

PROPORTIONAL REPRESENTATION SOCIETY OF AUSTRALIA NSW  
BRANCH

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31st March 2005  
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Marianne Saliba MP Chairman  
JOINT STANDING COMMITTEE ON ELECTORAL MATTERS  
PARLIAMENT OF NEW SOUTH WALES  
Macquarie Street  
Sydney NSW 2000

Dear Marianne Saliba,

**SUBMISSION TO:** Inquiry into the administration of the 2003 NSW State election and related matters.

Thank you for your 9th March invitation to make a submission to the inquiry.

It is noted that the terms of reference preclude the Standing Committee from inquiry into that part of the relevant Acts concerning the distribution of electorates and accordingly our Society reluctantly refrains from comments on that aspect of the elections.

However I draw attention of the Committee to the significantly different voting methods for the Legislative Assembly and the Legislative Council and the contrast in many aspects of the Legislative Assembly single member electorates, using the preferential voting system, and the Legislative Council, with a single state-wide electorate and the quota-preferential method of proportional representation (Hare-Clark) voting system.

Also, whilst acknowledging the different voting methods, there remain some unnecessary discriminatory differences in the requirements for recording a formal vote between the two voting methods which are referred to later in this submission.

**A BASIC PRINCIPLE OF DEMOCRACY - A FAIR AND JUST VOTING SYSTEM**

**This Society believes that one basic principle of a democracy is to use the most fair and just voting system to ensure a just outcome for both voters and candidates in all aspects of the process of voting, within the constraints of practicability.**

This includes:-

1. The greatest practicable effectiveness of votes. This means that the highest practicable proportion of voters elect the candidate whom they voted for as first preference, or as a high preference candidate. Also, that there is the lowest practicable proportion of wasted votes. In other words, the number of voters who do not see their high preference candidate elected is kept to a minimum.
2. Voters to be free to record as few or as many preferences for candidates as the voter may wish. That is, there should be no arbitrary obligatory number of preferences which a voter is required to number in order to record a valid vote. However, voters should be encouraged to show preferences for any other candidate or candidates they would like to

see elected should their first or higher preference candidate(s) fail to be elected. Voters should have freedom of choice to choose their preferred candidate or candidates, irrespective of whether they are in one or more groups.

3. The ability to count-back.
4. Consistency in results of a ballot in the event of a recount of votes.
5. Informal votes to be kept to a minimum.
6. The donkey vote to be minimised and dispersed as evenly as practicable between candidates.
7. Not discriminate against genuine independent candidates or new groups.
8. Discourage the proliferation of spurious minor groups with little prospect of electing a candidate when the group is established specifically to obtain a small proportion of votes and then direct these votes to an associated group.
9. Simplicity of the ballot paper.

#### **ACHIEVING A FAIR AND JUST VOTING SYSTEM**

In the promotion of effective voting, the Proportional representation Society of Australia regards the Hare-Clark systems of Tasmania (including its application to local government) and the Australian Capital Territory as constituting the best current practice in Australia.

There is no requirement for "Above the Line" group voting in either Tasmania or the ACT and in fact the absence of "Above the Line" voting enhances the principles of fair voting. It is interesting to note that at the 2004 Federal Senate election, only 2.4% of NSW voters voted "Below the Line". By contrast, in electorates where Hare-Clark is used for their own elections in Tasmania and the ACT, 18.8% and 20.9% respectively of voters recorded "Below the Line" votes. (*Electoral Newsfile*, No. J 22, February 2005, *Australian electoral Commission*). It is very apparent that many of the voters in those jurisdictions appreciate the benefits which their more pure Hare-Clark voting system provides.

#### **Legislative Assembly**

The Legislative Assembly elections fall far short of this ideal, as Preferential Voting is used. Introduction of Hare-Clark voting would require multi-member electorates, requiring the combination of single member electorates in groups as the most simplistic basic essential.

However, as the terms of reference of the Committee exclude consideration of the distribution of electorates, no further comments are offered regarding the Legislative Assembly, except when comparing some aspects of the formal voting requirements with the Legislative Council

#### **Legislative Council**

The Hare-Clark voting method used in the Legislative Council provides the framework for a fair and just voting system and meets many of the basic requirements.

