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Submission on 'Act for the Future - Directions for a new Local Government Act'

This submission, with active hyperlinks, is also at
www.prsa.org.au/2016-09-14_directions_local_government_act_1989.pdf

Introduction: This submission responds to the following directions in the above document.

DIRECTION 4 – Mayoral elections (Page 39):

Instead of the proposals in Direction 4, the new Act should retain, unless they are changed as outlined below, the existing systems for electing the Mayor in each municipality except that:

- popularly-elected Mayors should be elected under the existing system provided for in Tasmania's *Local Government Act 1993*, in which a candidate for Mayor must also stand in the concurrent election for all councillors, and cannot be elected as Mayor unless he or she has been elected as a councillor at that concurrent election,
- where a Mayor is popularly elected, a Deputy Mayor should be separately elected as in the existing Tasmanian system, and
- where a Mayor is elected by the councillors, they should also be required to elect a Deputy Mayor.

The relatively recent peculiar arrangement for Melbourne City Council of a joint nomination device, which prevents electors voting directly for the Mayor as a single position, and directly for the Deputy Mayor as a separate single position, is a disturbingly undemocratic development that fortunately has not been adopted anywhere else in Australia for any level of government.

That device, also referred to in Directions 8 and 156, installs a Deputy Mayor as a councillor, without that person's fitness for election being able to be specifically voted for by any elector except at the cost of not voting for a Mayoral candidate that the elector might fully favour. The Tasmanian system above does not conflate the two separate positions, but instead allows each elector to distinguish between the positions to be filled and the candidates standing for them, and it also ensures that the candidates elected are elected to the council on the same quota basis as every other councillor.

Any change between a system of election by the councillors, and a system of election by the municipal electors, should be initiated by the Council only, and not by a Minister, but such a change should not take effect unless it has been approved by the electors at a New-South-Wales-style Constitutional Referendum.

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 and Deputy Mayors, in the interest of ensuring that that democratic approach must apply to all councils.

DIRECTION 8 – Deputy Mayor (Page 42):
The comment above on Direction 4 is consistent with the wording of the first part of Direction 8, which recommends that the new Act should require all councils to elect a Deputy Mayor in a manner consistent with that of the Mayor. Unfortunately the later wording recommends the existing joint nomination device, which distorts the accurate representation of the electors on the council that proportional representation is designed to achieve.

DIRECTION 34 – Determining councillor numbers accounting for population growth (Page 50):
Increasing the maximum number of councillors allowable in a municipality is supported for the significant increase in the options it provides for populous municipalities to have wards having the desirable qualities of an equal number of councillors in each, and also, as explained in the comment on Direction 36 just below, an odd number of councillors in each. Thus, three acceptable new sub-divided structures would become available for populous municipalities viz.

- two 7-councillor wards in a municipality with 14 councillors *(such an even number of councillors overall would be undesirable unless the present artificial imposition of a second or casting vote is, as it should be, discontinued),*
- and either three 5-councillor wards, or five 3-councillor wards in a municipality with 15 councillors.

DIRECTION 36 – Simpler and more consistent electoral structures (Page 52):
Option 1 is strongly supported, as it is the option that will ensure that each electoral district in every council will elect councillors that collectively represent more than a bare majority of voters. Option 2, although it shares with Option 1 the very necessary and desirable provision that wards be equal in their district magnitude, does not offer that advantage, as it would allow single-councillor wards, in which all councillors can represent only a bare majority of voters, leaving up to almost half the voters unrepresented.

To reduce stalemates, and to ensure that an absolute majority of votes in an electoral district is sufficient to elect an absolute majority of councillors, rather than a greater majority being required as happens if an even number of positions are to be filled, it should also be required that no electoral district can return an even number of councillors.

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.

At the very least, Option 1 should be strengthened by including a provision that no electoral district should return fewer than three councillors, as two-councillor wards have the greatest potential for producing stalemates, and the least potential for reflecting a majority vote by the election of a majority of such a ward's councillors.

The Footnote 14 to Option 1, which states that Option 1 is also the model that New South Wales uses for council elections, is invalidated by the case of Botany City Council, which now has single-councillor wards only.

