



PARLIAMENTARY LIBRARY OF SOUTH AUSTRALIA

**POSSIBLE CHANGES TO THE SOUTH AUSTRALIAN
ELECTORAL SYSTEM:**

**Optional preferential voting and simultaneous election
of all Members of the Upper and Lower Houses**

Jenni Newton-Farrelly

(C) 2003, Parliamentary Library of South Australia

Not to be reproduced in part or whole without the written permission of, or acknowledgement to, the Parliamentary Library of South Australia

This information paper has been prepared by the Research Service of the Parliamentary Library. While all care has been taken to ensure that the material is both accurate and clearly presented, the responsibility for any errors remains with the author.

August 2003
ISSN 0816-4282

TABLE OF CONTENTS

<u>Executive Summary</u>	i
<u>Electoral Issues Identified by the Constitutional Convention</u>	1
<u>Optional preferential voting for the House of Assembly</u>	2
<u>How would moving to an optional preferential system change the <i>conduct</i> of South Australian elections?</u>	2
<u>How To Vote cards</u>	4
<u>Two Party Preferred vote</u>	5
<u>How would moving to an optional preferential system change the <i>outcome</i> of South Australian elections?</u>	6
<u>Preferences</u>	6
<u>Electing all of the Legislative Council Members at the same time</u>	10
<u>Optional Preferential voting at a Legislative Council election</u>	12

Tables

<u>Table 1</u>	Proportion of Ballot Papers with Single Preference, Partial List or Full List of Preferences, Queensland State Elections 1992 to 2001 (%)
<u>Table 2</u>	Seats won under various electoral systems, South Australian State election 2002
<u>Table 3</u>	Composition of the Legislative Council after the 1985, 1989, 1993, 1997 and 2002 State Elections, electing 11 Members for 8 year terms or 22 Members for 4 year terms.
<u>Table 4</u>	Electing 22 MLCs using proportional representation, one State-wide electorate and either full preferential voting or partial preferential voting.

POSSIBLE CHANGES TO THE SOUTH AUSTRALIAN ELECTORAL SYSTEM: optional preferential voting and simultaneous elections of all Members of the Upper and Lower Houses

EXECUTIVE SUMMARY

On the weekend of the 9th and 10th of August 2003, participants at the Constitutional Convention deliberated on issues related to the South Australian Constitution, from which issues of importance to the Representatives were identified¹.

This paper addresses two issues which were identified by individual Representatives at the Convention – optional preferential voting and electing all 22 Members of the Legislative Council at the same time.

The paper does not look at the arguments for or against optional preferential voting or simultaneous election of all MLCs, but rather the effects of those changes if or when they are made.

Introducing optional preferential voting would have effects in two areas - the conduct of the election and the outcome of the election. In the House of Assembly election my guess is that tickets would become obsolete but How To Vote cards would not, and that the fairness provision imposed on the Electoral Districts Boundaries Commission through the Constitution Act may require change because the meaning of a two party preferred result would change. In relation to the outcome of the House of Assembly election, we could expect between one quarter and one half of all votes currently available for transfer, to exhaust and play no part in the final result. In 2002 this would have made a difference in Norwood, Hammond and possibly also Adelaide - my guess is that all three seats would have been won by a LIB candidate (and the Liberal Party would have been in a better position to form a minority government than the ALP).

Electing all of the Members of the Legislative Council at the same time would have made it possible under the landslide circumstances of 1993 for one party to have won a majority of seats in the Upper House (indeed in both Houses at the same time) but under more normal circumstances the composition of the Legislative Council would have been very much as it stands today - two major parties and the balance of power held by the DEM or smaller party MLCs.

Electing all of the Members of the Legislative Council at the same time and also introducing partial preferential voting, would make preferences much less important in the outcome of the election than they are currently. Voters would probably need to indicate a preference for at least 15 (rather than 22) candidates, and ticket voting could be retained in a truncated form similar to the new NSW system.

¹ See the Summary Report [South Australia Deliberates: The Future of Our Parliament](http://www.ida.org.au) at www.ida.org.au

Optional preferential voting and simultaneous election of all Members of the Upper and Lower Houses

Electoral issues identified by the Constitutional Convention

The Summary Report from the Constitutional Convention identified several electoral issues of importance to the Representatives who attended².

A majority of the Representative South Australians believed that both Houses should be retained³ and this belief became more widespread during the Convention.

In relation to the Legislative Council, a majority believed that the current number of Members was "about right"⁴ and again this belief became more widespread during the Convention. A majority of the Representatives initially believed that the current system of election for the Legislative Council (proportional representation) should be discontinued, and changed to a mix of regional and proportional representation, but this belief seems to have changed during the Convention: the general belief after the Convention was that proportional representation should be retained.⁵

There was a general belief that the Members elected to the Legislative Council should stand for election every 4 years and serve only a 4-year term.⁶

In relation to the House of Assembly, the Representatives believed before the Convention that the current number of Members in the House was about right - although a sizeable minority thought that we should have fewer Members in the Assembly. Almost no-one believed that the Assembly should be larger. During the Convention these views changed to the extent that after the Convention almost no-one believed that the House should have fewer Members - the current size was preferred by a sizeable minority of the Representatives but just on half of the Representatives now preferred a larger Assembly.⁷

The Summary Report states that when individual Representatives were asked about their main priorities for reform, "optional preferential voting...was a clear first preference for most individuals."⁸ The other areas identified by individual Representatives included:

² See the Summary Report South Australia Deliberates: The Future of Our Parliament at www.ida.org.au

³ The Summary of Results reports that 65% of Representatives believed in the need to retain both Houses before the Convention and 80% afterwards.

