

11. The Voting System

There are many proportional representation models in operation in political systems around the world. As the Commission has noted, proportional representation is used in one House of every Australian bicameral parliament, except in Victoria. Victorians, however, use a proportional voting system when they vote for the Senate.

The Commission has studied many of the proportional representation systems and has had the benefit of consultation with a former Federal Electoral Commissioner, the current Victorian Electoral Commissioner, representatives of the Australian Proportional Representation Society and other experts in the field. The views expressed during the Commission's wider consultation process have also been valuable.

The proportional representation system used in the Senate is the one with which most Victorians would be familiar. The system is based on the Hare-Clark model and was adopted by the Commonwealth Parliament in 1948. At the time, Dr H.V. Evatt, in introducing the legislation, said:

In principle, the method proposed is the same as that used in Tasmania although for reasons of workability and simplicity it differs slightly in its practical application.¹⁶

Proportional representation models have a long history. The Hare-Clark model was developed in the United Kingdom by Thomas Hare and was improved and adapted by the Tasmanian Attorney General Andrew Inglis Clark. The Tasmanian proportional representation system, as it works today and is replicated in the Australian Capital Territory elections, is essentially the same as the Senate system.

Under the Senate system, as with the Tasmanian system, candidates are elected if they record a quota of votes. A quota is calculated on the basis of the number of valid votes cast in an election and the number of seats to be filled in a particular electorate:

$$\frac{\text{Valid Votes}}{\text{Number of Seats} + 1} + 1 = \text{Quota}$$

In the Senate system, where there are six Senators to be elected, the quota is one vote more than 1/7th of the total vote, as only six candidates can achieve that number of votes. As votes in an electorate are counted, the individual candidates will accumulate votes up to the quota level. When a candidate reaches a quota, she or he will be declared elected. Under the Senate system, all the votes an elected candidate receives will be transferred to other candidates according to the preferences marked on the ballot paper by the voter.

The votes are not transferred at full value. They are transferred at a transfer value depending

K. Tschuggel, South Gippsland, The Federal Senate should be looked at as a model for an effective house of review, where opinions from varying backgrounds have a chance to be heard. I would like to see the members of the Victorian Upper House be elected by proportional representation...

¹⁶ Commonwealth Parliamentary Hansard, 16 April 1948, page 965

on the total number of votes the candidate received and the quota level:

$$\frac{\text{Candidate's Total Vote minus the Quota}}{\text{Candidate's Total Vote}} = \text{Transfer Factor}$$

The higher a candidate's first round vote, however, the higher is the transfer value under the system. For example, if a candidate received a vote equal to two quotas, all his or her votes would be redistributed at a value of half a vote each.

The quota determination and the vote transfer systems lie at the heart of this approach to proportional representation, known as the Single Transferable Vote. The Commission proposes the adoption of this approach in Victoria.

Filling Casual Vacancies

The main difference between the Senate and Tasmanian approaches is in the way the two systems deal with the filling of casual vacancies.

The Tasmanian system avoids the need for by-election where a Member dies or is otherwise unable or unwilling to continue. The Electoral Authority retains all voting papers after the election. If a Member has to be replaced, the voting papers are recounted and the vacating Member's votes are passed through to other candidates, in accordance with the preferences expressed by the individual voters. A new candidate is then identified as elected. In usual circumstances, the new candidate will come from the same party as the vacating Member. In Tasmania, if a candidate from the same party as the vacating candidate is not available, that party has an option to ask for a by-election.

One problem with the method used under the Tasmanian system is that it makes the assumption that voters would have elected the next candidate on a recount if the vacating candidate had not stood at the original election. The result may be arithmetically correct but it does not necessarily reflect the voters' wishes had that in fact been the case at the original election. This result is underlined by the option available to Parties in Tasmania to hold a by-election following the departure of a sitting Member when there is no Member available for the recount. A by-election for a single seat in a multi-member proportional representation electorate will distort the original proportional balance.

The method adopted for filling vacancies under the Senate system does not involve a by-election or vote recount. To fill a vacancy, a candidate is appointed from the same party as the Member vacating a seat. This ensures that the original voter choice about the political make-up of the House is maintained. Where the vacating Member is not party politically aligned, the decision on a replacement is left up to the State Parliament where the vacancy occurs.

The Tasmanian approach also requires the retention and storage of ballot papers for a period between general elections, at considerable cost and administrative effort, against the

contingency that the ballots may be needed between elections. The Senate approach avoids these costs, because it is only when a vacancy occurs that need for the appointment mechanism arises. The costs involved in the maintenance of the ballot papers in smaller electorates such as Tasmania or the Australian Capital Territory may be reasonable, however in Victoria that cost would be high. Accordingly, the Commission recommends the Senate model for replacing casual vacancies be adopted, as has been done with the South Australian and New South Wales Constitutions. However, the Parliament should place a heavy emphasis upon selecting a candidate with views similar to those of the departing member where the seat has been held by an independent member.

Rotating candidate names on the Ballot paper

A Tasmanian extension of the Hare-Clark system also provides the basis for a variation known as the Robson Rotation, whereby the names of candidates are randomly rotated on the ballot paper within the broad party groupings. This system is used in both Tasmania and the Australian Capital Territory. In Tasmania the system operates in the Lower House. The candidates' names are rotated within a group consisting of candidates from the same party or, where the candidate is an Independent or member of a minority party, within a special listing for those Independents and minority candidates. The rotation is vertical within each designated list.

Proponents of the Tasmanian system enhanced by the Robson Rotation argue that it eliminates the advantage of the “donkey vote” and diminishes the power of political parties over the election process. Also, the influence of “how to vote” cards is said to be reduced. Consequently, the system demands greater voter knowledge of the candidates and puts greater responsibility on candidates to establish a separate standing within the electorate.