A very worthwhile practical result of adopting Option 1 and Direction 34, together with a provision against wards with an even number of councillors, would be that the only available configurations that would be available for subdivided municipalities would become the following fair and manageable groupings:

- Two 3-councillor wards in a 6-councillor municipality,
- Three 3-councillor wards in a 9-councillor municipality,
- Two 5-coucillor wards in a 10-councillor municipality,
- Four 3-councillor wards in a 12-councillor municipality,
- Two 7-councillor wards in a 14-councillor municipality,
- Five 3-councillor wards in a 15-councillor municipality, and
- Three 5-councillor wards in a 15-councillor municipality.

In addition to those 7 options, there would be available the 11 different options for undivided municipalities whose single electoral districts would range in district magnitude from 5 to 15. It would seem that a total of 18 different options should suffice to cover the range of different municipalities.

DIRECTION 38 – Aligning ballot-counting systems and reducing informality in voting (Page 53):
This is a most important and very worthwhile reform. It will make the formality arrangements for Victoria's municipal elections in multi-councillor electoral districts consistent with the *below-the-line* practice for Legislative Council polls, and closer to the new Senate arrangements than the present unreasonable requirement. At present, instead of there being a prescribed upper limit on the number of unique preferences a voter must mark in an unbroken sequence for his or her vote to be formal as Direction 38 proposes, a voter must mark a unique preference for all candidates, regardless of how many there are or how obscure or unknown they are.

As the 2016 Senate voting reforms ended the gaming of Group Voting Tickets, this reform should end the longstanding abuse of Victoria's municipal electoral system by the proliferation of 'dummy candidates'.

Victoria should discontinue its regrettable and unnecessary use of the Group Voting Ticket device provided for elections to Melbourne City Council, whose continuation is envisaged in Direction 156.

DIRECTION 39 – Reflecting independent candidates in filling casual vacancies (Page 54):
The title of this Direction incorporates in its wording a critical flaw in the justification put forward for the proposed change. Countback is based on the principle that it provides direct election of a replacement candidate involving the actual votes cast at the general election by just the quota of voters that elected the vacating candidate.

Because countback is thus a candidate-based system, and in no way depends on the existence or otherwise of party groupings, unlike party list systems, it is an irrelevance to introduce the existence of parties, as the text supporting Direction 39 proceeds to misleadingly state, *"An argument exists to reform the countback arrangements for multi-member wards and unsubdivided councils to reflect the fact that parties do not generally endorse candidates who contest council elections. In parliamentary democracy, countbacks are designed to maintain the proportionality of representation reached at the general election and allow casual vacancies to be filled rapidly and economically."*

Contrary to the above quote, whether candidates are endorsed, or are just tacit party figures, or have no party connection as such, does not affect the operation of countback, which is simply controlled by the cumulative ballot paper markings made by individual voters. The classic indication of how countback follows voters' wishes, rather than parties' wishes, is given by the 1983 countback that elected Dr Bob Brown, who has never been a member of the Australian Democrats party, to fill the House of Assembly vacancy created by the resignation of Dr Norman Sanders, the Australian Democrats MHA for Denison, instead of any of the other Australian Democrats candidates that stood at the general election.

The final paragraph in the supporting text for Direction 39 states, *"The proposed change to the method of conducting countbacks addresses the concern that the current process - by depending exclusively on the preferences of the vacating councillor - often denies the election of another candidate preferred by the rest of the electorate and on the cusp of being elected at the general election. It achieves the efficiency of the current countback arrangement and better reflects the independence of candidates in council elections."*

That final paragraph betrays the misunderstanding of the purpose of countback, by its completely irrelevant and distracting reference to *"another candidate preferred by the rest of the electorate and on the cusp of being elected at the general election"*. The *"rest of the electorate"* is made up of the voters that are represented by the councillors continuing in office plus those that were too few in number to have an effect on the result at the general election. That combined group of voters had nothing to do with the filling of the vacated seat at the general election, and therefore, for continuity and the maintenance of the balance of opinion on the representative body that was formed as a result of the general election, that group should have nothing to do with the filling of the vacancy, as countback achieves.

A candidate might well have been *"on the cusp of being elected at the general election",* but the point is that they were not elected. It was the vacating candidate that was elected, solely on the basis of the quota of votes that elected that candidate, so it is solely that quota of votes that should decide who will replace the vacating candidate, and no other, extraneous candidates, regardless of their relative numbers of first preference votes at the general election, as proportional representation using the single transferable vote is not a first-past-the-post electoral system.

