

**Submission to  
Electoral Matters Committee** of the Parliament of Victoria  
[www.parliament.vic.gov.au/emc](http://www.parliament.vic.gov.au/emc)

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On behalf of the Democratic Labor Party of Australia (Victorian Branch)

## **Summary**

For the reasons argued below, the Democratic Labor Party is opposed to the adoption of optional preferential voting.

## **Representation to the Electoral Matters Committee**

The Victorian Branch of the Democratic Labor Party seeks to make an oral presentation to the Electoral Matters Committee.

## **Optional Preferential Voting**

- 1.1 It can be said that a preferential system of voting does not result in the election of the most popular candidate or party, but the least unpopular.
- 1.2 In any election, all but (the supporters of) the successful candidate might be expected to be disappointed by the election result.
- 1.3 The implication of the former description ('most popular') is that, for supporters of other candidates, the successful candidate or party is in some way undeserving of the office or lacks the confidence of the electorate. Popularity is most prominent in non-preferential elections, where the successful candidate in a field of five candidates may not necessarily receive much more than one-fifth (20 per cent) of the vote.
- 1.4 The implication of the latter ('least unpopular') is that the successful candidate reflects the least disappointment, the least objection, the least variation from fairness – and so, the most democratic outcome.

## **Current Victorian Electoral Practice**

- 2.1 Currently, though not widely known or promoted, optional preferential voting is practised in elections for the Legislative Council (Upper House) where, by placing the numbers 1 to 5 below the line in the five-member electorate, an elector's vote is considered formal, and counted in the relevant ballot.
- 2.2 In the case where an elector places only the numbers 1 to 5 on the ballot paper, the elector is clearly declining to provide any preferences other than that for his/her preferred five candidates (the minimum required to fill the vacancies for that electorate).

- 2.3 Perhaps many more ballot papers exhibit a limited preferential vote, where the elector displays preferences for some – but not all – remaining candidates.
- 2.4 Such an incomplete preference allocation does not normally constitute a formal vote in elections for Legislative Assembly (Lower House) districts.
- 2.5 A ballot of  $n$  candidates – in either house of the Victorian Parliament – in which an elector has preferred all but the last-preferred candidate is considered valid and formal, provided no preferences are repeated (for example, the number 3 does not appear twice).
- 2.6 There is no doubt that, in a ballot involving 7 candidates, an elector casts a valid and formal vote where preferences 1 to 6 are marked. Clearly, the remaining candidate is clearly the elector's seventh-ranked preference.
- 2.7 A great deal less certainty is evident if the elector marks the preferences 2 to 7. Is the unmarked candidate the elector's first or last choice? The lack of clarity would, I expect, render this vote informal.
- 2.8 A similar doubt is cast over a ballot paper incompletely marked in any non-sequential order (for example, seven-candidate ballot papers marked 1, 3, 5, 7, 9 and 11; or 1, 2, 3, 5, 8 and 13), and over any ballot paper in which the number 1 is not marked.

### **Alternative Practice or Proposals**

- 3.1 A proposal substantially different to current practice is under consideration by the (Commonwealth) Joint Select Committee on Electoral Matters. That proposal is that, in single-member electorates (that is, in House of Representatives divisions and Legislative Assembly districts – 'lower house' seats), a ballot paper marked only with a '1' would be assigned the preferences allocated by the registered ballot paper of the nominated candidate (or party).
- 3.2 This proposal, however, is flawed, not least because it discriminates against electors voting for a genuinely independent candidate, most particularly when such candidate declines to allocate preferences, thus compromising the independence and/or principles of the candidate.
- 3.3 Further, this proposal does not fairly reflect the preferences where the party registers and distributes the more than one how-to-vote card (as was the sometime practice of the Australian Democrats, for example, with alternative HtV cards preferring one or other of the major parties).
- 3.4 The late social commentator, Mr BA ('Bob') Santamaria was frequently – and incorrectly – reported variously the 'founder' and a 'key member' of the Democratic Labor Party. At no stage was Mr Santamaria a member of the DLP. Nor did he direct DLP policies or strategies.
- 3.5 In published media interviews, Mr Santamaria announced that he had voted for the DLP prior to and during its period of parliamentary representation (from 1955 to 1974) but, in subsequent elections, had voted "informal".

