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## Submission to the Victorian Parliament's Electoral Matters Committee's Inquiry into the Conduct of the 2018 State Election

### 1. Introduction:

This submission to the [above Inquiry](#) by the Victoria-Tasmania Branch of the Proportional Representation Society of Australia deals in detail with the Victorian Legislative Council, the House of Parliament in which the range of opinions expressed by voters is represented most fairly and accurately.

Table 1 below, which compares the [overall percentages](#) of first preference votes received and the percentage of seats won, shows that the Legislative Council corresponds to the will of the voters in party terms much more closely than the Legislative Assembly does.

A copy appears at [http://www.prsa.org.au/2019-08-29\\_electoral\\_matters\\_committee\\_submission.pdf](http://www.prsa.org.au/2019-08-29_electoral_matters_committee_submission.pdf)

Party	Legislative Council			Legislative Assembly		
	No. of seats	% of seats	% of first preference vote	No. of seats	% of seats	% of first preference vote
ALP	18	45.0%	39.2%	55	62.5%	42.9%
Liberal-National coalition	11	27.5%	29.4%	27	30.7%	35.2%
Greens	1	2.5%	9.3%	3	3.4%	10.7%
Others	10	25.0%	22.1%	3	3.4%	11.2%

**Table 1: Comparison of percentages of seats and votes for the two houses**

Note: The Liberal Party and the National Party had common tickets in some Legislative Council regions. Therefore, for the purpose of this submission, they are listed together throughout.

As can be seen, in the Legislative Assembly, the percentage of Labor Party MLAs is substantially greater than the percentage of first preference votes that Labor candidates received, whereas the Greens and other candidates are substantially under-represented in comparison to their support.

In this election, Labor won [57.3%](#) of the two-party-preferred (2PP) vote, which was what gave victory to the Labor Party in the [winner-take-all](#) Legislative Assembly.

## 2. The failure of Group Voting Tickets to implement voters' wishes:

Ten of the candidates that gained the necessary 16.67% quota, and were therefore duly elected as members of the Legislative Council - becoming a quarter of its membership – stood as the candidates of 'micro-parties'. Their percentage of the first preference vote, and their micro-parties, are shown below:

Micro-party	Western Victoria	Northern Victoria	Eastern Victoria	Western Metro.	Northern Metro.	Eastern Metro.	South-east Metro.	Southern Metro.
Animal Justice Party	2.71							
Derryn Hinch's Justice Party	4.40	4.82		6.77				
Fiona Patten's Reason Party					3.30			
Liberal Democrats		3.76					0.84	
Shooters, Fishers & Farmers			4.90					
Sustainable Australia								1.26
Transport Matters						0.60		
<b>TOTALS</b>	<b>7.11</b>	<b>8.58</b>	<b>4.90</b>	<b>6.17</b>	<b>3.30</b>	<b>0.60</b>	<b>0.84</b>	<b>1.26</b>

**Table 2: Percentages of first preference votes received by each of the 10 MLCs of 'micro-parties'**

At the 2014 election, there were only five candidates of micro-parties elected, so their presence in the Legislative Council has doubled since that previous election. Some commentators expressed concern about the election of MLCs whose first preference votes were less than 2% of their region's vote. PRSA(V-T) Inc. sees no problem at all with the election of a candidate whose [first preference vote](#) is less than a quota provided that candidate's total vote reaches a quota as a result of the deliberate and considered decisions of voters to give their preferences thus.

Each of the 12 elected candidates listed in second position on the [Group Voting Tickets](#) of the major parties (ALP and Liberal) received a percentage of first preference votes that was lower than the lowest of the elected micro-party candidates in Table 2. Those major party candidates were nevertheless elected in each of the 8 regions as a result of preferences that voters were deemed to give them as surpluses from the candidates listed in first position on the relevant party's Group Voting Ticket, or as transfers after exclusion of other candidates, in the same manner as each of the elected micro-party candidates.

