

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

Chris Curtis.

The ACTING CHAIR (Lee Tarlamis): I declare open the public hearing for the Electoral Matters Committee Inquiry into the Conduct of the 2022 Victorian State Election. All mobile phones 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 are gathered on today, and pay my respects to their ancestors, elders and families. I particularly welcome any elders or 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 Lee Tarlamis, Member for South-Eastern Metropolitan. The other members of the committee here today are –

Emma VULIN: Hi. I am Emma Vulin, Member for Pakenham.

Nathan LAMBERT: Nathan Lambert, Member for Preston.

Sam HIBBINS: Sam Hibbins, Member for Prahran.

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

David ETTERS HANK: David Ettershank, Western Metro.

The ACTING CHAIR: I welcome Mr Chris Curtis 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 given today is being recorded by Hansard and is also being broadcast live on the Parliament's website. You will be provided with a proof version of the transcript for you to check as soon as it is available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

I now invite you to proceed with a brief 5-minute opening statement to the committee, which will then be followed by questions from members.

Chris CURTIS: Thank you for the opportunity to appear. The politicians have a hard time sometimes putting the public interest against their self-interest. ALP did not like preferential voting when DLP preferences put Liberals in; Liberals do not like preferential voting when Greens preferences put Labor in. But in the end the system has to respond to what is right in principle. Now, I think I have dealt with the arguments against group voting tickets pretty comprehensively in my submission. I do not think those stand up in the slightest, so I will not go over them now, but you can question me on them later. I want to start from first principles. The single transferable vote is the best system you have, because it lets people vote for anyone they like, in any order they like, for any reason they like, and it produces a proportional result, dependent partly on the number of candidates or seats there are in each region. Upper houses do not form government, so the argument for a two-party system and stability of single-member seats does not apply.

The first point I want to make about the system is that the argument for compulsory voting and the argument for compulsory preferences are the same: it is the citizen's duty to vote, whether you like any of the candidates or not. It is similarly the citizen's duty to express preferences, whether you like the candidates left in the count or not. The reason that breaks down is you have 50 or 100 candidates, and it is utterly unrealistic to expect most

people to go through and rank all those candidates against each other. They simply will not do it, and there is a great danger of high informal votes, which we used to have in the Senate elections prior to the group voting tickets coming in. So you need to set a number of compulsory preferences and then allow them to be optional after that. The higher the number of compulsory preferences, the higher the risk of an informal vote; the lower the number of compulsory preferences, the greater the risk of votes exhausting and the result becoming less proportional. I am going to suggest that the number be 12, simply because that is the number stated for the Senate. Consistency helps: you have the same number for the Senate, the Legislative Assembly, the House of Reps, the local councils, and you can get the message through to the public. But I also think, on the number, we cannot now tell people it is a compulsory 12 below the line in the upper house, because they are used to it being five, so we have to leave it at five.

Group voting tickets should remain. They reduced the informal vote when they were brought into the Senate by two thirds. They are used by 90 per cent of Victorians, despite the fact we have had a 19-year campaign against them, particularly in the run-up to the last election with articles regarding Glenn Druery. Despite the fact that voting below the line in Victoria is easy – you only have to put one to five, it takes you 5 seconds – yet still 90 per cent vote above the line. The problem I have with it is not the existence of above-the-line voting, it is the fact that the preferences expressed by a group voting ticket are far greater than the ones you have to do below the line. So you put 1 above the line, you have got 50 preferences automatically there. You go to the trouble of voting below the line – five, 10, 20 – your vote is likely to exhaust before the above-the-line vote. So the only change I am suggesting is that the group voting ticket have a restricted number of preferences. I am suggesting 12, because that is the number I would recommend people put below the line, but that is arguable.

Above-the-line preferences – the Senate system – are a bad idea because they discriminate between voters. Some voters are going to write one, two above the line and that is a preference for four candidates below the line, and yet the same person puts one, two, three, four below the line and it is an informal vote. Your duty should be the same for every voter to express a number of preferences for the same number of candidates, because it is a candidates-based system. The other problem with the Senate system is that it is dishonest. It not only says you have to do certain things, there is then a savings provision which says no, you do not have to mark the votes the way you are told at the polling booth. If we were going to abolish them in Victoria, you certainly should not have a system which requires the electoral commission to misinform voters. I have also put up suggestions regarding nomination fees and signatures for party registration, which would halve the number of candidates below the line to make it easier to vote there.

