

# Submission re Draft Expansion of Parliament Bill

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## Summary

Given that the government intends to restore the size of the House of Assembly to 35 seats, this submission supports the proposed system of five seats with seven members each (here referred to as **5x7**) as in principle superior to alternative proposals, especially seven seats of five members (here referred to as **7x5**). However the Bill lacks any savings provisions to cover a potential increase in unintended informal voting as a result of voters having to number seven boxes without error instead of five.

I recommend that the Bill be supported **if and only if** the following conditions are met:

1. At the time of the Bill's introduction the Government commit to resourcing the TEC to conduct a major multi-media voter education campaign aimed at not only ensuring voters are aware of the need to number seven boxes, but also at combatting the three commonest forms of unintended informal voting: omission and repetition of numbers, multiple first preferences, and use of ticks and crosses.
2. At the time of the Bill's introduction the TEC be asked to prepare a report identifying any and all savings provisions that can be adopted to reduce the number of votes disallowed as informal without severely compromising the operation of the voting system or the accuracy of the ballot paper instructions, with a view to legislating any provisions thus identified by the end of 2023.

In the absence of significant action to combat unintended informal voting, I cannot support a return to seven-member electorates. The rate of unintended informal voting in state elections, now nearly 3% of votes submitted, is already too high, and risks should not be taken of increasing it further.

This submission firstly discusses reasons for in principle support for the 5x7 system as proposed in the Bill. It then discusses the issue of unintended informal voting and the desirability of urgent measures to address this in considerable detail.

## Author background

I have been involved in scrutineering, analysing and providing media coverage of various Tasmanian elections since 1988. My psephology website [www.kevinbonham.blogspot.com.au](http://www.kevinbonham.blogspot.com.au) analyses local, state and federal elections and politics and is well known in Tasmanian political circles. I also comment on elections and politics on Twitter: @kevinbonham . I have in the past been primarily a scientist by profession but an increasing proportion of my income comes from electoral and psephology related commissions and website donations; my doctorate is in science but my first degree included a political science major.

## In principle support for 5x7 model over 7x5 model

Firstly I wish to state my general in principle support for comments in the Tasmanian Electoral Commission's advice to the State Government on the relative merits of the 5x7

model in comparison to the 7x5 model that has had a small level of public support. In summary the TEC has found that the 7x5 model would create extra expense through the need to create a state-specific redistribution tribunal, and unnecessary public confusion because voters would be in state divisions with different names and boundaries to the five federal divisions. The TEC has also found that the 7x5 model does not necessarily present an improvement in delineating communities of interest, and would be likely to result in the splitting of the Hobart municipal area between two divisions.

Two arguments have been advanced for the 7x5 model. The first is that the 5x7 model would lead to increased informal voting. This is a serious concern to which most of this submission is devoted, but it can be addressed by adopting the 5x7 model while taking measures to combat unintended informal voting. That, however, is subject to the Parliament's willingness to adopt and fund such measures.

The second is that increasing the number of divisions would better enable more local representation. There is no evidence that this is actually a problem, As it is, the major parties routinely select candidates from a range of locations within each of the larger divisions to cover distinct communities (eastern shore vs Kingborough/Huon based candidates in Franklin, Burnie and north-west coast vs Devonport area candidates in Braddon.) From time to time an area may be under-represented but this has not been a matter of significant public complaint. To the extent it happens, no evidence has been advanced that 7x5 would make a significant difference, and indeed it could create an increase in the frequency of candidates contesting divisions they don't actually live in.

To the extent that a party or candidate might achieve a very high localised level of support based on a distinct level of support, the 5x7 system is actually better for such candidates (all else being equal). As noted in the TEC's advice, the quota in the 7x5 system ( $1/7 \times 1/6 = 1/42$  of the state's population) is lower than the quota in the 5x7 system ( $1/5 \times 1/8 = 1/40$ .) However, the difference is only  $1/840^{\text{th}}$  of the statewide formal vote (fewer than 410 votes at the last election.)