⁴ Current size of the Upper House was considered to be about right - Before the Convention 58%; After the Convention 65%.

⁵ Continue the current system of proportional representation: Before the Convention 35%; After the Convention 62%.

Change to a mix of regional and proportional representation: Before the Convention 56%; After the Convention 36%.

⁶ Upper House should stand for election every 4 years: Before the Convention 66%; After the Convention 75%.

⁷ Before the Convention: Size of the Lower House should be smaller: 32%; is about right: 57%; should be larger: 6%.

After the Convention: Size of the Lower House should be smaller: 7%; is about right: 41%; should be larger: 50%.

⁸ Summary Report at www.ida.org.au.

- Four year terms for the Upper House;
- Increasing the number of MPs in the Lower House
- Multi-Member electorates
- Introduce a uni-cameral system.

The Summary Report gives no detail on these themes, such as whether optional preferential voting was a priority for both Houses; how many Members would be preferred for the Lower House; and whether multi-member electorates were a priority for both Houses. Nor is there any indication of how strongly these priorities were felt by the individuals who nominated them. For this we need to wait for the Final Report.

Optional Preferential voting for the House of Assembly

Optional preferential voting allows voters to restrict their first and any subsequent preference votes to the candidates they do indeed want to support, and to refrain from voting at all for candidates they oppose.

On the other hand, it allows candidates to win a seat without necessarily having the approval of a majority of the voters in the electorate, or (in the case of the Legislative Council) without necessarily having a quota of votes.

Introducing optional preferential voting for the House of Assembly would have flow-on effects in two areas – in relation to the conduct of elections and in relation to the outcome of the elections.

In relation to the *conduct* of elections, my guess is that party tickets (for House of Assembly elections) would become obsolete, but that How To Vote cards would not.

It may also be that the two party preferred vote calculations will be seen as less meaningful because they will exclude those voters who exhaust their votes before showing a preference for one or both of the major parties – if the usefulness of these two party preferred vote calculations is compromised then the fairness provisions which bind the Electoral Districts Boundaries Commission may need to be changed.

In relation to the *outcome* of elections, we should expect that more seats would fall into the marginal range on the pendulum. If the House of Assembly election of 2002 had been conducted using an optional preferential voting system, my guess is that the Liberal Party would have retained Hammond and Adelaide, and possibly gained Norwood (and probably also government).

How would moving to an optional preferential system change the *conduct* of South Australian elections?

In Australia, voters marking their ballot papers at elections for the Lower Houses in New South Wales and Queensland currently only have to mark one box for their votes to be formal; in addition, voters at elections for the Tasmanian Lower House where they have multi-member electorates, are only required to number as many boxes as there are seats to be filled. (Of course, voters may mark more than one preference in both States.)

By contrast, in South Australia, Western Australia and Victoria, and also at the Federal level, voters for Lower House elections are required to number each name on the ballot paper. In South Australia and at the federal level, there are savings provisions in the relevant electoral legislation which allow ballot papers which are incomplete – and therefore should be informal – to be re-included in the count if they comply with a voting ticket⁹ lodged by a candidate, or if the intention of the voter is otherwise clear. These provisions were introduced in South Australia in time for the 1985 House of Assembly election, in order to reduce the informal vote, with the intention of allowing as many voters as possible to have their votes taken into account. At the 5 House of Assembly elections for which the ticket vote provisions have operated, between 4% and 6% of ballot papers have been re-included into the formal count by virtue of the ticket vote provisions.¹⁰

There is an inherent incompatibility between a full preferential system (which *requires* every square on the ballot paper to be marked with a preference) and a provision which nonetheless allows an incomplete ballot paper to be included in the count. Either a voter is required to mark all of the squares, or he is not.

This is why, under the Electoral Act 1985 (SA) the savings provision is not (and cannot be¹¹) publicised, and the system effectively still operates as a full preferential one.¹² Consequently, the existence of tickets at House of Assembly elections is not widely known even within the ranks of electoral commentators, let alone the voting public.

This awkward situation would be remedied with the introduction of optional preferential voting, because a ballot paper marked simply with the voter's first preference would have to be regarded as signifying that the voter was making a decision not to support the other candidates on the ballot paper. It would be inconsistent for an electoral system to allow a voter to signify that he had just one preference and then to interpret those ballot papers (with the aid of tickets) *as if* the voter had more than one preference.

Of course, every vote which is currently re-included into the count by virtue of the existence of party tickets, would be a formal vote under an optional preferential system, so dropping the ticket vote provision would not increase the level of informality in the House of Assembly ballot. In fact, when the State Electoral Office looked at the informal ballot papers from the 2002 State Election, 1 in every 5 was made informal because they were incomplete and not covered by a candidate's ticket.¹³ If an optional preferential system had been in operation in 2002 these 4,600 or so votes (incomplete and not

⁹ Tickets are lodged with the relevant Electoral Commissioner prior to the election. Tickets were only introduced for House of Representatives elections in 1998; prior to that incomplete votes would be included in the count as far as the intention of the voter was clear and would then be exhausted.

