



11 October 2019

Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000  
Via email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Madam

I wish to provide a submission for the Committee's consideration regarding the *Electoral (Voter's Choice) Amendment Bill 2019* (the Bill) which was recently introduced by Mr David Janetzki MP, Shadow Attorney-General and Shadow Minister for Justice. The Shadow Attorney-General introduced the Bill on the basis that it,

*... recognises the importance of a democratic voting system—which is why the bill seeks to reintroduce optional preferential voting ... it will enshrine in law the voter's choice. It brings back from the dead the spirit of the Fitzgerald era reforms and will pave the way to a fairer and more democratic electoral system which voters can have complete faith in. If you want more people to have their votes counted the way they really want, then you will support the bill. If you want to hear less talk about back room bargains and preference whispering, you will support the bill. If you want to return choice—real choice—to the people of Queensland by empowering them to express their true voting intention, you will support the bill.*<sup>1</sup>

The Shadow Attorney-General's explanatory speech to the Bill noted that optional preferential voting (OPV) was a recommendation of the Electoral and Administrative Review Commission (EARC) in 1990. The Shadow Attorney-General mentioned that EARC reported to a parliamentary select committee. However, what the Shadow Attorney-General did not note was that this parliamentary committee—the Parliamentary Committee for Electoral and Administrative Review (PCEAR)—was somewhat reserved about EARC's OPV recommendation.<sup>2</sup> Furthermore, while the Shadow Attorney-General highlighted several submitters who supported the OPV proposal, he failed to mention that there were those who were not in favour of the recommendation. Indeed, those opposed to the proposal included some from his own side of politics, the National and Liberal Parties in Queensland, the forerunners to the LNP. In fact, members of the PCEAR from the then National and Liberal Parties provided dissenting statements to the PCEAR's report on EARC's various electoral reform recommendations which included particular opposition to the OPV proposal.<sup>3</sup> Queensland Labor,

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<sup>1</sup> <https://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/190918/Electoral.pdf>

<sup>2</sup> <https://www.parliament.qld.gov.au/documents/committees/PCEAR/1990/earc/pcear-report5.pdf>, pp. ii, 11-12. The Committee saw "... merit in the recommendation for optional preferential voting which does not force voters to declare preferences they do not have in order to avoid having their vote declared invalid; however the Committee considers that there is a strong argument in favour of compulsory preferential voting in that it would be consistent with Commonwealth electoral law and thus avoid confusion and resultant voting invalidity." (pp. 11-12)

<sup>3</sup> Ibid, Appendices I and J

too, was not initially supportive of OPV although the Goss Government subsequently legislated its introduction.<sup>4</sup>

For the purposes of the Committee's consideration of the Bill it is useful to note some of the objections to EARC's OPV proposal as listed at the time by the National and Liberal Parties. A Liberal Party member of the PCEAR, Mr Bob Quinn MLA, expressed the following concerns:

*Optional preferential openly invites an unbalanced result. By failing to indicate their full preferences, voters can unwittingly distort the final election result. EARC (Para 6.16) has cited evidence from the Republic of Ireland which uses optional preferential voting: "... a fifth of by-elections since 1923 have failed to produce a candidate with an overall majority, and over the last 20 years the proportion has been almost half". EARC (Para 5.25) notes that this trend is also starting to appear in NSW. Compulsory or full preferential voting is the only system that guarantees that the elected member has majority support from within the electorate. Using optional preferential, Members of Parliament could be elected in any one of four circumstances:*

- *majority of first preferences*
- *majority after preferences have been distributed*
- *minority of first preferences (not currently possible in Queensland)*
- *minority after preferences have been distributed (not currently possible in Queensland)*

*Theoretically, it would be possible for a Government to be formed relying on Members elected on a minority of votes cast, for its majority in the Parliament. Whilst it is desirable that voters have as much freedom as possible to support the candidates they wish, it should not be possible for such freedom to lead to an unfair election result.*

*With single member constituencies, no guarantee can be given that the proportion of votes cast for the various political parties will be reflected in the number of seats each party wins. Optional preferential voting can further exacerbate this problem thus breeding a suspicion about the fairness of the election. Therefore, in order that the voting system remain fair and the same as used in Federal elections, it is recommended that compulsory or full preferential voting be retained.<sup>5</sup>*

National Party members of the PCEAR, Mr Mark Stoneman MLA and Mr Tony FitzGerald MLA, similarly opposed the proposal:

*In our view, if there is to be a compulsory vote required at general elections in Queensland then there should be a requirement that voters should give full expression to the voting procedure. The ultimate conclusion of allowing an optional process for the allocation of preferences is that Governments could emerge that cannot claim to have been elected by a majority, regardless of the fairness or otherwise of the boundary structure. This has only happened in Queensland once in the last four decades.*

*Claims have been made that the current preferential system forces a voter to vote for a candidate whether or not they feel inclined to do so. We find this a strange argument in that the reverse*

