

Submission to Electoral Matters Committee

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Contents

Summary	-	-	-	-	-	-	-	-	3
1. Constitutional Principle	-	-	-	-	-	-	-	-	4
2. The Single Transferable Vote	-	-	-	-	-	-	-	-	4
3. The Irrational Complaints	-	-	-	-	-	-	-	-	10
4. Party Preferences	-	-	-	-	-	-	-	-	11
5. Imposing a Party List System	-	-	-	-	-	-	-	-	13
6. Nothing Undemocratic about Group Voting Tickets	-	-	-	-	-	-	-	-	14
7. The Real Issue	-	-	-	-	-	-	-	-	15
8. Personal How-to-Vote Website	-	-	-	-	-	-	-	-	17
9. Constitutional Entrenchment of Democratic Voting	-	-	-	-	-	-	-	-	17
10. Reducing the Number of Candidates Democratically	-	-	-	-	-	-	-	-	17
11. Ensuring Political Parties Are Real	-	-	-	-	-	-	-	-	18
Conclusion	-	-	-	-	-	-	-	-	18
Appendix: 2014 Election Results	-	-	-	-	-	-	-	-	20

Summary

The purpose of this submission is to preserve and enhance the democratic nature of the proportional voting system used for elections to the Victorian Legislative Council.

This submission is a response to the Electoral Matters Committee's inquiry into the conduct of the 2014 Victorian State Election.

The sudden triumph of the micro-parties has created consternation across the land and predictable calls to "reform" the system. Some are thoughtful, but most are knee-jerk reactions, oblivious to the democratic principles of the single transferable vote system, designed to advantage one particular party and/or deeply undemocratic. The issue is not that some candidates were elected with tiny initial votes.

The first thing to note is that while the "experts" claimed that people were horrified that micro-party candidates (voted for by 23.5 per cent of the national population in the 2013 Senate election) actually won seats, that they were appalled that they did not know where their votes had ended up, that they would realise their "mistake" and that they flock back to the "proper" parties, the micro-party candidates actually gained votes in the Western Australian Senate election, showing that people were not horrified or appalled at all but pleased that the system allowed "outsiders" to be elected and relaxed about where their preferences went. The total micro-party vote was 25.5 per cent (<http://vtr.aec.gov.au/> (Sunday, 06 April 2014 03:11:32 AM)), up 5.9 per cent on 2013.

There has, fortunately, not been no rerun in Victoria, but there is no reason to think that, had there been, the micro-party vote would have collapsed.

1. The federal Constitution requires that senators be "directly chosen by the people", thus ruling out party list systems. This is a good principle and ought to apply to the Victorian Legislative Council.
2. The single transferable vote upholds this principle in a highly democratic way.
3. That the complaints about the results of the 2014 Legislative Council election are motivated by hostility to those elected, not by any principle, is obvious from the silence in the far greater majority of cases in which candidates from major parties with tiny primary votes have been elected.
4. Setting a threshold for candidates to remain in the race is undemocratic.
5. Replacing below-the-line preferences with above-the-line preferences is irrational, while allowing above-the-line optional preferences along with below-the-line preferences is undemocratic, irrational and likely to produce random results.
6. Group voting tickets are perfectly democratic.
7. The only changes needed to the voting system are to restrict the number of preferences a group voting ticket can express and to increase the number of compulsory preferences below the line.

8. The Victorian Electoral Commission ought to provide assistance to voters to vote formally below the line via a website.

9. The Constitution should be amended to entrench the single transferable vote for Legislative Council elections.

10. Tightening deposit requirements would reduce the clogging the ballot paper by candidates who cannot be elected.

11. Tightening party registration requirements would reduce the number of overnight parties with no long-term base.

1. Constitutional Principle

The outrage at the 2014 Legislative Council results – and before that the 2013/14 Senate results, the 2006 Legislative Council results and the 2004 Senate results – is based on the assertion that someone with a very small vote has not got the right to be elected, a stance that shows a fundamental misunderstanding of the principles and operations of the single transferable vote and a stance that was mentioned by no one on any of the pre-2004 occasions on which someone with a very small vote got elected to the Senate, these occasions being in every Senate election since the STV system was introduced in 1949.

The first point to keep in mind is Section 7 the Australian Constitution:

“7. The Legislative Council shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.”

Senators cannot be “directly chosen by the people” unless the people have the option for voting for every candidate on the ballot paper. Party lists systems that compel a vote for the Number One candidate of a party and prevent a vote for the Number Two candidate of that party are unconstitutional because they interpose a party choice between the candidates and the voters’ rights. That would mean that senators are no longer “directly chosen by the people”. (This does not make group voting tickets or the option of above-the-line voting unconstitutional as neither of them compels a vote for particular candidates or prevents a vote for others: the voter retains the freedom to vote for any individual candidate on the ballot paper.)