- 3.6 There are very few justifications for voting informal. Ignorance of candidate or party policy or principle, apathy, laziness and objection to the obligation to vote or to the obligation to vote preferentially are not among them.
- 3.7 Dissatisfaction with the remaining candidates may lead some to refuse to vote – on principle – for one or other of those candidates. But, by refusing to allocate (further) preferences, an elector is either:
- (A) i) exhausting his/her vote where declared (marked) preferences constitute a formal vote; and
  - ii) placing his/her trust in (the remainder of) the electorate to choose the better candidate from those remaining in contention; and
  - iii) accepting responsibility for his/her refusal to take part in ensuring the ‘better’ candidate (by the elector’s standards and, by inference, less objectionable to the elector) is elected; and
  - iv) accepting a share – some might say an increased share – of the responsibility for the decisions and actions of the successful candidate while in office;

OR

- (B) i) opting out of the electoral process and of every citizen’s moral and legal obligations in that process; and
- ii) outsourcing his/her own responsibilities while accepting those responsibilities outlined in (A) ii) to iv) above.

### **Implications of Optional Preferential Voting**

- 4.1 Taken to its logical conclusion, optional preferential voting leads to non-preferential voting and ultimately to first-past-the-post election results.
- 4.2 With the “least unpopular” outcome effectively removed from the electoral process and from the reach of electors, greater dissatisfaction and more widespread disillusionment with the electoral process will result.
- 4.3 Disenchanted and disenfranchised electors (or those who believe they are) are more likely to opt out of the political process – surely the opposite outcome to that desired by the Parliament and its citizens.

### **Optional Preferential Voting Outcomes**

- 5.1 The Victorian State election of November 2006 was the first in Victoria to include the election of multiple candidates (five) to represent each Legislative Council (Upper House) Region. Previous Legislative Council elections in Victoria elected a single member to represent each Province, elected members serving two terms of government and facing the electorate in alternate State elections.

- 5.2 In several important respects, that made that election fairer than those preceding those generational changes.
- 5.3 The election in 2006 of DLP candidate Peter Kavanagh as a member of the Legislative Council for the Region of Western Victoria was one outcome of that first ‘fair’ election. Mr Kavanagh’s election caused much discussion and some unfavourable comment. Yet Mr Kavanagh was elected with approximately 2.5 per cent of the Western Victoria region’s primary vote and, with one member in the 40-member Legislative Council, the DLP held 2.5 per cent of the representation in that chamber.
- 5.4 As a multi-member electorate, each region elects five members (MLCs). As in the Australian Senate and some municipal elections, a quota system applies. In each Victorian Legislative Council region, each election for five members involved successful candidates receiving a quota of more than one-sixth (one-sixth of the formal votes cast, plus one). Because a quota is more than one-sixth of the formal votes cast, and five successful candidates receive more than five-sixths, there is less than one-sixth of the vote remaining (spread among remaining candidates).
- 5.5 In the two elections held under the current system (in November 2006 and November 2010), three (3) candidates have been elected despite reaching a quota. An analysis of the allocation of preferences reveals that this is due to the exhaustion of votes (as outlined in paragraph 3.7 above).
- 5.6 After the distribution of preferences in the 2006 election, only the last-elected MLC in Southern Metropolitan region (the ALP’s second-elected candidate Evan Thornley) was elected with fewer votes than a quota (396 fewer votes, constitution 0.99343 quota).
- 5.7 In 2010, the second-elected Liberal (and third-elected Coalition) candidate in Northern Victoria region, Donna Petrovich, received 216 votes short of a quota (0.99667 quota), and the single Australian Greens elected in Western Metropolitan region. Colleen Hartland, received 103 votes short of a quota (0.99854 quota).

