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

Tel. +61395891802
Mobile +61429176725
ABN 31 010 090 247
A0048538N Victoria

18 Anita Street
BEAUMARIS VIC 3193
vtpre@prsa.org.au
www.prsa.org.au
2015-12-17

Submission on Government's Review of the Local Government Act 1989

This submission, with active hyperlinks, is also at
www.prsa.org.au/2015-12-18_review_local_government_act_1989.pdf

Introduction: This submission responds to some of the subject matter - under the headings in red type below - in Chapter 3, 'How councils are elected', and in Chapter 4, 'How councils operate', of the Discussion Paper on the above Review.

Chapter 3 - COUNCILLOR NUMBERS (Page 28):

The present method of fixing the number of councillors to be elected for a municipality depends on the Minister's decision based on her response to the recommendation she receives from the Victorian Electoral Commission after it has conducted a periodic Electoral Representation Review.

The one alternative option suggested in the Discussion Paper is to fix the number of councillors in a municipality based on the number of voters *(number of persons enrolled to vote*). That option would entail prescribing a relationship between the number of electors and the number of councillors in a council, where the more electors there were the larger would be the number of councillors, but one that would presumably involve a sliding scale rather than a directly proportional relationship.

OPTIONS FOR NUMBERS:
A difficulty with too much emphasis being placed on the number of councillors a municipality has is the quite different characteristics of the 8 options for the numbers of councillors that are available to be fixed under Section 5B of the Act. Table 1 below lists those 8 available options, and notes their different characteristics from the important perspective of the ability to create one of more equitable and normally manageable electoral districts in each of those categories of municipality. Table 1 does not include any single or 2-councillor wards, or mixtures of wards with different numbers of councillors, as those arrangements are considered less equitable or unsatisfactory for reasons given below.

Table 1: Equitability and manageability compared with no. of councillors in a municipality

No. of councillors in a municipality	Concern over tied votes in Council as a whole	Equitable and normally manageable electoral district options	Less equitable or normally unmanageable electoral district options
5		One 5-Cr district	
6	Even no. stalemates	Two 3-Cr wards	One 6-Cr district
7		One 7-Cr district	
8	Even no. stalemates	None	One 8-Cr district, Two 4-Cr wards
9		One 9-Cr district, Three 3-Cr wards	
10	Even no. stalemates	Two 5-Cr wards	One 10-Cr district
11		None	One 11-Cr district
12	Even no. stalemates	Four 3-Cr wards	Three 4-Cr wards, One 12-Cr district

The Victorian Electoral Commission's evident preference for recommending that the number of councillors in a municipality should be an odd number, to reduce the incidence of tied votes, should be supported at present.

The device of giving presiding officers a casting vote as well as a deliberative vote is arbitrary and undemocratic. Victoria should return to the common law position - which applies in South Australia and Tasmania - of requiring a genuine majority of councillors' equal deliberative votes before a motion can be carried, so that the significance of an even number of councillors overall is less problematic.

Avoiding the 4 even numbers would leave only the 4 odd numbers: 5-, 7-, 9-, and 11-councillor wards. Table 1 above shows that only three of those odd numbers of councillors produce a Council where the electoral district options are both equitable and manageable, as an 11-councillor electoral district would generally run the risk of creating unmanageably long ballot papers at elections, as long as full marking of all preferences continues to be required for a formal ballot.

The options that are both equitable and manageable, and best avoid tied votes at Council meetings, are those shaded yellow above.

The number of councillors in a particular Council is of more primary concern to its electors, and the councillors themselves, than it is to the State, or persons outside the municipality.

For that reason, the New South Wales system of Constitutional Referendums - which leaves any question of a change from the *status quo* to be first proposed by the Council in question, in accordance with legislatively-available options, and then approved or rejected at a poll of the municipality's electors held in conjunction with a general election of its councillors - is a most democratic and affordable system.