Victoria is not bound by the federal constitutional provision, but it should follow the same principle because it is a god principle and consistency in electoral arrangements helps the voter.

2. The Single Transferable Vote

The single transferable vote allows voters to vote for any candidate they wish in any order they wish. The above-the-line addition gives particular party-chosen sets of preferences an advantage over the trillions of other possible sets of preferences

possible, but every voter has the right to choose one of those non-party-chosen sets of preferences, even though few do so.

The addition of above-the-line voting and group voting tickets makes the practical operation of the system similar to a party list system.

The system means that at each stage of the count a choice is being made between those candidates with sufficient support to be left in the count. It is in effect a series of elections. It is the same as there being an election on one day among 100 candidates, followed by an election the next day among 99 candidates, followed the next day by an election among 98 candidates, followed the next day by an election among 97 candidates, and so on. At each election, the candidate with the least support drops out and the voters make a choice from the remaining candidates. Instead of having 99 days of elections, the STV system has one day and simply recounts the votes as each candidate drops out – just as in preferential voting in single-member seats.

Another way of looking at it is to imagine 10,000 voters in a room, moving initially to the candidates they most prefer and then moving from the least supported candidate to the one they next support until it is clear which candidates have the support to be elected.

At the end of the process, we have the candidates elected that have the most support and thus a Legislative Council that is most representative of the people.

The principle of the single transferable vote system seems not to be understood even by politicians, given the articles and remarks by them after the recent micro-party victories. There is still a widespread emotive and irrational belief that there is something wrong with someone being elected from a tiny initial vote (unless they are the No. 2 or 3 candidate of a major party, in which case it is held to be perfectly reasonable).

To clarify the issue, let us imagine a hypothetical election among 280 voters for a single-member seat with the following first preferences:

Seedmast	3
Stringer	2
Holdfast	130
Somerfelt	10
Bentle	10
Meanfare	20
Smith	40
Enfled	65

Holdfast has most votes, but not majority (141), so the counting of preferences commences.

On the second count, Stringer's 2nd preferences go to Somerfelt:

Seedmast	3
Holdfast	130
Somerfelt	12
Bentle	10

Meanfare	20
Smith	40
Enfled	65

On the third count, Seedmast's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	15
Bentle	10
Meanfare	20
Smith	40
Enfled	65

On the fourth count, Bentle's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	25
Meanfare	20
Smith	40
Enfled	65

On the fifth count, Meanfare's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	45
Smith	40
Enfled	65

On the sixth count, Smith's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	85
Enfled	65

On the seventh count, Enfled's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	150

Somerfelt wins the seat, despite polling only 10 votes out of 280 to start with, and there is no issue because we know that the principle of the preferential voting system is that no one wins until they get a majority of the vote; i.e., 50 per cent plus one. We know it does not matter what they start on. It matters what they finish on, and Somerfelt has finished with more votes than Holdfast because at each stage of the count the voters of the candidate with the lowest number of votes chose her as their next choice. She was genuinely the most preferred of those available.

Now imagine a hypothetical election among 1,000 voters (with six seats – six because these calculations were done in relation to the Senate, but the principle is the same for the Legislative Council – to be filled and a quota of 144 votes), with the following first preferences:

GROUP A	
Margoyles	435
WHEEL	0

Bowfingle	0
Seedmast	0

GROUP B

Pastertime	290
Coreflute	0
Toadle	0

GROUP C

Holdfast	130
Fernden	0

GROUP D

Somerfelt	10
Flowere	0

GROUP E

Bentle	10
Deedsful	0

GROUP F

Meanfare	20
Jumper	0

GROUP G

Smith	40
Wessen	0

GROUP H

Enfled	65
Gefless	0

On the first count, Margoyles and Pastertime are elected, with their surplus votes going to Wheel and Coreflute respectively, with the following changes to Groups A and B and all other groups unchanged:

GROUP A

Wheel	291
Bowfingle	0
Seedmast	0

GROUP B

Coreflute	146
Toadle	0

On the second count, Wheel and Coreflute are elected, with their surplus votes going to Bowfingle and Toadle respectively, with the following changes to Groups A and B and all other groups unchanged:

GROUP A

Bowfingle	147
Seedmast	0

GROUP B

Toadle	2
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On the third count, Bowfingle is elected, with his surplus votes going to Seedmast, with the following change to Group A and all other groups unchanged:

GROUP A

Seedmast	3
----------	---

On the fourth count, all those with zero are eliminated with no preferences to go anywhere, leaving the following result:

GROUP A

Seedmast	3
----------	---

GROUP B

Toadle	2
--------	---

GROUP C

Holdfast	130
----------	-----

GROUP D

Somerfelt	10
-----------	----

GROUP E

Bentle	10
--------	----

GROUP F

Meanfare	20
----------	----

GROUP G

Smith	40
-------	----

GROUP H

Enfled	65
--------	----

Each group has only one candidate in it, so let's remove the group headings to save space:

Seedmast	3
----------	---

Stringer	2
----------	---

Holdfast	130
----------	-----

Somerfelt	10
-----------	----

Bentle	10
--------	----

Meanfare	20
----------	----

Smith	40
-------	----

Enfled	65
--------	----

On the fifth count, Stringer's 2nd preferences go to Somerfelt:

Seedmast	3
Holdfast	130
Somerfelt	12
Bentle	10
Meanfare	20
Smith	40
Enfled	65

On the sixth count, Seedmast's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	15
Bentle	10
Meanfare	20
Smith	40
Enfled	65

On the seventh count, Bentle's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	25
Meanfare	20
Smith	40
Enfled	65

On the eighth count, Meanfare's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	45
Smith	40
Enfled	65

On the ninth count, Smith's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	85
Enfled	65

On the tenth count, Enfled's 2nd preferences go to Somerfelt:

Holdfast	130
Somerfelt	150

Somerfelt wins the seat, despite polling only 10 votes out of 280 left to determine the last seat (720 being used up as five quotas to fill the first five seats) because she has passed the quota of 144 votes (i.e., 14.3 per cent) or, to put it another way, she has passed the target of 50 per cent plus one of the votes left in the count, just as in the single-member seat example. At each stage of the count the voters of the candidate with the lowest number of votes chose Somerfelt as their next choice. She was genuinely the most preferred of those available.

There was no issue when Somerfelt won a single-member seat with exactly the same initial vote because we know that the principle of the preferential voting system is that no one wins until they get a majority of the vote; i.e., 50 per cent plus one. But now

that Somerfelt has won one seat in a multi-member electorate, outrage erupts across the land.

The figures are exactly the same. The process is the same. The result is the same. But the reaction is not. We also know that Pastertime, Wheel and Coreflute were elected from even fewer initial votes than Somerfelt, but not a word of complaint greeted their election because they were number 2 and 3 candidates of the major parties.

The election of micro-party candidates from tiny initial votes is perfectly democratic because those elected were the most preferred of the remaining candidates.

3. The Irrational Complaints

The complaint after the 2014 Legislative Council election was that candidates like Rachel Carling-Jenkins, James Purcell, Fiona Patten, Jeff Bourman and Daniel Young had been elected from minuscule primary votes. Yet this complaint was not heard at all in elections before 2004 (in which Family First's Steve Fielding won a Senate seat on an initial 1.9 per cent of the vote) or in this election about major party MLCs also elected from primary minuscule votes. The outrage is not coming from the 20 per cent of Victorians who voted for micro-party candidates.

There was no outcry to any of these candidates getting into the Legislative Council on preferences:

Bruce Atkinson (Liberal)	0.12
Richard Dalla_Riva (Liberal)	0.15
Danny O'Brien (Nationals)	0.10
Daniel Mulino (Labor)	0.15
Nazih Elasmr (Labor)	0.14
Damian Drum (Nationals)	0.26
Jaelyn Symes (Labor)	0.07
Adem Somyurek (Labor)	0.14
Inga Peulich (Liberal)	0.10
Georgie Crozier (Liberal)	0.13
Margaret Fitzherbert (Liberal)	0.14
Khalil Eideh (Labor)	0.09
Josh Morris (Liberal)	0.14
Gayle Tierney (Labor)	0.17

Their primary votes are lower than those of the micro-party candidates, but they have been elected, perfectly democratically, on preferences from candidates higher up their own party ticket.

Some may argue that the preferences of most of those elected as MLCs on small initial votes came from within their own group. That is true but irrelevant. The single transferable vote is designed to elect individuals. It does not matter from which party's candidates the preferences come. Sometimes two parties run on the same ticket. Thus, National Party MLCs are often elected on Liberal preferences. There is no difference in principle between preferencing within a ticket or between tickets. The groupings of candidates are a convenience for voters, but the system is designed

to elect individuals. To preference a candidate in a different party is as valid as preferencing another candidate within the same party. Voters are entitled to vote on whatever basis they like: to vote for all the candidates of one gender before voting for any candidate of the other; to vote for all those who are not lawyers before those who are; to vote for pro-Life candidates before pro-abortion candidates; to vote for pro-gay marriage candidates before anti-gay marriage candidates. The party groupings are a convenience in that they put supposedly like-minded candidates together, but voters may vote on particular issues that split those candidates. The value of each voter's vote must be the same whether the preferences are within a party group or passed outside a party group.