Member of the Legislative Council	Percentage of first preference votes	Party	Region
VAGHELA, Kaushaliya	0.09%	Labor	Western Metropolitan
ATKINSON, Bruce	0.18%	Liberal	Eastern Metropolitan
KIEU, Tien	0.19%	Labor	South-eastern Metropolitan
SOMYUREK, Adem	0.23%	Labor	South-eastern Metropolitan
CROZIER, Georgie	0.24%	Liberal	Southern Metropolitan
ELAZMAR, Nazih	0.26%	Labor	Northern Metropolitan
TIERNEY, Gayle	0.28%	Labor	Western Victoria
STITT, Ingrid	0.31%	Labor	Western Metropolitan
TERPSTRA, Sonja	0.35%	Labor	Eastern Metropolitan
SHING, Harriet	0.36%	Labor	Eastern Victoria
SYMES, Jaclyn	0.43%	Labor	Northern Victoria
TAYLOR, Nina	0.53%	Labor	Southern Metropolitan
<b>MEAN PERCENTAGE</b>	<b>0.29%</b>		

**Table 3: Percentage of first preferences received by the 12 MLCs of major parties with the lowest such vote**

If the preferences had been indicated intentionally, and with the knowledge and understanding of the individual voters, all of those transfers were necessary to maximize the effectiveness of as many voters as possible, which is the rationale of the [single transferable vote](#).

However, as an undesirable result of the continuing imposition of Group Voting Tickets and [preference whispering](#), which has arisen as a response to the opportunities for distortion that they provide, it is very likely that the election of some of those MLCs listed in Table 2 was not the explicit intention of voters, because nearly all the voters very likely marked a 1 *above-the-line* without knowing what the flow of their subsequent preferences would be. That is because under the Group Voting Tickets system, those subsequent preferences are decided not by the voter, but by each of the relevant parties – and are unknown to most of the voters.

An [attachment \(Detail B\)](#) to the PRSA’s [report on Victoria’s 2018 elections](#) in the December 2018 issue of its newsletter, *Quota Notes*, gives detailed evidence from the examination of election results in Southern Metropolitan Region about probable differences in the results with various different incidences of the use of the *below-the-line* voting option. If all voters had only one of those two options available, the open and direct option that is presently relegated to the inferior position under the thick black line on the ballot paper, and that is routinely discouraged in the [how-to-vote cards](#) that numerous parties importune voters - as they enter voting centres - to vote in accordance with, it would be impossible for the extent to which voters chose a particular such option to change the outcome of the election.

The Group Voting Tickets, which are all quite intricate\*, were duly available [online](#) before the election. They [had to be displayed](#) in voting centres to avoid the impression of being hidden, but there was little sign of voters examining such displayed tickets. A few voters might have made the not inconsiderable effort to scroll through the numerous pages involved, but since there is no way of knowing in advance the relative standings of parties and candidates with limited first-preference support, the most likely practical consequences of endorsing a particular Group Voting Ticket cannot be at all easily assessed.

\* The Concise Oxford Dictionary definition of intricate is ‘perplexingly entangled or complicated; involved; obscure’.

It is unlikely that most voters, however, would have examined the Group Voting Tickets by either of the available methods and, by taking the easy option of voting *above-the-line*, thus gave their first preference vote to the leading candidate of the party they chose to vote for, as is their democratic right. But by so voting *above-the-line*, they then passed control of all subsequent preferences to the predetermined ticket of whichever party it was they had cast their *above-the-line* vote for. There was a large number of such preferences for [each ticket](#) in each region as Table 4 below shows.

Eastern Metropolitan	Eastern Victoria	Northern Metropolitan	Northern Victoria	South-eastern Metropolitan	Southern Metropolitan	Western Metropolitan	Western Victoria
45	46	52	45	53	45	48	46

**Table 4: Number of candidates in each region at the 2018 election for Victoria’s Legislative Council**

The Electoral Matters Committee will be aware - as Table 5 below shows – that, owing largely to the growth of preference whispering, Group Voting Tickets have been discontinued in most of the Australian jurisdictions that had earlier introduced them. Because all Australian voters have to vote in Senate elections, which use proportional representation with the single transferable vote ([PR-STV](#)), it is desirable to remove at the corresponding PR-STV elections at the State level any unnecessary differences between the rules voters have to follow when voting, in order to avoid unnecessary mistakes or difficulties with the task of voting.

It has been stated that some voters that experienced and coped with the new Senate voting procedures in 2016, which the PRSA produced [an explanatory video](#) on, fell into the trap of believing that the *above-the-line* option for Victoria’s Legislative Council had also changed in that way. They marked the group boxes with successive preference numbers according to their considered preferences, without realizing that all that counted in Victoria was the box they marked a 1 in, with their subsequent preferences being deemed to be in accordance with that Group Voting Ticket, and not with their explicit markings.

