

**Submission
No 36**

**PROPOSALS TO INCREASE VOTER ENGAGEMENT, PARTICIPATION AND
CONFIDENCE**

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Proposals to increase voter engagement, participation and confidence

Thank you for the opportunity of making a submission.

I apologise for the lateness of this submission. When this inquiry was first accepting submissions in August, I was analysing the Northern Territory election and preparing for a very busy few months with many elections around Australia. When the inquiry was first announced in May, I did [publish a blog post](#) on the topic.

Informal votes in New South Wales local government

I wished to make a late submission after hearing of a particular story about informal voting at the recent New South Wales local government election. I also read some submissions advocating for compulsory preferential voting in New South Wales elections, and I wanted to address this issue. So this submission entirely deals with rules around requiring multiple preferences for a formal ballot, and the dilemmas that make this issue so difficult.

Sydney Morning Herald journalist Anthony Segart [reported earlier this month](#) on the case of a small town in Moree Plains Shire where almost every vote was classified as informal. The Special Minister of State, John Graham, is quoted in the story referring the issue to this committee.

In the town of Toomelah, 43 votes were cast. Just three of those votes were formal. That is an informal rate of 93%. Helpfully, the NSWEC publishes the full dataset of ballot papers, including what marks were made on informal ballot papers. This makes it relatively easy to evaluate the reason why each ballot was marked as informal, and whether some of these ballots could be made formal by a change to the rules. I have done this for the whole of Moree Plains Shire.

The ballot paper for Moree Plains Shire had an odd shape. Most candidates were “ungrouped” candidates, but one group nominated two candidates. This caused the ballot to take up two columns – the single group on the left and everyone else on the right. No group qualified for a box above the line (which would have required two groups of five candidates or more), so all votes are “below the line” for individual candidates. NSW local government election rules require that votes for individual candidates must number at least half as many boxes as there are vacancies. In the case of Moree Plains, that is five boxes.

These two policies were directly responsible for a majority of the informal votes in Moree Plains: either votes with a clear first preference, but insufficient preferences marked; or a

voter marking both columns of the ballot separately, clearly being confused by the two columns and thus marking two first preferences.

For Moree Plains Shire, the types of informal ballots were:

- Clear first preference, but failed to number boxes 2, 3, 4 and 5 correctly. Includes “just vote 1” – 209 votes (37.9%)
- First preference unclear, including blank ballots – 216 (39.1%)
- Numbered boxes in both columns – 127 (23.0%)

If the rule requiring 5 preferences was replaced by a rule simply requiring a clear first preference, that would have formalised almost 38% of the informal ballots in Moree Plains. If you also ensured that the two-column ballot is not used, that would likely result in another 23% of informal votes being cast formally. That would have reduced the informal rate from 8.7% to 3.4%.

For now I have only performed this analysis for Moree Plains, but the same data is available for other councils and a broader analysis can be done in the future. The issue with producing a ballot paper with two columns is present in a number of councils, generally those on the border of areas where the ballot paper is dominated by above-the-line groups, and where the ballot paper solely consists of ungrouped candidates. I mapped out the different ballot shapes [in this September blog post](#). There are also a large number of councils where most people vote for individual candidates and are affected by rules requiring multiple preferences for a vote to be formal.

I have another example of where formality rules creates an unreasonable burden. In three-member urban wards, there is not a big difference in formality requirements between above- and below-the-line, with a below-the-line vote requiring just two preferences. But in a big unwarded council like Campbelltown, a below-the-line voter must number eight preferences.

In 2024, due to some unspecified error, only seven of the eight Animal Justice Party candidates managed to nominate as a group, with the eighth candidate listed in the ungrouped column. The party had polled 4.77% in 2021, and won one seat. But in 2024, without an above-the-line box, the eight candidates polled just 0.71% between them, and their sitting councillor did not come close to being re-elected. It should not be so difficult to cast a below-the-line vote in such circumstances.

I have two recommendations to fix this problem, and a broader recommendation.

- **Recommendation 1** – Formality rules for local government elections should specify that a single ‘1’ is sufficient for a vote to be formal below the line.
- **Recommendation 2** – When only one group successfully nominates for the ballot paper in a particular ward or undivided council, that group’s candidates will be listed amongst the ungrouped candidates, with no group columns.
- **Recommendation 3** – The Joint Standing Committee on Electoral Reform should hold an inquiry into the conduct of the 2024 New South Wales local government

elections, considering all matters including nominations procedures, formality rules and ballot paper design.