However, some defects in the preferred model have existed since inception of Hare-Clark for the Legislative Council. In addition, since the inception of Hare-Clark voting for the Legislative Council in 1978, subsequent amendments of the *Parliamentary Electorates and Elections Act 1912 No 41*, including provisions which first applied at the 2003 periodic election, have resulted in a

watering down of some of the important principles of a fair voting system and an increasingly disturbing corruption of this otherwise fair and just voting method

**TO ACHIEVE A MORE FAIR VOTING SYSTEM AND REVERSE THE NEGATIVE ASPECTS EXISTING UNDER THE PRESENT ACT, THE SOCIETY RECOMMENDS THE FOLLOWING CHANGES**

**\* Elimination of above the line group voting.**

The problem is that an opportunity is created for voters to take the easy way out and accept a complex order of preferences for often obscure candidates which a party machine asks them to take on trust. The ejection of one or more candidates within a group is determined in advance by the party machine, rather than being a free choice by the voter at the poll.

The problem with above-the-line voting is that it creates two classes of voters - those that clearly make the voting decision themselves by voting below-the-line and those that do not and vote above-the-line.

Also, by marking just one square above-the-line, a significant number of votes can be exhausted, resulting in wasted votes. This is particularly the case where a candidate in a group just fails to be ejected, with the votes for the candidate not being transferred to a preferred candidate or candidates in another group or groups. The opportunity to show above-the-line preferences for groups attempts to address this concern, but again eliminates the opportunity for voters to choose their own order of candidates within a group.

A negative side effect of above-the-line voting is to unnecessarily complicate the counting procedure. Not only must below-the-line votes be sampled, but also above-the-line votes sampled independently.

**\* Non-Compulsory Marking of Preference Votes**

There are several discriminatory aspects under the current Act.

- While it is only necessary to mark one preference above-the-line *Section 103 (4)*, it is necessary to show at least 15 preferences below-the-line *Section 103 (3)*.
- For Legislative Assembly elections, the number "1", a cross or a tick is a formal vote *Section 122A (4)*.

Voters who choose to make their own voting decision regarding preference votes by voting below-the-line are clearly discriminated against. There is no need for this discrimination and a vote should be formal provided that at least the intention of the voter in recording a first preference is clear. Voters should be encouraged, but not obliged, to record as many preferences as they wish.

Technically, as long as there is a clear first preference, a vote can be counted, as has occurred in Eire and Malta since the 1920s and the ACT under Hare-Clark voting since 1995.

The ACT's approach, supported by the entire Legislative Assembly, has been to accept votes as formal provided that they have a single first preference. While this results in more exhausted votes when some candidates are excluded, the principle is that voters are being listened to closely rather than dictated to, and there has been no complaint about levels of exhausted votes.

It is important that voters understand they cannot harm the prospects of those they support most strongly by marking further preferences. If they choose to express only a handful or fewer of real preferences, they should be given that right, rather than have their vote invalidated at the outset and be deprived of their democratic right of freedom of choice.

**\* Abolish the sampling procedure, count all votes and reduce informal voting**

In order to allow proper sampling of votes, it is stated that 1.8 million votes (out of the total 3,721,116 votes) needed to be sampled anyway. *Anthony Green, Sydney Morning Herald, 17<sup>th</sup> April 2003; Robert Wainwright, 15<sup>th</sup> April 2003.*

Random sampling of ballot papers, rather than counting in full for the distribution of preferences as used in Tasmania and the ACT; and for that matter the Australian Senate, (notwithstanding the adoption of the technically flawed *VNWEIGHTED Gregory Transfer Factor*), is an outdated and unnecessarily flawed process in this age of computers and there is no valid reason why all votes should not be counted. Not only would counting all votes ensure that preference votes are correctly allocated, but in the event of a recount of votes, selection of different parcels of randomly sampled votes could not produce a different election outcome.