As stated above, the number of micro-party candidates elected in 2018 doubled since the election 4 years previously. There have now been two Senate elections in Victoria with an *above-the-line* voting option, but without Group Voting Tickets.

Since the 2014 election, the percentage of voters using the *below-the-line* option has **increased by 44%**. As Table 5 below shows, Group Voting Tickets have become a **museum piece**, and it is time that Victoria discontinued using them, for the reasons stated above.

Jurisdiction	Year GVTs adopted	Year GVTs discontinued	Years used to date
Senate	1983	2016	33
NSW Legislative Council	1978	1999	21
SA Legislative Council	1985	2017	32
WA Legislative Council	1987	-	32
VIC Legislative Council	2003	-	16

**Table 5: History of adoption and subsequent discontinuation of Australia's Group Voting Ticket devices**

#### **RECOMMENDATION 1**

The provision for Group Voting Tickets should be discontinued. The procedure should be that all voters are required to explicitly indicate their own individual preferences among a minimum number of candidates (currently 5 for the Legislative Council), and as many more as they choose.

### **3. The need to discontinue provision for *above-the-line* voting:**

PRSA(V-T) Inc. recommends that there be no provision for any form of *above-the-line* voting, resulting in a change to solely what is presently *below-the-line* voting, with the maintenance of the existing requirement of only 5 preferences being required. *Above-the-line* voting was introduced for the Australian Senate, in 1983, and adopted from there for Victoria's Legislative Council, ostensibly to reduce the high levels of informal voting that had been maintained by the contested **non-bipartisan provision in the 1948 Act** to continue requiring voters to mark all preferences on Senate ballot papers, which even then were recognized by members debating the Bill as having a large number of candidates. Since that unreasonable requirement to express all preferences is **not** required for Victorian Legislative Council elections, there is no justification for *above-the-line* voting to be maintained.

It would be an improvement in the democratic processes in Victoria if voters were positively encouraged to take complete control of their own individual preferences, both the ordering of candidates within the party that they choose, as well as deciding how many candidates to preference. In addition, electoral authorities could focus their publicity efforts on alerting voters that the marking of preferences is simply an instruction about the order in which candidates may be assisted by whatever remains unused of their **single transferable vote**.

#### **RECOMMENDATION 2**

Provision for *above-the-line* voting should be discontinued.

### **4. The need for Robson Rotation in the printing of ballot papers:**

Control of who is elected will be placed far more definitely in voters' hands by the introduction of the rotation of the order of candidates' names appearing on ballot papers, known as **Robson Rotation**, as operates in both Tasmanian houses, and in the Australian Capital Territory, and was supported by referendum in the latter. Under Robson Rotation, candidates' names are still listed in party columns on each ballot paper, but the ordering of their names within each of those columns varies from one ballot paper to another. Each candidate's name appears in a given position in his or her party's column on an equal number of ballot papers. The ballot papers issued to voters are in a random order.

The purpose of Robson Rotation is to ensure that no candidate within a group is advantaged or disadvantaged electorally because of his or her name's position in a column on the ballot paper. This has not led to substantial increases in informality, but does mean that the elected MPs are those that have the greatest support across the community. Distortion of outcomes due to [donkey voting](#) is avoided, and the pre-selected candidates within a party that are elected are those that gain a quota of votes as the voters, and nobody else, choose.

Modern computer-based printing, operating in a similar manner to the mail-merge used for personalized circulars, allows such ballot-paper rotation at no substantial extra cost. Advice should be sought from the Tasmanian and ACT Electoral Commissions on how they deal with the different permutations of ballot paper order at the scrutiny.

Because there are candidates from larger parties with rather large progress totals throughout the scrutiny, candidates with limited first-preference support are very unlikely to cobble together what could be termed a 'surprise' quota. [Tasmanian and ACT experience](#) has been that parties and independents failing to secure half a quota of first preferences have little prospect of getting elected.

[Section 11](#) of the [Final Report of Victoria's 2002 Constitution Commission](#), *A House for our Future*, included the following paragraph supporting the discontinuance of *above-the-line* voting and the adoption of Robson Rotation:

*'At a later stage, when voters have become accustomed to the system, abolition of "above the line voting" combined with the Robson Rotation would place a greater emphasis upon the personal responsibility of the individual voter. Both reforms would tend to decrease the influence of the party machines on the final outcome and contribute to a greater sense of independence by Members of the Upper House. However, any decision on either issue is one for the future and would need to be accompanied by a major voter education campaign.'*

Relative to 2002, when those recommendations were made, it is reasonable to consider that the present year, 2019 -which is 17 years later - is surely well enough into the future referred to for some action to occur to discontinue *above-the-line* voting, and to introduce Robson Rotation.