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<sup>4</sup> <https://www.abc.net.au/news/2016-04-21/electoral-law-ructions-in-the-queensland-parliament/9388770>

<sup>5</sup> <https://www.parliament.qld.gov.au/documents/committees/PCEAR/1990/earc/pcear-report5.pdf>, Appendix I, pp. 6-7

*could also be applied in that a compulsory system enables a voter to specifically indicate who they do not wish to become elected by numbering that candidate last.*

*Simply leaving voting card numbers blank does not give any assurance of greater accountability, nor does it give those with a narrower view of electoral issues any greater chance of election as it would tend to force together larger groupings within a philosophic range.*

*We concur with the view that it is most undesirable to have optional preferential voting in the State while the federal system retains compulsory preferential voting.<sup>6</sup>*

It is also noted that prior to the 2008 merger of the Liberal and National Parties to form the LNP, the National Party continued to oppose OPV on the basis that it gave the ALP an unfair advantage through its use of the "Just Vote 1" strategy. Indeed, the then Queensland Opposition Leader and National Party leader, Mr Lawrence Springborg MP, said, "*I think we need to look at moving back towards compulsory preferential voting, because I think it gives the best outcome.*" Mr Springborg further said, "*... the system was clearly 'terribly skewed' if Labor would win 56 seats with 47 per cent of the primary vote, as it did at the last election, while the conservative parties picked up only 20 seats with a combined 35 per cent of the primary vote.*"<sup>7</sup> Mr Springborg's clear view was that OPV did not serve the best interests of voters by allowing some very undemocratic outcomes to occur. As a result, Mr Springborg considered that compulsory preferential voting needed to be reintroduced to counteract the adverse electoral impacts associated with OPV.

In response to the arguments and concerns mentioned above it is noted that full (compulsory) preferential voting still exists for Commonwealth elections. Furthermore, the claims of the Shadow Attorney-General that the re-introduction of OPV in Queensland will ensure greater fairness and be more respectful of voter choice seem at odds with the arguments and objections made by the above cited members of the previous National and Liberal Parties who did not see compulsory preferential voting as a denial of voter choice and in fact regarded it as essential for ensuring democracy and political stability and certainty.<sup>8</sup> The Shadow Attorney-General needs to explain to Queenslanders why the arguments against and objections towards OPV such as those raised by the previous National and Liberal Parties are no longer relevant or valid in the contemporary context. Unfortunately, nothing in either the Shadow Attorney-General's explanatory speech or in the Bill's explanatory notes provides any detail or allays any concerns regarding such matters.

Another important issue pertinent to the Committee's consideration of the Bill about which the Shadow Attorney-General's explanatory speech and the Bill's explanatory notes are silent relates to one of the most oft-cited disadvantages of OPV, that it amounts to a form of first past the post (FPTP) voting. Under FPTP voting "*... the candidate with the most votes is elected after one round of counting whether or not that person has more than half the votes counted*".<sup>9</sup> Not only that, FPTP voting "*... could enable a candidate to be elected without obtaining an absolute majority of votes,*

<sup>6</sup> Ibid, Appendix J, p. 5

<sup>7</sup> *The Courier Mail*, "Springborg vows to revise voting system", 19 August 2005, p. 9

<sup>8</sup> On the point of political stability it has also been noted elsewhere how preferential voting ensures the political system stays away from the extremes and remains in the "*moderate middle*". Not only that, preferential voting provides "*...the ever-cautious national electorate with the means to punish perceived extremism of any ideology, providing strong incentives for the major parties to keep their focus on the middle ground at all times*". (Reilly in Sawyer (Ed), *Elections Full, Free & Fair*, 2001, The Federation Press, p. 79)

<sup>9</sup> [http://library.bsl.org.au/jspui/bitstream/1/1397/1/strengthening\\_australias\\_democracy.pdf](http://library.bsl.org.au/jspui/bitstream/1/1397/1/strengthening_australias_democracy.pdf), p. 221

*even in circumstances where an absolute majority of voters would have ranked that candidate last in a full preferential system”.*<sup>10</sup> Australia has flirted with FPTP voting in the past but the system was abandoned as a result of the anomalous electoral results that can—and did—occur.<sup>11</sup> The PCEAR noted that EARC also rejected “... *first past the post* voting because it does not ensure fairness between political parties”.<sup>12</sup>

One of the concerns raised in submissions to the PCEAR about EARC’s OPV recommendation was that it would “... *lead to de facto ‘first past the post’ voting*”.<sup>13</sup> Similarly, the Commonwealth Government’s 2009 Electoral Reform Green Paper noted “... *that because votes that do not express a preference for all candidates will ‘exhaust’ at a certain point, there is a risk that optional preferential voting may result in a ‘de facto first past the post system where candidates can be elected with significantly less than half the vote*”.<sup>14</sup> Professor John Wanna has likewise noted that OPV,