It is a system that ensures that it is a majority of the municipality's voters that decide the outcome, instead of a rigid numerical formula, or a ministerial determination taking into account the recommendations of an Electoral Representation Review.

Achieving equitable and normally manageable options above, and prohibiting options that are less equitable or not normally manageable, are important in implementing Victoria's use of proportional representation counting in municipal elections.

Legislative change outside the stated scope of this Review is needed to prohibit a councillor casting more than one vote at a meeting, and to add the specific option of 15 councillors, as three 5-councillor wards, or even five 3-councillor wards, as an alternative to the present equitable and manageable maximum of 9 councillors, for councils with a very large number of electors.

Chapter 3 - ELECTORAL STRUCTURES AND REPRESENTATION (Pages 29-31)

The discussion under the above heading began by very properly describing the present approach as a 'patchwork of different electoral structures across the state'.

The result to date of the creation of that patchwork is summed up in 4 categories, and detailed in Table 2.

Table 2: Percentages of local government ward structures across Victoria (data from Table 2 in Chapter 3)

Structure of councils in terms of their electoral districts	1978 (%)	1993-94 (%)	1998 (%)	2003 (%)	2014 (%)
	Annual *winner-take-all* periodic elections of a third of an undivided council's Crs, or of one of the 3 Crs in a ward.	Triennial *winner-take-all* general elections in both undivided and divided councils	As for 1993-94, except that *ad hoc* Ministerial Orders could specify a proportional representation (PR) element for a named Council	As for 1998, but PR replaces *winner-take-all* counting for multi-Cr electoral districts, and the *ad hoc* provision ended	As for 2003, but multi-Cr electoral districts predominate instead of single-Cr wards
Unsubdivided (PR)				16.5	27.8
Uniform multi-Cr wards (PR)				12.7	20.3
Non-uniform multi-Cr wards (PR)				1.3	19.0
Single- and multi-Cr wards (*winner-take-all* and PR)				15.2	19.0
Unsubdivided (*winner-take-all*)	14.4	14.3	17.3		
Uniform multi-Cr wards (*winner-take-all*)	85.6	83.3	10.7		
Non-uniform multi-Cr wards (*winner-take-all*)	0.0	1.9	2.7		
Single- and multi-Cr wards (*winner-take-all*)	0.0	0.0	18.7		
Single-Cr wards only (*winner-take-all*)	0.0	0.5	50.7	54.4	13.9

The electoral systems in the first two rows – Unsubdivided and Uniform Multi-Cr wards – elected by PR, are the most representative and fairest available systems. These two systems are the best because:
(a) they allow for a range of views on council, which is a general feature of PR,
(b) they give equal weighting to every voter in the council, and
(c) they are likely to adequately reflect majority opinion within the community by a majority on council.

Since the important 2003 amendments introduced by the Bracks Government, the percentage of Victorians represented by those best practice democratic systems has risen from zero to 48.1%. The view of PRSAV-T Inc. is that this should rise to 100%, and all Victorian Councils should be elected by the most democratic systems available.

Table 2 shows the substantial, but *ad hoc* and erratic, changes in the structure of municipal electoral districts that have occurred in the last 37 years, after the long stable period that began in what is now Victoria, even before its separation from the Colony of New South Wales, and essentially continued for some 140 years up to a time a little past the 1978 pattern shown above.

SINGLE-COUNCILLOR WARDS:
Table 2 shows the rise from zero - and the later welcome fall - over the last 36 years in the percentages of Victoria's councils with single-councillor wards. The benefit of that significant fall is explained at www.prsa.org.au/history.htm#VIC_municipal_single

PRSAV-T Inc. considers that Victoria should return to the earlier longstanding practice that it and all other Australian jurisdictions, other than Queensland, have had of ensuring diversity in wards, with more than the bare minimum representation that *winner-take-all* systems give, by discontinuing single-councillor wards. Single-councillor wards, a 'winner-take-all' model, provide no diversity of representation, and often lead to many years of uncontested elections. Multi-councillor electoral districts elected by PR, on the other hand, provide diversity, and are rarely uncontested

MIXTURES OF DIFFERENT DISTRICT MAGNITUDES:
Chapter 3 of the Discussion Paper on the above Review correctly states that PRSAV-T Inc. 'has argued that different numbers of councillors in different wards should no longer be allowable.' That argument appears to have been accepted by the Local Government Electoral Review Panel (Georgiou Review) when its Recommendation No. 2 was included in its Stage 2 Final Report.