### RECOMMENDATION 3

**Robson Rotation should be introduced for the printing of Legislative Council ballot papers, as was recommended by Victoria's 2002 Constitution Commission.**

## 5. The problems with exclusionary thresholds:

A suggestion some commentators have made for overcoming the perceived problem of the election of candidates from parties with small first preference votes - one that might **appear** to some at first sight to be attractive - has been to impose an arbitrary **threshold**, of say 5% of the vote. There are several ways attempts to apply [exclusionary thresholds](#) could be made in systems like Victoria's.

One attempt, inappropriately copied from [party list systems](#), which are quite different in that they have no transferable votes, might be for ballots showing a first preference vote for candidates of a group or party failing to gain 5% of the total first preference vote to be thereby excluded from the count. If such a provision had applied in Victoria's 2018 Legislative Council election, it would have **nullified and rendered ineffective** the votes of all the approximately 760,000 people that voted for candidates of smaller parties, which is just under 20% of the voters.

The first two elections of the South Australian Upper House [reformed in 1973](#) operated under a party list system with an exclusionary threshold provision, which was soon found to be very unfair and was replaced by [PR-STV](#) methods that have been in place ever since.

The imposition of arbitrary thresholds is actually very problematic for major parties, and has led to seriously distorted outcomes. Consider the situation in the [2013 German federal election](#), in which (for the party list votes), the following votes were cast:

Christian Democratic Union /Christian Social Union	41.5%
Social Democratic Party	25.7%
‘The Left’	8.6%
Greens	8.4%
Others	17.8%

The conservative government won 41.5% support, and a total of 311 seats, whereas the three loosely left wing parties won 42.7% and 319 seats. As can be seen, the result was very close between these two main groups. However, 9.5% of people voted for two other parties, both right wing in outlook, but both fell just short of the arbitrary 5% threshold and none of their votes counted for the final result. A **very substantial majority** of Germans voted for parties of the right, but - because of the exclusionary threshold - **the right wing Government lost its majority** and had to form a coalition with its centre-left traditional opponents, the Social Democrats. This was only possible because the votes of the 17.8% - nearly 7.8 million voters - were excluded and disregarded.

**Thresholds** not only disregard people’s votes, but also lead to highly **distorted** results, meaning that our parliaments are less representative and less democratic. Artificially excluding minority voices, such as occurs under thresholds, simply increases the percentage of disenfranchised voters.

Another very bad exclusionary threshold system is that applying in Turkey, where the threshold was set at 10% - initially to try to keep the Kurdish Parties from being represented in the Parliament. This has allowed the fundamentalist party to ‘win’ the last three elections with well under 50% support because large numbers of voters have their votes disregarded.

If an exclusionary threshold of 5% had applied for the 2018 election of the Legislative Council, the 8 MLCs listed in Table 4 below, who together constitute 20% of the members of the Legislative Council, would not have been able to be elected, despite each having gained a quota of votes, and each also having gained a higher percentage of the first preference vote than any of the 12 major party candidates listed in Table 3. A threshold is simply a device used by major parties to exclude smaller rivals by overriding voter’s expressed intentions, and should not form part of a democratic electoral system.

Member of the Legislative Council	Percentage of first preferences to party	Party	Region
BARTON, Rodney	0.62%	Transport Matters	Eastern Metropolitan
LIMBRICK, David	0.85%	Liberal Democrats	South-eastern Metropolitan
HAYES, Clifford	1.32%	Sustainable Australia	Southern Metropolitan
MEDDICK, Andy	2.77%	Animal Justice	Western Victoria
PATTEN, Fiona	3.35%	Fiona Patten’s Reason	Northern Metropolitan
QUILTY, Tim	3.78%	Liberal Democrats	Northern Victoria
GRIMLEY, Stuart	4.44%	Derryn Hinch’s Justice	Western Metropolitan
MAXWELL, Tania	4.86%	Derryn Hinch’s Justice	Northern Victoria

**Table 4: The 8 MLCs not able to be elected if a 5% exclusionary threshold had applied (cf. Table 3)**

**Recommendation 4:**  
**The Committee should not recommend the adoption of thresholds.**

## 6. Need for adoption of a sounder method of transferring surplus votes

This section explains concerns with the current rules for transferring surplus votes. This is a complex and detailed issue, but one that has important consequences, as discussed in terms of the result in Northern Victoria in the next paragraph. There are two proven workable improvements on the current system, the Weighted Inclusive Gregory Method, which is a viable, coherent improvement that has been successfully implemented for [Western Australia's Legislative Council](#) after a thorough review brought on by controversy after the 2001 WA elections, and the Meek method, which goes further in not bypassing candidates that are already elected (see further below).