¹⁰ State Electoral Office 2002, South Australian elections 9 February 2002; Statistical Returns, SEO, Rose Park, at p.225.

¹¹ The Electoral Act 1985 (SA) at s.126 prohibits anyone from advocating that a elector fill in an incomplete vote or issuing a How To Vote card which shows an incomplete sequence of preferences (maximum penalty \$2,500).

¹² On average about 92% of voters manage to complete a full preferential ballot paper for the House of Assembly elections. (Average of the figures from the 5 elections from 1985 to 2002.) See SA. State Electoral Office, Statistical Returns from the General Elections (various dates), SEO, Adelaide.

¹³ State Electoral Office, 2003, Election Report for the South Australian Elections 9 February 2002, SEO, Rose Park at pp.45-46.

covered by a ticket) would have been re-included in the count as formal votes, thereby reducing the actual informal rate from 3.1% to just 2.6%.

It is difficult to judge whether one party would benefit more than another if optional preferential voting was to allow more votes which are currently informal, to be accepted into the formal count. Still, at the 2002 SA State election the average informal rate across the 15 seats which emerged from the election as safe ALP seats, was 3.6%, compared to only 2.5% as the average across the 13 seats which emerged from the election as safe LIB-held seats.¹⁴ Under an optional preferential count, it seems likely that more incomplete ballot papers would be included in the formal count in safe ALP seats than in safe LIB seats, and that the ALP would benefit a little more than LIB from the change.

How much is a little more? Could it tip the balance in a really marginal seat?

The short answer is that it could at some past or future election, but would not have at the most recent election. The most marginal result at the 2002 State election was Norwood, where the seat was won by the sitting ALP Member with a final margin of 189 votes; putting 20% of the informals back into the count would add another 128 votes into the count – not enough to change the outcome in that seat even if every one of those informals would have favoured the losing candidate.

There is some indication from Queensland that the votes which are currently informal because they are incomplete and do not conform to a ticket, are more prevalent in booths where voters also lodge a lot of votes which are informal for other reasons. The ballot paper survey from the Queensland election of 1992 did not compare informal rates from one electorate to another, but did find that once incomplete ballot papers could be treated as formal votes, informality in 12 booths where the Aboriginal population was known to be high, dropped from an average of 10.4% in 1989 to 4.3% in 1992¹⁵.

It is interesting to note that in Stuart at the recent SA State election the average rate of informal votes was 2.3%, but rates above 3% were recorded at Morgan, Port Augusta, Port Germein and from the Mobile booth which serviced the far north areas, calling at Oodnadatta, Maree, Neppabunna and Lyndhurst. In Giles, the average rate of informal votes was 2.7% across the whole seat, but rates above 3% were recorded at Andamooka and Iron Knob (both above 6%), at Coober Pedy and from both of the remote area mobile polling stations.¹⁶ It seems entirely possible that the introduction of optional preferential voting would help more aboriginal voters to have their votes included in the formal count.

How To Vote Cards

It seems logical that How To Vote cards would be redundant in a voting system where a voter can mark just one or a few preferences on the ballot paper. But the experience in Queensland was that where parties issued *complete* How To Vote Cards, voters were

¹⁴ These calculations exclude Hammond and Chaffey, and include all seats with a swing to lose after the election of 6% or more.

¹⁵ 1992 ballot paper survey, p.7.

¹⁶ Giles Mobile Far North called at Oak Valley, Cadney Homestead, Watarru Community, Pipalyatjara Community, Amata Community, Nyapari, Pukatja / Ernabella Community, Umuwa Community, Katjiti / Fregon, Iwantja / Indulkana, Mimili, Mintabie Community hall, and Marla. Giles Mobile Far West called at Yalata, Nundroo, Coorabie, Fowlers Bay, Scottdesco and Penong.

quite likely to complete a full ballot paper, whereas voters were more likely to complete just one or a few preferences where their preferred party issued a How To Vote Card recommending that course. The rule of thumb seems to be that a party can double the rate of plumping¹⁷ amongst its supporters by issuing a How To Vote Card along those lines, and this seems to apply equally well in respect of any party.

Queensland ALP Member Mr Mickel stated soon after their 2001 State election that the “optional preferential voting system has largely negated the need for people to stand outside polling booths handing out how to vote cards.”¹⁸ Actually, a new form of How To Vote cards has emerged in Queensland. These are referred to as “second preference How To Vote cards” and use wording such as “Thinking of voting for Joe Bloggs? Give your second preference to Fred Nurk”¹⁹; they are authorised by the party wanting the second preference (Fred Nurk’s party), and indeed may run counter to the How To Vote card issued by Joe Bloggs.

Two Party Preferred vote

Introducing optional preferential voting for the House of Assembly would require changes to the Electoral Act and possibly also the Constitution Act. My guess is that if we accept that optional preferential voting is a good thing *because it does not force voters to give preferences to candidates they do not want*, then the changes to these Acts will be seen as relatively uncomplicated.