Moreover, in return for the very slightly higher quota, the distinctive candidate/party firstly only needs to finish in the top seven candidates in their division, rather than the top five (and may not need to reach quota to do so), and secondly has an extra  $2/35^{\text{ths}}$  of the state's population to draw upon. Hypothetically if a division under the 7x5 system was entirely contained in one of the current divisions, a candidate who could poll a quota (16.67%) in the 7x5 system division would also poll a quota (12.5%) under the 5x7 system within the current division by getting an average vote of just over 2% in the rest of the division. Of course, it could be that the support base for this distinctive candidate/party fell entirely within a 7x5 division and that a current 5x7 division cut through the boundaries of that support base, but this could just as easily happen the other way around.

It has been suggested that advocacy of the 7x5 system may in fact be motivated by a belief that it creates a greater chance of majority government, because it is harder for minor parties and independents to win seats when the district magnitude (the number of seats to be elected per division) is lower. To the extent that this could be the case, much of the

existing debate about chances of majority government with five or seven seats per division has revolved around comparing the current 5x5 system with the former 5x7 system, and not with a 7x5 system. Even then in the ten state elections since the rise of the Greens (originally Green Independents) as a significant statewide force, there has only been one election (1998) at which the 5x5 system produced or would have produced a majority but the 5x7 system would clearly not have done so or did not do so.<sup>1</sup>

The TEC's advice notes that the drawing of a boundary through Hobart City could be a point of objection in a redistribution proposal under the 7x5 model. An issue here is that with the southern end of the Hobart municipal area removed (including the Liberal enclave around Sandy Bay) Liberal support could drop low enough in the remainder of Clark for the party to win only one seat, meaning it would in all likelihood need at least one four-seat result in the north to win a majority. Detailed modelling would be needed to say which of the 5x7 and 7x5 systems provided the greater chance of majority government, and this would need to canvass a range of vote shares and include the possibility of parties adjusting strategically to the new boundaries in making decisions about campaign resources. I suspect any difference in the chances of majority government under the two systems would be small.

I believe the 5x7 model could be better for political diversity and could increase the chance of stable as opposed to unstable minority parliaments. It has been noticeably difficult in both Tasmania and the ACT for independents and fourth parties to win seats in five-seat divisions, with only one independent doing so and one nearly doing so in Tasmania at the past seven elections. In the ACT the last case of a five-member seat not being won by Labor, the Liberals or Greens came in 2001.

A further objection to the 7x5 model that is not noted in the TEC's advice concerns the possibility of a party running out of replacement candidates. In the history of the 5x5 system there have been two cases of a party exhausting its supply of replacement candidates (Labor, Franklin 2006-10 and Liberals, Braddon 2018-21), meaning that another vacancy could have left their party with the unenviable choice of contesting a single-seat by-election or allowing a different party to win the seat. A similar situation existed for the Liberals in Lyons 2018-21 as the only remaining candidate had been elected to the Legislative Council, and in the current term the Liberals are already down to only one replacement in Bass. While an increase in the resignation rate of Government MPs under the 5x5 system on a per-MP basis may have been caused by the overburdening of Ministers in the smaller Parliament, it is also possible that it is to some degree reflective of increased pressures in modern political life.

The potential risks to the Government's majority in the event of an unexpected vacancy appear to have been a factor in the 2021 election being called early. Having enough candidates to fill casual vacancies has also caused parties to sometimes run more than five candidates, despite the risk of some of their voters voting 1-5 and stopping. Increasing the

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<sup>1</sup> See detailed findings for all elections from 1989 at <https://kevinbonham.blogspot.com/2013/03/tasmanian-lower-house-25-or-35-seats.html> The most recent elections are discussed at the bottom of the page.

district magnitude to seven under the 5x7 model will reduce the risk of a government running out of candidates for possible recounts if it runs only as many candidates as there are vacancies. The 7x5 model, however, increases the number of divisions in which a government could run out of replacements.

## **The rate of unintended informal voting is already too high**

The remainder of this submission concerns the problem of unintended informal voting in House of Assembly elections and the need for action to be taken concerning it. Irrespective of the increase to seven members per electorate (which could cause further unintended informal voting problems), the rate of unintended informal voting has grown at recent elections, from 2.15% of all votes cast in 2014 to 2.48% in 2018 and 2.94% in 2021. Unintended informal voting includes votes with omissions and repetitions in the first five numbers (this would become seven), votes using ticks and crosses, votes with multiple first preferences and some other less important categories. At the 2021 election the total informal rate crossed 5% for the first time since 1996, giving Tasmania the second-worst state informal rate in the current state and territory electoral cycles (behind Victoria).

