



**PARLIAMENT OF VICTORIA**  
Electoral Matters Committee

**Inquiry into the conduct  
of the 2014 Victorian  
state election**

Parliament of Victoria  
**Electoral Matters Committee**

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# Committee functions

The Electoral Matters Committee is constituted under section 9A of the *Parliamentary Committees Act 2003*.

The committee's functions are to inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with:

- a. the conduct of parliamentary elections and referendums in Victoria;
- b. the conduct of elections of Councillors under the *Local Government Act 1989*; and
- c. the administration of, or practices associated with, the *Electoral Act 2002* and any other law relating to electoral matters.

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This report is also available online at the Committee's website.

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# Terms of reference

## Inquiry into the conduct of the 2014 Victorian state election

Received from the Legislative Assembly on 5 May 2015:

To the Electoral Matters Committee — for inquiry, consideration and report no later than 1 December 2015\* an inquiry into the conduct of the 2014 Victorian State Election.

*\* Reporting date subsequently amended on 6 October 2015 from 1 December 2015 to 30 April 2016.*



# Chair's foreword

I am pleased to present to the Victorian Parliament the Electoral Matters Committee's 'Inquiry into the conduct of the 2014 Victorian State election.' The Electoral Matters Committee receives a reference from the Government after every state election to enquire into the conduct of the previous election.

The Committee advertised its terms of reference and attempted to contact every party and independent candidate who contested the last state election, inviting comments about the manner in which the election was conducted. The Committee held public hearings at which some of those who wrote submissions were invited to give further evidence before the Committee. The Committee thanks those members of the public who made submissions and particularly thanks those who appeared before the Committee and assisted us in our determinations.

I also wish to thank the Deputy Chair of the Electoral Matters Committee, Ros Spence, and all other members of the committee – Martin Dixon, Russell Northe, Adem Somyurek, Lizzie Blandthorn and Fiona Patten. I also wish to thank the previous Deputy Chair of the Committee, Philip Dalidakis, for his work on the Committee prior to his promotion to the Ministry. I particularly want to thank the Deputy Chair and the Labor Party for providing a pair during Committee deliberations, given one of the Committee members was unable to attend due to tragic personal circumstances. Whilst there is a strong tradition of providing pairs in the Parliament itself, such a tradition does not exist in Parliamentary committees. Therefore, I wish to express my gratitude for the provision of this pair.

The Victorian Electoral Commission has an excellent record in running Victorian State elections. The 2014 State election was extremely well run and the Victorian Electoral Commission needs to be acknowledged and commended for that work. However, there is always room for improvement and this report suggests a number of areas where this could occur.

The Victorian Electoral Commission has suggested a number of improvements to its operation and the Committee has largely supported those recommendations. However, there are additional areas where the Committee feels that the conduct of the 2014 election could have been improved. Many members of the public complained about queueing, particularly at pre-poll centres. This election saw the continued growth in the numbers of people who prefer to vote prior to election day and, whilst this was anticipated, there were many occasions where people were forced to queue for some considerable time prior to casting their vote. The Committee heard from those with disabilities who experienced a range of problems in casting a vote. Accordingly, the Committee has made a number of suggestions in this area. The Committee has also made recommendations to make postal voting easier, bearing in mind the changing nature of the service that is now provided by Australia Post. The Committee has also recommended

that, given the large amount of pre-poll voting, that these votes, where cast in an elector's 'Home' electorate, be counted on the night. There is an expectation from the public that an election result should be available on election night. The fact that significant numbers of pre-poll votes are not counted on the night is not consistent with these expectations. In the event that a future election result was extremely close, it is also undesirable for the State of Victoria to be in limbo, without a government, while votes in these centres remain uncounted on the Saturday night.

There were a number of submissions that were presented to the Committee that discussed the behaviour of people outside voting centres. Whilst politics and Parliamentary elections are robust and vigorous contests, a number of people complained about the use of firefighters' uniforms and firefighting equipment, and others complained about intimidatory behaviour outside polling booths. The committee found that there had been behaviour that was intimidatory to volunteers and party workers outside polling booths.

In this report the Committee has included a chart which follows up recommendations from the previous Committee's report into the 2010 election. We believe that this chart is useful because it provides continuity between the current and previous committees' work.

I also want to thank the staff of the Electoral Matters Committee. Mark Roberts, the Executive Officer, Nathaniel Reader, Research Officer and Bernadette Pendergast and Maria Marasco, the administrative officers, all worked extremely hard to support the Committee members to produce, what we hope, is a useful series of recommendations that will be acceptable to the Government in setting the parameters for the 2018 Victorian State election.



**Hon Louise Asher MP**  
**Chair**

18 April 2016

# Abbreviations

<b>ABS</b>	Australian Bureau of Statistics
<b>AEC</b>	Australian Electoral Commission
<b>ALP</b>	Australian Labor Party
<b>ATL</b>	above-the-line
<b>BTL</b>	below-the-line
<b>CALD</b>	culturally and linguistically diverse
<b>CFA</b>	Country Fire Authority
<b>DLP</b>	Democratic Labor Party
<b>EBC</b>	Electoral Boundaries Commission
<b>ECCV</b>	Ethnic Communities Council of Victoria
<b>IDEA</b>	Institute for Democracy and Electoral Assistance
<b>JSCEM</b>	Joint Standing Committee on Electoral Matters
<b>LDP</b>	Liberal Democratic Party
<b>NSW</b>	New South Wales
<b>PR</b>	proportional representation
<b>PRSA</b>	Proportional Representation Society of Victoria and Tasmania
<b>STV</b>	single-transferrable vote
<b>UFU</b>	United Firefighters Union
<b>VILJ</b>	Vote 1 Local Jobs
<b>VAGO</b>	Victorian Auditor-General's Office
<b>VEC</b>	Victorian Electoral Commission
<b>VGSO</b>	Victorian Government Solicitor's Office



# Findings and Recommendations

## 2 Background to the 2014 Victorian state election

**RECOMMENDATION 1:** The committee recommends the VEC continue its informal ballot surveys at future Victorian state elections, using the information to develop targeted community education programs regarding formal voting and Victoria’s electoral system, focusing in particular on Districts with high levels of informal voting. The VEC should document these programs in its annual report. . . . . 19

## 3 Early voting at the 2014 Victorian state election

**FINDING 1:** The committee supports a minimum of an eleven day early voting period at Victorian state elections. . . . . 35

**RECOMMENDATION 2:** The committee recommends that s63 of the *Electoral Act 2002* (Vic) be amended to specify that the maximum allowable period for early voting at a Victorian by-election be two weeks. . . . . 37

**RECOMMENDATION 3:** The committee recommends the *Electoral Act 2002* (Vic) be amended so that all early votes cast in an elector’s ‘Home’ District are counted on Election Night. The VEC should also amend its annual reporting processes to include a performance target that all early votes cast in an elector’s ‘Home’ District are counted on Election Night. To facilitate this, the *Electoral Act 2002* (Vic) should be amended so that early votes are treated as ordinary votes for the purposes of vote counting at Victorian state elections. . . . . 41

**RECOMMENDATION 4:** The committee recommends that s99 of the *Electoral Act 2002* (Vic) be amended so that early voting commences on the Monday after the final nomination day. . . . . 43

**FINDING 2:** The committee encourages the VEC to locate early voting centres in appropriate, accessible and visible locations. Further, all voting centres should be located near population centres and have access to public transport. The VEC should also utilise public buildings, such as libraries, where appropriate. . . . . 44

**RECOMMENDATION 5:** The committee recommends the VEC appoint queue controllers at all Victorian voting centres experiencing high demand. . . . . 45

**RECOMMENDATION 6:** The committee recommends the VEC establish a performance target for queueing at all Victorian voting centres which reduces queueing times encountered at the 2014 Victorian state election. This target should be incorporated into the VEC’s election planning and be used to benchmark the efficiency of voting centres as part of the VEC’s annual reporting. . . . 45

**RECOMMENDATION 7:** The committee recommends the *Electoral Act 2002 (Vic)* be amended so that an application for a postal vote can be applied for by electronic means, contingent on the VEC providing registered Victorian political parties with a data file containing the details of electors who have applied for a postal vote. . . . . 50

**RECOMMENDATION 8:** The committee recommends the *Electoral Act 2002 (Vic)* be amended so that an authorised witness, witnessing a written postal vote application, is not required to add their title or capacity in respect of which the authorised witness acts. . . . . 50

**RECOMMENDATION 9:** The committee recommends the *Electoral Act 2002 (Vic)* be amended to allow election officials to inspect the witness date for returned postal vote declarations postmarked the Sunday or Monday immediately after Election Day, to determine if the vote is to be accepted. . . . . 51

**FINDING 3:** The committee supports the continued role of registered political parties in the postal voting process for Victorian elections. . . . . 53

## 4 Methods of voting for the Legislative Council and Legislative Assembly

**RECOMMENDATION 10:** The committee recommends the *Electoral Act 2002 (Vic)* and the *Electoral Regulations 2012 (Vic)* be amended so that prospective registered political parties meet the statutory requirements for membership 60 days before a Victorian state election. . . . . 87

## 5 Community engagement with electoral processes

**RECOMMENDATION 11:** The committee recommends the VEC conduct ongoing, targeted engagement strategies and programs focusing on Victorian communities that experience barriers to electoral participation. The VEC should ensure that these programs are funded appropriately and reported on as part of the VEC’s annual reporting. . . . . 109

**RECOMMENDATION 12:** The committee recommends the VEC continue to secure as many accessible Election Day voting centres and early voting centres as possible for Victorian state elections. . . . . 112

**RECOMMENDATION 13:** The committee recommends the VEC amend its guidelines relating to selection of accessible voting centres to include consideration of proximity to public transport and population areas. . . . . 112

**RECOMMENDATION 14:** The committee recommends the VEC amend its Election Manager training procedures so that electoral officials provide prioritised access to voting centres for elderly electors, electors with disabilities and anyone who in the opinion of the electoral official requires assistance. . . . . 112



**FINDING 4:** The committee encourages the VEC to re-establish accessibility ‘supercentres’ at the 2018 Victorian state election after collaborating with Vision Australia and advocacy groups to determine the most appropriate locations. . . . . 113

**RECOMMENDATION 15:** The committee recommends the VEC provide electoral information from political parties on its website, consistent with guidelines already used by the VEC for providing information in accessible formats. . . . . 114

**RECOMMENDATION 16:** The committee recommends the VEC work with the ECCV and its CALD Advisory Group to cross-promote the Australian Government’s Democracy Week initiative and the VEC’s Passport to Democracy program. . . . . 115

**FINDING 5:** The committee encourages the VEC’s Electoral Advisory Group to continue developing opportunities to improve access to electoral services for Victorians living in residential care. . . . . 116

**RECOMMENDATION 17:** The committee recommends the VEC establish Democracy Live at future Victorian state elections, as a space for Victorians to congregate to view election results and celebrate Victoria’s democracy. . . . . 117

## 6 Political campaigning at the 2014 Victorian state election

**RECOMMENDATION 18:** The committee recommends the *Electoral Act 2002 (Vic)* be amended so that how-to-vote cards at joint voting centres need only carry a single authorisation message consistent with requirements in the *Commonwealth Electoral Act 1918 (Cwth)*. . . . . 139

**RECOMMENDATION 19:** The committee recommends that the Public Sector Code of Conduct be amended to prohibit public sector workers using government property, such as ambulances, fire trucks and uniforms for political purposes and in election campaigns and that penalties be developed for a breach of this type. . . . 145

**FINDING 6:** The committee finds that intimidation of volunteers and party workers occurred at the 2014 Victorian state election. . . . . 152

**RECOMMENDATION 20:** The committee recommends the VEC enhance training for employees joining the Senior Election Official pool, emphasising an Election Manager’s responsibility under s174 of the *Electoral Act 2002 (Vic)* to maintain order and peace at voting centres. This training should also acknowledge the remedies and actions available to Election Managers when incidences of intimidation, bullying and threats occur at voting centres. . . . . 152

**RECOMMENDATION 21:** The committee recommends the VEC more widely distribute its how-to-vote card protocol, including displaying the protocol in a prominent location on its website. This will encourage greater awareness in the community of acceptable standards of behaviour at voting centres. . . . . 153

**RECOMMENDATION 22:** The committee recommends the VEC provide additional training for political parties and independent candidates regarding the VEC’s how-to-vote card protocol. .... 153

**RECOMMENDATION 23:** The committee recommends the *Electoral Act 2002 (Vic)* be amended to require independent candidates to lodge a statement of election return with the VEC within 60 days after the election, with the return noting the sources of funding received during the appropriate election campaign..... 156

# Review of recommendations from the inquiry into the conduct of the 2010 Victorian state election

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<b>RECOMMENDATION 3.1:</b> The Committee recommends the Victorian Government amend Section 23A(2) of the <i>Electoral Act 2002</i> (Vic) to allow data obtained by the Victorian Electoral Commission as part of the AEC/VEC joint enrolment process to be used for automatic enrolment purposes	The then Victorian government supported this provision. Provision was included in s5 of the <i>Justice Legislation Amendment Act 2013</i> (Vic) – Act No 31/2013.
<b>RECOMMENDATION 3.2:</b> The Committee recommends the Victorian Government amend the <i>Electoral Act 2002</i> (Vic) so that the close of roll occurs three days after the issue of the writ.	<p>The then Victorian government supported this provision. Provision was included in the defeated <i>Electoral Amendment Bill 2014</i> (Vic) in the 57<sup>th</sup> Parliament.</p> <p>During this inquiry, the VEC recommended changes to the close of roll provisions as part of its report to Parliament on the 2014 Victorian state election.</p> <p>This matter is addressed in Chapter Three of this report.</p>
<b>RECOMMENDATION 4.1:</b> The Committee recommends the Victorian Government amend the electoral regulations to include the Victorian Proof of Age card as a prescribed proof of identity document for provisional voting.	<p>The then Victorian government supported this administrative amendment.</p> <p>This provision was included in the <i>Electoral Regulations 2012</i> (Vic).</p>
<b>RECOMMENDATION 4.2:</b> The VEC works with the Committee to explore a simpler method for electors to apply for a postal vote application, including an online option, provided the application is underpinned by sufficient verification processes.	<p>The then Victorian government supported this provision. Provision was included in the defeated <i>Electoral Amendment Bill 2014</i> (Vic).</p> <p>During this inquiry, the VEC recommended an online postal voting application process as part of its report to Parliament on the 2014 Victorian state election.</p> <p>This matter, and others connected to postal voting, are addressed in Chapter Three of this report.</p>
<b>RECOMMENDATION 4.3:</b> The Committee recommends the Victorian Government amend Section 99(1) of the <i>Electoral Act 2002</i> (Vic) so that early voting commences on the Monday after nominations close.	<p>The then Victorian government supported this provision. Provision included in the defeated <i>Electoral Amendment Bill 2014</i> (Vic).</p> <p>During this inquiry, the VEC recommended changes to the commencement of early voting as part of its report to Parliament on the 2014 Victorian state election.</p> <p>These matters are addressed in Chapter Three of this report.</p>
<b>RECOMMENDATION 4.4:</b> The Committee recommends the VEC amend its website and printed material to show more prominently the criteria for early voting in person at Victorian elections, and include this material in their quality assurance practices and training. The Committee encourages the VEC to examine the New South Wales Electoral Commission website for an example of good practice.	In 2014 the VEC amended its website to show the criteria for early voting more prominently – in practice, there is no criteria, just the oral declaration process, as discussed in Chapter Three.

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<p><b>RECOMMENDATION 4.5:</b> The Committee recommends the VEC undertake detailed research into early voting at future Victorian state elections, including statistics relating to the demographics of those casting an early vote in person, and statistics about the number of electors who attempted to vote early but were prevented from casting an early vote in person because they did not meet the criteria.</p> <p>The Committee also encourages the VEC to establish working relationships with academic institutions specialising in early voting.</p>	<p>In correspondence with the then committee in mid-2013 the VEC committed to continuing research into early voting.</p> <p>During 2014 and 2015 the VEC supported Nathaniel Reader's research into early voting as part of his PhD at the Swinburne Institute of Technology. They provided data and the Electoral Commissioner and Deputy Electoral Commissioner participated in interviews as part of the qualitative phase of Mr Reader's project.</p> <p>The VEC has also participated in various Electoral Regulation Research Network, University of Melbourne, events since 2013, discussing early voting and issues related to convenience voting.</p>
<p><b>RECOMMENDATION 6.1:</b> The Committee supports an electronic voting trial at the 2012 Victorian local government elections provided the VEC ensures electors are able to access a voter verifiable record of their vote prior to it being lodged.</p>	<p>The Victorian government did not support an electronic voting trial at the 2012 local government elections, given there was at the time a pending review of local government electoral systems conducted by the Department of Planning and Community Development.</p> <p>During this inquiry, the VEC again recommended expanding the franchise for electronic voting in Victoria, focusing this time on remote voting.</p> <p>As noted in Chapter Three, issues relating to electronic voting have been deferred to the committee's inquiry into electronic voting, which is due to be tabled in Parliament in April 2017.</p>
<p><b>RECOMMENDATION 8.1:</b> The Committee recommends the VEC work with the Victorian Government to amend Section 114A(28)(c) of the <i>Electoral Act 2002 (Vic)</i> to ensure consistency with the <i>Commonwealth Electoral Act 1918 (Cwth)</i> and the <i>Local Government Act 1989 (Vic)</i>.</p>	<p>This provision was contained in the defeated <i>Electoral Amendment Bill 2014 (Vic)</i>. It relates to the way surplus values are treated in Legislative Council election counts. For each candidate elected with a surplus to the quota, commencing with the candidate elected first, a transfer value is calculated for all his or her ballot papers.</p> <p>During this inquiry, the VEC again recommended this amendment as part of its report to Parliament on the 2014 Victorian state election.</p> <p>This matter is raised in Chapter Four of this report, as it relates to the current system used to determine the transfer value of surplus votes for the Legislative Council.</p>
<p><b>RECOMMENDATION 8.2:</b> The Committee recommends the Victorian Government amend the <i>Electoral Act 2002 (Vic)</i> so that if the writ for a by-election is to be issued within 58 days of the date of a general election, the option not to conduct the by-election should be considered and the general election used to fill the vacancy.</p>	<p>This provision was contained in the defeated <i>Electoral Amendment Bill 2014 (Vic)</i>.</p> <p>During this inquiry, the VEC did not raise this issue in its report to Parliament on the 2014 Victorian state election. The committee did not receive evidence from inquiry participants.</p> <p>However, the committee affirms the measure as outlined in recommendation 8.2 in the then committee's report on the 2010 Victorian state election. The committee encourages the Victorian government to pursue amendments to the <i>Electoral Act 2002 (Vic)</i> to enact this recommendation.</p>

## 1.1 Terms of reference

On 5 May 2015, pursuant to s33 of the *Parliamentary Committees Act 2003* (Vic), the Electoral Matters Committee received terms of reference from the Legislative Assembly to inquire into the conduct of the 2014 Victorian state election.<sup>1</sup>

The committee's original reporting date was 1 December 2015. However, on 6 October 2015 the date was amended by the Legislative Assembly to no later than 30 April 2016.<sup>2</sup>

## 1.2 Responsibilities of the Electoral Matters Committee

The Electoral Matters Committee is a joint investigatory committee of the Parliament of Victoria. The committee comprises seven Members of Parliament drawn from the Legislative Assembly and Legislative Council.

While some committees have ongoing functions to scrutinise legislation and finances, the Electoral Matters Committee almost exclusively conducts inquiries based on a reference from either House of Parliament. The powers and responsibilities of the committee are determined by the *Parliamentary Committees Act 2003* (Vic). The committee's functions, as defined by s9A, are, "if so required or permitted under this Act, to inquire into, consider and report to Parliament on any proposal, matter or thing concerned with–

- The conduct of parliamentary elections and referendums in Victoria;
- The conduct of elections of Councillors under the *Local Government Act 1989* (Vic); and
- The administration of, or practices associated with, the *Electoral Act 2002* (Vic) and any other law relating to electoral matters".<sup>3</sup>

## 1.3 The Electoral Matters Committee's previous inquiries

This inquiry is the third consecutive inquiry into a Victorian state election by the Parliament's Electoral Matters Committee. In the 56<sup>th</sup> Parliament the then committee inquired into the 2006 Victorian state election; at the time of that

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1 Parliament of Victoria, Electoral Matters Committee, Inquiry into 2014 Victorian state election, "Terms of reference", 5 May 2015.

2 Parliament of Victoria, Electoral Matters Committee, Inquiry into 2014 Victorian state election, "Terms of reference", 5 May 2015.

3 *Parliamentary Committees Act 2003* (Vic) s9A. Retrieved 27 January 2016 from [www.austlii.edu.au/au/legis/vic/consol\\_act/pca2003273/s9a.html](http://www.austlii.edu.au/au/legis/vic/consol_act/pca2003273/s9a.html).

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inquiry the committee's terms of reference were amended so that it could inquire into the 2007 Williamstown District and Albert Park District by-elections.<sup>4</sup> In the 57<sup>th</sup> Parliament the then committee also inquired into the 2010 Victorian state election, and considered matters arising from the 2011 Broadmeadows District by-election and the 2012 Niddrie District by-election.

Inquiries into general elections play a key role in Australia's electoral governance framework. They provide opportunities for members of Parliament to scrutinise how elections are run. Importantly, they also allow the public, people with expertise in elections and electoral systems and other organisations interested in Australia's electoral administration and electoral participation, to contribute to a public review of elections. As noted by Kelly, public review of elections is a central facet of good international electoral governance as determined by the United Nations Development Program and UN observer organisation the International Institute for Democracy and Electoral Assistance (IDEA).<sup>5</sup>

Alongside its inquiries into state elections, the Electoral Matters Committee has completed other inquiries into electoral issues in Victoria. The committee has inquired into:

- The impact of social media on Victorian elections and Victoria's electoral administration (discussion paper issued in September 2014);
- The future of Victoria's electoral administration (inquiry completed in March 2014);
- The conduct of the 2010 Victorian state election (inquiry completed in May 2012);
- The functions and administration of voting centres (inquiry completed in June 2010);
- Misleading or deceptive electoral advertising (inquiry completed in March 2010);
- Voter participation and informal voting (inquiry completed in July 2009);
- Political donations and disclosure (inquiry completed in May 2009); and
- The conduct of the 2006 Victorian state election (inquiry completed in June 2008).<sup>6</sup>

## 1.4 Inquiry process

After receiving the terms of reference for this inquiry in May 2015, the committee commenced secondary research, including analysis of electoral data from the VEC's Virtual Tally Room and desktop review of the political science literature

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4 Parliament of Victoria, Electoral Matters Committee, Inquiry into 2006 Victorian state election, "Terms of reference".

5 Kelly, N. (2012), *Directions in Australian Electoral Reform: Professional and Partisanship in Electoral Management*, Australian University E-Press, Canberra, p.24, p.29.

6 Parliament of Victoria, Electoral Matters Committee, "Inquiries".

on Australian electoral participation. In mid-2015 the committee also reviewed the Parliament of Australia's Joint Standing Committee on Electoral Matters' (JSCEM) final report into the conduct of the 2013 federal election.<sup>7</sup> Amongst other matters, the report addressed the loss of 1,370 ballot papers which ultimately led to the April 2014 Western Australian Senate re-election.

All Victorian parliamentary joint investigatory committees advertise their terms of reference and invite submissions from the general public and other interested parties. For this purpose, the Electoral Matters Committee secretariat maintains a comprehensive database of approximately 300 stakeholders. The database includes:

- Electoral commissions, including Australia's nine electoral commissions;
- Australia's three other dedicated parliamentary electoral matters committees (the Parliament of Australia's JSCEM, the New South Wales (NSW) Parliament's JSCEM and the Parliament of South Australia's Standing Committee on Electoral Matters);
- Psephologists, or people who study elections and electoral processes;
- Academics at Australian and international universities who have an interest in electoral administration, including the Electoral Regulation Research Network, University of Melbourne;
- Australia's political parties, including the parties which contested the 2014 Victorian state election;
- Community and advocacy and representative organisations representing a social group experiencing barriers to electoral participation (such as Vision Australia, which represents people who are blind or have low vision); and
- Members of the public with an interest in electoral administration and how Victorian elections are run.

The committee wrote to its stakeholders in late May 2015, requesting submissions and their participation in the inquiry. The committee distributed a press release on 28 May 2015 accompanying the call for submissions.<sup>8</sup>

Given a 26 percent increase in the number of candidates contesting the 2014 Victorian state election compared to the 2010 Victorian state election, the committee wrote to every independent candidate who contested the 2014 Victorian state election.<sup>9</sup> The committee contacted 108 individuals who stood for election in either a Legislative Assembly District or Legislative Council Region.

7 Parliament of Australia, Joint Standing Committee on Electoral Matters, "The 2013 Federal Election: Report on the conduct of the 2013 election and matters related thereto", Parliament of Australia, Canberra, April 2015.

8 Parliament of Victoria, Electoral Matters Committee, Inquiry into the 2014 Victorian state election, "Media".

9 Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.13.

Like all Victorian joint investigatory committees the committee also placed a call for submissions in print media. The committee advertised in *The Age* and the *Herald Sun* newspapers on 30 May 2015. While the deadline for submissions was 8 July 2015, the committee accepted some submissions after the due date by consensus.

### 1.4.1 Submissions

The committee received 57 written submissions, the highest number of submissions ever received for any inquiry conducted by a Victorian parliamentary Electoral Matters Committee. A complete list of those who provided written submissions, ordered by name and date, is contained in Appendix One.

Submissions addressed a wide range of issues relating to the conduct of the 2014 Victorian state election, and Victoria's electoral administration generally. Some of the major themes included:

- The rate of early voting in person (pre-poll voting) at the 2014 Victorian state election, how early voting in person is administered by the VEC and the provisions for early voting in the *Electoral Act 2002* (Vic);
- Evidence about political campaigning at the 2014 Victorian state election, including evidence concerning conduct at certain polling places;
- Methods and mechanisms to reform the way the Legislative Assembly and Legislative Council are elected;
- Electronic voting, including discussion about NSW's iVote remote voting system;
- Evidence about how particular members of the Victorian community engage with electoral processes and participate in elections, including evidence from organisations representing Victorians and individuals who, are blind or have low vision, come from culturally and linguistically diverse (CALD) communities, and Victorians with a physical or intellectual disability; and
- Evidence about Victoria's electoral administration, including the Victorian Auditor-General's performance audit of the VEC.

The committee wishes to thank those organisations and individuals who made a submission to the inquiry.

### Victorian Electoral Commission

The VEC is an independent and impartial statutory authority established under the *Electoral Act 2002* (Vic). The VEC conducts Victorian state elections, local council elections, certain statutory elections and polls, and commercial and community elections.<sup>10</sup> The VEC also conducts boundary reviews, maintains the

<sup>10</sup> Victorian Electoral Commission, "About", Victorian Electoral Commission, Melbourne, 2015. Retrieved 28 January 2016 from [www.vec.vic.gov.au/About/Default.html](http://www.vec.vic.gov.au/About/Default.html).



Victorian electoral enrolment register, conducts electoral research and provides education services. Its core mission is to engage all Victorians who are entitled to vote in the democratic process.<sup>11</sup>

The VEC's work is guided by three legislative instruments:

- *Electoral Act 2002* (Vic);
- *Constitution Act 1975* (Vic); and
- *Electoral Boundaries Commission Act 1982* (Vic).

The VEC provided a detailed submission to the inquiry, in the form of a document which was largely drawn from the VEC's report to Parliament on the 2014 Victorian state election. Section 8 of the *Electoral Act 2002* (Vic) requires the VEC to table a report in Parliament after every state election. The VEC's final report on the 2014 Victorian state election was tabled in Parliament in September 2015. The report is available from the VEC's website at [www.vec.vic.gov.au](http://www.vec.vic.gov.au).

The committee thanks the VEC for its submission. The committee acknowledges the VEC's efforts to 'fasttrack' its submission so that the committee could consider important statistics and trends during the early stages of this inquiry.

## 1.4.2 Public hearings

Public hearings are an important part of the joint investigatory committee inquiry process. Organisations and individuals are invited to appear before the committee in person to elaborate on their written submission and clarify, or add, additional evidence.

For this inquiry the committee held two rounds of public hearings.

The first hearings were held on Tuesday 11 August and Wednesday 12 August 2015 at 55 St Andrews Place, East Melbourne. On Tuesday 11 August 2015 the committee heard from 10 organisations and individuals. Warwick Gately AM, Victorian Electoral Commissioner, and Liz Williams, Deputy Electoral Commissioner, appeared before the committee at this hearing. On Wednesday 12 August 2015 the committee heard from eight organisations. Appendix Two lists all attendees at the August 2015 public hearings.

The committee scheduled two additional public hearings on Monday 14 September 2015 and Monday 5 October 2015 at 55 St Andrews Place, East Melbourne. Appendix Two lists all attendees at the September and October 2015 public hearings.

The committee wishes to thank those organisations and individuals who appeared at the public hearings.

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<sup>11</sup> Victorian Electoral Commission, "About", Victorian Electoral Commission, Melbourne, 2015. Retrieved 28 January 2016 from [www.vec.vic.gov.au/About/Default.html](http://www.vec.vic.gov.au/About/Default.html).

### 1.4.3 Briefings

A joint investigatory committee may schedule briefings during the inquiry process so that it can explore particular subjects in greater detail or seek expert evidence from stakeholders. Table 1.1 lists the briefings the committee received during this inquiry.

**Table 1.1 Inquiry into the 2014 Victorian state election – list of briefings**

Organisation	Date and venue of briefing	Subject of briefing
Victorian Electoral Commission Electoral Commissioner, Mr Warwick Gately AM Deputy Electoral Commissioner, Ms Liz Williams	22 June 2015 55 St Andrews Place, East Melbourne	Overview of the 2014 Victorian state election. Discussion of the VEC's service plan for the 2016 Victorian local government elections.
Victorian Auditor-General's office (VAGO) Deputy Auditor-General, Dr Peter Frost Audit Manager, Ms Caitlin Makin	17 August 2015 55 St Andrews Place, East Melbourne	Overview of VAGO's performance audit of the VEC.
NSW Electoral Commission Director of IT and Chief Information Officer, Mr Ian Brightwell	23 November 2015 55 St Andrews Place, East Melbourne	Briefing on NSW's "iVote" remote voting system as used for the 2015 NSW state election.

### 1.4.4 Site visits

Many of the committee's stakeholders are located outside Victoria. During this inquiry the committee travelled to Sydney, Brisbane, Adelaide and New Zealand to support its investigations. Table 1.2 lists the dates of each visit. Appendix Three provides a detailed list of the individuals the committee met during these visits.

**Table 1.2 Inquiry into the 2014 Victorian state election – site visits**

Location	Date of visit	Organisations met with
Sydney, New South Wales	24 August 2015	NSW Electoral Commission NSW Parliament – Joint Standing Committee on Electoral Matters
Brisbane, Queensland	25 August 2015	Queensland Electoral Commission Dr Graeme Orr, Professor of Law, University of Queensland Parliament of Queensland – Legal Affairs and Community Safety Committee Hon Peter Wellington MP, Speaker, Parliament of Queensland
Adelaide, South Australia	21 September 2015	South Australian Electoral Commission Dr Jenni Newton-Farrelly, Electoral Specialist, South Australian Parliament Library Hon Michael Atkinson MP, Speaker, Hon Russell Worley MLC, President, Parliament of South Australia

Location	Date of visit	Organisations met with
Wellington, New Zealand	29 February to 2 March 2016	NZ Electoral Commission and Electoral Enrolment Centre Local Government New Zealand and Wellington City Council Australian High Commission New Zealand National Party New Zealand Parliament's Justice and Electoral Committee New Zealand Labour Party Transparency International New Zealand Election Study

## 1.5 By-elections

In Victoria a by-election is an election for a single District of the Legislative Assembly. A by-election is held when a Member's seat becomes vacant due to resignation, death or another reason.

Since the 2014 Victorian state election there have been three Victorian by-elections.

The Gippsland South District by-election was held on 14 March 2015 and was triggered by the resignation of former Nationals leader the Hon Peter Ryan MP. The seat was retained by The Nationals Victoria.<sup>12</sup>

The Polwarth District and South-West Coast District by-elections were held concurrently on 31 October 2015. They were triggered by the resignations of the Hon Terry Mulder MP and former Premier the Hon Denis Napthine MP respectively. Both seats were retained by the Liberal Party.<sup>13</sup>

The committee considered matters arising from these three by-elections as part of its investigations for this inquiry. As is discussed in Chapter Two, the committee's decision follows interest in the length of the early voting period for the Polwarth District and South-West Coast District by-elections; early voting was available for four-weeks for both elections. Early voting is normally available over a two-week period at Victorian elections and by-elections.

## 1.6 Data analysis

The findings and recommendations in this report are based on the primary evidence – submissions, hearings transcripts and related documents – the committee received during the inquiry. The committee also considered findings from the Electoral Matters Committee in the 56<sup>th</sup> and 57<sup>th</sup> Parliaments.

<sup>12</sup> Victorian Electoral Commission, "Gippsland South District By-Election 2015", Victorian Electoral Commission, Melbourne, 2015. Retrieved 28 January 2016 from [www.vec.vic.gov.au/Results/State2015/GippslandSouthDistrict.html](http://www.vec.vic.gov.au/Results/State2015/GippslandSouthDistrict.html).

<sup>13</sup> Victorian Electoral Commission, "State District By-Elections 2015: Polwarth District", Victorian Electoral Commission, 2015. Retrieved 28 January from [www.vec.vic.gov.au/Results/State2015/PolwarthDistrict.html](http://www.vec.vic.gov.au/Results/State2015/PolwarthDistrict.html).

Where appropriate, the committee secretariat prepares qualitative research to support the committee's investigations.

## 1.7 Report outline

This report is organised into seven chapters, including this Introduction.

**Chapter Two:** Background to the 2014 Victorian state election.

**Chapter Three:** Early voting at the 2014 Victorian state election

**Chapter Four:** Methods of voting for the Legislative Council and the Legislative Assembly.

**Chapter Five:** Community engagement with electoral processes.

**Chapter Six:** Political campaigning at the 2014 Victorian state election.

**Chapter Seven:** Evaluation of the 2014 Victorian state election's electoral administration, and the Victorian Electoral Commission.

# Background to the 2014 Victorian state election

## AT A GLANCE

- The Victorian state election was held on Saturday, 29 November 2014. The election was won by the Australian Labor Party, led by the Hon Daniel Andrews MP.
- The 2014 Victorian state election occurred following the 2012/2013 redivision of Victoria's electoral boundaries. Fifteen Legislative Assembly Districts were abolished and replaced with 15 new Districts.
- Voter turnout has remained relatively stable at Victorian elections since 1999. Voter turnout at the 2014 Victorian state election was 93.02 percent, a slight increase on the 2010 Victorian state election.
- The rate of informal voting for the Legislative Assembly of 5.22 percent at the 2014 Victorian state election was the highest ever recorded.
- In 2014-2015, 94.76 percent of eligible Victorians were enrolled to vote. This is around one percent higher than the federal average.
- Nine hundred and twelve thousand Victorians voted early in person at the 2014 Victorian state election, representing 26 percent of all votes cast, an increase of 67 percent compared to the 2010 Victorian state election.

Victorians went to the polls on 29 November 2014 to elect a new Parliament. The Australian Labor Party won 47 seats in the Legislative Assembly and formed government, having been sworn in on 4 December 2015, five days after Election Day. The Liberal Party won 30 seats in the Legislative Assembly, The Nationals Victoria eight seats, the Australian Greens two seats, and an independent candidate won in Shepparton District.

This chapter backgrounds the committee's inquiry, providing important information about Victoria's electoral system and electoral processes. It summarises the timeline for the 2014 Victorian state election, legislative changes prior to the 2014 Victorian state election and briefly describes Victoria's electoral system. The chapter also mentions the 2012-2013 redivision of Victoria's electoral boundaries. It then discusses trends in Victorian electoral participation using data from the 2014 Victorian state election and the three Victorian by-elections since the beginning of 2015, focusing on voter turnout, informal voting and electoral enrolment.

## 2.1 Election summary

### 2.1.1 Date and fixed terms

The Victorian state election was held on Saturday, 29 November 2014. It was the third state election to occur following substantial reforms to Victoria's electoral system through amendments to the *Constitution (Parliamentary Reform) Act 2003* (Vic). These reforms included:

- Changes to the method by which the Legislative Council was elected, including the introduction of proportional representation;
- The re-drafting of electoral boundaries for the Legislative Council and the introduction of a new ballot paper;
- The establishment of fixed terms for the Parliament of Victoria;
- A reduction in the number of Legislative Councillors from 44 to 40; and
- A new process for filling casual vacancies in the Legislative Council.<sup>14</sup>

### 2.1.2 Legislative changes

Unlike the 2010 Victorian state election, before which there were a number of major amendments to the *Electoral Act 2002* (Vic), the administration of the 2014 Victorian state election was mostly unaffected by legislative change.

In 2014 the Legislative Assembly debated the *Electoral Amendment Bill 2014* (Vic), to amend the *Electoral Act 2002* (Vic). The Bill sought to amend various electoral processes in the Act. The Bill would also have amended the *Constitution Act*

<sup>14</sup> Parliament of Victoria, Legislative Council, Information Sheet No. 16, Parliament of Victoria, 2009.

1975 (Vic) to clarify matters relating to the Presiding Officer’s administrative responsibilities after the expiry of the Parliament, and until their successor is chosen. The Bill was defeated in the Legislative Assembly in September 2014.

The *Electoral Regulations 2012* (Vic) were also amended in August 2013 to “improve efficiencies around the administration of provisional, overseas and Antarctic voting”.<sup>15</sup>

### 2.1.3 Timeline

Victorian state elections follow a fixed time line. The *Constitution Act 1975* (Vic) prescribes that, barring exceptional circumstances, a Victorian state election is to be held on the last Saturday in November every four years. The trigger for a Victorian state election is the issue of the writs, which occurs 25 days before Election Day. The Governor issued writs for the 2014 Victorian State election on Tuesday, 4 November 2014. The writs set out the timetable for the election. Separate writs are issued for the election of the Legislative Council and for the election of the Legislative Assembly. The writs for a Victorian state election must be returned no later than 21 days after Election Day.

Table 2.1 lists the key dates and events for the 2014 Victorian state election:

**Table 2.1** Key dates – 2014 Victorian state election

Event	Date
Expiry of the Legislative Assembly	Tuesday, 4 November 2014
Issue of writs	Tuesday, 4 November 2014
Close of rolls	Tuesday, 11 November 2014
Close of nominations	Thursday, 13 November 2014 (registered political parties) Friday, 14 November 2014 (independent candidates)
Final day for submission of how-to-vote cards	Friday, 21 November 2014
Close of postal voting	Thursday, 27 November 2014
Close of early voting	Friday, 28 November 2014
Election Day	Saturday, 29 November 2014
Last day for votes to be admitted to scrutiny	Monday, 8 December 2014
Return of the writs	Saturday, 20 December 2014 (writ returned Friday, 19 December 2014)

Source: Victorian Electoral Commission, “Report on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.2.

<sup>15</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.2.

## 2.1.4 Summary of results

The Australian Labor Party, led by the Hon Daniel Andrews MP, won the 2014 Victorian state election.

In the Legislative Assembly, Labor won a total of 47 seats. The Coalition won 38 seats (30 to the Liberal Party and eight to The Nationals Victoria), the Australian Greens won the seats of Melbourne District and Prahran District and an independent won the seat of Shepparton District.<sup>16</sup>

In the Legislative Council, Labor won 14 seats. The Coalition won 16 seats (14 to the Liberal Party and two to The Nationals Victoria), the Australian Greens won five seats, the Shooters and Fishers Party of Victoria two seats, the Democratic Labor Party one seat, the Australian Sex Party one seat and Vote 1 Local Jobs one seat.<sup>17</sup>

Table 2.2 shows the total first preference votes for each party in the Legislative Assembly, number of seats won and the change in each party's representation in the Legislative Assembly compared to the 2010 Victorian state election.

**Table 2.2 Results, Legislative Assembly – 2014 Victorian state election**

Party	First preference votes	Percentage of first preference votes	No. of seats won	Change in seats since 2010 Victorian state election
Australian Labor Party	1,278,322	38.1	47	5
Liberal Party	1,223,474	36.46	30	-5
Australian Greens	385,190	11.48	2	2
The Nationals Victoria	185,619	5.53	8	-2
Australian Country Alliance	43,038	1.28	0	-
Family First	37,194	1.11	0	-
Rise Up Australia Party	26,545	0.79	0	-
Voice for the West	20,795	0.62	0	-
Australian Sex Party	16,584	0.49	0	-
Animal Justice Party	8,930	0.27	0	-
Democratic Labor Party	7,778	0.23	0	-
Shooters and Fishers Party	2,799	0.08	0	-
Socialist Alliance	2,622	0.08	0	-
People Power Victoria / No Smart Meters	1,728	0.05	0	-

<sup>16</sup> Lesman, B., Macreadie, R., Ross, C., Darby, P., "The 2014 Victorian state election", Victorian Parliament Library and Information Service, No.1, June 2015, p.50.

<sup>17</sup> Lesman, B., Macreadie, R., Ross, C., Darby, P., "The 2014 Victorian state election", Victorian Parliament Library and Information Service, No.1, June 2015, p.50.



Party	First preference votes	Percentage of first preference votes	No. of seats won	Change in seats since 2010 Victorian state election
The Basics Rock "N" Roll Party	1,375	0.04	0	-
Other candidates	1,043	0.03	0	-
Other – Suzanna Sheed	13,211	0.35	1	-

Source: Lesman, B., Macreadie, R., Ross, C., Darby, P., "The 2014 Victorian state election", Victorian Parliament Library and Information Service, No.1, June 2015, p.50.

## 2.2 Victoria's electoral system

The Parliament of Victoria is made up of two Houses – the lower house is called the Legislative Assembly, the upper house the Legislative Council. Voting is compulsory for all Victorian parliamentary elections.

Members of the Legislative Assembly are elected from 88 single-member electoral Districts, each with approximately 43,000 electors. A party or coalition with the "majority support in the Legislative Assembly forms the Government. The voting system for the Legislative Assembly is full preferential. Voters must number all the squares on the ballot paper in order of their choice. To be elected a candidate must gain more than 50 percent of all formal votes to be elected. If none of the candidates receives over 50 percent of the first-preference votes, voters' preferences are distributed until one candidate gains an absolute majority".<sup>18</sup>

Members of the Legislative Council are elected to eight electoral Regions, each with approximately 480,000 electors. Each region returns five elected members. As mentioned earlier, "proportional representation vote counting for the Legislative Council was introduced in 2006. The principle of proportional representation is that candidates and parties are elected in proportion to their level of support among voters. Under this system, voters can:

- Vote 1 'above-the-line' for their preferred party or group of candidates (the voter's preferences will follow the group voting tickets lodged by the party or group); or
- Vote 'below-the-line' for individual candidates. Voters have to vote at least 1 to 5 for their vote to count, and can continue numbering other squares if they wish. This is known as optional preferential voting".<sup>19</sup>

Under proportional representation, as noted by the VEC,

"a candidate must gain a "quota" (one sixth plus one) of the formal votes to be elected. First, candidates who have gained more than a quota of first-preference votes are elected. Then, elected candidates' surplus votes (the number of votes more than the

<sup>18</sup> Victorian Electoral Commission, "Report to Parliament on the 2010 Victorian state election", Victorian Electoral Commission, Melbourne, August 2011, p.13.

<sup>19</sup> Victorian Electoral Commission, "Report to Parliament on the 2010 Victorian state election", Victorian Electoral Commission, Melbourne, August 2011, p.13.

quota) are transferred to other candidates according to the preferences on the ballot papers. Any candidate who reaches a quota through these transfers is elected. If there are still vacancies to fill once the surplus votes have been transferred, the candidate with the fewest votes is excluded and that candidate's votes are distributed to the remaining candidates according to the preferences on the ballot papers. The process of transferring surpluses from elected candidates and distributing preferences from excluded candidates continues until all positions have been filled".<sup>20</sup>

### 2.2.1 2013 report on redivision of Victoria's electoral boundaries – Electoral Boundaries Commission (EBC)

In October 2013 the EBC released its final report on the redivision of Victoria's electoral boundaries. The report was the culmination of a review process which began in December 2012.

