



Submission to the Victorian Parliament's Electoral Matters Committee's
Inquiry into the Conduct of the 2014 State Election

1. Introduction

This submission by the Victoria-Tasmania Branch of the Proportional Representation Society of Australia deals in detail with the Victorian Legislative Council, the House of Parliament in which the range of opinions expressed by voters is represented most fairly. Tables 1 and 2 below, which compare the percentage of first preference votes received and the percentage of seats won, show that the Legislative Council clearly reflects the will of the voters better than the Legislative Assembly does.

Table 1: Comparison of percentages of seats and votes for the Legislative Council

| Party | No. of seats | % of seats | % of first preference vote |
|----------------------|--------------|------------|----------------------------|
| ALP | 14 | 35.0% | 33.5% |
| Liberal and National | 16 | 40.0% | 36.1% |
| Greens | 5 | 12.5% | 10.7% |
| Others | 5 | 12.5% | 19.7% |

Table 2: Comparison of percentages of seats and votes for the Legislative Assembly

| Party | No. of seats | % of seats | % of first preference vote |
|----------------------|--------------|------------|----------------------------|
| ALP | 47 | 53.4% | 38.1% |
| Liberal and National | 38 | 43.2% | 42.0% |
| Greens | 2 | 2.3% | 11.5% |
| Others | 1 | 1.1% | 8.4% |

Note: The Liberal Party and the National Party had common tickets in some Legislative Council regions. Therefore, for the purpose of this submission, they are listed together throughout.

As can be seen, in the Lower House, the ALP representation is substantially greater than the percentage of first preference votes received, whereas the Greens and others are substantially under-represented in comparison to their support.

In this election, the ALP won 51.99% of the two-party-preferred (2PP) vote, which was what gave victory to the ALP in the [winner-take-all](#) Lower House.

2. The failure of Group Voting Tickets to implement voters' wishes

Following the election of 5 members of the Legislative Council from micro-parties (2 from the Shooters and Fishers Party, Victoria, 1 from the Sex Party, 1 from the Democratic Labour Party and 1 from Vote 1 Local Jobs), commentators expressed some concern about the election of MLCs whose first preference votes were only around 1% to 2%. Two 'micro-party' candidates were nearly elected in Northern Victoria Region, Shooters and Fishers (with 3.49% of the first preferences) and Australian Country Alliance (with 2.49% of the first preferences), but the latter was narrowly defeated.

In the view of PRSA(V-T) Inc, there is no problem at all with the election of a candidate whose first preference vote is less than a quota if that candidate's total vote reaches a quota as a result of the deliberate and considered decisions of voters to give their preferences thus. The candidates listed in second position by the major parties (ALP, Liberal & National) also received a very low first preference vote, but were elected in many regions (for example South-Eastern Metropolitan) as a result of preferences from the candidates listed in first position.

The following table gives the percentage of first preference votes for each of the five successful candidates in Northern Victoria Region.

Table 3: Percentage of the first preference vote for MLCs elected for Northern Victoria Region

| | | |
|-----------------|----------------------|--------|
| Young, Daniel | Shooters and Fishers | 3.44% |
| Lovell, Wendy | Liberal | 40.45% |
| Drum, Damian | National | 0.26% |
| Herbert, Steven | ALP | 25.96% |
| Symes, Jacyn | ALP | 0.07% |

Note: The percentage quota for each region was 16.67%. Surpluses above that are transferred.

From this table it can be seen that Mr Drum and Ms Symes each received significantly fewer first preference votes than Mr Young, and, like Mr Young, were elected because of later preferences. In the case of Mr Drum, those later preferences were all from the surplus of more than a quota gained by Ms Lovell, whereas in the case of Ms Symes, they were partly from the surplus of less than a quota gained by Mr Herbert, and partly from voters whose first preference vote was for other parties' candidates that did not gain enough support to be elected. The preferences that elected Mr Young were almost entirely from voters for other parties' candidates that did not gain enough support to be elected. Provided that the preferences were indicated intentionally, and with the knowledge of the individual voters, all of those transfers were necessary to maximize the effectiveness of as many voters as possible, which is the rationale of the [single transferable vote](#).

