

Emma Vulin

WITNESS

Antony Green.

The DEPUTY CHAIR: I declare open the public hearings for the Electoral Matters Committee's Inquiry into the Conduct of the 2022 Victorian State Election. All mobile telephones should now be turned to silent.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us is gathered on here today, and pay my respects to their ancestors, elders and families. I particularly welcome any elders and community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings.

I am Evan Mulholland, Member for Northern Metropolitan, and the other members of the committee here today are –

Emma VULIN: Emma Vulin, Member for Pakenham.

Nathan LAMBERT: Nathan Lambert, Member for Preston.

Lee TARLAMIS: Lee Tarlamis, South-Eastern Metropolitan Region.

Sam HIBBINS: Sam Hibbins, Member for Prahran.

Brad BATTIN: Brad Battin, Member for Berwick, online.

The DEPUTY CHAIR: And we have David Ettershank here as well, I believe.

I welcome Antony Green here today.

All evidence taken by this committee is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, including on social media, those comments may not be protected by this privilege.

The committee does not require witnesses to be sworn, but questions must be answered fully, accurately and truthfully. Witnesses found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty.

All evidence today is being recorded by Hansard. This is also broadcast live on the Parliament's website. You will be provided with a proof copy of the transcript to check as soon as possible. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

I invite you to proceed with a brief 5-minute opening statement to the committee, followed by questions.

Antony GREEN: Thank you, Mr Chairman. I should first point out that I am appearing as a private individual. I have worked for the ABC for many years – in my submission I say for 24 years, it is 34 actually. I have covered 90 elections over 34 years. I have got a fair bit of experience with working with the various electoral commissioners and electoral systems around the country, and I thought it was worthwhile my offering that experience to the committee.

Earlier, on the left-hand side of the table here, I set up a ballot paper for the 1999 New South Wales election – the famous tablecloth ballot paper. This was a result of group ticket voting. In 1997, two years before that election – it is not very often as an election analyst you get to predict something and it turns out to be correct, so I always remember this one – I wrote that the election for the Legislative Council in 1999 would be determined by voters incapable of reading a ballot paper 1-metre square or simply bewildered and unable to find the parties they knew and wanted to vote for. The current growth of registered parties is clearly about manipulating the process of group voting tickets, with stalking horse parties running multiple tickets and delivering preferences unknown to the voter to parties they would not otherwise expect them to go to. That occurred in 1999 at that election, and New South Wales promptly abolished the group voting ticket system. Other states ignored the problem in New South Wales, saying it was caused by a low quota, but by 2013 federally and in 2018 in

Victoria states with higher quotas were running into the same problem – the group voting tickets were being manipulated to elect candidates that would not otherwise be elected.

I refer to something called the leading candidate ratio – the ratio between a candidate with a higher vote who is defeated by a candidate with a lower vote. If you look at systems when voters determine their own preferences, you never see that ratio get above two to one. At the 2018 Victorian Legislative Council election there were two candidates, one from the Liberal Democrats in South-Eastern Metropolitan and the Transport Matters Party in Eastern Metropolitan, one with a ratio of 14 to one – impossible under systems where voters control their own preferences. And at the 2021 WA upper house election the Daylight Savings Party, with 96 votes, was elected with a ratio of more than 50 to one. Now, an electoral system that produces such distortions is clearly not one you should use. That is not respecting the voters' will.

Now, I am less interested in the issue of which party is disadvantaged, but historically a lot of this began as an anti-Greens movement amongst a lot of small parties, and certainly the Labor Party, small parties and the Greens are engaged in strange games through group voting tickets to try and gain advantage for winning the final seats in regions. But for me the sin of this system is it distorts the voters' will. Voters have trouble finding the candidates they know amongst the flotsam and jetsam that washes up on the ballot paper for the purposes of manipulating preferences. If you abolish group voting tickets, you will shrink the size of the ballot paper, have fewer parties nominating and result in more candidates being elected in proportion to their votes. Whether the system is altered to be a one-state region or individual regions, I would still recommend getting rid of group voting tickets, even if you maintain the current regions, because you will get a result which is more reflective of how people vote.

I have recommended abolishing group voting tickets and going to a single 1 above the line. You can adopt the Senate system of recommending a minimum number of preferences as long as a single 1 is maintained as the default, as a savings provision, and I have made some other recommendations in terms of the ballot paper, which I can discuss.