### Exhausted Votes cast in 2006 and 2010 Victorian elections

- 6.1 The numbers of exhausted votes cast in the two most recent Victorian State elections – both conducted under the current system – is shown below:

Region	Exhausted <b>2006</b>	Formal votes	% Exhausted	Exhausted <b>2010</b>	Formal votes	% Exhausted
Eastern Metro	3 097	375 947	0.8238	2 194	389 611	0.5631 68.4% of 2006
Eastern Victoria	2 990	379 201	0.7885	2 223	416 457	0.5338 67.7% of 2006
Northern Metro	3 215	360 149	0.8927	5 249	394 035	1.3321 149.2% of '06
Northern Victoria	3 902	365 391	1.0679	2 249 (incl LIB2 deficit)	389 673	0.5772 54.1% of 2006

SouthEastern Metro	2 670	365 547	0.7304	2 087	396 939	0.5258 72.0% of 2006
Southern Metro	2 635 (incl ALP2 deficit)	361 805	0.7283	1 362	381 369	0.3571 49.0% of 2006
Western Metro	4 605	374 411	1.2299	2 270 (incl AG1 deficit)	422 708	0.5370 43.7% of 2006
Western Victoria	6 839	394 478	1.7337	2 006	425 594	0.4713 27.2% of 2006
Victoria (whole)	29 953	2 976 929	1.0062	29 953	3 216 386	0.6106 60.7% of 2006

- 6.2 In 2010, in all regions except Northern Metropolitan region (where exhausted votes rose by almost half (49.2 per cent), the number and proportion of exhausted votes decreased significantly. Across Victoria, exhausted votes fell by almost 40 per cent (39.3 per cent).
- 6.3 As electors have become more accustomed to their use, above-the-line voting options have become more readily accepted among and more widely practised by the voting public.
- 6.4 Additionally, the fact that the Victorian election was held 14 weeks after the Federal election – with its ‘hung parliament’ result and the unusually long time to reach such result, and media and community discussion of the merits of minority government – may well have contributed to the electors being more polarised in their votes, militating against potential errors in casting a below-the-line vote by more readily adopting the above-the-line option.

Region	SIXTH-placed <b>2006</b>	<b>LAST-</b> elected	Fourth- elected	SIXTH-placed <b>2010</b>	<b>LAST-</b> elected	Fourth- elected
Eastern Metro	AG1	<b>LIB3</b>	ALP2	AG1	<b>ALP2</b>	LIB3
Eastern Victoria	AG1	<b>NAT1 –</b> Coalition3	ALP2	CA1	<b>ALP2</b>	LIB2 – Coalition3
Northern Metro	DLP1	<b>ALP3</b>	AG1	ALP3	<b>LIB2</b>	ALP2
Northern Victoria	AG1	<b>ALP2</b>	LIB2 – Coalition3	CA1	<b>LIB2** –</b> Coalition3	ALP2
SouthEastern Metro	AG1	<b>ALP3</b>	LIB2	LIB3	<b>ALP3</b>	LIB2
Southern Metro	LIB3	<b>ALP2**</b>	AG1	ALP2	<b>AG1</b>	LIB3
Western Metro	LIB2	<b>AG1</b>	ALP3	ALP3	<b>AG1**</b>	LIB2
Western Victoria	AG1	<b>DLP1</b>	LIB2	AG1	<b>NAT1 –</b> Coalition3	ALP2

Notes:

1. The abbreviations “LIB3” and “ALP2” refer respectively to the third-elected Liberal candidate and to the second-elected ALP candidate.

2. In rural or provincial regions, where National Party candidates contest elections, the number of Coalition members elected is also recorded.
3. A double-asterisk (\*\*) is shown where the candidate was elected without receiving a full quota.

6.5 Clearly, those candidates at the cusp of election – whether elected fourth or fifth, or being the next eligible candidate – are those most vulnerable to optional preferential voting.

6.6 The above table shows that, in 2006 (when it formed government), the ALP had 4 last-elected members and 3 fourth-elected members, easing to 3 and 3 respectively when it lost power to the Coalition.

6.7 Coalition candidates, on the other hand, won further seats in 2010. From five vulnerable candidates (2 last-elected and 3 fourth-elected) in 2006, it increased its share of the vote, capturing 8 vulnerable seats (3 last-elected and 5 fourth-elected) to secure government and a majority in the Legislative Council.

6.8

END of submission