The big issue is the Greens under-representation in the upper house. That is a result of the district magnitude, the eight regions of five candidates each. I think we should look at alternate structures, whether five regions with nine, or the state as one electorate. But to do that, as we have discussed earlier, requires a constitutional change and referendum, and it should form the basis of a separate inquiry – I do not think this committee could simply recommend it.

I have been very brief in my remarks because I think my submission is pretty detailed, so I will elaborate in answering any questions committee members have. Again, thank you for this opportunity.

The ACTING CHAIR: Thank you, Mr Curtis. I will now turn to Mr Lambert for a question.

Nathan LAMBERT: Thank you, Acting Chair. And thank you, Chris, for your submission and for covering a lot of territory on the way through there, which we appreciated. Picking up perhaps just where you left off on this question of proportionality and the number of members that you have per region, whatever the region is, I suppose I put it to earlier witnesses that there is a trade-off there essentially between proportionality on one hand and democratic accountability on the other. Proportionality is not the only objective in an electoral system. Most obviously, for instance, if we thought proportionality was the only thing we were trying to do, we would all be talking about making the lower house proportional, which we are not. What are some of the reasons why we trade off proportionality for other benefits?

Chris CURTIS: I think mainly in our society they are historical, because we have inherited a political system from Britain which originally started with the knights of the shires and the burghers of the towns being sent off to the House of Commons, and the electorates, so-called, were not even in any way equal in numbers of people. So I think it is purely historical, because the general trend, say, in European countries is to have

proportional systems, and then you have to have the coalition with all the argy-bargy in order to form a government.

But I am not arguing for it for the lower house. The lower house is different because it does form a government. We are talking about the upper house, which is the house of review. It does not form the government. It very rarely gets rid of a government, if we leave aside certain Senate events, so it is better to be proportional there. I think in terms of, if you like, local accountability that people are more likely to see their local lower house member of Parliament if they need something in particular rather than the upper house regional member. I cannot say that is for sure, but that is the impression I have.

Nathan LAMBERT: Yes. Maybe just as a follow-up to that, you skipped over the argy-bargy bit, as you called it, but it is a clear practical outcome of proportional systems that form government. We can look recently at Israel, but you can look at repeated European examples. It is actually very difficult even for highly informed observers to guess what the outcome of coalition governments will look like, let alone the average voter, so you get systems that are both unstable but also highly unpredictable. And the reality here in Victoria is that upper houses have often produced coalitions of voting patterns which any given voter would have found impossible to predict. So taking proportionality as a useful outcome, again, I am sort of perhaps just asking you to reflect on the fact that those arrangements do have their downsides when it comes to the predictability of the final policy outcomes for the person casting their vote.

Chris CURTIS: I am sorry to be cynical, but often governments do not do things they have promised and do things they have not promised, and the predictability of outcome is pretty much an open issue, sometimes for good reason where you cannot get legislation through or circumstances change or whatever. You just cannot, because the voters generally, if they are rusted-on voters, which there are fewer of, vote for their party because of the general stance that party takes, not for all the ins and outs of each policy. Yes, the argy-bargy is real, and it is important in the lower house. And it is bad when you cannot get a government, like Belgium, I think, often goes without governments. But I do not see that applying in the Legislative Council. I do not know – I have not looked at *Hansard* records of voting patterns in the upper house, so I do not know if there are coalitions as such formed there from diverse groups or whether it is just an issue-by-issue thing. So the proportionality is, to me, in an upper house certainly more important than the other issues. Thanks.

Nathan LAMBERT: I have got further questions, Chair, but I am conscious of other people's time.

The ACTING CHAIR: Let us circle back around. Mr Hibbins.

Sam HIBBINS: Thank you, Chair. You have raised the issue of being supportive of group voting tickets because they allow voters to cast a formal vote.

Chris CURTIS: Yes.

Sam HIBBINS: Now, a lot of the models that have been proposed by other submitters for a Senate-style system would allow for a savings provision – a ballot marked 'one' to be a formal vote. Wouldn't that go to addressing your concerns of informal votes?

Chris CURTIS: Well, it does not seem to have in the Senate, because they have the savings provisions and yet the informal vote in the Senate increased after they brought in the new voting system. Now, I do not know the detail as to why that happened, but I have got the figures in this submission. So even with the Senate savings provision, the informal vote is higher now than when you had group voting tickets, so I do not think that matters. And if you were to bring it in in Victoria, you should not say to voters, 'You must put one, two, three, four above the line' when you only have to put one. You could say to them, 'You may put one, two, three, four above the line, but you must put one.'