There are questions about the effectiveness of that system, given that the rotation does not prevent the identification of candidates with political parties. The rotation impacts on the donkey vote only within party groupings. The system does not randomly rotate all candidates individually on the ballot paper. Instead it rotates their names within the party groupings. If a donkey voter, for instance, fills in his or her ballot from the left of the paper, the Party that occupies the first column will capture that donkey vote for its party grouping.

A theme running through this Report is that Upper Houses would be more effective if there were less rigid control in the House by major political party machines. Some would argue the Robson Rotation acts against party control of ballot papers and that this is a “good” thing because it diminishes party machine control. There are concerns about introducing into Victoria an unfamiliar system of voting that differs radically from existing methods at State or Federal levels. There are also concerns about the complexity and delay in vote counting, in the absence of sophisticated electronic alternatives to existing paper-based systems. Although the voting systems differ, the most recent ACT election recorded an informal vote of 4.01 per cent in what is recognised as Australia's best-educated community. In Victoria, the informal vote was 3.01 per cent.

Optional Preferential voting and “Above the line” voting

Two further questions the Commission needs to address are whether the Senate system for election to the Upper House in Victoria should allow for optional preferences on a ballot paper, and whether it should have “above the line” voting.

In an optional preference system, the voter is required to express only as many preferences as there are positions to be filled. Thus if there are thirty candidates and four vacancies, an elector casts a valid vote if any four candidates are numbered consecutively one to four. Voters can of course express more preferences than there are vacancies for election. Optional preferential voting has been used a number of times at State level in Australia. A Joint Parliamentary Committee on Electoral Reform in 1983 in its report to the Commonwealth Parliament supported the introduction of optional preferential voting for Senate elections.

Helen Bushell, Kew,
I hate my vote
"trickling down" to
the least, worst party
when I want it to go
to Bob Brown or
Democrat and to no
one else.

There are some voters who only want to vote for a smaller number of candidates, but under the present system are required to complete the full list on the ballot paper. There are others who do not want to vote for some candidates in any circumstances, but are compelled to complete the ballot paper to ensure its validity. Reilly¹⁷ quotes former Prime Minister the Hon E.G. Whitlam as saying that the optional preference system is “perhaps the only electoral procedure in the world which allows electors to express their indifference to candidates”.

The ballot paper may be structured to encompass arrangements between Parties and individual candidates. A voter voting “above the line” by marking a party preference implicitly endorses that party’s arrangements, whether or not he or she understands or likes them. Some voters resent having to fill out a complete ballot paper that is the result of such arrangements between political parties. The result is that voters are compelled to exercise a vote beyond or against their understanding or desire. Adoption of optional preferences would make the voting procedure both simpler and more genuine for those who choose to express specific preferences between candidates and who do not wish to be compelled to mark a preference for candidates for whom they have none.

“Above the line” systems allow a voter merely to place a mark in the box assigned to one party for the vote to be valid. It does not preclude a voter from voting for all the candidates “below the line”. Currently, where “above the line” voting selection is not used, a voter is required to place a number in each square to express a preference between the candidates “below the line”. Where the voter fails to fill out the complete list the vote is rendered invalid.

There is a view that “above the line” voting gives undue power to the parties in influencing the outcome of a vote by allowing the “easy” option, in that voters do not have to make an independent choice beyond that made for them by the party for which they vote. Some voters may be content with this outcome, relying on their particular party’s decisions. Others may not be. For example, a person who is inclined to choose a party by marking “above the line” may be

¹⁷ Ben Reilly, *Preferential Voting and Political Engineering: A Comparative Study*, *Journal of Commonwealth & Comparative Politics*, Vol 35, No. 1, (March 1997), pages 1-19

surprised to find a member of another party being elected as a result of preference arrangements.

Optional preferences under a proportional representation system are not inconsistent with a ballot paper with “above the line” voting. Nor does this present a problem for those who wish to vote for more than the minimum number of candidates. Under the current voting system with “above the line” voting, a voter still has the option of exercising a preference “below the line”, but the voter cannot do both. Therefore, the introduction of a system of proportional voting for the Upper House with optional preferences but without the “above the line” option would depart unnecessarily from the system with which Victorians are familiar.

The Commission has concluded that electors should be given the greatest freedom of choice through the introduction of optional preferential voting. In place of “above the line” voting, voters should be able to vote for the number of candidates to be elected or choose as many further preferences as they wish. Notwithstanding the criticisms of “above the line” voting in Upper House elections, the Commission believes that it is well understood by voters and can with real advantage be supplemented by the above proposal.

The Commissioners appreciate the concern that “above the line voting” gives the major Parties some advantage, particularly where voters are unaware of the relationship between their vote and underlying preference deals or are unwilling to make specific choices among candidates. However, the solution is not in limiting voters’ choice but in education and cultural change. Voters should be given the greatest freedom to choose for themselves and be free, if they wish, to give the party they favour the right to deal with their votes as the party thinks fit.

It is important that the way people vote is as consistent as possible in both State and Federal elections, where proportional representation is used so as to avoid confusion, especially in the short term but the Commission believes that the refinement proposed above simply gives the voters an opportunity not provided by the present Federal system.

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.

It should also be noted that, in rare circumstances, no candidate might achieve the last quota of votes under an optional preference system. Where that occurs the candidates with the lowest votes will be progressively eliminated and their preferences distributed. When the field is reduced to two candidates through the elimination process, the candidate with the higher vote is elected to fill the final seat.