The EBC has responsibility for conducting redivisions of Victoria's electoral boundaries. It is an independent statutory authority and at the time of the 2013 redivision, it was composed of the chairman, Chief Judge of the County Court, His Honour Chief Judge Michael Rozenes AO, the Electoral Commissioner (Elizabeth Williams as Acting Victorian Electoral Commissioner until 29 April 2013, and then Warwick Gately AM, Victorian Electoral Commissioner), and the Surveyor-General (John Tulloch).

When formed the EBC's primary function is:

"to divide the State of Victoria into electoral Districts for the Legislative Assembly and electoral Regions for the Legislative Council as often as is necessary from time to time for the conduct of elections for the Legislative Council and the Legislative Assembly with the object of establishing and maintaining electoral regions of approximately equal enrolment and electoral districts of approximately equal enrolment and to determine the boundaries thereof".<sup>21</sup>

The 2012-2013 redivision process was unique as it was the first full redivision of both Houses of Parliament since 2001, or a period of three Victorian state elections. In 2004 the Legislative Council was separately restructured as a result of the passage of the *Constitution (Parliamentary Reform) Act 2003* (Vic), to establish eight Regions comprising 11 Legislative Assembly Districts.

The reasons why a full redivision of the Parliament did not take place until 2012 are complex and best summarised by the EBC:

"Until 2004 a redivision was required only when the number of electors enrolled for the various electorates did not comply to a substantial extent with the requirements of the *Electoral Boundaries Commission Act 1982* (Vic)...for approximately equal enrolment. The Electoral Legislation (Amendment) Act 2004 (Vic) replaced this

20 Victorian Electoral Commission, "Report to Parliament on the 2010 Victorian state election", Victorian Electoral Commission, Melbourne, August 2011, p.13.

21 Electoral Boundaries Commission, "Report on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.7.

imprecise condition with a set of clear triggers for a redivision. The EBC must conduct a redivision if any of the following conditions apply in the period 24 to 18 months before the next scheduled State election.

At the 2006 State election, only eight districts (and no regions) were outside the 10 per cent tolerance. There was some political and media interest in whether a redivision would take place before the 2010 State election. However, by the end of the relevant period under the Act (27 May 2009), 16 districts and no regions were more than 10 per cent outside the average and three districts were more than 20 per cent outside. Thus the ‘numbers’ triggers for a redivision had not been met. The ‘general elections’ trigger also did not apply, as there had been only one general election as defined in the Act (in 2006) since the previous redivision.

The next relevant period under the Act began on 29 November 2012 (24 months before the November 2014 State election). This was the point at which the ‘general elections’ trigger took effect, as there had been two general elections (in 2006 and 2010) since the last redivision, and the redivision could begin<sup>22</sup>.

After public consultation the EBC released its final boundaries. In total, the EBC abolished 15 electoral Districts and replaced these with 15 new electoral Districts. Table 2.3 shows the electoral Districts abolished in 2014. Table 2.4 shows the electoral Districts created in 2014.

**Table 2.3** 2012-2013 redivision of Victoria’s electoral boundaries – abolished electoral Districts, Legislative Assembly

Former Districts abolished in 2014		
Ballarat East	Doncaster	Murray Valley
Ballarat West	Keilor	Rodney
Benalla	Kilsyth	Scoresby
Clayton	Lyndhurst	Seymour
Derrimut	Mitcham	Swan Hill

Source: Electoral Boundaries Commission, “Report on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.2.

**Table 2.4** 2012-2013 redivision of Victoria’s electoral boundaries – new electoral Districts, Legislative Assembly

New electoral Districts in 2014		
Buninyong	Keysborough	St Albans
Clarinda	Murray Plains	Sunbury
Croydon	Ovens Valley	Sydenham
Eildon	Ringwood	Wendouree
Euroa	Rowville	Werribee

Source: Electoral Boundaries Commission, “Report on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.2.

<sup>22</sup> Electoral Boundaries Commission, “Report on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.p.1-7.

As a result of the 2013 redivision of Victoria's electoral boundaries, 1,068,389 electors, or 29.27 percent of all Victorian electors, were transferred to different electoral Districts. In addition, 392,844 electors, or 10.76 of all Victorian electors, were transferred to different electoral Regions.<sup>23</sup> As a result of the new boundaries, one Liberal-held seat, Doncaster District, was abolished as was one National-held seat, Rodney District, in regional Victoria. Two notionally Labor-held electorates were created in Melbourne's western suburbs. Major boundary changes also resulted in five Labor-held seats becoming notionally Liberal-held.

## 2.3 Trends in Victorian electoral participation

Electoral participation can mean different things in different electoral systems. Broadly speaking, given that voting in Australia and Victoria is compulsory for all eligible citizens, electoral participation in Australia is taken to mean participation through the act of voting in periodic, parliamentary elections.

Electoral authorities also measure electoral participation in different ways. In Victoria, the VEC has traditionally referred to three electoral indicators — voter turnout, informal voting and the rate of electoral enrolment — to determine the health of Victoria's electoral participation. In previous parliaments, the then Electoral Matters Committee referred to these indicators to assist its own investigations into how fully Victorians participate in electoral processes.

### 2.3.1 Voter turnout

Voter turnout is regarded as the number of eligible electors in a particular jurisdiction who cast a vote in an election. In Australia, it is generally accepted that voter turnout is the percentage of eligible electors who voted. This figure is usually calculated by dividing the sum of formal and informal votes by the final enrolment figure for a particular election. As noted by the AEC, the final enrolment figure is the "total number of people who are entitled to vote in an election".<sup>24</sup>

High voter turnout is generally considered to be desirable, even in countries like Australia where compulsory voting effectively assures rates of voter turnout around 90-93 percent of eligible electors. Elections with high rates of turnout are generally considered more legitimate than others, with a high turnout of eligible electors conferring greater confidence in the result. While some public choice theorists question the necessity and value of high voter turnout<sup>25</sup>, high turnout elections also serve an important, socialising function. As demonstrated by

<sup>23</sup> Electoral Boundaries Commission, "Report on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.p.302-306.

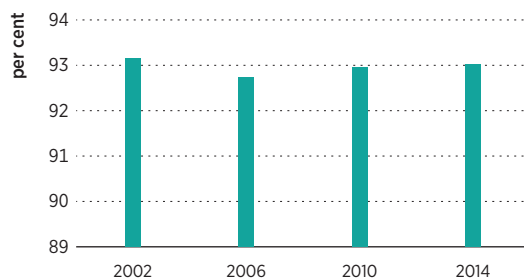
<sup>24</sup> Australian Electoral Commission, "Who voted in previous referendums and elections", Australian Electoral Commission, Canberra, September 2015. Retrieved 1 February 2016 from [www.aec.gov.au/Elections/australian\\_electoral\\_history/Voter\\_Turnout.htm](http://www.aec.gov.au/Elections/australian_electoral_history/Voter_Turnout.htm).

<sup>25</sup> Aldrich, J., (1993). "Rational choice and turnout". *American Journal of Political Science*, 37 (1), 246-278; Dhillon, A., Peralta, S., 2002. "Economic theories of voter turnout", *The Economic Journal*, 112, 332-352.

Thompson<sup>26</sup>, periodic elections have increasingly become one of the few social events in which communities participate together, in person, in a joint activity. Elections thus have important cultural and social characteristics.

In recent years, the rate of voter turnout for the Legislative Assembly at Victorian state elections has remained relatively constant, fluctuating between 92.7 percent and 93.2 percent of eligible electors. The voter turnout rate for the 2010 Victorian state election was 92.96 percent, 92.73 at the 2006 Victorian state election and 93.15 percent at the 2002 Victorian state election.<sup>27</sup>

**Figure 2.1** Voter turnout at Victorian state elections, 2002-2014



Source: Parliament of Victoria, Electoral Matters Committee, "Report on the 2010 Victorian state election", Parliament of Victoria, Melbourne, May 2012, p.14; Victorian Electoral Commission, "State election results", Victorian Electoral Commission, Melbourne, 2015. Retrieved 28 January 2016 from [www.vec.vic.gov.au/Results/results-state.html](http://www.vec.vic.gov.au/Results/results-state.html).

Voter turnout at the 2014 Victorian state election was 93.02 percent of total electors enrolled, slightly higher than the 92.96 percent at the 2010 Victorian state election.<sup>28</sup> Figure 2.1 shows voter turnout at Victorian state elections since 2002.

Table 2.5 shows voter turnout at all 88 Legislative Assembly Districts for the 2014 Victorian state election.

As noted by the VEC, voter turnout was highest in rural and country Districts and on the "eastern and northern fringes of the metropolitan area".<sup>29</sup> Bellarine District had the highest District voter turnout rate of 95.38 percent. As in 2010, Melbourne District had the lowest rate of voter turnout for a District of 87.54 percent. Other inner-city Districts also had low rates of turnout – Albert Park District, Prahran District and Richmond District – as did Districts with a high percentage of electors from non-English speaking backgrounds – Broadmeadows District, Dandenong District, Footscray District and St Albans District.<sup>30</sup>

Chapter Two further explores voter turnout at the 2014 Victorian state election, focusing on the growing number of votes cast before Election Day.

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- 26 Thompson, D., (2004). Thompson, Dennis F. 2004. "Election Time: Normative Implications of Temporal Properties of the Electoral Process in the United States". *American Political Science Review*, 98, 51-63.
- 27 Parliament of Victoria, Electoral Matters Committee, "Report on the 2010 Victorian state election", Parliament of Victoria, Melbourne, May 2012, p.71.
- 28 Victorian Electoral Commission, "Report on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.ii.
- 29 Victorian Electoral Commission, "Report on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.54.
- 30 Victorian Electoral Commission, "Report on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.54.

**Table 2.5** Voter turnout by Legislative Assembly District, 2014 Victorian state election

District	Enrolled	Turnout <sup>(a)</sup>	District	Enrolled	Turnout <sup>(a)</sup>
Albert Park	43134	88.45	Macedon	41580	94.76
Altona	48044	92.64	Malvern	40708	92.53
Bass	44492	94.37	Melbourne	43801	87.54
Bayswater	42719	94.10	Melton	44915	92.56
Bellarine	42541	95.38	Mildura	42452	92.34
Benambra	44259	92.88	Mill Park	42969	94.14
Bendigo East	43982	94.95	Monbulk	41906	94.48
Bendigo West	42505	93.83	Mordialloc	43607	94.01
Bentleigh	40981	93.56	Mornington	43622	94.20
Box Hill	43389	93.40	Morwell	45409	93.40
Brighton	42924	92.05	Mount Waverley	39993	93.29
Broadmeadows	41717	88.14	Mulgrave	40682	92.93
Brunswick	46954	90.40	Murray Plains	45327	93.73
Bulleen	44702	93.34	Narracan	46055	94.07
Bundoora	39435	93.98	Narre Warren North	43281	92.61
Buninyong	40891	94.29	Narre Warren South	45818	93.61
Burwood	41878	41878	Nepean	44669	92.69
Carrum	44578	44578	Niddrie	42548	94.36
Caulfield	41992	41992	Northcote	44273	91.67
Clarinda	43698	43698	Oakleigh	39556	92.08
Cranbourne	45863	45863	Ovens Valley	41110	93.67
Croydon	40730	40730	Pascoe Vale	45879	91.15
Dandenong	41199	41199	Polwarth	43277	94.88
Eildon	41479	41479	Prahran	44075	88.47
Eltham	44409	44409	Preston	42297	90.80
Essendon	44129	44129	Richmond	46690	89.21
Euroa	45847	45847	Ringwood	40419	93.77
Evelyn	40174	40174	Ripon	40057	94.78
Ferntree Gully	40780	40780	Rowville	38834	94.97
Footscray	46116	46116	Sandringham	41456	93.40
Forest Hill	40991	40991	Shepparton	46190	92.82
Frankston	41747	41747	South Barwon	44738	94.89
Geelong	45026	93.89	South-West Coast	44766	94.93
Gembrook	42239	94.38	St Albans	46041	89.55
Gippsland East	43113	93.58	Sunbury	41877	93.92
Gippsland South	40241	94	Sydenham	45303	93.75

District	Enrolled	Turnout <sup>(a)</sup>	District	Enrolled	Turnout <sup>(a)</sup>
Hastings	47150	93.83	Tarneit	43971	92.93
Hawthorn	42149	92.96	Thomastown	39826	92.27
Ivanhoe	44366	92.85	Warrandyte	43008	94.29
Kew	43898	93.68	Wendouree	40549	94.19
Keysborough	42381	93.17	Werribee	41377	92.74
Kororoit	46173	92.05	Williamstown	47162	92.09
Lara	43000	93.52	Yan Yean	44963	95.36
Lowan	42979	95.01	Yuroke	43811	92.44

(a) Turnout = formal votes / enrolled electors

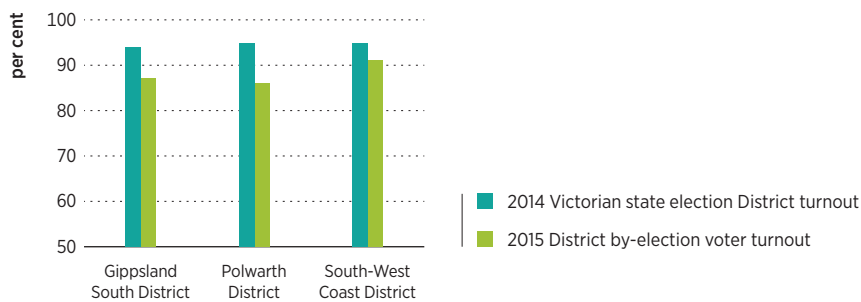
Source: Victorian Electoral Commission, "Virtual Tally Room: 2014 Victorian state election", Victorian Electoral Commission, Melbourne, February 2016. Retrieved 4 April 2016 from [www.vec.vic.gov.au/Results/State2014/Summary.html](http://www.vec.vic.gov.au/Results/State2014/Summary.html).

### By-elections since 2015

Voter turnout at by-elections is typically lower than at general elections. This relationship holds true for turnout at Victorian by-elections compared to state elections.

As noted in the Introduction, since the 2014 Victorian state election there have been three Victorian by-elections – the March 2015 Gippsland South District by-election, and the October 2015 Polwarth District and South-West Coast District by-elections. As seen in Figure 2.2, turnout at all three by-elections was lower than the turnout rate for the same Districts at the 2014 Victorian state election.

**Figure 2.2** District / voter turnout comparison between 2014 Victorian state election and 2015 Victorian by-election



Source: Victorian Electoral Commission, "State election results", Victorian Electoral Commission, Melbourne, 2015. Retrieved 28 January 2016 from [www.vec.vic.gov.au/Results/results-state.html](http://www.vec.vic.gov.au/Results/results-state.html).

Some of the factors influencing low voter turnout at Australian by-elections are proximity to a general election, also known as "election fatigue", issues around the salience of the election (i.e., that voters tend to view by-elections as less important than general elections), whether, in the Australian context, a major political party does not field a candidate for election, as well as geographic and

demographic factors.<sup>31</sup> Antony Green, Election Analyst, and Emeritus Professor Brian Costar, Swinburne Institute for Social Research, have also suggested that population mobility can explain lower rates of turnout.<sup>32</sup> Inner city electoral Districts in NSW and Victoria tend to have higher rates of population change, high proportions of people living in rental accommodation and, relatedly, significant populations who do not regularly update their electoral enrolment.

### 2.3.2 Informal voting

In Victoria, as mentioned earlier, the Legislative Assembly electoral system is full preferential voting. Electors must number all preferences on their ballot paper, in consecutive numerical order, in order for the ballot to be deemed formal.<sup>33</sup> Any ballot paper that is completed outside the parameters of the formality rules set out in legislation is considered informal. In Victoria s93 and s93A of the *Electoral Act 2002* (Vic) determine the formality rules for Legislative Assembly and Legislative Council ballot papers, and additional provisions determining whether a ballot paper will be accepted or excluded from an election count.

**Table 2.6** Informal voting by Legislative Assembly District, 2014 Victorian state election

District	Informal vote <sup>(a)</sup>	District	Informal vote <sup>(a)</sup>
Albert Park	4.13	Monbulk	5.16
Altona	5.45	Mordialloc	6.44
Bass	5.41	Mornington	4.04
Bayswater	5.07	Morwell	5.38
Bellarine	4.84	Mount Waverley	3.81
Benambra	4.53	Mulgrave	5.18
Bendigo East	3.49	Murray Plains	5.49
Bendigo West	4.40	Narracan	4.22
Bentleigh	5.24	Narre Warren North	6.75
Box Hill	3.75	Narre Warren South	5.63
Brighton	3.61	Nepean	4.97
Broadmeadows	8.52	Niddrie	6.41
Brunswick	4.92	Northcote	4.22
Bulleen	4.91	Oakleigh	4.56
Bundoora	4.54	Ovens Valley	4.49
Buninyong	4.80	Pascoe Vale	6.37

<sup>31</sup> Victorian Electoral Commission, "Report to Parliament on the 2011 Broadmeadows District by-election", Victorian Electoral Commission, Melbourne, June 2011, p.16.

<sup>32</sup> Antony Green, "Antony Green's Election Blog: A Comment on NSW by-elections", Australian Broadcasting Corporation, October 2014. Retrieved 1 February 2016 from [blogs.abc.net.au/antonygreen/2014/10/a-comment-on-nsw-by-election-turnouts.html](http://blogs.abc.net.au/antonygreen/2014/10/a-comment-on-nsw-by-election-turnouts.html).

<sup>33</sup> In Victoria ballot papers are still formal if the last preference on the ballot paper is left blank.



District	Informal vote <sup>(a)</sup>	District	Informal vote <sup>(a)</sup>
Burwood	3.47	Polwarth	3.89
Carrum	5.12	Prahran	5.11
Caulfield	4.17	Preston	5.32
Clarinda	6.14	Richmond	3.72
Cranbourne	6.56	Shepparton	5.84
Croydon	4.41	South Barwon	3.91
Dandenong	8.30	South-West Coast	4.04
Eildon	5.23	St Albans	7.83
Eltham	4.29	Sunbury	5.69
Essendon	3.93	Sydenham	6.62
Euroa	4.68	Tarneit	8.08
Evelyn	5.72	Thomastown	7.03
Ferntree Gully	4.71	Warrandyte	4.72
Footscray	5.87	Wendouree	4.87
Forest Hill	4.27	Werribee	6.37
Frankston	8.88	Williamstown	5.01
Geelong	4.78	Yan Yean	5.10
Gembrook	5.28	Yuroke	6.50
Gippsland East	5.63	Richmond	3.72
Gippsland South	5.50	Shepparton	5.84
Hastings	5.89	South Barwon	3.91
Hawthorn	3.75	South-West Coast	4.04
Ivanhoe	4.59	St Albans	7.83
Kew	4.11	Sunbury	5.69
Keysborough	6.06	Sydenham	6.62
Kororoit	6.69	Tarneit	8.08
Lara	4.60	Thomastown	7.03
Lowan	4.53	Warrandyte	4.72
Macedon	3.67	Wendouree	4.87
Malvern	4.02	Werribee	6.37
Melbourne	3.50	Williamstown	5.01
Melton	8.13	Yan Yean	5.10
Mildura	7.05	Yuroke	6.50
Mill Park	5.70		

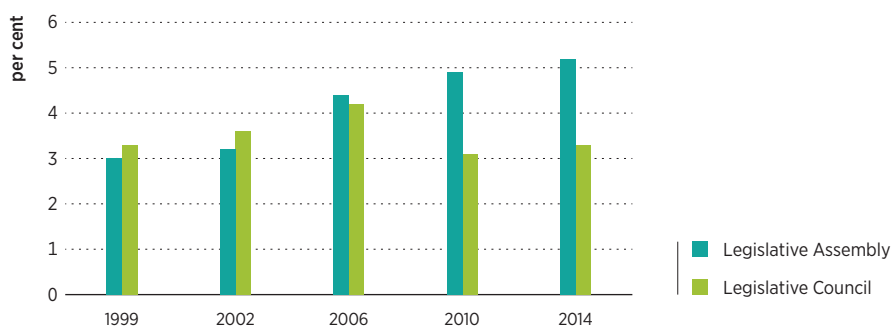
(a) Expressed as percentage of total votes cast

Source: Victorian Electoral Commission, "Virtual Tally Room: 2014 Victorian state election", Victorian Electoral Commission, Melbourne, February 2016. Retrieved 4 April 2016 from [www.vec.vic.gov.au/Results/State2014/Summary.html](http://www.vec.vic.gov.au/Results/State2014/Summary.html).

## Legislative Assembly

The rate of informal voting for the Legislative Assembly has increased at every Victorian state election since the 1999 Victorian state election. Figure 2.3 shows rates of informal voting for the Legislative Assembly at Victorian state elections since 1999.

**Figure 2.3** Informal voting at Victorian state elections, 1999-2014



Source: Parliament of Victoria, Electoral Matters Committee, Parliament of Victoria, Melbourne, May 2012. Retrieved 28 January 2016 from [www.vec.vic.gov.au/Results/results-state.html](http://www.vec.vic.gov.au/Results/results-state.html); Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.ii.

The rate of informal voting at the 2014 Victorian state election for the Legislative Assembly was 5.22 percent, the highest rate ever recorded for a Legislative Assembly election, or a 0.26 percent increase compared to the rate of informal voting for the Legislative Assembly at the 2010 Victorian state election.<sup>34</sup>

The VEC notes that informal voting was highest in Districts with high numbers of candidates. For instance, there were 14 candidates in Frankston District, which recorded the state's highest informal voting rate of 8.88 percent. Tarneit District, where 10 candidates stood, also had a high informal voting rate of 8.08 percent.<sup>35</sup> There was a 26 percent increase in the number of candidates for the Legislative Assembly compared to the 2010 Victorian state election.

At recent Victorian state elections, there has also been a link between high rates of informal voting in Districts with a high percentage of electors from non-English speaking backgrounds; as noted by the VEC, these areas are typically located in the north, west and south-eastern suburbs of Melbourne.<sup>36</sup> This trend continued at the 2014 Victorian state election. Dandenong District recorded an informal voting rate of 8.3 percent. St Albans District recorded an informal voting rate of 7.83 percent.<sup>37</sup>

<sup>34</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.ii.

<sup>35</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.54.

<sup>36</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.54.

<sup>37</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.54.

As per previous practice, the VEC completed an informal ballot paper survey after the 2014 Victorian state election. These surveys allow the VEC to measure and assess the incidence of different types of informal voting across Victoria. For the first time, the VEC extended this analysis to every Legislative Assembly District and Legislative Council Region; the survey was published in the VEC's report to Parliament on the 2014 Victorian state election.<sup>38</sup>

The largest category of informal District ballots at the 2014 Victorian state election was ballots that were left "blank", representing 30.30 percent of all informal District ballots.<sup>39</sup> The second largest category of informal District ballots were those marked with a "1" only, representing 22.98 percent of informal District ballots. Other categories of informal District ballot papers included those papers which were informal due to an incomplete numerical sequence (9.80 percent of informal District ballot papers) and those which were apparently informal "deliberately" (6.65 percent of informal District ballot papers).<sup>40</sup>

**RECOMMENDATION 1:** The committee recommends the VEC continue its informal ballot surveys at future Victorian state elections, using the information to develop targeted community education programs regarding formal voting and Victoria's electoral system, focusing in particular on Districts with high levels of informal voting. The VEC should document these programs in its annual report.

### Legislative Council

The VEC's informal ballot paper survey for the Legislative Council at the 2014 Victorian state election demonstrated that the largest category of informal Region ballots were those left "blank", representing 49.76 percent of informal Region ballot papers.<sup>41</sup> This was a 5.2 percent increase on the same category of informal Region ballot papers at the 2010 Victorian state election. The next largest category of informal Region ballot papers was those with writing which were apparently informal "deliberately" (14.21 percent of informal Region ballot papers).<sup>42</sup>

### By-elections since the 2014 Victorian state election

As for turnout at by-elections, informal voting at Victorian by-elections is not generally considered a strong indicator of electoral participation. The rate of informal voting at by-elections is influenced by several factors, including the salience of the contest, where the District is located, and the proportion of people in the District for whom English is not their first language. As noted by the VEC

<sup>38</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.55.

<sup>39</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.55.

<sup>40</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.55.

<sup>41</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.58.

<sup>42</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.58.

in its report to Parliament on the 2011 Broadmeadows District by-election, the number of candidates also tends to impact informal voting rates in a District, as does whether a major party chooses to field, or not field, a candidate.

Rates of informal voting at the three Victorian by-elections since 2015 have fluctuated. The rate of informal voting at the 2015 Gippsland South District by-election of 5.51 percent was almost identical to the rate of informal voting in the District at the 2014 Victorian state election (5.5 percent).<sup>43</sup> The Labor Party did not field a candidate in the by-election.

In Polwarth District and South-West Coast Districts, the rate of informal voting at the October 2015 by-elections increased compared to the 2014 Victorian state election. In Polwarth District, the rate of informal voting at the October 2015 by-election was 5.16 percent, compared to 3.89 percent at the 2014 Victorian state election.<sup>44</sup> In South-West Coast District, the rate of informal voting at the October 2015 by-election was 6.29 percent, compared to 4.04 percent at the 2014 Victorian state election. In this context, it is notable that the Labor Party did not field a candidate in either the Polwarth District or South-West Coast District by-elections.

### Conclusion – informal voting

This section summarises the incidence of informal voting at Victorian elections since late 2014. Chapter Four addresses the incidence of informal voting in the elections for the Legislative Assembly and Legislative Council, focusing on evidence the committee received about the method of voting for each House of Parliament. Chapter Five explores evidence the committee received about electoral engagement and efforts by the VEC and community and advocacy organisations to increase awareness of Victoria’s electoral system and how to cast a formal vote.

### 2.3.3 Electoral enrolment

In Victoria all eligible electors must be correctly enrolled on the electoral roll. Under Part 3, s21 of the *Electoral Act 2002* (Vic), the VEC must establish, maintain and regularly update a ‘register of electors’. This register contains the names, addresses and dates of birth of electors, and other information such as changes of name or address. The complete register of electors and their details is never available for public inspection. However, a list of electors (excluding silent electors) must be prepared every six months and made available for public viewing at VEC offices.

<sup>43</sup> Victorian Electoral Commission, “Gippsland South District by-election 2015”, Victorian Electoral Commission, Melbourne, 2015. Retrieved 1 February 2016 from [www.vec.vic.gov.au/Results/State2015/GippslandSouthDistrict.html](http://www.vec.vic.gov.au/Results/State2015/GippslandSouthDistrict.html).

<sup>44</sup> Victorian Electoral Commission, “State District by-elections 2015 – Polwarth District”, Victorian Electoral Commission, Melbourne, 2015. Retrieved 1 February 2016 from [www.vec.vic.gov.au/Results/State2015/PolwarthDistrict.html](http://www.vec.vic.gov.au/Results/State2015/PolwarthDistrict.html).

When an election is called, a date is set for the ‘close of roll’. On that date a snapshot is taken of the register of electors, which becomes the roll for that election. People therefore often refer to the register of electors as the ‘electoral roll’.

While the VEC has primary responsibility for the Victorian register of electors, the VEC works closely with the Australian Electoral Commission (AEC) under the auspices of the Joint Roll Agreement. Each Australian state and territory has a Joint Roll Agreement with the AEC, and “the Commonwealth roll also forms the basis of each of the rolls used by the state and territory electoral commissions. This has traditionally meant that Australians could complete one enrolment form and be enrolled for local, state and territory, and federal elections”.<sup>45</sup>

Since 2010 the VEC has employed a direct enrolment system to help maintain and update the register of electors. This system was introduced in August 2010 by amendments to the *Electoral Act 2002* (Vic). The then Electoral Matters Committee’s report on the 2010 Victorian state election discusses the introduction of direct enrolment in Victoria. As shown in Table 2.4, the major sources of enrolment updates to the register of electors in the lead up to the 2014 Victorian state election were inputs from the Joint Roll Agreement with the AEC, followed by the VEC’s direct enrolment transactions. As noted by the VEC in its report to Parliament on the 2014 Victorian state election, “direct enrolment is now used on a weekly basis to update the register of electors”.<sup>46</sup> In 2014-2015 over 61 percent of enrolment transactions were also generated by VEC programs.<sup>47</sup>

**Table 2.7** Sources of enrolment updates in the lead up to 2014 Victorian state election

Type of transaction	AEC	VEC Online	VEC direct enrolment	VEC manual update
New to roll	51,547	7,289	11,836	2
Change of address	97,798	19,010	118,384	3,230
Reinstatement	12,050	1,358	6,148	569
<b>Total</b>	<b>161,395</b>	<b>27,657</b>	<b>136,368</b>	<b>3,801</b>

Source: Victorian Electoral Commission, “Report on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p10.

In August 2014 the VEC also introduced an online enrolment facility. Using this system, eligible Victorian electors can directly update their details with the VEC. As noted by the VEC, the online enrolment facility generated 10,459 enrolments or enrolment updates in the lead up to the close of rolls on 11 November 2014.<sup>48</sup>

<sup>45</sup> Australian Electoral Commission, “Direct enrolment and direct update: the Australian experience”, Australian Electoral Commission, Canberra, 2013. Retrieved 1 February 2016 from [www.aec.gov.au/about\\_aec/research/direct.htm](http://www.aec.gov.au/about_aec/research/direct.htm).

<sup>46</sup> Victorian Electoral Commission, “Report on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p10.

<sup>47</sup> Victorian Electoral Commission, *Annual Report 2014-2015*, Victorian Electoral Commission, Melbourne, 2015, p.53.

<sup>48</sup> Victorian Electoral Commission, “Report on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p10.

## Victorian electoral enrolment, 2014-2015

At the close of rolls for the 2014 Victorian state election there were 3,806,301 people enrolled to vote, representing 94.21 percent of eligible electors.<sup>49</sup>

A stronger gauge of Victoria's electoral enrolment comes from the VEC's *Annual Report 2014-2015*. The number of Victorians enrolled to vote increased by 92,179, or 2.44 percent, to 3,858,225 in 2014-15. The VEC estimates that 94.76 percent of eligible electors are enrolled. This is "slightly higher than the national figure of 93.2 percent and meets the VEC's target of at least one percent higher than the national (federal) average".<sup>50</sup>

Despite this, the committee is aware of ongoing concerns about levels of electoral enrolment in Australia. In late 2015 David Kerslake, Western Australian Electoral Commissioner, via the Commission's Annual Report 2014-2015 noted that nearly 1.5 million eligible Australians were not enrolled despite being eligible:

"These missing electors were not just 18-year-olds intending to enrol and yet to get around to it, or electors whose enrolment had lapsed through failure to keep their address details up to date.

Of particular concern, a high proportion were citizens aged between 30 and 50 who had never been enrolled, indicative of a conscious decision to opt out of the electoral system altogether".<sup>51</sup>

These concerns reflect recent findings about trends in Australian electoral participation. In 2015 the Australian National Audit Office reported that over one million Australians are 'missing' from the electoral roll.<sup>52</sup> Furthermore, in January 2016 the AEC estimated, using information from its direct enrolment and Joint Roll Agreement program, that 1,066,799 eligible electors were not enrolled to vote.<sup>53</sup>

## Conclusion - electoral enrolment

Evidence received by the committee about electoral enrolment is also addressed elsewhere in this report. Chapter Five considers evidence the committee received about the challenges facing Victorians with disabilities in relation to maintaining their electoral enrolment, particularly those Victorians living in high care facilities.

49 Victorian Electoral Commission, "Report on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.ii.

50 Victorian Electoral Commission, *Annual Report 2014-2015*, Victorian Electoral Commission, Melbourne, 2015, p.53.

51 Western Australian Electoral Commission, *Annual Report 2014-2015*, Western Australian Electoral Commission, 2015, p.7.

52 Western Australian Electoral Commission, *Annual Report 2014-2015*, Western Australian Electoral Commission, 2015, p.7.

53 Australian Electoral Commission, "Enrolment statistics", Australian Electoral Commission, Canberra, January 2016. Retrieved 1 February 2016 from [www.aec.gov.au/Enrolling\\_to\\_vote/Enrolment\\_stats](http://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats)

## Early voting at the 2014 Victorian state election

### AT A GLANCE

- More than 1,200,000 Victorians voted before Election Day at the 2014 Victorian state election.
- Nine hundred and twelve thousand Victorians voted in person before Election Day, representing a 67 percent increase in early voting in person compared to the 2010 Victorian state election.
- The committee recognises that early voting is now an established part of Victorian electoral practice. The committee supported a minimum eleven day early voting period for Victorian state elections.
- Given the advent of four-week early voting periods at the 2015 Polwarth District and South-West Coast District by-elections, the committee also recommended that the maximum allowable early voting period for a Victorian by-election be two weeks.
- With early voting likely to increase at future Victorian state elections, the committee recommended amendments to the *Electoral Act 2002 (Vic)* so that early votes cast in an elector's 'Home' District are counted on Election Night. This will prevent potential delays to an election result.
- Elector complaints about queuing at early voting centres increased at the 2014 Victorian state election. The committee recommended the VEC appoint queue controllers at voting centres experiencing high demand, and benchmark reducing queuing performance based on the 2014 Victorian state election.
- The committee recommended changes to postal voting, including allowing electors to apply for a postal vote online.

At the 2014 Victorian state election 1,207,538 Victorians voted before Election Day, representing 34.11 percent of all votes cast.<sup>54</sup> Compared to the 2010 Victorian state election, this represents a 52 percent increase on the number of votes cast before Election Day and a 155 percent increase on the 2006 Victorian state election. The majority of early votes were cast in person – also known as pre-poll voting. For the 2014 Victorian state election 912,000 Victorians cast their vote at an early voting centre, a 67 percent increase on the 2010 Victorian state election.<sup>55</sup>

This chapter is focused on early voting in person at the 2014 Victorian state election. It defines early voting, discussing s98 of the *Electoral Act 2002* (Vic) and the implications of voting before Election Day for Australian and Victorian electoral practice. It then outlines the VEC’s administrative arrangements for early voting in person at the 2014 Victorian state election, and examines the incidence of early voting at the 2014 Victorian state election and the three Victorian by-elections since 2015. The chapter also explores evidence received during the inquiry about early voting.

### 3.1 Definition of early voting

Early voting is simply the act of casting a vote before Election Day. In Australia and Victoria, early voting has traditionally taken two forms; postal voting and early voting in person. Postal voting is the oldest form of early voting at Australian elections, and was used for colonial elections in the mid-19<sup>th</sup> century. Postal voting has been used for every federal election since Federation, and for Victorian state elections since 1900.<sup>56</sup>

In contrast, early voting in person is much newer. Pre-poll voting was first introduced in the mid-1990s by the AEC. At the time the AEC permitted electors who were travelling or working on Election Day to attend the AEC’s office in their Division and cast their vote before Election Day. As people became more aware of the service, the AEC formalised arrangements, establishing early voting centres in each Division by the time of the 1996 federal election.<sup>57</sup> In Victoria and around Australia, state electoral commissions followed the AEC’s lead; by 1999 the VEC established an early voting centre in each Legislative Assembly District.

In practice, early voting is almost identical to ordinary voting on Election Day. Electors receive the same ballot papers and same information as those who vote on Election Day, including how-to-vote cards. The only real difference between Election Day polling places and early voting centres is where they are established. For the past five Victorian state elections the VEC has provided early voting services at the District Election office established by the VEC in each

54 Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.29.

55 Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.29.

56 Reader, N., 2015. “The demographic correlates of early voting in person at Victorian state elections”, ERRN Working Paper 31, University of Melbourne, August 2015, p.3.

57 Reader, N., 2015. “The demographic correlates of early voting in person at Victorian state elections”, ERRN Working Paper 31, University of Melbourne, August 2015, p.3.



Legislative Assembly District. In some Districts, such as South-West Coast, the VEC also establishes additional early voting centres. This is due to several factors, including the geography of the District, where major population centres are located, and previous demand for early voting in the District.

## 3.2 Legislation – early voting in person

Section 98 and s99 of the *Electoral Act 2002* (Vic) provide for early voting and postal voting at Victorian state elections and by-elections.

In Victoria a person may make an application to vote at an early voting centre “if they will be unable to attend an Election Day voting centre during the hours of voting on Election Day”.<sup>58</sup> As stipulated by s99 of the *Electoral Act 2002* (Vic), electors must declare they are unable to present on Election Day; the application is made either to an Election Manager or an election official at the early voting centre.

In practice, the declaration is an oral declaration. Victorian electors who present at an early voting centre must be asked – ‘are you unable to vote on Election Day?’ If they answer ‘yes’, they are eligible. Section 98 of the *Electoral Act 2002* (Vic) thus provides a single criterion for early voting in person at Victorian state elections.

Prior to 2005, there were additional criteria in s98 and s99 of the *Electoral Act 2002* (Vic). Victoria’s electoral legislation was comprehensively rewritten in 2002 for the first time in nearly 100 years.<sup>59</sup> The first version of the *Electoral Act 2002* (Vic) passed by the Parliament provided a set of criterion for early voting which were broadly similar to the criteria for postal voting. In 2005 the *Electoral Act 2002* (Vic) was amended, simplifying the criteria. The eight points stipulated by s98 were replaced by the oral declaration in its current form in s98.

## 3.3 Administrative arrangements

### 3.3.1 Early voting centres

At the 2014 Victorian state election, early voting in person was available at 100 early voting centres throughout Victoria, including some special early voting centres, namely those at Avalon and Melbourne Airports. Each District had at least one early voting centre. As mentioned above, in some Districts the VEC also established additional early voting centres. These Districts were:

- Bass District, three early voting centres;
- Gippsland South District, two early voting centres;

<sup>58</sup> s98 *Electoral Act 2002* (Vic).

<sup>59</sup> Victorian Electoral Commission, “Report to Parliament on 2002 Victorian state election”, Victorian Electoral Commission, Melbourne, August 2003, p.9.

- Lowan District, two early voting centres;
- Melbourne District, three early voting centres;
- Ovens Valley District, three early voting centres; and
- South-West Coast District, two early voting centres.<sup>60</sup>

Officially there were also two early voting centres in Lara District and Sunbury District. However, the second centre in each District was actually one of the VEC's dedicated airport early voting centres – Avalon and Melbourne Airports respectively. Both airport early voting centres operated outside normal business hours, to cater for airport traffic and flight schedules.

Appendix Six of the VEC's report to Parliament on the 2014 Victorian state election lists the location of all 100 early voting centres.

Pursuant to s65 of the *Electoral Act 2002 (Vic)* the VEC also establishes mobile early voting centres for each Victorian state election. Centres may be established in nursing homes, hostels, hospitals and institutions providing living support to Victorians with disabilities. At the 2014 Victorian state election, there were 1,106 mobile early voting centre locations, compared with 986 locations at the 2010 Victorian state election.<sup>61</sup>

In addition to early voting centres based in Victoria, the VEC and partner organisations establish interstate and overseas early voting centres. At the 2014 Victorian state election there were 11 interstate and 32 overseas early voting centres, with 12,872 votes returned from outside Victoria, representing a 20 percent increase compared to the 2010 Victorian state election (10,782 votes).<sup>62</sup> Interstate voting centres are usually established at the offices of state or territory electoral commissions. Overseas voting centres are usually established in countries with high populations of resident or travelling Australians, such as London and Manchester. Typically the voting centre is located in a diplomatic post, such as the Australian High Commission, Embassy or Consulate.

### 3.3.2 Early voting period

Early voting centres were open for two weeks, from Monday 17 November 2014 to Friday 28 November 2014. In addition to weekday business hours, these centres were open until 8:00 pm on Thursday 27 November 2014, and from 8.00 am to 2.00 pm on Saturday 22 November 2014. The VEC notes this was “to meet the needs of those members of the community who could not attend a voting centre on Election Day or during weekday business hours”.<sup>63</sup>

<sup>60</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.72.

<sup>61</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.29.

<sup>62</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.30.

<sup>63</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.29.

As has occurred at previous Victorian state elections, some electors were able to vote from 4.00 pm on Friday 14 November, four hours after the close of nominations. However, they were only able to vote on ballot papers with below-the-line voting options for the region, as group voting tickets were not finalised until the Sunday after the commencement of early voting. As noted by the VEC, the short period between the close of nominations and commencement of early voting “does not allow enough time for the production and distribution of ballot papers, so ballot papers used during that period were printed on-site at election offices”.<sup>64</sup>

### 3.4 Impact of early voting on Victorian elections

With 26 percent of Victorian electors voting in person before Election Day over the 2014 Victorian state election, this trend has several implications for Victoria’s electoral administration, electoral processes and democratic traditions.

During this inquiry the committee considered some of the logistical challenges the VEC encounters in providing early voting services to Victorians. These include:

- Securing a short-term lease for an accessible District election office (which also serves as an early voting centre) in an appropriate and visible location;
- Staff training, including ensuring that election officials at early voting centres are correctly asking electors to declare their eligibility to vote before Election Day, pursuant to s98 of the *Electoral Act 2002* (Vic);
- Administrative and logistical issues related to the counting of early votes, including the potential for an election result, or results in an individual District or Districts, to be delayed due to a high number of early votes; and
- Concerns around the ongoing viability of postal voting at Victorian elections due to Australia Post’s recent decision to introduce a three-day (or longer) regular mail service.

Early voting also affects the temporality of elections. During the inquiry the committee met with Professor Graeme Orr, T.C. Beirne School of Law, University of Queensland. Professor Orr and the committee discussed how elections, particularly in Australia, have important situational characteristics, especially given Australia’s well-respected election rituals and tradition of compulsory voting. According to Professor Orr, most Australians are accustomed to voting on a single Election Day. Referring to the work of democratic theorist Denis Thompson, Professor Orr suggested that the advent and increasing popularity of early voting represented a fundamental challenge to the idea of “electoral simultaneity”, or the notion that elections should be held at roughly the same time and that all electors should, as far as practical, also vote at roughly the same time.<sup>65</sup>

<sup>64</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.30.

<sup>65</sup> Orr, G., 2015. *Ritual and Rhythm in Electoral Systems: A Comparative Legal Account*, Ashgate, Surrey, 2015.

Related to this, the committee received some evidence exploring the normative impact of early voting on Victorian elections. The Nationals Victoria's submission questioned whether the rise of early voting was a positive development for Victorian elections, suggesting that Victorian elections now take place over a 'defacto' polling period rather than a single polling day. James C. Murphy, an individual who made a submission to the inquiry, expressed similar concerns, arguing that early voting is a negative development for Victoria's democracy.<sup>66</sup>

### 3.5 Incidence of early voting at the 2014 Victorian state election

As mentioned earlier, there were 912,000 early votes in person at the 2014 Victorian state election, representing 26 percent of all votes.

This is a record high for any Victorian state election and also a record high for an Australian state or territory election, except for the 2012 Australian Capital Territory general election which recorded a higher rate of early voting in person (approximately 27 percent of all votes cast).<sup>67</sup> However, this result should be considered in context due to the ACT's small and highly mobile population located around Canberra.

Early voting is also increasing in other Australian jurisdictions. At the 2015 NSW state election, held five months after the 2014 Victorian state election, approximately 650,000 early votes were cast before Election Day, representing 18 percent of votes cast.<sup>68</sup> There were also 280,000 electronic votes cast via the NSW Electoral Commission's iVote remote internet voting system.<sup>69</sup> In September 2015 the committee met with Colin Barry, the then NSW Electoral Commissioner, to discuss early voting and iVote, amongst other matters.

Early voting also increased at the 2015 Queensland state election, although to a lesser extent than in Victoria or NSW. In September 2015 the committee met with Walter van der Merwe, Queensland Electoral Commissioner, to discuss early voting, amongst other matters.

