

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

WITNESSES

Dr Stephen Morey, President (*via videoconference*), and

Geoffrey Goode, Treasurer, Proportional Representation Society of Australia (Victoria–Tasmania) Inc.

The ACTING CHAIR (Lee Tarlamis): I declare open the public hearings of the Electoral Matters Committee Inquiry into the Conduct of the 2022 Victorian State Election. All mobile telephones should now be turned to silent.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us 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 these issues to the committee or who are watching the broadcast of these proceedings.

I am Lee Tarlamis, Member for South-Eastern Metropolitan Region, and the other members present today are –

Emma VULIN: Emma Vulin, Member for Pakenham.

Nathan LAMBERT: Nathan Lambert, Member for Preston.

Sam HIBBINS: Sam Hibbins, Member for Prahran.

David ETTERS HANK: David Ettershank, Western Metropolitan Region.

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

The ACTING CHAIR: Thank you. I welcome Dr Stephen Morey, President of the Proportional Representation Society of Australia (Victoria–Tasmania), and also Mr Geoffrey Goode, Treasurer of the Proportional Representation Society of Australia (Victoria–Tasmania).

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 a 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 available, and 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 be followed by questions from the committee.

Stephen MOREY: Thank you very much. I apologise for not being there and present in person, but the COVID illness has got me – but anyway.

We have made a handout, which unfortunately I cannot share with those of you who are online, but I am going to read the summary of our submission:

... the principles of a good democratic system include the following

- i) That the largest possible number of voters are represented in Parliament by MPs for whom they cast –

effective ballots –

...

- ii) That the diversity of opinions within the community is represented fairly in Parliament, and

- iii) That all MPs, including those filling casual vacancies, are directly elected by the voters.

We could add that the value of each ballot should be as close as possible to equal, where someone lives not being relevant – so that is one vote, one value – and that the enrolment on the electoral roll is made as easy as possible for the eligible persons. But we are doing that well in Victoria at the moment, so we are going to concentrate on the first three.

It is very obvious, if we examine voters' first preferences – that is table 1, and this is also in our original submission, for those of you who are watching online – that there is a distortion of the will of the voters in the results of the Legislative Assembly: Labor Party, 36.7 per cent of votes, 63.6 per cent of MLAs; Liberal–National, 34.5 per cent, 31.9 per cent of MLAs; others, 17.4 per cent, zero members of Parliament; and Greens, 11.5 per cent but only 4.5 per cent of MLAs. So the ALP is very substantially over-represented and other parties under-represented. While as a whole the coalition parties were represented reasonably closely to the level of first preferences received, as seen in table 2, when the votes for the two coalition parties are distinguished, that of the National Party is significantly over-represented and the Liberals somewhat under-represented. The reason that the Nationals have twice as many MLAs as the Greens but with only around 40 per cent of the vote in support is due to single-member districts, which favour parties that have localised regional representation and disadvantage parties that have similar levels of overall support but whose support is more widespread geographically.

I am just going to summarise a bit of this now. Single-member electoral systems are an archaic system for representing voters in electoral bodies that often produce distorted results. If we consider the Legislative Council, since 2006 it has far better represented the diversity of opinion in the community. In our submission we provide several tables that demonstrate this using multiple criteria – we reproduce two of these tables on the handout – comparing the Assembly and the Council in terms of the percentage of first preferences that elected an MP and the percentage of effective preferences that elected an MP. These figures are based on spreadsheets that we have made and can provide to the committee. So in the Legislative Assembly only 43.7 per cent of voters cast a first preference that elected an MP, whereas in the Legislative Council 71.2 per cent cast a first preference that elected an MP. For effective preferences, 58.4 per cent in the Legislative Assembly cast effective preferences electing an MP, and in the Legislative Council that was 83.1 per cent.