Under s.96 of the Electoral Act 1985 (SA), a candidate for a House of Assembly seat can only be elected if he or she has an absolute majority of the formal votes cast (either through first preferences alone or through preferences received from candidates as they are excluded). In an optional preferential system there are formal votes which are originally part of the count but which drop out of the count as exhausted votes once there are no more preferences marked on the ballot paper. Accordingly s.96 would need to be changed to require a candidate to have an absolute majority of the formal votes *remaining in the count*.

In the event of a situation where a large number of voters exhaust their votes before ranking both the ALP and LIB candidates, the new version of a two party preferred vote might be less useful than the current version. For example in NSW in 2003, there were 3 seats where more than a quarter of all votes were exhausted before the end of the count²⁰, so the preferences of more than a quarter of the voters in these seats would not be reflected in a two party preferred result for the seat.

In South Australia, s.83(1) of the Constitution Act 1934 (SA) requires the Electoral Districts Boundaries Commission to ensure

¹⁷ Plumping is used to describe voters marking just one preference on the ballot paper.

¹⁸ Mr Mickel, ALP Logan, 22 March 2001 Address in Reply, p.115.

¹⁹ Mr Springborg, NAT Southern Downs, Electoral and Other Acts Amendment Bill, 16 May 2001:920. Mr Springborg raised the matter again in debate on the Electoral and Other Acts Amendment Bill, 11 April 2002:920.

²⁰ In Bligh 25.2% of all formal votes exhausted before the end of the count; in Dubbo 28.4% exhausted; and in Myall Lakes 29.2% exhausted.

“... as far as practicable, that the electoral redistribution is fair to prospective candidates and groups of candidates so that, if candidates of a particular group attract more than 50 per cent of the popular vote (determined by aggregating votes cast throughout the State and allocating preferences to the necessary extent), they will be elected in sufficient numbers to enable a government to be formed.”

This requirement has been interpreted by the Commission in terms of the two party preferred vote across the State, such that the Commission judges a redistribution to have been fair if, at the subsequent election, a party which wins more than 50% of the two-party preferred vote across the State also wins more than half of the 47 seats in the House of Assembly.

Changing to optional preferential voting would mean that at the end of each election the closest we could get to a two party preferred vote (in each seat or as a State-wide two party preferred vote) would be: Formal votes for the ALP as a proportion of all formal votes at the end of the count, and Formal votes for LIB as a proportion of all formal votes at the end of the count. Conceptually this would not be as inclusive as the full two party preferred figure, but may in fact be as meaningful.

How would moving to an optional preferential system change the *outcome* of South Australian elections?

Preferences

At the 2002 State election in South Australia, 2 in 3 seats were decided after the preferences of excluded candidates were distributed.²¹ In an optional preferential system fewer preferences would be distributed because plumping and partial allocation would exhaust some votes during the count.

The extreme case of an optional preferential system where *every* voter is a plumper (i.e. every voter chooses to mark *just a first* preference), collapses into a first-past-the-post voting system.

In the hypothetical situation that South Australia had changed to an optional preferential system *and every voter had marked just one preference*, the 1997 and 2002 State elections would have led to a Liberal government in 1997 and probably also in 2002 (with the help of one of the NAT or IND Members).

Still, reducing the vote to a first past the post system is the extreme example of what could have happened if optional preferential voting had been introduced. It is much more likely to be the case that some voters would fill in a full ballot paper and some would exhaust their votes before the end of the count; the important question is really what proportion of votes could be relied on to contribute to the final result, and perhaps also whether the supporters of particular parties would be more likely to exhaust their votes than to have them transfer to one of the final two candidates.

²¹ Seats won on first preferences were:

for IND Mt Gambier;

for LIB Bragg, Davenport, Finniss, Flinders, Frome, Goyder, Mackillop, Morphett, Unley and Waite and for ALP Croydon, Napier, Playford, Pt Adelaide, Ramsay and Taylor.

Two States might help here: New South Wales and Queensland both have optional preferential voting in their Lower House elections (and a single transferable vote and single member electorates).

- The Queensland figures come from a survey done after each of the past 4 elections, looking at ballot papers in a series of electorates.²² After the introduction of optional preferential voting in Queensland in 1992 about 25% of all first preferences votes would have exhausted before the end of the count, until the *parties* began to recommend that voters “Just Vote One,” at which stage the proportion of votes which would have exhausted during the count increased to 68%.

Table 1: Proportion of Ballot Papers with Single Preference, Partial List or Full List of Preferences, Queensland State Elections 1992 to 2001 (%)

	Just One Preference	Partial Listing of Preferences	Full Listing of Preferences	ALL Formal Ballot Papers
1992	23	4	73	100
1995	20	4	76	100
1998			not available	
2001	60	8	32	100

SOURCE: ECQ Ballot paper Surveys 1992, 1995, 2001.

It is clear from the Queensland ballot paper surveys that Queensland voters were not keen on marking just a few preferences on their ballot papers - they chose to either plump or complete a full listing of preferences on their ballot papers.