I have also had some experience with the Victorian Electoral Commission and the counting system at the election, and I have made a number of recommendations there. I have worked with all the electoral commissions around the country, and I think the Victorian Electoral Commission has suffered from a system which worked and was in place 10 years ago. Their election management system and their procedures have got rather caught out by the growth of pre-poll voting. They should have more detailed disaggregation of the pre-poll voting and reporting. I gave the example of some Ballarat and Bendigo polling places where thousands of votes are transferred to the central activity centre rather than being counted locally. It is not that there are not joint early voting centres. Every Victorian early voting centre is a joint early voting centre, but because they are all taken as ordinary votes, they have difficulties with counting. What we need is more joint counting centres, so the polling places in Ballarat should be declared for the two Ballarat seats plus Ripon, so they can all be counted there and there are fewer votes transferred to a central activity centre. Other states have a central activity centre, but they only deal with declaration votes. It is only in Victoria that they are dealing with ordinary votes as well because of the way pre-polls are taken. They need to be separately identified.

One of the basic problems in the electoral commission's website – and I have set some detail out about how the counts are done in different countries and different states – is the site displays primary counts initially, first counts initially, and then after several days they put in all the checked counts and it switches over to the checked count. What they should be doing is every time you check count at a polling place, that should replace what is displayed on the website, so that at all times the website is an accurate reflection of the current state of the count. Maybe indicate that this is a checked count for that polling place, but if that is done, you know that count is more accurate than what is being currently supplied. And at the pre-poll centres, as they are counted, it should be separately identified. If there are two pre-poll centres in a district, they should be separately identified. If there are multiple early voting centre counting sites, as in Ballarat or Bendigo, they should also be separately identified. Then you may have four or five individual pre-poll centres, as occurs in Queensland, New South Wales and at federal elections, whereas at the moment it is just an accumulating total which is provided to the media and the parties, and we get caught out in people not being aware of these things. Also, with the re-count of the preferences, as I understand it the count is done initially. That is then matched to the first count of primaries. They cannot enter another check count. Even if they check count the preferences, I understand that they cannot enter them because the preference count has to match the first count, not the check count. So I think there are some things in their computer system which are preventing them doing these things. Apart from all

pre-polls being ordinaries – that is, legislative – most of these other matters are more the way the procedures work, and I think they can all be dealt with. Now, I have probably gone on for too long, but those are the areas I have covered in my submission. I am quite happy to take questions on all those areas.

The DEPUTY CHAIR: Thank you so much for your introduction. Just on group voting tickets in particular, it has been a storied history, and Victoria is now the last state to still have group voting tickets. In your opinion why do you think it has taken so long for Victoria to acknowledge that it is a problem and hopefully move on it?

Antony GREEN: This is my view. My view is it has more been of a political problem in Victoria. You have two parties, in the Greens and the Labor Party, who in most regions are competing for a seat, and group voting tickets allow them to talk to all the other parties in the hope of attracting preferences to their party as opposed to the other. If you go back to the 2004 Senate election, there were clearly agreements sorted out between a lot of minor parties and the Labor Party at the time, which was an anti-Green move to keep Greens out in several states. That was when it first came to public attention, because Family First was elected in 2004 in Victoria when the preference tickets did not work out correctly. I think some of this comes down to political interests of parties. I am less interested in that. I am more interested in the fact that when people turn up to vote the members elected should reflect their votes. At the moment there is at least one and sometimes two members in Victorian upper house regions which are being elected reflective of the deals that are being done, and I do not think that is how electoral Parliament should be elected. The election should be based on the votes received by parties.

What we do know when voters control preferences is they do not do these strange lists of preferences, which is what you get in the group voting ticket votes. The parties that hand out more how-to-vote cards, do more campaigning and get higher first preference votes also have a degree of control over their preferences because more people follow their how-to-vote cards. But these minor parties that get half a per cent of the vote and can deliver 90 per cent of preferences are absolutely unable to do that unless they control the preferences. If the party with a low vote has to rely on getting people to follow a how-to-vote card and give preferences and direct them a particular way, it does not happen, because voters never see the how-to-vote card and often they have no particular idea who this first preference party is. We know that parties that are known have more say over how their preferences flow if you abolish group voting tickets. They are also more likely to attract preferences from minor parties than they do with group voting tickets.

