

ELECTORAL MATTERS COMMITTEE

Inquiry into voter participation and informal voting

Inquiry into political donations and disclosure

Melbourne — 24 July 2008

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Mr A. van der Craats.

The CHAIR — Welcome to the public hearings of the Electoral Matters Committee inquiring into political donations and disclosures, and into voter participation and informal voting. All evidence taken by this hearing as protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamations Act 2005 and, where applicable, the provisions of reciprocal legislation in other Australian states and territories. I also wish to advise you that any comments you make outside the hearing may not be afforded such privilege. I take it you have read the ‘Giving evidence at a public hearing’ pamphlet?

Mr van der CRAATS — That is correct.

The CHAIR — Can you please state your full name and your business address?

Mr van der CRAATS — Anthony van der Craats is my name. I am currently working out of the Ukraine. I am back in Australia on a short visit. I do not have a permanent address.

The CHAIR — Are you attending in a private capacity or representing an organisation?

Mr van der CRAATS — I am here in a private capacity.

The CHAIR — Your evidence will be taken down and become public evidence in due course. I now invite you to make your further submission.

Mr van der CRAATS — Perhaps before I do that, can I suggest that this committee seeks, if possible, a submission from the Southern Cross Group. Having just heard the previous contribution, I think the Southern Cross Group would be a worthy organisation. It certainly represents overseas voters and some of the problems and issues that overseas voters encounter. Having been an overseas voter myself, I am very much aware of these problems and I have no doubt that a large percentage of the 66 per cent of the people disenfranchised by the Victorian Electoral Commission were probably in my position where they were overseas at the time. That is just a suggestion that you may wish to approach them. They are a good group and they have made numerous submissions to the federal Parliament before but they do not normally come down to state level.

Mr O’BRIEN — Come up to state level, I think you mean!

Mr van der CRAATS — I thought I meant down. It is a question of whether the map is upside down, I suppose! I also understand that the committee has taken on board the issues that I raised in terms of the surplus transfer value and distribution of votes; is that correct?

The CHAIR — That is right.

Mr van der CRAATS — It did not get mentioned in the preamble, that is all. I have some issues and concerns in relation to the committee’s report to the Parliament. There are a number of false and misleading statements which I would like to address. If the opportunity is there, I would like to take it. But my prime concern today is to try and get the Parliament to focus on the need for reforms over the issues of the surplus transfer value and the distribution segmentation of the vote pertaining to the multi-member upper house constituents. That is the main issue of my submission today. The current system that we have in the legislation is really outdated. It was designed back in the 1900s; it was designed to facilitate a manual count; it was predominantly also designed to facilitate a Senate election where the number of participants is significantly greater than what you would find in a state or even a municipal constituency.

I have analysed the various systems we have in place and I realise there is a major flaw, in my view, in the way in which we calculate the surplus transfer value. The surplus transfer value as done by the Senate and also by the Legislative Council takes the value of the surplus and divides it equally by the number of ballot papers. Those ballot papers may have variations quite significantly in the value of each of the ballot papers. An example may be that 25 per cent of the ballot papers actually hold 70 to 75 per cent of the value of the vote and the other 75 per cent may actually hold 20, 25 per cent of the vote. But when they are distributed out under the current formula, they all go out at the same percentage value. This distorts seriously the proportionality of the count and it is something that is unnecessary. Back in the 1900s when we did not have the advantage of computer technology, it was a trade-off between the various systems to facilitate an ease in the count. With the advent of computers and the regular use of

computers, it is advantageous that we now re-look at that issue and, if possible, we adopt a surplus transfer value calculation based on the value of the vote as opposed to the number of ballot papers.

I did an analysis of the 2007 Victorian Senate election. I thought that would be an interesting case example. In order to trigger the distortion that occurs in the count, I had to implement a hypothetical and in my analysis I presented to the committee I have reassigned the ticket vote given from One Nation where they would have preferred the Liberal Party, then the Labor Party and then the Greens. This in the calculation of the vote would have triggered the surplus of the Liberal Party's third candidate, and it is when you look at the distribution of the Liberal Party's third candidate, you begin to see the level of distortion that occurs in the system. In fact it adds a value of something around 7000 votes to the Liberal Party ticket vote.