PRSAV-T Inc. answers the apt question posed in Chapter 3 of the Review of the Act, *'Should councils be able to be constituted by wards containing different numbers of councillors in different wards?'* in the negative. Its case for answering '**NO**' - which the Georgiou Review also appears to have accepted in its Final Report - is set out at www.prsa.org.au/2014-06-25_parity_among_wards_in_municipality.pdf

STALEMATE DISTRICTS:
A key question that was not asked in the Discussion Paper is the need for the Act to not only restrict the total number of councillors in a municipality to an odd number, as argued above, but to also require that the number of councillors to be elected in each electoral district within the municipality should always be an odd number.

The major reason why multi-member wards within each municipality should always have an odd number of councillor positions is, given that proportional representation is, quite properly, the only method to be used for determining, from the votes cast in a ward, which candidates will be elected for that ward, having an odd number is the only way that a majority of votes can always be translated into a majority of seats.

With an even number of councillor positions in a ward, a minority of voters can - particularly in a situation where there are two main groups vying for public support - often elect exactly half the councillors, leaving the majority of voters stalemated by finding, despite their numerical superiority, that they have elected the other half only, and that their larger numbers have not been able to give effect to their majority position.

The worst cases of stalemate wards are two-councillor wards, where the quota for election is 33.3%, and the serious anomaly can arise that, in such a ward, one candidate or group might win 65% of the vote and another just 35%, yet the two groups still have equal representation under proportional representation.

Only by having an odd number of councillors elected in an electoral district can the important democratic principle that majority electoral support should lead to majority representation be upheld.

CITY OF MELBOURNE:
Arrangements for the City of Melbourne have also varied erratically soon before and after the end of the 20th Century. The present poor position is described at www.prsa.org.au/history.htm#melbourne and in more detail at www.prsa.org.au/mccforum.pdf The Discussion Paper correctly states, *'The Lord Mayor and Deputy Lord Mayor are elected as a team by all Melbourne voters using preferential voting'*, but it then contradictorily states, underneath that, *'The City of Melbourne shares with the City of Greater Geelong the distinction of having a directly elected Mayor.'*

The second statement made is incorrect as, unlike the City of Greater Geelong, the Lord Mayor of Melbourne is not directly elected, because it is - as was correctly stated earlier - a 'joint nomination' of Lord Mayor and Deputy Lord Mayor that is directly elected, given that voters are not permitted to vote for either position separately. This misuse of the term 'directly elected' distracts attention from the very undemocratic ruse implicit in this restrictive contrivance.

It leads to a situation where, in practice, the Deputy Lord Mayor is an unelected councillor, who entirely owes his or her elevation to having been accepted by the Lord Mayor as a joint nominee for the election. Nevertheless, the Deputy Lord Mayor is deemed to be a councillor, with an equal vote in the council to each other councillor, despite the voters not having been able to exert any choice as to whether he or she should be there at all, except in the most unlikely circumstance of having to change their vote for the major position of Lord Mayor just to avoid supporting the joint nominee for the lesser position of Deputy Lord Mayor.

The submission above to an MCC Forum explained the far superior system that Tasmania uses for its much longer-established popular elections of Mayors and Deputies, where there is not - as in Melbourne and Geelong - segregation between the election of those officers and that of councillors.

All candidates for such offices must also stand - and be elected - as a councillor, in equal competition with all other council candidates, as a pre-requisite for their concurrent election to an office to take effect. That superior non-segregating approach saves candidates from having to decide between standing for a leadership position and standing for a non-leadership position, as it places that decision in the hands of the voters, who are more empowered as a result. It also ensures that a high quality Mayoral candidate that narrowly fails to be elected as Mayor can nevertheless be elected as a councillor, if that candidate receives a quota of votes.