Sam HIBBINS: What was the informal vote in the Senate?

Chris CURTIS: I will have to go to my submission to find that.

Sam HIBBINS: That is okay. I was making the point that I think previous questions have gone to. Obviously there are trade-offs within voting systems, so you might point to, you know, an increased informal vote, but then how do you address the, let us face it, farcical outcomes that group voting tickets have produced

with very, very small numbers of votes electing a member who has not campaigned and who has essentially focused purely on getting the right preference deal as part of a group voting ticket? Surely that is of a larger concern than a small increase in informal votes.

Chris CURTIS: I am sorry, not to me. Increase in the informal vote from 2.96 per cent in 2013–14 to 3.94 per cent in 2016 when the new system came, and the following two elections were also over 3 per cent. I do not think it is farcical that someone is elected from a very small vote, because the number two and three candidates of the major parties are all elected from tiny votes. It is the preferences that get them in, and no-one says that is a problem. The starting vote is in fact irrelevant.

Sam HIBBINS: Is that an apples-and-oranges argument there, if you are talking about the vote for a candidate below the ballot and then the vote for the party above the ballot?

Chris CURTIS: No, I do not think so, because the person who votes 1 above the line is voting 1 for that first candidate, and the people who want that second, third and fourth candidate are tiny numbers. The starting vote is irrelevant. You could start from zero votes and be elected legitimately on a surplus from somebody else. Look, if people were intimidated into doing it or if it was hard to vote below the line, I would agree with you, but it is dead easy. It is 5 seconds – one, two three, four, five, done – and they choose to vote above the line. Anybody can find out the preference tickets from the electoral commission website or by asking at the polling booth. They make these arrangements with different parties, which the critics say are parties that do not really fit together, because they know that party A will get a seat in Western Metro and party B will get one in northern country, and it is a consequence of the eight fives, and you can solve that by having one state electorate.

Sam HIBBINS: But again, I only hear this – electoral systems will produce different outcomes. On one occasion you are saying the election of, say, micro-parties on very small votes is essentially the will of the people, because they could have voted below the line, but then you make a different argument that the informal vote is a product of the system of changing away from group voting tickets.

Chris CURTIS: Sorry, I did not understand the last bit about the informal –

Sam HIBBINS: Surely if there is an increased informal vote, that is also the will of the people.

Chris CURTIS: Well, you do not know. I do not know why there were informal votes in the earlier instances. People make mistakes with the long numbers. Why there were in a system of very small numbers, I do not know. The fact is 27 per cent of the Victorian population voted for those micro-parties. If 27 per cent vote that way and they swap preferences, they are going to win seats.

Sam HIBBINS: All right. We could go round and round. Thank you.

Chris CURTIS: Yes, we are just not going to agree.

The ACTING CHAIR: Thank you. Mr Battin.

Brad BATTIN: Thank you very much. Please excuse my voice; it is struggling a bit more. First of all, I will follow up from Sam. In relation to your informal vote research, you said it has gone up from 2-point something to 3.9 for the Senate. At the same time, between 2013 and 2022, what has the informal vote gone up on lower house tickets?

Chris CURTIS: I did not look for that.

Brad BATTIN: Okay. In Victoria the lower house informal vote has gone up, and non-voting. Only an 88 per cent formal vote in my electorate, which has declined from sort of 94, 95 per cent. Isn't that then going against the argument? Maybe the argument here is that a lot of people do not understand our system at all or that we have got a higher proportion, particularly out in growth corridors, of people for whom English is a second language and who come from other countries where they vote differently which is actually impacting our formal versus informal vote more so than the group voting ticket or understanding to put one to five below the line.

Chris CURTIS: Look, that is possible. Many of those people may come from countries where they have list systems of proportional representation and just mark a party. Those people would be helped by having above-the-line voting, because you just put one mark and then your vote carries through to the party and others that you want. I have not looked at the lower house, so I cannot say, but I accept your argument.

Brad BATTIN: Yes, I understand that, but I think that is probably one of the biggest issues. The one thing I do agree with you on, and I think it is something we should look at not just from our committee but we can even put recommendations around other areas to look at is consistency across voting across all states, country and council, because that is a huge concern. Even I said before, and I know when Antony Green was in before I said about proportional voting versus first past the post et cetera. I know Queensland used to. Queensland has got the optional preferential, and if you live in a border town, you get two different ads to tell you how to vote at different elections. I think that is one thing we could look at. But I think the other side of that is the formal vote is something we need to look at as a committee, whilst taking into consideration what you are saying, the bigger issue on formal versus informal is the way it is explained from the VEC. And the other side of that too – and I just want to make sure this is on record – you put a recommendation in around the VEC having a site where people could go and put details in and it could effectively pump out a ticket that says ‘Here’s a formal vote based on what you’re saying.’ I actually think that would be something that would be worth having a look at so people do understand that system better, so thank you very much for that recommendation.