The DEPUTY CHAIR: Thanks for that. Just on group voting tickets, it is almost a separate question of what kind of model you would move to, and I am just wondering your thoughts on both a model that might not be the current regions in place, but a model that would be representative. Also, I am just wondering how best we ensure regional representation. I will just note the seats of Mildura and Lowan together cover 35 per cent of the landmass but have about two electorate officers to MPs to be able to access their member of Parliament. What do you think about a single metro electorate, single regional electorate model, or what would be the effect of a statewide model? Just talk me through what your thoughts are on a model.

Antony GREEN: Look, I think whether you split the state into two regions, city versus country, you would have to deal with trying to make sure those enrolments across those two regions roughly equate to equal numbers – not equal numbers in each region but equal numbers per member elected. You could do that, or you could do a single statewide electorate. The only caveat I would put on that – Western Australia has moved to electing 37 members at large for the upper house at the next WA election. My concern with what they have done in WA is whether they can produce a ballot paper which is printable and countable, because if you have to print a ballot paper and you have to print all the names of the candidates as well, then you have the potential to create a ballot paper as big as the New South Wales election. That makes it very difficult for voters to manipulate and understand and very difficult to count, so that would be one caveat there.

Now, WA has the same provision in its constitution as in the Commonwealth constitution that refers to members being directly elected, and that has always been viewed as being that you must have candidate names listed and the option must be there to vote for candidates. I do not know the constitutional arrangement in Victoria, but if it does not have a provision which says something like ‘directly elected’, it may be able to use a party list type system where you do not have to have the candidates printed.

Using preferential voting in multimember electorates to elect such large electorates as a 37-member upper house in Western Australia would be laughed at in the rest of the world. There are many different models of proportional representation, but in Australia we are so used to preferential voting as a method of doing this that these other options tend not to be available. So in terms of regional representation, if you wanted to ensure you had country members represented, then you would have to do it in two regions. But it is also in the interest of parties to try and balance their tickets – or it should be. Certainly in New South Wales both parties try and ensure that there are country members represented. Upper house tickets in other states often involve selecting candidates who represent regions of the state where that party does not have lower house representatives. You would think that, to some extent, this comes down to who the parties pick as candidates in terms of representation as much as whether the system can or cannot represent regional voters.

The DEPUTY CHAIR: Just quickly, I wanted to talk to you about the inclusive Gregory system. The Liberal Party, in its submission to the committee, has called for a change in the counting system for the Legislative Council from inclusive Gregory to weighted inclusive Gregory. Can you explain the difference to this committee and whether it is possible to change the counting system independently of changing group voting tickets?

Antony GREEN: Yes, you could do that. It is a problem mainly caused by group voting tickets, because there are so many votes under the control of the ticket that the weighting at a particular point can have a real impact. If you have only got a smaller number of bundles of votes, which you get when voters give their own preferences, it is less likely to be important. The key thing it does is that when a candidate reaches a quota and goes over a quota, which votes do you look at to determine the surplus? If you use the current inclusive Gregory, what it does is a manual-based counting method. It says, ‘We have got all these votes for these candidates, but to do this count we will revert them all back to ballot papers, not votes.’ So you might have a party with 1.1 quota of votes, but half of those votes may have come from, say, the Labor Party, which had two quotas of votes. Those two quotas of votes reach this newly elected candidate and they make up half of the quota. But in terms of ballot papers, if you suddenly convert it to ballot papers, as the inclusive Gregory method does, then nearly all of the surplus will end up coming from the Labor Party, not from this party that has just been elected.

The weighted inclusive Gregory system weights it by the vote value of the ballot papers, not by the ballot papers themselves, and it is much fairer. It ensures that when you distribute the preferences and surplus it is representative of all the votes that elected that candidate, not all the ballot papers that made up the bundle of devalued votes.

The DEPUTY CHAIR: Excellent. We will go to Emma Vulin.

Emma VULIN: Thank you. Thank you, Mr Green. In your submission you highlight the fact that the VEC do not update their website figures to reflect the reject tally of the two-candidate preferred, using my electorate of Pakenham as the example. Can you elaborate on the benefits of them addressing this, and can you see any risks if they do not update?

Antony GREEN: Look, it should be done, and I am aware of the cost. The AEC does a vast amount of counting with this, but the AEC has got far more resources than the Victorian Electoral Commission. What I believe they should do is in any seat which is close at the end of election night, they should make sure that at those polling places their two-candidate preferred count is rechecked and that that becomes the basis of the ongoing count.