The City of Melbourne has also been arbitrarily inflicted with the sole case among Victorian councils of the option of Group Voting Tickets, whose discontinuance - following widespread public disquiet about the results of 'preference gaming' at the 2013 periodic election of senators - is a major recommendation of the Commonwealth Parliament's Joint Standing Committee on Electoral Matters.

Melbourne's use of this ticket device operates in a similar manner to the Senate's, and deflects attention away from the individual candidates to craftily-coined group names designed to appeal to voters on themes that have no necessary connection with the actual candidates or their qualities.

No *'above-the-line'* ballot paper option should apply, so that there will no longer be two different classes of voters - *'above-the-line'* and *'below-the-line'*. Ballot papers for Melbourne City Council elections should follow the same pattern as those for other Victorian municipalities.

Chapter 3 - VOTING AND BALLOT COUNTING SYSTEMS (Page 31)

TERMINOLOGY FOR VOTE COUNTING SYSTEMS:

This section of the Discussion Paper reveals a confusing terminology used to describe the difference between the method prescribed for the counting of ballots in single-councillor wards and that prescribed for the counting of ballots in multi-councillor electoral districts. The former is termed 'preferential vote-counting', and the latter is termed 'proportional representation vote counting', despite both systems being systems of 'preferential vote counting'.

The two systems, which are prescribed in Schedule 3 of Victoria's Act, but are not referred to by any distinguishing name in the Act, would be better distinguished, and given official names in the Act, by using the terms 'vote counting in single councillor wards using the single transferable vote' and 'proportional representation vote counting using the single transferable vote'.

That nomenclature does use more words, but it does properly distinguish the two systems, and also indicates what is common to them both. Victoria's practice of the present vacuum being filled by names being coined by Electoral Commission officials, without a legislative direction, has lent itself to inconsistency and unnecessary puzzlement by those reading official electoral material.

Tasmania does not, in this case, offer any better example, as its two corresponding systems are also unnamed in its *Local Government Act 1993,* but the two corresponding systems are named in Section 285 of the New South Wales *Local Government Act 1993,* being termed 'optional preferential' and 'proportional' respectively. Unfortunately, although the principle of naming the counting method has been embodied in that latter Act, the actual name chosen for the non-proportional system suffers the same problem as the names used in the Discussion Paper, as both NSW methods use an optional preferential system. Victoria has the chance here to set a good example to both those neighbouring States, which is something it has not been hitherto noted for in municipal electoral matters.

In South Australia, Section 48 of its *Local Government (Elections) Act 1999,* which is the most recently consolidated of these three acts, avoids the above dichotomy by specifying exactly the same counting method regardless of the number of positions to be filled. That is a perfectly sensible arrangement, as the rules for counting ballots under a proportional representation system using the single transferable vote are identical regardless of the number of positions to be filled, with the count just being simpler in single-councillor wards owing to there being no possibility of surplus votes once the first and only candidate able to be elected has been elected.

It is easily recognized that proportional representation cannot be achieved in single-councillor wards even though the same counting system is used. Victoria should consider whether South Australia's approach of not creating an artificial perceived and named difference between the counting system used for single-councillor wards and that used for multi-councillor electoral districts might not be better than Victoria's present approach, given that the former is nothing more than a special case of the latter. There does not seem to be any strong reason for governing electoral matters by a separate Act as South Australia does.

