

Voting Systems, Peak Body Proportional Representation Advocacy and Victorian Local Government

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Abstract

The Bracks Government reformed Victorian local government voting procedures in 2003. Those reforms required the use of the quota-preferential (single transferable vote) method of proportional representation for all multi-councillor wards. This was to replace the multiple-majority-preferential system that was used previously, the same voting system (considered by advocates of proportional representation to be discredited) for Senate elections from 1919-46. The Victorian Electoral Commission (VEC), a statutory body, conducts a representation review which, after submissions from interested parties, recommends a structure for each council, for approval of the Minister for Local Government.

The Proportional Representation Society of Australia's Victoria-Tasmania Branch (PR Society) is the only Victoria-wide body with concerns about local government voting systems to make representation review submissions, and has done so for almost all councils. The VEC has reviewed all Victorian municipalities at least once, and in some cases twice.

The VEC's final recommendations have in many cases wholly or partly accorded with PR Society submissions, but in other cases have recommended otherwise. Factors that might bear on the VEC's inclination are considered. These include the advocacy of local councils, community groups and individuals, and less often political parties.

Introduction

Local government electoral reform in Victoria has been a gradual process. Partly this is due to the fact that local government has never been considered more than a lesser important activity of government (Dalton 1992, 215; Davies 1951). Changes to the franchise and structure of the Victorian upper house, the Legislative Council, were of greater interest to most parliamentarians, certainly Australian Labor Party (ALP) ones (Economou 2008). A recent autobiography by former ALP Victorian Premier Steve Bracks credits his government with introducing the proportional representation voting system to the Victorian Legislative Council, the upper house of the Victorian Parliament (Bracks and Whinnett 2012, 248). Bracks could make a similar claim for local government, for as a consequence of his reforms proportional representation now applies in the election of a majority of Victorian municipalities. Local government has rarely been a subject in Victoria that has aroused great passions, except over issues at the individual council level.

Change in the voting system to provide for proportional representation took several decades and considerable debate (O'Toole and Burdess 2003). The election of local councils by proportional representation has been consistently proposed by groups such as the Proportional Representation Society of Australia Victoria-Tasmania Branch Inc. (PR Society) over many decades, but only in relatively recent years has it been seriously proposed by any major party. It was supported by the Cain government after 1982 (Halligan 1985), and in a less supportive way by the Liberal Party after the election of the Kennett government. An attempt in 1989 to provide for proportional representation in all Victorian councils by the Cain government was defeated in the Legislative Council (Goode 2012).

The first municipal election conducted in Victoria by proportional representation was an experiment, by Regulation rather than by Act of Parliament, in the election of the Richmond City Council in 1988 (Goode 2012). That council had previously been dismissed and administrators appointed. The 1988 poll was a return to elected councillors. The Liberal and National Coalition parties in the upper house of the Victorian Parliament were generally hostile to proportional representation in this period (Dahan 1994). Surprisingly, the first legislative provision for proportional representation was under the Kennett Coalition government in 1997 (Gifford 2000), but applied in only three municipalities (Kiss 2000; Goode 2012).

The widespread use of the quota-preferential (Single Transferable Vote) system of proportional representation in Victorian local government elections since 2004 results from legislation by the Bracks government, the Local Government (Democratic Reform) Act (2003; Broad 2003). The passage of that legislation resulted from the election of an ALP majority in both houses of the Victorian Parliament for the first time in 2002. It placed the decision to determine the electoral structure of particular councils in the hands of a statutory authority, the Victorian Electoral Commission (VEC), after a representation review (Tully 2008), which is required by legislation to invite submissions by interested parties, and to take these into account in making a report. The peak body in Victoria supporting the use of proportional representation, the PR Society, made submissions to almost all representation reviews (Goode 2012).

This paper will examine the structure of local government prior to the Bracks government reforms. It will then consider the factors responsible for the Bracks government decision to place responsibility for determining the structure and voting system for individual councils in the hands of a statutory authority. It will argue that the use of representation reviews has given credibility and respectability to the key peak body making submissions. It will also examine the degree to which PR Society submissions have been wholly or partly successful.