The VEC gave me huge help during the election campaign, and they were constantly keeping me in touch with what was going on with the count, when things would occur and when they would switch off to the check count, so we did not get a whole bunch of zero votes come through – so all that was good. I do understand that even if they do a check count of the two-candidate preferred, they cannot enter it into their current computer system, so they cannot publish it. So that is one of the problems I think in their election management system – if they do it. There are difficulties with them getting them all done by the time of the return of the writ. But I would point out the AEC, which gives vast amounts of data, is often returning the writ before they have completed all that data preparation. My view is that if there are difficulties doing those two-candidate preferred counts, what they should do is continue with them and provide them for all the districts where there is ongoing counting, which will determine the winner. If it is a safe seat where someone has clearly won, then I think they

do not have to do that continued two-candidate preferred checking. What they should do is after the event come back and do those counts to get those two-candidate preferreds.

Often what we are after is we want the information after the events. We want to know the polling place two-candidate preferreds, and we want them to be accurate; we want to know what the pre-poll totals were afterwards. So I think if they look at it in that way: where the count is required, they do it and they update it. If it is just simply for the issue of cost, you can actually defer it in elections, where you do not have to do that count to determine the winner. But we should not be in the position which we had in Pakenham at the last election, of having one count showing the Liberal winning, but it was clear, if you understood the problem with the check count, that that was not going to be the result.

Emma VULIN: Thank you.

The DEPUTY CHAIR: Excellent. I might move to Mr Hibbins.

Sam HIBBINS: Thank you, Chair. We have heard witnesses put forward the proposition that, ‘Well, look, we had a roughly proportional outcome in the upper house in the last election and if we simply just abolished group voting tickets without reform to the upper house, that would create a disproportionate result at the next election.’ Do you have a view in terms of whether it is problematic to abolish group voting tickets without upper house reform?

Antony GREEN: No. I think you have got eight by five regions; if you are only electing five members per region, you are not going to get the best proportional result. Group voting tickets – the fact that it did not produce a disproportionate result this time is simply down to the fact there were competing minor party groups that did not all put their preferences together this time, and therefore they cut each other off. I mean, I would point out it was South Eastern Metropolitan in 2014, I think it was, where there were enough votes for others to elect another MP. In fact the Green won a seat, I think from memory. The reason another party did not elect that election is the Sex Party declined to give preferences to Family First at that election, for obvious reasons. I have always objected to people who add up all the other parties and say, ‘These are the numbers and members should be elected.’ That is the wrong way to go. The only reason these votes can be added together is because of group voting tickets, and because parties choose sometimes not to direct preferences, ignoring ideological differences. That case is an example where there were enough other votes to elect a member, but two of those parties were diametrically opposed in their political views and therefore they did not. Now, if voters were in charge of preferences, that is exactly the result you would have gotten.

Group voting tickets allow parties to game the system. They trade their preferences on the basis they will get a reward. The Family First election in the Senate in 2004 came about because the Labor Party gambled that it wanted to improve its chances of winning a third seat at the expense of the Greens. But in fact they did not poll as well as they expected, the preference deal backflipped and they elected Family First ahead of the Green. Now, if they had just had that choice, Family First versus the Greens, the Labor Party might have done something different with its preferences. But the deals it had done meant that when it came down to the last two, it had given up its ability to influence who won the last seat, because it had traded its preferences to try and improve its chances of winning its own seat.

That is what is wrong with the system – parties get these things wrong. The Call to Australia many years ago in Western Australia in an attempt to punish a Liberal candidate who had supported abortion ended up electing a gay Australian Democrats candidate, which was not their intent, because they got their preference tickets wrong. So if voters gets their preferences wrong, it is fine. I would also give the caveat of the 2013 WA Senate election. That result was so close that at a key count, where two parties went also in opposite directions with their preferences, it completely flipped two seats. With the counting system in group voting tickets in a close contest, if you have any error go wrong with the count, you have the potential to invalidate the entire count because so many votes are under control of the tickets. When voters control their preferences, there are many, many different ways and you do not get these cut-off points that have a critical impact on the final count.

Sam HIBBINS: So there is absolutely no guarantee that we would have proportionality if group voting tickets were retained in 2026, like you pointed out.

Antony GREEN: Absolutely none. Group voting tickets are a game that people play. And if you keep group voting tickets, you will have even more candidates on the ballot paper than last time. We know that the number

of parties on the ballot paper have gone up at every election in Victoria. They went up in every Senate election – election to election – and in all the other states it was the same issue. They went up and up because it is honey; it is just an attraction. For parties that occupy the same field, there is nothing in group voting tickets that punishes them for being divided parties. If you get rid of group voting tickets, some of these parties – the multiple Christian parties, multiple anti-fluoride parties – have a reason to coalesce and form a single party. I think if voters are offered fewer and better identified and better known options, you get a better election.