I am using parties here because that is the real example. This can swap over to the Labor Party, Liberal Party. It is really a non-political issue or partisan issue. I think that is of great concern because some votes increase in value at the expense of other votes. It is a principle issue that I think is readily changeable, which brings me to the second part of my submission which relates to the segmentation and distribution. Again this is one of those things that was designed to mitigate the distortion that takes place in the way they calculate the surplus transfer value. It is also designed to facilitate a manual count. Some systems use what is known as the last bundle distribution, which was again a system designed to facilitate a manual count. The last bundle distribution, in my view, has some great advantages to what the Parliament currently adopts. However, the whole concept of segmentation is really unnecessary and it would be desirable from my point of view if it was done away with and you had a single transfer, one transfer per candidate, proportionately based on the distribution of preferences.

Ideally the best way to implement this would be that every time you go through the counting process, you would work out who has got surpluses, you would distribute those surpluses, and if the number of vacant positions had not been filled and you need to exclude a candidate, ideally at that point you would go back and start the count again, recalculate the quota, recalculate the distribution of preferences and then see who is the next person elected or who is next in line. Such a system would automatically take into account any optional preferential or any discrepancy in the allocation of preferences as it would build up and be a fresh count itself. I am not sure if the committee is following this technicality or not. I assume you are. I am sure Robin is.

Mr SCOTT — Yes.

Mr van der CRAATS — My argument is that we need to change it. I have put forward some very simple principles, and I hope the committee would endorse those principles. I am open to questions at this point; it is that basic.

Mr SCOTT — Firstly, are you aware of the West Australian system where they have changed the system? As far as I can tell — I have not been there to check some of it — but in my understanding it has been changed to address a number of the issues that you have raised because of a particular election involving One Nation where the discrepancy which you are discussing did actually change the result. The chance of changing the result, one of the issues is — —

Mr van der CRAATS — Five per cent.

Mr SCOTT — Yes. It depends on the count.

Mr van der CRAATS — It depends if you have above-the-line.

Mr SCOTT — Yes, it can get quite complex doing a calculation of that nature. It is a reasonably unlikely, but possible, outcome. That is the way I would describe it. Are you aware of what happened in Western Australia?

Mr van der CRAATS — I am not familiar with the Western Australian scenario, but I am conscious of the fact that in most cases the system produces the same overall result. But there are many occasions when it can affect the result, and my hypothetical gives an example. The chances of it affecting the overall outcome of the election increases as the electorate gets smaller and when you do not have above-the-line voting. Above-the-line voting gives a direction to the vote, therefore the distortion in the surplus transfer value, for example, or the segmentation, begins to not play a significant role. But when you have got, for example, a local government election, which we are about to enter into in November, I am pretty confident that the distortion will show up in

those elections. I think it will discredit the overall proportion. I think proportional representation is a credit to this government — having introduced that to local government.

Ms CAMPBELL — Can you speak up? There is noise outside, and my hearing is not the best.

Mr van der CRAATS — I was saying that I commend the government for having introduced proportional representation for local government. It was a positive step. However, having adopted the Senate counting system there are potential pitfalls and problems that will show up, I believe, in November. It would be better if the committee or the Parliament could address this technical issue now, as opposed to waiting until November erupts.

Ms CAMPBELL — Are you saying that the committee should address it?

Mr van der CRAATS — The Parliament.

Ms CAMPBELL — Or the Parliament. But could it not be addressed by the VEC at all?

Mr van der CRAATS — No. It is a legislative requirement.

Ms CAMPBELL — Not at all?

Mr SCOTT — No, the legislation stipulates how the count should be conducted in such a way that would prevent the sort of remedy you are discussing.

Mr van der CRAATS — When I first wrote my previous submission I gave more thought to it, and I have become more and more convinced that an exhaustive reiterative count system would produce a better outcome overall because you are trying to stamp out the electorate into the number of positions that you want to elect. It has a lot of advantages. We are talking about the difference between, say, 5 minutes to calculate the results and what could be extended out to maybe 3 hours under computer-based technology. I think the system I am putting forward and advocating has a lot of merit to it, and it is certainly worth considering. If applicable to local government, it will certainly be perceived a lot more clearly — one transaction per candidate.

The CHAIR — What are the weaknesses in your system — time costs, accuracy?