Electoral Structure and Voting Systems in Victorian Local Government

The electoral structure of Victorian local government was considered anachronistic and outdated in the 1970s, and it was inevitable that some change was likely to occur, a major impetus to change being a growing interest in local government by middle class voters (Logan 1985, 218). Plural voting was a particular issue, and the franchise restricted to property owners and leaseholders another (Holmes 1976). A discussion of these is largely outside the scope of this paper. The ward structure is, however, of considerable relevance, and continues to be a matter of considerable controversy. The majority of Victorian municipalities prior to the 1990s comprised three-councillor wards with one councillor from each ward retiring annually. Councillors served a three-year term. Local government elections were held in August of every year. Single-councillor wards were elected by the alternative vote preferential system. Some councils, such as Altona in western metropolitan Melbourne, were undivided, with an at-large election for one-third of the council membership every year (Symons 2012).

The one vote-one value principle, a principle that all votes should have the same value (Corcoran and Dickenson 2010), never had universal application in Victorian local government. In an earlier era this was due to plural or multiple voting by ratepayers owning properties of higher value, a practice abolished by the Bolte government in 1968 (Holmes 1976, 66). There was also a failure to re-apportion ward boundaries, an action many councils and councillors supported (Allan, Dahan and Williams 1994). Many council wards by the 1970s had been unchanged for over a century (Purdie 1976). The argument normally used was that a review of ward boundaries might encourage party politics, with the election of a majority of councillors unopposed, or without opposition. Uncontested wards, it was argued, suggested satisfaction with the existing council boundaries. A relatively low number of voters in a large number of councils was a factor in voter choice, as this limited the potential pool of candidates (Chapman and Wood 1984)

Presently, the franchise requirements that allow non-resident ratepayers and leaseholders to vote in local government are another factor. In some municipalities, particularly the Melbourne City Council (MCC), such voters constitute a high proportion of those on the electoral roll.

In 1994 the newly elected Kennett government replaced all Victorian councils, other than the tiny Borough of Queenscliffe, with commissioners. The number of councils was reduced from 210 to 78, and the commissioners were responsible for the administration of their councils, as well as setting up an electoral structure to operate when their councils returned to democratic rule. The Kennett government's actions were considered draconian by many local government activists. Earlier proposals to restructure Victorian councils and reduce their number by the Cain government met considerable opposition from local interest groups, including ratepayers' associations, from within the peak body representing Victorian councils, the Municipal Association of Victoria, and municipalities themselves. Councils are rarely likely to approve any proposal that would bring about their extinction (Atkins 1973, 227), and this was certainly a motivation for the majority of affected councils. The Cain government could not implement reform because it lacked a majority in the upper house. The Kennett government, led by a strong-willed Premier with an upper house majority, was able to accomplish a "centrally directed *fait accompli*" (Galligan 1998, 227) that would have been beyond the capacity of any Labor government.

The electoral structure for each municipality depended on commissioner whim. Some councils were undivided, some had all multi-councillor wards, some had a combination of multi-councillor wards and single-councillor wards, while others had all single-councillor wards. The Kennett government provision for proportional representation in 1997, after the end of commissioner rule, provided for under a dual voting structure in some municipalities, the City of Melbourne, the City of Greater Geelong, and the Shire of Nillumbik. Under dual voting some councillors, referred to as district councillors, were elected “at-large” by proportional representation from the whole municipality. Others were elected from single-councillor wards (Kiss 2000; Goode 2012).

Where commissioners opted for multi-councillor wards or an undivided council these were elected from a block vote system (Lakeman 1974, 36), the multiple-majority-preferential system. This system was used from 1919-1946 in elections for the Australian Senate, as well as for multi-councillor ward elections in a number of Victorian councils prior to the appointment of commissioners in 1994. Advocates of proportional representation argue that this voting system is discredited, and usually point to large-group dominance, the lopsided results that almost always saw all Senators from a particular state belonging to the same political party. In some years that resulted in one party winning all Senate seats, as in 1943 when the ALP was successful in every state. At the 1946 Senate poll, the Coalition won only the three vacancies from Queensland, and was represented by only three Senators from 1947-49 (Wright 1980, 87-90). In the Northern Territory the system resulted in the denial of representation to members of the Aboriginal community in a number of councils (Sanders 2009). The Northern Territory abandoned the system in 2012, as did Victoria in 2004.