I am especially interested in what might be called “saveable” unintended informals (those with a unique 1 but containing omissions or repetitions, which would be formal in the ACT under its savings provisions.) These break unevenly by party, with the Greens least proportionally likely to lose votes in this manner and minor-party or independent candidates who run on tickets containing fewer than five candidates the most likely to do so. <sup>2</sup>

In my view, all states and territories should be aiming for an overall informal vote that is below 5% and an unintended informal vote of at most 2.5%. Higher informal voting rates than that undermine claims that elections represent the whole community.

## **Having seven members per division could further increase the unintended informal voting rate**

In the absence of savings provisions or an effective education campaign, increasing the number of boxes to be filled to seven is likely to increase the rate of unintended informal voting for the following reasons:

1. Some voters number many boxes but unintentionally omit or duplicate numbers. Currently any vote that omits or duplicates the numbers 6 and 7, but has the numbers 1 to 5 each once and once only, is formal. If the Bill is passed in its current form such a vote will be informal.

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<sup>2</sup> Detailed discussion of rates by party prior to 2021 at <https://kevinbonham.blogspot.com/2020/02/unintended-informal-voting-in-tasmanian.html>. The pattern continued in 2021 with informal votes containing omissions or repetitions equalling 2.32% of the formal votes received for fourth-party and independent candidates.

2. Some voters may number an insufficient number of boxes by reason of confusion with any of the following (i) previous state elections where only five boxes were required (ii) 2022 Tasmanian council elections where only five boxes are required (iii) half-Senate elections where voters above the line are instructed to number six boxes. Concerning (iii), both the next state and federal election are currently “due” in May 2025 and there is potential for the federal election to be held before the state election, or overlapping with its campaign period.
3. Statistics on unintended informal voting rates and causes are available in TEC reports from 1992 onwards. In 1992 an education campaign that included attempting to reduce informal voting was conducted<sup>3</sup>. In that year, informal votes caused by omissions and repetitions were 1.32% of the number of total formal votes<sup>4</sup>. In 1996 there does not seem to have been such a campaign and the rate rose to 1.90%. In 1998 with only five boxes required, it fell to 0.88% of the number of total formal votes and has remained below 1% ever since (0.98% of the size of the formal vote in 2022). All else being equal, a return to filling seven boxes could increase the informal vote by approaching 1%.
4. In other elections that compel voters to number boxes without error, there is a general pattern that, for a given voter base, more boxes equals more informals. For example the AEC reported regarding federal elections in 2016 that: “[.] while the number of candidates on the ballot paper is a relatively poor predictor of the total informality rate for a division, it is a good predictor for the rates of ballot papers with incomplete numbering (other than a number ‘1’ only) and ballots with non-sequential numbering where there is a clear first preference.”<sup>5</sup>

It is also possible that having more candidates on the ballot paper (a likely result of the expansion) will increase the informal voting rate irrespective of the number of boxes a voter must fill.

## **The informal voting rate under the previous seven-candidate requirement**

During the Electoral Act review process I proposed that Tasmania adopt the ACT system in which any vote with a unique 1 is deemed formal and exhaust rates are reduced by leaving votes that would exhaust behind with an elected candidate. This is discussed further later. In the Final Report on this process some comments were made suggesting that a change in 1973 to increase the number of boxes required for a formal vote from three to seven did not affect the informal voting rate. I am not clear what this was supposed to have to do with a proposal to (effectively) reduce the number required from five to one, or what the nature of the Tasmanian electorate in 1973 has to do with the more culturally diverse

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<sup>3</sup> <https://www.tec.tas.gov.au/Info/Publications/ElectionReports/1990-1994.pdf> p 27

<sup>4</sup> I calculated these rates as a proportion of the formal vote not the total vote for easy comparability with the rate by party.

<sup>5</sup> [https://www.aec.gov.au/about\\_aec/research/files/analysis-of-informal-voting-2016.pdf](https://www.aec.gov.au/about_aec/research/files/analysis-of-informal-voting-2016.pdf)

electorate today, but I suspect the 1973 example might again be used to attempt to claim that increasing the number of boxes from five to seven will not be a problem.