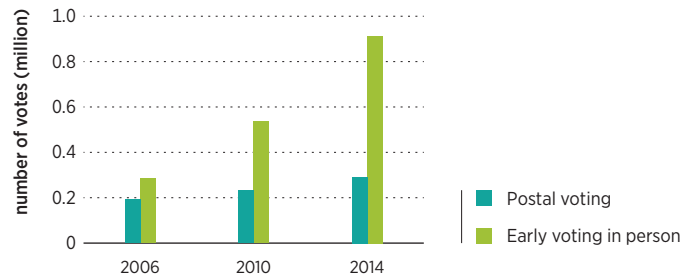
As seen in Figure 3.1, the rate of early voting in person at the 2014 Victorian state election caps a 350 percent increase in early voting in person since the 2002 Victorian state election. As also seen in Figure 3.1 the increase in early voting in person has far outpaced the growth of postal voting, which increased just 2.06 percent since the 2006 Victorian state election.

<sup>66</sup> James C. Murphy, Submission No. 23, p.4.

<sup>67</sup> Reader, N., 2015. "The demographic correlates of early voting in person at Victorian state elections", ERRN Working Paper 31, University of Melbourne, August 2015, p.4.

<sup>68</sup> Mills, S., 2015. "Why vote early? Reasons and implications: NSW state elections", University of Sydney, Convenience Voting Workshop, November 2015, p.2.

<sup>69</sup> NSW Electoral Commission, "iVote", NSW Electoral Commission, October 2015. Retrieved 11 February 2016 from [www.elections.nsw.gov.au/voting/ivote](http://www.elections.nsw.gov.au/voting/ivote).

**Figure 3.1** Rates of early voting, Victorian state elections 2006-2014

Source: Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.p.29-30.

As seen in Table 3.1, at the District level, there were 10 Districts at the 2014 Victorian state election where nearly half of those who turned out to vote, considered as the sum of early votes and postal votes, did so before Election Day. While six of these 10 Districts are located in rural or regional areas, four of the 10 – St Albans District, Sunbury District, South-Barwon District and Niddrie District are located either in metropolitan Melbourne or large towns (Sunbury) or cities (Geelong). Across these "top 10" Districts, the average rate of early voting was 43.5 percent. In 56 of the 88 Legislative Assembly Districts 30 percent of electors voted before Election Day, an increase of 96 percent compared to the 2010 Victorian state election.

**Table 3.1** Early voting by type and by District at the 2014 Victorian state election (Top 10 Districts highlighted)

District	Voter turnout	Early votes %	Postal votes %	Total early vote %
Albert Park	88.45	20.47	9.63	30.10
Altona	92.64	25.52	5.56	31.08
<b>Bass</b>	<b>94.37</b>	<b>39.03</b>	<b>6.54</b>	<b>45.57</b>
Bayswater	94.10	26.34	9.86	36.20
Bellarine	95.38	26.24	11.91	38.15
Benambra	92.88	30.11	6.60	36.71
<b>Bendigo East</b>	<b>94.95</b>	<b>37.51</b>	<b>6.38</b>	<b>43.89</b>
Bendigo West	93.83	24.36	6.59	30.94
Bentleigh	93.56	19.37	11.42	30.79
Box Hill	93.40	20.00	12.74	32.74
Brighton	92.05	21.38	10.44	31.82
Broadmeadows	88.14	16.92	4.41	21.34
Brunswick	90.40	28.75	6.31	35.06
Bulleen	93.34	20.54	12.21	32.75
Bundoora	93.38	25.76	7.92	33.69
Buninyong	94.29	24.91	6.31	31.22
Burwood	93.41	18.49	12.43	30.92

District	Voter turnout	Early votes %	Postal votes %	Total early vote %
Carrum	93.21	21.62	12.84	34.47
Caulfield	90.66	21.67	15.77	37.43
Clarinda	91.92	19.40	8.83	28.24
Cranbourne	93.42	27.29	10.82	38.10
Croydon	94.68	25.68	11.76	37.45
Dandenong	89.62	22.29	8.45	30.74
Eildon	94.14	10.61	12.42	23.03
Eltham	94.91	28.12	10.27	38.38
Essendon	92.43	27.50	6.48	33.98
Euroa	93.89	19.16	8.43	27.58
Evelyn District	94.98	25.81	10.63	36.44
Ferntree Gully	93.86	27.21	8.13	35.33
Footscray	89.53	29.46	7.19	36.65
Forest Hill	94.02	19.42	13.51	32.93
Frankston	91.99	22.33	12.19	34.52
Geelong	93.89	26.65	10.79	37.44
Gembrook	94.38	25.82	11.13	36.95
Gippsland East	93.58	29.28	3.49	32.77
Gippsland South	94.00	27.28	3.16	30.44
Hastings	93.83	21.90	9.89	31.78
Hawthorn	92.96	18.98	10.80	29.78
Ivanhoe	92.85	27.84	8.07	35.91
Kew	93.68	18.62	11.67	30.29
Keysborough	93.17	28.79	8.96	37.75
Kororoit	92.05	35.76	3.84	39.60
Lara	93.52	28.66	5.10	33.76
Lowan	95.01	33.30	3.97	37.27
Macedon	94.76	20.07	10.07	30.14
Malvern	92.53	23.70	10.80	34.50
Melbourne	87.54	23.00	7.73	30.73
Melton	92.56	32.85	5.51	38.35
<b>Mildura</b>	<b>92.34</b>	<b>38.88</b>	<b>2.93</b>	<b>41.81</b>
Mill Park	94.14	27.89	7.22	35.10
Monbulk	94.48	16.99	10.35	27.33
Mordialloc	94.01	18.00	10.86	28.86
Mornington	94.20	24.74	12.05	36.79

District	Voter turnout	Early votes %	Postal votes %	Total early vote %
Morwell	93.40	34.87	2.68	37.55
Mount Waverley	93.29	26.29	12.54	38.82
Mulgrave	92.93	16.93	10.94	27.87
Murray Plains	93.73	31.86	2.92	34.78
Narracan	94.07	29.29	8.06	37.35
Narre Warren North	92.61	20.05	11.51	31.56
Narre Warren South	93.61	25.95	10.98	36.93
Nepean	92.69	29.25	9.93	39.17
<b>Niddrie</b>	<b>94.36</b>	<b>34.37</b>	<b>8.74</b>	<b>43.11</b>
Northcote	91.67	17.73	5.28	23.01
Oakleigh	92.08	21.71	9.49	31.20
<b>Ovens Valley</b>	<b>93.67</b>	<b>43.84</b>	<b>2.95</b>	<b>46.80</b>
Pascoe Vale	91.15	23.63	5.30	28.93
Polwarth	94.88	19.57	7.08	26.65
Prahran	88.47	22.24	13.61	35.85
Preston	90.8	22.76	6.17	28.93
Richmond	89.21	22.68	6.32	29.00
Ringwood	93.77	21.28	12.16	33.44
Ripon	94.78	14.14	10.22	24.37
Rowville	94.97	21.66	8.34	29.99
Sandringham	93.40	22.26	8.31	30.58
Shepparton	92.82	28.15	2.17	30.31
<b>South Barwon</b>	<b>94.89</b>	<b>32.70</b>	<b>9.69</b>	<b>42.40</b>
<b>South-West Coast</b>	<b>94.93</b>	<b>44.86</b>	<b>4.46</b>	<b>49.32</b>
<b>St Albans</b>	<b>89.55</b>	<b>36.04</b>	<b>4.31</b>	<b>40.36</b>
<b>Sunbury</b>	<b>93.92</b>	<b>33.45</b>	<b>6.91</b>	<b>40.36</b>
Sydenham	93.75	32.87	6.09	38.97
Tarneit	92.23	32.91	3.93	36.84
Thomastown	92.27	19.33	5.97	25.30
Warrandyte	94.29	17.24	10.86	28.10
<b>Wendouree</b>	<b>94.19</b>	<b>34.75</b>	<b>6.89</b>	<b>41.64</b>
Werribee	92.74	34.13	5.13	39.25
Williamstown	92.09	22.64	7.78	30.42
Yan Yean	95.36	22.92	11.14	34.06
Yuroke	92.44	25.92	3.55	29.48

Source: Victorian Electoral Commission, "State election 2014 results", Victorian Electoral Commission, Melbourne. Retrieved 11 February 2016 from [www.vec.vic.gov.au/Results/State2014/Summary.html](http://www.vec.vic.gov.au/Results/State2014/Summary.html).

### 3.6 Incidence of early voting at Victorian by-elections since 2015

As mentioned in the Introduction, in August 2015 the committee agreed to investigate matters relating to the three Victorian by-elections held since the 2014 Victorian state election. These elections are the March 2015 Gippsland South District by-election, and the October 2015 Polwarth District and South-West Coast District by-elections.

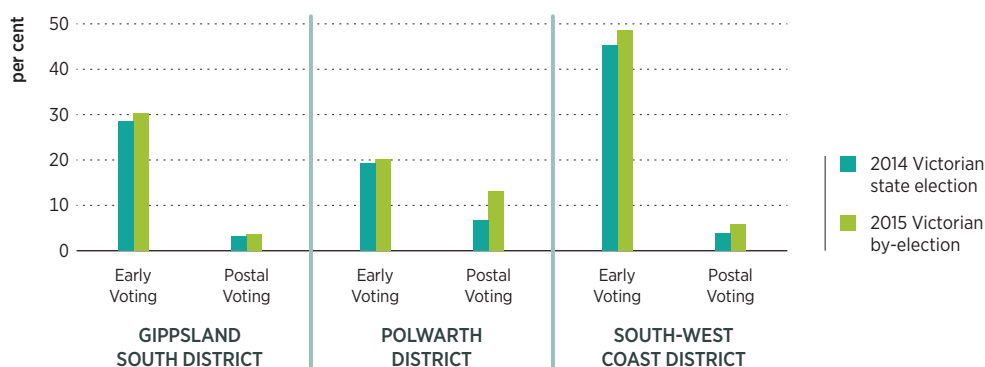
All three by-elections recorded significant levels of early voting. At the Gippsland South District by-election 10,739 electors voted early in person, representing 30.3 percent of total votes cast. There were also 1,339 postal votes cast, representing 3.7 percent of total votes cast.<sup>70</sup>

At the Polwarth District by-election 7,783 electors voted early in person, representing 20.1 percent of total votes cast. There were also 5,019 postal votes cast, representing 13.2 percent of total votes cast.<sup>71</sup>

At the South-West Coast District by-election, 20,134 electors voted early in person, representing 48.7 percent of total votes cast. There were also 2,423 postal votes cast, representing 5.8 percent of total votes cast.<sup>72</sup>

As noted in Chapter Two, referring to by-elections as a measure of electoral participation is problematic given that voter turnout is generally lower at Victorian by-elections, due to a range of factors. Despite this, it is clear the upward trend in early voting in person continued at Victorian by-elections since 2015. Figure 3.2 compares early voting rates for Gippsland South District, Polwarth District and South-West Coast District at the 2014 Victorian state election and the corresponding District by-election in 2015.

**Figure 3.2** Three-District early voting comparison, Victoria 2014-2015



Source: Victorian Electoral Commission, "State election 2014 results", Victorian Electoral Commission, Melbourne, 2015; Victorian Electoral Commission, "State District by-elections 2015", Victorian Electoral Commission, Melbourne, 2015.

<sup>70</sup> Victorian Electoral Commission, "Gippsland South by-election 2015", Victorian Electoral Commission, Melbourne, 2015.

<sup>71</sup> Victorian Electoral Commission, "State District by-elections 2015: Polwarth District", Victorian Electoral Commission, Melbourne, 2015.

<sup>72</sup> Victorian Electoral Commission, "State District by-elections 2015: South-West Coast District", Victorian Electoral Commission, Melbourne, 2015.



Results from the South-West Coast District by-election are particularly notable; 54 percent of electors voted before Election Day in the October 2015 South-West Coast District by-election. This is the first time that the majority of electors in a Legislative Assembly District voted before Election Day at any Victorian election.

South-West Coast District covers the coastal parts of Victoria's western districts. It is 5,829 square kilometres in size, with the largest cities being Portland and Warrnambool. The District also includes Port Fairy, Heywood, Macarthur and Koroit.

## 3.7 Matters raised during the inquiry related to early voting

During its inquiry the committee received a considerable amount of evidence about early voting at the 2014 Victorian state election. Early voting was mentioned in 80 percent of the committee's 57 written submissions. 90 percent of those who appeared at the public hearings also discussed early voting in some form.

Evidence about early voting addressed the following matters:

- The length of the early voting period at Victorian state elections and Victorian by-elections;
- The administration of early voting, including recommendations as to how and when early votes should be counted;
- Recommendations about the close of the roll period, and the corresponding commencement of early voting;
- Commentary about the location of early voting centres;
- Commentary about queueing at early voting centres;
- The efficacy of s98 of the *Electoral Act 2002* (Vic), including the VEC's procedures relating to early voting and compliance with s98;
- The use and availability of non-remote electronic voting kiosks at early voting centres, and remote voting; and
- Postal voting, focusing on the administrative procedures to apply for a postal vote.

### 3.7.1 Length of the early voting period at Victorian state elections

As mentioned earlier, early voting and postal voting for a Victorian state election is usually permitted during a two-week period before Election Day. This was the case for the 2014 Victorian state election.

In the case of Victorian state elections, the writ for the election, as issued by the Victorian Governor, also determines the potential length of the early voting period. Section 63 of the *Electoral Act 2002* (Vic) stipulates that the writ set out

three key dates: the day for the close of the roll, the final nomination day and Election Day. Early voting can theoretically occur at any stage between the close of the roll and Election Day.

### **Recommendations from inquiry participants – length of early voting period at Victorian state elections**

During the inquiry the committee received mixed views about the appropriateness of the length of the early voting period at Victorian state elections.

Several inquiry participants told the committee that the current two-week period was too long, calling for a shorter early voting period. In their submission, The Nationals Victoria recommended reducing early voting to seven days. The submission based its reasoning on an appeal to democratic integrity; namely, that extended periods of early voting are “damaging Victoria’s democracy” and encouraging convenience voting behaviour.<sup>73</sup> Similarly, James C. Murphy, an individual who made a submission to the inquiry, also questioned the value of a two-week early voting period for Victoria’s democracy.<sup>74</sup>

The Australian Sex Party’s submission also recommended reducing the early voting period to seven days, for reasons of fairness. The submission argues that extended early voting periods disadvantage smaller political parties and independent candidates, who often find it difficult to secure volunteers to staff early voting centres for longer periods compared to larger parties.<sup>75</sup> Maria Rigoni, a Palmer United Party Candidate in Northern Metropolitan Region at the 2014 Victorian state election, recommended reducing the early voting period on the same basis.<sup>76</sup>

In contrast, other inquiry participants supported the current two-week early voting period. In its submission Victorian Trades Hall Council supported early voting and the potential expansion of the service, noting the convenience of early voting for those who undertake shift work.<sup>77</sup> In addition, while the VEC did not directly comment on the length of the early voting period, at the public hearings Warwick Gately AM, Victorian Electoral Commissioner, noted that a two-week period seemed appropriate given contemporary demand for early voting services. Similarly, during his appearance at the public hearing Noah Carroll, State Secretary, Victorian Labor, suggested that Victorian Labor “accepts” a two-week early voting period.<sup>78</sup>

<sup>73</sup> The Nationals Victoria, Submission No. 43., p.5.

<sup>74</sup> James C. Murphy, Submission No. 23, p.4.

<sup>75</sup> Australian Sex Party, Submission No. 27, p.1.

<sup>76</sup> Maria Rigoni, Submission No. 56, p.p.1-2.

<sup>77</sup> Victorian Trades Hall Council, Submission No. 49, p.4.

<sup>78</sup> Noah Carroll, Transcript of Evidence, 11 August 2015, p.2.

### Committee's view

While the committee appreciates the concerns of some inquiry participants about the current two-week early voting period at Victorian state elections, the committee does not support limiting early voting opportunities at Victorian state elections. With 1.2 million Victorians voting early at the 2014 Victorian state election, the committee is also concerned that a shorter early voting timeframe may lead to longer queues at early voting centres. In other words, it makes little sense to try and fit an increasing number of electors into a smaller voting window.

The committee is also cognisant of the previous Electoral Matters Committee's views on this matter. In the 57<sup>th</sup> Parliament the then committee found that "early voting is here to stay" and that trying to curtail early voting might only disenfranchise some electors who have come to rely on flexible voting services.

**FINDING 1:** The committee supports a minimum of an eleven day early voting period at Victorian state elections.

### 3.7.2 Length of early voting period at Victorian by-elections

In the case of Victorian by-elections, s63 of the *Electoral Act 2002* (Vic) stipulates that the writ be issued by the Speaker of the Legislative Assembly. As for state elections, s63 stipulates that the writ sets out three key dates: the day for the close of the roll, the final nomination day and the Election Day. Within the boundaries set by these key dates, the Speaker has discretion over the length of the early voting period.

Unlike the two-week early voting period at Victorian state elections, the length of the early voting period has differed at Victorian by-elections since 2012. At two of the past six Victorian by-elections the early voting period was two weeks. Four of the past six Victorian by-elections had an early voting period of four weeks. Table 3.2 lists the last six Victorian by-elections, the early voting period and key dates.

**Table 3.2** Victorian by-elections since 2012; early voting periods

By-election and date	Early voting period	Key dates
Melbourne District, 21 July 2012	Four weeks	Commenced: 22 June 2012 Ended: 20 July 2012
Niddrie District, 24 March 2012	Two weeks	Commenced: 9 March 2012 Ended: 23 March 2012
Lyndhurst District, 27 April 2013	Four weeks	Commenced: 2 April 2013 Ended: 26 April 2013
Gippsland South District, 14 March 2015	Two weeks	Commenced: 2 March 2015 Ended: 13 March 2015
Polwarth District, 31 October 2015	Four weeks	Commenced: 6 October 2015 Ended: 30 October 2015
South-West Coast District, 31 October 2015	Four weeks	Commenced: 6 October 2015 Ended: 30 October 2015

Source: Victorian Electoral Commission, "Election results", Victorian Electoral Commission, Melbourne, February 2012.

During the inquiry the committee did not receive evidence directly from inquiry participants about the length of the early voting period at any Victorian by-election. However, the committee did learn of widespread concern amongst candidates at the South-West Coast District by-election about the early voting period. In early November 2015, as results were being finalised, the ABC reported that Michael Neoh, The Nationals Victoria candidate, and independent Roy Reekie, considered the four-week early voting period “excessive”. Mr Reekie flagged potential legal action to “make a point about the length of the pre-poll period”.<sup>79</sup> The ABC also reported that seven of the 11 candidates did not support the four-week early voting period.<sup>80</sup>

In addition, *The Standard*, a newspaper based in Warrnambool covering Victoria’s south-west coast, reported on 5 October 2015 that a group of eight candidates were planning to lodge an official complaint with the VEC about the four-week early voting period. The group, led by candidates Pete Smith and Roy Reekie, claimed that the Speaker’s decision to hold a four-week early voting period was “undemocratic” and “sucked the life” out of the political campaign for the by-election.<sup>81</sup>

At the time of writing the committee had not received formal notification of any complaint to the VEC.

### Committee’s view

As Table 3.2 demonstrates, 66 percent of Victorian by-elections since 2012 have had a four-week early voting period, two weeks longer than the usual early voting period set for Victorian state elections. The committee felt that this fact, along with the commentary accompanying the South-West Coast District by-election, warranted consideration.

While the committee broadly supports flexible voting options for Victorian electors, it does not support a four week early voting period at state elections or by-elections. Twenty eight days of campaigning, in addition to the usual campaigning activities that precede an election, places an unnecessary strain on political parties and their volunteers, and also on independent candidates.

The committee also notes that Victorian electors are sufficiently aware of their ability to access early and postal voting services over the standard two week early voting period. Given that Victoria has fixed election dates, and the VEC widely advertises the location of early voting centres in the lead up to the election, the committee does not see a need for an additional fortnight of early voting.

79 Judd, B., 2 November 2015. “Victorian by-election: Supreme Court action considered over “excessive” pre-poll voting period”, Australian Broadcasting Corporation. Retrieved 11 February 2016 from [www.abc.net.au/news/2015-11-02/victorian-by-election-supreme-court-action-considered/6904790](http://www.abc.net.au/news/2015-11-02/victorian-by-election-supreme-court-action-considered/6904790).

80 Judd, B., 2 November 2015. “Victorian by-election: Supreme Court action considered over “excessive” pre-poll voting period”, Australian Broadcasting Corporation. Retrieved 11 February 2016 from [www.abc.net.au/news/2015-11-02/victorian-by-election-supreme-court-action-considered/6904790](http://www.abc.net.au/news/2015-11-02/victorian-by-election-supreme-court-action-considered/6904790).

81 Sinnott, A, 5 October 2015. “Four week pre-poll uproar”, *The Standard*, 2015. Retrieved 11 February 2016 from [www.standard.net.au/story/3404057/four-week-pre-poll-uproar/](http://www.standard.net.au/story/3404057/four-week-pre-poll-uproar/).

To this end, the committee recommends s63 of the *Electoral Act 2002* (Vic) be amended to specify that the maximum allowable period for early voting at a Victorian by-election be two weeks.

**RECOMMENDATION 2:** The committee recommends that s63 of the *Electoral Act 2002* (Vic) be amended to specify that the maximum allowable period for early voting at a Victorian by-election be two weeks.

### 3.7.3 Counting of early votes

One of the major themes related to early voting was the counting of early votes, including potential reforms to how and when early votes are counted for Victorian state elections.

At present, early votes at Victorian state elections are not counted on Election Night. Primarily, this is because Victorian electoral legislation treats early votes as unsorted-multi District votes. In practice, when casting an early vote in person Victorian electors do not need to place the ballot in a declaration envelope. Due to resource constraints, Election Day staff are usually occupied with the task of processing and counting Election Day votes, leaving little capacity for additional counting and sorting work. As a result early votes at Victorian state elections are not usually counted until the Monday after Election Day.

This differs to procedures in other Australian jurisdictions. For federal elections, the *Commonwealth Electoral Act 1918* (Cwth) was amended by the *Electoral and Referendum (Pre-Poll Voting and Other Measures) Act 2010* (Cwth) to provide a new category of early vote, “pre-poll ordinary votes”, as distinct from “pre-poll declaration votes”.<sup>82</sup> Since 2010 the inclusion of pre-poll ordinary votes has enabled the AEC to treat early votes cast in an elector’s ‘Home’ Division to be treated as ordinary votes and counted on Election Night. The ‘Home’ Division refers to the division in which the elector is enrolled.<sup>83</sup>

In contrast, in Victoria ballot boxes at early voting centres may contain ballots from more than one District. As noted by Antony Green, Election Analyst, this situation makes counting early votes difficult:

“Counting votes requires reconciliation of ballot papers to the roll mark-off, which is difficult in Victoria if it means reconciling ballot papers for multiple [D]istricts from the same ballot box”.<sup>84</sup>

Despite this, at present the VEC processes and counts some early votes on Election Night. For the 2014 Victorian state election the VEC included a parcel of 2,000 early votes – both early votes in person and postal votes – in the Election

<sup>82</sup> *Electoral and Referendum (Pre-Poll Voting and Other Measures) Act* (Cwth).

<sup>83</sup> *Electoral and Referendum (Pre-Poll Voting and Other Measures) Act* (Cwth).

<sup>84</sup> Antony Green, Submission No. 52., p.p.1-2.

Night count for each District, so as to provide some indication of the trends from early voting data. A similar practice was used for the 2010 and 2006 Victorian state elections.<sup>85</sup>

### When are early votes cast – 2014 Victorian state election

At the 2014 Victorian state election most early voting centres used electronic roll mark off facilities to mark an elector’s name off the electoral roll. Due to this, it is possible to determine the number of early votes issued on particular days during the early voting period, which ran between Friday 14 November 2014 and Friday 28 November 2014.

Table 3.3 lists early votes issued by day at the 2014 Victorian state election. Given that roll scanning and the processing of declaration envelopes occurred at the end of the voting period, the “issued date” was not captured on all early votes and as such the figures in Table 3.3 do not represent all early votes cast. The difference between the total number of early votes compared to the figures in Table 3.3 is approximately 30,000 votes.

**Table 3.3** Electronic roll mark off statistics, 2014 Victorian state election

Date	Day	Early votes issued	Percentage of total early votes with electronic roll mark off	Progressive early vote count	Percentage of total electronically issued votes
14/11/2014	Friday	66	0.01	66	0.01
15/11/2014	Saturday	-	0.00	66	0.01
16/11/2014	Sunday	-	0.00	66	0.01
17/11/2014	Monday	30,287	3.43	30,353	3.44
18/11/2014	Tuesday	41,116	4.66	71,469	8.10
19/11/2014	Wednesday	48,237	5.47	119,706	13.56
20/11/2014	Thursday	56,661	6.42	176,367	19.98
21/11/2014	Friday	71,797	8.13	248,164	28.12
22/11/2014	Saturday	50,720	5.75	298,884	33.86
23/11/2014	Sunday	1,073	0.12	299,957	33.99
24/11/2014	Monday	78,223	8.86	378,185	42.85
25/11/2014	Tuesday	99,956	11.28	477,781	54.13
26/11/2014	Wednesday	108,154	12.25	585,935	66.39
27/11/2014	Thursday	154,286	17.48	740,221	83.37
28/11/2014	Friday	142,371	16.13	882,592	100.00

Source: Liz Williams, Deputy Electoral Commissioner, Victorian Electoral Commission, “Correspondence”, 2 March 2016, p.1.

<sup>85</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.35.

As seen in Table 3.3:

- Approximately 28 percent of total early votes issued in an early voting centre with electronic roll mark off were cast in the first week of the 2014 Victorian state election early voting period;
- Approximately 72 percent of total early votes issued in an early voting centre with electronic roll mark off were cast in the second week of the 2014 Victorian state election early voting period; and
- 33 percent of early votes in person at the 2014 Victorian state election were cast on the Wednesday, Thursday and Friday before Election Day.

### Evidence from inquiry participants

With the recent increase in early voting at Victorian state elections, several inquiry participants called for the VEC to amend its procedures so that early votes could be counted on Election Night.

In their submission The Nationals Victoria recommended that “the counting of votes must also include the counting of [votes cast at] early voting centres”. The Nationals Victoria also stipulated that “where the volume of votes at these centres is greater than 20 percent of the overall [District total], that the VEC should count early votes on Sunday”.<sup>86</sup>

Victorian Labor’s submission also recommended the VEC separate a parcel of early votes and postal votes for counting on Election Night. However, the submission cautioned against “taking too large a parcel of early votes, so that counting on Election Night becomes impractical”.<sup>87</sup>

Similarly, the Victorian Liberal Party’s submission also recommended that the VEC count a parcel of early votes on Election Night. At the August 2015 public hearings Simon Frost, State Director, Victorian Liberal Party, advised that 3,000 votes per District was a reasonable sum of early votes to count on Election Night.<sup>88</sup>

Antony Green, Election Analyst, also supported counting early votes on Election Night at Victorian state elections. In his submission, he specifically recommended that the *Electoral Act 2002* (Vic) be amended to “draw a distinction between ‘Home’ and ‘Outside’ District early votes in person, allowing ‘Home’ District early votes in person to be counted on Election Night”.<sup>89</sup> Mr Green also recommended the VEC restructure some of its early voting centres so that early votes cast by electors in their ‘Home’ District were separated from ‘Outside’ District ballots. This would facilitate faster counting of ‘Home’ District early votes.<sup>90</sup>

<sup>86</sup> The Nationals Victoria, Submission No. 43., p.p.5-6.

<sup>87</sup> Victorian Labor, Submission No. 15, p.2.

<sup>88</sup> Simon Frost, Transcript of Evidence, 12 August 2015, p.9.

<sup>89</sup> Antony Green, Submission No. 52, p.7.

<sup>90</sup> Antony Green, Submission No. 52, p.6.

### Evidence from the VEC

During this inquiry the VEC also supported the counting of some early votes on Election Night.

In its submission, and in its report to Parliament on the 2014 Victorian state election, the VEC recommended the *Electoral Act 2002* (Vic) be amended so that the “processing of postal and early votes, in a manner determined by the Commission that does not include the inspection of ballot papers, can commence not earlier than 72 hours before the close of voting on Election Day so that these votes can be included in Election Night counting and results reporting”.<sup>91</sup>

The VEC favoured a segregation-style administration of early voting counting, whereby the ballots from the first week of early voting are quarantined and from the remaining week of early votes (given a two-week early voting period). This would allow the VEC to inspect the ballot papers but not compromise the integrity of further voting. At the public hearings on 11 August 2015, Liz Williams, Deputy Victorian Electoral Commissioner, explained this process to the committee:

“Our thoughts for 2018 at this stage would be to allocate for each early voting centre — the number of early voting centres we will still need to look at — a set of ballot papers as well as paperwork. We will run the early voting for the first week, if the time line is still the same, and then at the end of the first week we will close off those ballot boxes and the paperwork. We will put those aside and quarantine them so that we have a manageable number that we can deal with on [E]lection [N]ight. Then we will run the second week on a separate set of ballot boxes and paperwork that we can have separately. Come 6 o’clock, if there is no ability to do any processing before 6 o’clock, the Election Managers will open those ballot boxes and start that counting. Given the volume that we would have in that first week, it would be manageable to get some of those counted. We anticipate that we could possibly do 4,000 or 5,000 per [D]istrict. It also depends on how many go through those centres in the first week”.

### Committee’s view

The committee recognises that early voting is likely to continue increasing at Victorian state elections and by-elections. In 56 of the 88 Legislative Assembly Districts at the 2014 Victorian state election 30 percent of electors voted before Election Day, an increase of 96 percent compared to the 2010 Victorian state election. If this trend holds for the 2018 Victorian state election, and early votes remain uncounted until the Monday after Election Day, it is likely that the results from a single District, with a close election count and a high rate of early voting, could potentially delay the entire election outcome and even affect when government is formed.

While the committee appreciates the VEC’s proposal to segregate a parcel of early votes cast during the first week of the early voting period at future Victorian state elections so that some early vote results are available on Election Night, the

<sup>91</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2014, p.7.



committee is concerned that the proposal only captures a quarter of early votes. As shown in Table 3.3, three quarters of early votes are cast in the second week of the early voting period.

Given recent concerns around the integrity of Australia's electoral administration, a delayed election result would be unacceptable for Victoria. To avoid this scenario, the committee notes there is merit amending how early votes are treated in the *Electoral Act 2002* (Vic), so that the VEC can count early votes alongside ordinary votes on Election Night. As noted earlier, an amendment to the *Commonwealth Electoral Act 1918* (Cwth) by the *Electoral and Referendum (Pre-Poll Voting and Other Measures) Act 2010* (Cwth) has allowed the AEC to count early votes on Election Night at the past two federal elections. Replicating the administrative distinction between 'Home' District and 'Outside' District early votes is, in the committee's view, a sensible approach.

During this inquiry the committee also considered how comparable international jurisdictions are responding to increased demand for early voting services. Like Victoria, New Zealand has seen rates of early voting – known as advance voting in New Zealand – increase significantly; approximately 30 percent of all votes cast at the 2014 New Zealand general election were advance votes, a 100 percent increase compared to the 2011 New Zealand general election.

The committee notes that Elections New Zealand, New Zealand's national electoral authority, has recently adjusted key performance targets through its annual planning process to include a measure that 80 percent of early votes cast are counted on Election Night. Further, the committee understands that Elections New Zealand begins counting advance votes at 2pm on Election Day.

**RECOMMENDATION 3:** The committee recommends the *Electoral Act 2002* (Vic) be amended so that all early votes cast in an elector's 'Home' District are counted on Election Night. The VEC should also amend its annual reporting processes to include a performance target that all early votes cast in an elector's 'Home' District are counted on Election Night. To facilitate this, the *Electoral Act 2002* (Vic) should be amended so that early votes are treated as ordinary votes for the purposes of vote counting at Victorian state elections.

### 3.7.4 Close of the roll and commencement of early voting

#### Close of the roll

As noted in Chapter One, the 2014 Victorian state election was mostly unaffected by legislative change. In 2014 Parliament debated the *Electoral Amendment Bill 2014* (Vic), which was defeated in September 2014. The Bill contained two amendments to the early voting timetable.

The first related to the close of the roll provisions. Currently the close of the roll occurs seven days after the issue of the writ for a Victorian state election.

Table 3.4 shows enrolment transactions between the issue of the writ and close of the roll at Victorian state elections.

**Table 3.4** Enrolment transactions between the issue of writ and close of the roll, 1999-2014 Victorian state elections

	1999 Victorian state election	2002 Victorian state election	2006 Victorian state election	2010 Victorian state election	2014 Victorian state election
Issue of writ to close of the roll period	3 days	3 days	7 days	7 days	7 days
New enrolments	29,313	21,158	21,238	12,842	15,132
Enrolment updates	32,381	34,003	36,479	25,310	22,610
Total enrolments	3,130,338	3,220,206	3,353,845	3,582,232	3,806,301
Last week as percentage of enrolment transactions	1.97	1.71	1.72	1.07	0.99

Source: Liz Williams, Deputy Electoral Commissioner, Victorian Electoral Commission, "Correspondence", 2 March 2016, p.2.

Since the 57<sup>th</sup> Parliament the VEC has argued that, with the advent of a fixed election date for Victorian state elections and the opportunity to enrol on Election Day, there is no need for a seven-day period between the issue of the writ and the close of the roll. The VEC advised the committee it would be unlikely that any Victorian would be disenfranchised by a three-day period. In the 57<sup>th</sup> Parliament, the then committee learnt that a seven-day period places some pressure on the VEC's capacity to produce roll products in time for early voting, nomination checking and for candidates' campaigns.<sup>92</sup>

To this end, the then committee recommended that the *Electoral Act 2002* (Vic) be amended so that the close of the roll occurs three days after the issue of the writ for a Victorian state election.

During this inquiry the VEC again recommended that the *Electoral Act 2002* (Vic) be amended so that the close of the roll occurs three days after the issue of the writ for a Victorian state election.

### Committee's view

The committee does not support reducing the period between the issue of the writ and the close of the roll to three days.

As shown in Table 3.4, 15,132 Victorians enrolled for the first time in the seven days between the issue of the writ and the close of the roll at the 2014 Victorian state election. While the committee accepts that anyone who does not enrol or update their enrolment details before the close of the roll may still submit a provisional vote, reducing the length of time between the issue of the writ and the close of the roll to three days may result in thousands of Victorians having to submit a provisional vote. Making it easier, not harder, to vote is one of the committee's objectives.

<sup>92</sup> Parliament of Victorian, Electoral Matters Committee, "Inquiry into the 2010 Victorian state election", Parliament of Victoria, Melbourne, May 2012, p.44.

The committee also recognises that the number of provisional votes at Victorian state elections is increasing. There were 37,622 provisional votes admitted to the count at the 2014 Victorian state election, compared to 29,272 at the 2010 Victorian state election. Given widespread concern around the potential for delayed election results, it makes no sense, in the committee's view, to recommend a change to legislation that would increase the level of provisional voting.

### Commencement of early voting

The second amendment relating to early voting in the *Electoral Amendment Bill 2014* (Vic) concerned the commencement of early voting.

As noted earlier, s99 of the *Electoral Act 2002* (Vic) stipulates that early voting can commence at 4.00pm on the day of the final nomination day. Under this timeframe the VEC has four hours to conduct the ballot draw and to print and distribute ballot papers to voting centres. Anecdotally, as noted earlier, the committee learnt that some early voting centre officials “hand drew” ballot papers for electors who wished to vote during this window, given that the VEC was unable to distribute ballot papers to all early voting centres. In addition, electors who vote during this time are restricted to voting below-the-line on the Legislative Council ballot paper, as group voting tickets have not been lodged.

In the 57<sup>th</sup> Parliament the then committee recommended amending the *Electoral Act 2002* (Vic) so that early voting commences on the Monday after nominations close.

During this inquiry the VEC again recommended that the *Electoral Act 2002* (Vic) be amended so that early voting commences on the Monday after nominations close.

### Committee's view

The committee supports the commencement of early voting on the Monday after nominations close. This will ensure that all Victorians who vote early can access a ballot paper for the Legislative Council with all available voting options.

**RECOMMENDATION 4:** The committee recommends that s99 of the *Electoral Act 2002* (Vic) be amended so that early voting commences on the Monday after the final nomination day.

## 3.7.5 Location of early voting centres

As noted earlier there were 100 early voting centres at the 2014 Victorian state election, with at least one early voting centre located in each Legislative Assembly District. A District election office is usually designated as the early voting centre.

Following the state election media reports indicated that some candidates were unhappy with the location of early voting centres in certain Districts. On 29 November 2014 *The Age* reported that early voters in Frankston District had

to “line up at the Justice Service Centre and Department of Human Services alongside parolees reporting to authorities and families involved in child protection matters”.<sup>93</sup> In the report Liberal candidate Sean Armistead said the location of the early voting centre was “terrible” and he would lodge a complaint with the VEC after the election.

The committee is also aware of a dispute in Kew District over the location of an early voting centre in a residential building. *The Age* again reported that Melbourne Body Corporate Management issued a “breach notice” to the tenant, ejected campaign volunteers off the grounds and banned voters from queuing inside.<sup>94</sup>

During the inquiry several inquiry participants also raised the issue of the location of early voting centres. In his submission Jack Medcraft, who made a submission to inquiry, called for “more convenient” locations for early voting centres in and around Sunbury District.<sup>95</sup>

Thuy Hung Vo, an independent candidate in Keysborough District at the 2014 Victorian state election, also called for better placement of early voting centres. He noted that early voting centres were located outside Keysborough’s central business districts of Noble Park, Springvale and Parkmore Shopping Centres.<sup>96</sup>

### Committee’s view

The committee encourages the VEC to place early voting centres in appropriate, accessible and visible locations. Wherever possible, early voting centres should be located near major population centres, have good access to public transport, and be located in public buildings such as libraries, as is the practice for Queensland state elections.

**FINDING 2:** The committee encourages the VEC to locate early voting centres in appropriate, accessible and visible locations. Further, all voting centres should be located near population centres and have access to public transport. The VEC should also utilise public buildings, such as libraries, where appropriate.

## 3.7.6 Queueing at early voting centres

Some early voting centres experienced queuing issues at the 2014 Victorian state election. As also noted in Chapter Seven, the proportion of electors who voted at an early voting centre who felt they had to queue for too long increased from one percent in 2010 to 20 percent in 2014.

In February 2016 the Victorian Auditor-General examined the growth of early voting as part of the performance audit of the VEC. As part of the assessment of the VEC’s planning for the 2014 Victorian state election, the audit’s final report

<sup>93</sup> Cook, H., 2014, “Candidates decry early voting strife”, *The Age*, 29 November 2014.

<sup>94</sup> Cook, H., 2014, “Candidates decry early voting strife”, *The Age*, 29 November 2014.

<sup>95</sup> Jack Medcraft, Submission No. 11, p.1.

<sup>96</sup> Thuy Hung Vo, Submission No. 9, p.2.

noted that the increase in early voting at the 2014 Victorian state election was somewhat unanticipated, and this contributed to queues at some early voting centres. The report found:

“Queue lengths grew in centres across the state. VEC’s planning allowed for an increase in the number of people voting in the early voting period, however, demand was unprecedented – almost 70 per cent higher than in 2010. This had some impact on voter satisfaction with queue lengths but did not, on the whole, interfere with VEC’s ability to conduct the election in a secure and accurate manner”.

During this inquiry the VEC also acknowledged that some electors experienced long queues at early voting centres.<sup>97</sup>

### Committee’s view

With over a third of Victorians voting before Election Day, it is essential that the VEC ensures that all electors are able to cast their vote in a timely and efficient manner. Lengthy queues may deter some electors from voting.

The committee sees merit in the VEC developing a specific performance target for queues at early voting centres. Using this target, the VEC will be able to benchmark early voting behaviour and measure, through its post-election evaluation surveys, the number of electors who fall within or outside the benchmark.

Building on findings in Chapter Five, the committee also notes that the VEC should appoint queue controllers at Victorian voting centres experiencing high demand. These officials would provide an important public interface; for instance, they could advise queueing times, assist electors with special needs and also relieve some of the responsibility of election staff with regards to voting centre administration.

**RECOMMENDATION 5:** The committee recommends the VEC appoint queue controllers at all Victorian voting centres experiencing high demand.

**RECOMMENDATION 6:** The committee recommends the VEC establish a performance target for queueing at all Victorian voting centres which reduces queueing times encountered at the 2014 Victorian state election. This target should be incorporated into the VEC’s election planning and be used to benchmark the efficiency of voting centres as part of the VEC’s annual reporting.

### 3.7.7 Efficacy of s98 of the *Electoral Act 2002 (Vic)*

Section 98 and s99 of the *Electoral Act 2002 (Vic)* set out the criteria for applying for an early vote in person at a Victorian election. As noted earlier, in Victoria the declaration an elector must make about not being able to vote on Saturday is an oral declaration.

<sup>97</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2014, p.51.

In December 2014 Maria Rigoni, a Palmer United Party candidate for Northern Metropolitan Region and also a participant in this inquiry, brought proceedings in the Victorian Supreme Court, sitting as the Court of Disputed Returns, arguing that the VEC did not comply with the *Electoral Act 2002* (Vic) because it did not require early voters to make a declaration that they were unable to vote on Election Day. Ms Rigoni sought to overturn the whole 2014 Victorian state election.

In March 2015 Justice Garde held that the Court of Disputed Returns does not have power to declare a general election void and that Ms Rigoni did not have standing to dispute the result of the entire election.<sup>98</sup> Justice Garde also found that in some instances, early voting was not conducted in accordance with s98(b) and s99(1) of the *Electoral Act 2002* (Vic). Nevertheless, in these instances, Justice Garde found that the votes of the electors who voted early were valid and should stand.<sup>99</sup>

During this inquiry Ms Rigoni gave evidence to the committee. She argued the VEC's alleged misinterpretation of s99 constituted grounds to void the 2014 Victorian state election. At the August 2015 public hearings, she also discussed the efficacy of s98 and s99 of the *Electoral Act 2002* (Vic), and the VEC's administrative procedures at early voting centres. She claimed that many electors who voted early were actually ineligible to do so, and should have voted on Election Day.<sup>100</sup>

In addition, another inquiry participant, Steven Armstrong, an independent candidate in Albert Park District at the 2014 Victorian state election, made a short submission to the inquiry about the efficacy of Victoria's electoral legislation in relation to early voting at the 2014 Victorian state election. Like Ms Rigoni, Mr Armstrong notes that many early voters are ineligible to do so and that s98 of the *Electoral Act 2002* (Vic) is effectively redundant because of this.<sup>101</sup>

### Committee's view

The committee recognises there has been a shift in community expectations around access to early voting. Many Victorians now expect – and rely on – flexible voting services due to social and lifestyle factors, and employment.

The committee also notes that this shift has been accompanied by widespread understanding in the community about the need to provide an oral declaration to vote early at Victorian state elections. Given current demand for early voting, it would not be appropriate to impose an additional declaration hurdle on Victorian electors.

<sup>98</sup> Electoral Regulation Research Network, "ERRN Newsletter October 2015", University of Melbourne, p.19. Retrieved 11 February 2016 from [law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0009/1650186/ERRN-Newsletter-October-2015.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0009/1650186/ERRN-Newsletter-October-2015.pdf).

<sup>99</sup> Electoral Regulation Research Network, "ERRN Newsletter October 2015", University of Melbourne, p.19. Retrieved 11 February 2016 from [law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0009/1650186/ERRN-Newsletter-October-2015.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0009/1650186/ERRN-Newsletter-October-2015.pdf).

<sup>100</sup> Maria Rigoni, Transcript of Evidence, 12 August 2015, p.1.

<sup>101</sup> Steven Armstrong, Submission No. 29, p.2.