As an alternative to the current random sampling procedure when distributing surpluses above a quota, consideration should be given to adoption of the *WEIGHTED INCLUSIVE Gregory Method* proposed for the Western Australian Legislative Council. This method of distributing surpluses has been recommended in W.A. following comparative study of the five most recognised alternative methods by Dr. Narelle Miragliotta, who was commissioned by the Western Australia Electoral Commission, and is documented in the publication released in July 2002, entitled "*Determining the Result: Transferring Surplus Votes in Western Australian Legislative Council*".

Use of the *Weighted Inclusive Gregory method* for the NSW Legislative Council as proposed for Western Australia, would prevent ballot-papers increasing in value during a scrutiny. Officially described as "a minor revision of the counting method for the (W A) Legislative Council", this amendment would be a welcome change, viewed by the Proportional Representation Society with a sense of optimism that similar faulty definitions in jurisdictions such as the NSW Legislative Council and for Senate elections will not persist much longer.

Concurrent elimination of above-the-line voting would eliminate the complicated series of preference distributions which the Electoral Commissioner, John Wasson, has described as "hard and messy" *Robert Wainwright, 15<sup>th</sup> April 2003.*

**\* Rotation of names on ballot papers**

In the course of the scrutiny, often only a small number of votes determine which of two or more candidates gets excluded next. Where this margin can be shown to result from the luck of the draw for places on the ballot paper, the unfortunate excluded candidate is entitled to regard the current unsophisticated approach to fairness with some concern.

In the 1970's, Tasmanian MHA Neil Robson devised a magnificently simple scheme of rotations that shares access to the best places in a column or list equally among all the relevant candidates: there are as many orders as candidates whose names appear. Robson rotation is used in Tasmanian Local Government, Legislative Council and House of Assembly elections and has also been adopted and entrenched in the ACT's Hare-Clark system.

An extension of Robson Rotation has been devised in the ACT due to the Latin Square research efforts of the ACT Electoral Commissioner Phil Green and Dr. Ken Brewer of the Canberra Branch of the Statistical Society of Australia. It minimises candidates being favoured by the donkey vote to the extent theoretically possible.

**\* Countback**

As a quota of votes suffices to elect a candidate, a by-election to fill a casual vacancy, or even appointment by a Party, as is currently the case for the NSW Legislative Council results in the replacement being elected or nominated on a different basis from all the other Members. It is only necessary to retain the ballot papers and recount the votes for the vacating candidate.

Under the Hare-Clark system in use in the ACT and Tasmania (including Local Government), the quota of the vacating candidate (or ultimate predecessor successful at the election) is re-examined to establish whom those who have lost their representative most want as a replacement. This approach emphasises the election of the original Legislative Council for the duration of the term and discourages resignations for strategic reasons.

Unsuccessful candidates are asked to indicate whether they would be willing to fill the casual vacancy, and ballot papers in the quote being re-examined are originally set out for whoever of them has the highest preference. The replacement is effected at relatively little cost compared to a by-election.

**OUTCOME IF SOCIETY'S RECOMMENDATIONS ARE ADOPTED**

- 1. Confidence that candidates preferred by the majority of electors are elected.**
- 2. A more just outcome for candidates and voters.**
- 3. Elimination of the requirement for more than one clear first preference vote would reduce the incidence of both the donkey vote and informal votes.**
- 4. As the advantage to parties in having spurious groups of candidates is eliminated, the number of candidates and groups nominating for election is certain to be reduced.**
- 5. A simplified voting paper.**
- 6. More rapid counting of votes with certainty of result.**
- 7. The side-benefit of reducing the vote counting work load of Electoral Office staff.**

**ELECTORAL OFFICE RESOURCES**

In order to fully achieve the above outcomes, it is important that the Electoral Commissioner has sufficient time prior to the election to effectively prepare ballot papers and organise the significant resources required for many aspects of the election.

In addition, it appears that improvement in the computing capacity of the Electoral Commissioners staff is necessary.

It is suggested that a detailed review of the resources and capacity of the Electoral Commissioner is necessary and that comments by the Electoral Commissioner to meet requirements of the Government and the expectations of the general public should be considered.

J. T. Webber

President NSW Branch

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