We make the point that effective preferences are what elects candidates and that first preferences are equal in value to second or subsequent preferences in electing candidates in both houses, although in the Council surplus preferences are quite correctly transferred at a lower value. Since we have a preferential system, the most important reform the committee could recommend and should recommend is the abolition of the above-the-line voting option, so that the Legislative Council voting system is close to that used in Tasmania and the ACT, but even the newer systems used in the South Australian and New South Wales Legislative Councils or the Senate, with eight regions, having five members being maintained, would still be an improvement.

In urging the end to group voting tickets we do not suggest that candidates with very few first preference votes should be excluded from election. The candidates listed second on major party tickets usually receive very few first preferences but are quite properly elected if they receive a full quota. What needs reform is the system that allows for preference whispering, where a person, for a fee, can devise complex preferential arrangements that help elect candidates that would not have been elected if the voters themselves had marked the relevant preference, rather than those being deemed. The fact that almost all of the candidates elected in this way in the 2018 election failed in their bids for re-election in 2022 is just one piece of evidence for why group voting tickets should be abolished. We hope to discuss this with the committee.

So the things we are strongly recommending are discontinuing the above-the-line voting option, particularly the group voting tickets; to preserve the important principle of direct election the committee recommends the introduction of countback for filling casual vacancies in the Legislative Council; to introduce the rotation of the order of candidates names on ballot papers, termed Robson Rotation, for both houses of Parliament, as in Tasmania and the ACT; prohibiting the use of how-to-vote cards in voting centres, as in Tasmania and the ACT; and undertaking a thorough study into the decline in voter participation in elections and the increase in informal voting, which should recommend measures to overcome these threats to a viable democracy. Thank you.

The ACTING CHAIR: Thank you, Dr Morey. We will now go to questions, and I will call on Mr Lambert.

Nathan LAMBERT: Thank you, Acting Chair. Forgive me, I am not sure if you were tuned in for Mr Raue earlier. I should say thank you first, Dr Morey and Mr Goode, for your submission. In many respects I suppose you made some similar points to Mr Raue, albeit even more strongly. To ask the same question I asked him, as we know, we have a political system that fundamentally has to solve what we call the social choice problem, which is that people have different opinions and we can only make one decision. At any given point in time only one position can prevail, and the job of the government is to get down to that one decision. As we know, over a long period systems have been designed to deal with some of that difference of opinion at the ballot box and some of it inside the legislative chamber.

I could tomorrow start or someone could start a 'Reintroduce the Death Penalty' party. People try it occasionally. It will get 0.5 per cent of the vote or something like that. There is not majority support for that proposition in the current environment – unlikely to ever be – and at some point in our system their proposition loses out. Now, as I understand the way you see the world, the ideal way to deal with that is we should have a very large chamber that is as proportional as possible so that the Reintroduce the Death Penalty party can elect one or two candidates, and then the fact that their proposition is not very popular will be resolved by all the usual horsetrading within that chamber rather than being resolved at the ballot box. I am just not sure why it is that you hold the view that it is always better to resolve differences in the chamber and not at the ballot box.

Stephen MOREY: If I may make a few comments, firstly, there will always be a majority in Parliament for any position that you put before the members who are elected. Our position is that we would like to see the Parliament representing the diversity of opinions to the greatest extent possible. Now, this is limited in the upper house by the eight regions having five members each. There you have a quota of 16.67 per cent, which means you need to get 16.67 per cent of the votes after preferences to be elected to that Parliament. Now, Parliament can set the level at wherever it wishes. Currently for the lower house, the quota, if you like, is 50.1 per cent, so 49.9 per cent of people in a particular district may not be represented if the result is very close, as was the case in a couple of electorates in the recent election, as I think you would be aware. So our position would be that we have a stronger democracy when the diversity of opinions in the community are represented on the floor of the Parliament. That is certainly the case.

Nathan LAMBERT: Yes, but if I can just probe a little on that, the ideal arrangement in that sense would be to have a chamber with 6 million representatives, in which case all Victorians' opinions would be represented. At some point you have to draw the line – I presume at less than 6 million. Where would you draw the line?