However, as a result of the imposition of **Group Voting Tickets** and the resulting practice of **preference gaming**, it is arguable that the election of some of those MLCs was not the explicit intention of voters, because nearly all the voters marked a 1 *above-the-line* without knowing what the flow of their subsequent preferences would be. That is because under the Group Voting Tickets system, those subsequent preferences are decided by the parties – each of the parties – and are unknown to most of the voters.

The Group Voting Tickets, which are all quite intricate*, were available [online](#) before the election. Some voters made the not inconsiderable effort to scroll through the numerous pages involved, but since there is no way of knowing in advance the relative standings of parties and candidates with limited first-preference support, the most likely practical consequences of endorsing a particular Group Voting Ticket cannot be easily assessed. Most voters, however, did not examine the Group Voting Tickets and, by voting *above-the-line*, thus gave their first preference vote to the leading candidate of the party they chose to vote for, as is their democratic right. But by voting *above-the-line*, they then passed control of all subsequent preferences to whichever party it was they voted for.

* The Concise Oxford Dictionary definition of intricate is 'perplexingly entangled or complicated; involved; obscure'.

RECOMMENDATION 1

The provision for Group Voting Tickets should be discontinued. The procedure should be that all voters are required to explicitly indicate their own individual preferences among a minimum number of candidates (currently 5 for the Legislative Council), and as many more as they choose.

3. The need to discontinue provision for *above-the-line* voting

PRSA(V-T) Inc. recommends that there be no provision for any form of *above-the-line* voting, resulting in a change to solely what is presently *below-the-line* voting, with the maintenance of the existing requirement of only 5 preferences being required. *Above-the-line* voting was ostensibly introduced for the Australian Senate (and adopted from there for Victoria's Legislative Council) to reduce the high levels of informal voting that had been maintained by the contested [non-bipartisan provision in the 1948 Act](#) to continue requiring voters to mark all preferences on Senate ballot papers, which even then were recognized by members debating the Bill as having a large number of candidates. Since that unreasonable requirement to express all preferences is **not** required for Victorian Legislative Council elections, there is no need for *above-the-line* voting to be maintained.

It would be an improvement in the democratic processes in Victoria if voters were positively encouraged to take complete control of their own individual preferences, both the ordering of candidates within the party that they choose, as well as deciding how many candidates to preference. In addition, electoral authorities could focus their publicity efforts on alerting voters that the marking of preferences is simply an instruction about the order in which candidates may be assisted by whatever remains unused of their [single transferable vote](#).

RECOMMENDATION 2

Provision for *above-the-line* voting should be discontinued.

4. The need for Robson Rotation in the printing of ballot papers

Control of who is elected will be placed far more definitely in voters' hands by the introduction of the rotation of the order of candidates' names appearing on ballot papers, known as [Robson Rotation](#), as operates in both Tasmania and the Australian Capital Territory, and was supported by referendum in the latter. Under Robson Rotation, candidates' names are still listed in party columns on each ballot paper, but the ordering of their names within each of those columns varies from one ballot paper to another. Each candidate's name appears in a given position in his or her party's column on an equal number of ballot papers. The ballot papers issued to voters are in a random order.

The purpose of Robson Rotation is that no candidate within a group is advantaged or disadvantaged electorally because of his or her name's position in a column on the ballot paper. This has not led to substantial increases in informality, but does mean that the elected MPs are those that have the greatest support across the community. Distortion of outcomes due to [donkey voting](#) is avoided, and the pre-selected candidates within a party that are elected are those that gain a quota of votes as the voters, and nobody else, choose. Modern computer-based printing, operating in a similar manner to the mail-merge used for personalized circulars, allows such ballot-paper rotation at no substantial extra cost. Advice should be sought from the Tasmanian and ACT Electoral Commissions on how they deal with the different permutations of ballot paper order at the scrutiny.

Because there are candidates from larger parties with rather large progress totals throughout the scrutiny, candidates with limited first-preference support are very unlikely to cobble together what could be termed a 'surprise' quota. [Tasmanian and ACT experience](#) has been that parties and independents failing to secure half a quota of first preferences have little prospect of getting elected.

