

PROPORTIONAL REPRESENTATION SOCIETY OF AUSTRALIA (VICTORIA-TASMANIA) INC.



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2010-05-24

**Submission to the Electoral Matters Committee, Victorian Parliament,
Inquiry into Functions and Administration of Voting Centres**

emc@parliament.vic.gov.au

The main thrust of our submission is that, at the 2006 election for the Legislative Council, Section 73A of Victoria's Electoral Act 2002, which makes the display of Group Voting Tickets mandatory, **was not adhered to**.

For the convenience of the Committee, we reprint Section 73A below, with bold added by us:

73A. Group voting tickets to be displayed

- 1) If a group voting ticket is, or group voting tickets are, registered for the purposes of a Council election, the Commission **must cause** the ticket or tickets to be **prominently displayed** at the election day voting centres in a manner determined by the Commission.
- 2) If a group has 2 or 3 group voting tickets, the tickets relating to that group must be displayed in the order indicated in the statement lodged under section 69B(1)(b), 69B(2)(b) or 69(B)(3)(b).

Prior to the Election, our Organization had written to the Victorian Electoral Commissioner, Mr Steve Tully, in anticipation of Section 73A perhaps not being complied with, given that our experience with Senate elections was that, despite the similar federal legislation (CEA Section 216) making the display of a GVT poster or pamphlet mandatory, Group Voting Tickets (GVTs) were often not displayed. An earlier reply we had received from Senator Hon. Eric Abetz, Special Minister of State, admitted that the Federal law had not been complied with in displaying GVTs, and promised proper compliance by the AEC in the future.

Our letter to Mr Tully, dated 20th November 2006, is presented to the Committee as Appendix 7. We received a written assurance from Mr Tully (Appendix 5) that GVTs would be "prominently displayed" as per Section 73A, but this did not occur.

The following paragraph from Mr Tully's letter, dated 21st November 2006, is included for the Committee's information: (the full letter is presented as Appendix 5)

The VEC has determined that registered group voting tickets will be available for inspection at the enquiry table at each voting centre. Each enquiry counter will be staffed to ensure that booklets are not removed from the voting centre, and voting centre managers have been asked to put up a sign that prominently advises electors of this arrangement. The booklets will be on display without electors having to ask for them, but electors may ask the enquiry officer for assistance.



We offer the following evidence of the failure to abide by the provisions of the law,

From Dr. Lee Naish, Vice-President of PRSAV-T Inc.

On election day, several PRSAV-T members looked for group voting tickets at several voting centres. In all cases they had to speak to multiple staff members in order to view the tickets, which were in a shrink-wrapped plastic package away from the view of voters.

(See Appendix 1)

From former Victorian Senator Lyn Allison (who was a member of the Senate at the time of the 2006 election)

When voting on Saturday at the polling booth in Nott Street, Port Melbourne, I asked the official directing me to a table where the group voting tickets were, to be told that she didn't know anything about this and would have to consult a more senior officer. I subsequently spoke with the officer in charge who told me there were too many documents to display and produced stapled reports for all metropolitan upper house regions. He indicated that I was the first to request this information.

(See Appendix 2)

From Mr Marcus Ward, unsuccessful Green Party candidate for Western Victoria Region:

I did hear from an ABC journalist who votes in Western Victoria that as a matter of interest, he asked to see the preference tickets as he was aware that they were supposed to be prominently displayed at the polling area. It took 20-30 minutes for the supervisor and staff to locate a copy and show it to him.

(See Appendix 3)

I have heard similar stories from several people who were careful to look because of their disappointment at finding that their preferences had gone to FF (Family First) at the federal election, including one woman who handed out for the ALP at the last federal election who had tried many times to find out where ALP Senate preferences were going, and was unable to find this out. Hence her extra interest and effort. None-the-less, she was unable to find out at her polling booth where here above the line vote preferences would flow.

(See Appendix 3)

From Mr Geoffrey Goode, President of PRSAV-T Inc.