FORMALITY RULES:

Under the sub-heading 'Key Issues', the Discussion Paper raises, but devotes little discussion to, the vexed question of whether - or to what degree - there should be any alteration of Victoria's present requirement that the first, and all subsequent consecutive preferences but the last, be marked on a ballot if that ballot paper is to be accepted as a formal ballot paper, and thus be able to be admitted to the scrutiny. PRSAV-T Inc. considers that the circulation to electors by the Returning Officer of recommended voting orders lodged by candidates should be prohibited, as it - combined with Victoria's requirement for full preferential marking of ballots - is a major cause of Victoria's peculiar 'dummy candidates' problem, but it notes that, at the end of Chapter 3, the Paper states that the Regulation that provides for the circulation to electors of candidates' recommended voting order will be considered separately.

The Paper also later touches on this matter under the heading 'INFORMATION ON CANDIDATES', where it is stated, *"This must be balanced with the challenge candidates face in campaigning in a postal election where candidate 'how-to-vote' preference cards cannot be issued at the polling station."* PRSAV-T Inc. argues that candidates' business is to campaign in relation to their own qualities and virtues, and not to be attempting to instruct voters about other candidates, and certainly not by the use of publicly-funded measures. The idea of such preference cards is an artifact of mandatory full preferential voting, and would have no force - as is the case for Tasmanian municipal elections, which are all by postal voting - if partial optional preferential voting applied.

The Paper makes the good point that consistency with State and Federal formality rules is desirable, but then admits that Victoria's practice for elections to its Parliament prescribe full preferential marking for the Lower House, but partial optional preferential marking for the Upper House. Tasmania is far more consistent here in that it prescribes partial optional preferential marking for the elections of all its councillors, and for both its single-member electorate Legislative Council and its multi-member electorate House of Assembly.

It has, like Victoria, one House with single-member electorates and the other House with multi-member electorates. In avoiding full preferential voting, Tasmania has also carefully avoided fully optional preferential voting, so that voters are kept aware that the system is a transferable vote system, and that works to ensure that it does not degenerate into a *de facto* first-past-the-post system.

If Victoria's quite recent provision for single-councillor and 2-councillor wards were removed, and all of its councillors were representatives of wards that elected three or more councillors, as was the case from 1842 for about 150 years until the last few years of the 20th Century, it would be a simple matter to prescribe partial optional preferential voting for all the municipal electoral districts in Victoria, as they would all be multi-member districts, just as all of Victoria's Legislative Council electoral districts are multi-member districts, where optional preferential voting has applied since PR was adopted in 2006.

COUNTBACK FOR FILLING CASUAL VACANCIES:
The present Act has sensibly adopted the general procedures of the *countback* system used in Tasmania's Hare-Clark system for the filling of casual vacancies.

Nevertheless, Recommendation 54 of the recent Local Government Electoral Review Panel (Georgiou Review) is that Tasmania's *countback* system, which was introduced for filling House of Assembly casual vacancies in 1918, and has operated successfully since its first use for that purpose, in 1942, be replaced by a total recount of the original general election. See PRSAV-T Inc's case against that at www.prsa.org.au/2014-09-08_local_government_electoral_review_recommendation_54.html

PRSAV-T Inc. also recommends that Victoria's idiosyncratic and procrastinating approach to implementing *countback* be replaced with the much more straightforward Tasmanian approach at www.prsa.org.au/2014-09-08_local_government_electoral_review_recommendation_54.html#proven

PRSAV-T Inc. recommends against the replacement of *countback* by by-election polls that is proposed in the second and final paragraph of the Georgiou Review's Recommendation 54 at www.prsa.org.au/2014-09-08_local_government_electoral_review_recommendation_54.html#by-election

NEED TO REPLACE THE UNWEIGHTED INCLUSIVE GREGORY TRANSFER:
Much of the proportional representation system that was adopted for Victoria's Legislative Council in 2003 embodied aspects of the system that were included in the *Commonwealth Electoral Act 1918* in 1983, including the Unweighted Inclusive Gregory Transfer used in transferring surplus votes to continuing candidates during the scrutiny. Understandably, that Transfer was also chosen when proportional representation was later specified in Victoria's *Local Government Act 1989*.

The Proportional Representation Society of Australia submitted in 1983 that the Weighted Inclusive Gregory Transfer should be used instead, and it was pleased that Western Australia adopted that superior Transfer in 2006 for elections for its Legislative Council.