Mr van der CRAATS — It is the difference between 5 to 10 minutes to 3 hours in the calculation; I think it is very minimal. There is no extra time in terms of collating the vote itself. The votes are all entered into the computer in exactly the same way. It is just the determination of how you go about calculating that proportionality. It must be based on the value of the vote. That is a principle that is hard and fast. The only reason we accepted it in the past was because it was a trade-off, as mentioned before. The scenario where this comes into play and produces a different overall outcome is 5 per cent, maybe less. But as the electorates get smaller and you do not have above-the-line and you do not have the same focus to the voting patterns, it does play a significant role.

I did an analysis based on some early City of Melbourne votes. I cannot remember what year it was — 2002 maybe. I played around with it and said, ‘What if we use this and this and what if we do that?’, and the outcome there would have changed. It is a matter of principle: one vote, one value. We are in a lucky position; we have computer technology. If had you asked me five, six or seven years ago which system I would prefer, I probably would have homed in a little bit on the current system we have. I would have certainly changed the segmentation rules and done all of that stuff, but now I reject it completely. I used to favour and advocate for, and I still do, a manual count; the proportional representation manual system of the last bundle distribution. But again, with the use of computer technology it is inappropriate and unnecessary. It creates distortions which are not warranted.

Mr SCOTT — Depending on the stage of the count when the votes are exercised.

Mr van der CRAATS — Exactly. If you happen to reach your surplus at a primary vote — Victoria does this differently to the Senate; we segment our primary votes a little bit — at the end of the vote your secondary primary votes can be significantly greater than your first primary vote, and if you happen to reach a point of surplus at that point, the distortion becomes quite significant, and this shows up in the distribution in the analysis I did based on the 2007 election on my hypothetical. The hypothetical, again, was only on the basis that we did get to distribute that third candidate from the Liberal Party.

In the local government election the order of elections will not be so clear cut. They will happen throughout the count process, and you will see that distortion occurring a lot more as it progresses. I think the very simple analysis that I did with a few hundred votes shows that taking place.

Mr SCOTT — One other issue: would you, as I know occurs in some elections, advocate — in order to remove a proportion of the distortion with remainders and others — votes being awarded a points amount above 1 to reduce some of that distortion?

Mr van der CRAATS — Yes. Whether it is above 1 or a fraction of 1, it is just a matter of placing the decimal point. I would definitely have a value on the vote. Each vote should have a value, and it is the value that should be proportioned out.

Mr SCOTT — And the value should be either a multiple of 1 or have a certain decimal point so you remove some of the distortion?

Mr van der CRAATS — Where you put the decimal point with a computerised system is irrelevant. If you have got double resolution, it does not matter. You are going to be so far down the track it is irrelevant.

Mr SCOTT — But you would accept, or you would contend, that the current system allows for a vote to exit the system at such a rate that can distort a close result?

Mr van der CRAATS — Without a doubt. Even the number of exhausted votes can creep up quite significantly. Under the reiterative counting system that I am advocating any vote that does exhaust — and the remainders obviously would stay with the candidate — would change the overall spread of the election. The quota would change slightly and so on. It takes it in automatically just by default, and it applies equally to a single-member electorate as it would to a multi-member electorate as well. I think it is a good system.

The CHAIR — Are there more questions?

Mr O'BRIEN — Is your system in operation in any state of Australia?

Mr van der CRAATS — My system? It is a question of who steps forward first. I am going to look closer at Western Australia now that you mention it. I am going to give a similar submission on the same points to the Australian Senate committee next month, and I am hoping that that committee will also look favourably on the proposals that I am putting forward. There are two main issues: change the surplus transfer value calculation and make it a value-based system as opposed to ballot-paper based; and get rid of the segmentation distortion. It is not necessary; it provides no advantage at all.

Ms BROAD — Anthony, I think you were about to give an example of how allocating points would work.

Mr van der CRAATS — I have given an example in my submission. Each ballot paper has a value of 1; you can multiply that if you want to, it does not matter. When you take the surplus down, it is reduced by the percentage depending on the value of the surplus. So a vote starts off at 1, it may end up down at 66 per cent, it may end up down at a third of the vote. By the time it reduces it is worth a fraction of its original value, but other primary votes from excluded candidates are still worth a full value of 1. You may have 80 000 votes at the value of 0.2, but you may also have 20 000 votes that have the value of 1. When you are carrying that distribution forward and making a further division you should be dividing them based on their value, not on the number of ballot papers. Do you understand what I am saying?