Sam HIBBINS: Yes. Just on another issue, you identified in your submission the AEC reporting and their website. That is the gold standard, isn't it, for what you would like to see in Victoria?

Antony GREEN: Yes, it is. I am aware that the states do not have the facilities. The AEC has dedicated returning officers. They also have these big facilities where they do all their counting and all their pre-polls down there. I am not sure whether the VEC made much use of that. That would be worth pursuing with the AEC, but that would help in some areas. If the VEC was able to use the AEC's big Ballarat counting centre facility, that would be useful for pre-polls. But I mean essentially, yes, that is where you want to go. I understand because of facilities the AEC's model may not be suitable for a state. They may not be able to support doing that level of counting and checking in every district. But certainly to resolve the difference between the first count and the check count in what is displayed on the website and what is sent to the media – the website cannot become a replacement for scrutineers. Scrutineers will always in presence have more information on what is coming in the count, but there are enough people now who are watching and observing on the outside to be able to make sense of the data if the data is published. I worked closely with the VEC. They did everything to help in this election. They set out to me beforehand the difficulties they had with their election management system. So I am not critical of that, but –

Sam HIBBINS: That would require an overhaul, though, between now and the next election of the electoral management system.

Antony GREEN: It does, and I think they have got four years to do it. But in the meeting I had eight or nine months ago, they said they could not achieve it before the next election. Also, I have made a number of points: where a pre-poll centre cannot be counted on the night, for instance, if they are on the premises, they can be counted the next day. I think what we want to avoid is moving thousands of votes to the central activity centre that could be counted locally if they were identified and kept there. I did make a suggestion, and this is more for a post-election thing: if hundreds of votes from one district end up at the central activity centre, they should be counted and separately identified. I think beyond the large numbers of pre-polls, pre-polls at the central activity centre should be treated like the absents – they are just accumulated together. But there are far too many ordinary votes going to the central activity centre that could be counted locally if they would just plan it that way.

The DEPUTY CHAIR: Can I go to Mr Lambert.

Nathan LAMBERT: Thank you, Deputy Chair. And thank you, Antony, for coming in. Thank you for your submission and very strong recommendations all the way through. Without going into the details of the Council and the computer systems, in which I think we would have a lot of agreement, I thought I would go to the two key issues that we are discussing in terms of reform – and I do think of them as separate issues – the first one being essentially the number of members that you have in a region. At least the way I see it, there is a straight trade-off there between proportionality and democratic accountability, and ultimately Parliament or the Victorian people through a referendum will come to a choice on that. But the second one is this trade-off when we think about how we actually set up a ballot paper – a trade-off between simplicity and extracting people's preferences. Of course there is a lot of value in extracting people's preferences, because they do have preferences. Obviously the vote-one system is by far the simplest to explain to people, but we lose the preference extraction. Filling out every box is best for preferences but very complicated for the upper house. It is often put by psephologists that there is a benefit to either major or minor parties in arrangements of whether you either go to vote-one or whether you come all the way through to a full preferential system. I do not see how people draw that conclusion. If we look at the difference between one to five or full preferential, is there any reason that particularly favours any sized party?

Antony GREEN: All electoral systems advantage parties with more votes over parties with fewer votes. Every electoral system does that. GVT turns that upside down occasionally. But if you have got more votes,

you have got a better chance of getting elected under nearly all systems. If you have got more votes, you are more known to voters and you are more likely to have handed out how-to-vote material. A party that gets a high vote is also more likely to generate a reasonable flow of preferences in line with that party's vote.

Having looked at how-to-vote cards, the Labor Party and the Liberals tend to put out more obvious how-to-vote cards with second and third preferences, which is more obvious to voters. If you look at Senate above-the-line voting now or if you look at the seven electorates which had data entry for Victoria – I have been able to look at the preferences that occurred there – voters for the two major parties were much more likely to follow the ticket. The Greens have a habit of putting another like-minded party on the ticket before the Labor Party, and it does tend to be that voters ignore that and go to Labor. There is a tendency for voters if they do not follow the how-to-vote cards to at least go to what they view as a related or like-minded party. So all the parties that get a significant vote produce more obvious flows of preferences and are advantaged under the system. Parties that are not known tend to have no influence over their preferences whatsoever, which is why there is a stark difference in outcome for them between that and group voting tickets. With group voting tickets they can deliver 90 per cent of preferences as organised; without group voting tickets they have almost no say.