Stephen MOREY: Well, our position would be to draw the line closer to what we currently have in the Legislative Council for the houses of Parliament, rather than in the Legislative Assembly where, as we have demonstrated, you have a situation where a large number of people are not electing the person who is representing them in their Legislative Council region. You have a situation where a lot of people pointed to the recent result – and not just in Victoria but around the country – and said, 'How is the Parliament representing us when the 17.4 per cent of voters who voted for all the other parties have no representation at all in the lower house?' And I think that is a problem leading potentially to voter dissatisfaction.

Nathan LAMBERT: If it is okay, Chair, I have got just one final question. As we said earlier, I take it your view is that political systems should just optimise the Gallagher index. As I say, you optimise that by having 6 million representatives. Do you recognise that there are any other objectives that the political system is trying to achieve apart from optimising the Gallagher index?

Stephen MOREY: Yes, of course. And –

Nathan LAMBERT: Well, can you describe them and describe where we would actually draw the line then on not having a chamber of 6 million, but what, you want a chamber of a thousand?

Stephen MOREY: Well, no. We have never suggested that there is a problem with having a chamber of 88 in the lower house. The current numbers in Parliament – you could increase the number of MPs as the population increases; that is not something we have an opinion on. But we are certainly favouring representative democracy. Representative democracy means that you are elected as our representatives. Now, Parliament is making decisions about how we decide who those representatives should be, and you currently

have a system which has enabled a party that received 36.7 per cent of the first preferences to win a very large majority on the floor of the Legislative Assembly.

Okay, I understand that after preferences I left out the paragraph that dealt with the fact that the Labor Party had 55 per cent two-party preferred after preferences. We understand that after preferences the Labor Party had a large majority, and we are not suggesting that anything but the correct government is the one that is elected. But we are saying that there is more diversity in the community that is not necessarily currently well represented in the Legislative Assembly. I would not suggest – 6 million is very far from where we would want to be suggesting. We are in favour of representative democracy. We would like to shift it more towards a situation where the Parliament as a whole, particularly the Legislative Assembly, represents the diversity of opinion in the community better.

Geoffrey GOODE: Could I make a comment on what Mr Lambert said?

The ACTING CHAIR: Yes, sure.

Geoffrey GOODE: I think it is the district magnitude range that you are referring to. The district magnitude in the Assembly is a district magnitude of one, only one member. You suggested going to the other extreme, which would be 6 million. No. We believe somewhere in between. You do not have to go to either extreme, in fact both extremes are inadvisable in our opinion. A small number, an odd number, like five, will ensure that you get the main points of view. Quite often when you have a single-member system, in the past we have only had two points of view. Now when those people both agree, then only half the voters have had an input into it, because, as Dr Morey said, the quota is 50.1 in each of the 88 divisions. Half the Victorian people have no effect on the outcome. That is a bit serious in a democracy.

Now, you mentioned 6 million. We actually do have an electorate of 6 million, and that will be tested in October I believe, at Commonwealth level, by the referendum. All 6 million have an effect. There are provisions for that in Victorian legislation, and they actually relate to this question of district magnitude that has been entrenched.

Nathan LAMBERT: Look, I will not monopolise any more time, but only just to perhaps repeat my point: I take it that it sounds bad to only represent two points of view, but the fundamental point of the political system is to get down to one point of view – you have to do it at some stage. There, I will leave, Chair, the rest of it with you.

Geoffrey GOODE: Indeed, but the voters need to be more involved.

The ACTING CHAIR: Mr Hibbins.

Sam HIBBINS: Thank you, Chair. I note your first recommendation, which is to get rid of above-the-line voting options and particularly group voting tickets. Do you have a preferred model for the upper house, and do you think reforming the upper house and getting rid of group voting tickets need to be seen together?