- In the New South Wales case, no survey of ballot papers has been done, so the following figures are from the official results of the Legislative Assembly elections in 2003. We have no access to information about the number of preferences shown on the ballot papers of those people who voted for one of the two *final* candidates in a given seat but in a sense the second or subsequent preferences expressed on these votes don't matter because they would never affect the outcome of the contest. What matters here are the *preferences available for transfer* and whether they make any contribution to the final result in the seat. In this respect we do have useful figures from the NSW 2003 elections - of all of the preference votes which could have been transferred²³ about 55% were exhausted before the end of the count. The proportions ranged from only 37% in both Lane Cove and Vaucluse to almost 90% in Myall Lakes.²⁴

²² Electoral Commission of Queensland, 1993, Queensland Election 1992 Ballot Paper Survey; Report on Informal and Optional Preferential Voting, ECQ Research Report No 1/1993.

Electoral Commission of Queensland, 1996, Queensland Election 1995 Ballot Paper Survey, ECQ Brisbane. Results of the 1998 survey have not been published.

Electoral Commission of Queensland, 2002, Queensland Election 2001 Ballot Paper Survey, ECQ Brisbane.

²³ the preference votes for candidates other than the final two candidates in each seat.

²⁴ My calculations from 2003 NSW electoral data available at www.seo.nsw.gov.au.

It is quite possible to calculate a hypothetical result in South Australia with an optional preferential vote where 25% of all voters for any party, plumped (marked just one preference), and the remaining voters completed the full ballot paper. Or we could look at the hypothetical situation where 50% of voters for any party marked just one preference. These rates would have been well within the realms of possibility in NSW in 2003, and Queensland at any time since 1992. The results of such an exercise, using the voting figures for 2002 in South Australia are:

- Any plumping at all would have made the results closer in 13 seats²⁵ and would have made 32 seats stronger; Light would have remained exactly the same.
- Plumping would have strengthened the LIB position in every seat which was actually won by LIB candidates in 2002.
- Plumping would have strengthened the LIB position in 11 seats which were won by ALP candidates in 2002: Norwood, Adelaide, Elder, Ashford, Florey, Colton, Mitchell, Lee, Elizabeth, West Torrens and Enfield, and also in the 4 seats which were won by Members who do not represent the two major parties - Hammond (CLIC), Fisher and Mt Gambier (IND) and Chaffey (NAT).
- With anything more than 20% plumping in Norwood, that seat would have changed hands to LIB in 2002; Hammond would have stayed LIB with 35% or more of voters plumping, and Adelaide would have remained LIB with anything more than 50% of voters plumping.

The seats which would have been affected most by optional preferential voting if it had been introduced in time for the 2002 House of Assembly elections in South Australia would have been Norwood, Adelaide and Hammond, but other seats would have become more or less marginal.

Table 2: Seats won under various electoral systems, South Australian State election 2002

	ALP	LIB	NAT	IND	CLIC
	Number of seats won				
Actual result in 2002 (present system of full preferential ballot)	23	20	1	2	1
Optional preferential -					
With 25% plumping	22	21	1	2	1
With 50% plumping	22	22	1	2	0
First past the post (100% of voters plumping)	21	23	1	2	0

SOURCE: my calculations based on results from the South Australian House of Assembly election of 2002.²⁶

These figures have been calculated on the basis of an across-the-board change to plumping by 25% or 50% of voters regardless of the party they supported. In fact, in most South Australian seats, the ALP and LIB candidates have more votes than other

²⁵ Plumping would have moved the following seats towards LIB: Norwood, Adelaide, Elder, Ashford, Florey, Colton, Mitchell, Lee, Elizabeth, West Torrens and Enfield all held by the ALP, and Hammond (CLIC), Fisher and Mt Gambier (IND) and Chaffey (NAT).

²⁶ State Electoral Office 2002, South Australian elections 9 February 2002; Statistical Returns, SEO, Rose Park.

candidates and are not excluded at any stage of the count, so at least in these seats it is irrelevant whether ALP and LIB supporters would decide to plump. *What would make a difference in these seats, would be how many supporters of the minor parties – especially any IND candidates associated with the major party holding the seat - decided to exhaust their votes without giving a preference to either of the two major parties.*

On the basis of Queensland experience, this might depend on whether a party ran a "Just Vote One" type of campaign; in the absence of such a campaign a prudent guess might be that between a quarter and half of preferences will not contribute to the final result.

Electing all of the Legislative Council Members at the same time

Because the quota of votes required for a seat in the Legislative Council is calculated according to the number of Members to be elected, increasing the number of Members to be elected at any one time would reduce the quota. At the State election of 2002, there were 930,462 formal votes in the Legislative Council count as a result of which the quota was deemed to be 77,539 votes.²⁷ Had we been electing 22 MLCs in 2002, the quota would have been 40,455, a reduction from 8.3% to 4.4% of formal votes.

We are accustomed to the idea of one party or another winning the majority of seats in the House of Assembly, but it is a different matter to win enough votes to win a majority of seats in the Legislative Council.

Since the introduction of proportional representation in time for the 1985 State election, no one party has ever been able to win enough votes to secure a majority of the seats in the Legislative Council, no matter how large its support within the community. This has been largely the result of the lagged elections for the Council – it has often been possible for a party to win 5 seats at an election and indeed in the 1993 landslide against the ALP the Liberal Party even won 6, but it has never been possible for a party to win these landslide levels of support at two consecutive elections in order to win 12 seats (and hence the balance of power for 4 years). If we changed to electing all 22 Members of the Legislative Council at the same time, it would be possible – but still not common – for one party to win a majority of seats.