As to the difference between asking for preferences or not, clearly if most people just vote 1 above the line and do not give further preferences, then the influence of preferences diminishes. But if you look at the Senate elections where people are directed towards six, those preferences have had almost no influence, because the further down the list of polling parties you go, the less their preferences flow in any particular direction, so the less that their preferences impact on the final result.

Ignoring the regions versus the statewide thing for the moment, you have got two options, I think: (1) to go for the method that is used in New South Wales, South Australia and Western Australia, which is just to recommend one, and then above-the-line preferences are optional; or the one which was done for the Senate, which is one but with a recommended six, but one is still valid, and 95 per cent of voters go beyond one. That has increased the number of preferences, but it has had almost no impact on who is elected, because the preferences tend to be pretty random.

Nathan LAMBERT: Yes, that was my thinking – that it doesn't make a big difference.

Antony GREEN: The best chance for someone to be elected from behind on the new Senate system is if a Labor Party or a Green or a Liberal candidate is elected, because they are more likely to have flows of preferences. Family First won the last seat in South Australia in the 2016 double dissolution because the Liberal Party was excluded and the Liberal Party had a flow of preferences. The smaller parties with very low votes have almost no influence, because most voters' preferences tend to be relatively random, but those are their preferences. The point is that parties cannot control preferences, and if voters direct preferences wherever they like, they will be counted that way.

Nathan LAMBERT: I have a follow-up question, which is in the same vein. I think that people sometimes exaggerate the extent to which these changes, some of which are important changes, actually affect the composition or the outcome. If we turn then to inclusive Gregory versus weighted inclusive Gregory, again it is sometimes put forward that this is some vast major party conspiracy. My own understanding is there is no real reason for the difference – well, it is an empirical question. We know that there are some cases where it has produced a different result. If we look at the cases where it has produced a different result, is there any pattern to them, suggesting it favours any type of party, or does it appear to be, as I think it is, random?

Antony GREEN: Inclusive Gregory favours the preferences of parties that have elected more than one candidate – that have a large number of votes. Their votes flow on as a surplus at a reduced value. But under inclusive Gregory if they are examined for a further election of a candidate and distribution of surplus, those votes get overweighted. Inclusive Gregory was introduced because in 1984, when there were the Senate reforms, the count was still done manually. So inclusive Gregory, which is done on the basis of ballot papers, was viewed as the easiest way to do the count because they could refer to physical ballot papers; they did not have hundreds of different transfer values floating around the system. The minute we moved to a computer-based system you could use weighted inclusive Gregory, because the problem of manual handling had disappeared. It is not a conspiracy. It was done because that was how you did a manual count. The oddity with it and with the way it works with group voting tickets is it does tend to favour the parties that have already been

elected to the Senate, because their preferences carry more weight if they get into someone's surplus. It is the better method to do, but it is not a conspiracy that it is not being used.

Nathan LAMBERT: I could dig into it further, Deputy Chair, but I will –

The DEPUTY CHAIR: I will go to either David or Brad, if you have got any questions.

Brad BATTIN: If David is not there – and excuse my voice if I go up and down with it at the moment; that is why I am in with you today – I know we keep talking about upper house here, which obviously is very, very important, but on the lower house, one of the issues at this last election you would have seen, Antony, is both major parties had a fair decline in primary vote, so the reported figures were down for both parties, but preferences obviously make a big difference in a lot of the lower house seats. I suppose I was looking for more of an opinion on we have currently a preference system through the lower house in which people do pick their own preferences, but there are other states that have, or have moved away from, a first-past-the-post model. What would be the impact in a state like Victoria if we had a first-past-the-post model for our lower house candidates?

Antony GREEN: Nobody uses first past the post, but New South Wales uses optional preferential voting. Optional preferential voting, like having limited preferences in the upper house, always advantages the party the leads on first preferences. With optional preferential voting it is harder to come from behind and win on preferences. You get many more seats that are won on preferences at federal elections in New South Wales than you do in New South Wales elections under optional preferential voting. If you want – I cannot give you the exact numbers, but it is almost certain that since 1990, I think, Labor has won more than 100 lower house seats at federal elections on preferences from behind on preferences and the coalition has won two. Labor supported optional preferential voting for decades until 1991 when they started to win on preferences and switched to supporting full preferential voting. The coalition stuck with full preferential voting. I am aware in recent years the coalition are moving towards optional preferential voting. Both sides have tended to shift their position on full or optional preferential voting based largely on their perceptions of self-interest rather than principle, is my view. That would be my observation.