Chris CURTIS: Yes, I have been recommending that for at least eight years federally and state, because there are private sites that do it but an official one would be really useful.

Brad BATTIN: Yes, there are some private sites that do it that seem to have preferences to a direction they want you to go rather than a direction that is a balanced decision.

Chris CURTIS: Yes.

The ACTING CHAIR: Thank you. I will go back to Mr Lambert.

Nathan LAMBERT: Thank you, Acting Chair. I suppose if I can make a general observation, a lot of our psephological community do wonderful work. If I could make a criticism, it is that perhaps we do not often recognise within that community enough that there are trade-offs, and then we do not quantify those trade-offs. If I can turn that to a direct question: we have now spoken at some length in this committee about the trade-off in a voting system between simplicity – or informality is probably a better way to put it – versus proportionality, and you very directly spoke about that earlier. Are you aware of any attempt within the community to actually measure the magnitude of that effect? As we add preferences to the system, how does that affect proportionality and informality?

Chris CURTIS: No, I am not. I do not know if this is relevant to your question, but one of the things I mention in my submission is the suggestion the electoral commission re-run the ballots through computers that would test different numbers of compulsory preferences to see how many votes would exhaust and how many would have no say. That might be a little bit off the track. But no, I am not aware of any study of that, except that it is sort of pretty obvious that the more numbers you ask, the more some people will have difficulty with it. If you go from three to four, there might only be 10 people, but if you go from three to 100, it would be 100,000 people who will find it difficult.

Nathan LAMBERT: Yes, forgive me; I possibly did not pick that up on my way through your submission. But as far as you are aware no-one has ever attempted that exercise – as you say, a very obvious exercise, which is actually to work it out.

Chris CURTIS: No, I am just not aware of it. But I am an amateur; there might be political science academics who have done that.

Nathan LAMBERT: It should be possible to determine the effect on proportionality using the method you have just discussed, and then if we turn our minds to the effect on informality, do we know of any way that we could actually dig in and have an answer on how much adding extra preferences increases informality?

Chris CURTIS: The only way I think you could do it, and it would be a complicated mathematical exercise, would be you go back to the Senate elections from 1949 to 1983 and look at the different numbers of

candidates who stood in each state at each electorate and the informal vote – how it was affected by the fact that there might have been 10 candidates in 1955 but there were 20 in 1980. That might give you some sort of indication on it. The other one is you can look at lower house seats and compare the informal vote in a seat that might have had three candidates with one that had six or 10. That is the sort of thing. But then you would have to control for other factors to do with the demographics of that electorate. But you would also compare one electorate from, you know, the 1980 election – that was federal. There was a 1982 and a 1985 in the same seat, did the number of candidates increase, did the number of preferences increase, did the informal vote increase?

Nathan LAMBERT: Yes, you are right – difficult to control. Perhaps a final one, if I can, Acting Chair. It is an intriguing suggestion about parties being honestly named – I think you suggested a syllable limit on the party names. Could you talk through that briefly?

Chris CURTIS: Well, yes. I was surprised at how long they have been allowed to get. I was trying to think if you could ban certain words or demand a word be an adjective, and you cannot practically do things like that. But there can be a limit on the name so you cannot write your election slogan as the name of your party, and that is my suggestion, because there are a lot of pop-up parties, as we all know, that appear and disappear.

Nathan LAMBERT: Thank you, Acting Chair.

The ACTING CHAIR: Just picking up on that, I think that is where some of the recommendations you make in your report around the changes to registration of political parties may also address that issue as well.

Chris CURTIS: Yes. I am suggesting a longer period of existence – not a huge time – a requirement to have members within the region in which you stand and that if you are a candidate, you must get a number of signatures. If you do not have members, you can stand as an independent with a number of signatures equivalent to the number of members that you would have to have to be a registered party. I do not know what the number is at the moment, but it just seems too easy to get all your mates to create a party out of nothing. They all sign up, you appear on the ballot paper and then you disappear after the election and take your money if you get the 4 per cent of the vote.

The ACTING CHAIR: Thank you, Mr Curtis, for your contributions today but also for your submission. That will end this session of the hearings.

Witness withdrew.