The Bracks government after its election in 1999 faced considerable obstacles in reforming the local government voting system. The upper house was certainly one before the election of 2002 resulted in the ALP’s ability to pass legislation without support from the conservative parties. In that year the ALP for the first time won a majority in the upper house, but reform of the Legislative Council itself was a greater priority than any change in the voting system for local councils. A change in the structure of the Melbourne City Council, to an undivided council with seven members elected by proportional representation, and the direct election of a Leadership Team, the Lord Mayor and Deputy Lord Mayor, was approved by Parliament without opposition from the conservative parties in 2001. A greater obstacle after 2002 came

from the ALP's factions, in particular some members of the ALP's Right, who saw proportional representation as a threat to the ALP's dominant position in certain inner-Melbourne councils. These councils represented the ALPs heartland. The Bracks Democratic Reform Bill did not provide for proportional representation by legislation, except in those councils with multi-councillor wards before a representation review could be held. A so-called independent umpire, the VEC, made that decision (Broad 2004).

It was too radical a change for the Bracks legislation to automatically provide for a change of voting system in all councils, as the Cain government had tried to do earlier. The Bracks government was mindful of the fact that some of the larger councils created under the Kennett reforms had great political clout, and the government did not want to create a situation of conflict if this could be avoided. Councils now had greater populations and generally covered a greater area. An argument that different councils had different needs was widely promoted. The regime of commissioners set in place electoral structures in each council that were very diverse. As well changes in the factional makeup of the Labor Caucus in the Victorian Parliament meant there would have been opposition to proportional representation if it had been made a requirement in the election of all Victorian municipalities.

Representation Reviews and their Administration by the VEC

The object of a representation review is to determine the internal electoral structure of a particular council. In South Australia representation reviews are conducted by councils themselves, and their purpose is deemed to be of benefit to a council's community from any alteration to its composition and ward structure (Heylen 2008). In Victoria representation reviews are conducted by an authority independent of the councils themselves, the VEC. The Local Government Act (1989) at Section 219A states that the purpose of a representation review is to provide for an independent review of electoral representation for all Councils on a regular basis to provide for fair and equitable representation.

The review cannot change the external boundaries of a council. Reviews are conducted at council expense by a panel of three persons appointed by the VEC. Reviews are now conducted over a three--term cycle. Every council in Victoria can expect to be reviewed once every twelve years.

The initial action of the VEC in conducting a review will be to place an advertisement in newspapers circulating in the area of the review. This will invite preliminary submissions from interested parties, who may be individuals or representatives of organisations, including political parties, community associations, or the council being reviewed. The submissions will be examined, and the VEC will then issue a preliminary report. This report will make a preliminary recommendation, and will suggest various options (not in any order of preferred ranking) for the council being reviewed. Response submissions will be called, asking for comment about the preliminary report, and a public hearing will be held. Individuals or a representative of organisations who have previously made a response submission may make an oral submission to the VEC panel, and they may also be subject to questioning by the panel.

The VEC is constrained by legislation, unchanged since its enactment by the Kennett government that limits the number of councillors in any municipality. Currently this is between 5 and 12. Where a council is divided into wards, as the majority of councils are, the number of voters represented by each councillor in each ward must be within ten per cent of the average number of voters per councillor for the municipality. This is known as the ten per cent tolerance, and the intention is that each vote has the same value. The VEC attempts to create a consistent Victoria--wide approach to the number of councillors, based on the population of each municipality. The most populous, Greater Geelong, has 12 councillors. The least populous, Queenscliffe, has five (Tully 2011, 19--22).

The VEC argues that factors such as likely population growth, ethnic diversity, age profiles and geographic diversity can impact upon representation review decisions. It will also take into account community of interest. This is defined as people who share a range of common concerns and aspirations (Tully 2011, 11). The argument for representation of a community of interest can be an argument for single-councillor wards, where in a large geographical area a town some distance from the major population centre might not otherwise have a representative on a particular council. Community of interest can also be used to justify multi-councillor wards elected by proportional representation where, for example, there might be an ethnic minority that is widespread throughout the municipality that might not in a single-councillor ward structure obtain representation.