Table 3 shows the actual composition of the Legislative Council just after the 2002 State election, and also the composition of the Council if we had elected all 22 MLCs at that election, but still using our current full preferential ballot²⁸. The difference is not startling – neither the ALP nor LIB would have had a majority of seats in the Council. The LIB and Family First membership would have remained at the same level, but the ALP would have had one extra Member compared to the actual situation on the floor of the House today, the Democrats would have had only 2 seats rather than 3, and the two other Independents (Xenophon for IND No Pokies and Cameron, IND) would have been replaced by a Greens MLC and an IND Grey Power MLC.

It is true that the 2002 Legislative Council would not have changed markedly from the current one, but Table 3 shows that the group of Members who would have been elected in 1993 had we elected them all at the time of the House of Assembly election, would have been quite unusual – one party (LIB) *would* have had the majority of seats (12 seats) for the 4 years from 1993 until the 1997 election.

²⁷ The quota is calculated as :

$$\left[\frac{\text{total formal votes}}{\text{number of seats available, plus 1}} + 1 \right]$$

Where the quota works out to be more than a whole number, it is rounded down to the nearest integer.

²⁸ That is, either marking every candidate below the line or just one party above the line (in which case the vote is distributed according to that party's complete ticket).

Table 3: Composition of the Legislative Council after the 1985, 1989, 1993, 1997 and 2002 State Elections, electing 11 Members for 8 year terms or 22 Members for 4 year terms.

State of the Legislative Council:	ALP	LIB	DEM	CTA	GREY POWER	GREENS/ Aust Greens	NO POKIES	IND McCarty	SA First	Family First	IND Grey Power	TOTAL
After the State election of 7 December 1985: House of Assembly: ALP government elected to power. Legislative Council <i>having elected 11 MLCs in 1982 and electing 11 MLCs in 1985</i> Actual result on the floor of the Council after the 1989 election OR, <u>model result</u> if we had elected 22 MLCs in 1989	5 5 10 11	5 5 10 9	1 1 2 1	1								11 11 22 22
After the State election of 25 November 1989: House of Assembly: ALP minority government elected to power. Legislative Council <i>having elected 11 MLCs in 1985 and electing 11 MLCs in 1989</i> Actual result on the floor of the Council after the 1989 election OR, <u>model result</u> if we had elected 22 MLCs in 1989	5 5 10 9	5 5 10 10	1 1 2 2	1								11 11 22 22
After the State election of 11 December 1993: House of Assembly: LIB government elected to power. Legislative Council <i>having elected 11 MLCs in 1989 and electing 11 MLCs in 1993</i> Actual result on the floor of the Council after the 1993 election OR, <u>model result</u> if we had elected 22 MLCs in 1993	5 4 9 6 7	5 6 11 12 12	1 1 2 2 2		1 1			1				11 11 22 22 22
After the State election of 11 October 1997: House of Assembly: LIB minority government elected to power. Legislative Council <i>having elected 11 MLCs in 1993: and electing 11 MLCs in 1997</i> Actual result on the floor of the Council after the 1997 election OR, <u>model result</u> if we had elected 22 MLCs in 1997	4 4 8 7	6 4 10 8	1 2 3 4		1 1	1						11 11 11 22
After the State election of 9 February 2002: House of Assembly: ALP minority government elected to power. Legislative Council <i>having elected 11 MLCs in 1997, and taking changes into account (Cameron) and then electing 11 MLCs in 2002</i> Actual result on the floor of the Council after the 2002 election OR, <u>model result</u> if we had elected 22 MLCs in 2002	3 4 7 8	4 5 9 9	2 1 3 2			1			1			11 11 22 22

NOTE: The two alternatives for 1993 with 22 Members depend on how the surplus votes are distributed when Grey Power is excluded. Each of the two alternatives is equally likely.
SOURCE: Actual results from the State elections, from the state Electoral Office, and my calculations based on a ticket vote model.

Optional preferential voting at a Legislative Council election

Because we have one State-wide electorate for the Legislative Council we need to elect more than one Member at each Council election, and it will always be necessary for voters to show preferences for more than one candidate. For this reason it is not, strictly speaking, possible to think in terms of optional preferential voting for the Legislative Council - *partial preferential* voting would be as close as we could get.

The South Australian Legislative Council is elected on a proportional representation basis, and so are the Tasmanian House of Assembly, the ACT Legislative Assembly and the NSW Legislative Council.

Currently, electing Members to the multi-member electorates of Tasmania's House of Assembly is done using proportional representation and a partial preferential system. There are 5 seats in each electorate and voters are required to show preferences for at least 5 candidates – showing any more preferences than that is up to the voter. Similarly, in the ACT where there are two 5-Member and one 7-Member electorates, voters are required to mark their preferences for 5 or 7 respectively, and may then choose whether to add more preferences.