It is essential for value to flow via transfers for the electoral system to achieve proportional representation. Without the transfer of surplus votes, each major party at a Legislative Council or Senate election would typically get one only MLC or senator elected from each Region or State. In his second reading speech on the *Commonwealth Electoral Bill 1948*, Dr H V EVatt pointed out that was owing to [regimented voting](#), as the use of how-to-vote cards and - since 1983 - Group Voting Tickets, leads to [so few first preference votes being cast](#) for the 2nd, 3rd and subsequent candidates in those major parties' columns.

The flaw in the counting rules is discussed below using Table 1 in Farrell and McAllister's [2003 paper](#):

	Shirley's ballot papers		
	First count: Shirley's 35,000 first preferences	Second count: 100,000 ballot papers from Tom	Third count: 25,000 ballot papers from Dick
<b>(Original) Gregory method</b>			
Incoming value	1	0.1	1
Outgoing value	0	0.1	0.8
Contribution to surplus (%)	0	0	100.0
<b>(Unweighted) Inclusive Gregory method<sup>1</sup></b>			
Incoming value	1	0.1	1
Outgoing value	0.125	0.125	0.125
Contribution to surplus (%)	21.9	62.5	15.6
<b>Weighted inclusive Gregory method</b>			
Incoming value	1	0.1	1
Outgoing value	0.286	0.029	0.286
Contribution to surplus (%)	49.9	14.5	35.6

*Note:* Calculations are subject to rounding errors.

### The Table 1 from Page 486 of Farrell and McAllister's [2003 paper](#)

Of [the surplus transfer systems](#) that progress from the Original Gregory Transfer system (devised in Melbourne in 1880, provided for in Tasmania's *Electoral Act 1907*, and used there ever since) to the Weighted Gregory Transfer system, it is only the Unweighted Inclusive Gregory system, which is used for Victoria's Legislative Council, that involves 'a second bite of the cherry'. That is a major flaw, as indicated in Farrell and McAllister's 2003 paper (*and first indicated by the PRSA's inaugural National President, Jack Wright, as his letter incorporated in a 1983 Senate Hansard shows*).

PRSAV-T Inc. included discussion of improving on the present system for transferring surpluses in [its 2014 presentation](#) before the Federal Parliament's Joint Standing Committee on Electoral Matters. In Farrell and McAllister's example, Tom's papers have already used 0.9 to elect someone and contribute  $0.1 \cdot 10000 / 70000 = 0.014$  to get Shirley elected, and still have a value of 0.125 transferred, a total value of 1.039. Some papers can inevitably have value of less than one, but no papers should ever get a value of greater than one. Here Tom's voters clearly are 'getting more than an equal vote'. This arbitrary system is inferior to both the Original and the Weighted methods.

<sup>1</sup> The word 'unweighted' is not used in the Farrell and McAllister paper, but using it here makes the argument easier to follow.

The general consensus is that the Original Gregory Transfer (last parcel) is less fair than the Weighted Inclusive Gregory Method. The latter is in turn less scrupulously fair than the more sophisticated [Meek method](#), which is an option in New Zealand local government elections, but unfortunately is only practicable if computer counting is employed.

The views of the Victorian Electoral Commission on the value and practicability of using the Meek method would be a useful input to the Committee's deliberations. The distinction between these systems is nevertheless **far less important** than the distortions created by Group Voting Tickets and *above-the-line* voting.

#### **RECOMMENDATION 5**

The present provision for counting transfers of surpluses, known as the Unweighted Inclusive Gregory method, should be replaced by the Weighted Inclusive Gregory method, but if the Victorian Electoral Commission considers that the Meek system should be used, that computer-reliant system would be an even more sophisticated provision.

### **7. Giving evidence before the Committee in person**

If the Committee were to invite it, PRSAV-T Inc. would appreciate the opportunity for one or more of its representatives to appear before the Committee in person to give evidence and answer questions on matters related to this submission.

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