### 3.7.8 The use and availability of non-remote electronic voting kiosks at early voting centres, and remote voting kiosks

#### vVote

Section 100 of the *Electoral Act 2002* (Vic) and Part 5 of the *Electoral Regulations 2012* (Vic) provide for electronic voting at Victorian state elections. Since 2006 the VEC has provided non-remote (i.e. machines not connected to the internet) electronic voting kiosks at some early voting centres for Victorian state elections. Victorians who are blind or have low vision, have a motor impairment or insufficient literacy or language skills can vote electronically.

In 2014 the VEC's electronic voting system was called vVote. vVote was available during the early voting period to electors in Victoria and Victorian electors in the United Kingdom. As noted by the VEC in its report to Parliament on the 2014 Victorian state election, vVote was an entirely new software system compared to the system used at the 2010 Victorian state election. It was designed by the VEC "in-house" with the assistance of local and overseas expert developers.<sup>102</sup>

The committee notes that electronic voting has been poorly patronised at the past three Victorian state elections. There were 1,121 electronic votes cast at the 2014 Victorian state election, and 961 electronic votes cast at the 2010 Victorian state election.<sup>103</sup> In previous Parliaments the then committee, and the VEC, expressed disappointment at the low patronage of electronic voting, and committed to expanding opportunities for eligible Victorians to access the system.

Despite vVote's low patronage, some inquiry participants gave evidence about vVote. In their submission Vision Australia called for the Victorian Government and the VEC to provide electronically assisted voting, or EAV, at all early voting centres.<sup>104</sup> Vision Australia also suggested that electronic voting could potentially be expanded to Election Day polling places, subject to appropriate legislative change.

#### Committee's view

The committee in principle supports the idea of providing electronic voting services on Election Day to Victorians who are blind or have low vision, have a motor impairment or insufficient literacy or language skills.

The committee notes these matters require further investigation. Such an investigation will form part of the committee's inquiry into electronic voting following a reference received from the Legislative Assembly on 7 October 2015, with the final report due in April 2017.

<sup>102</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.31.

<sup>103</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.31.

<sup>104</sup> Vision Australia, Submission No. 42, p.p.4-6.

### Remote voting

Remote voting is a type of electronic voting which happens at a non-designated polling place. Currently in Victoria all electronic voting kiosks are non-remote.

During its inquiry the committee closely considered the NSW Electoral Commission's wide scale implementation of iVote, the commission's remote internet voting platform. iVote was first used at the 2011 NSW state election; 47,000 electors cast their vote using the system. In March 2015 the system was expanded, with approximately 280,000 electors casting their vote via iVote for the 2015 NSW state election, representing approximately 30 percent of all early votes cast.

As mentioned earlier, the committee met with Colin Barry, the former NSW Electoral Commissioner, in September 2015.

As part of its report to Parliament the VEC recommended that the *Electoral Act 2002* (Vic) be amended to allow the VEC to commence a trial of remote electronic voting at the 2018 Victorian state election. The VEC's rationale for the trial is that one of the reasons for the poor take-up of vVote is that many electors are dissuaded by the hassle and inconvenience of having to attend a static polling place. The VEC suggests allowing eligible Victorians to vote remotely from the comfort of their home may increase patronage of electronic voting. The VEC also suggests that overseas and interstate electors would be more likely to vote electronically on a remote platform, given the unreliability of postal services.<sup>105</sup>

The VEC's full recommendation is that:

“the *Electoral Act 2002* (Vic) be amended so that a limited category of electors (blind or with low vision, motor impaired, insufficient language or literacy skills, interstate and overseas) be allowed to access a remote voting system where their vote could be cast and transferred electronically subject to regulatory protocols established by the Commission”.<sup>106</sup>

### Committee's view

The committee will examine remote voting as part of its inquiry into electronic voting. Given Australia Post's decision to implement a three-day regular mail service, and continuing increases in early voting at Victorian state elections, the committee will specifically examine international best-practice voting technologies.

The committee's final report for the electronic voting inquiry is due in April 2017.

<sup>105</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.7.

<sup>106</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.7.



### 3.7.9 Postal voting, focusing on the administrative procedures to apply for a postal vote

Sections 101-106 of the *Electoral Act 2002* (Vic) set out the procedures for postal voting at Victorian state elections. Any Victorian elector who is unable to reach a polling centre on Election Day may apply for a postal vote.

To apply for a postal vote, electors must apply in writing via an approved application form. Electors can obtain a postal vote application form by collecting one from any post office in Victoria, downloading one from the VEC's website, telephoning the VEC to request that a form be posted to them, or using a form delivered to their letterbox by a political party. The VEC receives postal vote applications in four main ways: by post; by hand-delivery from a political party; by fax; and by email (applications must be signed and scanned before they are emailed).

During its inquiry the committee received some evidence about postal voting. The VEC made three recommendations in its report to Parliament on the 2014 Victorian state election about potential reforms to postal voting procedures; some recommendations are extant from the defeated *Electoral Amendment Bill 2014*.

#### Applying for a postal vote online

The first recommendation focused on the procedures to apply for a postal vote online. Currently the AEC, the NSW Electoral Commission and the Queensland Electoral Commission provide online portals for electors to apply for a postal vote.

In the 57<sup>th</sup> Parliament the then committee considered evidence and a recommendation from the VEC for an online postal vote application portal. The VEC noted that the online application would take a prescribed form and would contain information to allow the VEC to verify the elector in accordance with established online security protocols, such as a 'secret question'. To this end, the then committee supported the recommendation; an amendment for an online postal vote application was also included in the *Electoral Amendment Bill 2014*, which was defeated in September 2014.

During this inquiry the VEC again recommended that the *Electoral Act 2002* (Vic) be amended "so that an application for a postal vote can be made by electronic means".<sup>107</sup>

<sup>107</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.6.

### Committee's view

The committee supports the VEC's recommendation to amend the *Electoral Act 2002* (Vic) so that an application for a postal vote can be applied for online. This initiative will help Victoria keep pace with best practice in other Australian jurisdictions.

During the inquiry the committee also learnt that the NSW Electoral Commission shares data with NSW political parties relating to the details of electors who apply electronically for a postal vote. The committee also recommends that the VEC be required to share the equivalent data with registered Victorian political parties, subject to recommendation 7.

**RECOMMENDATION 7:** The committee recommends the *Electoral Act 2002* (Vic) be amended so that an application for a postal vote can be applied for by electronic means, contingent on the VEC providing registered Victorian political parties with a data file containing the details of electors who have applied for a postal vote.

### Witnessing provisions on a postal vote application

Currently anyone witnessing a postal vote application is required to add their title or capacity to the postal vote declaration.

In the 56<sup>th</sup> Parliament, the committee learnt that this may prove confusing for some electors, particularly electors who have low literacy or do not speak English well. For some time it has been considered sufficient for an elector witnessing a postal vote application to sign their name in their own handwriting and add the date on the application. Title or capacity is effectively redundant.

To this end, during this inquiry the VEC recommended, as it did in the 57<sup>th</sup> Parliament, that the Act be amended so that an authorised witness, witnessing a written postal vote application, is not required to add their title or capacity in respect of which the authorised witness acts.<sup>108</sup>

### Committee's view

The committee supports this legislative amendment to the *Electoral Act 2002* (Vic) which is out of step with contemporary electoral practice.

**RECOMMENDATION 8:** The committee recommends the *Electoral Act 2002* (Vic) be amended so that an authorised witness, witnessing a written postal vote application, is not required to add their title or capacity in respect of which the authorised witness acts.

<sup>108</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.7.

### Postal vote declarations postmarked the Sunday after Election Day

Section 106 (3) (aa) of the *Electoral Act 2002* (Vic) allows the VEC to inspect the date that a postal vote declaration was witnessed in order to determine admissibility for declarations postmarked the Sunday immediately after Election Day.

As noted by the VEC, this provision reflected Australia Post's service operations at the time the *Electoral Act 2002* (Vic) was first drafted. That is, "in not processing mail on Saturdays so that any ballot papers posted after 6.00 pm on Friday evening (before Election Day) would be postmarked Sunday".<sup>109</sup> The VEC advised the committee that Australia Post has since changed its postal procedures so that it "cannot be guaranteed that all mail posted after 6.00 pm on Friday evening or on Saturday prior to 6.00 pm will be processed on Sunday". Some of this "mail may be carried over and processed on the Monday...there may be some mail, postmarked Monday, that may have been posted between 6.00 pm on Friday and 6.00 pm on Saturday".<sup>110</sup>

Accordingly, the VEC recommends the *Electoral Act 2002* (Vic) be amended to allow the VEC to inspect the witness date for returned postal vote declarations postmarked the Sunday or Monday after Election Day, to determine if the vote is to be accepted.

#### Committee's view

The committee supports this administrative amendment to the *Electoral Act 2002* (Vic).

**RECOMMENDATION 9:** The committee recommends the *Electoral Act 2002* (Vic) be amended to allow election officials to inspect the witness date for returned postal vote declarations postmarked the Sunday or Monday immediately after Election Day, to determine if the vote is to be accepted.

#### Political parties and postal voting

Section 101 (2) (c) of the *Electoral Act 2002* (Vic) provides that a written application to vote by post may be physically attached to, or form part of, other written material issued by a person or organisation. Pursuant to s101 (5), if a person "other than the owner of the copyright in the postal vote application form reproduces the form, that person is not taken to have infringed the copyright. These provisions mean that political parties and candidates may legally print postal vote application forms as part of their campaign material to distribute to electors".

<sup>109</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.7.

<sup>110</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.7.

Since 2007, when the Electoral Matters Committee was first established in the 56<sup>th</sup> Parliament, the VEC has asked the committee to support a recommendation to amend the *Electoral Act 2002* (Vic) to prevent political party involvement in the postal voting process. During this inquiry, the VEC also recommended that the *Electoral Act 2002* (Vic) be amended so that only the VEC can distribute postal vote applications.

The VEC has argued that political party involvement in postal voting is problematic, for the following reasons:

- **Administrative:** The VEC has argued that the timing of the distribution of postal vote applications by political parties has created problems. As noted by the VEC in its report to Parliament on the 2014 Victorian state election, the *Electoral Act 2002* (Vic) “requires the VEC to reject political party applications that have been signed and returned prior to the issue of the writ. The VEC also receives legitimate applications from parties, in some cases, too late to issue ballot packs”. This situation was exacerbated during the 2014 Victorian state election by Australia Post’s decision to introduce a three-day regular mail service. The VEC notes there is “potential for greater numbers of legitimate applications failing to reach the VEC in time to issue a ballot pack – effectively disenfranchising [many electors]”.<sup>111</sup>
- **Elector confusion:** The VEC argues that party involvement in the postal voting process blurs the distinction between the “participants in an election and the electoral administrators”. In 2012 the VEC prepared a research paper on postal voting. Steve Tully, the then Victorian Electoral Commissioner, suggested that:

“Parties are entitled to receive copies of the electoral roll and to communicate with electors, but inclusion of postal vote applications with campaign material makes it appear that an interested party has a role in the conduct of the election. Following the 2002 [Victorian] [s]tate election, at which one party’s postal vote application resembled VEC material, the VEC developed a postal voting protocol designed to minimise confusion about the source of postal vote applications and encouraged parties to follow this protocol in designing their applications. This improved the situation, but in 2006 and 2010 the VEC still received complaints from electors who were uncertain about the source of postal vote applications and angered when they realised that they had handed their information over to a political party”.<sup>112</sup>

Since 2007, the Electoral Matters Committee has offered the following counter arguments:

- In the 56<sup>th</sup> Parliament the then committee suggested that political parties were entitled to communicate and distribute information to electors by any lawful means.

<sup>111</sup> Victorian Electoral Commission, Position Paper, “The Postal Voting Process”, Victorian Electoral Commission, Melbourne, February 2012, p.p.3-4. Retrieved 11 February 2016 from [www.vec.vic.gov.au/files/PostalVotingProcess201202.pdf](http://www.vec.vic.gov.au/files/PostalVotingProcess201202.pdf).

<sup>112</sup> Victorian Electoral Commission, Position Paper, “The Postal Voting Process”, Victorian Electoral Commission, Melbourne, February 2012, p.p.3-4. Retrieved 11 February 2016 from [www.vec.vic.gov.au/files/PostalVotingProcess201202.pdf](http://www.vec.vic.gov.au/files/PostalVotingProcess201202.pdf).

- In the 57<sup>th</sup> Parliament the then committee argued that political parties had a democratic right to distribute postal vote applications, and that doing so is legal and enfranchises some electors who might otherwise not receive a postal vote.

During this inquiry the committee did not receive any evidence from inquiry participants other than the VEC about political party involvement in postal voting.

### **Committee's view**

While the committee appreciates the VEC's advice on this matter, the committee supports the right of political parties to distribute postal vote applications.

The committee notes that political parties are performing an important community service. By sending out postal vote applications, political parties are maximising opportunities for people to participate in elections, particularly at a time when flexible voting options are increasingly appealing to Victorian electors.

**FINDING 3:** The committee supports the continued role of registered political parties in the postal voting process for Victorian elections.



# 4

## Methods of voting for the Legislative Council and Legislative Assembly

### AT A GLANCE

- Several candidates were elected to the Legislative Council at the 2014 Victorian state election on a small percentage of the primary vote. This situation has occurred since 2006 when reforms introducing proportional representation for the Legislative Council were enacted.
- During the inquiry the Parliament of Australia amended the Senate voting system through the *Commonwealth Electoral Amendment Bill 2016* (Cwth).
- At the next federal election in 2016, electors must mark at least six boxes (political parties) above-the-line, or at least 12 candidates below-the-line. Group voting tickets have been abolished, and political party logos will appear on both the House of Representatives and Senate ballot papers.
- After reviewing suggestions for reform from inquiry participants, the committee agreed to review and monitor the implementation of the Senate's new voting laws at the 2016 federal election.
- The committee also recommended tighter regulations regarding the requirement for prospective registered political parties to meet the statutory requirements for membership.

The 2014 Victorian state election saw several candidates elected to the Legislative Council with a small percentage of the total first preference vote. First preference votes for the Shooters and Fishers Party (two seats), the Democratic Labor Party (DLP) (one seat) and the Australian Sex Party (one seat) ranged from 1.65 to 2.63 percent. In addition James Purcell, a Vote 1 Local Jobs (V1LJ) candidate, won the fifth seat in the Western Victoria Region with 1.3 per cent of the Region's first preference vote – V1LJ achieved 0.21 percent of total first preference votes for the Legislative Council. Since the election, results such as these have sparked debate amongst electoral commentators about whether the method of election for the Legislative Council requires reform, whether the current system of above-the-line (ATL) voting is appropriate, and whether the election of candidates to the Legislative Council following allocations of parties' group voting tickets represents a true reflection of voter intent. Given this, and obvious interest in this matter from inquiry participants, this chapter is primarily concerned with evidence the committee received about the Legislative Council's voting system.

Section One begins by discussing the history of the Victorian Legislative Council's voting system, including major constitutional reforms in 2003 introducing proportional representation (PR) and ATL voting. It then discusses reforms to the Senate's voting system by the federal Parliament, including the Commonwealth JSCEM's 2014 interim report on Senate voting practices and the *Commonwealth Electoral Amendment Bill 2016* (Cwth). The chapter briefly outlines the Legislative Council's voting system, and results of the Legislative Council at the 2014 Victorian state election. Section One concludes with suggestions for reform from inquiry participants, and the committee's views.

Section Two focuses on the system of voting for the Legislative Assembly. As noted in Chapter Two, while turnout increased at the 2014 Victorian state election informal voting increased for the third successive time at Victorian state elections. Some Legislative Assembly Districts now have rates of informal voting in excess of eight percent. Section Two considers the history of the Legislative Assembly's voting system, contrasting Victoria with New South Wales, Queensland and South Australia. After a brief discussion of District-level results the chapter considers evidence from inquiry participants.

## SECTION ONE – LEGISLATIVE COUNCIL

### 4.1 History of Upper House voting practices in Victoria

Prior to 2003 the Legislative Council comprised 44 members from 22 two-member provinces<sup>114</sup>. From 1921 to 2005 members for the Legislative Council were elected using the same single-member preferential voting system as used in the Legislative Assembly. Elections were staggered over two cycles, with half the Legislative Council's 44 members elected each election, and terms being twice

<sup>114</sup> Parliament of Victoria, Legislative Council, "Electoral system: historical information", Parliament of Victoria, Melbourne, 2015.



the length of those in Legislative Assembly (initially six years, then eight years).<sup>115</sup> At the time, the Victorian Upper House's electoral system differed from several Australian jurisdictions; by 1989 South Australia, New South Wales and Western Australia had introduced proportional representation. In 1984 the Australian Senate adopted PR.

As noted by Economou, a distinct feature of Victoria's electoral system in the twentieth century was that only the Liberal, Labor and National parties could win seats in the Legislative Council.<sup>116</sup> In the twentieth century there was also a perception, according to some commentators, that the Legislative Council's electoral system was inherently unfair to the Labor Party. As seen in Table 4.1, between 1992 and 1999 the Labor Party's share of seats in the Legislative Council fell below 33 percent. The committee notes that these results in Table 4.1 should be interpreted cautiously given the large election victories in 1992, 1996 and 2002.

**Table 4.1** Australian Labor Party performance, Victorian Legislative Council elections, 1985-2002

	1985	1988	1992	1996	1999	2002
Primary Vote %	47.0	48.1	39.0	40.0	42.2	47.9
Two-party vote %	50.6	49.1	43.3	46.0	50.7	57.8
Seats	10	9	5	5	8	17
Seats % won	45	41	22.7	22.7	34.7	77
Total seats	22	19	14	10	13	25
As a percentage	50	42	32	23	29	57

Source: Economou, N., 2008. "Changing the Rules to Change the House: Electoral Reform and the 2006 Electoral Contest for the Victorian Legislative Council", *Australian Journal of Political Science*, v.43, 4, p.635.

Reflecting these results, the Labor opposition introduced several Bills between 1959 and 1980 to abolish the Legislative Council (March 1959, April 1976 and June 1979).<sup>117</sup> On each occasion these Bills were defeated by the non-Labor majority. In the early 1980s the Cain government also campaigned for Legislative Council reform, including the introduction of PR; however, as noted by Economou, reform was blocked by the Liberal and National parties.<sup>118</sup>

The Legislative Council's electoral system was substantially reformed in 2003 by the *Constitution (Parliamentary Reform) Act 2003*. As noted in Chapter Two, these reforms included the re-drafting of electoral boundaries for the Legislative Council to introduce eight Regions, the introduction of a new ballot paper, fixed terms for both Houses of Victoria's Parliament, a reduction in the number of

<sup>115</sup> Parliament of Victoria, Legislative Council, "Electoral system: historical information", Parliament of Victoria, Melbourne, 2015.

<sup>116</sup> Economou, N., 2008. "Changing the Rules to Change the House: Electoral Reform and the 2006 Electoral Contest for the Victorian Legislative Council", *Australian Journal of Political Science*, v.43, 4, p.635.

<sup>117</sup> Economou, N., 2008. "Changing the Rules to Change the House: Electoral Reform and the 2006 Electoral Contest for the Victorian Legislative Council", *Australian Journal of Political Science*, v.43, 4, p.635.

<sup>118</sup> Economou, N., 2008. "Changing the Rules to Change the House: Electoral Reform and the 2006 Electoral Contest for the Victorian Legislative Council", *Australian Journal of Political Science*, v.43, 4, p.635.

Legislative Councillors from 44 to 40 and the introduction of a new process for filling casual vacancies in the Legislative Council. The other major reform was the introduction of PR.

### 4.1.1 Proportional representation

In Australia's system of preferential voting, the allocation of preferences is an important factor in determining electoral outcomes. Political parties have become adept at influencing the flow of preferences – especially through ticket voting in the Upper House.

Proportional Representation describes a group of electoral systems used to elect candidates in multi-member electorates. Under PR, parties, groups and independent candidates are elected to the Parliament in proportion to the number of votes they receive. As noted by the Electoral Council of Australia and New Zealand, the composition of a legislature “where members are elected using PR usually better reflects the proportions of votes received by candidates on a state or territory-wide basis than houses where members are elected to single seat electorates”.<sup>119</sup>

There are three different types of PR systems: list systems; mixed-member proportional representation systems (as used in New Zealand); and single-transferrable vote systems (STV). All Australian PR systems are forms of STV systems.<sup>120</sup>

### 4.1.2 Quota

In PR systems a candidate is elected when his or her total number of votes equals or exceeds the quota. In some circumstances, a candidate can also be elected with less than a quota.

The quota is the number of votes a candidate needs to be certain of election. The quota is calculated using the formula:

$$\text{"(total number of formal votes / (number of candidates to be elected + 1)) + 1 (disregarding any remainder or fraction)}$$

For example, if there were a total of 10,000 formal votes and 4 candidates to be elected, the quota would be:

$$\text{Quota: } (10\,000 / (4 + 1)) + 1 = 2001.\text{"}^{121}$$

<sup>119</sup> Electoral Council of Australia and New Zealand, “Systems”, Electoral Council of Australia and New Zealand, Canberra, September 2013. Retrieved 29 February 2016 from [www.eca.gov.au/systems](http://www.eca.gov.au/systems).

<sup>120</sup> Electoral Council of Australia and New Zealand, “Systems”, Electoral Council of Australia and New Zealand, Canberra, September 2013. Retrieved 29 February 2016 from [www.eca.gov.au/systems](http://www.eca.gov.au/systems).

<sup>121</sup> Electoral Council of Australia and New Zealand, “Systems”, Electoral Council of Australia and New Zealand, Canberra, September 2013. Retrieved 29 February 2016 from [www.eca.gov.au/systems](http://www.eca.gov.au/systems).

### 4.1.3 Group voting tickets

In elections for the Senate and the New South Wales, Victorian, Western Australian and South Australian Legislative Councils, in addition to voting for individual candidates the elector has the option to vote for a particular party or group ticket. A “separate section at the top or at the side of the ballot paper is provided for the elector to mark a single preference for a party or group. This is known as ‘above-the-line’, ‘beside-the-line’ or ‘ticket voting’.”<sup>122</sup>

Group voting tickets were introduced in 1984 to reduce levels of informal voting at Senate elections. At the 1983 Senate election informal voting was 9.9 percent.

Each party or group can register a specific order of preferences to apply to ballot papers. This order of preferences is known as a ‘ticket’. Except in Western Australia, “these tickets are required to be displayed at each polling place for electors to inspect. Due to the size of group voting tickets, this is often impractical. By marking a ticket square, the voter’s preferences are taken to be the same as the ticket registered by a party, group or independents”.<sup>123</sup>

For elections for the Senate and the New South Wales, Victorian, South Australian and Western Australian Legislative Councils, those parties, candidates or non-party groups entitled to register tickets have the option of registering more than one ticket – up to three tickets for the Senate, New South Wales and Victoria, and up to two tickets in South Australia and Western Australia. Where two or three tickets are lodged, 1/2 or 1/3 of the votes for that ticket (as the case may be) are taken to follow each ticket.

### 4.1.4 Duverger’s law – multipartyism

One of the classic theories in political science is “Duverger’s law”. First proposed in the mid-1950s, this principle asserts that plurality-rule elections, such as first-past-the-post structured electoral districts tend to favour a two-party electoral system. Associatively, Duverger’s law states that the “double ballot majority system and proportional representation tend to multipartyism”, or third parties.<sup>124</sup> Since the 1950’s Duverger’s law has become a core focus of study into political parties.

The introduction of PR in 2006 led to greater minor party representation in the Legislative Council, as shown in Table 4.2. At the 2006 Victorian state election the Greens won seats in the Legislative Council but had to achieve a strong first preference vote to do so. In contrast the DLP’s election in 2006 was the first

<sup>122</sup> Electoral Council of Australia and New Zealand, “Systems”, Electoral Council of Australia and New Zealand, Canberra, September 2013. Retrieved 29 February 2016 from [www.eca.gov.au/systems](http://www.eca.gov.au/systems).

<sup>123</sup> Electoral Council of Australia and New Zealand, “Systems”, Electoral Council of Australia and New Zealand, Canberra, September 2013. Retrieved 29 February 2016 from [www.eca.gov.au/systems](http://www.eca.gov.au/systems).

<sup>124</sup> Duverger, M., 1972. “Factors in a Two Party and Multiparty system”, in *Party Politics and Pressure Groups*, New York, Thomas Y. Crowell, 1972.

Victorian state example, as suggested by Economou, “of the way in which political parties could engineer an electoral outcome in the Upper House using preference flows from group voting tickets”.<sup>125</sup>

**Table 4.2** Composition of the Victorian Legislative Council, 2002-2014

	55 <sup>th</sup> Parliament (2002-2006)	56 <sup>th</sup> Parliament (2006-2010)	57 <sup>th</sup> Parliament (2010-2014)	58 <sup>th</sup> Parliament (2014-2018)
Australian Labor Party	24	19	16	14
Liberal Party	14 (1) <sup>(a)</sup>	15	18	14
National Party	4	2	3	2
Independents	2			
Greens		3	3	5
Democratic Labor Party		1		1
Vote 1 Local Jobs				1
Sex Party				1
Shooters and Fishers Party				2
<b>Total</b>	<b>44</b>	<b>40</b>	<b>40</b>	<b>40</b>

(a) The reason for 14 (1) is that 15 Liberal Legislative Councillors were elected at the 2002 Victorian state election. Andrew Olexander, member for Silvan Province, became an independent in 2005.

Source: Economou, N., 2008. “Changing the Rules to Change the House: Electoral Reform and the 2006 Electoral Contest for the Victorian Legislative Council”, *Australian Journal of Political Science*, v.43, 4, p.635; Victorian Electoral Commission, “State election 2014 results”, Victorian Electoral Commission, Melbourne. Retrieved 2 March 2016 from [www.vec.vic.gov.au/Results/State2014/Summary.html](http://www.vec.vic.gov.au/Results/State2014/Summary.html).

## 4.2 Recent developments in Senate voting reform

Since the 2013 federal election there has been significant interest in PR and how the Senate is elected.

### 4.2.1 2013 Senate election

As noted by the Australian Parliament Library and the Commonwealth JSCEM, the Senate’s voting system came under intense scrutiny in 2014.<sup>126</sup> The 2013 federal election was distinguished by the extent to which sophisticated preferencing strategies were employed by parties and candidates to optimise their electoral success, notably in the Senate but also through the use of how-to-vote cards in the House of Representatives.

One of the major points of contention remains that some candidates were elected with a low percentage of the primary vote. In Victoria the Australian Motoring Enthusiast Party candidate, now Senator Ricky Muir, was elected to the Senate

<sup>125</sup> Economou, N., 2008. “Changing the Rules to Change the House: Electoral Reform and the 2006 Electoral Contest for the Victorian Legislative Council”, *Australian Journal of Political Science*, v.43, 4, p.635

<sup>126</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.1.

having received only 0.51 per cent of formal first preference votes. In total, the Australian Motoring Enthusiast Party “received only a total of 17,122 votes in Victoria, equalling just 0.0354 of a quota”.<sup>127</sup> However, through preference deals, the party was elected to the final seat with a transfer of 143,118 votes from the Australian Sex Party, “whose transferred votes themselves had been transferred from over twenty other parties, arguably coming from voters that had no idea that their vote would elect a candidate from such an unrelated party with such low electoral support”.<sup>128</sup>

A similar situation occurred at the 2004 federal election when Family First’s Steve Fielding was elected to the Senate with 1.9 percent of the primary vote, and later in 2010 when DLP Senator John Madigan was elected with 2.33 percent.<sup>129</sup>

Several commentators openly questioned whether the 2013 Senate election result reflected the will of the electorate. Writing for *The Conversation* in 2014, Stephen Morey, Australian Research Council Future Fellow, said that:

“Microparties have been elected at the expense of better-known parties, so reform is in the interest of all major parties, as well as being an improvement to Australian democracy. And consider this: if the Senate rejects the new government’s [carbon tax repeal] legislation and Tony Abbott calls a double dissolution election, we can, without reform of the Senate electoral process, expect even more horse trading from microparties. With the lower quota of 7.7 per cent [in a double dissolution election] we might even get two microparty senators per state”.<sup>130</sup>

Antony Green, Election Analyst, has also questioned whether the 2013 Senate election result is a good outcome for Australia’s democratic system. In 2014 he told the Commonwealth JSCEM that:

“Above all, what has been ridiculous in this process is that it has produced the gigantic ballot papers which we saw at the federal election and which presented voters with options where the size of the ballot paper and the range of options started to interfere with their ability to cast a sensible vote. It has produced results that were engineered by the preference deals rather than by the votes cast by voters. I think the case for some sort of reform to that system is compelling”.<sup>131</sup>

As noted by the Commonwealth JSCEM, the success of the Australian Motor Enthusiast Party and the Australian Sports Party in Western Australia was largely engineered due to the guidance of Glenn Druery, who is colloquially known as the “preference whisperer”. Mr Druery assisted both parties with preference arrangements; “prior to founding his company, Independent Liaison, he has

<sup>127</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.1.

<sup>128</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.1.

<sup>129</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.1.

<sup>130</sup> Morey, S. 2013, “How do we solve a problem like the Senate?”, *The Conversation*, 11 September 2013. Retrieved 29 February 2016 from [theconversation.com/how-do-we-solve-a-problem-like-the-senate-18042](http://theconversation.com/how-do-we-solve-a-problem-like-the-senate-18042).

<sup>131</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.27.

also worked at the Parliament of NSW as the liaison and negotiator for the many independent and minor party MPs, and ran several times himself as an independent candidate in various state elections”.<sup>132</sup>

Mr Druery has consistently said that preferencing behaviour is not undemocratic. He has also never claimed that preferencing delivers random election outcomes, as suggested by some commentators like Professor Brian Costar and Antony Green. Appearing before the Commonwealth JSCEM in 2014, Mr Druery noted that:

“There is nothing random [about the election outcome]. I have a very good idea of who is going to be elected”.<sup>133</sup>

Some commentators and politicians have also defended the electoral system used for the 2013 federal election. Writing for the *Australian Financial Review*, Senator Bob Day wrote:

“...at the last federal election, the non-major parties’ vote Australia-wide was about 25 per cent (by major parties, I’m referring to the Liberal Party, Labor and the Greens who, with 10 senators, have major-party status in the Parliament). Twenty-five per cent is close to two quotas – that is, two senators per state – yet the non-major parties are represented by only one senator per state”.<sup>134</sup>

Writing for *The Conversation* in February 2016, Nick Economou, Senior Lecturer, Monash University, also noted that “more than 90 [percent] of Australians now vote this way (i.e. using group voting tickets) in the Senate. The informal vote has dramatically declined from an average of nearly 10 percent to being regularly less than three percent... But these achievements have been overwhelmed by the controversies the group voting ticket system has also been responsible for”.<sup>135</sup> Dr Economou also argued:

“There are better ways to mitigate the power of the party secretariats in the preference wheeling-and-dealing process. In Victoria’s [Upper House], voters can still vote for a group voting ticket or they can give as few as five preferences below the black line.

This doesn’t completely do away with the group voting ticket. But it does try to give voters a viable option to go their own way by reducing the complexity of voting below the line.

Victoria enfranchises voters by simplifying the system. It is a good principle. It ought to be applied to the federal sphere as well”.<sup>136</sup>

<sup>132</sup> Parliament of Australia, Parliamentary Library, “Federal election 2013: issues, dynamics, outcomes”, Parliament of Australia, Canberra, January 2014, p.23.

<sup>133</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.24.

<sup>134</sup> Day, B, 2015. “Minor parties are the will of the people”, *Australian Financial Review*, 4 August 2015. Retrieved 4 April 2016 from [www.afr.com/opinion/minor-parties-are-the-will-of-the-people-20150408-1mgjau](http://www.afr.com/opinion/minor-parties-are-the-will-of-the-people-20150408-1mgjau).

<sup>135</sup> Economou, N., 2016. “Senate voting reform: keep it simple, or too many people’s votes won’t be counted”. *The Conversation*, 22 February 2016.

<sup>136</sup> Economou, N., 2016. “Senate voting reform: keep it simple, or too many people’s votes won’t be counted”. *The Conversation*, 22 February 2016.

The 2013 Senate election also drew attention to other issues, including:

- (a) The size of the ballot paper; There were a record number of candidates (1,717) at the 2013 federal election. In NSW alone, 110 candidates stood for election to the Senate. As candidate numbers have steadily increased over successive elections, the restrictions placed on the construction and format of Senate ballot papers by the *Commonwealth Electoral Act 1918* (Cwth) has “meant that many ballot papers have reached their maximum printable width (of over a metre) and font sizes have had to be reduced to cater for the increased numbers of candidates, ultimately resulting in ballot papers that are hard to read and equally difficult to manage for voting”.<sup>137</sup> To this end, at the 2013 election, plastic magnifying sheets were made available for voters to assist them in reading the ballot paper. The ballot paper measured nearly a metre in length.
- (b) Informal voting, or lack thereof; Informal voting decreased at the 2013 Senate election, down to 2.96 percent from 3.75 percent at the 2010 federal election. The AEC has “noted that the large size of the Senate ballot paper may have encouraged some voters, who were perhaps overwhelmed by the ballot, to simply mark ‘1’ ATL”.<sup>138</sup>
- (c) Confusing name and party registration; In 2013, the Liberal Democratic Party (LDP), headed by now Senator David Leyonhjelm, drew first place in the 45 columns on the NSW Senate ballot paper. As noted by *Sydney Morning Herald* columnist Tim Colebatch, it is likely “hundreds of thousands of voters saw the size of the ballot paper, saw the word “Liberal” in the first box, and just put a 1 against it”.<sup>139</sup> The LDP won 434,002 votes, or 9.5 per cent of total votes – “this roughly equates to 50 times the vote it won in 2007 before it adopted the name ‘LDP’”.<sup>140</sup> Reports thus suggest that the party benefited from either a so-called ‘donkey vote’ effect, with voters marking the party first because it appeared first on the ballot paper, or by the fact that some voters voted for the [LDP] when they in fact wished to vote for the Liberal Party.

#### 4.2.2 Joint Standing Committee on Electoral Matters – interim report on the 2013 federal election, Senate voting practices

On 9 May 2014 the Commonwealth JSCEM released its interim report for its inquiry into the 2013 federal election focusing on Senate voting practices. As a result of intense interest in the Senate election, the JSCEM elected to issue a separate report on the Senate’s voting system.

<sup>137</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.11.

<sup>138</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.11.

<sup>139</sup> Colebatch, T. 2013. “How mistaken identity and lucky won the day”, *Sydney Morning Herald*, October 2013. Retrieved 28 February 2016 from [www.smh.com.au/national/how-mistaken-identity-and-luck-won-on-the-day-20131004-2uzse.html](http://www.smh.com.au/national/how-mistaken-identity-and-luck-won-on-the-day-20131004-2uzse.html).

<sup>140</sup> Colebatch, T. 2013. “How mistaken identity and lucky won the day”, *Sydney Morning Herald*, October 2013. Retrieved 28 February 2016 from [www.smh.com.au/national/how-mistaken-identity-and-luck-won-on-the-day-20131004-2uzse.html](http://www.smh.com.au/national/how-mistaken-identity-and-luck-won-on-the-day-20131004-2uzse.html).

During this inquiry this committee considered the JSCEM's evidence, findings and recommendations.

While the JSCEM's terms of reference did not specifically mention voting systems, the JSCEM noted in its introduction that the so-called "gaming" of the electoral system through the use of preferences made "Senate voting convoluted and confusing and corroded the integrity of Australia's electoral system".<sup>141</sup> To this end, the JSCEM specifically called for evidence from psephologists, academics and those interested in electoral systems, to determine what shape the Senate's voting system should take to "restore public confidence and transparency in elections".<sup>142</sup>

The JSCEM ultimately found that the Senate's voting system required reform so that power was given back to electors. To this end, the JSCEM recommended:

- That the relevant sections of the *Commonwealth Electoral Act 1918* (Cwth) be amended to allow for: optional preferential ATL voting; and "partial" optional preferential voting BTL with a minimum sequential number of preferences to be completed equal to the number of vacancies, this being six for a half-Senate election, twelve for a double dissolution; or two for any territory Senate election;
- The *Commonwealth Electoral Act 1918* (Cwth) be amended to abolish group and individual voting tickets; and
- Stricter party registration requirements, including an increase in party membership requirements to a minimum 1,500 unique members who are not relied upon for any other party in order for a federally registered party to field candidates nationally, amongst other administrative changes.<sup>143</sup>

### 4.2.3 Xenophon bill

The full report of the committee was accompanied by additional comments from Senator Nick Xenophon. In December 2013 Senator Xenophon introduced to the Senate the *Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013* (Cwth). The Bill proposed an amendment to current voting practices for the Senate to introduce ATL and ATL optional preferential voting, based on the system used for NSW Legislative Council elections.

The Bill was referred to the Senate's Finance and Public Administration Legislation Committee in December 2013. The committee recommended that the Commonwealth JSCEM consider the Bill as part of its 2013 federal election inquiry.

<sup>141</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, "Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices", Parliament of Australia, Canberra, May 2014, p.1.

<sup>142</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, "Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices", Parliament of Australia, Canberra, May 2014, p.1.

<sup>143</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, "Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices", Parliament of Australia, Canberra, May 2014, p.xvii.



#### 4.2.4 Commonwealth Electoral Amendment Bill 2016 (Cwth)

With a federal election due in 2016, discussion about Senate voting reform was revived.

On 18 March 2016 the Australian Parliament passed the *Commonwealth Electoral Amendment Bill 2016* (Cwth). As noted in the explanatory memorandum, the Bill amends the *Commonwealth Electoral Act 1918* (Cwth) to:

- “Reduce the complexity of the Senate voting system, by providing for partial optional preferential voting ATL, including the introduction of advice on the Senate ballot paper that voters number, in order of preference, at least six squares;
- Provide appropriate vote savings provisions to capture voter intent and reduce the risk of increased vote informality, including by improving vote savings provisions for below the line voting;
- Improve transparency around the allocation of preferences in a Senate election, by abolishing group and individual voting tickets, noting that this does not change other provisions relating to candidates nominating to be grouped on the Senate ballot paper;
- Introduce a restriction that there be a unique registered officer and deputy registered officer for a federally registered party; and
- Reduce the confusion that may arise with political parties with similar names, by allowing party logos to be printed on ballot papers for both the House of Representatives and the Senate”.<sup>144</sup>

In practical terms, at the next federal election electors must number at least six boxes ATL for their preferred parties or groups, or number at least 12 boxes BTL for individual candidates in the order of their choice. As a result of this change, parties and groups can no longer register Senate group voting tickets to direct preferences.

### 4.3 Victorian Legislative Council – how voting works

#### 4.3.1 Voting

##### ‘Above-the-line’

The Victorian Legislative Council ballot paper can be completed in one of two ways; an ATL and BTL ballot option. As shown in Figure 4.1, the thick, black line denotes the options ATL.

Section 93A of the *Electoral Act 2002* (Vic) provides instructions for how Legislative Council ballot papers are to be filled out. In Victoria, an elector must mark the ballot paper ATL by marking the number “1” in the square in relation

<sup>144</sup> *Commonwealth Electoral Amendment Bill 2016* (Cwth), “Explanatory Memorandum”. Retrieved 28 February 2016 from [www.austlii.edu.au/au/legis/cth/bill\\_em/ceab2016323/memo\\_0.html](http://www.austlii.edu.au/au/legis/cth/bill_em/ceab2016323/memo_0.html).

to the group corresponding to the elector's first preference. If an elector marks a tick or a cross in a square printed on a ballot paper in relation to a group, the voter is considered to have marked a number "1" in the square. Under either circumstance, the elector's ballot paper will be counted according to the preferences on the group's registered group voting ticket.

Above-the-line voting is the most popular form of voting for Victorian Legislative Council elections. In 2014, 93.92 percent of completed Legislative Council ballot papers were marked ATL, a decrease of 2.04 percent (95.96 percent) compared to the 2010 Victorian state election<sup>145</sup>. At the 2006 Victorian state election, the first election which used PR to elect the Legislative Council, 94.84 percent of Legislative Council ballot papers were marked ATL.<sup>146</sup>

In 2008 the VEC, in conjunction with researchers at the University of Melbourne, examined some of the reasons for the popularity of ATL voting.<sup>147</sup> At the time, the VEC and the University's research suggested that it was simply easier for electors to vote ATL. There was also evidence that political parties, via how-to-vote cards, encouraged their supporters to vote ATL.<sup>148</sup> In addition, the availability of optional preferential voting BTL influenced ATL rates: the proportion of BTL votes in the 2006 Victorian state election was more than two times higher than the 2.05 percent of Victorians who voted BTL at the 2007 Senate election.<sup>149</sup> The VEC suggested that "only having to number five squares" encouraged some Victorians to vote BTL at the Victorian state election.<sup>150</sup>

<sup>145</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.60.

<sup>146</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.60.

<sup>147</sup> Victorian Electoral Commission, "Below the line votes at the 2006 Victorian state election", Victorian Electoral Commission, Melbourne, 2008. Retrieved 1 March 2016 from [www.vec.vic.gov.au/files/RP-BelowLineVotes2006.pdf](http://www.vec.vic.gov.au/files/RP-BelowLineVotes2006.pdf), p.3

<sup>148</sup> Victorian Electoral Commission, "Below the line votes at the 2006 Victorian state election", Victorian Electoral Commission, Melbourne, 2008. Retrieved 1 March 2016 from [www.vec.vic.gov.au/files/RP-BelowLineVotes2006.pdf](http://www.vec.vic.gov.au/files/RP-BelowLineVotes2006.pdf), p.2.

<sup>149</sup> Victorian Electoral Commission, "Below the line votes at the 2006 Victorian state election", Victorian Electoral Commission, Melbourne, 2008. Retrieved 1 March 2016 from [www.vec.vic.gov.au/files/RP-BelowLineVotes2006.pdf](http://www.vec.vic.gov.au/files/RP-BelowLineVotes2006.pdf), p.3.

<sup>150</sup> Victorian Electoral Commission, "Below the line votes at the 2006 Victorian state election", Victorian Electoral Commission, Melbourne, 2008. Retrieved 1 March 2016 from [www.vec.vic.gov.au/files/RP-BelowLineVotes2006.pdf](http://www.vec.vic.gov.au/files/RP-BelowLineVotes2006.pdf), p.2.

Figure 4.1 Example Legislative Council ballot paper, Victorian state election

REGION OF  
**Region Name**  
(District or DISTRICT NAME)

REGION OF  
**Region Name**

Election of 5 members of the Legislative Council

**For your vote to count, you must vote in either one of the two ways described below.**

**EITHER** place the number 1 in one, and one only of these squares to indicate your choice.

<b>A</b>	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>
<b>B</b>	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>
<b>C</b>	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>
<b>D</b>	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>
<b>E</b>	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>
<b>F</b>	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>
<b>G</b>	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>
<b>H</b>	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>
<b>I</b>	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>	OR	<input type="checkbox"/>

**OR** place the numbers 1 to at least 5 in these squares to indicate your choice.

<b>A</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>B</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>C</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>D</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>E</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>F</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>G</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>H</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>I</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**UNGROUPED**

<b>A</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>B</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>C</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>D</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>E</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>F</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>G</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>H</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>I</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Fold the ballot paper and put it in the ballot box or declaration envelope as appropriate.**

Victorian Electoral Commission

Source: Victorian Electoral Commission, "How to vote – state elections", Victorian Electoral Commission, Melbourne. Retrieved 1 March 2016 from [www.vec.vic.gov.au/Voting/StateElections.html](http://www.vec.vic.gov.au/Voting/StateElections.html).

### Group voting tickets - Victoria

As noted earlier, a group voting ticket informs electors how preferences will be directed for a vote marked ATL. Put simply, if the elector selects a group or party ATL on the ballot paper, the “voter’s preferences are deemed to follow the group voting ticket for the Legislative Council”.<sup>151</sup>

In Victoria s69A and s69B of the *Electoral Act 2002* (Vic) provide for group voting tickets. In Victoria registered parties or groups of candidates can lodge up to three group voting tickets with the VEC. All group voting tickets are available in every voting centre and will be published on the VEC’s website for public information. Figure 4.2 is an example of a hypothetical group voting ticket.