When I returned to my local Voting Centre to show the Manager the letter of assurance I had received from the Electoral Commissioner about the prominent display of Group Voting Tickets, a copy of which I have just emailed to PRSAV-T Inc. members for their information, I found that the stack of GVT booklets for the 8 regions was sitting underneath other material on his desk and was not visible to anyone. He read my letter and kept the copy I left with him.

(See Appendix 4)

As can be seen by these comments, there appears to have been a **quite unacceptable failure** to abide by the requirement of Victoria's Electoral Act 2002 that *the Commission must cause the ticket or tickets to be prominently displayed at the election day voting centres.*

It is true that the Act qualifies this by saying "in a manner determined by the Commission", but by **no stretch of the imagination** could any of the following be described as 'prominently displayed':

- a) *keeping them in a shrink-wrapped plastic package away from the view of voters, or*
- b) *voters needing to consult more than one officer and being told there was too much material to display, or*
- c) *taking 20-30 minutes for the supervisor and staff to locate a copy and show it to a voter, or*
- d) *a stack of booklets sitting under other material, not visible to anybody.*

In no case were the booklets "on display without electors having to ask for them", as we were assured by Mr Tully they would be (Appendix 5).


Why is this important?

In our preferential system, it is not only the first preference that may count to the election of a candidate, but any subsequent preference. For the Legislative Council, preferences may be distributed both from candidates that receive a surplus and from those that are excluded. In the case of the Western Victoria Region, the last position was ultimately decided after the exclusion of the Australian Labor Party's candidate, Carbines. The ALP's ticket gave preferences to the DLP candidate (Kavanagh), who was ultimately elected, ahead of the Greens candidate (Ward). Since most people voted 'above the line', if they voted for the ALP, their preferences flowed to the DLP ahead of the Greens. Since people are by and large not aware of the details of Group Voting Tickets, they are not aware of the implications of voting above the line, and **because of the failure to follow Section 73A**, they are deprived, contrary to the law, of the opportunity to be made aware of them before they vote at the polling booth.

Group Voting Tickets are a legislated perversion of the preferential system, something most starkly demonstrated by the election of Senator Fielding on ALP preferences in 2004. We do not imagine that the Committee will recommend the abandonment of GVTs and their replacement by the simple below the line requirement to mark no more than 5 squares, but the Committee ought to at least ensure that those voters that wish to know what their preferences in a Legislative Council election are going to do, should be assisted and enlightened, and that the Committee **should therefore recommend that the VEC be**

- **informed that the Committee has been made aware of the failure to comply with the law, and**
- **further and more strenuously urged to abide by Section 73A in the spirit and letter of the law, by the prominent display of group voting tickets.**

Signed



Stephen Morey
Secretary, Proportional Representation Society of Australia (Victoria-Tasmania) Inc.

Appendix 1: Open Letter written by Dr. Lee Naish, Vice-President, Proportional Representation Society of Australia (Victoria-Tasmania branch)

885 Park St.
Brunswick West 3055
Ph. 93811631

14/12/2006

This is an open letter to express concern that failure of the Victorian Election Commission to comply with the Electoral Act 2002 may have affected the results of the 2006 Legislative Council elections.

Section 73A of The Act reads:

73A. Group voting tickets to be displayed

- 1) If a group voting ticket is, or group voting tickets are, registered for the purposes of a Council election, the Commission must cause the ticket or tickets to be prominently displayed at the election day voting centres in a manner determined by the Commission.
- 2) If a group has 2 or 3 group voting tickets, the tickets relating to that group must be displayed in the order indicated in the statement lodged under section 69B(1)(b), 69B(2)(b) or 69(B)(3)(b).

Having witnessed repeated widespread non-compliance with similar legislation concerning Senate elections (Section 216 of the Commonwealth Electoral Act 1918), members of the Proportional Representation Society of Australia (Victoria-Tasmania) Inc. wrote to the Victorian Electoral Commissioner and were assured The Act would be complied with. On election day, several PRSAV-T members looked for group voting tickets at several voting centres. In all cases they had to speak to multiple staff members in order to view the tickets, which were in a shrink-wrapped plastic package away from the view of voters. It is clear there were multiple instances of non-compliance with this section of The Act and, having received no reports of group voting tickets being displayed (let alone prominently), we believe non-compliance was very widespread. This point alone warrants further action whether or not the election results were affected in this instance.