Section 11 of the [Final Report of Victoria's 2002 Constitution Commission](#), *A House for our Future*, included the following paragraph supporting the discontinuance of *above-the-line* voting and the adoption of Robson Rotation:

'At a later stage, when voters have become accustomed to the system, abolition of "above the line voting" combined with the Robson Rotation would place a greater emphasis upon the personal responsibility of the individual voter. Both reforms would tend to decrease the influence of the party machines on the final outcome and contribute to a greater sense of independence by Members of the

Upper House. However, any decision on either issue is one for the future and would need to be accompanied by a major voter education campaign.'

RECOMMENDATION 3

Robson Rotation should be introduced for the printing of Legislative Council ballot papers, as was recommended by Victoria's 2002 Constitution Commission.

5. The problems with thresholds

A suggestion some commentators have made for overcoming the perceived problem of the election of candidates from parties with small first preference votes - one that might **appear** to some at first sight to be attractive – has been to impose an arbitrary **threshold**, of say 5% of the vote. There are several ways attempts to apply **exclusionary thresholds** could be made in systems like Victoria's.

One attempt, inappropriately copied from **party list systems**, which are quite different in that they have no transferable votes, might be for ballots showing a first preference vote for candidates of a group or party failing to gain 5% of the total first preference vote to be thereby excluded from the count. If such a provision had applied in Victoria's 2014 Legislative Council election, it would have **nullified and rendered ineffective** the votes of all 760,000 people that voted for candidates of smaller parties, which is just under 20% of the voters.

The first two elections of the South Australian Upper House **reformed in 1973** operated under a party list system with an exclusionary threshold provision, which was soon found to be very unfair and was replaced by quota-preferential methods that have been in place ever since.

The imposition of arbitrary thresholds is actually very problematic for major parties, and has led to seriously distorted outcomes. Consider the situation in the **2013 German federal election**, in which (for the party list votes), the following votes were cast:

| | |
|--|-------|
| Christian Democratic Union /Christian Social Union | 41.5% |
| Social Democratic Party | 25.7% |
| 'The Left' | 8.6% |
| Greens | 8.4% |
| Others | 17.8% |

The conservative government won 41.5% support, and a total of 311 seats, whereas the three loosely left wing parties won 42.7% and 319 seats. As can be seen, the result was very close between these two main groups. However, 9.5% of people voted for two other parties, both right wing in outlook, but both fell just short of the arbitrary 5% threshold and none of their votes counted for the final result. A **very substantial majority** of Germans voted for parties of the right, but, because of the exclusionary threshold, **the right wing Government lost its majority** and had to form a coalition with its centre-left traditional opponents, the Social Democrats. This was only possible because the votes of the 17.8%, nearly 7.8 million voters, were excluded and disregarded.

Thresholds not only disregard people's votes, but also lead to highly **distorted** results, meaning that our parliaments are less representative and less democratic. Artificially excluding minority voices, such as occurs under thresholds, simply increases the percentage of disenfranchised voters.

Another very bad exclusionary threshold system is that applying in Turkey, where the threshold was set at 10% - initially to try to keep the Kurdish Parties from being represented in the Parliament. This has allowed the fundamentalist party to 'win' the last three elections with well under 50% support because large numbers of voters have their votes disregarded.

Recommendation 4:

The Committee should not recommend the adoption of thresholds.

6. Need for adoption of a sounder method of transferring surplus votes

This section explains concerns with the current rules for transferring surplus votes. This is a complex and detailed issue, but one that has important consequences, as discussed in terms of the result in Northern Victoria in the next paragraph. There are two proven workable improvements on the current system, the Weighted Inclusive Gregory Method, which is a viable, coherent improvement that has been successfully implemented for [Western Australia's Legislative Council](#) after a thorough review brought on by controversy after the 2001 WA elections, and the Meek method, which goes further in not bypassing candidates that are already elected (see further below).

The ABC Elections Analyst, Mr Anthony Green, has described in detail on his blog, <http://blogs.abc.net.au/antonygreen/2014/12/transfer-values-in-northern-victoria-region.html#more>, a serious anomaly with the transfer of surplus votes in Northern Victoria Region. As Mr Green says, "Labor won the last seat in Northern Victoria Region because of the formula used to calculate transfer values for the distribution of preferences from candidates who have more than a quota of votes." Under fairer counting rules (but with Group Voting Tickets still in place), the last position in Northern Victoria would have been won by the Australian Country Alliance, on this occasion. PRSAV-T Inc. recommends that the Committee members read that blog, which explains clearly what happened there. The flaw in the counting rules that led to this anomaly has been known for many years, and is discussed in more detail below.