Therefore I note that the analysis of the 1973 change in the Final Report contained an embarrassing error. The Final Report claimed that following the 1973 change, the informal rate at “the 3 subsequent elections decreased slightly”. However the evidence cited for this claim was “*The total informality rate at the 1969 House of Assembly elections was 4.72%. This decreased to 3.66% at the 1972 elections; 3.80% at the 1976 elections; and 3.85% in 1979.*”<sup>6</sup>

1972 is before 1973 not after. The third election following the change was in fact 1982 at which the informal voting rate jumped to 5.66%. The 1972 informal rate, under the previous 1-3 system, was the lowest of those listed.

In fact, the informal rate for four of the seven elections held with the requirement to mark seven boxes exceeded 5%. The exceptions were the first two elections with that requirement, and also 1992 for which a public education campaign had some effect. Only four other elections have had informal rates over 5%: 1916 (when the informal vote was inflated by including persons not on the roll)<sup>7</sup>, 1946 (when massive confusion was caused by the introduction of columns), 1959 and, concerningly, 2021.

Different periods may have different rates of underlying informal voting rates and looking at overall informal voting rates is a poor substitute for data that separates out unintended and deliberate informal votes and classifies the former. It seems that the period 1972-1979 had a low underlying informal vote, and perhaps voter education in advance of the 1976 election prevented an immediate increase.

## The ACT savings provisions

As noted above, I have previously recommended adopting the ACT method in which any vote with a unique 1 is counted. This would be inconsistent with the current Tasmanian ballot paper instructions but that would be resolved by changing the instructions to roughly match those used in the ACT.

It is apparent that there is staunch opposition to this proposal so I have not specifically recommended it in this submission but I do want to make some comments about it:

1. In the Final Report for the Electoral Act Review the following comment was made about my proposal: “*He noted however, that votes that would exhaust at a given stage are disproportionately targeted for exhaustion on surplus transfers. In other words there would be an increase in the number of exhausted votes.*” I did not say that adopting the ACT method would cause an increase in the number of exhausted votes in the submission in question, and it is not straightforwardly obvious that this

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<sup>6</sup> [https://www.justice.tas.gov.au/\\_data/assets/pdf\\_file/0009/601398/210030-DPAC-Electoral-Act-Final-Report\\_16-Feb\\_wcag.pdf](https://www.justice.tas.gov.au/_data/assets/pdf_file/0009/601398/210030-DPAC-Electoral-Act-Final-Report_16-Feb_wcag.pdf) p 52

<sup>7</sup> <https://www.tec.tas.gov.au/Info/Publications/ElectionReports/1973-1977.pdf> p 30

is actually the case. The reason it is not straightforwardly obvious is that minor-party tickets in the ACT have no reason to run full slates of candidates, so often do not. As a result, their voters tend to distribute preferences beyond their preferred party. In contrast, in Tasmania several non-Green minor party tickets have run full slates, and when all candidates from such parties have been elected or excluded, it is common to see a high exhaust rate from those tickets.

2. Concerns have been raised about very high exhaust rates in ACT elections.<sup>8</sup> However the published distribution sheets for some recent ACT elections have exaggerated the level of exhaust by continuing to distribute preferences past the stage needed to determine the winner. Once this is accounted for the true exhaust rates at recent ACT elections have been around 6-7% of vote-values, similar to the 2014 and 2018 Tasmanian elections.<sup>9</sup> So if exhaust was too high in the ACT in 2016 and 2020 then it was also too high in Tasmania in 2014 and 2018. However, the 2010 and 2021 Tasmanian elections had much lower exhaust rates. The main difference is that in those two Tasmanian elections there were no five-candidate non-Green minor-party slates (in the case of 2021 perhaps because it was a snap election.)

## Savings provisions within the current system

Ideally, the legislation for changing from five to seven members per electorate would simply include a transitional savings provision such that any vote considered formal under the old system would be considered formal under the new system too for, say, the next two elections. The problem with this is that accepting a vote that numbered 1 to 5 and stopped as formal would render the statement on the ballot paper (“YOUR VOTE WILL NOT COUNT UNLESS YOU NUMBER AT LEAST 7 BOXES”) false.