Something a bit different is now operating at elections for the New South Wales Legislative Council – there are 21 members to be elected at each time²⁹ but voters are only required to show preferences for 15 candidates (and can show more). This can be done by voting below-the-line (below-the-line voters must rank at least 15 candidates), but NSW has also retained above-the-line provisions: above-the-line voters must vote for one party, but may go on to mark preferences against other parties if they choose to.³⁰ What makes this above-the-line provision work when a large number of MLCs are to be elected, is a requirement that any party which wants to be part of the above-the-line area of the ballot paper is required to field at least 15 candidates.

A party's ticket in the NSW Legislative Council election is no longer a complete ranking of all of the candidates standing at the election but just a ranking of the party's own candidates, so the effect of the ticket is simply to allow a vote to be transferred within that party's group of candidates; at that point it exhausts.

The NSW Legislative Council ticket vote provision also allows a voter to actually mark more than one preference above the line – indeed a voter could number every group above the line. In that case the vote is transferred completely through the 15 (or more) candidates standing for the party of the voter's first preference, then completely through the candidates standing for the voter's second preferred party, and so on. The difference between this sort of vote and the voter choosing to number candidates below the line is that an above-the-line vote travels down the list of a party's candidates in the order that they are printed on the ballot paper (which order is decided by the endorsing party) whereas a below-the-line vote can specify his own order of preference within a party's list of candidates.

²⁹ As with our current Legislative Council, half of the 42 Members of the NSW Upper House are elected each 4 years, to serve an 8 year term.

³⁰ www.seo.nsw.gov.au

In past South Australian elections, tickets have been vitally important, partly because the vast majority of voters (95-96%) have made use of the above-the-line voting provisions and partly because receiving preferences from excluded candidates has given those candidates continuing into the count a chance to pick up enough preferences to win another quota. But if we increase the number of Members elected each time from 11 to 22, these additional preferences may become less important in the count, so it may be that even *abandoning full ticket voting* would not be a major disadvantage to parties.

The reasoning for this argument is as follows.³¹

- On the basis of the actual results from 1985 to 2002, a party or IND candidate has needed to win at least 20% of a quota in first preference votes in order to have a big enough support base to stay in the count and not be excluded early with other “minor players”.
- In order to win a majority of the seats in the Legislative Council a party currently needs to win 6 of the 11 available seats (at two successive elections). In order to win 6 seats a party needs to win 5 quotas worth of first preference votes plus at least another 20% of a quota of first preference votes (in order to stay in the count) and then another 80% of a quota which can come from a combination of first preference votes and preferences from excluded candidates. Translating this into percentages of the first preference vote, in order to win 6 of the 11 seats a party would need to win at least 43.3% of first preferences (41.7% of first preferences to win 5 seats plus another 1.7% of first preferences to stay in the count) and then would need to win *another 6.7% of preferences either in its own right as first preferences or by receiving them as second or subsequent preferences from other candidates as they are excluded*. This would need to be repeated at two successive elections.
- However, in order to win a majority of the seats if we elected all 22 Members of the Legislative Council at the same time, a party would need to win 12 of the 22 available seats (at just one election). In order to win 12 seats a party would need to win 11 quotas worth of first preference votes plus at least another 20% of a quota of first preference votes (in order to stay in the count) plus another 80% of a quota which can come from a combination of first preference votes and preferences from excluded candidates. Translating this into percentages of the first preference vote, to win 12 of the 22 seats a party would need to win at least 48.7% of first preferences³² and then would need to win **another 3.5% of first preferences - not 6.7% as before** - either in its own right as first preferences or by receiving them as second or subsequent preferences from other candidates as they are excluded.

So even if we retained our current full preferential voting system for the Legislative Council, electing 22 MLCs at once would have the effect of reducing the importance of preferences to some extent.

If we changed to an optional preferential vote for the Legislative Council, and elected 22 MLCs at the same time, the importance of preferences would be reduced even further.

³¹ This was first noted in Newton-Farrelly J., 2000, The South Australian Legislative Council: Possible Changes to its Electoral System, Parliamentary Library of South Australia Information Paper No.17, at pp 13-15.

³² 47.8% of first preferences to win 11 seats plus another 0.9% of first preferences to stay in the count.

Table 4: Electing 22 MLCs using proportional representation, one State-wide electorate and either full preferential voting or partial preferential voting.

	ALP	LIB	DEM	Call To Aust	NAT	IND NDP Mountwinter	All Others
1985							
quotas won	11.0	9.0	1.3	0.7	0.37	0.34	0.24
seats won with full preferential vote (as we have now)	11	9	1	1			
seats won with partial preferential voting and 80% exhausting	11	9	1	1			

	ALP	LIB	DEM	Call To Aust	Grey Power	IND Greens Conservative Party	Aust Others
1989							
quotas won	9.14	9.45	2.46	0.58	0.52	0.38	0.21
seats won with full preferential vote (as we have now)	9	10	2	1			
seats won with partial preferential voting and 80% exhausting	9	9	3	1			

	ALP	LIB	DEM	IND McCarty	IND HEMP	IND Greens	Grey Power	IND Lab Petersen	Shooters Party	IND Call To Aust	All Others
1993											
quotas won	6.3	11.9	1.8	0.47	0.41	0.38	0.37	0.27	0.30	0.26	0.24
seats won with full preferential vote (as we have now)	6	12	2	1			1				
seats won with partial preferential voting and 80% exhausting	6	12	2	1			1				