The proposed change to the method of filling casual vacancies by countback shows a misunderstanding of why countback operates as it does. Instead of trying to elect the candidate preferred by an absolute majority of the voters whose votes formed the quota of the departing councillor, it is proposed that instead the candidate preferred by an absolute majority of all voters - other than those whose votes formed the quotas of the councillors remaining in office - should be elected. That is definitely not a better approach.

Countback has been well accepted, for Tasmanian House of Assembly vacancies since 1917, all Tasmanian municipalities since 1993, for the Australian Capital Territory's Legislative Assembly since 1992, and for Victorian municipalities using PR-STV since 2003. There is a need to retain it in the form that has worked well at both parliamentary and municipal level in Tasmania for all of this century, and was supported at an advisory poll in the Australian Capital Territory in 1992 and entrenched by a referendum in 1995.

Countback's approach is to keep the school of thought represented by each of a municipality's councillors - and hence the balance of views on the Council as a whole - as unaffected as possible by the occurrence of the extraneous event that a vacancy constitutes. None of the quotas of voters represented by the continuing councillors find themselves - as the quota of voters for a vacating councillor could well find themselves, under the proposed direction - suddenly and inexplicably represented by a councillor in a school of thought that is likely to differ significantly from that of the vacating councillor.

The proposal to widen the pool of votes from which electoral support could be provided to replacement councillors to include not only the vacating councillor's quota, but also the residual sub-quota of votes that was insufficient to form a Droop quota at the general election, amounts to artificially deeming those councillors to have an electoral resource to draw from almost **twice as large** as any of the continuing councillors. That amounts to a flagrant distortion of voting power and voting balance on the Council compared with the composition of the Council achieved at the previous general election.

The key weakness in the above thinking is the undue emphasis on giving so-called 'unrepresented voters' an opportunity to achieve something as the result of a casual vacancy that they could not achieve at the preceding general election. The proposal fails to consider adequately the distorting effect on the balance of representation on the Council as a whole.

The result of such distortion could alter the overall balance of the viewpoints on the Council, akin to a changing of horses in mid-stream, with adverse impacts on the overall majority of the voters at the previous general election, who would gain no comparable power to those hitherto 'unrepresented voters'.

The proposal not only has the disadvantage of being less straightforward than the present countback system, but its predisposition to altering the balance of power on a Council could unfortunately encourage opportunistic attempts to 'persuade' certain councillors to vacate their seats initiated by schemers spurred by the prospect of a change to that balance of power. The existing Countback provides far less incentive for such manipulation.

If the present Countback system were altered along the lines proposed - which PRSAV-T Inc. advises against - it would be better to use the full recount method that is specified in Western Australia's Electoral Act 1907 for filling casual vacancies in WA's Legislative Council, and has done so on various occasions, rather than introduce yet a third variant in Australia's procedures for filling such vacancies.

DIRECTION 155 – City of Greater Geelong Act 2001 (Page 113):
This direction is fully supported, as Greater Geelong, although a large municipality, has no other distinction among Victoria's non-capital-city municipalities. There is no reason why another municipality might not equal or displace Greater Geelong as Victoria's most populous non-metropolitan municipality.

DIRECTION 156 – City of Melbourne Act 2001 (Page 113):
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 Lord Mayor of Melbourne is not directly elected, because it is 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 - 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 - was a major recommendation of the Commonwealth Parliament's Joint Standing Committee on Electoral Matters, which was given effect to by the Commonwealth Electoral Amendment Act 2016.

Melbourne's use of this ticket device operates in a similar manner to the Senate's former system, 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.

Matters not apparently covered by any of the Directions :

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'.

DISCONTINUANCE OF CASTING VOTE ADDITIONAL TO DELIBERATIVE VOTE:
In the Government's previous discussion paper on its Review of the Local Government Act 1989, it was stated, in regard to this matter, *"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.

The case for discontinuing this distortion of democracy, whereby a motion can be carried even though a majority of the representative body is not in favour of it, is mentioned in the comment on Direction 34, and is detailed at www.prsa.org.au/history.htm#VIC_municipal_unlike.

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