Of course it is impossible to know for sure whether the results of the election would have been the same had the VEC complied with The Act. It depends on several factors including the prior knowledge of voters, how closely the group voting tickets reflected voters' preferences, the relative ease of voting above and below the line and how close the counts are in the various regions.

Had voters already been aware of group voting ticket details before entering voting centers then whether or not they were prominently displayed would have little affect. However, although it was possible to obtain group voting tickets before the election, only a very small percentage of voters took this opportunity. The vast majority of voters were ignorant of group voting ticket details when they entered voting centres and, due to non-compliance with The Act, remained ignorant at the time they voted.

Group voting tickets do not always reflect the actual preferences of above-the-line voters. After the 2004 Senate elections, many Victorians who voted for the ALP above the line were

dismayed by the fact they helped elect a Family First Senator instead of a Greens candidate. They preferred the Greens candidates to the Family First candidates even though the ALP group voting ticket had the reverse preference order (most people were unaware of this at the time they voted - the AEC failed to prominently display group voting tickets). Similarly, there must have been a myriad of differing actual preference orders of above the line voters in the Legislative Council elections, not least the ALP voters who preferred Greens candidates to DLP candidates.

At the time of the 2004 Senate election, even if group voting tickets had been prominently displayed, many voters may have been dissuaded from voting below the line because they would have had to mark scores of preferences, expending considerable time and effort, and risking their vote being wasted due to informality. For Legislative Council elections only five preferences are required below the line and further preferences will not render the vote informal. Whether a voter has knowledge of group voting tickets is thus significantly more likely to affect they way they vote for the Legislative Council than for The Senate.

In all Legislative Council regions but one, preference flows between different parties (as opposed to different candidates within a single party) are required to determine the results, and in three regions the counts were so close that re-counts were performed, changing the result in two of them. The margins in these counts are smaller than plausible estimates for the numbers of people who would have changed their vote if group voting tickets had been prominently displayed. Thus, the possibility of the failure of the VEC to comply with the Electoral Act 2002 having affected the results is a real possibility.

The PRSAV-T inc strongly supports many features of the Legislative Council electoral system, for example, quota preferential vote counting is used, all regions have the same district magnitude (number of seats to fill), which is neither excessively high nor excessively low, and marking more preferences than the district magnitude is optional. However, we have maintained that ballot papers should present a level playing field for all candidates; having stage managed ordering of candidates and an above the line option unnecessarily distorts the will of the people. We have consistently argued for Robson Rotation, used in Tasmania and the ACT, which counteracts the effect of donkey votes. The Constitution Commission which recommended the reform of the Legislative Council did not recommend Robson Rotation be introduced initially, but it suggested it be considered in the future. Given the failings of the group voting ticket system, and its implementation by the VEC, we suggest Robson Rotation should be carefully considered immediately, so it could be introduced before the next Legislative Council elections.

Dr Lee Naish
Vice President
Proportional Representation Society of Australia (Victoria-Tasmania) Inc.
[A0048538N Victoria]
www.prsa.org.au

Appendix 2: Email from former Senator Lyn Allison to Geoffrey Goode, President,
PRSAV-T (dated Monday 27 November 2006)

Hi Geoffrey

Good to catch up with you on Saturday night. I have sent this to the
VEC today.

Regards

Lyn

Dear Commissioner

When voting on Saturday at the polling booth in Nott Street, Port
Melbourne, I asked the official directing me to a table where the group
voting tickets were, to be told that she didn't know anything about this
and would have to consult a more senior officer. I subsequently spoke
with the officer in charge who told me there were too many documents to
display and produced stapled reports for all metropolitan upper house
regions. He indicated that I was the first to request this information.