	ALP	LIB	DEM	IND No Pokies	IND HEMP	IND Greens Party	Grey Power	IND UAP	NAT Aust First	All Others
1997										
quotas won	7.0	8.7	3.8	0.7	0.40	0.39	0.37	0.31	0.24	0.23
seats won with full preferential vote (as we have now)	7	8	4	1		1	1			
seats won with partial preferential voting and 80% exhausting	7	9	4	1		1	1			

	ALP	LIB	DEM	Family First	IND Greens Party	One Nation	IND Xen. No Pokies	IND SA First	IND HEMP	Grey Power	All Others	TOTAL
2002												
quotas won	7.6	9.2	1.7	0.9	0.6	0.42	0.3	0.27	0.2	0.196	1.4	23
seats won with full preferential vote (as we have now)	8	9	2	1	1							22
seats won with partial preferential voting and 80% exhausting	8	9	2	1	1	1				1		22

SOURCE: my calculations using a ticket vote model and assuming preferences exhausted at a rate of 80% at first transfer only.

The New South Wales Legislative Council voting system was changed to optional preferential in time for their recent election in 2003, and the outcome there was that when it came to transferring preferences from excluded candidates, roughly 80% exhausted. *The effect was that instead of preferences being vitally important in the outcome of the election, in 2003 they made no difference at all to the outcome.* “The election of the final vacancies was determined entirely by the number of primary votes received by each party, not by the distribution of preferences.”³³

It would not necessarily be the case at each election that preferences would be irrelevant to the final result – a party with a sizeable support base could manage to persuade its voters to pass their preferences on to other parties. But as with the transfer of votes at the House of Assembly elections, it would be largely irrelevant what proportion of voters *for the larger parties* decided to do with their preferences because in most cases these preferences would not be transferred. Once again, the focus would be on the proportion of votes exhausted or transferred by supporters of minor parties.

Retaining proportional representation but allowing optional preferential voting for the Legislative Council, and assuming an exhaustion rate of 80% (which was the average in NSW in 2003) we can calculate the outcome in South Australia had we elected 22 MLCs at our most recent elections. Table 4 shows the outcome.

Table 4 shows that in 1985 the result would have been the same whether we had a full preferential vote or partial preferential voting. In fact in 1985 the same outcome would have been achieved if every vote exhausted on transfer – that is, the candidates who would have won the 22 available seats represented the parties with the most first preference votes, and preferences would have made no difference at all to the outcome.

In more recent elections there have been more IND candidates and more candidates representing small parties. In 1985 the 3 major parties won almost 93% of all first preference votes, leaving only about 7% of first preference votes to the IND candidates and smaller parties, but by 2002 these IND candidates and smaller parties won nearly 20% of all first preference votes. This much larger pool of votes was not detached from the major parties by another new popular party (unlike the east coast One Nation phenomenon) but seems to have been more a matter of support leaking out of the major parties towards a myriad of single issue groups, so even if a large proportion of these votes exhaust during the count the sheer size of the pool has the potential to make a difference to the outcome of an election.

The 1989 result is a good example (see Table 4). Electing 22 MLCs, Grey Power would have won just over half a quota, DEM would have had 2.46 quotas (2 seats with 46% of a quota continuing into the count), and LIB started the count with 9.45 quotas (9 seats and 45% of a quota continuing into the count). With a full preferential vote the preferences of smaller parties and IND candidates would have awarded the final seat to LIB which had fewer continuing votes than either DEM or Grey Power. With a partial preferential count and 80% of preferences exhausting, the final seat would have been won by DEM – so even though it won more first preferences, Grey Power simply would not have received enough preferences from excluded candidates to win a seat. Quite the opposite would have occurred in 2002 with a full preferential ballot – Grey Power would have won a seat with under 20% of a quota of first preference votes, when 5 other parties³⁴ had more first

³³ Antony Green, 2003, *2003 New south Wales Election – Final Analysis*, NSW Parliamentary Library Research Service Background Paper 6/2003, at pp.53-54 available on-line at www.parliament.nsw.gov.au.

³⁴ One Nation, IND Xenophon No Pokies, IND Voluntary Euthanasia, SA First and IND HEMP.

preference votes – this time Grey Power would have received more preferences from excluded candidates than the other parties in question.

How many preferences would voters need to specify if they vote below the line, if we changed our system to partial preferential and elect 22 MLCs? To elect 21 MLCs in the NSW Legislative Council ballot, voters are required to rank at least 15 candidates if voting below the line or at least 1 party (fielding at least 15 candidates) if voting above the line. In fact at the 2003 NSW election, voters could have ranked just 10 candidates and the result would have been the same,³⁵ but a prudent approach might be to adopt 15 in South Australia as well.

We should bear in mind that allowing voters to exhaust their votes will mean that some voters will have their ballot papers discarded before reaching a party which wins a seat – that is, some voters will effectively not have *any* of their preferences catered to. That is inherent in partial preferential voting.

Partial preferential voting would make it highly probable that the final candidates elected to the Council – often representing smaller parties - will be elected with less than a quota, so some MLCs would have been elected with fewer votes than others. Again, that is inherent in partial preferential voting.

27 August 2003

³⁵ The ALP won 9.6 quotas and went on to accumulate enough preferences to secure a 10th seat.