In some municipalities very few submissions are made. In the case of the 2011 Whittlesea City Council Review the PR Society made the only preliminary submission. In others the

number can exceed 200. In the 2012 Latrobe City Council Review 887 response submissions were made, although over 800 of these were form letters, written from a template with a standardised format. Almost all councils being reviewed make a preliminary and a response submission. Branches of political parties occasionally make submissions, to a minority of reviews.

These submissions may be very influential in determining the VEC's recommendation, which is subject to the approval of the Minister for Local Government. As of the present date all VEC final report review recommendations have been so approved. The review may recommend that a council be undivided (or without wards), or consist of single--councillor wards, multi--councillor wards, or a mixture of both. Proportional representation applies in all multi--councillor wards. The result of these reviews has been that a majority of Victoria's local councils are now elected wholly or partly by proportional representation. The VEC has reviewed all of Victoria's 79 councils at least once, and in 27 cases twice.

The Proportional Representation Society as a Peak Body Advocacy Group

The PR Society is the only Victoria-wide organisation to consistently advocate the proportional representation voting system in Victoria. Although affiliated with the national organisation, the Proportional Representation Society of Australia, it is incorporated in Victoria under the Associations Incorporation Act and makes preliminary and response submissions to representation reviews on its own behalf. It is a "peak body" in the sense of the definition by Roberts (2012), a non-profit body offering advocacy and advisory services to people involved at governance levels of activity.

A peak organisation is sometimes described as an association of similar associations, particularly when the term is applied to central bodies of trade unions or employer associations (Briggs 2004, 154; Corcoran and Dickenson 2010). Such organisations are concerned with political mobilisation, seeking a benefit for their members. The PR Society seeks no benefit for its members. It is a single purpose group, to promote the proportional representation voting system. The PR Society sees itself as playing an important role in influencing government, for as Warhust suggests (1986), it is becoming more difficult for the grass roots to influence policy at the highest levels. The PR Society does not support candidates or parties.

Preliminary submissions and response submissions by the PR Society to representation reviews result in media publicity, certainly in many country newspapers when municipalities in their circulation area are being reviewed. They are read widely by other submitters, local councils and the VEC itself.

Preliminary submissions normally argue the case for proportional representation in general terms, or best practice, although they are made as specific as possible to the council being reviewed. Best practice arguments will normally be presented in terms that if a municipality is divided into wards these should all have the same number of councillors, which should be an odd number. They will also argue that the total number of councillors should be an odd number, for this will eliminate a tied vote in the election of a mayor or presiding officer by the council. Arguments will include the fact that proportional representation will ensure a better quality council, that there will be less wasted votes, that a higher percentage of the electorate will be represented, and that there will be fewer uncontested elections, a common feature of single-councillor wards. The presence or absence of dummy candidates will also be argued. (Goode 2012)

Response submissions will, where the VEC preferred recommendation or additional options make such a provision, argue against even number wards. Such wards are referred to as “stalemate” wards, as they can produce an unjust result. In a two-councillor ward the quota for election would be about 33.3 per cent. To elect a majority of councillors, or both councillors in this case, would require 66.67 per cent of the votes. In an odd-numbered ward a majority of votes will always produce a majority of councillors. The PR Society will argue as well that a combination of single-councillor and multi-councillor wards might also result in an unfair result. If there is one single-councillor ward, for example, and the other multi-councillor wards all elect an even number of councillors, the councillor from the single-councillor ward might act as a “kingmaker.” If the councillors from the multi-councillor wards are evenly split, the councillor from the single-councillor ward might in fact control all council decisions.

The maximum number of councillors allowed by legislation, 12, frequently makes difficult the use of purist arguments. The PR Society will normally argue a case in its preliminary submission that supports a position consistent with a structure that will allow for the best operation of proportional representation, but often it cannot do so without recognition that a pure structure would be unavoidable. The City of Greater Geelong Preliminary Submission is

a case in point. It recognises the fact that the city had twelve councillors at the date of the review (as it still has), and that, with a population of around 220,000, greater than that of Southern Tasmania, it is the most populous municipality in Victoria. The preliminary submission (Goode 2008a) argues for an eleven--member undivided council, an argument the VEC (2008) would be unlikely to accept, and in fact did not accept.