Optional preferential voting at New South Wales elections

I note that the committee received a submission from the Australian Labor Party that advocated for a switch from optional preferential voting (OPV) to compulsory preferential voting (CPV) for New South Wales state elections, and this was then a topic of discussion at the committee's hearing. I wish to discuss this issue. While I do not support a change to compulsory preferential voting, I believe some intermediate measures could achieve a better outcome than either pure OPV or pure CPV.

Firstly, it doesn't appear that the submission or the discussion at the hearing broached the issue of changing the constitution. The current OPV electoral system is embedded in the NSW Constitution, and would require a referendum to change it. I believe this makes such a change impractical.

I don't see how a switch from OPV to CPV is consistent with ensuring that "every vote is valued and counted". Such a change would result in a substantial number of votes becoming informal, and thus not being counted at all.

The NSW Labor submission discusses such a change as if it would magically result in all of those voters who currently exhaust their ballot instead filling it in to ensure it would be formal. That would be the case for many, but far from all.

CPV produces a fictional result where there are no exhausted ballot papers – every preference ends up going to one of the last two candidates, and the winner always wins a majority. But it does that by throwing out any ballots who don't fit the strict rules, and also forcing others who may not have a preference to indicate one so their vote gets counted.

We know that informal rates are much higher under CPV elections than OPV elections. While both systems produce intentional informal votes, where a voter chooses not to cast a vote, CPV also adds in a substantial number of informal votes where the voter has marked at least a first preference.

We know many of these are likely to be accidental, either because the voter doesn't understand the formality rules or they just make a small mistake. We also know that informal rates climb as the ballot paper gets longer.

I don't see how this is at all consistent with increasing participation in NSW elections.

The debate at the committee hearing was insightful because it showed two different understandings of OPV and CPV. The first (argued by Labor members) sees exhausted ballots as accidents caused by a voter not knowing how to maximise the value of their vote, or being caused by misleading campaigning, such as the "Just Vote 1" posters sometimes seen in NSW elections. The second (argued by Coalition members) sees exhausted ballots as

a deliberate choice by a voter who does not wish to number the remaining boxes as a point of principle.

The reality is likely somewhere in between. Some voters genuinely do not wish to number every box. In a contest between Liberal and Labor, some voters would rather opt out, but do want their first preference to be counted. Other voters likely do make mistakes, or are misled into not filling out all of their genuine preferences. Neither a system which forces every ballot to fill out every preference, nor one which treats the marking of additional preferences as a minor detail, are ideal.

Fortunately there is an alternative. The current Senate electoral system, first used in 2016, instructs voters to number at least six boxes above the line or twelve boxes below the line. This instruction comes in the form of written instructions on the ballot paper, verbal instructions from the polling clerk when handing over the ballot, and has also been communicated through AEC advertising.

Another example can be seen in elections to the ACT Legislative Assembly. The ballot paper instructs voters to “Number five boxes from 1 to 5 in the order of your choice” (and then suggests they can go further if they wish), but a single ‘1’ counts as formal.

I will leave the legal and constitutional questions to others, but I would argue that a system which strongly encourages voters to mark multiple preferences (five seems like a reasonable number) but only enforces a single preference would help prevent voters unintentionally exhausting their vote while not punishing those who wish to do so sincerely, or those who stuff up.

- **Recommendation 4** – While only requiring a single ‘1’ for a vote to be formal, ballot papers for the NSW Legislative Assembly and NSW local councils should instruct voters to number at least five boxes.

The position of New South Wales in encouraging electoral participation

Beyond these issues, I would like the committee to broaden its perspective and see all of the things that New South Wales is already succeeding at. We have a very good system for ensuring that a ballot paper gets in the hands of voters. Direct enrolment ensures a very high proportion of eligible residents are on the roll, and enrol-and-vote policies make it easy to enrol even at the last minute.

Optional preferential voting also ensures a low rate of informal voting, although compulsory voting means there will always be a certain number of voters who will choose to vote informally regardless of efforts to minimise informal voting. Thus we also make it easy for a voter to cast a formal ballot once they get that piece of paper in their hand.

Where New South Wales falls short is the same place that most Australian states fall short – our electoral system of single-member electorates means that the casting of votes has only a loose relationship with the number of seats won by each party. But that is a much bigger issue, and one I’ve previously raised with the committee.

Once again thank you for the chance to send in this submission.

Regards,

Ben Raue
22 November 2024