I remind you of the explicit statutory requirement in the Electoral Act
that these group voting tickets are "prominently displayed". I would
argue that it is not reasonable to have these documents tucked away,
unknown to polling booth officers, just because no one usually asks to
see them. People will not ask for something they do not know they are
entitled to.²⁰

I would be obliged if you can indicate why it is that the preference
flows of above the line voting for each party cannot be put on a matrix
and prominently displayed in polling booths.

Yours sincerely

Senator Lyn Allison
Leader, Australian Democrats

Appendix 3: Email from Marcus Ward, unsuccessful Greens candidate for Western Victoria Region to Lee Naish, Vice-President PRSAV-T

Lee

Thanks for your letter, and for sending it through to me. I have an interest, as do all Victorians. My interest may be more personal: I ended up #6 candidate for Western Victoria.

I did hear from an ABC journalist who votes in Western Victoria that as a matter of interest, he asked to see the preference tickets as he was aware that they were supposed to be prominently displayed at the polling area. It took 20-30 minutes for the supervisor and staff to locate a copy and show it to him.

I have heard similar stories from several people who were careful to look because of their disappointment at finding that their preferences had gone to FF at the federal election, including one woman who handed out for the ALP at the last federal election who had tried many times to find out where ALP Senate preferences were going, and was unable to find this out. Hence her extra interest and effort. None-the-less, she was unable to find out at her polling booth where here above the line vote preferences would flow.

It is worth asking how many people in Western Victoria voting ALP would have been happy to have their preference go to the DLP. My scrutineers tell me that there were very few ALP below the line preferences flowing to the DLP.

Marcus Ward
Ph 54235254 or Mobile 0427235254

Appendix 4: Email from the Mr. Geoffrey Goode, President, PRSAV-T to members of the PRSAV-T

To members of PRSAV-T Inc.

When I returned to my local Voting Centre to show the Manager the letter of assurance I had received from the Electoral Commissioner about the prominent display of Group Voting Tickets, a copy of which I have just emailed to PRSAV-T Inc. members for their information, I found that the stack of GVT booklets for the 8 regions was sitting underneath other material on his desk and was not visible to anyone. He read my letter and kept the copy I left with him.

He remarked that I was the first person in his 20 years as a polling booth official (presumably at Senate polls also) to have asked to see Group Voting Tickets. I told him that did not surprise me as the AEC has been just as dilatory and unsatisfactory in its display of them, and that people tend not to ask for things they do not get told about. I said that making people aware of the tickets was surely the point of the explicit statutory requirement that they be "prominently displayed".

Regards,

Geoffrey Goode
President
Proportional Representation Society of Australia (Victoria-Tasmania)
Inc.
[A0048538N Victoria ABN 31 010 090 247]
(Re-established in 1943 to campaign for PR for Senate and House of
Representatives elections)
www.prsa.org.au
Tel. 0429176725



Our ref: 9253Pt2

21 November 2006

Mr Geoffrey Goode
President
Proprtional Representation Society of Australia (Victoria-Tasmania) Inc
18 Anita Street
Beaumaris Vic 3191

Dear Mr Goode

Display of voting preferences for “above the line” voting

I refer to your letter of 20 November 2006 in which you request the Victorian Electoral Commission (VEC) to ensure that group voting tickets are available on display at voting centres at the 2006 State election without any need to ask for them.

As you note, section 73A(1) of the *Electoral Act 2002* requires the VEC to cause registered voting tickets to be prominently displayed at the election day voting centre in a manner determined by the Commission.

The booklets of group voting tickets for each of the eight regions are quite expensive to produce, and the VEC has produced one complete set (with all eight regions) to be available for inspection at each of the 1,600 election day voting centres.

The VEC has determined that registered group voting tickets will be available for inspection at the enquiry table at each voting centre. Each enquiry counter will be staffed to ensure that booklets are not removed from the voting centre, and voting centre managers have been asked to put up a sign that prominently advises electors of this arrangement. The booklets will be on display without electors having to ask for them, but electors may ask the enquiry officer for assistance.