*... risks becoming a de facto first-past-the-post system—in which candidates can be elected with around 35 per cent of the formal vote. Optional preferential voting has the potential, then, to inflate majorities while penalising the most divided side of politics. If voters deliberately choose to ‘just vote one’ (plumping) and intend their vote to exhaust if their candidate comes 3<sup>rd</sup> or worse, then this does not undermine democracy. However, if voters simply follow party instructions to vote for one candidate and out of ignorance or unfamiliarity do not allocate preferences, then if their votes exhaust this could be a denial of a true democratic outcome.*<sup>15</sup>

A Commonwealth Parliamentary research paper also made the following point regarding the anomalous electoral outcomes which can arise under OPV:

*Unlike full Preferential Voting where the winning candidate will eventually achieve an absolute majority of votes, under Optional Preferential Voting it is possible for a winning candidate to receive fewer than half of the votes left in the count. This is because some votes are exhausted, with no more preferences to distribute, and are removed from the count.*<sup>16</sup>

Finally, it is important to note what the Shadow Attorney-General’s colleague, Mr Jarrod Bleijie MP—then Attorney-General and Minister for Justice—had to say in a 2013 Electoral Reform Discussion Paper about OPV’s potential to act as a form of FPTP voting and the undemocratic electoral outcomes that can result:

*A key issue with OPV is that it has the potential to become a de facto ‘first past the post’ system. Preferences can be quickly exhausted where a large number of voters choose to vote ‘1’ only. This is particularly problematic where a large number of candidates are contesting a seat. In such a*

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<sup>10</sup> Ibid, p. 57

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[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/CIB/cib9899/99cib10](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/cib9899/99cib10);

[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/RP0708/08rp05](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP0708/08rp05)

<sup>12</sup> <https://www.parliament.qld.gov.au/documents/committees/PCEAR/1990/earc/pcear-report5.pdf>, p. 10

<sup>13</sup> Ibid, p. 11

<sup>14</sup> [http://library.bsl.org.au/jspui/bitstream/1/1397/1/strengthening\\_australias\\_democracy.pdf](http://library.bsl.org.au/jspui/bitstream/1/1397/1/strengthening_australias_democracy.pdf), p. 58

<sup>15</sup> <https://apo.org.au/sites/default/files/resource-files/2004/03/apo-nid8397-1084026.pdf>

<sup>16</sup>

[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/RP0708/08rp05](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP0708/08rp05)

*circumstance, it would be possible for a candidate to be elected with only a small proportion of the vote, which could leave the majority of the population unrepresented.*<sup>17</sup>

The concerns regarding the potential—even risk—of OPV to act as a de facto FPTP voting system such as noted above, including the denial of democratic electoral outcomes, were not recognised or addressed by the Shadow Attorney-General in either his explanatory speech or in the Bill's explanatory notes.

In conclusion, the Shadow Attorney-General stated in his explanatory speech, *"This bill recognises the importance of a democratic voting system—which is why the bill seeks to reintroduce optional preferential voting"*.<sup>18</sup> However, as previously noted, neither in his speech nor in the Bill's explanatory notes did the Shadow Attorney-General acknowledge or address the various concerns regarding OPV such as outlined by members of his own side of politics or by those with specialist expertise in electoral matters. Voters will want to know from the Shadow Attorney-General why he supports the reintroduction of OPV over and against the concerns of members from his own side of politics as well as those of electoral specialists about OPV and its risk to democracy in Queensland. Furthermore, if the Bill is intended to recognise the *"importance of a democratic voting system"*, they will want to know from the Shadow Attorney-General why he would seek to reintroduce a voting system that is known for its significant potential to give rise to undemocratic electoral outcomes.

I trust the above comments and observations will assist the Committee in its deliberations on the Bill.

Yours sincerely

Don Willis

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<sup>17</sup> [https://australianpolitics.com/downloads/voting/2013/13-01-03\\_electoral-reform-discussion-paper-qld.pdf](https://australianpolitics.com/downloads/voting/2013/13-01-03_electoral-reform-discussion-paper-qld.pdf), p. 37. It is noted that despite identifying OPV's undemocratic potential as a "key issue" in its January 2013 Electoral Reform Discussion Paper, the then Queensland Government still decided to retain OPV for State elections. It did so on the basis that *"... the current system of voting is understood by electors and is consistent with the system currently used in local government elections"* (Electoral Reform – Queensland Electoral Review Outcomes, July 2013, p. 3). However, nothing in the Government's response to the discussion paper acknowledged or addressed the "key issue" involving OPV. Furthermore, while the response noted that an alternative to OPV was full preferential voting such as existed for Commonwealth elections (p. 3), it did not explain why the Government ultimately accorded greater preference to the voting arrangements for local government elections over those used at the Commonwealth level with which voters also have long-time familiarity and experience.

<sup>18</sup> <https://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/190918/Electoral.pdf>