At the 2014 Victorian state election, a total of “133 groups were registered across the eight Legislative Council Regions compared with 57 in 2010”.<sup>152</sup> This was a significant increase and gave rise to increased ballot paper sizes across all Regions. Northern Metropolitan Region had the highest number of groups, with 20 groups registered. As noted by the VEC, this “triggered the implementation of the special ballot paper layout prescribed by Schedule 1B of the *Electoral Act 2002* (Vic), with two rows of ATL groups and two rows of candidates BTL”.<sup>153</sup> The VEC notes:

“Northern Victoria Region had the least with 14 groups registered. A total of 129 groups were from registered political parties and three further groups were registered by independent candidates. The Liberal and National Party registered combined groups in Eastern, Northern and Western Victoria Regions. Nine independent candidates remained ungrouped. In accordance with legislation, all registered groups lodged group voting tickets with the VEC by midday on Sunday 16 November... One independent group in Southern Metropolitan Region chose to lodge two group voting tickets”.<sup>154</sup>

### ‘Below-the-line’

Section 93A (2) (b) provides for voting BTL at Legislative Council elections. In order to vote this way, electors must number ‘1’ opposite the name of the candidate for whom the elector votes as first preference and at least the numbers ‘2’, ‘3’, ‘4’ and ‘5’ opposite the names of the remaining candidates so as to indicate by unbroken numerical sequence the order of preference of contingent votes.

<sup>151</sup> Victorian Electoral Commission, “Group voting tickets”, Victorian Electoral Commission, Melbourne. Retrieved 29 February 2016 from [www.vec.vic.gov.au/CandidatesAndParties/GroupVotingTickets.html](http://www.vec.vic.gov.au/CandidatesAndParties/GroupVotingTickets.html).

<sup>152</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.30.

<sup>153</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.30.

<sup>154</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.30.

Figure 4.2 Example Group Voting Ticket, Victorian state elections

**REGION OF Eastern Metropolitan**

**Group A Voting Ticket**  
REGISTERED POLITICAL PARTY

By placing the single figure 1 in the square above the name of this group, you adopt the ticket as marked below the line.

<b>A</b> <input type="checkbox"/>	<b>B</b> OR <input style="width: 30px; text-align: center;"/> 1	<b>C</b> OR <input type="checkbox"/>	<b>D</b> OR <input type="checkbox"/>	<b>E</b> OR <input type="checkbox"/>	<b>F</b> OR <input type="checkbox"/>	<b>G</b> OR <input type="checkbox"/>	<b>H</b> OR <input type="checkbox"/>
REGISTERED POLITICAL PARTY	REGISTERED POLITICAL PARTY	REGISTERED POLITICAL PARTY	REGISTERED POLITICAL PARTY	REGISTERED POLITICAL PARTY	REGISTERED POLITICAL PARTY	REGISTERED POLITICAL PARTY	REGISTERED POLITICAL PARTY

---

<b>A</b> <input style="width: 30px; text-align: center;"/> 8	<b>B</b> <input style="width: 30px; text-align: center;"/> 1	<b>C</b> <input style="width: 30px; text-align: center;"/> 9	<b>D</b> <input style="width: 30px; text-align: center;"/> 13	<b>E</b> <input style="width: 30px; text-align: center;"/> 17	<b>F</b> <input style="width: 30px; text-align: center;"/> 21	<b>G</b> <input style="width: 30px; text-align: center;"/> 28	<b>H</b> <input style="width: 30px; text-align: center;"/> 29
CANDIDATE, Name1 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name1 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name1 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name1 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name1 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name1 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name1 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name1 REGISTERED POLITICAL PARTY Location
<input style="width: 30px; text-align: center;"/> 7	<input style="width: 30px; text-align: center;"/> 2	<input style="width: 30px; text-align: center;"/> 10	<input style="width: 30px; text-align: center;"/> 14	<input style="width: 30px; text-align: center;"/> 18	<input style="width: 30px; text-align: center;"/> 22	<input style="width: 30px; text-align: center;"/> 25	<input style="width: 30px; text-align: center;"/> 30
CANDIDATE, Name2 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name2 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name2 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name2 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name2 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name2 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name2 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name2 REGISTERED POLITICAL PARTY Location
<input style="width: 30px; text-align: center;"/> 5	<input style="width: 30px; text-align: center;"/> 3	<input style="width: 30px; text-align: center;"/> 11	<input style="width: 30px; text-align: center;"/> 15	<input style="width: 30px; text-align: center;"/> 19	<input style="width: 30px; text-align: center;"/> 23	<input style="width: 30px; text-align: center;"/> 26	<input style="width: 30px; text-align: center;"/> 31
CANDIDATE, Name3 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name3 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name3 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name3 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name3 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name3 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name3 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name3 REGISTERED POLITICAL PARTY Location
<input style="width: 30px; text-align: center;"/> 6	<input style="width: 30px; text-align: center;"/> 4	<input style="width: 30px; text-align: center;"/> 12	<input style="width: 30px; text-align: center;"/> 16	<input style="width: 30px; text-align: center;"/> 20	<input style="width: 30px; text-align: center;"/> 24	<input style="width: 30px; text-align: center;"/> 27	<input style="width: 30px; text-align: center;"/> 32
CANDIDATE, Name4 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name4 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name4 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name4 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name4 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name4 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name4 REGISTERED POLITICAL PARTY Location	CANDIDATE, Name4 REGISTERED POLITICAL PARTY Location

Source: Victorian Electoral Commission, "Group voting tickets", Victorian Electoral Commission, Melbourne. Retrieved 29 February 2016 from [www.vec.vic.gov.au/CandidatesAndParties/GroupVotingTickets.html](http://www.vec.vic.gov.au/CandidatesAndParties/GroupVotingTickets.html).

For the 2006, 2010 and 2014 Victorian state elections the average rate of voting BTL for the Legislative Council has been 3.75 percent. As noted earlier, at the 2014 Victorian state election 5.16 percent of Legislative Council ballots were marked BTL. According to the VEC's analysis of informal ballot papers, there was significant variation in BTL voting between Regions, "ranging from 4.38 percent in South-Eastern Metropolitan Region to 8.46 percent in Northern Metropolitan Region".<sup>155</sup> Based on figures from the VEC's 2006, 2010 and 2014 informal voting analysis, BTL voting tends to be concentrated in inner Melbourne suburbs, with higher than average proportions in a band stretching out to the east, and in Macedon and Monbulk Districts. The outer suburbs and urban fringe areas north and west of Melbourne, had the lowest proportions of BTL votes.<sup>156</sup>

One of the reasons for this is that there is a relationship between BTL voting and minor parties. As shown in Table 4.3, electors who voted for a major political party in the Legislative Council usually voted ATL; this is probably due to the effect of how-to-vote cards. Of the major political parties, the Greens tend to have higher rates of BTL voting than other larger parties – in 2014, the VEC notes Greens votes made up almost a third of all BTL votes.

**Table 4.3** Below-the-line votes received by party, Legislative Council, 2014 Victorian state election

Party	BTL votes	Total votes	BTL votes as proportion of total %
Animal Justice Party	6,173	58,128	10.62
Australian Christians	4,807	35,156	13.67
Australian Country Alliance	2,519	23,159	10.88
Australian Cyclists Party	4,598	20,699	22.21
Australian Greens	65,680	367,592	17.87
Australian Labor Party	42,786	1,143,774	3.74
Democratic Labour Party	5,301	79,298	6.68
Family First	5,081	62,422	8.14
Liberal Party of Australia	19,356	711,548	2.72
Liberal Democratic Party	3,788	104,510	3.62
Liberal/The Nationals Victoria (joint ticket in country Regions)	13,119	523,510	2.51
Palmer United Party	4,318	66,674	6.48
People Power Victoria – No Smart Meters	1,779	12,022	14.80
Rise Up Australia Party	2,581	17,670	14.61
Sex Party	11,583	89,737	12.91
Shooters and Fishers Party	5,071	56,527	8.97

<sup>155</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.60.

<sup>156</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.60.

Party	BTL votes	Total votes	BTL votes as proportion of total %
The Basics Rock'n'Roll Party	1,369	6,340	21.59
Voice for the West	2,160	11,064	19.52
Voluntary Euthanasia Party	3,700	16,769	22.06
Vote 1 Local Jobs	843	7,108	11.86
Non-party groups	1,277	3,586	35.61

Source: Victorian Electoral Commission, "State election 2014 results", Victorian Electoral Commission, Melbourne. Retrieved 11 February 2016 from [www.vec.vic.gov.au/Results/State2014/Summary.html](http://www.vec.vic.gov.au/Results/State2014/Summary.html).

Another trend in Legislative Council voting since 2006 has been the popularity of voting "1" to "5". At the 2014 Victorian state election, of those who voted BTL, "more than half (52.67 percent) simply voted 1 to 5.<sup>157</sup> One seventh (14.65 percent) numbered all the squares on the ballot paper. In 2006, 57 percent of electors BTL voters voted "1" to "5".<sup>158</sup> As noted by the VEC, this indicates that many electors are comfortable with optional preferential voting. Conversely, these electors may also not be aware that they have exhausted their preferences. The VEC does not formally advertise the requirement for electors to vote "1" to "5" BTL.

### 4.3.2 Summary of results, 2014 state election – Legislative Council

A total of 3,539,762 votes were cast for the Legislative Council's eight Regions at the 2014 Victorian state election. This was 93 per cent of total voters enrolled. There were 121,482 informal Region votes, or 3.4 percent of the total votes counted.<sup>159</sup>

The quota for election to the Legislative Council is 16.7 percent, as five members are elected per Region.

The Victorian Parliamentary Library's research paper on the 2014 Victorian election summarises the composition of the Legislative Council in the 58<sup>th</sup> Parliament.

As can be seen in Table 4.4, "the composition of the Legislative Council reflects first preference votes to a certain degree".<sup>160</sup> The largest disparities are the Coalition's vote share of 36.1 percent of first preference votes for 40 percent of seats, the Shooters and Fishers Party's vote share of 1.7 percent for five percent of seats and the VILJ party which achieved 0.21 percent of first preference votes and two and half percent of seats.

<sup>157</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.p.59-60.

<sup>158</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.p.59-60.

<sup>159</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.27.

<sup>160</sup> Lesman, B., Macreadie, R., Ross, C., Darby, P., 2014. "The 2014 Victorian state election", Victorian Parliamentary Library and Information Service, No.1, June 2015, p.51.

**Table 4.4** First preference votes, Legislative Council, 2014 Victorian state election

Party	First preference vote percentage	Number of successful candidates	Seats in Legislative Council percentage
Labor	33.46	14	35.0
Liberal	20.82	14	25.0
Nationals	15.32	2	15.0
Greens	10.75	5	12.5
Liberal Democratic Party	3.06	0	0.0
Sex Party	2.63	1	2.5
DLP	2.32	1	2.5
Palmer United Party	1.95	0	0.0
Family First	1.83	0	0.0
Animal Justice Party	1.70	0	0.0
Shooters and Fishers Party	1.65	2	5.0
Australian Christians	1.03	0	0.0
Australian Country Alliance	0.68	0	0.0
Australian Cyclists Party	0.61	0	0.0
Rise Up Australia Party	0.52	0	0.0
Voluntary Euthanasia Party (Victoria)	0.49	0	0.0
People Power Victoria-No Smart Meters	0.35	0	0.0
Voice for the West	0.32	0	0.0
Vote 1 Local Jobs	0.21	1	2.5
The Basics Rock 'N' Roll Party	0.19	0	0.0
Other Candidates	0.13	0	0.0
<b>Total</b>	<b>100</b>	<b>40</b>	<b>100</b>

Source: Lesman, B., Macreadie, R., Ross, C., Darby, P., 2014. "The 2014 Victorian state election", Victorian Parliamentary Library and Information Service, No.1, June 2015, p.41.

Several candidates were elected having achieved a substantial percentage of the quota from preferences. Table 4.5 demonstrates this in detail. By way of example, James Purcell, the V1LJ candidate in Western Victoria, achieved 5,501 first preference votes, representing 1.28 percent of first preference votes in Western Victoria Region. He was elected to the fifth position in the Region, with 92.5 percent of the quota achieved through preferences. Using another example, in Northern Metropolitan Region, committee member Fiona Patten MLC achieved 2.88 percent of the first preference vote. Ms Patten was elected to the fifth position in Northern Metropolitan Region, with 82.8 percent of the quota achieved through preferences.



**Table 4.5** Quota calculations, Legislative Council, 2014 Victorian state election

Party	First preference vote percent	Region Quota	Percentage of quota achieved via preferences
Vote 1 Local Jobs	5,501	72,490 (Western Victoria Region)	92.5
Sex Party	11,843	68,648 (Northern Metropolitan Region)	82.8
Shooters and Fishers Party (Jeff Bourman)	10,657	72,744 (Eastern Victoria Region)	85.4
Shooters and Fishers Party (Daniel Young)	15,303	72,945 (Northern Victoria)	79
Democratic Labor Party	11,175	72,622 (Western Metropolitan Region)	84.6

Source: Victorian Electoral Commission, "State election 2014 results", Victorian Electoral Commission, Melbourne. Retrieved 11 February 2016 from [www.vec.vic.gov.au/Results/State2014/Summary.html](http://www.vec.vic.gov.au/Results/State2014/Summary.html).

In summary, at the 2014 Victorian state election none of the five minor parties elected won more than 3.5 percent in the Region they contested. As noted by Professor Brian Costar, Antony Green and psephologist Adrian Beaumont, this is a small fraction of the 16.7 percent quota requirement, while acknowledging that the combined first preference vote of these parties was approximately 20 percent.

Echoing similar issues at the 2013 federal election, there is also some evidence from the 2014 Victorian state election that a minor party benefited from having a similar name to a major party vis-à-vis the party's position on the ballot paper. As noted by Beaumont, the LDP won over 4.5 percent in three Regions, but in those Regions the LDP had a favourable ballot paper position compared to the Liberal Party.<sup>161</sup> In other Regions, the LDP vote was less than two percent. Similarly, the DLP won over four percent in Northern Victoria Region, when they were listed in column A on the ballot paper with the ALP in the last column; in the rest of the state, the DLP first preference vote was about two percent.

During the public hearings in August 2015 Antony Green, Election Analyst, also discussed how the LDP received a higher vote in these three Regions.<sup>162</sup> He said:

"...The [LDP] polled higher in the three Regions where they were to the left of the Liberal Party than in the five regions where they were to the right, and the difference is up to [two] per cent, and I can dig up those figures precisely.

Where they appear to the left on the ballot paper of the Liberal Party, they seem to do much better, and that was most clear at the last federal election where they polled 9.5 per cent with column A on the ballot paper in NSW. The fact that they also seemed to poll a much higher proportion of their votes above the line also suggests to me that there is some confusion with Liberal voters who are used to voting just 1 for the LDP.

<sup>161</sup> Beaumont, A. 2014. "Micro parties surge in Vic upper house on major vote party fall", *The Conversation*, December 2014. Retrieved 1 March 2016 from [theconversation.com/micro-parties-surge-in-vic-upper-house-on-major-party-vote-fall-35720](http://theconversation.com/micro-parties-surge-in-vic-upper-house-on-major-party-vote-fall-35720).

<sup>162</sup> Antony Green, Transcript of Evidence, 11 August 2015, p.3.

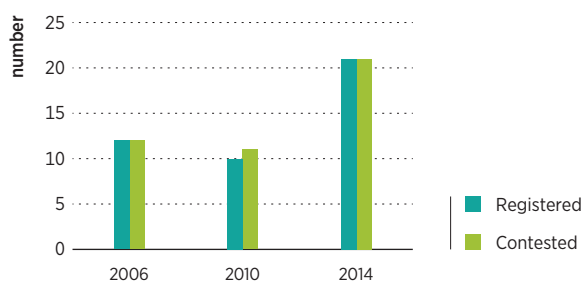
That is a phenomenon which exists in the Senate elections as well. The LDP seem to have a much lower rate of below-the-line voting than other minor parties, and it is quite unusual for that to occur”.<sup>163</sup>

### 4.3.3 Registration of political parties

In Victoria Part Four of the *Electoral Act 2002* (Vic) covers the registration of political parties.

As shown in Figure 2.1, 21 registered political parties contested the 2014 Victorian state election, double the number of parties that contested the 2010 Victorian state election. The VEC received applications for registration from 13 new political parties, 11 of which were registered in time for the election. Three parties were registered on the last possible day, 3 November 2014.

**Figure 4.3** Political party registrations, Victorian state elections, 2006-2014



Source: Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.13.

In order to qualify for registration, a political party must have a written constitution and at least 500 members who are Victorian electors, party members in accordance with the party’s rules, and not members of another registered political party, or of a party applying for registration. The registration fee is \$500.<sup>164</sup>

While it is not compulsory for a political party to be registered to contest an election, registration offers several entitlements, including:

- “The right to have the party’s name on ballot papers;
- A requirement to nominate candidates and register how-to-vote cards centrally with the VEC;
- Access to enrolment and voter information on a periodic basis; and
- Public funding for parties obtaining enough votes”.<sup>165</sup>

<sup>163</sup> Antony Green, Transcript of Evidence, 11 August 2015, p.3.

<sup>164</sup> Victorian Electoral Commission, “Registering a political party”, Victorian Electoral Commission, Melbourne. Retrieved 1 March 2016 from [www.vec.vic.gov.au/CandidatesAndParties/RegisteringAPoliticalParty.html](http://www.vec.vic.gov.au/CandidatesAndParties/RegisteringAPoliticalParty.html).

<sup>165</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.12.

Before registering a party, the VEC must be “satisfied that the party is an eligible political party within the meaning of the *Electoral Act 2002* (Vic). There are two main ways that the VEC tests a party’s eligibility:

“First, the VEC advertises the application, inviting objections to the application. Objections must be received within 30 days after the VEC’s notice. At the same time, the VEC writes to the people on the party’s membership list, asking those people to use an included form and reply-paid envelope to confirm whether they are eligible members of the party”.<sup>166</sup>

## 4.4 Evidence from inquiry participants

During the inquiry the committee received evidence from inquiry participants about the Legislative Council’s voting system. Evidence focused on the following areas:

- Legislative Council voting practices, including suggestions to amend the rules governing ATL and BTL voting;
- Group voting tickets;
- Potential election thresholds for the Legislative Council;
- Registration requirements for political parties;
- Adjustments to the way ungrouped candidates are listed on the Legislative Council ballot paper; and
- Amendments to the way transfer values are calculated during Legislative Council vote count preference distributions.

### 4.4.1 Legislative Council voting practices

Some inquiry participants discussed reform of the Legislative Council’s voting practices. However, there were several views about how this should take place. To assist its deliberations, the committee considered evidence from the Commonwealth JSCEM’s 2014 interim report on Senate voting practices.

#### **‘Above-the-line’ voting**

Some inquiry participants suggested several different models.

#### **Compulsory or full preferential voting ‘above-the-line’**

Under this proposal electors would be required to mark each and every box ATL on the Legislative Council ballot paper. At the federal level, this proposal has circulated since the mid-2000s, when the then Commonwealth JSCEM considered the model during its inquiry into the 2004 federal election. During

<sup>166</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.12.

this JSCEM’s inquiry into the 2013 federal election, the National Party of Australia supported full preferential voting ATL, arguing it was a true reflection of voter intent and also most similar to the type of voting system used for the House of Representatives.<sup>167</sup>

During this inquiry there was little support for full preferential voting ATL. In their submission, the Proportional Representation Society of Victoria and Tasmania (PRSA) noted that requiring electors to mark all preferences ATL was unconstitutional, and a perversion of voter intent.<sup>168</sup> Malcolm Mackerras AO, offered a similar view in his submission.<sup>169</sup>

### Optional preferential voting ‘above-the-line’

Under this proposal electors could mark as many squares ATL as they wish. This differs to current provisions where electors are only required to mark a ‘1’ ATL. This model was the most widely discussed proposal during the inquiry.

In his submission Antony Green, Election Analyst, recommended that Victoria consider implementing a system comparable to the NSW Legislative Council.<sup>170</sup>

The NSW Legislative Council consists of 42 members serving eight year staggered terms. Twenty one members face election every four years. Members are elected from a state-wide electorate via quota preferential (PR) voting. The quota for election to the NSW Legislative Council is 4.55 percent of the state vote. To vote ATL for the NSW Legislative Council electors must mark at least a number ‘1’ in one of the ATL squares. Electors can also mark additional choices by putting a number ‘2’, ‘3’ and so on in the other squares.

In contrast, other inquiry participants did not support optional preferential voting ATL. Malcolm Mackerras AO notes that ATL preference voting creates the “impression of a party list system” and is unconstitutional.<sup>171</sup> At the public hearings, Mr Mackerras explained how, in his view, there was never any need for ATL voting in Victoria, following constitutional reforms in 2006 and the provision for electors to vote BTL from ‘1’ to ‘5’:

“The three contrivances, which were not there before, which were not there in the ballot paper up to 1983, begin with the ballot line—that is, the thick black line which runs through the ballot paper. The second contrivance is above the ballot line. There you find the party boxes. The third contrivance is the group voting ticket. I argue that in the case of Victoria, this state never had any need for these contrivances when it brought in the new Legislative Council system. The reason why it never had any need for the contrivances was that Victoria started from the very word go to do what

167 Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.29.

168 Proportional Representation Society of Australia, Victoria and Tasmania Branch, Submission No.35, p.3.

169 Malcolm Mackerras AO, Submission No.1, part 1, p.p.2-3.

170 Antony Green, Submission No.52, p.p.3-4.

171 Malcolm Mackerras AO, Submission No.1, part 1, p.p.2-5.

the Whitlam government had requested in 1975 and what the Hawke government had requested in 1983—namely, that the elector cast a vote going ‘1’, ‘2’, ‘3’, ‘4’, ‘5’, and nothing beyond that is needed.

Had people thought these things through logically, when the system for the Legislative Council was reformed, beginning with the 2006 election, they would have realised that there was no need for these contrivances”.<sup>172</sup>

Chris Curtis, an individual who made a submission to the inquiry, argued against the NSW-style optional preferential voting system. He said that the system was contrary to the system of direct election of Senators proposed by the *Australian Constitution*. He also noted that the system was a de-facto “party list” system.<sup>173</sup>

In addition, the PRSA argued against all forms of ATL voting for the Legislative Council, including current arrangements for abolishing optional preferential voting:

“[PRSA] recommends that there be no provision for any form of above-the-line voting, resulting in a change to solely what is presently below-the-line voting, with the maintenance of the existing requirement of only [five] preferences being required. [ATL] voting was ostensibly introduced for the Australian Senate (and adopted from there for Victoria’s Legislative Council) to reduce the high levels of informal voting that had been maintained by the contested non-bipartisan provision in the 1948 Act to continue requiring voters to mark all preferences on Senate ballot papers, which even then were recognised by members debating the Bill as having a large number of candidates. Since that unreasonable requirement to express all preferences is not required for Victorian Legislative Council elections, there is no need for [ATL] voting to be maintained”.<sup>174</sup>

During the inquiry the committee notes that Victorian Labor, the Liberal Party of Victoria nor the Victorian Greens’ submissions offered a view about Legislative Council voting reform.

The Australian Sex Party’s submission supported the Legislative Council’s current voting practices.<sup>175</sup>

The Nationals Victoria discussed the importance of voter intent, and encouraged the committee to consider the appropriateness of group voting tickets.

### **‘Below-the-line’ voting**

As mentioned earlier s69A and s69B provide that Victorian electors may mark their ballot paper BTL. Electors must mark all preferences from ‘1’ to ‘5’ in sequential order.

During the inquiry there was considerable support for Victoria’s BTL provisions. As shown above, Mr Mackerras broadly supports Victoria’s ‘1’ to ‘5’ voting option.

<sup>172</sup> Malcolm Mackerras AO, Transcript of Evidence, 5 October 2015, p.2.

<sup>173</sup> Chris Curtis, Submission No.44, p.p.4-10.

<sup>174</sup> Proportional Representation Society of Australia, Victoria and Tasmania Branch, Submission No.35, p.p.3-4.

<sup>175</sup> Australian Sex Party, Submission No.27, p.1.

In addition, the PRSA also supported Victoria's BTL provisions. By voting below the line, the PRSA suggested that electors were able to avoid the type of so-called "preference gaming" associated with ATL voting and group voting tickets, and that Victoria's '1' to '5' option was an accurate reflection of the constitutional principle that the Senate should be "directly elected by the people".<sup>176</sup>

During his appearance at the public hearing, Mr Green also noted that Victoria's BTL voting option was a superior alternative to other Australian jurisdictions.<sup>177</sup>

As noted earlier, the *Commonwealth Electoral Amendment Bill 2016* was enacted in March 2016. Electors are now instructed to number at least twelve candidates BTL for Senate elections.

### **Modelling the impact of changes to optional preferential voting for the Legislative Council**

During the inquiry the committee considered how various changes to the Legislative Council's voting system might impact on the results of Victorian elections.

While it is not appropriate for the committee to offer complex psephological analysis, or to speculate about the result of future Victorian state elections, some suggest that introducing a NSW-style optional preferential voting ATL for Victorian Legislative Council elections would have the effect of making it more difficult for minor parties to be elected to the Legislative Council.

Writing for *The Conversation* in December 2014, then University of Melbourne PhD candidate and statistician Adrian Beaumont suggested that if there was an optional preferential voting system for the Legislative Council where voters could mark as many preferences as they wished ATL, "it [was] highly unlikely that any of the micro parties would have won a seat [in 2014]".<sup>178</sup> Mr Beaumont noted:

"The highest state wide vote for any micro party was 3.1 percent for the LDP, and this was partly due to confusion with the Liberals. Many small parties would realise that they had no chance of winning seats under OPV, and would not contest. As a result, ballot papers would be less cluttered, so name confusion would not be the problem it sometimes is now".<sup>179</sup>

Using Mr Beaumont's model, only two of the eight Regions have the same outcomes compared to the actual 2014 Victorian state election results in the Legislative Council. As noted by Mr Beaumont:

<sup>176</sup> Proportional Representation Society of Australia, Victoria and Tasmania Branch, Submission No.35, p.2.

<sup>177</sup> Antony Green, Transcript of Evidence, 11 August 2015, p.p.3-4.

<sup>178</sup> Beaumont, A. 2014. "Micro parties surge in Vic upper house on major vote party fall", *The Conversation*, December 2014. Retrieved 1 March 2016 from [theconversation.com/micro-parties-surge-in-vic-upper-house-on-major-party-vote-fall-35720](http://theconversation.com/micro-parties-surge-in-vic-upper-house-on-major-party-vote-fall-35720).

<sup>179</sup> Beaumont, A. 2014. "Micro parties surge in Vic upper house on major vote party fall", *The Conversation*, December 2014. Retrieved 1 March 2016 from [theconversation.com/micro-parties-surge-in-vic-upper-house-on-major-party-vote-fall-35720](http://theconversation.com/micro-parties-surge-in-vic-upper-house-on-major-party-vote-fall-35720).

“This is because group voting tickets can allow parties with low votes to reach a quota by harnessing the preferences of other parties. Some may argue that the micro parties deserve some seats given that the total micro party vote was almost 20 percent. However, the most any *individual* micro party won was 3.1 percent by the LDP, and that vote was inflated by confusion with the Liberals. Given the choice, most people who vote for left wing micros would not preference right wing micros, and vice versa”.<sup>180</sup>

During this inquiry, there was a similar consensus amongst inquiry participants about the potential impact of Legislative Council voting reforms on minor parties. Malcolm Mackerras AO noted that while he was not “gunning for” or singling out minor party candidates, the end result of some reforms to the Legislative Council, particularly the introduction of optional preferential voting ATL, was that minor parties would probably not be elected to the Legislative Council.<sup>181</sup>

In contrast, as part of the JSCEM’s inquiry into the *Commonwealth Electoral Amendment Bill 2016* (Cwth), Professor George Williams, University of NSW, suggested that the provisions in the Bill for optional preferential voting ATL from ‘1’ to ‘6’ preferences for the Senate would unfairly advantage Australia’s major political parties. Professor Williams noted:

“The system as amended would unduly favour the ordering of candidates suggested by parties, rather than enabling voters an accessible and straightforward means of themselves selecting the order of preference for party candidates...

...If the logic behind the proposed reforms is followed through (that voter preferences should determine outcomes), this problem must be fixed. Without this, the system will still be loaded towards enabling parties to affect the result in a way that is not a true reflection of voter preferences...

...Disturbingly, it would do this in a way that would create the impression that this Bill is designed to harm the electoral chances of minor parties while retaining the capacity of major parties to manipulate the preferences of voters through the ordering of candidates”.<sup>182</sup>

In his submission to the Commonwealth JSCEM, Professor Williams preferred full preferential voting above and below the line, “along with generous savings provisions”.<sup>183</sup>

### Committee’s view

The committee notes that this inquiry took place at a time of great interest in the reform of Senate voting practices. The committee’s own deliberations about Senate voting reform occurred as the Senate was debating the passage of the *Commonwealth Electoral Amendment Bill 2016* (Cwth), which was passed by the Australian Parliament on 18 March 2016.

<sup>180</sup> Beaumont, A. 2014. “Micro parties surge in Vic upper house on major vote party fall”, *The Conversation*, December 2014. Retrieved 1 March 2016 from [theconversation.com/micro-parties-surge-in-vic-upper-house-on-major-party-vote-fall-35720](http://theconversation.com/micro-parties-surge-in-vic-upper-house-on-major-party-vote-fall-35720).

<sup>181</sup> Malcolm Mackerras AO, Transcript of Evidence, 5 October 2015, p.p.2-3.

<sup>182</sup> George Williams, Submission 023, Parliament of Australia, Joint Standing Committee on Electoral Matters, p.2.

<sup>183</sup> George Williams, Submission 023, Parliament of Australia, Joint Standing Committee on Electoral Matters, p.2.

After reviewing suggestions for reform from inquiry participants, the committee has elected to monitor and review the operation of the *Commonwealth Electoral Amendment Act 2016* (Cwth), and how these changes to the Senate’s voting practices take effect at the next federal election.

The committee wishes to observe how the introduction of optional preferential voting ATL impacts on the AEC. Publicly, the AEC has advised that it will need three months to alter its administrative procedures to suit the new voting arrangements, train staff and conduct a public awareness campaign. The Act will also have substantial financial implications for the AEC, which are yet to be determined. After the election the committee may examine how the AEC approaches these challenges, and whether the changes to the Senate’s voting system result in adverse outcomes, such as an increase in informal voting. The committee notes that recent examples of Upper House electoral reform in Australia, such as the introduction of PR for the Legislative Council in Victoria in 2006 and the introduction of PR for the Senate in 1984, resulted in higher levels of informal voting in the Upper House at the next election in each jurisdiction.

#### 4.4.2 Group voting tickets

Some inquiry participants supported abolishing group voting tickets.

The PRSA recommended that group voting tickets be discontinued. In favour of this, the PRSA argues that all electors should be required to “explicitly indicate their own individual preferences among a minimum number of candidates (currently five for the Legislative Council), and as many more as they choose”.<sup>184</sup>

The PRSA also believe that group voting tickets distort electoral outcomes because the majority of voters do not log on to the VEC’s website to inspect group voting tickets before they vote. The PRSA noted:

“However, as a result of the imposition of group voting tickets and the resulting practice of preference gaming, it is arguable that the election of some of those MLCs was not the explicit intention of voters, because nearly all the voters marked a ‘1’ [ATL] without knowing what the flow of their subsequent preferences would be. That is because under the group voting tickets system, those subsequent preferences are decided by the parties – each of the parties – and are unknown to most of the voters”.<sup>185</sup>

In his submission Antony Green noted that the 2014 Victorian state election “suffered” from the same issues as the 2013 federal election, “with a large number of parties nominating for election and group voting ticket preferences becoming increasingly difficult for electors to understand”.<sup>186</sup> While he did not make a specific recommendation, Mr Green suggested the committee consider the Commonwealth JSCEM’s findings in its interim report on Senate

<sup>184</sup> Proportional Representation Society of Australia, Victoria and Tasmania Branch, Submission No.35, p.p.2-4.

<sup>185</sup> Proportional Representation Society of Australia, Victoria and Tasmania Branch, Submission No.35, p.2.

<sup>186</sup> Antony Green, Submission No.52, p.p.3-4.



voting practices. He also suggested that Victoria needed to be cautious, as an increase in candidates and parties would likely lead to larger Legislative Council ballot papers.

Malcolm Mackerras AO supported abolishing group voting tickets. As noted earlier, Mr Mackerras would like to see Senate and all Australian Upper House voting systems return to what he terms a “candidate-based” system of election, as is the case for the House of Representatives and the Legislative Assembly. He notes that the “three contrivances” – the ballot line, ATL voting and group voting tickets – are contrary to the *Australian Constitution*, which states that “Senators should be directly elected”.<sup>187</sup>

Further to this, The Nationals Victoria asked the committee to consider whether group voting tickets accurately reflected voter intent. In their submission The Nationals Victoria noted:

“Our concern is that the current system of group voting ticket preference allocation is not reflecting voter intent; rather it has been hijacked by paid preference harvesters working with minor parties. We maintain that the system is in need of reform and cite the example of the result in Western Victoria Region, where over 98 percent of the voters chose to vote [ATL]. Seventeen parties were registered in Western Region, four of these parties received under two percent of the primary vote. The party with the lowest primary vote, Vote 1 Local Jobs, with a vote of just 1.3 percent, reflecting a deliberate choice of over 98 percent of voters not to vote for this party, now sits in the Parliament, representing the voters of the Western Victoria Region. This is a very clear example that voter intent is not aligned with the election outcome in the Upper House”.<sup>188</sup>

The committee notes that group voting tickets were abolished by the enactment of the *Commonwealth Electoral Amendment Bill 2016* (Cwth).

### 4.4.3 Thresholds

An electoral threshold represents the minimum share of the vote which a political party needs to secure in order to gain representation in a legislature.

Thresholds can operate in a number of ways. In party-list PR systems an election threshold is a rule that requires that a party must receive a specified minimum percentage of votes (e.g. five percent), either nationally or within a particular district, to obtain seats in the legislature.

In the case of Victoria, which has eight multi-member constituencies or Regions for the Legislative Council, each constituency has a quota, representing the minimum percentage of the votes in that constituency to be awarded one seat. In Victoria, the quota for election to the Legislative Council is 16.7 percent of the vote.

<sup>187</sup> Malcolm Mackerras AO, Transcript of Evidence, 5 October 2015, p.p.2-7.

<sup>188</sup> Nationals Victoria, Submission No.43, p.2.

As noted by the Commonwealth JSCEM, thresholds are a common feature of PR systems. Under the additional member system in Germany, “there is a threshold of five percent, only applicable where the party does not win at least one electoral seat. Israel has a two percent threshold under its nation-wide PR system. Turkey also has a 10 percent nationwide threshold under its closed list PR system; and Sweden a four percent nationwide threshold under its party-list PR system”.<sup>189</sup>

During its study tour to New Zealand, the committee discussed thresholds with Elections New Zealand; there is a five percent election threshold in New Zealand’s mixed-member PR system for party list seats.

While Victoria does not have a formal election threshold, as for the federal elections, the concept of a threshold exists in relation to the receipt of election funding. Section 211 of the *Electoral Act 2002* (Vic) sets out the entitlement for public funding for electoral expenditure. To be eligible for this entitlement the party or candidate must receive at least four percent of the first preference vote in the relevant election. The first preference vote calculation does not include informal votes. Section 212 of the *Electoral Act 2002* (Vic) provides rules around when claims can be made, and other administrative detail.

For federal elections, the concept of a threshold is provided for by Division 3 of the *Commonwealth Electoral Act 1918* (Cwth). Section 297 states “a payment under this Division shall not be made in respect of votes given in an election for a candidate unless the total number of eligible votes polled in the candidates favour is at least 4 percent of the total number of eligible votes polled in favour of all the candidates in the election”.<sup>190</sup>

During this inquiry, the committee received some evidence about thresholds. The PRSA argued against Victoria adopting a threshold for the Legislative Council. The PRSA noted that “thresholds not only disregard people’s votes, but also lead to highly distorted results, meaning that our parliaments are less representative and less democratic. Artificially excluding minority voices, such as occurs under thresholds, simply increases the percentage of disenfranchised voters”<sup>191</sup>.

The PRSA also suggested that, if there were a five percent threshold for election to the Legislative Council at the 2014 Victorian state election, it would have “nullified and rendered ineffective the votes of all 760,000 people that voted for candidates of smaller parties, which is just under 20 percent of the voters”.<sup>192</sup>

In addition, Antony Green did not support a threshold for the Legislative Council. At the public hearings in August 2015, he suggested that thresholds only assist parties with a high public profile:

<sup>189</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.29.

<sup>190</sup> *Commonwealth Electoral Act 1918* (Cwth), s297.

<sup>191</sup> Proportional Representation Society of Australia, Victoria and Tasmania Branch, *Submission No.35*, p.4.

<sup>192</sup> Proportional Representation Society of Australia, Victoria and Tasmania Branch, *Submission No.35*, p.4.

“The worst problem with the threshold is that it may help the party that has the highest profile. If you looked at, say, the last federal election, it might have had a huge advantage for the Palmer United Party, which could get above a three or four per cent threshold. It might have resulted in everybody else directing their preferences to him. There is also the point where it should be applied, and I think this comes up under the Commonwealth because of the way the High Court might rule on the [*Australian Constitution*]; I do not know if there is a constitutional issue in Victoria. If you just excluded those votes and did not count preferences and reweighted the quota, it could have perverse outcomes. If you actually included them as preferences, the question you get is whether all those preferences end up flowing to one party or not. It also means that a party that knows it is going to be over the quota — one of the major parties — goes to every other micro-party. You still have to end up doing deals with other parties with threshold”.<sup>193</sup>

In contrast, The Nationals Victoria requested the committee consider a threshold based on the eligibility for public funding at four percent of first preference votes. This view is based on the idea that the public funding threshold, and the threshold for election, should be aligned, given that some parties were elected with less than two percent of the vote.<sup>194</sup>

During this inquiry the committee also considered evidence about thresholds received by the Commonwealth JSCEM during its inquiry into Senate voting practices. In contrast to Victoria, there were mixed views about thresholds.

Some Commonwealth JSCEM inquiry participants agreed that election thresholds could potentially have the effect of minimising the impact of “preference deals” in Senate elections, and reducing the possibility that minor parties would be elected. At a public hearing in March 2014, Professor George Williams noted that “if the [Commonwealth] moved to a system that was a fully preferential or optional [ATL], then that would largely take the heat out of the threshold issue because the likelihood of someone being elected on a minuscule first preference vote would be very small if that occurred”.<sup>195</sup>

In addition, Professor Kevin Bonham, University of Tasmania, argued that thresholds:

“...remove the possibility of parties snowballing to victory on tiny percentages of the vote. Possibly, this alone would deter some of the micro-parties from competing. However, it would not stop horse-trading between those parties capable of getting four percent, and the number of such parties would be likely to increase as some of the micro-parties either did not run or merged to avoid splitting the primary vote... Furthermore, while micro-parties would no longer win (or would be encouraged to merge into broader niche parties that were more competitive, e.g. a broad libertarian

<sup>193</sup> Antony Green, Transcript of Evidence, p.10.

<sup>194</sup> Nationals Victoria, Submission No.43, p.3.

<sup>195</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.37.

right party, a broad left-libertarian non-Green party, a broad Christian-right party) they could still use their preferencing power to influence political goals. So it's not clear how much this would really cull the candidate list".<sup>196</sup>

Brian Loughnane, then federal Director of the Liberal Party, also agreed that election thresholds could make it more difficult for minor parties to be elected. In this instance, he specifically referred to a 10 percent election threshold for the Senate.<sup>197</sup>

Other Commonwealth JSCEM inquiry participants offered cautious assessments of thresholds. Antony Green urged the JSCEM to carefully consider the practical implications of an election quota and the effect of how an election count would be conducted. He noted

"...if you have a threshold quota, do you allow them to have preferences to be distributed? If they are distributed, at what point are they distributed? Do you elect the candidates elected from the first count and then exclude the other parties, or do you exclude them initially? Say the Coalition has 2.9 quotas, and then you exclude all parties under your threshold, suddenly the Coalition might get to 3.4 quotas overall, because you have done the exclusion of them before you have done any elections. So there is actually quite a number of complexities to the way you define this".<sup>198</sup>

Professor George Williams and Mr Green also discussed the potential constitutional implications of thresholds. Given that any threshold is unlikely to apply to an individual candidate in the Australian or Victorian context – it would have to apply to a group – Professor Williams and Mr Green suggested that this might form the basis of a legal challenge on the grounds that excluding a vote from a candidate on the basis of a candidate's party may be unconstitutional.<sup>199</sup>

At the time of writing, the High Court of Australia had accepted a legal challenge by Senator Bob Day to the Senate's new voting laws. The case will be heard by the Full Court on 2 May 2016.

#### 4.4.4 Registration of political parties

As noted earlier Part Four of the *Electoral Act 2002* (Vic) covers the registration of political parties.

Twenty one registered political parties contested the 2014 Victorian state election, double the number of parties that contested the 2010 Victorian state election. The VEC received applications for registration from 13 new political parties, 11 of which were registered in time for the election. Three parties were registered on the last possible day, 3 November 2014.

<sup>196</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, "Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices", Parliament of Australia, Canberra, May 2014, p.38.

<sup>197</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, "Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices", Parliament of Australia, Canberra, May 2014, p.38.

<sup>198</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, "Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices", Parliament of Australia, Canberra, May 2014, p.40.

<sup>199</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, "Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices", Parliament of Australia, Canberra, May 2014, p.41-42.

During the inquiry several participants discussed whether it was appropriate to change how political parties are registered for Victorian elections.

At the August 2015 public hearings Mr Green and the committee discussed registration requirements, exploring this issue in relation to Victorian, NSW and federal elections. Mr Green noted there was a need to curtail the number of political parties and candidates at Upper House elections. He noted that many of these parties are campaigning on similar issues, referring to the registration of Family First Australia, Rise Up Australia Party and the Australian Christians at the 2014 Victorian state election.

Mr Green suggested the central candidacy process could only control candidacies to a limited extent. In particular, he discussed introducing a separate registration process for Legislative Council candidates:

“A point on that, and this is something I have suggested at the federal electoral committee, is once you are a registered party you get the ability to centrally nominate candidates. That was one of the reasons why there were so many groups at the federal election. Once registered a party could nominate candidates for every state, and parties did nominate for every state, which created the gigantic ballot papers. Often candidates who were nominated for a state had nothing to do with that state, but they were allowed to be nominated centrally.

...If you wanted to be an independent standing in any of those states, you had to have nominators. If you wanted to stand as an independent at the Legislative Council election, you needed nominators. If you were from a registered party, you did not. One of the reasons why parties nominate for every Region now is that the central nomination allows them to. Perhaps we should bring back nominators for Upper House elections, which would put a slightly higher test on parties. If they wanted to get on the ballot paper, they would have to get organised in a Region. That may be one way to sieve out the process”.<sup>200</sup>

### Registration fees

As noted earlier, currently in Victoria the registration fee for a new political party is \$500. Registered parties must also re-register once in the parliamentary term at a cost of \$500.

At the September 2015 public hearings Malcolm Mackerras AO discussed the fees associated with registration requirements. Mr Mackerras argued that candidates for Legislative Council elections should have to nominate individually. Mr Mackerras also called for higher registration fees.<sup>201</sup>

During the Commonwealth JSCEM’s inquiry into Senate voting practices there was almost unanimous agreement amongst inquiry participants about the need to increase party registration fees. Malcolm Mackerras AO proposed increasing the federal registration fee from \$500 to \$2,000.<sup>202</sup> The Democratic Audit of

<sup>200</sup> Antony Green, Transcript of Evidence, p.9.

<sup>201</sup> Malcolm Mackerras AO, Transcript of Evidence, p.p.3-4.

<sup>202</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices”, Parliament of Australia, Canberra, May 2014, p.56.

Australia proposed raising the federal registration fee to \$5,000. Professor George Williams also supported raising federal registration fees in principle, although he did not offer a figure.