I have not done the numbers for the most recent Victorian election. Preferences proved to be slightly less important at the Victorian election because most of the last decade has seen most preferences distributed coming from the Greens and other leftish parties. There were a lot more right-wing parties on the ballot paper in the recent Victorian election so preferences were a little bit more neutralised. But certainly there is a difference. Clearly under first past the post the candidate with the highest first preference wins, under optional preferential voting the candidate with the highest first preference vote is more likely to win and under full preferential voting a candidate leading on first preferences still has the better chance of winning but it is easier for a second-place candidate to pass them.

Sam HIBBINS: Or third.

Antony GREEN: Or third.

Brad BATTIN: I was going to say, it is sometimes a three-way contest, yes. The other one is around the pre-poll. I know you mentioned the counting of pre-polling. One of the issues we had in my seat of Berwick was one of the pre-polling booths was actually in Clyde North, so it was literally 50 metres outside my electorate but was not classified as a pre-polling booth for Berwick, so that meant – and I am going off memory here – about 8000 votes had to be transported over the next week to get them back to the Berwick booth, which is 4½ kilometres away, but they had to go via the showgrounds and wherever else they went around Victoria before it got there, obviously impacting. Now, we had a bit more of a margin, but I would feel for someone – and I will say Emma, who is in Pakenham, because you are on a super margin and if you had 8000 votes transported for a week, it could make a big difference, and it made a big difference in mine in 2018 when we had to wait. I know you said about counting at the booths. Is it something I think you could see in the future, though where we actually have pre-polling, or we will call it an election period rather than election day, and therefore counting could happen? So more of these pre-polling-style centres and almost no election day, where you come in and people have a two-week period. And I think, if I am correct, Canada do something very similar to that?

Antony GREEN: Yes, Canada has a lot of their votes taken early. There has been a trend towards early voting in most countries. The ACT took, I think, 75 per cent of its votes last time early, with electronic voting. That was a COVID measure to a large extent.

Look, I made a number of submissions. I do think that the committee might be ending up looking at whether to shorten the period of pre-poll voting from two weeks to one. That would certainly solve some of the problems that have been raised about registering how-to-vote material and about getting ballot papers printed between the close of nominations and the start of early voting. New South Wales shortened the early voting at the last election from two weeks to one and the Commonwealth shortened it from three weeks to two at the last federal election, so it would be in line with other states if you are shortening the pre-poll voting period, and that shortening would solve other problems.

The point I was making partly in my submission was that because all early votes are taken as ordinaries in Victoria you have this issue that you are transferring ordinary votes from districts to a central activity centre. If you do not want to move to making external votes as declaration votes, and you have gone down that path, I think the main thing to look at is to make more of your early voting centres joint counting centres. I included Berwick in my submission particularly because the whole south-east corner of Melbourne – it is pretty clear people go to a centre and they vote in an early voting centre which is not necessarily related to their electorate. There is a lot more driving to regional shopping centres in the outer suburbs than there is in the inner suburbs, and I think there should be some thought given to it. You had 4082 votes that were taken at the Cranbourne early voting centre, which I presume is the Clyde one you are referring to.

Brad BATTIN: No. Believe it or not, Cranbourne is not the Clyde one. There is another one in between, which is Clyde North. Cranbourne is in Cranbourne, Clyde North is Clyde North and Berwick was Berwick. The Cranbourne one was at the Cranbourne community hall, and the Clyde North one was next to the Clyde North Medical Centre on Selandra Rise.

Antony GREEN: Yes, that might have been in one of the Narre Warren electorates, I am not sure. But anyway, that I think is an example of, in that part of Melbourne in particular – I think the commission should possibly focus on getting regional centres which cover a range of electorates, and those electorates should all be counted in the centre. The AEC does something similar; it is aided by the fact its electorates are larger, so it does not have to cover as many seats. But I still think there is a problem. Even if those centres could not count all of the associated districts on the night, the next day the other districts should be dealt with at that centre. The ballot papers should not be bundled up and sent to the central activity centre, if for no other reason than it would allow the parties and candidates to sort out where their scrutineers are going. I think the parties have to make some decisions on where they send their scrutineers to – a local counting centre or some central activity centre – and if the thousands of bundles of votes were not at the central activity centre, if you did not have 6000 Ripon early votes taken in Ballarat sent to Melbourne, the parties would have been able to make more sensible decisions on where to be scrutineering.