Once you understand the voting system, there is nothing undemocratic in a person's being elected from even zero initial votes (which is theoretically possible if the candidate on zero votes moves above zero through the transfer of another candidate's surplus). No one is elected to the Legislative Council until they reach a quota – 16.7 per cent. It does not matter what vote they start on. Once candidates with quotas are elected and their surplus votes distributed, the process is a contest to reach a quota of 16.7 per cent (just as in single-member seats the contest is to reach 50 per cent plus one). The candidates are ranked from the highest to lowest in votes and the lowest is eliminated because, obviously, the lowest has the least support. The votes of the lowest then move to their next choice. This may mean that the second-lowest jumps ahead of the third-lowest, which is telling us that the originally third-lowest actually has more support than the originally second-lowest. The maths may be complicated, but the principle is simple. It's a contest to reach a quota. The initial vote is irrelevant because each count is a new stage in which the least preferred is rightly eliminated in order to find out the most preferred.

The voting system worked exactly as it is meant to. That is why the main suggested changes, to impose a threshold (common in list systems and mixed-member systems) and to allow preferences above the line (with or without the choice of voting below the line), are unjustified.

4. Party Preferences

It is argued that the system we have is distorted because of group voting tickets. It would be if it were compulsory to choose one of them, but it is. If voters do not want to accept the party's preference allocation, they are free to vote below the line. If they vote above the line, they have chosen to accept their party's preference allocation. They can make the effort to find out where the party's preferences go, or they can choose to trust their party. If they choose to trust their party, their vote is not inferior. If their party chooses to swap preferences with a party with different ideas, that is also perfectly acceptable.

It is true that choosing the party's preference allocation has the advantage of making a formal vote far easier than filling out all the preferences below the line. The answer to that problem is not to distort the single transferable vote by thresholds or above-the-line preferences, but by making preferences below the line optional after a certain number, which is already the case in Victoria.

To eliminate from the count and distribute the preferences of the lead candidate of a Legislative Council group or an ungrouped independent unless he or she secures in excess of any set percentage of the first vote one would be a disgrace. This proposal, one way of dealing with the “fact” that the “wrong” people got elected to the Legislative Council, is profoundly undemocratic. That it is so is on plain display in the wording for the number two and number three candidates of the major parties and of the Greens who do not secure the set percentage – whatever it may be – are not to be eliminated.

Under STV, all votes are equal. The vote of someone who supports a minor candidate is not of less value than the vote of someone who supports a major candidate. That voter is entitled to have his or her vote remain in the count until the end. To exclude it or discount it or remove it out of sequence because it went to a minor party candidate is the antithesis of democracy.

It is also an infringement of the democratic rights of other voters to have candidates excluded because they fall below a certain threshold as those other voters may prefer them to others allowed to remain in the race and yet would be denied the right to have their true preferences counted. To eliminate the second-lowest because of an arbitrary threshold would thus distort the result.

The party system has been grafted onto the STV system. Years ago, Tasmanians understood the full power of the Senate voting system. In 1949, they elected the No. 4 Liberal candidate before the No. 1 Liberal candidate and the No. 4 Labor candidate before the No. 3 Labor candidate. They still understand that power in their state elections.

If anyone suggested a threshold for single-member seats, it would be immediately obvious that it was undemocratic. One suggested threshold for a five-member electorate is 4 per cent. The equivalent threshold for a single-member seat would be 20 per cent. No one has yet suggested that we deny the right of a candidate with 20 per cent of the vote to stay in the race for a House of Representatives seat. Those who say no one could ever win from such a low vote should look at the 1972 result in the seat of McMillan, in which the winning candidate scored an initial 16.6 per cent. The equivalent House of Representatives threshold to a Legislative Council threshold of 5 per cent would be 25 per cent, but no one has yet suggested that we deny the right of a candidate with 25 per cent of the vote to stay in the race for a House of Representatives seat.

There would be nothing undemocratic even for a person to win a seat from an initial zero per cent. No one wins a Legislative Council seat until they reach a quota – 16.7 per cent for everyone. The vote they start on is immaterial, as is whether or not they get their preferences from their own party or another one. The micro-party candidates got around 20 per cent of the vote so it is perfectly democratic that they end up with five MLCs. It could be argued that they are under-represented as the Greens, with half that vote, also have five MLCs. If the micro-parties had scored 5 per cent in total, no number of preference swaps would have seen any of them elected. If they had scored 5 per cent in total and received preferences or surplus votes from major parties, that would simply show that those micro-party candidates were preferred at that stage of

the count to other candidates still in the race and would be perfectly legitimate and democratic.

5. Imposing a Party List System

Another change suggested is to allow preferences above the line, which is the NSW Legislative Council system.

Providing preferences above the line is contrary to the spirit of the federal Constitution, which compels that senators be “directly” elected. It acts like a party list system and thus entrenches the party system. It makes it less likely that voters will vote for individuals and is thus contrary to what the Constitution intends. The same principle ought to apply in Victoria because it suggests to the voter that he or she is electing persons, not parties.