### **Relationship between party registration and the size of the Legislative Council ballot paper**

Mr Green also discussed strategies to prevent the Legislative Council ballot paper becoming too large. At the August 2015 public hearing he discussed the now infamous 1999 NSW Legislative Council ballot paper, which featured more than 200 candidates and 81 individual columns. As noted by Mr Green, this election was characterised by weak party registration requirements, and the fact that, at the time, there was no BTL voting option for the NSW Legislative Council. Referring to the Northern Metropolitan Region ballot paper at the 2014 Victorian state election, which featured 20 groups and two rows of ATL and BTL candidates, Mr Green suggested that, in principle, tighter party registration requirements could limit the size of the Legislative Council ballot paper at future elections.<sup>203</sup>

### **Shorter registration timeline for new parties**

Separately to these matters, in the VEC's report to Parliament on the 2014 Victorian state election the VEC also recommended a defined timeframe for political parties seeking registration to meet statutory requirements regarding membership.

As noted by the VEC, the *Electoral Act 2002* (Vic) requires a political party's registration to be accompanied by a statutory declaration by the party secretary that at least 500 members of the political party are electors and members. The VEC tests this information by comparing the enrolment status and membership status of persons listed in the application.

At the 2014 Victorian state election, some parties seeking registration required several attempts to establish their membership numbers. To assist the VEC with the process of establishing whether an application for registration is genuine, the VEC notes that "prospective registered political parties should be given a finite time within which to meet statutory requirements regarding membership, such as 60/90 days from receipt of application".<sup>204</sup>

### **Committee's view**

The committee supports the VEC's recommendation to limit the amount of time a political party can use to meet statutory requirements regarding membership. A finite time will allow the VEC to process applications, and assess the genuineness of applications, in a timely manner.

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<sup>203</sup> Antony Green, Transcript of Evidence, p.p.6-10.

<sup>204</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.7.

**RECOMMENDATION 10:** The committee recommends the *Electoral Act 2002 (Vic)* and the *Electoral Regulations 2012 (Vic)* be amended so that prospective registered political parties meet the statutory requirements for membership 60 days before a Victorian state election.

#### 4.4.5 References to ‘ungrouped’ candidates on Legislative Council ballot paper

During the inquiry Darren Bain, an independent candidate in Northern Metropolitan Region at the 2014 Victorian state election, asked the committee to consider how ‘ungrouped’ candidates are referred to on the Legislative Council ballot paper. At present, candidates who do not belong to a group are listed BTL as ‘ungrouped’ candidates.

Mr Bain suggested the term ‘ungrouped’ is prejudicial and confusing to electors. As an alternative, Mr Bain recommended that the word ‘ungrouped’ should be changed to ‘independent’, as this was a better reflection of the candidate’s status. Mr Bain also recommended amending the term ‘grouped’ to ‘informal / registered party’.<sup>205</sup>

#### 4.4.6 Procedures for ascertaining the number of votes for a Legislative Council candidate

The procedures to ascertain the number of votes for a candidate in PR counts are complex and differ between jurisdictions.

As noted earlier, to secure election to the Legislative Council, candidates must secure a quota of votes. The quota is determined by dividing the total number of formal first preference votes in the count by one more than the number of electors to be elected for the Region and increasing the result by one. Should a candidate gain an exact quota, he or she is declared elected and his or her ballot papers are set aside as finally dealt with as there are no surplus votes.

##### Transferring a surplus

In most PR counts, many candidates are elected with a surplus of votes. For “each candidate elected with a surplus, commencing with the candidate elected first, a transfer value is calculated for all his or her ballot papers”.<sup>206</sup> The reason for a transfer value is that it is not possible to determine which votes actually elected the candidate and which votes are surplus. As a result of this all the elected candidate’s ballot papers are transferred at a reduced rate. All those “ballot papers are then re-examined and the number showing a next available preference for each of the continuing candidates is determined. Each of these numbers of

<sup>205</sup> Darren Bain, Submission No.25, p.2.

<sup>206</sup> Victorian Electoral Commission, “Proportional Representation Voting System”, Victorian Electoral Commission, Melbourne, p.2. Retrieved 1 March 2016 from [www.vec.vic.gov.au/files/PRVotingSystem.pdf](http://www.vec.vic.gov.au/files/PRVotingSystem.pdf).

ballot papers is multiplied by the transfer value. The resulting numbers, ignoring any fractional remainders, are added to the continuing candidates' respective progressive totals of votes".<sup>207</sup>

### Treatment of bundles

Different PR systems treat bundles of ballot papers differently.

In Victoria for Legislative Council counts and local government elections using PR, s114 of the *Electoral Act 2002* (Vic) permits ballot papers of the same value to be amalgamated whereas legislation in other states does not permit such amalgamation. This method is called the Unweighted Inclusive Gregory Transfer method. As noted by the PRSA, this method provides for transfers from all ballot-papers, rather than just from first preference and last parcel papers only, like the Original Gregory Fractional Transfer.

This procedure is described in the VEC's "Proportional Representation Voting System" document, which is available on the VEC's website.

### Evidence about method used to transfer surplus values

During the inquiry the committee received some detailed evidence about this matter.

In the VEC's report to Parliament on the 2014 Victorian state election, the VEC recommended that to avoid confusion, the Parliament amend s114 of the *Electoral Act 2002* (Vic) to be consistent with the wording in the *Commonwealth Electoral Act 1918* (Cwth) and the *Local Government Act 1989* (Vic) as follows: "a transfer in accordance with subsection 12 (b) of all the votes of an excluded candidate that were transferred to that candidate from a particular candidate or candidates as the case may be, at a particular transfer value".<sup>208</sup>

This recommendation stems from the VEC's participation in the then committee's inquiry into the 2006 Victorian state election. Several inquiry participants at the time, including Anthony van der Craats, a participant in this inquiry, argued that the VEC's treatment of bundles – by amalgamating bundles – was effectively incorrect. At the time of that inquiry, the VEC sought legal advice from the Victorian Government Solicitor's Office, which advised that the VEC's interpretation of s114 was correct.<sup>209</sup>

During this inquiry the VEC advised the committee that it had once again sought legal advice about its interpretation of s114, and that the VEC's construction is preferred.

<sup>207</sup> Victorian Electoral Commission, "Proportional Representation Voting System", Victorian Electoral Commission, Melbourne, p.2. Retrieved 1 March 2016 from [www.vec.vic.gov.au/files/PRVotingSystem.pdf](http://www.vec.vic.gov.au/files/PRVotingSystem.pdf).

<sup>208</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.7.

<sup>209</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.7.



In contrast to the VEC, several other inquiry participants argued for a different method for transferring surplus values, based on their view about the formula's contribution to the election of a candidate in Northern Victoria Region.

Anthony van der Craats, who made a submission to this inquiry and appeared at the public hearings, called for the committee to recommend a weighted surplus value, "to maintain the correct proportionality of the count". He also called for Victoria to adopt a different method for calculating the quota value, based on what he terms a "pure proportional quota".<sup>210</sup>

According to Mr Green and the PRSA, Labor won the last seat in Northern Victoria Region at the 2014 Victorian state election because the formula – the Unweighted Inclusive Gregory Method – used to calculate transfer values for the distribution of preferences from candidates who have more than a quota of votes, determined this outcome. Both Mr Green and the PRSA note that, had the Weighted Inclusive Gregory method been used, "based on vote values rather than ballot papers, then Coalition preferences would have carried less weight on the election of the Shooters and Fishers Party, resulting in the Greens receiving more preferences at the next count. The result would have been Labor being excluded and the last seat being won by the Australian Country Alliance, not by Labor".<sup>211</sup>

Mr Green's Election blog explains how this outcome occurred. Table 4.6 shows Count 151 in the Northern Victoria Region for the 2014 Victorian state election.

**Table 4.6** Count 151, Northern Victoria Region, 2014 Victorian state election

Vote Source	Ballot papers	Transfer value	Votes
Shooters and Fishers ticket votes	13,923	1.0	13,923
Liberal/National ticket votes	174,808	0.18049324	31,551
Palmer United Party ticket votes	11,823	1.0	11,823
Australian Sex Party ticket votes	12,863	1.0	12,863
Australian Cyclists Party ticket votes	1,813	1.0	1,813
Below the line votes	4,540	(various)	4,219
<b>Totals</b>	<b>219,770</b>		<b>76,192</b>

Source: Green, A. 2014; "Antony Greens' Election Blog: Transfer values in Northern Victoria Region", Australian Broadcasting Corporation, December 2014. Retrieved 1 March 2016 from [blogs.abc.net.au/antonygreen/2014/12/transfer-values-in-northern-victoria-region.html](http://blogs.abc.net.au/antonygreen/2014/12/transfer-values-in-northern-victoria-region.html).

Mr Green's blog notes:

"The quota for election in Northern Victoria was 72,936. So at count 151, the Shooters and Fishers Party had a surplus of 3,256 votes.

<sup>210</sup> Anthony van der Craats, Submission No. 40, p.8.

<sup>211</sup> Green, A. 2014; "Antony Greens' Election Blog: Transfer values in Northern Victoria Region", Australian Broadcasting Corporation, December 2014. Retrieved 1 March 2016 from [blogs.abc.net.au/antonygreen/2014/12/transfer-values-in-northern-victoria-region.html](http://blogs.abc.net.au/antonygreen/2014/12/transfer-values-in-northern-victoria-region.html).

How this surplus of votes is turned into preferences is the difference between the two methods of calculating transfer value.

The Inclusive Gregory Method reverts to ballot papers at this point. So the surplus of 3,256 is divided by the total ballot papers, 219,770, producing a transfer value of 0.01481548. This method heavily weights the preferences flows in favour of the Liberal/National ticket votes which make up 79.5 percent of all ballot papers, but only 41.4 percent of votes.

As the Liberal/National ticket had next preferences for the Australian Country Alliance, the Inclusive Gregory biases the preference flow to follow the Liberal ticket with next preference for the Australian Country Alliance.

The Weighted Inclusive Gregory Method divides the surplus by the number of votes. So the surplus of 3,256 votes is divided by the number of votes, 76,192, a transfer value of 0.04273414.

This may sound like a trivial difference, but look what it does to the 26,499 votes/ballot papers derived from the Palmer United, Sex Party and Cyclists Party ticket votes. These all had next preference for the Greens.

Under the Inclusive Gregory Method, these ballot papers are translated into 392 votes with next preferences for the Greens. This was the method used in Victoria, resulted in the Greens finishing 161 votes behind Labor, resulting in the Greens being excluded and Labor winning the final seat.

If the Weighted Inclusive Gregory Method had been used, the 26,499 ballot papers would have been 1,649 preferences for the Greens, putting the Greens ahead of Labor, resulting in Labor being excluded and the Australian Country Alliance winning the final seat".<sup>212</sup>

Based on this, Mr Green recommends that "ballot papers with exhausted preferences be excluded from the transfer value formula used in distributing the preferences of surplus to quota votes from elected candidates". Mr Green also recommends that transfer values be based on the number of votes held by a candidate on their election, not on the number of 'ballot papers'".<sup>213</sup>

Mr Green's recommendations are largely supported by the PRSA in their submission to the inquiry. The PRSA recommend that "the present provision for counting transfers of surpluses, known as the Unweighted Inclusive Gregory method, should be replaced by the Weighted Inclusive Gregory method".<sup>214</sup>

The PRSA also encourage the VEC to examine the Meek system.

The committee notes that both Mr Green and the PRSA see the issue of how surplus votes are transferred in Legislative Council counts as secondary to the need for reforms to the method of voting, particularly the use of group voting tickets.

212 Green, A. 2014; "Antony Greens' Election Blog: Transfer values in Northern Victoria Region", Australian Broadcasting Corporation, December 2014. Retrieved 1 March 2016 from [blogs.abc.net.au/antonygreen/2014/12/transfer-values-in-northern-victoria-region.html](http://blogs.abc.net.au/antonygreen/2014/12/transfer-values-in-northern-victoria-region.html).

213 Antony Green, Submission No.52, p.7.

214 Proportional Representation Society of Australia, Victoria and Tasmania Branch, *Submission No.35*, p.p.7-8.

### Committee's view

The committee will revisit the method used to determine the transfer of surplus values for Legislative Council elections as part of its inquiry into electronic voting, which will be tabled in Parliament in April 2017.

## SECTION TWO – LEGISLATIVE ASSEMBLY

### 4.5 History of Legislative Assembly voting practices

Before the major electoral reforms of 2003 outlined in Section One both the Legislative Assembly and the Legislative Council were elected by the preferential voting system, which remains in place for the Legislative Assembly. As demonstrated by Economou, the *Preferential Voting Act 1911* (Vic) “introduced preferential voting for the Legislative Assembly and replaced the previously used form of first past the post voting where electors were required to strike out the names of all candidates other than the preferred candidate”.<sup>215</sup> The other, significant amendment affecting the Legislative Assembly was the introduction of four-year terms in 1984, with the introduction of the *Constitution (Duration of Parliament) Act 1984* (Vic).<sup>216</sup> Fixed terms were then legislated for in 2003.

### 4.6 Legislative Assembly – how voting works

Section 93 of the *Electoral Act 2002* (Vic) provides instructions for completing the Legislative Assembly ballot paper. An elector must mark the elector’s vote on the ballot-paper by placing—

- (a) The number ‘1’ opposite the name of the candidate for whom the elector votes as first preference; and
- (b) Contingent votes for all the remaining candidates by placing numbers ‘2’, ‘3’, ‘4’ (and so on as the case requires) opposite their names so as to indicate by an unbroken numerical sequence the order of preference.

Where a ballot paper is completed but the last box is left blank, s93 (5) provides that an elector is to be taken to have indicated the order of preference for all the candidates and to have given the last contingent vote to the candidate opposite whose name no number is placed. In other words, a vote will still be formal if the last preference is left blank.

<sup>215</sup> Economou, N., 2008. “Changing the Rules to Change the House: Electoral Reform and the 2006 Electoral Contest for the Victorian Legislative Council”, *Australian Journal of Political Science*, v.43, 4, p.635.

<sup>216</sup> Economou, N., 2008. “Changing the Rules to Change the House: Electoral Reform and the 2006 Electoral Contest for the Victorian Legislative Council”, *Australian Journal of Political Science*, v.43, 4, p.635.

### 4.6.1 Preferential voting

This system is called ‘full preferential’ voting because an elector must effectively number every box on the ballot paper. If an elector does not number every box correctly, their vote is considered informal and their preferences are not counted.

Preferential voting is one of the unique features of Australia’s electoral system. Unlike elections in many other countries, where electors only cast a single vote for a candidate or party of their choice and their vote exhausts at this point, preferential voting allows the most preferred candidate to be elected, the candidate that can demonstrate an absolute majority of support in the electorate.

## 4.7 Preferential voting in other Australian jurisdictions

Preferential voting is used for all Lower House elections across Australia, including the House of Representatives, except for the Tasmanian House of Assembly and the ACT Legislative Assembly. However, some states, notably NSW, Queensland and South Australia, use modified preferential voting systems which differ to Victoria’s. These systems are commonly known as optional preferential voting – as used in NSW and Queensland – and the ticket voting / savings provision system, as used in South Australia.

### 4.7.1 Optional preferential voting

Optional preferential voting is a system of voting used in the NSW Legislative Assembly and the Queensland Legislative Assembly. Unlike the full preferential voting system used for Victorian Legislative Assembly elections, for which, as noted, electors must number all preferences on their ballot paper in their order of preference, optional preferential voting permits electors to choose to mark for a single candidate, all candidates or any number of candidates in between on the ballot paper. By voting ‘1’ only, the vote is cast in much the same way as a first-past-the-post election.

Another major difference between full preferential voting systems and optional preferential voting systems is that some systems allow voters to vote with non-numerical symbols, such as ticks and crosses.

Apart from Australia, several countries have modified preferential voting systems, including Malta, the Republic of Ireland, and Northern Ireland.

### 4.7.2 New South Wales

Optional preferential voting for the NSW Legislative Assembly was introduced in NSW in 1980, used at four by-elections and first used at a NSW state election in 1981.<sup>217</sup>

<sup>217</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into the future of Victoria’s electoral administration”, Parliament of Victoria, Melbourne, March 2014, p.47.

Under the NSW system an elector may number ‘1’, once only, in or adjacent to a square opposite a candidate’s name. The elector may indicate further preferences if they wish. According to the NSW Electoral Commission, where the number ‘1’ appears once only, the ballot paper is still formal even if there is a break or repeat in subsequent preferences. In addition, a single tick or single cross in or adjacent to a square opposite a candidate’s name is accepted as a first preference vote. If a number “1” is also shown on the ballot paper it takes precedence over the tick or cross.<sup>218</sup>

An informal ballot paper in NSW is either blank, or one in which a tick or a cross appears with numbers in other squares (other than the number “1”).

### Informal voting at NSW Legislative Assembly elections

Informal voting at NSW Legislative Assembly elections has been lower than equidistant Victorian state elections since the mid-1990s. Table 4.7 shows informal voting rates at NSW Legislative Assembly elections since 1989.

**Table 4.7** Rates of informal voting, NSW Legislative Assembly elections, 1989-2015

Election year	Informal voting %	Election year	Informal voting %
1989	3.3	2003	2.6
1991	9.3	2007	2.7
1995	5.2	2011	3.2
1999	2.5	2015	3.44

Source: NSW Electoral Commission, “Results”, New South Wales Electoral Commission, Sydney, December 2015. Retrieved 28 February 2016 from [www.elections.nsw.gov.au](http://www.elections.nsw.gov.au).

The reason for the significant rate of informal voting of 9.3 percent at the 1991 NSW state election was due to a change in voting systems. A “tick or a cross was a valid first preference from 1982, but was declared informal in 1990”.<sup>219</sup> A concurrent referendum to reform the Legislative Council “also meant that voters were faced with three ballots and three different voting systems, with different formality rules for each”.<sup>220</sup>

### 2015 NSW state election

The committee notes that the 2015 NSW state election was the first ever Australian election when computers were used to complete the formal distribution of preferences. Every NSW Legislative Assembly ballot paper was

<sup>218</sup> NSW Electoral Commission, “Optional Preferential”, NSW Electoral Commission, Sydney, October 2014. Retrieved 28 February 2016 from [www.elections.nsw.gov.au/about\\_elections/voting\\_and\\_counting\\_systems/optional\\_preferential](http://www.elections.nsw.gov.au/about_elections/voting_and_counting_systems/optional_preferential).

<sup>219</sup> Australian Electoral Commission, ‘Research Report 10 - Informal Voting at State and Territory Elections: Introduction’, Australian Electoral Commission, West Block, Canberra, 30 May 2013. Retrieved 10 February 2014 from [www.aec.gov.au/About\\_AEC/research/paper10/page01.htm](http://www.aec.gov.au/About_AEC/research/paper10/page01.htm).

<sup>220</sup> Australian Electoral Commission, ‘Research Report 10 - Informal Voting at State and Territory Elections: Introduction’, Australian Electoral Commission, West Block, Canberra, 30 May 2013. Retrieved 10 February 2014 from [www.aec.gov.au/About\\_AEC/research/paper10/page01.htm](http://www.aec.gov.au/About_AEC/research/paper10/page01.htm).

data entered – data entry is usually performed for NSW Legislative Council counts (and also for Victorian Legislative Council counts) due to the complexity of the count process.

As noted by Antony Green, “entering [Lower House] ballot papers is feasible in NSW because of optional preferential voting. The data set corresponds to 4.3 million formal ballot papers containing 10.1 million preferences. Had the same data been entered under full preferential voting, the number of preferences would have been 25 million”.<sup>221</sup>

As a result of this data entry, and the fact that NSW has optional preferential voting for NSW Legislative Assembly elections, it is possible to accurately examine preference distributions, types of informality and how ballot papers were marked. In particular, Mr Green’s research demonstrates that most ballot papers were marked with a ‘1’ only:

As demonstrated by Mr Green:

“Overall 65.1 percent of ballot papers had only a single preference. Under optional preferential voting, such a vote can be a ‘1’, a tick or a cross. 25.2 percent of ballot papers had all squares numbered correctly, while 9.7 percent of ballot papers had more than one but fewer than a full list of preferences. The median number of preferences per ballot paper was 1, the average number of preferences per ballot paper was 2.3”.<sup>222</sup>

**Table 4.8** Preference sequences by party, 2015 NSW state election, Legislative Assembly

Party	% Vote	SEQUENCE OF PREFERENCES			NUMBER OF PREFERENCES	
		Single	Partial	Full	Median	Average
Liberal/National	45.6	77.4	7.5	15.1	1	1.8
Labor	34.1	58.0	9.1	32.9	1	2.7
Greens	10.3	42.4	18.0	39.6	2	3.2
Christian Democrats	3.2	51.7	17.4	30.9	1	2.6
No Land Tax	2.0	64.0	9.1	26.9	1	2.4
Others	4.8	57.3	12.2	30.4	1	3.0
<b>Totals</b>		<b>65.1</b>	<b>9.7</b>	<b>25.2</b>	<b>1</b>	<b>2.3</b>

Source: Green, A. 2015. “Preference flow data for the 2015 NSW state election”, Australian Broadcasting Corporation, August 2015. Retrieved 22 February 2016 from [blogs.abc.net.au/antonygreen/2015/08/preference-flow-data-for-the-2015-nsw-election.html](http://blogs.abc.net.au/antonygreen/2015/08/preference-flow-data-for-the-2015-nsw-election.html).

<sup>221</sup> Green, A. 2015. “Preference flow data for the 2015 NSW state election”, Australian Broadcasting Corporation, August 2015. Retrieved 22 February 2016 from [www.youtube.com/watch?v=IW0YGC68qP4](http://www.youtube.com/watch?v=IW0YGC68qP4).

<sup>222</sup> Green, A. 2015. “Preference flow data for the 2015 NSW state election”, Australian Broadcasting Corporation, August 2015. Retrieved 22 February 2016 from [www.youtube.com/watch?v=IW0YGC68qP4](http://www.youtube.com/watch?v=IW0YGC68qP4).

As seen in Table 4.8, there is evidence that, under optional preferential voting, electors tend to follow the instructions contained in how-to-vote cards, and particularly, instructions to vote only with a single preference. In NSW political parties are allowed to include a message in their campaigning and how-to-vote cards instructing electors to simply vote “1”. According to Mr Green:

“The Liberal and National Parties recommended either a single ‘1’ or a ‘1’-‘2’ sequence in all electorates. In no electorate did the Coalition recommend a full sequence. Unsurprisingly, 77.4 percent of Coalition ballot papers had only a single preference, and only 15.1 percent of ballot papers had a full sequence of preferences. At 1.8 the Coalition had by far the lowest average number of preferences per ballot paper.

Of Labor first preference ballot papers, a significantly lower 58.0 percent of ballot papers had only a single first preference while 32.9 percent had a full sequence, more than twice the rate for Coalition first preference ballot papers. The average number of preferences on Labor ballot papers was 2.7”.<sup>223</sup>

Further to this research, in September 2015 the committee met with Colin Barry, the then NSW Electoral Commissioner. Mr Barry discussed Mr Green’s research and also noted that, based on his experience as the former Victorian Electoral Commissioner, optional preferential voting could potentially reduce rates of informal voting at Victorian state elections.

### 4.7.3 Queensland

Like NSW Queensland also has a system of optional preferential voting for Legislative Assembly elections. The Queensland Parliament has been unicameral since 1922, meaning it has only the one House, the Legislative Assembly.

Queensland has used optional preferential voting on and off since the 1940s. After a long absence it was reintroduced in 1992 following an earlier review by the Electoral and Administrative Review Commission (EARC). The EARC was formed in 1989 after the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (better known as the Fitzgerald Report) recommended its establishment. The EARC was asked to examine the Legislative Assembly electoral system, the operation of Parliament, as well as the broader operation of Queensland’s public administration.

As in NSW, electors must number ‘1’, once only, in or adjacent to a square opposite a candidate’s name. The elector may indicate further preferences if they wish. A cross or a tick is accepted as a first preference. A ballot paper is informal if it has no markings, has a combination of two or more numbers of crosses and ticks, and also if it has markings on it which can identify the elector.

Rates of informal voting in Queensland have also been generally lower than in Victoria, and lower than in NSW. As seen in Table 4.9, the mean rate of informal voting at the past six Queensland state elections was 1.9 percent. Research suggests that Queensland has lower rates of informal voting due to

<sup>223</sup> Green, A. 2015. “Preference flow data for the 2015 NSW state election”, Australian Broadcasting Corporation, August 2015. Retrieved 22 February 2016 from [www.youtube.com/watch?v=IW0YGC68qP4](http://www.youtube.com/watch?v=IW0YGC68qP4).

the state's history with optional preferential voting, and traditionally high rates of postal voting – postal votes usually have lower rates of informality than attendance votes.<sup>224</sup>

**Table 4.9** Rates of informal voting, Queensland Legislative Assembly elections, 2001-2015

Election year	Informal voting %	Election year	Informal voting %
1998	1.5	2009	2.1
2004	2.0	2012	1.9
2001	2.2	2015	2.2

Source: Parliament of Victoria, Electoral Matters Committee, "Inquiry into the future of Victoria's electoral administration", Parliament of Victoria, Melbourne, March 2015, p.42.

#### 4.7.4 South Australia

The system of OPV used in South Australia is unique amongst Australia's electoral systems as candidates can lodge either one or two voting tickets for the Legislative Assembly – this is often referred to as a "savings provision", as it saves votes which may otherwise have been informal.

According to Section 93 of the *Electoral Act 1985 (SA)* a candidate may lodge one or two voting tickets. Under these provisions an incomplete ballot will be saved if a first preference has been marked (with a '1', tick or a cross) for a candidate who has lodged one or more tickets, or a first preference and some – but not full – preferences have been marked that are consistent with the tickets lodged.

Unlike NSW and Queensland, it is an offence in South Australia to encourage an elector to vote '1' only on their ballot.

Rates of informal voting at South Australian Legislative Assembly elections have been slightly lower than at Victorian Legislative Assembly elections, and slightly higher than at NSW and Queensland Legislative Assembly elections. As seen in Table 4.10, the mean rate of informal voting at the past six South Australian Legislative Assembly elections was 3.3 percent.

In September 2015 the committee met with David Gully, then Acting South Australian Electoral Commissioner, to discuss South Australia's 'savings provision'.

<sup>224</sup> Parliament of Victoria, Electoral Matters Committee, "Inquiry into the future of Victoria's electoral administration", Parliament of Victoria, Melbourne, March 2014, p.42.



**Table 4.10** Rates of informal voting, South Australian Legislative Assembly elections, 1993-2014

Election year	Informal voting %	Election year	Informal voting %
1993	3.1	2006	3.6
1997	4.0	2010	3.3
2002	3.1	2014	3.1

Source: Parliament of Victoria, Electoral Matters Committee, "Inquiry into the future of Victoria's electoral administration", Parliament of Victoria, Melbourne, March 2015, p.43.

#### 4.7.5 Northern Territory

The committee notes that the Northern Territory Legislative Assembly adopted optional preferential voting in February 2016. This will take effect for the August 2016 Northern Territory election.

#### 4.8 Results of 2014 Victorian state election – Legislative Assembly

As noted in Chapter Two, the overall rate of informal voting at Victorian state elections for the Legislative Assembly has increased at every state election since the 1999 Victorian state election. In line with this trend, the rate of informal voting at the 2014 Victorian state election for the Legislative Assembly was 5.22 percent, the highest rate ever recorded for a Victorian Legislative Assembly election.<sup>225</sup>

Following each state election, the VEC completes an informal ballot paper survey. As noted in Chapter Two, the survey allows the VEC to measure and assess the incidence of different types of informal voting across Victoria. For the first time ever, the VEC extended this analysis to every Legislative Assembly District.

As noted in Chapter Two, the largest category of informal District ballots at the 2014 Victorian state election were ballots that were left "blank", representing 30.30 percent of all informal District ballots.<sup>226</sup> The second largest category of informal District ballots marked with a '1' only, representing 22.98 percent of informal District ballots. Other categories of informal District ballot papers included those papers which were informal due to an incomplete numerical sequence (9.80 percent of informal District papers) and those which were apparently informal deliberately (6.65 percent of informal District ballot papers).<sup>227</sup>

<sup>225</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.ii.

<sup>226</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.54.

<sup>227</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.54.

### 4.8.1 Comparison with previous Victorian state elections

The results of the VEC's 2014 informal ballot paper reflect trends in informal voting from previous Victorian state elections. At the 2010 Victorian state election, the largest category of informal ballots, as in 2014, were informal ballots marked 'blank', representing 25 percent of all informal District ballots. In addition, the second largest category were ballots marked with a single '1', representing 23.7 percent of all informal District ballots. Informal ballots with an incomplete numerical sequence comprised 7.4 percent of all informal District ballots.

Table 4.11 compares the three largest categories of informal District ballots at the 2006, 2010 and 2014 Victorian state elections.

**Table 4.11** Informal ballot survey results, Legislative Assembly, 2006-2014 Victorian state elections

Victorian state election	Blank District ballots	'1' only District ballots	Incorrect numerical sequence ballots
2006	21.28	26.38	6.97
2010	25.10	23.70	7.40
2014	30.38	22.98	9.80

Source: Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.56.

From these figures, there is evidence that:

- The largest category of informal District ballots is those that are marked 'blank'. These types of ballots have been either deliberately left blank, or left blank by the elector due to some other reason;
- The percentage of ballots marked with a '1' only has decreased slightly at the past two Victorian state elections;
- The percentage of ballots that were informal due to an incorrect numerical sequence has increased at the past two Victorian state elections; and
- The average of the total proportion of ballots which could potentially be saved if Victoria had a system of OPV is 33.6 percent of all informal District ballots. At the 2014 Victorian state election, this would have been 61,500 votes.

### 4.9 Evidence from inquiry participants

During this inquiry the committee received some evidence about the voting system for the Legislative Assembly, focusing on potential reforms including optional preferential voting.

As mentioned earlier, in September 2015 the committee met with Colin Barry, then NSW Electoral Commissioner. Mr Barry advised that optional preferential voting had the potential to reduce informal voting at Victorian state elections, based on his experience as Victorian Electoral Commissioner from 1999-2004.

Other inquiry participants also discussed methods to reduce informal voting at Victorian state elections.

At the August 2015 public hearings Antony Green told the committee that he supported optional preferential voting for Victorian Legislative Assembly elections. He noted:

“...people called optional preferential voting “defacto first past the post, but as the recent New South Wales and Queensland elections show, it is not defacto first past the post — the result can be changed by optional preferential voting. I happen to think it is a fairer system: more votes count, and you have a lower informal vote. I can understand though why parties are always very nervous about moving to optional preferential voting”.<sup>228</sup>

In addition, at the August 2015 public hearings Me’ad Assan, representing the Ethnic Communities’ Council of Victoria, supported for optional preferential voting for the Legislative Assembly. Mr Assan discussed the relationship between Districts with high levels of candidates and the confusion this potentially causes for electors from CALD backgrounds. Mr Assan noted:

“The CHAIR—Thank you very much for the submission. As I understand it, you have attached the local government electoral review submission to the end, but you have made a recommendation on page 4 of that. Recommendation 1.2 says you are in favour of optional preferential voting. Does that apply to state elections as well?

Mr ASSAN—Absolutely, because we will be seeing more and more candidates. What will happen is a lot of people will probably just feel intimidated by the significant numbers of candidates, so to make them easier and to ensure their vote is valid that is an important area that we need to address. That is why we suggested the idea of making that option available to the community”.<sup>229</sup>

During this inquiry the VEC also provided information about informal voting patterns at the 2014 Victorian state election. However, in contrast to previous inquiries, the VEC did not address the issue of whether optional preferential voting could reduce informal voting at Victorian Legislative Assembly elections.

<sup>228</sup> Antony Green, *Transcript of Evidence*, p.8.

<sup>229</sup> Me’ad Assan, *Transcript of Evidence*, p.5.



# 5

## Community engagement with electoral processes

### AT A GLANCE

- The committee has a longstanding commitment to encouraging electoral participation at Victorian elections, by all eligible Victorians.
- During this inquiry the committee received evidence from organisations and individuals about electoral participation for groups who traditionally experience barriers to electoral participation. These groups included Victorians who are blind or have low vision, Victorians living in residential care, Victorians with physical disabilities and Victorians from culturally and linguistically diverse backgrounds.
- The committee recommended administrative changes to increase the accessibility of voting centres, including encouraging the VEC to secure as many accessible Election Day voting centres and early voting centres as possible, and recommending the VEC strengthen its guidelines relating to the selection of accessible voting centres to consider proximity to transport and other amenities.
- The committee also recommended the VEC amend its election official training procedures so that electoral officials provide prioritised access for elderly electors, electors with disabilities, and anyone who in the opinion of the electoral official requires assistance, at Victorian state elections.
- The committee also recommends Democracy Live, the event which replaced the Victorian Election Night Tally Room, is re-established at the 2018 Victorian state election as a way for Victorians to congregate in public to celebrate Victoria's democratic processes.

Ensuring all Victorians, regardless of their age, ethnicity, socio-economic circumstances or physical capacity, participate in elections is a key concern for this committee. Community engagement can refer to the extent to which people participate in elections and understand their democratic rights, the significance of voting and the work and role of Parliament in Victoria's democratic system. In addition, effective community engagement involves helping electors understand how to cast a valid vote. It also involves ensuring all electors have access to voting services, irrespective of their circumstances.

This chapter is focused on evidence the committee received about community engagement. It first defines community engagement, providing information about the VEC's community engagement responsibilities, core focus groups and the VEC's community engagement work for the 2014 Victorian state election. The chapter then addresses evidence from inquiry participants about the accessibility of Election Day and early voting centres for Victorians with disabilities and other special needs. It also considers evidence about how Victorians from culturally and linguistically diverse (CALD) backgrounds experience electoral participation. The chapter concludes by considering evidence about how Victorians living in high care experience electoral participation, then discussing the VEC's Election Night community engagement strategies.

## 5.1 Definition of community engagement

In Victoria, s8 (f) of the *Electoral Act 2002* (Vic) stipulates that the VEC provide “public awareness of electoral matters that are in the general public interest by means of the conduct of education and information programs”.

The VEC's Community Engagement and Education Unit is the main provider of electoral engagement strategies for Victorian elections. The Unit works with various groups in the Victorian community to “minimise barriers to democratic participation and encourage active citizens. Specifically, the Unit works with several communities including schools, homeless agencies, residents' associations, indigenous groups, disability groups and other community networks”.<sup>230</sup>

## 5.2 The VEC's community engagement activities for the 2014 Victorian state election

As noted in the VEC's report to Parliament on the 2014 Victorian state election, the VEC completed a range of community information and education activities in 2014 to raise awareness and encourage the participation of communities facing barriers to electoral participation. These included “outreach enrolment sessions, targeted information and education sessions, special mobile voting sessions

<sup>230</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into the 2010 Victorian state election and matters related thereto”, Parliament of Victoria, Melbourne, May 2012, p.115.

and a roadshow that aimed to raise public awareness”.<sup>231</sup> While these programs were specifically designed for the 2014 Victorian state election, many other programs also run throughout the Victorian electoral cycle as part of the VEC’s core business.

## 5.2.1 Driving Votes

One of the VEC’s major community engagement initiatives is Driving Votes, the VEC’s electoral ‘roadshow’ event.

The VEC implemented an updated roadshow for the 2014 Victorian state election. A van “featuring advertising campaign imagery visited 19 destinations across Victoria, focusing on Districts with low electoral statistics and targeting high foot traffic locations”.<sup>232</sup> The “schedule incorporated static sites including Federation Square, Dandenong Market and Southern Cross Station, and roving activities, in which Driving Votes staff travelled through major thoroughfares and areas of interest such as shopping strips, parks, street festivals and busy intersections”.<sup>233</sup> One of the major objectives of the Driving Votes initiative was to engage youth and CALD audiences, to “reinforce awareness of the upcoming election and the importance of correctly enrolling. Electors were encouraged to utilise the VEC’s online resources, although face-to-face information and paper forms were also provided”.<sup>234</sup>

As noted in the VEC’s report to Parliament on the 2014 Victorian state election, Driving Votes generated 29,647 direct interactions with electors. Visitor feedback was overwhelmingly positive, with many praising the ‘convenience’ factor and “the VEC’s willingness to put a public face on the electoral process”.<sup>235</sup>

In addition to Driving Votes, in July 2014 the VEC also distributed 2,500 Community Sector Information Kits to community organisations across Victoria. The aim of this activity was to raise awareness of the 2014 Victorian state election among communities facing barriers to electoral participation.

<sup>231</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.20.

<sup>232</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.20.

<sup>233</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.20.

<sup>234</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.20.

<sup>235</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.20.

## 5.2.2 Engagement with Indigenous Victorians

According to the 2011 Australian Bureau of Statistics (ABS) Census of Housing and Population, there were approximately 37,991 Aboriginal and Torres Strait Islander peoples in Victoria. Approximately 65 percent of indigenous Victorians are of voting age.<sup>236</sup>

As noted in the VEC's report to Parliament on the 2014 Victorian state election, due to a staffing loss "the VEC was unable to roll out a full outreach program for the Indigenous community prior to the election". Instead, the VEC sponsored several other community initiatives, including supporting an Indigenous football team.<sup>237</sup>

During the electoral cycle the VEC also runs an Indigenous Engagement Program. The group is composed of prominent Indigenous community members and the Victorian Electoral Commissioner.

## 5.2.3 People experiencing homelessness

At the time of the 2014 Victorian state election, approximately 23,000 Victorians were experiencing homelessness. This statistic is derived from the 2011 ABS Census and the Council to Homeless Persons.<sup>238</sup> At the time of the election, there were 1,780 electors who identified as experiencing homelessness on the electoral roll. During 2014 356 homeless persons enrolled or updated their details on the roll.

The ABS' definition of homelessness states that when a person does not have suitable accommodation alternatives, they are considered homeless if their current living arrangement:

- "Is in a dwelling that is inadequate; or
- Has no tenure, or if their initial tenure is short and not extendable; or
- Does not allow them to have control of, and access to space for social relations".<sup>239</sup>

The VEC has run an outreach program called 'Homeless not Voteless' since the 2006 Victorian state election. The program was again run in 2014, with additional enrolment outreach and mobile voting sessions. As noted by the VEC's report to Parliament on the 2014 Victorian state election, the VEC conducted

<sup>236</sup> Australian Bureau of Statistics, "2011 Census tells the story of Victoria's Aboriginal and Torres Strait Islander peoples", Australian Bureau of Statistics, Canberra, July 2012. Retrieved 11 February 2016 from [www.abs.gov.au/websitedbs/censushome.nsf/home/vic-45?opendocument&navpos=620](http://www.abs.gov.au/websitedbs/censushome.nsf/home/vic-45?opendocument&navpos=620).

<sup>237</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.20.

<sup>238</sup> Council to Homeless Persons, "Homelessness in Victoria – key statistics", Council to Homeless Persons, July 2012. Retrieved 11 February 2016 from [chp.org.au/wp-content/uploads/2012/12/10122012\\_Homelessness-in-Victoria-with-2011-ABS-stats.pdf](http://chp.org.au/wp-content/uploads/2012/12/10122012_Homelessness-in-Victoria-with-2011-ABS-stats.pdf).

<sup>239</sup> Australian Bureau of Statistics, "Homelessness Statistics", Australian Bureau of Statistics, Canberra, September 2012. Retrieved 11 February 2016 from [www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4922.0Main%20Features22012?opendocument&tabn](http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4922.0Main%20Features22012?opendocument&tabn).



“30 enrolment outreach sessions at key agencies that provide services to people experiencing homelessness from September 2014 to 18 November 2014”.<sup>240</sup> During the enrolment sessions, 86 people completed enrolment forms and 68 people checked that their details were on the electoral roll.

In addition, the VEC again operated specialised mobile voting services for Victorians experiencing homelessness. The VEC’s mobile voting team visited 20 locations, “with voting facilities set up at the most appropriate time as advised by the agency assisting the VEC. Three hundred and twenty votes were cast at mobile voting locations”.<sup>241</sup>

During the electoral cycle the VEC also runs a Homelessness Advisory Group, featuring representation from homelessness organisations across Victoria. The group meets regularly to discuss key issues and steer the Homeless not Voteless program.

## 5.2.4 CALD communities

In an Australian context, individuals from a CALD background are those who identify as having a specific cultural or linguistic affiliation by virtue of the place of birth, ancestry, ethnic origin, religion, preferred language, or because of their parents’ identification on a similar basis.

As noted by the Victorian Multicultural Commission, Victoria’s population is among the fastest-growing and most diverse in Australia. At the 2011 Census, Victoria’s total population was 5,354,039 persons, increasing by 8.5 percent (or 421,617 persons) from the 2006 Census. Of this number:

- 26.2 percent of Victorians “were born overseas in more than 200 countries (an increase from 23.8 percent in 2006);
- 46.8 percent of Victorians were either born overseas or have at least one parent born overseas (an increase from 43.6 percent in 2006).
- 23.1 percent of Victorians spoke a language other than English at home (an increase from 20.4 percent in 2006).
- 67.7 percent of Victorians followed 135 faiths – compared to 68.7 percent following 130 faiths in 2006”.<sup>242</sup>

The VEC has a comprehensive CALD engagement program. Prior to the 2014 Victorian state election the VEC delivered 151 face-to-face electoral information sessions to 3,196 members of established and new and emerging

<sup>240</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.21.

<sup>241</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.21.

<sup>242</sup> Victorian Multicultural Commission, “2011 Census: A Snapshot of our Diversity”, Victorian Multicultural Commission, Melbourne. Retrieved 11 February 2016 from Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.21.

CALD communities in metropolitan and regional Victoria. The project team worked with “groups that are harder to reach owing to their geographic location, age and/or gender”.<sup>243</sup>

In 2013 the VEC also established its Democracy Ambassador program. The program was established in response to advocacy from the Ethnic Communities’ Council of Victoria (ECCV), a participant in this inquiry and previous committee inquiries. The aim of the Democracy Ambassador program is to provide electoral information and education to CALD communities, with a particular focus on new and emerging communities. Community Educators share their lived experience, through which they promote community awareness about the election through local community media”.<sup>244</sup>

During the electoral cycle the VEC also runs a CALD Advisory Group, which is comprised of CALD community members and key stakeholders from around Victoria.

Wherever possible, the VEC also seeks to employ people from CALD, Indigenous and non-English speaking backgrounds, as well as people with a disability, to work as casual staff at Victorian electoral events. People who fluently speak a language other than English are encouraged to contact the VEC to register for casual employment on the VEC’s website. In Districts where there are high populations of non-English speakers, the VEC also provides training to Election Managers on the potential benefits of multi-lingual staff, both in terms of communication and inter-personal / cultural communication skills. At the 2014 Victorian state election 3,780 casual staff had language skills in addition to English.<sup>245</sup>

### 5.2.5 Victorians with disabilities

Voting in periodic elections is a fundamental human right. Article 29 of the United Nations Convention on the Rights of Persons with Disabilities states that State parties shall “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

- To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:
  - Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

<sup>243</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.21.

<sup>244</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.21.

<sup>245</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.32.

- Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate; and
- Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice”.<sup>246</sup>

According to ABS data the prevalence of disability in Victoria has remained reasonably constant over time, increasing roughly one per cent from 2009 to 2012. In 2012 approximately 19.4 percent of the Victorian population, or approximately 1,114,000 people, experienced disability.<sup>247</sup> This was slightly higher than the national rate of 18.5 percent (or 4.2 million). This is partly due to Victoria’s older demography compared with other Australian states and territories.