The Effectiveness of PR Society Advocacy

It is difficult to judge the extent to which PR Society advocacy has been responsible for the VECs decision in any individual municipality. The table below shows that, as a result of representation reviews, the number of all single councillor wards has reduced from just over half of all councils before the first round of reviews to about one-eighth.

Table 1
Council Structures before and after VEC Representation Reviews
(excludes Melbourne City Council)

	Unsubdivided	All Multi-Councillor Wards	Mixture of Multi-Councillor and Single-Councillor Wards	All Single-Councillor Wards	Total
Before Review	12	11	12	43	78
After Review to 2008	22	28	13	15	78
After Second Review to 2012	21	30	17	10	78

It is more likely that PR advocacy will be successful where a major interest group, such as an association of ratepayers, agrees wholly or partly with the VEC position. Where a council is

opposed to the PR Society position, and there are multiple submissions in agreement with that council, the likelihood is that proportional representation will be rejected.

Political parties appear to have minimal influence on the VEC's decision. It is rare for political parties to contest council elections in most municipalities, although claims are sometimes made that councillors in some municipalities will be largely members or fellow travellers of one political party or another. In England, where all major political parties contest council elections to a greater rather than lesser extent compared with Victoria, such councillors, who deny a political affiliation in some rural councils without a political tradition, are called "Concealed Conservatives" (Grant 1977, 40). While there have been a small number of submissions to representation reviews from political parties, particularly from the Australian Greens, the local character of individual submissions will almost certainly carry more weight. It is impossible to determine the political allegiance of individual submitters in most cases, and that allegiance is probably irrelevant to most reviews, given that local rather than party considerations will be foremost in the mind of most submitters. The PR Society, a non-party peak body, has never sought to do deals with political party members in making submissions.

The four types of municipal structure, and the result of the recent round of reviews, will be considered below. The Melbourne City Council will be considered separately. There have been some recent changes.

1. Undivided Councils

These are all rural. The policy of the VEC is against undivided councils in the Melbourne metropolitan area. Surf Coast Shire Council, the first municipality to be reviewed in 2005, was changed from an undivided council to a council with a mixed structure. This occurred because of pressure from residents in the town of Lorne, who argued that under an undivided structure they had no representation on the council. This occurred after a countback. One successful candidate, the only one from the Lorne area, was elected at the 2008 elections for the Shire. His place subsequently became vacant, and the candidate who replaced him did not come from Lorne. The PR Society arguments for a continued undivided Shire were not accepted by the VEC. There are now 21 councils in this category, a reduction of one.

2. All Multi-Councillor Wards

These are all elected by proportional representation, but not always in ways the PR Society has advocated. In every case in the current round of reviews the PR Society was supported, without significant opposition, from residents or interest groups in the municipality being reviewed. No municipality in this category has a changed status from multi-councillor wards to single-councillor wards in the current round. In Whittlesea City and Wyndham City, two fast-growing municipalities, the number of councillors was increased from 9 to 11. In both these cities, together with Hume City, the VEC adopted in its final report a structure of two 4-councillor wards and one 3-councillor ward. The PR Society is opposed to wards with an even number of councillors. There are 30 councils in this category, an increase of two.

3. Councils with a Mix of Single Councillor Wards and Multi-Councillor Wards

There were 13 councils in this category before the current round of reviews. Four new councils, Surf Coast Council, currently undivided, together with Mornington Peninsula Shire, Strathbogie Shire and Latrobe City, currently all single-councillor wards, will be in this category at the October elections this year for a total of 17.

4. Single-Councillor Wards

One council, the sparsely populated but large-area Loddon Shire Council will consist of five single-councillor wards rather than one 2-councillor ward and three single-councillor wards. One local councillor and the PR Society supported an undivided Loddon Shire but this position was not supported by the other councillors or any other local submitters. The argument here was that the geography of the Shire was unfavourable to an “at-large” structure.