Ms BROAD — Yes. I have been involved in counting elections where that distinction is drawn.

Mr van der CRAATS — Contrary to the statement from the Victorian Electoral Commissioner I should point out, for the sake of the committee itself, that I have over 35 years of direct experience in elections. I have been a scrutineer, I have been a booth captain, I have been a candidate on many occasions, and I fully understand the electoral process — fully understand it — and I am very much aware of the little ins and outs of the process. I am a life member of the proportional representation society. I have raised this issue with my colleagues and members of the proportional representation society and they are very much aware of it, and many of them are quite supportive of addressing what they see as distortion in this count. Hopefully they will get around to putting a formal submission on this particular point. I would like to see it addressed. I think Victoria can become a leader in this sort

of electoral reform. I believe that once a system like the one I am advocating is adopted, Australia would be at the pinnacle of electoral systems.

Ms BROAD — More importantly, it would be fairer.

Mr van der CRAATS — Without a doubt. One vote, one value.

The CHAIR — No more questions? We will be seeing the commissioner at 3 o'clock, so we might put it to him.

Mr van der CRAATS — If we have time I would like to address a couple of other issues, if that is possible. Off the top of my head it is in respect to what I consider some false and misleading statements that are in your report. The commissioner made reference to the fact that the software that was currently in place at the Victorian Electoral Commission had been audited, or had been certified. If the committee takes time to examine that certification I think they will find that modules of the software have been certified; the overall system certainly has not been subject to any form of review.

This raises some concerns to me because obviously there were some major shortcomings in the last 2007 election. Unfortunately the committee did not address the concerns I raised in respect to Western Metropolitan. There are still some issues that I would like answered as to why the total number of votes had differed between count A and count B. We are not talking about, as was trying to be implied by the commissioner, that it was a matter of reallocating votes from above the line to below the line or reallocating to misplaced candidates. The total number of votes represents the number of formal votes plus the number of informal votes. At the close of the receipt of ballot papers there should be, ideally, no change in that number whatsoever, particularly no change between count A and count B.

There was significant change between count A and count B in Western Metropolitan. I do not know why. Information was not readily available. In fact it appears to me that the commission may have gone into bit of a cover-up mode to avoid that information being made public. I am particularly concerned that it took three months before the commission had to respond to an FOI application, and when it did respond it did not provide all the data in full. Information in the data relating to the primary count for Western Metropolitan was never made available. In fact recent correspondence forwarded to me by Mark Roberts indicates that the commissioner implies that this information was deleted.

I am an IT expert, that is my profession, and I find it very hard to believe and to comprehend that any person involved in a serious data entry IT exercise would delete information without making backup copies of some form. One would also think that the information recorded on the preliminary count would be cross-compared with the secondary count in order to determine where discrepancies and errors occur.

I would have liked to have seen this information made public. Had it been made public it would have allowed me to do an independent analysis as to the quality control of the counting process, because it would have shown up a little more accurately. I am not talking about the stupid mistakes that took place in Northern Metropolitan. That was a lack of due diligence on behalf of the electoral commission. Had it applied the rules that are required in the Local Government Act, that mistake would never have happened. The Local Government Act requires that prior to tabulating the results of the election the commission, or the electoral authority, must ensure the total number of votes received back equals the total number of votes in the system.

Ms CAMPBELL — Yes.

Mr van der CRAATS — That crosscheck did not take place. That indicates to me that the software itself has not taken into account the requirement to provide that double-checking which should have all been plugged into the system before they hit the 'Go' button. I think the committee needs to look further into this.

I know the City of Melbourne paid \$200 000 towards the cost and development of software, which I would have thought the Australian Electoral Commission already has in place, but for some reason the Victorian Electoral Commission wanted to redevelop it. That concerns me greatly because there are a number of issues there. I am concerned that either the commissioner has made a mistake in the evidence he has given to the committee or the statement that he made to Mr Mark Roberts, or the worst scenario is that it was a deliberate attempt to mislead.

Ms CAMPBELL — What would be the questions that you would want asked?