It is essential for value to flow via transfers for the electoral system to achieve proportional representation. Without the transfer of surplus votes, each major party at a Legislative Council or Senate election would typically get one only MLC or senator elected from each Region or State. In his second reading speech on the *Commonwealth Electoral Bill 1948*, Dr H V EVatt pointed out that was owing to [regimented voting](#), as the use of how-to-vote cards and - since 1983 - Group Voting Tickets, leads to [so few first preference votes being cast](#) for the 2nd, 3rd and subsequent candidates in those major parties' columns.

The flaw in the counting rules is discussed below using Table 1 in Farrell and McAllister's [2003 paper](#):

| | Shirley's ballot papers | | |
|--|---|--|---|
| | First count: Shirley's 35,000 first preferences | Second count: 100,000 ballot papers from Tom | Third count: 25,000 ballot papers from Dick |
| <hr/> | | | |
| (Original) Gregory method | | | |
| Incoming value | 1 | 0.1 | 1 |
| Outgoing value | 0 | 0.1 | 0.8 |
| Contribution to surplus (%) | 0 | 0 | 100.0 |
| (Unweighted) Inclusive Gregory method ¹ | | | |
| Incoming value | 1 | 0.1 | 1 |
| Outgoing value | 0.125 | 0.125 | 0.125 |
| Contribution to surplus (%) | 21.9 | 62.5 | 15.6 |
| Weighted inclusive Gregory method | | | |
| Incoming value | 1 | 0.1 | 1 |
| Outgoing value | 0.286 | 0.029 | 0.286 |
| Contribution to surplus (%) | 49.9 | 14.5 | 35.6 |

Note: Calculations are subject to rounding errors.

Table 1 from Page 486 of Farrell and McAllister's [2003 paper](#)

¹ The word 'unweighted' is not used in the Farrell and McAllister paper, but using it here makes the argument easier to follow

Of [the surplus transfer systems](#) that progress from the Original Gregory Transfer system (devised in Melbourne in 1880, provided for in Tasmania's *Electoral Act 1907*, and used there ever since) to the Weighted Gregory Transfer system, it is only the Unweighted Inclusive Gregory system, which is used for Victoria's Legislative Council, that involves 'a second bite of the cherry'. That is a major flaw, as indicated in Farrell and McAllister's 2003 paper (*and first indicated by the PRSA's inaugural National President, Jack Wright, as [his letter](#) in a 1983 Senate Hansard shows*).

PRSAV-T Inc. included discussion of improving on the present system for transferring surpluses in [its 2014 presentation](#) before the Federal Parliament's Joint Standing Committee on Electoral Matters. In Farrell and McAllister's example, Tom's papers have already used 0.9 to elect someone and contribute $0.1 * 10000 / 70000 = 0.014$ to get Shirley elected, and still have a value of 0.125 transferred, a total value of 1.039. Some papers can inevitably have value of less than one, but no papers should ever get a value of greater than one. Here Tom's voters clearly are 'getting more than an equal vote'. This arbitrary system is inferior to both the Original and the Weighted methods.

The general consensus is that the Original Gregory Transfer (last parcel) is less fair than the Weighted Inclusive Gregory Method. The latter is in turn less scrupulously fair than the more sophisticated [Meek method](#), which is an option in New Zealand local government elections, but unfortunately is only practicable if computer counting is employed. The views of the Victorian Electoral Commission on the value and practicability of using the Meek method would be a useful input to the Committee's deliberations. The distinction between these systems is nevertheless **far less important** than the distortions created by Group Voting Tickets and *above-the-line* voting.

RECOMMENDATION 5

The present provision for counting transfers of surpluses, known as the Unweighted Inclusive Gregory method, should be replaced by the Weighted Inclusive Gregory method, but if the Victorian Electoral Commission considers that the Meek system should be used, that computer-reliant system would be an even more sophisticated provision.

7. Giving evidence before the Committee in person

If the Committee were to invite it, PRSAV-T Inc. would welcome the opportunity for its representatives to appear before the Committee in person to give evidence and answer questions on matters related to this submission. In that circumstance, our Branch President, Mr Geoffrey Goode, and Branch Secretary, Dr Stephen Morey, would be available to appear.

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