Submission to Electoral Matters Committee - Conduct of the 2006 Victorian State Election

This Proportional Representation Society of Australia (Victoria-Tasmania Branch) submission has taken account of the report of the Victorian Electoral Commission presented to the Victorian Parliament in July 2007. We are grateful that the Electoral Matters Committee is accepting late submissions, and would like to suggest that in future, the submission closing date be at least a month after the release of the VEC report, to allow the findings of that report to be considered in submissions.

We would appreciate being able to be represented in person at the hearings on 28th and 29th August 2007.

1. Full declaration of results for the Legislative Council

Fullest public disclosure is desirable: In a democratic election, a most important feature is the publication of comprehensive and thorough results that provide a basis for sound analysis and comment, rather than forcing insights and deductions relating to matters of electoral operations and possible improvements in them to fall, by default, more into the realm of suspicion, conjecture and speculation than evidence-based conclusions. PRSAV-T Inc. welcomes, subject to the concern in the next paragraph, the VEC’s publication of first preference results by candidate for each polling booth in the Legislative Council election held on 25th November 2006.

VEC’s conflation of First Preference figures: Unfortunately, however, this report conflated the ‘above-the-line’ votes with the ‘below-the-line’ first preference votes for those candidates whose names appeared at the top of each of the party columns. PRSAV-T Inc. notes that the Australian Electoral Commission (AEC) is more helpful in this respect, as it provides distinctly separate totals of ‘below-the-line’ first preference votes and corresponding ‘above-the-line’ votes, and it asks the Committee to recommend that the VEC should be required to do the same.

2. Problems with Group Voting Tickets

Quasi-party-list effect of GVTs: PRSAV-T Inc. has long been concerned about the so-called ‘above-the-line’ voting provision, which is the present culmination of a steadily increasing retrograde trend towards the stage-management of ballot-paper design in Australia that started with the Menzies Government’s 1940 legislative response to the ALP’s Four “A’s” initiative for the 1937 NSW Senate election. The long-term effect of this trend has been to distance voters from candidates and encourage far too many voters to take the easy way out of taking little significant interest in the merits of the group of candidates nominated by parties in quota-preferential proportional representation polls. Such polls take on much of the undesirable character of a party list form of proportional representation. There all that counts is the selection of the party, with the choice of candidates by the voters becoming de facto of relatively little significance, even though, unlike a true party list system, the de jure ability to choose between candidates continues to be preserved.
Need to entrench Direct Election: The continuance of that *de jure* preservation in Victorian State polls is, unlike equivalent polls for the Commonwealth or Western Australian parliaments, unfortunately not able to rely on any constitutional requirement for the “direct election” of members of Parliament. Some consideration should be given by the Committee to the desirability of recommending a constitutional provision requiring that members of both houses of the Victorian Parliament should be directly elected by the people as in the examples above.

VEC failure to Prominently Display GVTs: A major drawback that has emerged with this GVT system is that voters are not aware of the consequences of voting ‘above-the-line’, because the Group Voting Tickets are not being displayed at polling places as required by statute, are necessarily very elaborate and complex, and are difficult to access. On the VEC’s Web site one finds the GVTs are large files that are slow to download and appear on the computer screen with fine print that has to be awkwardly scrolled from one side to another and also up and down. Despite official written assurances from the VEC to PRSAV-T Inc. that the tickets will be displayed, it is the experience of a number of our members that the statutory requirement for their display was blatantly disregarded in practice. Section 73A of the Electoral Act 2002 states as follows:

“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.”

Examples and effects of Non-display of GVTs: At the State election held on 25th November 2006, a number of our members noticed that at those polling booths they attended, there was no display of any kind of these Group Voting Tickets. When asked about this, booth presiding officers retrieved Group Voting Ticket booklets that were stored in a box or in some other location where they were not evident to voters. Given that the flow of preferences elected at least one candidate whose election was not expected (Peter Kavanagh, DLP, elected ahead of Marcus Ward, Greens, in Western Victoria), we submit that democratic process is done a distinct disservice by the failure to implement Section 73A.

3. Above-the-line voting is neither necessary, nor desirable

VEC’s How-to-Vote Card Conformity Study: Table 24 in Section 8 of the How to Vote Card Conformity Study in the VEC report to Parliament, Pages 97-98, shows that, over a total of eight Assembly districts, more than 50% of formal ballots did not follow the party how-to-vote cards. Those districts comprised four inner metropolitan districts, two northern rural districts, and the two largest and most remote districts of Mildura and East Gippsland. Although those districts might have been chosen to illustrate particular situations relating to the range of candidates standing there, it would be unreasonable to suggest that the demonstrated ability of a clear majority of voters for every party in those districts to be well able to order their preferences without the aid of a how-to-vote card would be significantly different from voters in other Victorian districts.

Distinct net benefit of abolition of GVT option: We submit that this shows that the provision for ‘above-the-line’ voting for the Legislative Council can be removed from the Electoral Act 2002. Such removal would be without disadvantage, but would have the advantage of simplifying the procedure so that candidates could instead explicitly indicate orders in which they recommended preferences should be marked by newspaper advertisement or other means, without the State providing this mechanism for what is effectively the automatic channelling of predetermined preference orders that most voters are innocently unaware of. Given that voters are only required to mark five preferences for the Upper House, and given the evidence from the How to Vote Card conformity study, it is clear that the abolition of ‘above-the-line’ voting would not lead to a significant change in the informal vote. It would also solve the problem that the VEC has with having voters engaging with Group Voting Tickets discussed under Section 2 above, and would be a healthy transfer of power, interest and engagement from a few party organizers and insiders to the very much larger voting public.
4. Rotation of candidates’ names on ballot papers

Robson Rotation: Given the results of the VEC’s *How to Vote Card conformity study* it is also clear that the rotation of candidates’ names on ballot papers, as mandated for elections for the Australian Capital Territory and for both houses of the Parliament of Tasmania, and known as *Robson Rotation*, would be workable for Victorian Legislative Council elections. It has worked well in Tasmania for some 25 years. Robson Rotation was a key part of the Hare-Clark electoral package that was supported by a 65% majority vote at a 1992 plebiscite in the ACT, and that package was entrenched by a similar majority vote at a 1995 referendum there.

Correction of present disadvantage to larger parties: The adoption of Robson Rotation, and the removal of statutory interference in the electoral process represented at its worst by the regimentation of voters attempted by Group Voting Tickets and to a lesser extent by the relatively more open and older practice of ordering of candidates’ names by their agreed order, would remove the present electoral disadvantage that larger parties suffer. The classic analysis of that electoral disadvantage is set out in a 1979 report *“Voting by Party Direction or Free Choice?”* by Dr George Howatt that was tabled in the Tasmanian House of Assembly. A shorter explanation of why the spreading of first preference votes over a larger party’s several candidates can elect more of them, than can be the case when nearly all of the party’s first preference votes are concentrated on a single No. 1 candidate, appears in a *1988 article in The Canberra Times*.

Constitutional Commission advice: Victoria’s Constitution Commission took the trouble to meet with Hon Neil Robson, who proposed the Robson Rotation system and succeeded in having his private member’s bill to introduce it passed in 1979. The Commission’s report, which led to the introduction of legislation for proportional representation for the Legislative Council of Victoria, saw merit in Robson Rotation, and recommended that it be considered for adoption for Legislative Council elections in the future. The introduction of Robson Rotation, together with the abolition of *above-the-line* voting and the Group Voting Ticket device would make the Victorian Upper House an even more democratic body.

Geoffrey Goode
President
for Proportional Representation Society of Australia (Victoria-Tasmania) Inc.