Mr van der CRAATS — I would ask for a copy of the data file for the primary count for the western and northern metropolitan regions.

Ms CAMPBELL — A copy of the — —

Mr van der CRAATS — Preference data files that were recorded. If, as the commissioner implies, this information was deleted then I would be asking serious questions as to why. I would be wanting to interview the IT manager and the Victorian Electoral Commission database administrator to find out what practices they have in place because it certainly would go against my understanding of any professional practice not to record preference data.

Ms CAMPBELL — Presumably they would keep all the ballot papers so that if it has been deleted it could be re-entered.

Mr van der CRAATS — I would not advocate doing a data entry process for the upper house in any shape or form. One assumes that as — —

Ms CAMPBELL — I took it that you were.

Mr van der CRAATS — No, I certainly am not. I believe a responsible IT department would be doing backups throughout the counting process, certainly at the conclusion of each counting process, and those backups would be maintained and secure. For the commission to imply that the Victorian Electoral Commission no longer maintains data files and that it has been deleted, I think was the correct word — —

Ms CAMPBELL — There is a sentence here that says

The VEC does not have the preliminary data. It is overwritten as part of the recount process.

I actually underlined that. Is that the sentence you are referring to?

Mr van der CRAATS — That is exactly the sentence I am referring to. I find that extraordinary for that sort of statement to take place. I also find it extraordinary that it took three months to have this information made available. Clearly the commissioner is looking for a prescription. He is not prepared necessarily to do anything that is not prescribed for him to do. I think that is a shame because obviously a fair bit of this whole process is maintaining open transparency and it is about doing the right thing.

I think it is important and fundamental that perhaps the legislation or regulations spell out clearly that this data file must be made available during the count and certainly at the conclusion of any data entry process. Without this data entry file I can assure you there is no way you can properly scrutinise an electronic computerised counting system. Having scrutineers watching the data entry process is nowhere near satisfactory. You need to have that data file so that it can independently be verified in whatever shape or form. Different analysis could be done across the data file to allow a scrutineer to specifically hone in on a particular ballot paper. I cannot stress enough the importance of this.

I note the committee also took a back-step on the idea of the Ombudsman having responsibility over the Victorian Electoral Commission. I understand part of that argument, but the Ombudsman is the delegate of the Parliament. The Ombudsman takes away that political bias that could be perceived if a parliamentary committee started to do close examinations of their operations. I think it is appropriate that the Ombudsman, particularly on administrative matters, has authority to investigate the Victorian Electoral Commission. It is a responsibility. You already have the privacy commissioner having some oversight view of the commission. You have the Auditor-General who has some oversight view.

Ms CAMPBELL — Can I cut in? The reason — the committee will speak for itself — is that there are a number of nominated independent officers of the Parliament, the Auditor-General being one, the Ombudsman being another, and the Victorian electoral commissioner being another. You are suggesting that an independent officer of the Parliament could administratively be subject to the Ombudsman. You are saying they are not — —

Mr van der CRAATS — From an administrative point of view, yes.

Ms CAMPBELL — The understanding of the Parliament is that they are officers of the Parliament.

Mr van der CRAATS — The Ombudsman's role, in my view, is different. The Ombudsman looks at potential complaints of operations of a department, be it a separate department of the Auditor-General.

Ms CAMPBELL — The Ombudsman does do that.

Mr van der CRAATS — But not the Victorian Electoral Commission.

Ms CAMPBELL — Nor the Auditor-General's office. The Auditor-General's office is subject to questioning from the Public Accounts and Estimates Committee, the Victorian electoral commissioner — —

Mr van der CRAATS — The privacy commissioner has some jurisdiction.

Ms CAMPBELL — But he or she is not an independent officer of the Parliament.

Mr van der CRAATS — I also understand that the Auditor-General has some control over the Victorian Electoral Commission. I will have to double-check that, I am not 100 per cent sure of that.

Mr SCOTT — Not control.

Mr van der CRAATS — No? Okay. I still believe there needs to be something. The Ombudsman does not have a judicial role. He has more of an investigative role and a reporting role and I think it would be appropriate that some degree, particularly over administrative matters, should apply.

Ms CAMPBELL — Could I just have something clarified? You made reference to the Local Government Act having a process of double-checking within the act. What would be your recommendation if you were writing our report on what should be the content of any legislative changes to ensure your worries are answered?