Providing optional preferences above the line also distorts the proportional nature of the single transferable vote.

If group voting tickets are abolished and the option remains to put only the first preference above the line, preferences would be exhausted within one party group. The more this happens, the fewer votes are left in the count to determine the last Legislative Council positions, making the result random. The number of preferences expressed for individual candidates would vary according to how many groups the voter preferred above the line and how many candidates were in each group that the voter preferred.

If group voting tickets are abolished and a set number of preferences above the line is required for a formal vote, the issue becomes the number of preferences required to make a vote formal. Party groups do not run the same number of candidates. Thus, whatever number is set would also have different effects in that one set of, say, six preferences above the line would result in preferences to 30 candidates below the line while another set of six preferences above the line would result in preferences below the line to only six candidates.

If group voting tickets remain and optional preferences above the line are allowed, the issue becomes the number of above-the-line-preference that must be counted to cancel out the group voting ticket; e.g., a single preference above the line could be counted as support for the group voting ticket, while 2 above the line would count as overriding the group voting ticket. In such a case, the voter who put a single preference above the line would effectively have preferences counted all the way, while the voter who expressed two preferences above the line would have his or her vote exhausted after only two groups (which could be four candidates or 10 candidates – or any number in between – in a Legislative Council election).

Having preferences below the line allows a voter to go 1, 2, 3 for one party, 4, 5, 6 for the next, and so on, but it also allows the voter to go 2,3,1 for the first party and so on. Having preferences below the line incorporates preferences above the line, but vice versa does not apply.

Political parties change electoral systems for their own advantage. Liberals loved preferential voting when DLP preferences helped them win seats, and the ALP hated it for the same reason. Now that Greens preferences help Labor win seats, Liberals don't like it. In Queensland, optional preferential voting was introduced by Labor to stop the National and Liberal parties gaining seats on One Nation preferences in 1998.

The Greens like preferences above the line because they remember that the Victorian branch of the ALP used preferences to put Family First into the Senate in 2004 and the DLP into the Victorian Legislative Council in 2006, and they think they will get preferences from Labor voters who think the Greens are Labor's friends. Thus, having preferences above the line is to the political advantage of the Greens in that it is likely to increase the chances that the Greens gain the balance of power in the Legislative Council and reduce the chances of other parties even winning seats. If it were a democratic and rational proposal, we would have to accept that result. However it is an undemocratic and random proposal that would distort the proportional nature of the result, so we ought not support it.

We have grafted a party list system on top of it with the above-the-line system, but we should not remove the right to elect individuals. It would be confusing to have two sets of options involving optional preferences (which would have different sets of numbers in any case), so we ought keep the system that is most in line with the integrity of the system, which is to have preferences below the line.

6. Nothing Undemocratic about Group Voting Tickets

It is argued that the existence of group voting tickets is undemocratic in that people do not know for whom they are voting for and end up with preferences going to people whom they would not choose to support. This ignores the facts that all group voting tickets are on the web and available at polling stations and that no one has to vote above the line. No one has to endorse a group voting ticket. Everyone is free to vote below the line.

When a voter votes above the line, he or she is choosing one set of preferences over all others and doing so in the knowledge that his or her party has made an arrangement that it believes is in the interests of his or her party. That is a legitimate choice for the voter to make, especially given the reduction in informal votes that the introduction of above-the-line preferences achieved in Senate elections. The proportional, and thus representative, nature of the voting system is enhanced by the current above-the-line voting and group voting tickets because preferences go to all candidates; i.e., no votes are exhausted, which they would be with above-the-line optional preferences.

It is argued that the system we have is distorted because of group voting tickets. It would be if it were compulsory to choose one of them, but it is. If voters do not want to accept the party's preference allocation, they are free to vote below the line. If they vote above the line, they have chosen to accept their party's preference allocation. They can make the effort to find out where the party's preferences go, or they can choose to trust their party. If they choose to trust their party, their vote is not inferior.

If their party chooses to swap preferences with a party with different ideas, that is also perfectly acceptable.

It is said that parties make deals with diametrically opposed parties and that the “wrong” people won in 2014. We can look at the final seat in each region with a micro-party MLC and the total state vote for various micro-parties to see how unjustified that claim is.

How likely is it that voters for the Australian Christians (1.03), the Country Alliance (0.68), the DLP (2.32), Family First (1.83), the Liberal Democrats (3.06), PUP (1.95), People Power (0.35) or Rise up Australia (0.52) are angry that Shooters and Fishers (1.65) won instead of the ALP, the Greens or the Liberals/Nationals in Eastern and Northern Victoria? That’s 13.39 per cent of voters in total.