If there is not willingness to go to something like the ACT system then there are still some other methods that could be considered to try to reduce unintended informal voting without seriously contradicting the ballot paper instructions:

1. Votes where the voter had numbered at least seven boxes but had skipped a number in the first seven could be saved, possibly with the vote exhausting at the point of the first error.<sup>10</sup> This would create a slight increase in exhaust but would also increase the number of voters whose voices were heard.
2. Likewise, votes where the voter had numbered at least seven boxes but had duplicated a number in the first seven could be saved with the vote exhausting at

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<sup>8</sup> <https://www.parliament.tas.gov.au/ctee/House/Reports/RC%20Final%20Report%20Tabled.pdf> p 117

<sup>9</sup> Discussed in detail at <https://kevinbonham.blogspot.com/2020/02/unintended-informal-voting-in-tasmanian.html> and <https://kevinbonham.blogspot.com/2020/10/act-2020-final-results-review-how-did.html>

<sup>10</sup> A savings provision to this effect exists in Western Australian lower house elections – Section 140A of the WA Electoral Act 1907. Despite the potential for voters to use it deliberately to cast “Langer-style” votes to exhaust their preferences, the actual exhaust rate is negligible.



the point of the first error. This would create a slight increase in exhaust but would also increase the number of voters whose voices were heard.

3. If they are not saved already, votes where the voter had included a single tick and cross, and that would be valid if the tick or cross was interpreted as a 1, could be saved as in the Senate – this would be deemed equivalent to numbering the box as such is clearly the voter’s intention in the case of a tick and very likely to be so in the case of a cross.

As commendable on the level of detail in the TEC’s current tables of informal voting is, it is not sufficient to make it clear how many votes might be saved by such provisions (other than that in the case of 3 it would be relatively small.)

## **Hare-Clark Is Not A Rolls-Royce System**

In feedback on my proposals to adopt the ACT system to increase the number of voters whose voices are heard, I have noticed that the TEC is concerned that proposals that could increase the exhaust rate could ‘reduce the effectiveness and accuracy of the Hare-Clark counting process.’ (Final Report paraphrase of TEC’s views.)

This treats Hare-Clark as if it is some kind of well-calibrated deluxe system, the effectiveness of which is compromised if voters choose to exhaust their votes or if some votes that exhaust are included in the interests of hearing the voices of as many voters as possible. This is not in fact the case – despite the reverence many Tasmanians have for Hare-Clark it is actually a relatively simple system that is primitive as an example of proportional representation by single transferrable vote, and that ignores subsequent advances in the mathematics of PR design. It does not use a progressively reducing quota, meaning that candidates can continue to accrue votes even after their election is mathematically certain, reducing the value of preferences that could be made available to continuing candidates. It also – for practical reasons in the absence of data entry - uses the archaic “last bundle” system for deciding which votes will be transferred in a surplus, meaning that when a candidate crosses quota on preferences, only one of the many sources of votes that contributed to them doing so is used, while the other votes that elected the candidate do nothing for the rest of the election.

The supposed importance of the final candidates reaching/approaching quota is easily overstated. The quota is mainly a device for electing candidates when they don’t need any more votes. It is also not the case that Hare-Clark is a highly calibrated proportional representation system – it is candidate-focused which creates significant distortions.

It is true that the method used in the ACT can have some curious implications in the filling of casual vacancies, but these are very minor compared to a far more serious problem with the casual vacancy recount method, the unsolved “recount bug” problem in which candidates who performed well in the original count can be disadvantaged.<sup>11</sup>

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<sup>11</sup> <https://kevinbonham.blogspot.com/2019/09/wonk-central-hare-clark-recount-bug-and.html>

Democracy should be about hearing as many voices as possible, including those of voters who struggle with numbers and/or the English language. We should be looking for ways to count more votes, not more ways to not count votes. I hope the potential for an increase in the number of boxes required without error from five to seven to disqualify more votes will be taken seriously. If it is not, then the size of the House should not be increased at all.

## **5 PM Submission Deadlines**

Lastly, while I have managed to complete and submit this particular submission the day before it is due, I wish to again object to the use of 5 pm submission deadlines for public submissions processes. No valid reason for such deadlines has been presented. They discriminate against people who are busy during the day, and surely no-one is going to start processing submissions to any meaningful degree at 5:05 pm. Submission deadlines should be set to midnight, or to a time before the start of business on a day when they are actually being processed.

Dr Kevin Bonham

27 September 2022