Geoffrey GOODE: Yes. We put that model in representations we made to the Constitutional Commission that the Bracks government set up to advise. Now, that commission's report, although they actually suggested the above-the-line system we have got et cetera, they did qualify that by saying that after a reasonable period of time – which was not specified but I think 20 years is a fairly reasonable period of time – consideration should be given to ending that above-the-line system. That is in the words of the report of the Constitutional Commission; we give a hyperlink to it in our submission. It is worth looking, because they wrote it. And the other thing they recommend is Robson Rotation. What they are coming to – the Constitutional Commission – without saying it is something very similar to what happens in the Tasmanian lower house. It has operated – well, since Robson Rotation came in in the 1970s, but the actual main system has operated for 110 years.

Sam HIBBINS: Would you be happy for those changes to occur without any changes to the composition of the upper house – number of regions?

Geoffrey GOODE: Well, firstly, you ask if I would be happy. It is entrenched, and we believe that that would be an obstacle obviously. We do not see it as a major problem because, as I said, the difference between one extreme and the other – if you have all 40 elected and one electorate, you do have certain problems. You

have certain problems with only one being elected. We have had a long experience of that, because the upper house was like that for 150 years – single vacancy elections.

Stephen MOREY: If I may just jump in very quickly here, the position in our society is that the current situation where you have eight regions each electing five members is certainly producing a much more proportionate and representative result in the membership of the Legislative Council. We did not advocate in our submission, and we are not advocating today, for any change in that, notwithstanding that that provision is entrenched.

Sam HIBBINS: Yes. Okay. Thank you. And do you have a preferred model for the lower house?

Stephen MOREY: We did not have much expectation that moving the lower house to a proportional system would be strongly considered by the committee or likely to be recommended by the committee. But I think, if I could just answer this, something similar to the system used in the upper house would be appropriate. We had very similar systems in operation in both houses in Victoria for nearly 150 years, so there is no objection to that. But we have not really gone into great detail about what that would be, only to point out that there are problems with the current system.

Sam HIBBINS: Okay. Thank you.

The ACTING CHAIR: Thank you. Mr Battin.

Brad BATTIN: No, I am all good. Thanks, Lee.

Emma VULIN: I have got a quick one.

The ACTING CHAIR: Ms Vulin.

Emma VULIN: In your submission you spoke about how the society does not favour how-to-vote cards in the polling booths. I am just wondering what alternatives should be provided to voters to support them in how they cast their ballot.

Stephen MOREY: If I make quickly speak on this, how-to-vote cards are not used in state elections in Tasmania nor indeed in Assembly elections in the ACT. Mr Goode will correct me if I say anything wrong here. They are not required because, first of all, the ballot papers there are all rotated so that the order in which candidates' names appear on the ballot papers is not the same on each ballot. The voters work out and make the decisions about who they give their first and subsequent preferences to. There are provisions of course in both the Legislative Assembly in the ACT and the House of Assembly in Tasmania for what we might call 'optional preferential' – you do not need to fill out all of the preferences. It is quite similar in the House of Assembly in Tasmania to what currently applies to below the line for the Legislative Council in Victoria. That removes the challenge that voters have of filling in all the squares – they are not required to do that. But experience of more than 100 years in Tasmania is that the voters can very well do this by themselves. And we have seen that the number of people accepting how-to-vote cards on the day, either at the pre-poll or on election day, has been declining for a long time, so voters are not requiring these how-to-vote cards in order to fill in their ballots formally.

Emma VULIN: My only comment to that perhaps is we saw in this 2022 election we had up to 15 candidates on the papers, and I suppose if we were to continue with preferential voting, then that might cause trouble for many people, particularly from our CALD communities, that rely on that information. Thank you.

The ACTING CHAIR: That concludes questions from committee members, so can I thank Dr Morey and Mr Goode for your submission and for coming along today. That concludes this session, and we will resume at 1:50.

Witnesses withdrew.