How likely is it voters for the Country Alliance (0.68), Rise Up Australia (0.52), Family First (1.83), the Australian Christians (1.03), the Liberal Democrats (3.06), PUP (1.95) or the Shooters & Fishers (1.65) are angry that the DLP (2.32) won in Western Metropolitan instead of the ALP or the Liberals? That’s 13.04 per cent of voters in total.

How likely is it the voters for the Liberal Democrats (3.06), Basics Rock’n’Roll (0.19) or the VEP (0.49) are angry that Sex (2.63) won instead of Family First in Northern Metropolitan? That’s 6.37 per cent of voters in total.

How likely is it the voters for the Australian Christians (1.03), the Country Alliance (0.68), the DLP (2.32), Family First (1.83), the Liberal Democrats (3.06), PUP (1.95), People Power (0.35) or Rise up Australia (0.52) or the Shooters & Fishers (1.65) are angry that Vote 1 Local Jobs (0.21) won instead of the Greens in Western Victoria? That’s 13.60 per cent of voters in total.

In addition, how likely is it that surplus voters for the Liberals/Nationals in Northern Victoria (7.84) are angry that the Shooters & Fishers won instead of the ALP or the Greens?

In addition, how likely is it that surplus voters for the Liberals/Nationals in Western Victoria (3.63) are angry that the Vote 1 Local Jobs won instead of the Greens?

It is true that choosing the party’s preference allocation has the advantage of making a formal vote far easier than filling out all the preferences below the line. The answer to that problem is not to distort the single transferable vote by thresholds or above-the-line preferences, but by making preferences below the line optional after a certain number, which is already the case in Victoria.

7. The Real Issue

There is no problem whatsoever with a candidate’s election to the Legislative Council from a tiny initial vote as no one gets there until they reach the quota, 16.7 per cent. The issue is not the size of the initial vote. It is not the election of the “wrong” people to the Legislative Council. It is not group voting tickets. It is not the existence of

above-the-line voting. The issue is the difficulty of voting below the line. It is the duty of every citizen to vote and, by the same reasoning, the duty of every citizen to vote all the preferences there can be. However, this has become unrealistic with Legislative Council ballot papers with large numbers of candidates. The duty remains but is unenforceable. We have already solved that problem by making preferences optional after the first five.

That number is too low and is chosen for no better reason than that it equals the number of seats to be filled. The earlier votes become “exhausted” in the single transferable vote system of proportional representation, the less proportional the system becomes and later seats are filled by people who do not even reach a quota. In the Victorian Legislative Council, where that rule applies, parties typically run five candidates (the number of seats to be filled) even though they have no hope of winning five. This locks up below-the-line votes inside the party and means the above-the-line group voting ticket has more influence on the result.

It is possible to be faced with two or three or four unpalatable candidates on a ballot paper and no one worth electing; yet, the voter is legally required to vote for one of them (it’s a furphy that turning up at the polling place is all that is legally compulsory, though the secret ballot makes strict enforcement of the law impossible). It follows that at every stage of the count, there is a set number of candidates remaining to choose from. The compulsion to choose at each stage is no different from the compulsion to choose in the first place. The only reason to move away from insisting on this principle is the huge number of candidates and the practical reality that the overwhelming number of voters will not make any effort to distinguish between them all. A relatively high number of preferences is necessary to decrease the number that exhaust and thus the likelihood of the last or the last two candidates being elected on less than a quota.

It is better to have the same number of compulsory preferences for the nation, states, territories and local councils and for both houses of parliament. The key is the simplicity of one message on voting.

Preferences should not be locked up inside one party, so we should have a least 20. If the number were too low, you would still see the micro-party candidates elected, not from low initial votes as now, but from low final votes because preferences would be exhausted early and the winner of the final position would become truly random. If the number were too high, the informal vote would be high. A balance is needed between the two competing imperatives – the need to keep a proportional system and the need to maximise the formal vote. As above-the-line voting and group voting tickets would remain available and there can be a mechanism for assisting voters to ensure their votes below the line are formal (see below), setting 20 as the minimum number of preferences below the line is reasonable.

The of preferences required for the Legislative Council should also be applied to the Legislative Assembly for consistency, though if it is high, it will have no practical effect given that Legislative Assembly seats do not attract dozens of candidates. The other states and the federal parliament should also amend their laws to require the same 20 preferences in elections for both Houses. Having the same voting system for the marking of preferences (which is not the same as the method of counting the

votes) in all jurisdictions and for both Upper and Lower Houses would reduce confusion and increase the formal vote.

There is no problem with above-the-line votes remaining, as this has reduced the informal vote and people are free to choose it (because they trust that their party has done the best deal) or not choose it, but there is a case of sorts for restricting the number of preferences a group ticket may have to the same 20. That would be an incentive not to create phoney parties that last one election and are heard no more because parties would not be able to control the preferences all the way to whatever excessive number a future election may produce.