The single-councillor ward Hobsons Bay City and Maribyrnong City Councils in Melbourne’s metropolitan west and the provincial Greater Bendigo City Council will now be all multi-councillor wards, with the two metropolitan councils comprising one 3-councillor ward and two 2-councillor wards and the provincial council three 3-councillor wards. In the two metropolitan councils there were few local submissions. The Hobsons Bay City Council supported multi-councillor wards, which was unusual, as the VEC pointed out. It is rare for a

council to advocate a change in its electoral structure. The Maribyrnong City Council did not make a preliminary submission, but advocated the retention of single-councillor wards in a response submission. Here the VEC agreed with the PR Society because it complemented those from local residents and interested organisations. The Greater Bendigo Council saw a number of submissions favouring proportional representation from local residents, including two former mayors of that city. The council itself favoured the present structure. The Greater Bendigo City final report was completely in accord with the PR Society final submission.

The Mornington Peninsula Shire Council, the Latrobe City Council in Gippsland and the Strathbogie Shire Council in the central highlands were changed to a mixed structure. The PR Society argued for proportional representation in the case of Mornington Peninsula Shire, as did a ratepayers group in the Shire. The existing Council and the Shire's CEO conducted a campaign supporting the status quo. The VEC's final report represented a compromise, with two 3-councillor wards, one 2-councillor ward, and three single-councillor wards. In the case of Latrobe City Council, this followed large-scale criticism by local submitters of the existing single-councillor ward council. The new Latrobe City Council will comprise one 4-councillor ward, two 2-councillor wards and one single-councillor ward. The PR Society is opposed to this structure, as all multi-councillor wards elect an even number of councillors. The Strathbogie Shire Council will comprise two 2-councillor wards and three single-councillor wards, after some local opposition to the present structure. These included a former Leader of the Victorian National Party who, along with the PR Society, supported an undivided Shire.

There will be a net loss of five councils in this category after the October elections this year, a reduction from 15 to 10.

5. The Melbourne City Council

The Melbourne City Council (or MCC) is subject to its own legislation and until 2012 was not subject to review. The structure of the MCC differs from all other Victorian councils. A Leadership Team of Lord Mayor and Deputy Lord Mayor is separately elected from the other members of the council, who are elected "at large" from an undivided city. Another difference is the use of the "above the line" voting procedure for candidates contesting vacancies other than for the Leadership Team. This system allows candidates to contest the election as "groups" and is identical to that used in elections for the Australian Senate and for

the Victorian Legislative Council. Voters need only mark one square on a ballot paper with above the line voting for the MCC. Preferences are registered with the VEC, and votes are counted according to the way in which the preferences are submitted. Voters can vote “below the line” if they do not wish to vote according to a preference order submitted by the “group.”

The only political party that contests parliamentary elections to have contested MCC elections as an above the line “group” is the Australian Greens, although some groups are known to have affiliations with other political parties. The alternative vote preferential system applies for the Leadership Team ballot, and proportional representation for the other councillors. The PR Society is opposed to the separate election of the Leadership Team and “above the line” voting, but a change in this requirement is a matter for legislation and not part of a representation review.

The popularly elected Lord Mayor, Robert Doyle, a former Liberal Party Opposition Leader in the Victorian Parliament, urged retention of an undivided structure in his preliminary and response submissions to the VEC Representation Review. He advocated an increase from 7 to 9 councillors elected “at large,” a position supported by the PR Society. Some residents’ groups argued for a mixed structure, in a model supported by Councillor Jackie Watts. Cr Watts argued that residential parts of the City were not adequately represented on the MCC. Support from Lord Mayor Doyle was probably a key factor in the decision of the VEC panel, and the final report of the representation review accepted the increase he supported.

Conclusion

The PR Society peak body submissions represent an important part of the representation review process. The VEC will normally be influenced more by local submissions than by submissions from outside the municipality being reviewed, but this does not detract from the value of PR Society submissions.

The PR Society submissions are widely read and reported, and often the arguments used are accepted by other submitters. The PR Society cannot claim responsibility itself for the increasing acceptance of proportional representation, for that acceptance also depends upon support from each of the councils and community groups.

A failure of the PR Society has been to convince the VEC that it should move towards a more purist position. The VEC has not accepted PR Society arguments against differential ward sizes, as well as against a mixture of single-councillor and multi-councillor wards, necessitating the use of different voting systems, in the same municipality.

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