That Transfer would be a significant improvement on the existing Transfer, although a recommendation sought from the Victorian Electoral Commission as to whether the even more sophisticated Meek system should be specified instead might usefully lead to an even more satisfactory outcome. It would seem that such a change to the Transfer system should also be made for Legislative Council elections.

ROBSON ROTATION:
The rotational printing of ballot papers known as Robson Rotation was not originally included in Tasmania's *Local Government Act 1993*, but was later included in it at the instigation of MHAs that had previously been municipal councillors, as they valued it. It has worked well, is very cheap to operate with modern computer-controlled printing equipment, and has been well received by voters and candidates. PRSAV-T Inc. recommends it be adopted as an important measure against gaming of the system with 'dummy candidates', and to remove the unfair effect of 'donkey voting'.

Chapter 4 – THE MAYOR (Pages 42-44)

ELECTION OF MAYOR:
Election of the presiding officers in the Federal and Victorian Parliaments is governed by their respective Constitutions, and in detail by their respective Standing Orders, such as www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/House_of_Representatives_Standing_Orders and also www.parliament.vic.gov.au/assembly/standing-aamps-sessional-ordersrules/standing-orders/745#so11

Those Standing Orders specify that those officers shall be elected by secret exhaustive preferential ballot, but unfortunately Victoria's *Local Government Act 1989* contains no such requirement for Mayors elected by councillors. The Act should require such a ballot, or a secret preferential ballot, for such contested elections of Mayors, in the interest of ensuring that that democratic approach must apply to all councils.

PRSAV-T Inc. answers the question posed under the above heading, *'How effective are the directly-elected Mayors in Melbourne and Geelong?'* by stating its view that, if Mayors are to be popularly elected, it is far preferable for them to be elected as councillors at any concurrent election of Mayors or Deputy Mayors, under the system prescribed in Tasmania, so that all councillors are elected on the same basis, in order to most fairly and accurately reflect the spectrum of voters' opinions in the municipality.

As stated earlier, neither the Lord Mayor nor the Deputy Lord Mayor of Melbourne is presently directly elected, but they could be, and more fairly, if the significance of the Tasmanian system were eventually understood and implemented. PRSAV-T Inc. is nevertheless not in favour of electing Mayors by popular vote - which is contrary to the practice at the parliamentary level. Councillors, who see each other's qualities in person at first hand, can make a far better assessment of their councillor colleagues than the general public can. Popular election can too easily pit a Mayor against a majority of the other councillors.

Chapter 4 – COUNCIL PROCEEDINGS (Pages 50-53)

Under this heading, it is stated, *"The ability of the mayor to have a 'casting vote' if voting is tied was intended to enable timely decision making and prevent deadlocks that are more likely because of the small number of decision makers in a council (compared to State Parliament). Some hold the view that giving the mayor a second vote is undemocratic and gives the mayor unequal influence over council decisions in a way likely to promote divisions between councillors. On the other hand casting votes are a traditional prerogative of the chairperson."*

The above sentence is disingenuous in claiming an intention to enable timely decision making and to prevent deadlocks, as a tied vote in any parliamentary house in Australia, where there is no provision for any presiding officer to cast more than one vote, simply results in the motion of bill being rejected, owing to the simple democratic deficit of an absence of a majority. A 'deadlock' of that sort is simply one form of a lack of a majority, which might displease half of those voting, but will probably please the other half. Real, workable decisions should require a real majority, not the mere deeming of decisions being made.

The final sentence in the quote above is the opposite of the truth, as there is no second or 'casting' vote at common law, which is why the device of a second or 'casting' vote has been specifically included in Acts where it is intended that it should apply, otherwise the traditional common law position would apply.

PRSAV-T Inc. recommends that Victoria's Act be altered in a more democratic direction by following the examples in the South Australian and Tasmanian Acts of prohibiting a second or 'casting' vote.

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

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