8. Personal How-to-Vote Website

Given the concern that voters have about getting the numbers right below the line, it would be prudent for the Victorian Electoral Commission to establish a website and provide an app that allowed voters to determine their own preferences. Such a site would allow voters to rank candidates and would advise them if their vote was formal or not and print any formal how-to-vote for them to take into the polling booth.

9. Constitutional Entrenchment of Democratic Voting

Given the willingness of political parties in different jurisdictions to change voting systems to favour themselves, the Constitution ought to be amended to mandate the single transferable vote for Legislative Council elections. This ought to go with other constitutional reforms, such as a referendum for any legislation passed by one House and rejected twice by the other and recall provisions, though these are probably outside the terms of reference of the committee.

10. Reducing the Number of Candidates Democratically

The knee-jerk reaction to the Legislative Council having people elected to it whom other people do not like is to reduce the voters' democratic rights, via thresholds or above-the-line preferences. There are several steps that can be taken outside of the voting system itself to reduce the number of candidates without reducing voters' democratic rights.

Groups run more candidates than can ever be elected. This can be tackled by a sliding scale of nomination fees: \$2,000 for one candidate in a Legislative Council election (i.e., an independent not in a group and without the right to issue a group voting ticket) and for the first candidate in a group, \$10,000 for the second candidate in a group, \$20,000 for the third candidate in a group (meaning only the Coalition and the ALP would run one as they the only two parties ever to get a third candidate elected), \$50,000 for the fourth candidate in the group and \$100,000 for the fifth candidate in a group. No deposit would be lost for any candidate elected, no matter their initial vote. A group of one would have to poll 4 per cent of the primary vote not to lose its deposit. A group of two would have to poll 16 per cent of the primary vote not to lose its \$10,000 deposit. A group of three would have to poll 32 per cent of the primary

vote not to lose its \$20,000 deposit. A group of four would have to poll 48 per cent of the primary vote not to lose its \$50,000 deposit. A group of five would have to poll 64 per cent of the primary vote not to lose its \$100,000 deposit. The very low 4 per cent is designed not to discourage candidates from small parties competing. The other figures are set as one quota for two candidates, two quotas for three candidates, three for four and so on, ignoring the digits after the decimal point in the basic quota for simplicity's sake.

These moves would stop parties padding their ticket with people they know will never be elected and thus make voting below the line less daunting.

11. Ensuring Political Parties Are Real

Parties should have to be registered for at least two years to run as a group. This move would cut out phoney parties that appear for one election and then disappear. This is not to stop individuals from standing. It is to stop pretend parties.

The way to ensure parties are genuine is to ensure that they have long-term registration and a number of members (say, one in every 5,000 people) registered in. It is more sensible to relate party membership to the number of voters to allow for population changes.

If the proposal for increased deposits for additional candidates is adopted, it would also be necessary to ban political parties from running in more than one group as, if there were not such a ban, they would run two groups of two candidates each rather than one group of four in order to reduce the deposits they would have to pay.

Conclusion

Improving the integrity of the party system combined with optional preferences below the line would make it easier for voters to have a meaningful say.

However, the debate is not really about giving voters a say. It is about a political and media elite wanting to ensure that outsiders do not get elected.

MPs ought to protect the democratic system, even to the disadvantage of their own parties. Above-the-line preferences have no place in our constitutional system as they would introduce randomness to the result and distort the proportional nature of the Legislative Council. Thresholds are anti-democratic and show contempt for all voters, not just those who have chosen micro-party candidate, because they remove from the contest candidates who in the end would have more support than candidates allowed to remain in the contest.

There is no problem in the micro parties' ability to influence the outcome of the election by "gaming" the preferential system. They have as much right as the major parties and the Greens to influence the outcome of the election by whatever rules exist. There is no problem with the preferential system at all. It ensures that at each stage of the count the candidate with the least support is excluded until at the end the

candidates with the most support are elected.

If voters' rights are to be enhanced, then making it easier to vote below the line is the only change to voting that can be countenanced.

The real issue is the ease of voting below the line. Attempts to devalue the votes that one fifth of Victorians cast for the candidates of micro-parties should be resisted.

Chris Curtis
8/7/2015

Appendix: 2014 Election Results

Legislative Assembly

Labor	38.1
Coalition	42.0
Greens	11.5
Other	8.4

Legislative Council (Difference from Assembly vote)

Labor	33.5	(- 4.6)
Coalition	36.1	(- 5.9)
Greens	10.8	(- 0.7)
Other	19.6	(+ 11.2)
- Animal Justice	1.70	
- Australian Christians	1.03	
- Country Alliance	0.68	
- Australian Cyclists	0.61	
- DLP	2.32	
- Family First	1.83	
- Liberal Democrats	3.06	
- PUP	1.95	
- People Power	0.35	
- Rise Up Australia	0.52	
- Sex	2.63	
- Shooters & Fishers	1.65	
- Basics Rock'n'Roll	0.19	
- Voice for the West	0.32	
- VEP	0.49	
- Vote 1 Local Jobs	0.21	
- Others	0.13	