Of particular disabilities, it is estimated that there are approximately 90,000 Victorians who are blind or have low vision. Vision Australia expects this to rise to 138,000 by 2030.<sup>248</sup>

Regarding other disabilities, of the estimated 1,114,000 Victorians with a disability, the Public Record Office suggests approximately 323,000 have a profound or severe core-activity limitation. The most common, major disability groups are:

- Mental illness, especially depression. Symptoms vary widely and can include mood changes, psychotic episodes, auditory and visual hallucinations, and delusions;
- Physical disabilities, especially musculo-skeletal disorders. This includes people with spinal-cord injuries, cerebral palsy, arthritis and rheumatism; and
- Intellectual disabilities. “People with intellectual disabilities may learn slowly and have significantly below-average intelligence as measured by standard tests. The disability is generally defined as having an onset before 18 years. There are approximately 40,000 people in Victoria who have an intellectual disability, and of these, around 75 per cent have a mild degree of disability”.<sup>249</sup>

The VEC assists all Victorians with a disability to participate in elections by enrolling and voting. For the 2014 Victorian state election, the VEC developed a resource pack specifically for people living in shared group homes. As noted by the VEC:

<sup>246</sup> United Nations, UN Enable, “Article 29: Participation in political and public life”, UN, 2016. Retrieved 11 February 2016 from [www.un.org/disabilities/default.asp?id=289](http://www.un.org/disabilities/default.asp?id=289).

<sup>247</sup> Parliament of Victoria, Family and Community Services Community, “Inquiry into social inclusion for Victorians with a disability”, July 2015, p.1-16.

<sup>248</sup> Vision Australia, Submission to Inquiry into social inclusion for Victorians with a disability, Vision Australia, July 2015, p.1.

<sup>249</sup> Public Record Office, “Disability Action Plan 2011/2012”, Public Record Office, Melbourne, 2012, p.2.

“Department of Health and Human Services played a key role by assisting with the distribution of these packs to over 1,000 shared group homes in early October 2014. A total of 23 education sessions were delivered to 538 people with a disability between February and November. The DHHS and the VEOHRC were identified as partners in this project. DHHS played a key role in distributing the election kits to shared group homes and subsequently distributing, via email, the VEC letter to shared group homes seeking input to the online survey. The VEC’s Electoral Access Advisory Group provided advice about the Voting is for Everyone initiative and, more generally, about how the VEC could facilitate participation in the electoral process by people with a disability”.<sup>250</sup>

During the electoral cycle the VEC also runs an Electoral Access Advisory Group, including membership of key agencies in the Victorian disability sector. In preparation for the 2014 Victorian state election, the VEC also appointed a dedicated Disability Outreach Officer to “increase the VEC’s engagement with the disability sector and run education sessions for people living with disabilities”.<sup>251</sup>

### 5.2.6 Young people

Across Anglo-American democracies youth electoral participation is in decline. As demonstrated by Martin, young people are increasingly shunning formal electoral participation in favour of alternative forms of political expression, such as joining a protest, signing an online petition or appeals through social media.<sup>252</sup>

In all Australian states and territories, young people aged 18 to 25 years are less likely to be on the electoral roll than the rest of the adult general population. In 2010 the then committee learnt that approximately 85 percent of young people aged 18 to 25 are enrolled to vote.<sup>253</sup> While these rates have improved slightly as a result of the introduction of direct electoral enrolment in Victoria in August 2010, the VEC remains concerned that young people continue to be under-represented in electoral participation.

The committee understands there are two approaches to increasing electoral participation among young people. One relates to civics education during schooling. In Victoria, civics education is a part of the curriculum from Foundation to Year 10. Under the Victorian Essential Learning Standard ‘Civics and Citizenship’, students are taught what it means to be a citizen in a democracy. There are two dimensions to the standard. The first is civic knowledge, including study of Australian political and legal systems and basic Australian political history. The second is community engagement and is related to developing the types of skills required to live in a democratic community.<sup>254</sup>

<sup>250</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.22.

<sup>251</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.22.

<sup>252</sup> Martin, A, 2012. “Young People and Politics: Political engagement in the Anglo-American democracies”, Routledge, 2012.

<sup>253</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into the 2010 Victorian state election and matters related thereto”, Parliament of Victoria, May 2012, p.38.

<sup>254</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into the future of Victoria’s electoral administration”, Parliament of Victoria, Melbourne, March 2014, p.98.

Another approach involves teaching young people about the mechanics of elections. The VEC is actively engaged in civics education through its ‘Passport to Democracy’ program. Passport to Democracy is a course which can be completed by secondary school students. Through a series of classroom modules and mock electoral activities, the program “assists students to make the connection between politics and the things that matter to them”.<sup>255</sup> It also prompts students to “consider how they can make an impact on issues they care about and ultimately, how they can engage with the community to achieve positive change”.<sup>256</sup> In 2014-15 the program was delivered to 6,603 students at 99 schools, with 763 students participating in mock elections based on issues devised by the students.<sup>257</sup>

The VEC is also committed to ensuring first-time voters are engaged in electoral processes. For the 2014 Victorian state election the VEC developed an online youth engagement project called “Election Questions 2014”.<sup>258</sup> The questionnaire was aimed at all first-time voters and young Victorians. As noted in the VEC’s report to Parliament on the 2014 Victorian state election:

“The VEC contracted OurSay – an online youth engagement company with expertise in this area – to conduct the project, and it leveraged popular social media networks to drive active engagement on issues relevant to young people with regard to the State election. EQ14 attracted 4,600 unique visitors and 1,200 participants. Of the 1,200 who participated, 267 registered a question. A total of 111 candidates committed to participating and ultimately, 42 candidates across 37 electorates responded to questions”.<sup>259</sup>

The survey found that as a result of participating in EQ14, 36 percent of participants were more engaged in electoral matters and the 2014 Victorian state election. Fifty percent felt engaged as a result of participating, and nine percent felt less engaged.<sup>260</sup>

**RECOMMENDATION 11:** The committee recommends the VEC conduct ongoing, targeted engagement strategies and programs focusing on Victorian communities that experience barriers to electoral participation. The VEC should ensure that these programs are funded appropriately and reported on as part of the VEC’s annual reporting.

<sup>255</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into the future of Victoria’s electoral administration”, Parliament of Victoria, Melbourne, March 2014, p.98.

<sup>256</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into the future of Victoria’s electoral administration”, Parliament of Victoria, Melbourne, March 2014, p.98.

<sup>257</sup> Victorian Electoral Commission, “Annual Report 2014-2015”, Victorian Electoral Commission, Melbourne, 2015, p.68.

<sup>258</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.22.

<sup>259</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.22.

<sup>260</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.22.

## 5.3 Evidence from inquiry participants

During the inquiry the committee received evidence from several inquiry participants about their experience of electoral participation at the 2014 Victorian state election, focusing on the Election Day experience or views about the VEC's community engagement activities. The following issues were raised:

- The accessibility of Election Day and early voting centres for Victorians who are blind or have low vision, for Victorians with physical disabilities and for older Victorians;
- Evidence about the provision of electoral information in accessible formats by political parties;
- How CALD communities experience electoral participation, and the VEC's work engaging with CALD communities;
- The experience of Victorians living in high care facilities enrolling to vote and voting; and
- Evidence from the VEC about "Democracy Live", the VEC's major Election Night community engagement activity.

### 5.3.1 Accessibility of voting centres

The VEC advised the committee that it attempts, wherever possible, to secure accessible voting centres for Victorian electoral events.

At the 2014 Victorian state election the VEC established 1,786 Election Day voting centres. These centres were primarily located in schools and community halls. Of these centres, only 299 were fully-wheelchair accessible, with 1,072 having assisted wheelchair access and 415 having no wheelchair access. The VEC acknowledges that securing accessible voting centres is a major challenge.<sup>261</sup>

During the election the VEC received 34 complaints referring to the limited number of venues accessible to wheelchairs and the elderly. Despite its best efforts, the VEC "was not able to ensure that all venues were wheelchair accessible".<sup>262</sup> Early voting centres posed particular accessibility challenges for the VEC. During the Victorian state election, the VEC established six early voting centres as "fully accessible supercentres". Voting amenities, services and resources at these centres were fully accessible to electors with a varying range of abilities. Services included Auslan interpreters, CCTV and electronically-assisted voting. The VEC received "11 complaints about early voting centres, referring to the lack of lifts and ramps, limited car parking for use by disabled voters, and long corridors within early voting centres".<sup>263</sup>

<sup>261</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.28.

<sup>262</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.28.

<sup>263</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.28.

### 5.3.2 Election Day voting centres

Most of the evidence the committee received from inquiry participants called for more, fully accessible Election Day voting centres. In his submission Ray Jordan, an individual who participated in this inquiry and has participated in previous committee inquiries, discussed his experiences as an elector with mobility concerns voting in Preston District. While Mr Jordan understands the challenges the VEC faces securing accessible voting centres, he was especially concerned about whether there had been an improvement in the number of fully-wheelchair accessible centres in Preston District since the 2010 Victorian state election:

“The EasyVote Guide that I received in the mail listed 20 voting centres in the Electoral District. Only two of them were rated as FWA (Full Wheelchair Access). Although this compares favourably to the 2010 state election, where zero out of 17 were rated as FWA, it shows that little progress has been made in the last four years”.<sup>264</sup>

The committee also received evidence from organisations representing Victorians with low vision about their expectations around the accessibility of Election Day voting centres, focusing on how a person with vision impairment travels from their home to a voting centre. Colin Watson, on behalf of Blind Citizens Australia, Geelong and Districts Branch, requested the VEC to consider what surrounds a voting centre in terms of transport, footpaths and the general environment.<sup>265</sup>

Echoing Mr Watson’s submission, Vision Australia’s submission discussed the importance of considering what is in proximity to a voting centre before deeming it accessible. Vision Australia suggested that for a centre to be accessible for a person who is blind or has low vision, the building should feature:

- Signage of building code standard size and colour contrast;
- “Wayfinding” mechanisms such as tactile ground surface indicators and navigational cues for passage to, and within centres;
- Centres located within easy walking distance from public transport; and
- An accessible path of travel from transport to the voting centre, including adequate street crossing mechanisms.<sup>266</sup>

#### Committee’s view

While mindful of the logistic and administrative challenges faced by the VEC, the committee encourages the VEC to continue its efforts to secure as many accessible Election Day and early voting centres as possible for Victorian state elections.

The committee also encourages the VEC to continuing working with Vision Australia and other advocacy organisations who represent Victorians who are blind or have low vision. The committee particularly encourages the VEC to either

<sup>264</sup> Ray Jordan, Submission No. 24, p.1.

<sup>265</sup> Colin Watson on behalf of Blind Citizens Australia, Geelong and Districts Branch, Submission No. 6., p.3.

<sup>266</sup> Vision Australia, Submission No. 42, p.3.

incorporate, or amend, its guidelines for selection of accessible voting centres, to include consideration of transport, general proximity and “wayfinding” location mechanisms.

**RECOMMENDATION 12:** The committee recommends the VEC continue to secure as many accessible Election Day voting centres and early voting centres as possible for Victorian state elections.

**RECOMMENDATION 13:** The committee recommends the VEC amend its guidelines relating to selection of accessible voting centres to include consideration of proximity to public transport and population areas.

Another issue raised during the inquiry related to the accessibility of voting centres for older electors and those with disabilities whilst waiting to vote. In its submission, Victorian Labor noted that while these situations are usually settled informally on a voting centre by voting centre basis, Victorian Labor called for the committee to recommend that the VEC provide some “operational formalisation”.<sup>267</sup>

#### Committee’s view

The committee supports the VEC formalising arrangements in its election procedures, so that elderly electors and electors with disabilities are brought to the front of the queue at voting centres. Election Managers should be trained to this effect.

**RECOMMENDATION 14:** The committee recommends the VEC amend its Election Manager training procedures so that electoral officials provide prioritised access to voting centres for elderly electors, electors with disabilities and anyone who in the opinion of the electoral official requires assistance.

### 5.3.3 Early voting ‘supercentres’

As noted earlier, the VEC established six fully accessible early voting ‘supercentres’ at the 2014 Victorian state election.

During the inquiry Vision Australia told the committee that the location of the supercentres was not optimal, and may have contributed to their poor patronage:

“...Vision Australia expressed concerns with this approach from the outset, as we considered the development of accessibility in local voting centres as a better investment option. We recognise that people who are blind or have low vision prefer to access voting centres that are convenient, accessible and are familiar. While the...“supercentres” were equipped with all the accessibility measures the VEC had chosen to implement for this election, the location of the centres did not attract many voters with accessibility requirements. The VEC additionally provided wayfinding information about the location of the accessibility “supercentres”. As these centres were not highly used, they are not planning to provide wayfinding information again.

<sup>267</sup> Victorian Labor, Submission No. 15, p.2.



As this service is not generally provided by the VEC for all voting centres, Vision Australia considers choosing and investing in the accessibility of voting centres, in commonly used and accessible community spaces, as a higher priority than the provision of wayfinding instructions”.<sup>268</sup>

### Committee’s view

The committee encourages the VEC to continue working with Vision Australia and, if possible, re-establish the accessibility “supercentres” at the 2018 Victorian state election in conjunction with Vision Australia and advocacy groups.

**FINDING 4:** The committee encourages the VEC to re-establish accessibility ‘supercentres’ at the 2018 Victorian state election after collaborating with Vision Australia and advocacy groups to determine the most appropriate locations.

### 5.3.4 Provision of electoral information from political parties in accessible formats

As part of its Disability Action Plan the VEC provides key electoral information and publications in accessible formats. As noted in the VEC’s report to Parliament on the 2014 Victorian state election, the VEC published an Easy English Guide to the 2014 Victorian state election – the guide was very popular.<sup>269</sup> Electoral information in English and 20 additional languages was available on the VEC’s website, which conforms to the Web Content Accessibility Guidelines 2.0 conventions for accessibility. Users with “vision impairment, motor skill or mobility issues, auditory limitations, people affected by seizures, and people with cognitive difficulties can access information on the VEC’s website”.<sup>270</sup>

During the inquiry the committee received evidence from Vision Australia and Blind Citizens Australia, Geelong and Districts Branch, about the difficulties people with vision impairment have accessing electoral information from political parties, such as campaign materials and how-to-vote cards. Vision Australia noted that:

“...generally speaking, party and candidate information continues to be inaccessible for voters who are blind or have low vision. This includes information about parties and candidates that are presented in a range of formats such as policy documents, TV advertisements and how-to-vote cards.

While we realise that the VEC is not directly responsible for the activities of political parties and candidates, the [VEC] nevertheless does have an influential and persuasive role in promoting best practice in accessibility. The lack of a legislative mandate should not be used as a justification of inaction. We therefore recommend that the VEC emphasise to candidates and parties, for example, during general

<sup>268</sup> Vision Australia, Submission No. 42, p.3.

<sup>269</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.32.

<sup>270</sup> Victorian Electoral Commission, “Website accessibility guide”, Victorian Electoral Commission, Melbourne, 2016. Retrieved 11 February 2016 from [www.vec.vic.gov.au/Accessibility.html](http://www.vec.vic.gov.au/Accessibility.html).

briefings, that candidates and parties have a social and legislative responsibility to make their materials accessible to everyone, including people who are blind or have low vision”.<sup>271</sup>

Colin Watson, on behalf of Blind Citizens Australia, Geelong and Districts Branch, also called on the VEC to ensure that political parties provide electoral information in formats which are accessible for Victorians who are blind or have low vision. While acknowledging that there would be a cost involved, Mr Watson argued, as did Vision Australia, that it was the VEC’s responsibility to ensure that all Victorians have access to electoral information in accessible formats.<sup>272</sup>

### Committee’s view

The committee notes that all Victorians, regardless of their background, should be able to access electoral information. As Victoria’s electoral administrator, the committee notes the VEC has a responsibility to provide this information on its website, in accessible formats, wherever possible.

**RECOMMENDATION 15:** The committee recommends the VEC provide electoral information from political parties on its website, consistent with guidelines already used by the VEC for providing information in accessible formats.

### 5.3.5 Evidence about CALD communities and electoral engagement

During the inquiry the committee received evidence from the ECCV about how Victorians from CALD backgrounds experience electoral participation. The ECCV is the peak body for ethnic and multicultural organisations in Victoria.

The ECCV’s submission is in two parts. The second part is a copy of the ECCV’s submission to the 2013 Local Government Electoral Review panel. The terms of reference for this inquiry did not include local government elections.

In their submission the ECCV discussed Democracy Week. Democracy Week is an Australian Government initiative focused on youth civic engagement and participation in the democratic process. It consists of inviting schools around Australia to organise activities that promote democratic principles and values (such as conducting debates on issues of concern to young people and wider Australians, holding mock elections and parliaments). The ECCV notes that Democracy Week is not widely “known to the general public and needs to be widely celebrated as occurs in Canada where a series of activities are organised across Canada to mark the occasion”.<sup>273</sup> In this way, the program offers students the same, practical exposure to elections as the VEC’s Passport to Democracy.

<sup>271</sup> Vision Australia, Submission No. 42, p.p.3-5.

<sup>272</sup> Colin Watson on behalf of Blind Citizens Australia, Geelong and Districts Branch, Submission No. 6., p.p.3-4.

<sup>273</sup> Ethnic Communities Council of Victoria, Submission No. 51, p.2.

### Committee's view

Victoria is the fastest-growing state in Australia, with many new migrants from CALD backgrounds. It is important that everyone understands the significant and importance of voting in Victorian elections, and is aware of Australia's democratic history.

The committee encourages the VEC to continue working with the ECCV to develop community engagement programs for the CALD community. Given the similarities between the Australian Government's Democracy Week and the VEC's Passport to Democracy, the committee notes there are potential opportunities for the programs to be cross-promoted or leveraged off each other.

**RECOMMENDATION 16:** The committee recommends the VEC work with the ECCV and its CALD Advisory Group to cross-promote the Australian Government's Democracy Week initiative and the VEC's Passport to Democracy program.

### 5.3.6 Victorians living in residential care facilities

During the inquiry the committee received a submission from Matthew Potocnik. Mr Potocnik and his son, Levi, who has significant disability, appeared at the August 2015 public hearings. In 2014 Mr Potocnik also worked for the VEC as a Disability Engagement Officer.

In his submission Mr Potocnik called for a greater awareness of the enrolment and voting rights of Victorians living in residential care. Mr Potocnik suggested that:

- The VEC should hold workshops focusing on the democratic rights of Victorians living in residential care, working in conjunction with advocacy groups, day programs and local government;
- The VEC should develop additional education programs concerning the right of Victorians living in residential care to participate in electoral processes.
- The VEC should develop a parallel "Passport to Democracy" tailored to Victorian special schools;
- The VEC investigate developing a direct electoral enrolment system for Victorians who are in receipt of a various range of government disability support payments, including National Disability Insurance Scheme funding; and
- The VEC continue to improve how it provides electoral services to Victorians living in residential care, based on best practice disability guidelines.<sup>274</sup>

<sup>274</sup> Matthew Potocnik, Submission No. 13, p.p.1-3.

### Committee's view

The committee thanks Mr Potocnik for his submission and participation in the inquiry. The committee notes that all Victorians, regardless of their circumstances or level of disability, should be able to vote in Victorian elections if they are eligible and capable of doing so. This includes Victorians who have physical or intellectual disabilities.

The committee acknowledges that the delivery of electoral services to residential care facilities is complex, involving negotiation and collaboration between the VEC, residential care facilities and other government agencies. Due to this, the committee is of the view that the VEC should continue to pursue these issues through its Electoral Access Advisory Group. If possible, the VEC should offer individuals who have an interest in the democratic rights of Victorians with a disability, like Mr Potocnik, to input into the Advisory group's work, where appropriate.

**FINDING 5:** The committee encourages the VEC's Electoral Advisory Group to continue developing opportunities to improve access to electoral services for Victorians living in residential care.

### 5.3.7 Engaging Victorians on Election Night

In 2014 the VEC, after consulting the then Electoral Matters Committee, discontinued the traditional Election Night tally room. In 2013 the AEC also discontinued the Election Night tally room for the 2013 federal election, due to cost, lack of attendance and the media's preference to broadcast from their own studios.

In the 57<sup>th</sup> Parliament the VEC requested that the then committee, as part of its inquiry into the future of Victoria's electoral administration, which was tabled in Parliament in March 2014, consider recommending that the tally room be discontinued for future Victorian state elections. After considerable research and consideration, the then committee supported the VEC's decision. However, the then committee requested the VEC establish a public space on Election Night for Victorians to congregate to view election results, and to celebrate the pinnacle of Victoria's electoral democracy. To this end, the then committee supported discontinuing the tally room subject to the VEC investigating a replacement public celebration on Election Night, possibly in Federation Square.

As part of its report to Parliament on the 2014 Victorian state election, the VEC reported on Democracy Live, the event it organised in place of the tally room. Democracy Live was held in Federation Square, running from 6.30 pm to 10.30 pm on Election Night. It included street performers, a cover band, a coffee cart and live crosses to the ABC's election coverage on the large TV in Federation Square. Increased security measures were taken for the event.<sup>275</sup>

<sup>275</sup> Victorian Electoral Commission, "Report to Parliament on 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.23.

One of the major successes of Democracy Live was the considerable public attendance. Several thousand members of the public attended the event, some for brief periods of time and “some staying longer to enjoy the entertainment and coverage – up to the concession and acceptance speeches”.<sup>276</sup> The event organiser recorded a number of positive comments in relation to the event. Compared to the 2010 Election Night tally room, which only 50-60 members of the public attended, Democracy Live was clearly successful at generating public interest on Election Night and reinvigorating interest in an Election Night celebration of democracy.

### Committee’s view

The committee is pleased that Democracy Live represents a suitable replacement for the Election Night tally room. Given the significant public attendance at Democracy Live in 2014, the committee supports the VEC establishing this event at Federation Square at future Victorian state elections.

**RECOMMENDATION 17:** The committee recommends the VEC establish Democracy Live at future Victorian state elections, as a space for Victorians to congregate to view election results and celebrate Victoria’s democracy.

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<sup>276</sup> Victorian Electoral Commission, “Report to Parliament on 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.23.



# 6

## Political campaigning at the 2014 Victorian state election

### AT A GLANCE

- Australian elections allow for robust debate and expression of opinion by groups and individuals seeking election to public office.
- The committee agreed that the 2014 Victorian state election campaign was particularly hard fought.
- The committee recommended changes to the *Electoral Act 2002 (Vic)* to make the authorisation requirements for Victorian state election how-to-vote cards consistent with Commonwealth legislation.
- The committee found that intimidation of volunteers and party workers occurred at the 2014 Victorian State election.
- The committee also recommended that the Victorian Public Sector Code of Conduct be amended to prohibit public sector workers using government property, such as ambulances, fire trucks and uniforms for political purposes and in election campaigns and that penalties be developed for a breach of this type. The committee divided on this issue, with the Labor members not supporting the recommendation.
- Regarding Election Managers, the committee recommended enhanced training procedures for members of the Victorian Electoral Commission's Senior Election Official pool.
- The committee recommended the *Electoral Act 2002 (Vic)* be amended to require independent candidates to lodge a statement of election return with the VEC within 60 days after the election, with the return noting the sources of funding received during the appropriate election campaign.

Australian elections allow for robust debate and expression of opinion by groups and individuals seeking election to public office. Candidates and political parties are free to contest opinions expressed by others in the public domain, including the internet, during the campaign. However, in Victoria, legislation, case and common law regulates political advertising, election material and some campaigning behaviour.

This chapter considers political campaigning at the 2014 Victorian state election. The chapter defines political campaigning, and electoral matter, in a Victorian and Australian context, and the role of voting centres in Australia's democratic system. The chapter then outlines Victoria's legislative framework in relation to political advertising, the distribution of electoral material and conduct at voting centres, addressing Victorian legislation, Commonwealth legislation, case law and common law. The chapter considers the Electoral Matters Committee's previous work relating to s84 of the *Electoral Act 2002* (Vic) which relates to misleading and deceptive electoral content, and examines recent developments for federal elections and in the Northern Territory. The chapter concludes with evidence from inquiry participants, and the committee's views.

## 6.1 Definition of political campaigning

A political campaign is a series of activities by an individual or a group to influence a set of policies toward a particular action. According to the ACE Electoral Network, a collaborative international non-governmental group providing research and advice on electoral integrity, an electoral campaign can be defined "as the set of lawful activities candidates and their parties carry out, once they have formally been named as such, aimed at securing votes".<sup>277</sup> These activities

"...are normally at least partially subsidised, directly or indirectly, with public funds. But this process of canvassing votes must be subject to procedures and guidelines that guarantee the equality of the contenders, the honesty of the process and the neutrality of the public powers".<sup>278</sup>

An integral part of any political campaign is political advertising, otherwise known as election campaign material. Political parties and candidates use these materials to communicate directly with electors. In the 57<sup>th</sup> Parliament, the then Electoral Matters Committee was given a definition of political advertising / electoral material by Associate Professor Sally Young, University of Melbourne, an academic specialising in political campaigning and advertising in Australia. She defined political advertising as follows:

"First, there is government advertising used to promote or explain government policies or programs...Second, there are the advertisements placed by lobby groups and private interests (such as unions, business leaders and 'issue' groups) that are

<sup>277</sup> ACE Project, "Electoral Integrity", ACE Electoral Knowledge Network, 2016. Retrieved 10 March 2016 from [aceproject.org/ace-en/topics/ei/eif/eif08/default](http://aceproject.org/ace-en/topics/ei/eif/eif08/default).

<sup>278</sup> ACE Project, "Electoral Integrity", ACE Electoral Knowledge Network, 2016. Retrieved 10 March 2016 from [aceproject.org/ace-en/topics/ei/eif/eif08/default](http://aceproject.org/ace-en/topics/ei/eif/eif08/default).



designed to influence public opinion and persuade politicians. Third, the term ‘political advertising’ is most commonly used to refer to the advertisements produced by political parties and individual candidates that are shown during election campaigns in order to persuade voters to vote for them”.<sup>279</sup>

### 6.1.1 Voting centres

Campaigning at a voting centre on Election Day is a key feature of electoral campaigns across Australia. As noted by the AEC in its submission to Commonwealth JSCem’s 2016 inquiry into campaigning at polling places, “appropriate behaviour at voting centres is a vital part of Australian democracy”.<sup>280</sup> To this end, during electoral events, the “AEC rigorously enforces the legislative requirements of the *Commonwealth Electoral Act 1918* (Cwth) and the *Referendum (Machinery Provisions) Act 1984* (Cwth) working with all parties and candidates to ensure voters are able to properly exercise their democratic rights”.<sup>281</sup>

Voting at a voting centre has an important symbolic function in the Australian electoral process. While most people associate voting centres with the actual voting process, and perhaps a sausage sizzle, voting centres also serve as the ‘face’ of the democratic experience. Michael Maley, one of Australia’s longest-serving electoral administrators, noted recently that voting centres “constitute, arguably much more importantly, state-guaranteed places at which voters are supposed to be able to cast a secret ballot in a neutral political environment, free of fear, intimidation, or pressure”.<sup>282</sup> The ‘peaceful’ nature, therefore, of Australia’s voting centres is one of the defining features of Australia’s electoral system.

Mr Maley said:

“International visitors witnessing polling in Australia have in my experience almost without exception been struck by the calm, peaceful and friendly atmosphere on polling day, by the absence of overt presence of police or military officers at voting centres, and by the typically polite way in which representatives of different political parties or candidates deal with each other. These characteristics of polling day are underpinned by strong cultural foundations: a widely shared societal understanding that the election process is to be respected and supported, and that everybody – including parties, candidates, scrutineers, canvassers and voters – has a role to play in ensuring its success”.<sup>283</sup>

<sup>279</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into whether the provisions of the *Electoral Act 2002* (Vic) should be amended to make better provision for misleading or deceptive electoral content”, Parliament of Victoria, Melbourne, March 2010, p.2.

<sup>280</sup> Australian Electoral Commission, “Submission to Commonwealth JSCem inquiry into campaigning at polling places”, Australian Electoral Commission, p.1.

<sup>281</sup> Australian Electoral Commission, “Submission to Commonwealth JSCem inquiry into campaigning at polling places”, Australian Electoral Commission, p.1.

<sup>282</sup> Michael Maley, “Submission to Commonwealth JSCem inquiry into campaigning at polling places”, p.p.2-3.

<sup>283</sup> Michael Maley, “Submission to Commonwealth JSCem inquiry into campaigning at polling places”, p.p.2-3.

### 6.1.2 Effect of compulsory voting on Australia's electoral dynamic

Writing on his election blog, Antony Green notes that many international observers find the 'cut and thrust' of a traditional Australian Election Day interesting.<sup>284</sup> This is primarily because of compulsory voting and preferential voting.

Since 1924 it has been compulsory for all eligible Australians to vote at periodic federal elections. Short of guaranteeing full voter turnout, compulsory voting creates a unique dynamic. Unlike electoral systems where voting is voluntary, such as the United States of America and New Zealand, Australian electors must vote or be subject to a fine without a valid excuse for not voting. Many electors therefore present to vote, as noted by Green, "without having made up their mind".<sup>285</sup> Compulsory voting thus removes the need for political parties and campaigners to 'get out the vote'.

## 6.2 Legislative framework for campaigning at voting centres in Victoria

In Victoria political campaigning is regulated by Victorian legislation, Commonwealth legislation, case law and common law.

The *Electoral Act 2002 (Vic)* regulates political advertising, the dissemination and registration of how-to-vote cards, conduct near voting centres and enforcement procedures and penalties where there has been a breach of legislation. In Victoria campaigning must also comply with Commonwealth legislation in relation to broadcasting and defamation. In addition, political campaigning in Australia has been influenced by case law and common law.

### 6.2.1 *Electoral Act 2002 (Vic)*

#### Electoral matter

Sections 83 to 85 of the *Electoral Act 2002 (Vic)* authorise electoral matter in Victoria. These provisions operate permanently.

Electoral matter means matter which is intended to, or likely to, affect voting in an election. Without limiting the generality of the definition of electoral matter, matter is taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to or comment on:

<sup>284</sup> Antony Green, "Antony Green's Election Blog, "Northern Territory Adopts Optional Preferential Voting and Bans Campaigning Near Polling Places", Australian Broadcasting Corporation, 11 February 2016. Retrieved 9 March 2016 from [blogs.abc.net.au/antonygreen/2016/02/northern-territory-adopts-optional-preferential-voting-and-bans-campaigning-near-polling-places.html](https://blogs.abc.net.au/antonygreen/2016/02/northern-territory-adopts-optional-preferential-voting-and-bans-campaigning-near-polling-places.html).

<sup>285</sup> Antony Green, "Antony Green's Election Blog, "Northern Territory Adopts Optional Preferential Voting and Bans Campaigning Near Polling Places", Australian Broadcasting Corporation, 11 February 2016. Retrieved 9 March 2016 from [blogs.abc.net.au/antonygreen/2016/02/northern-territory-adopts-optional-preferential-voting-and-bans-campaigning-near-polling-places.html](https://blogs.abc.net.au/antonygreen/2016/02/northern-territory-adopts-optional-preferential-voting-and-bans-campaigning-near-polling-places.html).

- “The election;
- The government;
- The opposition;
- A previous government or a previous opposition; of the state, Commonwealth or any state or territory;
- A member or former member of the Parliament of the state or of the commonwealth, or any state or territory;
- A political party, a branch or division of a political party, or a candidate in the election; or
- An issue submitted to, or otherwise before the electors in connection with s4 of the *Electoral Act 2002* (Vic).<sup>286</sup>

### Electoral material to be authorised

Section 83 of the *Electoral Act 2002* (Vic) requires that all electoral material be authorised. Electoral material may not be printed, published, or distributed unless:

- The name and street address (not a post office box) of the person who authorised the electoral material appears at its end; and
- In the case of electoral material that is printed or published otherwise than in a newspaper, the name and place of business of the printer or publisher appears at its end.

‘To publish’ also includes publishing on the internet. A person who makes copies for distribution of electoral material that is published on the internet is deemed to be the printer of those copies.

In addition, s83 (3) of the *Electoral Act 2002* (Vic) deems that authorisation is not required for a car sticker, an item of clothing, lapel button, lapel badge, fridge magnet, pen, pencil, balloon, or a letter or card which bears the name and address of the sender, and does not include a representation of a ballot paper for an election.

According to the VEC candidates “using social media, such as Twitter and Facebook, for campaign purposes must ensure that authorisation details appear on the material or link directly to the required authorisation details”.<sup>287</sup>

Local laws also apply to some electoral advertisements. In Victoria the VEC “advises candidates to check with their local council to ascertain if there are local laws that may apply to the distribution and display of advertising material within the municipality, with VicRoads for provisions covering the display of

<sup>286</sup> *Electoral Act 2002* (Vic), s83-85.

<sup>287</sup> Victorian Electoral Commission, “Candidates Handbook District by-election 2015”, Victorian Electoral Commission, Melbourne, June 2015, p.19.

material on highways and with Public Transport Victoria for campaigning on the network and in relation to the distribution and display of material on public transport facilities”.<sup>288</sup>

### **How-to-vote cards**

Any handbill, pamphlet or card that is handed to voters at voting centres that shows how a party or candidate would like voters to fill in their ballot papers is classed as a how-to-vote card.

The publication of how-to-vote cards is pursuant to sections 77 - 82A, 156 and 157 of the *Electoral Act 2002* (Vic), and Regulations 16 and 18 of the *Electoral Regulations 2012* (Vic).

Pursuant to s156 (1) of the *Electoral Act 2002* (Vic) registered how-to-vote cards are the only form of printed electoral material permitted to be distributed within 400 metres of a voting centre on Election Day. This restriction does not apply to posters, bunting and similar material, material in campaign offices, or the normal distribution of newspapers.

Under s157 of the *Electoral Act 2002* (Vic) persons in charge of voting centres are empowered to require a person reasonably suspected of distributing unregistered how-to-vote cards to produce their how-to-vote cards for inspection and to hand over all unregistered cards.

In contrast to Election Day, how-to-vote cards distributed at early voting centres do not need to be registered. They are required to contain the name and street address of the person authorising the card and the name and place of business of the printer. They must not contain material that is likely to mislead or deceive an elector in relation to the casting of the vote of the elector.

How-to-vote cards carried by election officials at mobile voting centres must be registered.

All how-to-vote cards are registered by the VEC. According to s77 of the *Electoral Act 2002* (Vic) any person may lodge cards for registration with the Election Manager within the electorate that card relates to. Registered political parties must lodge their cards for registration directly with the VEC.

### **Misleading or deceptive electoral matter**

Section 84 of the *Electoral Act 2002* (Vic) relates to misleading or deceptive electoral material. The Act stipulates:

- (1) A person must not during the relevant period—
  - (a) print, publish or distribute; or

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<sup>288</sup> Victorian Electoral Commission, “Candidates Handbook District by-election 2015”, Victorian Electoral Commission, Melbourne, June 2015, p.19.

- (b) cause, permit or authorise to be printed, published or distributed—any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the vote of the elector.
- (2) A person must not during the relevant period—
  - (a) print, publish or distribute; or
  - (b) cause, permit or authorise to be printed, published or distributed—an electoral advertisement, handbill, pamphlet or notice that contains a representation or purported representation of a ballot-paper for use in that election that is likely to induce an elector to mark the elector’s vote otherwise than in accordance with the directions on the ballot-paper.
- (3) In a prosecution of a person for an alleged offence against sub-section (1) or (2) it is a defence if the person proves that the person—
  - (a) did not know; and
  - (b) could not reasonably be expected to have known—that the matter or thing was likely to mislead an elector when casting the elector’s vote.

Penalties for breaches of s84 are 60 penalty units or six months imprisonment for an individual, and 300 penalty units for a body corporate.

#### Case law – ‘casting of the vote’

It is important to note that the misleading and deceptive provisions in s84 of the *Electoral Act 2002* (Vic) narrowly define such behaviour as it relates only to the casting of the vote – that is, the actual marking, obtaining and depositing of a ballot paper.

This narrow definition stems from a High Court decision in *Evans v Crichton Browne* 1981 146 CLR 169. This case arose from the 1980 federal election. Mr Evans, an Australian Democrat candidate for the Senate in Western Australia, challenged the election of Mr Crichton-Browne, a Liberal candidate. Mr Evans argued that Liberal advertisements had breached the then s161 (e) of the *Commonwealth Electoral Act 1918* (Cwth), which prohibited “printing, publishing, or distributing any electoral advertisement, notice, handbill, pamphlet, or card containing any untrue or incorrect statement intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his vote”.<sup>289</sup> Mr Evans alleged that Liberal Party advertisements had “made untrue or incorrect statements about the Australian Democrats’ voting record, implying that a vote for the Australian Democrats could be a vote for the Australian Labor Party”.<sup>290</sup>

<sup>289</sup> Victorian Electoral Commission, “Submission to Electoral Matters Committee Inquiry into the Kororoit By-election August 2009”, Victorian Electoral Commission, August 2009, p.6.

<sup>290</sup> Victorian Electoral Commission, “Submission to Electoral Matters Committee Inquiry into the Kororoit By-election August 2009”, Victorian Electoral Commission, August 2009, p.6.

The High Court considered the scope of paragraph 161 (e). The critical term was “in or in relation to the casting of his vote”. The Court “determined that these words meant that this provision did not relate to the formation of an elector’s judgement about whom to vote for, but only to the carrying into effect of that judgement by casting a vote once the judgement had already been formed”.<sup>291</sup>

Expressed another way, the Court found that statements that might be untrue in the ordinary sense of word, such as the basis for Evans’s complaints, were not covered by the provision if they related to persuading electors about which candidates or parties to support. The “Court gave examples of hypothetical statements to which the provision could apply: a statement misleading voters about how to cast a formal vote, an incorrect statement about the time and place of voting, or a statement that a person who wished to support a particular party should vote for a particular candidate when that candidate in fact belonged to a rival party”.<sup>292</sup>

As noted by Justice Greenwood in the Federal Court in *Faulkner v Elliot 2010* FCA 884: “The question is whether the conduct... is arguably likely to mislead or deceive an elector in relation to the casting of a vote as opposed to influencing the formation of a judgement by an elector of for whom to vote”.<sup>293</sup>

In terms of electoral administration, Australia’s electoral commissions, including the VEC, have followed the Crichton-Brown principle in responding to complaints about misleading and deceptive material. The AEC’s “Electoral Backgrounder No. 15: Electoral Advertising” states:

“The Australian Parliament has determined that the Act should not regulate the content of political messages contained in electoral advertising; rather, the intent of the Act is to ensure electors are informed about the source of political advertising, and to ensure that political advertising does not mislead or deceive electors about the way in which a vote must be cast. Accordingly, the AEC has no role or responsibility in deciding whether political messages published or broadcast in relation to a federal election are true or untrue”.<sup>294</sup>

### False and misleading statements

Section 148 of the *Electoral Act 2002* (Vic) makes it an offence to provide orally or in writing any false or misleading information under the *Electoral Act 2002* (Vic).

<sup>291</sup> Victorian Electoral Commission, “Submission to Electoral Matters Committee Inquiry into the Kororoit By-election August 2009”, Victorian Electoral Commission, August 2009, p.6.

<sup>292</sup> Victorian Electoral Commission, “Submission to Electoral Matters Committee Inquiry into the Kororoit By-election August 2009”, Victorian Electoral Commission, August 2009, p.6.

<sup>293</sup> Victorian Electoral Commission, “Submission to Electoral Matters Committee Inquiry into the Kororoit By-election August 2009”, Victorian Electoral Commission, August 2009, p.6.

<sup>294</sup> Australian Electoral Commission, “Electoral Backgrounder No.15: Electoral Advertising”, Australian Electoral Commission, Canberra, 17 February 2015. Retrieved 10 March 2016 from [www.aec.gov.au/about\\_aec/Publications/Backgrounders/electoral-advertising.htm](http://www.aec.gov.au/about_aec/Publications/Backgrounders/electoral-advertising.htm).

Breaches of s148 are indictable offences and carry a penalty of 600 penalty units or five years imprisonment. However, there is no evidence of a narrow interpretation of s148, or s84 of the *Electoral Act 2002* (Vic), as neither provision has been tested in court.

### Political liberty

Section 152 of the *Electoral Act 2002* (Vic) provides that a “person must not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under this Act”.

Section 152 (2) provides that a person must not, “by violence or intimidation, influence the vote of a person at an election”.

The penalty for breaches of s152 of the *Electoral Act 2002* (Vic) is level six imprisonment, or five-year’s maximum imprisonment, and a fine of 600 penalty units.

## 6.2.2 Commonwealth legislation

Political campaigning in Victoria must also comply with Commonwealth legislation.

Any electoral matter broadcast or televised on radio or television in Victoria, including election advertisements, must comply with the requirements set out in Schedule 2 of the *Broadcasting Services Act 1992* (Cwth). The VEC does not provide advice to candidates for state or local government elections about Commonwealth legislation.

Further, electoral matter published in Victoria must comply with Commonwealth defamation law, including the *Commonwealth Criminal Code Act 1995* (Cwth).

## 6.2.3 Case and Common law

In Victoria freedom of expression is guaranteed under s15 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). According to the Charter:

- (1) Every person has the right to hold an opinion without interference.
- (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether—
  - (a) orally; or
  - (b) in writing; or
  - (c) in print; or
  - (d) by way of art; or
  - (e) in another medium chosen by him or her.

- (3) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary—
- (a) to respect the rights and reputation of other persons; or
  - (b) for the protection of national security, public order, public health or public morality.

The High Court of Australia has also recognised an implied right to freedom of political communication in Australia, subject to the operation of representative and responsible government outlined in the *Australian Constitution*. In *Nationwide News Pty Ltd v Wills* 1992 177 CLR 1 and *Australian Capital Television Pty Ltd v Commonwealth* 1992 177 CLR 106 Justices Deane and Toohey explained the implied freedom:

“[T]he central thesis of the doctrine [of representative government] is that the powers belong to, and are derived from, the governed, that is to say, the people of the Commonwealth. The repositories of governmental power under the Constitution hold them as representatives of the people under a relationship between representatives and represented, which is a continuing one. The doctrine presupposes an ability of represented and representatives to communicate information, needs, views, explanations and advice. It also presupposes an ability of the people of the Commonwealth as a whole to communicate, among themselves, information and opinions about matters relevant to the exercise and discharge of governmental powers and functions on their behalf. It follows from what has been said above that there is to be discerned in the doctrine of representative government which the Constitution incorporates an implication of freedom of communication and opinions about matters relating to the government of the Commonwealth”.<sup>295</sup>

In *Australian Capital Television*, High Court Judge Mason described the freedom:

“The point is that the representatives who are members of Parliament and Ministers of State are not only chosen by the people but exercise their legislative and executive powers as representatives of the people. And in the exercise of those powers the representatives of necessity are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act...Indispensable to that accountability and that responsibility is freedom of communication, at least in relation to public affairs and political discussion. Only by exercising that freedom can the citizen communicate his or her views on the wide range of matters that may call for, or are relevant to, political action or decision. Only by exercising that freedom can the citizen criticise government decisions and actions, seek to bring about change, call for action where none has been taken and in this way influence the elected representatives”.<sup>296</sup>

The implied freedom of political communication was further tested and expanded in *Lange v Australian Broadcasting Corporation* 1997 189 CLR 520.

<sup>295</sup> *Nationwide News Pty Ltd v Wills* 1992 177 CLR 1 at p.p.72-73.

<sup>296</sup> *Australian Capital Television Pty Ltd v Commonwealth* 1992 177 CLR 106 at p.138.



Most recently, in late 2015 in *McCloy v New South Wales and ICAC* the High Court unanimously held that the burden imposed on political communication by New South Wales's prohibition of political donations from property developers is permissible. The joint "judgment found that the provisions are a legitimate means of pursuing the legitimate objective of removing the risk and perception of corruption and undue influence in New South Wales politics".<sup>297</sup> The joint judgment further ruled that "the provisions in fact enhance the system of representative government that the implied freedom of political communication protects, and are adequate in their balance. Further, there are no obvious and compelling alternative and reasonably practicable means for achieving that purpose".<sup>298</sup>

#### 6.2.4 Conduct near voting centres in Victoria

Section 158 of the *Electoral Act 2002* (Vic) regulates conduct near voting centres.

The following acts are prohibited within three metres of the entrance of, or within, the building used as a voting centre:

- Canvassing for or soliciting votes;
- Inducing any elector not to vote for any particular candidate, or not to vote at the election;
- Exhibiting any notice or sign (other than an official one) relating to the election;
- Conducting an exit poll; or
- If the person is an election official or a scrutineer, wearing any badge or slogan of a candidate or political party.