Mr van der CRAATS — It should certainly be standardised with the Local Government Act. The Local Government Act was correct. When you go to a returning officer if you have ever scrutinised — I know most of you have, if not all of you — you go to the polling place, the returning officer at the polling place is issued 1000 ballot papers and they hand out 800 of those. Six of those may be replacement papers for mistakes or whatever, but at the end of the day they come back and they account for those ballot papers. That forms part of their report. That information independently should also be part of the report provided on the night for the polling place returns, not just the allocation and distribution of the votes but also an indication as to how many ballot papers they issued and how many they got back. That way, you could add up that column separately to ascertain how many ballot papers had been issued. If the Victorian Electoral Commission satisfied my requests in terms of the number of postal votes that were issued, the number of postal votes that were returned, likewise absentee votes, pre-polling votes, prior to even the data entry process or prior to the close of receipt of postal votes, I should have known exactly how many ballot papers were out in the system and how many ballot papers are back in the system. That figure should tally up with whatever figure the computer says it has got. It is like a double-checking, a double accounting process, a trial balance. To what extent you have to prescribe this really depends on the professionalism of the Victorian electoral office. Sadly, we have to go back to bring them in line and to make them more accountable. The Local Government Act has this clause in it; unfortunately, the state act does not.

Ms CAMPBELL — You are recommending that a similar clause go in?

Mr van der CRAATS — Without a doubt, and ideally provide that information, the scrutiny information which the Australian Electoral Commission provides, to the public on the internet as and when the polling place returns are received. Inform the scrutineers, the party and the public clearly beforehand so they know how many ballot papers are in the system. Ballot papers seem to appear from nowhere and disappear nowhere. Even though you ask for this information beforehand, if you are not given it, you are left with this feeling and say, 'Hold on, what happened?'

Ms CAMPBELL — Just out of curiosity, you were talking about the western metro primary count — what was the figure that was the discrepancy?

Mr van der CRAATS — It is in my earlier report; I would have to bring it up — 500 to 600 votes between count A and count B. I did a comparison with the lower house vote. There was a discrepancy that occurred in the lower house vote as well. I acknowledge there are discrepancies, but I would like an explanation for them.

Ms CAMPBELL — Five hundred is a lot of votes.

Mr van der CRAATS — Particularly between count A and count B. We are not talking about a misallocation of those; we are talking about the overall total votes: the informal plus formal. They should never change ideally, unless there has been a mistake in the counting process, and if there has, I want to know where it is. I want to go back and look at the polling place returns to see what was issued and was received back.

I requested this information. I requested it on behalf of a number of members of Parliament whom I was providing the data service for, and the commission was unable to provide this information. When I was scrutinising and monitoring the Australian Senate there were some issues, but in all respects the Australian Electoral Commission did a far better job in terms of its reporting. I look for these figures, particularly when the results of count A and count B overall change. I am still at a loss as to where that change really occurred. I do not think the information in the report provided by the electoral commission is satisfactory. I am not saying that there was any wrongdoing; I just have not got enough information. It has not been transparent enough for me to make an informed decision or assessment. It is an issue of great concern.

Mr O'BRIEN — The commission will come up shortly. Perhaps Ms Broad can ask the final question.

Ms BROAD — One follow-up question on the matter of the data files that we were discussing earlier: do you have a view about who should have the capacity to interrogate those data files?

Mr van der CRAATS — Everyone and anyone. Ideally it should be available publicly online in real-time. There is no loss of secrecy of the ballot, which is an issue, by the way. One of the issues I raised in respect of a concern was reported in your report as being the issue of secrecy of the ballot; it was actually the security of the ballot, but I am digressing. I think it should be available to everybody. I do not see why you would want to restrict it. If you had to restrict it and there was a valid reason, it should certainly be available on request; it should certainly be available to scrutineers and party officials. I would make it public. Open and transparent elections are the best way to educate the community at large as to how the electoral process properly works — none of this smoke-and-mirrors, technocrat scenario behind closed doors, that, 'We are the only ones who knows what is going on'. Open the books.

The CHAIR — Thanks, Anthony, for your time.

Mr van der CRAATS — Thank you. I have the federal Senate next.

Witness withdrew.