(<http://www.vec.vic.gov.au/Results/State2014/Summary.html>, 7/1/2015)

Primary votes of successful candidates other than No 1 of the major parties and the Greens

Eastern Metropolitan

Bruce Atkinson (Liberal)	0.12
Richard Dalla_Riva (Liberal)	0.15

(<http://www.vec.vic.gov.au/Results/State2014/EasternMetropolitanRegion.html>, 7/1/2014)

Eastern Victoria

Danny O'Brien (Nationals)	0.10
Jeffrey Bourman (Shooters and Fishers)	2.40
Daniel Mulino (Labor)	0.15

(<http://www.vec.vic.gov.au/Results/State2014/EasternVictoriaRegion.html>, 7/1/2015)

Jeffrey Bourman (Shooters and Fishers) elected on GTV preferences from Australian Cyclists (0.35)

People Power (0.42)
Rise Up Australia (0.59)
DLP (0.71)
Australian Christians (1.02)
Family First (1.69)
PUP (2.33)
Sex Party (2.49)
Liberal Democrats (4.75)
ahead of ALP, Greens, Liberals/Nationals
(<http://www.abc.net.au/news/vic-election-2014/results/legislative-council/evic/>,
8/1/2015)

Northern Metropolitan

Nazih Elasmr (Labor)	0.14
Fiona Patten (Sex)	2.85

(<http://www.vec.vic.gov.au/Results/State2014/NorthernMetropolitanRegion.html>,
7/1/2015)

Fiona Patten (Sex) elected on GTV preferences from
VEP (0.30)

Shooters & Fishers (1.09)
Liberal Democrats (1.48)
Basics Rock'n'Roll (1.54)
Greens (1.91)
Animal Justice (1.51)
Australian Cyclists (0.82)
Group N (0.48)
ALP (7.7)
ahead of Family First
(<http://www.abc.net.au/news/vic-election-2014/results/legislative-council/nmet/>,
8/1/2015)

Northern Victoria

Damian Drum (Nationals)	0.26
Daniel Young (Shooters and Fishers)	3.44
Jaelyn Symes (Labor)	0.07

(<http://www.vec.vic.gov.au/Results/State2014/NorthernVictoriaRegion.html>,
7/1/2015)

Daniel Young (Shooters and Fishers) elected on GTV preferences from
People Power (0.33)

PUP (2.89)
Sex Party (3.27)
Australian Cyclists (0.51)
Liberals/Nationals (7.84)
ahead of ACA, ALP, Greens
(<http://www.abc.net.au/news/vic-election-2014/results/legislative-council/nvic/>,
8/1/2015)

South-East Metropolitan

Adem Somyurek (Labor) 0.14
Inga Peulich (Liberal) 0.10
(<http://www.vec.vic.gov.au/Results/State2014/South-EasternMetropolitanRegion.html>, 7/1/2015)

Southern Metropolitan

Georgie Crozier (Liberal) 0.13
Margaret Fitzherbert (Liberal) 0.14
(<http://www.vec.vic.gov.au/Results/State2014/SouthernMetropolitanRegion.html>, 7/1/2015)

Western Metropolitan

Khalil Eideh (Labor) 0.09
Rachel Carling-Jenkins (DLP) 2.54
(<http://www.vec.vic.gov.au/Results/State2014/WesternMetropolitanRegion.html>, 7/1/2015)

Rachel Carling-Jenkins (DLP) elected on GTV preferences from
ACA (0.19)

Rise Up Australia (0.40)

Shooters & Fishers (1.24)

Australian Christians (1.37)

Voices for the West (1.78)

People Power (0.38)

Family First (1.46)

Liberal Democrats (6.9)

ahead of ALP and Liberal

(<http://www.abc.net.au/news/vic-election-2014/results/legislative-council/wmet/>, 8/1/2015)

Western Victoria

Josh Morris (Liberal) 0.14

Gayle Tierney (Labor) 0.17

James Purcell (Vote 1 Local Jobs) 1.26

(<http://www.vec.vic.gov.au/Results/State2014/WesternVictoriaRegion.html>, 7/1/2015)

James Purcell (Vote 1 Local Jobs) elected on GTV preferences from
ACA (0.99)

Family First (1.95)

Liberals/Nationals (3.63)

Sex (2.50)

DLP (1.53)

Rise Up Australia (0.34)

People Power (0.39)

Australian Christians (0.85)

Liberal Democrats (2.59)

Shooters & Fishers (2.59)

ahead of Greens

(<http://www.abc.net.au/news/vic-election-2014/results/legislative-council/wvic/>,
8/1/2015)