I trust that this information allays your concerns.

Yours sincerely



Steve Tully
Electoral Commissioner



Our ref: 9253Pt5

18 December 2006

Dr Lee Naish
Vice President
Proportional Representation Society of Australia (Victoria-Tasmania).

Email: lee@csse.unimelb.edu.au

Dear Dr Naish

Display of group voting tickets

I refer to your email of 15 December 2006 in which you assert widespread non-compliance of the legislative requirement for group voting tickets to be prominently displayed at election day voting centres in a manner determined by the Commission.

The Victorian Electoral Commission (VEC) arranged for group voting tickets to be available for inspection at the enquiry table at each voting centre. Large posters were provided to each voting centre manager to put on prominent display to advise electors of this prior to voting. I note your assertion that group voting tickets were not on display at election day voting centres visited by members of the Proportional Representation Society of Australia (Victoria-Tasmania).

The VEC is evaluating its voting services at the 2006 State election, and your feedback about the display of group voting tickets will be of assistance to us.

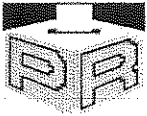
Part 8 of the *Electoral Act 2002* provides the means for disputing the validity of an election by of petition to the Court of Disputed Returns. You should note that, under section 139 of the Act, the Court of Disputed Returns must not declare an election void on account of any act, matter or thing which in the opinion of the Court of Disputed Returns did not affect the result of the election. A petition must be filed with the Court within 40 days after the return of the Writ.

Your comments in support of Robson Rotation for above the line voting have been noted. This is a matter for legislation, and I note that you have emailed your letter to a number of people, including a Member of Parliament.

Yours sincerely


Steve Tully
Electoral Commissioner

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2006-11-20

Mr Steve Tully
Electoral Commissioner
Victorian Electoral Commission
Fax 03 9629 8632

Dear Mr Tully,

Concern over method of display of Group Voting Tickets at Voting Centres

The Proportional Representation Society of Australia (Victoria-Tasmania) Inc. has been advised that one of its members wrote to you seeking confirmation that group voting tickets would be on display at voting centres in relation to the Legislative Council election now underway. PRSAV-T Inc. notes the requirement for such display set out in Section 73A of Victoria's *Electoral Act 2002*, which reads,

73A. Group voting tickets to be displayed

- (1) If a group voting ticket is, or group voting tickets are, registered for the purposes of a Council election, the Commission must cause the ticket or the tickets to be prominently displayed at the election day voting centre in a manner determined by the Commission.
- (2) If a group has 2 or 3 group voting tickets, the tickets relating to that group must be displayed in the order indicated in the statement lodged under section 69B(1)(b), 69B(2)(b) or 69B(3)(b).

It appears that that member received a reply from you that stated:

"A booklet of group voting tickets will be available to view at every voting centre, and voting centre managers are being asked to put up a sign prominently in their voting centre advising that these booklets are available for viewing."

That reply also referred to the tickets being placed on the VEC Web site, but made no reference to the matter for which confirmation was being sought, namely that the group voting tickets themselves be prominently displayed, as the Electoral Act 2002 requires to be done.

If the Act is complied with, at any given time several electors can simply see the group voting tickets without any need to ask for a booklet, whereas the type of sign that you have indicated would require electors to deal individually with an electoral official. Certain electors might be discouraged with persisting with such an approach, because of their language or cultural characteristics, or because the available official was occupied on another matter or the material was being examined by others for quite some time.

Would you please confirm, for the PRSAV-T Inc. and me, as a registered voter, that the actual requirement of that legislation will be complied with at voting centres. The request for such confirmation relates to the intended prominent display of the group voting tickets as such, and does not relate to the separate matter of signs advising that booklets are available for viewing, which is a measure that is distinct from the "prominent display of the group voting tickets", and that does not meet the requirement for that display, as it is a related sign that you refer to rather than the group voting tickets specified in the wording of the Act.

Yours sincerely,

Geoffrey Goode
President, PRSAV-T Inc.