The DEPUTY CHAIR: I will move quickly to Lee.

Brad BATTIN: Thank you very much.

The DEPUTY CHAIR: Thanks, Brad.

Lee TARLAMIS: Thank you, Antony. I am just conscious of time, but I just want to clarify: there has been a lot of discussion around the different structures that we should be considering, like the Senate system or like the New South Wales system. In those systems they have eight-year terms were half is elected at each. No-one has kind of discussed whether or not that is part of the proposal, to move towards that system, which whether you are electing them all or half would have an impact on quota. Do you have a view about that?

Antony GREEN: I am a much of a muchness. If you are going to a fully proportional system, I think maybe just electing the whole chamber at once is useful, every term. The split terms were about stopping first-term governments getting control of the whole Parliament at once in the days before we had proportional representation. I think the biggest difficulty with electing 40 is if you use the current counting system of single transferable vote, it is the most complex and difficult way to conduct an election to elect 40 members. The New South Wales upper house elects 21 members, and there is only one of those members ever affected by whether

they win on preferences or not. The system is so proportional when you elect that many members, it is a huge effort to get involved in using preferences to elect members.

South Australia, when it introduced the PR for the upper house in 1975, they were electing 11 members at the time. They thought that was too complex to use a preferential system. They introduced a system of party list voting: you had a vote and you had a preference. All the parties were arranged, they got the number of votes. If they did not reach half a quota, the party was excluded and preferences were distributed. They then did a cut on the votes that were remaining and just simply allocated. It was a very simple system, whereas single transferable vote is the most complex counting system you could come up with. You can get away with it for five members. I wait to see how it works with 37 members in WA, because it is really –

Around the world there are many ways to elect large magnitude chambers, 30 to 40 members. Nobody else in the world would choose to use proportional representation by single transferable vote. But we are used to preferences, so it tends to be we reject options which do not allow a candidate choice or do not allow preferences. There are also PR systems without preferences that allow candidate choice. The Netherlands and many other countries in Europe have open-list proportional representation systems where you can choose a candidate, but again there are not preferences.

The DEPUTY CHAIR: I will just go to David Ettershank. He has got one last question.

David ETTERSANK: Thanks, Chair. I apologise; both me and my computer are rather buggy at the moment. Mr Green, thank you for a very thoughtful submission. I really appreciate it. Most of my questions have been asked, but I suppose, just in wrapping up, you have raised so many variables, and this might be an unfair question: in an ideal world, looking at the Legislative Council, what would be, in simple terms, the structure and method for electing the Legislative Council, in your mind?

Antony GREEN: Australia has gone down the path towards proportional representation in every state; that has become a standard. As upper house chambers have been brought into line with elections for the lower house, as their system has become more proportional, one of the few things that has not been dealt with is actually their powers. If you went to a statewide election for electing the Legislative Council – the Legislative Council's greatest role is in keeping government to account, its committee work and those sorts of things. They are far more important. All discussion of upper houses is always, in the end, coloured by the 1975 dismissal, about whether an upper house should have the power to bring down a government or not.

Now, I am of the view that upper houses are there as an important check on governments. They are important in reviewing legislation. The recent problem of the Aboriginal heritage laws in Western Australia may come down simply to the fact that the government controlled both houses at the time – a government that did not have upper house control at the time might have found that law under a bit more question. That is where upper houses are really important, in doing those sorts of things. You then get whether they should have the power to bring down governments. That is a thing that has not been addressed very often.

If you went to a statewide proportional representation chamber, it would actually be very good at keeping government to account on specific things. It would produce a bit of horsetrading on legislation, but horsetrading on legislation sometimes produces better legislation. I think either chamber as they are – whether you stay with the current eight regions or you went to a statewide – it continues to be a check and balance on government, and I think it is worthwhile doing. Whether you do one rotation or two to elect the upper house, again that is a matter for discussion, but legislative councils do have an important role. Sometimes they look like a lot of games are going on, but sometimes those games are very important.

The DEPUTY CHAIR: Antony, thank you for joining us in these games today on the Electoral Matters Committee. We really appreciate your very thoughtful submission and you providing your expert advice to the committee as we go through our deliberations of reviewing the Victorian 2022 state election. I will close the meeting.

Witness withdrew.