Pursuant to s158 (3) when a voting centre is situated in enclosed grounds and there is displayed an official notice stating that the grounds are part of the voting centre, those grounds are considered to be part of the voting centre for the purpose of the offences described above.

#### Election Manager

Section 174 of the *Electoral Act 2002* (Vic) confers specific powers on an Election Manager for Victorian state elections.

Election Managers are appointed and authorised by the VEC to manage either a District or a Region at a Victorian state election or by-election. Election Managers are usually assisted by at least one Deputy Election Manager, and a team of casual election officials. Management appointees are drawn from the VEC's Senior Electoral Official pool of around 250 staff.

<sup>297</sup> University of Melbourne, Electoral Regulation Research Network, "October 2015 ERRN newsletter", Electoral Regulation Research Network, October 2015, p.24. Retrieved 10 March 2016 from [law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0009/1650186/ERRN-Newsletter-October-2015.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0009/1650186/ERRN-Newsletter-October-2015.pdf).

<sup>298</sup> University of Melbourne, Electoral Regulation Research Network, "October 2015 ERRN newsletter", Electoral Regulation Research Network, October 2015, p.24. Retrieved 10 March 2016 from [law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0009/1650186/ERRN-Newsletter-October-2015.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0009/1650186/ERRN-Newsletter-October-2015.pdf).

While the primary responsibility of Election Managers is to manage the voting centre during voting, ensure compliance, client service and engagement, Election Managers also have legislative responsibility to maintain order and peace at voting centres. Section 174 states:

- (1) Any Election Manager or election official has the power and authority—
  - (a) to maintain order and keep the peace at any election or voting at a voting centre; and
  - (b) to cause to be removed any person who—
    - (i) obstructs the approaches to a voting centre; or
    - (ii) wilfully or unnecessarily obstructs or delays the proceedings at a voting centre; or
    - (iii) behaves in a disorderly manner; or
    - (iv) remains in a voting centre for a longer time than is reasonably necessary for the purpose of voting; or
    - (v) causes a disturbance at any election.

Section 174 also authorises the police to assist Election Managers or election officials in the exercise of these powers.

Election Managers are required to maintain a diary provided by the VEC. The diary records administrative details and day-to-day occurrences at voting centres.

### 6.3 Non-legislative regulatory frameworks for campaigning at voting centres at Victorian state elections

In addition to legislation, the VEC also provides Election Managers with additional advice and instructions regarding the conduct of campaigning at voting centres.

All Election Managers and Deputy Election Managers must participate in a comprehensive training program as a requirement of joining the Senior Election Official pool. This training involves a one-week workshop and other training activities in the lead up to an election, including online and take home training. As part of this training, Election Managers are informed of their obligations under the *Electoral Act 2002* (Vic), including the effective management of voting centres. Election Managers also participate in activities with senior VEC staff, which simulate potential voting centre scenarios.

The VEC also adopts an approach to voting centre management which Warwick Gately AM, Victorian Electoral Commissioner, has called ‘constructive engagement’. In 2015 Mr Gately, presenting at the University of Melbourne’s Electoral Regulation Research Network Biennial Conference, discussed the definition of ‘constructive engagement’:

“The VEC approach on this matter of conduct outside voting centres has always been one of constructive engagement in preference to overzealous adherence to the law. To this end the instructions to Election Managers are clear. While a voting centre manager has the authority to respond to activities that are in breach of legislation, they will not arbitrate on any disputes outside any venue between party/candidate workers. In such cases managers will request cooperation from all parties in the first instance but if unsuccessful the matter will be escalated to the relevant party/candidate administration to resolve or if necessary to the police”.<sup>299</sup>

In addition, the VEC also provides a how-to-vote card protocol to all candidates for Victorian state elections as part of the Candidate Handbook information kit. This kit is intended to assist candidates at Victorian State elections. It explains those aspects of electoral law which relate directly to candidates.<sup>300</sup> Further, the how-to-vote card protocol discusses the VEC’s approach to the regulation of campaigning at voting centres, and what the VEC expects from candidates and campaign workers.<sup>301</sup> The protocol stresses the importance of ‘good faith’ relations between competing parties at voting centres.

Mr Gately discussed the key features of this protocol as part of his 2015 presentation:

“...party and candidate workers are asked to abide by the following guidelines in relation to all activities outside voting centres. Venues used as early and Election Day voting centres are not the property of the VEC. As such, much good will is relied upon in retaining the venue for subsequent elections...

- Be attentive to any local restrictions requested by venue owners and the VEC regarding the placement of personnel, banners and posters and ensure that the activities of your workers do not interfere with other concurrent activities at the venue;
- Ensure the complete removal of any banners (including ties), posters, how-to-vote cards and equipment before workers leave the venue at the end of each day;
- Ensure workers and materials do not impede or intimidate people moving in and out of the venue; and
- A spirit of cooperation is requested from all workers outside voting centres with an equal entitlement to convey their message”.<sup>302</sup>

<sup>299</sup> Warwick Gately AM, “Campaigning and Regulation: Time for Change”, Electoral Regulation Research Network Working Paper 32, University of Melbourne, Melbourne, November 2015, p.p.5-6. Retrieved 10 March 2016 from law.unimelb.edu.au/\_\_data/assets/pdf\_file/0005/1773554/WP\_32\_Gately.pdf.

<sup>300</sup> Victorian Electoral Commission, “Candidates Handbook District by-election 2015”, Victorian Electoral Commission, Melbourne, June 2015, p.2.

<sup>301</sup> Victorian Electoral Commission, “Candidates Handbook District by-election 2015”, Victorian Electoral Commission, Melbourne, June 2015, p.2.

<sup>302</sup> Warwick Gately AM, “Campaigning and Regulation: Time for Change”, Electoral Regulation Research Network Working Paper 32, University of Melbourne, Melbourne, November 2015, p.p.5-6. Retrieved 10 March 2016 from law.unimelb.edu.au/\_\_data/assets/pdf\_file/0005/1773554/WP\_32\_Gately.pdf.

## 6.4 Previous work by the Electoral Matters Committee relating to Section 84 of the *Electoral Act 2002* (Vic)

The Electoral Matters Committee during the 56th and 57th Parliaments considered various matters relating to operation of s84 of the *Electoral Act 2002* (Vic).

### 6.4.1 Inquiry into whether the provisions of the *Electoral Act 2002* (Vic) should be amended to make better provision for misleading or deceptive electoral content

In 2010 the committee received a reference to inquire into matters arising from the Kororoit District by-election, held in June 2008, and whether the *Electoral Act 2002* (Vic) “should be amended to improve the operation of the misleading provisions of the Act so that such abuses are more likely to be successfully prosecuted”.<sup>303</sup>

The inquiry arose from a complaint about a pamphlet distributed during the campaign which was authorised by the then State Secretary of Victorian Labor, Stephen Newnham. The pamphlet contained the statement ‘A vote for Les Twentyman is a vote for the Liberals’. As a consequence, in the VEC’s report to on the Kororoit District by-election, tabled in Parliament on 3 February 2009, suggested the Parliament may wish to consider whether the provisions of the Act relating to misleading or deceptive political advertising required amendment. The committee subsequently received the terms of reference for the inquiry from the Legislative Council on 1 April 2009.<sup>304</sup>

The then committee did not recommend amendments to s84, reflecting the committee’s objective for the harmonisation of Commonwealth and Victorian electoral legislation. While the then committee acknowledged that the *Electoral Act 2002* (Vic) has limited provisions, the committee “was not convinced that the proposed measures put to the committee... would improve the regulation of misleading or deceptive political advertising”.<sup>305</sup>

The then committee was concerned about overregulation. Evidence from inquiry participants, including Phil Cleary, Les Twentyman’s campaign manager, suggested that while misleading political material and behaviour was a negative development for Victoria’s electoral system, increased regulation may not be appropriate. To this end the then “committee was concerned that expanded measures to regulate misleading or deceptive political advertising would have implementation difficulties and increase the risk of a more litigious approach

<sup>303</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiries”. Retrieved 10 March 2016 from [www.parliament.vic.gov.au/emc/inquiries/inquiry/41](http://www.parliament.vic.gov.au/emc/inquiries/inquiry/41)

<sup>304</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiries”. Retrieved 10 March 2016 from [www.parliament.vic.gov.au/emc/inquiries/inquiry/41](http://www.parliament.vic.gov.au/emc/inquiries/inquiry/41)

<sup>305</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into whether the provisions of the *Electoral Act 2002* (Vic) should be amended to make better provision for misleading or deceptive electoral content”, Parliament of Victoria, Melbourne, March 2010, p.vi.

to elections and electoral law”.<sup>306</sup> The then committee was also reluctant for the VEC to have an expanded role monitoring electoral material and investigating breaches of the *Electoral Act 2002* (Vic).<sup>307</sup>

#### 6.4.2 Inquiry into the impact of social media on Victoria’s electoral administration

In 2014 the then committee issued a discussion paper as part of its inquiry into the impact of social media on Victoria’s electoral administration.<sup>308</sup>

Like the inquiry into the misleading and deceptive provisions of the *Electoral Act 2002* (Vic), the then committee’s inquiry into social media addressed the issue of regulation, and whether Victorian legislation was appropriate in light of the widespread use of social media like Facebook and Twitter for political campaigning.

While the committee considered a range of issues, it failed to reach a conclusion about the need for additional prescription in the *Electoral Act 2002* (Vic). It noted:

“The committee also supports the VEC’s comments about how Victorian legislation will always struggle to keep pace with technology and how social media is used for political and electoral purposes. Placing firm guidelines around a constantly evolving communication tool may be impractical. In this context the committee remains undecided as to whether the evidence received during the inquiry points to a need for less, or more, prescription regarding the authorisation of electoral matter on social media. In the absence of direct advice from the VEC, the committee favours maintaining the existing provisions in the *Electoral Act 2002* (Vic), and the VEC’s current enforcement initiatives”.<sup>309</sup>

#### 6.5 Recent developments in campaigning at voting centres in other Australian jurisdictions

There has been recent interest at the Commonwealth level and in the Northern Territory in the regulation of political campaigning at voting centres.

<sup>306</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into whether the provisions of the *Electoral Act 2002* (Vic) should be amended to make better provision for misleading or deceptive electoral content”, Parliament of Victoria, Melbourne, March 2010, p.vi.

<sup>307</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiry into whether the provisions of the *Electoral Act 2002* (Vic) should be amended to make better provision for misleading or deceptive electoral content”, Parliament of Victoria, Melbourne, March 2010, p.vi.

<sup>308</sup> Parliament of Victoria, Electoral Matters Committee, “Inquiries”. Retrieved 10 March 2016 from [www.parliament.vic.gov.au/emc/inquiries/inquiry/41](http://www.parliament.vic.gov.au/emc/inquiries/inquiry/41)

<sup>309</sup> Parliament of Victoria, Electoral Matters Committee, “Discussion paper: inquiry into the impact of social media on Victoria’s electoral administration”, Parliament of Victoria, Melbourne, August 2014, p.16.

### 6.5.1 Commonwealth JSCEM inquiry into campaigning at voting centres

On 17 June 2015 the Commonwealth JSCEM received an inquiry from the then Special Minister of State, Senator Michael Ronaldson, to inquire into and report on rules and practices in relation to campaign activities in the vicinity of voting centres.

The terms of reference required the committee to examine:

- the distribution of how-to-vote cards;
- campaigning by organisations other than political parties at voting centres;
- allegations in relation to the conduct of, and material disseminated by, campaigners at state and federal elections in the vicinity of voting centres intended or likely to mislead or intimidate electors; and
- any other related matter.<sup>310</sup>

### 6.5.2 Northern Territory – 2016 electoral amendments

Election Day campaigning in the Northern Territory has unique characteristics compared to other Australian jurisdictions. Most Northern Territory Legislative Assembly Districts have an average of 5,200 electors.<sup>311</sup> Due to this, there is an increased likelihood that an elector and a campaign worker may be known to each other and the elector may choose to ignore materials or take all material on offer so as to keep his/her voting intention secret. Reflecting this situation, many commentators, and the Northern Territory Electoral Commission, refer to the practice of attending a voting centre in the Northern Territory as ‘running the gauntlet’.<sup>312</sup>

As noted in Chapter Four, in February 2016 the Northern Territory Legislative Assembly passed the *Electoral Amendment Bill 2016* (NT). The headline provision of the Bill provided for optional preferential voting at Northern Territory elections.

Another provision in the Bill was the introduction of a 100-metre exclusion zone around voting centres for Northern Territory elections. The original version of the Bill proposed a 500-metre exclusion zone, based on a recommendation in the Northern Territory Electoral Commission’s report on the 2012 Northern Territory election.<sup>313</sup>

<sup>310</sup> Parliament of Australia, Joint Standing Committee on Electoral Matters, “Inquiry into campaigning at polling places”, Parliament of Australia, Canberra, June 2015. Retrieved 9 March 2016 from [www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/Campaigning\\_polling\\_places](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/Campaigning_polling_places).

<sup>311</sup> Northern Territory Electoral Commission, “Submission to Commonwealth JSCEM inquiry into campaigning at polling places”, Northern Territory Electoral Commission, p.2.

<sup>312</sup> Northern Territory Electoral Commission, “Submission to Commonwealth JSCEM inquiry into campaigning at polling places”, Northern Territory Electoral Commission, p.2.

<sup>313</sup> Northern Territory Electoral Commission, “Submission to Commonwealth JSCEM inquiry into campaigning at polling places”, Northern Territory Electoral Commission, p.p.2-3.

Candidates or campaign workers must not distribute election material within the 100-metre zone.

The Northern Territory Electoral Commission has suggested that there may be implementation difficulties associated with the exclusion zone in remote communities. The Northern Territory Electoral Commission plans to introduce a set of protocols, similar to the VEC's, on behaviour at voting centres to supplement the legislation:

“Any legislative amendments to restrict campaign material access will be difficult to police in remote regions. The main problem rests with the conduct of campaign workers during remote mobile polling and attitudinal changes would be required. This might best be achieved by stakeholder consultation, commencing with a forum between affected stakeholders; these may include party representatives, members of parliament, past independent candidates, the AEC and local government representatives (any legislative change to Legislative Assembly elections may naturally flow to local government elections). The objective would be to establish agreed protocols on values, practices and behaviours and identification of mechanisms to ensure compliance in regard to campaigning at remote polling”.<sup>314</sup>

## 6.6 Complaints received by the VEC about election material and behaviour at voting centres – 2014 Victorian state election

The committee acknowledges that campaigning at the 2014 Victorian state election was robust.

The VEC received 454 complaints related to the 2014 Victorian state election.

Of these complaints, 49 related to candidates failing to authorise electoral material, or allegations that electoral material was deceptive or misleading.<sup>315</sup> As noted earlier, due to the principle established in *Evans v Crichton Browne 1981* 146 CLR 169, the VEC has no capacity to regulate publications or material that influence the political judgement of voters, only matters influencing the casting of the vote. According to the VEC, 29 of the 49 complaints in this area misunderstood the law and alleged that candidate publications contained “untruths designed to influence voter judgement”.<sup>316</sup>

In addition, 11 complaints were received in relation to the conduct of candidates and 17 regarding the conduct of campaign workers at voting centres. The VEC notes:

<sup>314</sup> Northern Territory Electoral Commission, “Submission to Commonwealth JSCEM inquiry into campaigning at polling places”, Northern Territory Electoral Commission, p.3.

<sup>315</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.46.

<sup>316</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.p.46-47.

“The majority of these complaints related to rude or aggressive behaviour towards voters, generally outside voting centres, with the intention of encouraging voters to accept how-to-vote cards. A number of such complaints (6), were received noting the allegedly aggressive campaigning of the Firefighters Union and Ambulance Employees Australia and a smaller number of complaints (4), alleged similar behaviour from the Liberal Party and the Greens. Although election officials monitor the conduct of candidates and party workers at voting centres, and strictly enforce the three-metre rule, the presence of determined volunteers can be intimidating for some voters”.<sup>317</sup>

Overall, complaints about lack of authorisation and allegations that electoral material was deceptive or misleading represented 10 percent of total complaints. Complaints about candidates represented two percent of total complaints. Complaints about the conduct of campaign workers represented four percent of total complaints.

Of the 57 submissions received by the committee, 14 submissions, or 24 percent, addressed matters related to campaigning. Of these 14 submissions, eight submissions, or 14 percent, addressed complaints about campaigning.

## 6.7 Evidence from inquiry participants

The committee received evidence from inquiry participants in four areas:

- The regulation of how-to-vote cards;
- The conduct of campaign workers and party representatives at voting centres;
- The responsibilities and training of Election Managers; and
- Discussion about the regulation of deceptive and misleading electoral material and conduct in Victoria.

### 6.7.1 How-to-vote cards

#### Abolishing how-to-vote cards

Some inquiry participants, either independent candidates or members of minor political parties, recommended that how-to-vote cards be abolished for Victorian state elections.

Peter Campbell, an independent candidate in Burwood District at the 2014 Victorian state election, argued that how-to-vote cards should be abolished in the interests of fairness for all candidates. Mr Campbell recommended that all voting centres have a centralised dispensary for how-to-vote cards. He said:

<sup>317</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.47.



“Designing and printing [how-to-vote cards] was very expensive. Mine were of significantly lower quality than those printed and distributed by Labor, Liberal and Green candidates to keep my costs down. In addition, political party candidates had teams of people handing out the cards at every polling booth. As an independent candidate I was not able to do this, which put me at considerable disadvantage. I recommend that the practice of handing out [how-to-vote cards] at polling booths be banned and that instead, [how-to-vote cards] for each candidate be available in dispensers at each polling booth. In addition, plastic coated versions of the [how-to-vote] cards should be provided at each polling booth, fixed by a string, for voters to peruse. This practice would also reduce the environmental impact of each candidate several thousands of their [how-to-vote] cards, which are all discarded after Election Day”.<sup>318</sup>

Spero Katos, on behalf of the Australian Christians Victoria, also supported abolishing how-to-vote cards. However, rather than a central dispensary, he favoured large signage at voting centres, with equal space allocations for each candidate, as a means to communicate how-to-vote information.<sup>319</sup>

In contrast, other inquiry participants supported the use of how-to-vote cards at Victorian state elections. At the October 2015 public hearings Malcolm Mackerras AO explained that he had no problem with how-to-vote cards so long as the content in the cards did not mislead candidates in relation to the casting of their vote.<sup>320</sup>

Noah Carroll, State Secretary, Victorian Labor, also noted his and the Labor Party’s support for the continued use of how-to-vote cards at Victorian state elections.

“The ALP has always believed that anything that sits in the space of trying to somehow constrain the exercise of free speech, of ideas, at the voting booth—outside of the statutory requirements of how close you can be to the actual casting of the ballot of course—the idea that somehow we have a system that constrains people’s ability to exercise their view politically in relation to an election, it is, firstly, in my view completely inappropriate as far as all the laws of the land—common and statute—apply, but equally, I think there is something quite strange about trying to constrain a polity from exercising its views and explaining and conversing with each other in that space just at the time that they are trying to cast a ballot as to who they support for whatever reason”.<sup>321</sup>

Simon Frost, State Director, Liberal Party of Victoria, also supported the right of political parties to distribute how-to-vote cards:

“We respectfully believe that a how-to-vote card is a useful tool to have at a polling booth. I know they are banned in some states, but we have no desire to go down that path. In terms of the number of volunteers that assemble at an early voting centre on Election Day, our submission is all about better control, better rules and better

<sup>318</sup> Peter Campbell, Submission No.38, p.2.

<sup>319</sup> Spero Katos on behalf of Australian Christians Victoria, Submission No. 41, p.1.

<sup>320</sup> Malcolm Mackerras AO, Transcript of Evidence, 5 October 2015, p.2.

<sup>321</sup> Noah Carroll, State Secretary, Victorian Labor, Transcript of Evidence, 11 August 2015, p.6.

training so that electoral staff can ensure that the democratic process is not impeded. In terms of the number of volunteers, we do not see that we need to regulate the number of volunteers at polling booths, just their behaviour".<sup>322</sup>

### Committee's view

The committee supports the use of how-to-vote cards at Victorian state elections. They are a vital tool for communicating with electors, and assist many electors to cast a valid vote.

### Authorisation requirements for how-to-vote cards

As noted earlier, all how-to-vote cards must be authorised for Victorian state elections.

All how-to-vote cards are registered by the VEC. According to s77 of the *Electoral Act 2002* (Vic) any person may lodge cards for registration with the Election Manager within the electorate that card relates to. Registered political parties must lodge their cards for registration directly with the VEC.

Currently, to be registered, a how-to-vote card must:

- Clearly identify the person, political party, organisation, or group on whose behalf the card is to be distributed;
- Contain an indication of the order of voting preference for all candidates listed on the card or contain a statement that a number must be placed against the name of each candidate;
- Have the size of any logo, emblem, or insignia belonging to the person, political party, organisation, or group on whose behalf the card is to be distributed appearing on the how-to-vote card at not less than the relevant prescribed size of 4 square centimetres;
- Contain the name and street address (not a post office box) of the person authorising the card and the name and place of business of the printer;
- Not be likely to mislead or deceive an elector in casting their vote. For example, a card for a District election that contains empty boxes may induce the elector to cast an informal vote, and as such would not be registered;
- Not be likely to induce an elector to mark their vote otherwise than in accordance with the directions on the ballot paper;
- Not contain offensive or obscene material; and
- Contain the prescribed endorsement i.e. 'Registered by the Victorian Electoral Commission' [s79 of the *Electoral Act 2002* (Vic), *Electoral Regulations 2012*, Regulations 18, 18A].<sup>323</sup>

<sup>322</sup> Simon Frost, State Director, Liberal Party of Victoria, Transcript of Evidence, 13 August 2015, p.7.

<sup>323</sup> Victorian Electoral Commission, "Candidates Handbook District by-election 2015", Victorian Electoral Commission, Melbourne, June 2015, p.15.

During the inquiry the Liberal Party of Victoria told the committee that current authorisation requirements are unnecessarily cumbersome, particularly in relation to how-to-vote cards provided by political parties at joint voting centres.

Joint voting centres provide ordinary voting facilities for electors from two or more designated districts – they operate like two or more voting centres at the one facility, each with a defined administrative area within the venue.<sup>324</sup> They are typically established close to the boundaries between two, or sometimes three, electorates. They are designed to reduce the number of absent votes issued at voting centres located close to electorate boundaries, thereby speeding up the voting process. There were 97 joint voting centres at the 2014 Victorian state election, compared with 158 in 2010 and 147 in 2006.<sup>325</sup>

At the August 2015 public hearings Simon Frost, State Director, Liberal Party of Victoria, explained how current how-to-vote card registration requirements place an additional burden on political parties at joint voting centres:

“Current provisions require a how-to-vote card containing voting instructions for both a [Lower House] candidate and an [Upper House] candidate to have separate authorisations for each, even if they appear on the same page. Should the same how-to-vote card contain a political message or near the rear of the card or in another language on the reverse side, these additional elements must also carry a separate authorisation”.<sup>326</sup>

In addition to Mr Frost’s evidence, the Liberal Party of Victoria’s submission recommended that the VEC adopt a similar how-to-vote card registration system used by the AEC for federal elections. The major difference between a Victorian how-to-vote card and a how-to-vote card for a federal election is that the Victorian card must contain a single authorisation for each message on the card, compared to a federal card which must contain a single authorisation message for the entire card. To this end, the Liberal Party of Victoria “recommended that, apart from maintaining the existing registration requirements for how-to-vote cards under the *Electoral Act 2002* (Vic), a similar authorisation regime to that contained within the *Commonwealth Electoral Act 1918* (Cwth) should be adopted”.<sup>327</sup>

### Committee’s view

The committee supports amending the authorisation requirements for how-to-vote cards at joint voting centres so that they are consistent with Commonwealth legislation.

**RECOMMENDATION 18:** The committee recommends the *Electoral Act 2002* (Vic) be amended so that how-to-vote cards at joint voting centres need only carry a single authorisation message consistent with requirements in the *Commonwealth Electoral Act 1918* (Cwth).

<sup>324</sup> Victorian Electoral Commission, “Position paper: joint voting centres”, Victorian Electoral Commission, Melbourne, March 2010, p.2.

<sup>325</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.28.

<sup>326</sup> Simon Frost, State Director, Liberal Party of Victoria, Transcript of Evidence, 13 August 2015, p.3.

<sup>327</sup> Simon Frost, State Director, Liberal Party of Victoria, Transcript of Evidence, 13 August 2015, p.3.

## 6.7.2 The conduct of campaign workers and party representatives at voting centres

Some of the submissions addressing conduct at voting centres discussed the conduct of campaign workers and party representatives at voting centres during the 2014 Victorian state election.

Evidence addressed:

- Allegations that some campaign workers impersonated a group or organisation they did not belong to;
- Whether representatives of public sector organisations should be allowed to campaign in uniform;
- Allegations of intimidation, harassment and bullying at voting centres;
- Whether campaign workers should be authorised by political parties or candidates; and
- Assigning public safety officers at each voting centre to ensure the safety of electors, campaign workers and candidates, and to prevent intimidation. Also, the use of security cameras and other recording devices at voting centres.

### Allegations of impersonation

Some inquiry participants alleged that members of the United Firefighters Union (UFU) impersonated Country Fire Authority (CFA) volunteer firefighters at some early voting centres and Election Day voting centres throughout Victoria at the 2014 Victorian state election.

Bill Watson, on behalf of District 13 Volunteer Fire Brigade Victoria (VFBV), documented allegations in his submission that UFU members were “passing off” CFA members.<sup>328</sup> The submission alleged that:

- UFU members campaigned in Monbulk District during the early voting period while dressed in “look alike” firefighter clothing;
- UFU members campaigned in Ferntree Gully District during the early voting period in “look alike” firefighter clothing, distributing how-to-vote materials;
- On Election Day, UFU members campaigned at Kallista Primary School in “look alike” firefighter clothing. Mr Watson notes that he attended Kallista Primary School on Election Day and discussed this issue with UFU and CFA representatives;
- On Election Day, UFU members campaigned in Monbulk District in “look alike” firefighter clothing;
- On Election Day, UFU members campaigned in Upper Ferntree Gully in “imitation” firefighter clothing; and

<sup>328</sup> District 13 Volunteer Fire Brigade Victoria, Submission No.31, p.p.2-4.

- On Election Day, UFU members campaigned at Olinda Primary School. In response to this the local CFA brigade issued a message on their website advising local residents that the firefighters they might see at Olinda Primary School were UFU members and not part of the local brigade.<sup>329</sup>

Mr Watson also discussed these allegations during his appearance at the August 2015 public hearings.

In their submission, Kallista-The Patch Rural Fire Brigade alleged that UFU members were handing out how-to-vote cards at the Kallista Primary School voting centre on Election Day.<sup>330</sup> Kallista-The Patch alleged that the UFU members were dressed in a similar fashion to CFA volunteers;

“What the union members were wearing is very similar to how our community see us at Sunday morning training and when we respond to an incident... The only difference is the lettering on the tee shirt”.<sup>331</sup>

During the inquiry the committee also received a submission from a CFA volunteer firefighter, who requested, and was granted, confidentiality by the committee. In the submission, the CFA volunteer discussed his experiences at Frankston train station during the 2014 Victorian state election campaign. He alleged that a “wall” of UFU members was present at the station, canvassing passengers and handing out electoral material he felt to be misleading.<sup>332</sup>

He also alleged that the UFU members were dressed similarly to volunteer firefighters:

“While campaigning for the Labor Party, the UFU members dressed in a manner that sought to depict themselves as volunteer firefighters. The ‘lime green’ Nomex trousers that they wore are exclusively worn by CFA volunteers, ironically because the UFU forbade its members to wear the Nomex product as their work protective clothing. It was only upon closer inspection that I saw a small UFU logo on their tee shirts (also typical of volunteer firefighter clothing – apart from the logo). In my opinion, the union members were trying to mislead the Victorian public by manipulating public goodwill towards CFA volunteer firefighters”.<sup>333</sup>

Sarah Krumins, a CFA volunteer, wrote to the committee about her experiences at an early voting centre in Tacoma. She alleged that individuals, dressed in firefighter clothing, were handing out how-to-vote cards. She noted:

“On my arrival at the pre-polling booth I was approached by a man who out-right claimed to be a fire fighter and asked me to vote to support the [local] fire fighters. When I asked him which [local] brigade he was from he would not answer my question. All CFA personnel were informed that we were not allowed to even wear our CFA [tee-shirts] to vote let alone wear it to give out how to vote cards. This man

<sup>329</sup> District 13 Volunteer Fire Brigade Victoria, Submission No.31, p.p.2-4.

<sup>330</sup> Kallista-The Patch Rural Fire Brigade, Submission No.19, p.p.1-2.

<sup>331</sup> Kallista-The Patch Rural Fire Brigade, Submission No.19, p.1.

<sup>332</sup> Name Withheld, Submission No.26, p.p.1-2.

<sup>333</sup> Name Withheld, *Submission No.26*, p.2.

left the polling booth when I rang our operations manager to complain about him. It actually turned out that this man was not from a local brigade and we are not even sure he was a fire fighter at all”.<sup>334</sup>

The Liberal Party of Victoria also discussed alleged incidences of impersonation at voting centres. At the August 2015 public hearings Simon Frost, State Director, Liberal Party of Victoria, said that the party supported legislative change to “prevent volunteers at early voting centres or polling booths from impersonating any profession or indeed any interest group to which they do not legitimately belong”.<sup>335</sup> To this end, the Liberal Party of Victoria recommended changes to Victoria’s electoral laws to prevent “booth volunteers from impersonating any profession or interest group with which they do not legitimately belong”.<sup>336</sup>

Mr Frost appeared at the August 2015 public hearings with Donna Bauer, a member of the Liberal Party of Victoria’s administrative committee and former Member for Carrum. Ms Bauer also discussed allegations of impersonation:

“I am concerned about campaigners who purported to be something that they were not. As Mr Frost has discussed in his presentation, the Electoral Act prohibits misleading and/or deceptive material from being printed, published or distributed during the course of the campaign. Over the course of the early voting period and on Election Day I witnessed people arriving to hand out cards in their regular clothes, only to reach into prepacked tubs provided by supporters of the then opposition and to change into their costume yellow overalls designed to impersonate Victorian firefighters. When asked by members of the community about which brigade they belonged to, they would become defensive, they would become agitated and even aggressive towards other CFA volunteers who were inquiring, as well as electors who were coming to vote”.<sup>337</sup>

In addition, The Nationals Victoria’s submission alleged impersonation relating to s148 of the *Electoral Act 2002* (Vic), which regulates false and misleading statements.<sup>338</sup>

In contrast to these views, some inquiry participants disputed allegations that UFU members were impersonating CFA volunteers during the 2014 Victorian state election.

The United Firefighters Union (UFU) of Australia made a submission to the inquiry. The UFU is a registered organisation/federal union with a membership of career professional firefighters and other non-operational employees employed by public and private fire services.<sup>339</sup> It represents “career professional firefighters employed on a permanent full time basis, permanent part time basis and on a casual basis by fire services including aviation and defence”.<sup>340</sup>

<sup>334</sup> Sarah Krumins, *Submission No.14*, p.1.

<sup>335</sup> Simon Frost, State Director, Liberal Party of Victoria, *Transcript of Evidence*, 13 August 2015, p.p.2-3.

<sup>336</sup> Liberal Party of Victoria, *Submission No.45*, p.2.

<sup>337</sup> Donna Bauer, Member, Administrative Committee, Liberal Party of Victoria, *Transcript of Evidence*, p.5.

<sup>338</sup> The Nationals Victoria, *Submission No.43*, p.9.

<sup>339</sup> United Firefighters Union, *Submission No.53*, p.1.

<sup>340</sup> United Firefighters Union, *Submission No.53*, p.1.

The UFU's submission denied allegations that UFU members impersonated CFA or Metropolitan Fire Brigade (MFB) members:

“The UFU has its own firefighter uniforms that are not, and have never been, CFA or MFB uniforms. The UFU distributed the UFU's public-political awareness campaign uniforms of yellow pants, red braces and a campaign t-shirt to all those participating in the campaign. Career professional firefighters did not wear CFA or MFB uniforms while doorknocking residential areas, handing out public-political awareness campaign material or how to vote cards at public areas or events.<sup>341</sup>”

The UFU's submission also denied allegations that firefighters wearing UFU public-political awareness campaign uniforms were not real career professional firefighters:

“Only career professional firefighters were issued with the UFU public-political awareness campaign uniforms of yellow pants and red braces. Non-operational members and those supporting the UFU public-political awareness campaign wore campaign t-shirts without the yellow pants and red braces. The public political awareness campaign uniforms and material were not made available outside the strict parameters as specified above”.<sup>342</sup>”

At the August 2015 public hearings Peter Marshall, State Secretary, United Firefighters Union, Victorian Branch, also denied allegations of impersonation:

“Again, that is a falsehood. The uniforms were purchased by the UFU. They were never, and never have been, CFA or MFB uniforms. They are indeed uniforms that designate that a person is a firefighter, but they are not agency specific. In fact, there is a directive from both the CFA and MFB that states a prohibition on members wearing their brigade uniform, being the MFB-designated or CFA uniform, at rallies or at political protests. Again, that was a falsehood. I can provide the receipt if necessary as to the cost of those uniforms. They were purchased by the union, if there is any doubt about that. On allegations that firefighters who were wearing uniform for the public political awareness campaign were not real professional firefighters, we pride ourselves on being a registered organisation with accountability under the rules. We have a register of members who actually participated. With respect, I think the committee would understand why we do not put forward those names. However, we had a very rigid system as to who received our material. In fact, we had a roster of members who were off duty who actually participated, both during doorknocking as well as on polling day”.<sup>343</sup>”

Mr Marshall argued this campaign activity was consistent with the implied freedom of political communication in the *Australian Constitution*:

“Again, I emphasise that we do not see that we have done anything wrong. In fact, we were just exercising our constitutional right, in accordance with the Australian constitution, to engage in the political process and to have a say in relation to political matters that affected firefighters as well as the public”.<sup>344</sup>”

<sup>341</sup> United Firefighters Union, *Submission No.53*, p.p.3-4.

<sup>342</sup> United Firefighters Union, *Submission No.53*, p.p.3-4.

<sup>343</sup> Peter Marshall, Secretary, United Firefighters Union, Victorian Branch, Transcript of Evidence, 11 August 2015, p.4.

<sup>344</sup> Peter Marshall, Secretary, United Firefighters Union, Victorian Branch, Transcript of Evidence, 11 August 2015, p.4.

At the August 2015 public hearings Luke Hilakari, Secretary, Victorian Trades Hall Council, was asked for his view about allegations that UFU members impersonated CFA volunteers. Mr Hilakari said that he thought the allegations were false:

“Yes, we would say that would be wrong, and we have heard comments about firefighters in uniform. I think Peter Marshall spoke to you yesterday, and said that they were not in uniform, they were in clothing which had been purchased to represent the profession of firefighters. It is like this glass of water. If you put this water in a mug, it is still water. They are still firefighters — same with the paramedics, nurses and teachers”.<sup>345</sup>

Mr Hilakari also noted that, in contrast to previous Victorian state elections, several groups were “mobilised” to campaign due to dissatisfaction with the then Victorian government’s policies.<sup>346</sup>

### **Whether representatives of public sector organisations should be allowed to campaign in uniform**

Many public sector organisations prohibit their employees from engaging in political activities whilst in uniform. During the 2014 Victorian state election campaign Ambulance Victoria launched legal proceedings against the Ambulance Union of Victoria in an attempt to stop paramedics from participating in political campaigning while wearing uniform.<sup>347</sup> As part of this inquiry, the committee also learnt that the CFA, MFB and other federal government organisations, including the Australian Army, Australian Border Force and the Australian Federal Police, prohibit campaigning in uniform.

In Victoria public sector employees are also bound by a Code of Conduct pursuant to the *Public Administration Act 2004* (Vic).<sup>348</sup> “The values and this Code build on our public sector’s long tradition of striving to meet the high standards the community rightly expects of it and provide the foundation of the integrity and accountability framework for all public sector employees”.<sup>349</sup> Under s7 of the *Public Administration Act 2004* (Vic), public sector employees should demonstrate “impartiality in their work and the way they implement government policies”.<sup>350</sup>

<sup>345</sup> Luke Hilakari, Secretary, Victorian Trades Hall Council, Transcript of Evidence, p.4.

<sup>346</sup> Luke Hilakari, Secretary, Victorian Trades Hall Council, Transcript of Evidence, p.4.

<sup>347</sup> Medew, J, 2014. “Parademics on the mat for campaigning in uniform”, *The Age*, 11 November 2014. Retrieved 20 March 2016 from [www.theage.com.au/victoria/victoria-state-election-2014/ambulance-victoria-paramedics-on-the-mat-for-campaigning-in-uniform-20141120-1lqngm.html](http://www.theage.com.au/victoria/victoria-state-election-2014/ambulance-victoria-paramedics-on-the-mat-for-campaigning-in-uniform-20141120-1lqngm.html).

<sup>348</sup> Victorian Public Service Commission, “Code of Conduct for Victorian Public Sector Employees”, Victorian Public Service Commission, June 2015. Retrieved 10 March 2016 from [vpvc.vic.gov.au/html-resources/code-of-conduct-for-victorian-public-sector-employees-2/](http://vpvc.vic.gov.au/html-resources/code-of-conduct-for-victorian-public-sector-employees-2/).

<sup>349</sup> Victorian Public Service Commission, “Code of Conduct for Victorian Public Sector Employees”, Victorian Public Service Commission, June 2015. Retrieved 10 March 2016 from [vpvc.vic.gov.au/html-resources/code-of-conduct-for-victorian-public-sector-employees-2/](http://vpvc.vic.gov.au/html-resources/code-of-conduct-for-victorian-public-sector-employees-2/).

<sup>350</sup> Victorian Public Service Commission, “Code of Conduct for Victorian Public Sector Employees”, Victorian Public Service Commission, June 2015. Retrieved 10 March 2016 from [vpvc.vic.gov.au/html-resources/code-of-conduct-for-victorian-public-sector-employees-2/](http://vpvc.vic.gov.au/html-resources/code-of-conduct-for-victorian-public-sector-employees-2/).



The Code contains remedies for breaches of the Code, based “on the Victorian public sector values and therefore relates to both performance and conduct behaviours”. The Code states:

“Conduct may lead to action under relevant performance management or misconduct processes. These processes need to be consistent with the public sector employment principles (Public Administration Act 2004, s8), standards issued by the Victorian Public Sector Commission and any relevant industrial instruments; and communicated to all employees”.<sup>351</sup>

During this inquiry submissions both alleged and refuted allegations that some public sector employees campaigned in uniform at the 2014 Victorian state election.

In its submission The Nationals Victoria alleged the Code was breached during the 2014 Victorian state election campaign. In particular, it noted that “Victorian ambulances were used as political billboards for three years, and that public sector employees [allegedly] campaigned in mock uniforms to influence political outcomes”.<sup>352</sup> The Nationals Victoria also said:

“It is the contention of The Nationals Victoria that this constitutes unacceptable behaviour from public sector employees contravening the Public Sector Code of Conduct and we respectfully request the Committee to give consideration to these matters and determine an approach to prevent a reoccurrence of such conduct”.<sup>353</sup>

Jeremy Orchard, an individual who participated in the inquiry, also alleged that members of the emergency services were campaigning in uniform during the 2014 Victorian state election campaign. While accepting that everyone has the right to express their political views, he felt this situation was “misleading for electors”.<sup>354</sup> He noted:

“...presence in uniform in an official looking manner could [inadvertently] bias or sway a voter”.<sup>355</sup>

### Committee's view

The committee finds that public property, such as fire trucks, were used during the 2014 Victorian state election. It is implausible to claim that there was only one decommissioned fire truck used in the 2014 Victorian state election campaign, given the number of fire trucks seen all over the state.

**RECOMMENDATION 19:** The committee recommends that the Public Sector Code of Conduct be amended to prohibit public sector workers using government property, such as ambulances, fire trucks and uniforms for political purposes and in election campaigns and that penalties be developed for a breach of this type.

<sup>351</sup> Victorian Public Service Commission, “Code of Conduct for Victorian Public Sector Employees”, Victorian Public Service Commission, June 2015, p.4. Retrieved 10 March 2016 from [vpsc.vic.gov.au/html-resources/code-of-conduct-for-victorian-public-sector-employees-2/](http://vpsc.vic.gov.au/html-resources/code-of-conduct-for-victorian-public-sector-employees-2/).

<sup>352</sup> The Nationals Victoria, Submission No.43, p.10.

<sup>353</sup> The Nationals Victoria, Submission No.43, p.10.

<sup>354</sup> Jeremy Orchard, Submission No.30, p.1.

<sup>355</sup> Jeremy Orchard, Submission No.30, p.1.

### Allegations of intimidation, harassment and bullying at voting centres

Some inquiry participants commented on the charged campaigning atmosphere at the 2014 Victorian state election. At the August 2015 public hearings, Noah Carroll, State Secretary, Victorian Labor, noted that the campaign was particularly “hard fought”.<sup>356</sup> Other inquiry participants, such as the UFU, also noted that the union had embarked on its “largest ever public awareness campaign for a Victorian state election”;<sup>357</sup> these comments were supported by Luke Hilakari, Secretary, Victorian Trades Hall Council, who said that union members were “fired up” and “engaged” in an unprecedented way.<sup>358</sup>

During the inquiry the VEC provided a table to the committee documenting complaints relating to the conduct of party workers outside voting centres in relation to the type of voting centre, and the relevant District.

Nevertheless, some inquiry participants felt that campaigning activities at some voting centres went beyond the normal ‘cut and thrust’ of an election campaign.

6

**Table 6.1** Complaints at voting centres by District, 2014 Victorian state election

District	Early Voting Centre complaints	Voting centre complaints	District	Early Voting Centre complaints	Voting centre complaints
Bendigo West		1	Melbourne	1	
Bentleigh	1	1	Mordialloc	1	
Buninyong		1	Narre Warren South	1	
Burwood	1		Ovens Valley	1	
Carrum	1		Prahran	1	
Clarinda		1	Richmond	1	
Eltham		2	Not specified		2

Source: Liz Williams, Deputy Electoral Commissioner, Victorian Electoral Commissioner, Correspondence, 6 April 2016, p.3.

In its submission the Liberal Party of Victoria alleged that Liberal Party candidates “were stalked, harassed, intimidated and threatened, in a deliberate attempt to hinder their ability to distribute how-to-vote cards, impeding the democratic process”.<sup>359</sup> At the public hearings, Simon Frost, State Director, Liberal Party of Victoria, provided specific examples of allegations of intimidatory behaviour:

“I have been involved in politics for over two decades, which is a long time for some. I can say unequivocally that the behaviour of workers on polling booths at the 2014 state election represented a new low in all my years of campaigning in Victoria. In my role as campaign director for the south-east I witnessed firsthand bullying,

<sup>356</sup> Noah Carroll, State Secretary, Victorian Labor, Transcript of Evidence, 11 August 2015, p.6.

<sup>357</sup> United Firefighters Union, Submission No.53, p.2.

<sup>358</sup> Luke Hilakari, Secretary, Victorian Trades Hall Council, Transcript of Evidence, p.4.

<sup>359</sup> Liberal Party of Victoria, Submission No.45, p.2.

intimidation, harassment and misrepresentation by booth workers in the seats of Narre Warren North, Cranbourne, Carrum and Bentleigh — firsthand! I also received many firsthand accounts of what transpired at both early voting centres and Election Day polling booths at the 2014 state election”.

Donna Bauer, a member of the Liberal Party of Victoria’s administrative committee, also felt that the behaviour of campaign workers at the 2014 Victorian state election had reached a new low:

“I noticed that there was a noticeable shift and change in behaviour at polling booths. I have participated in numerous past state and federal elections as a volunteer, as a candidate and also as a member of Parliament. In my experience candidates and volunteers in past elections have been predominantly cordial with each other with a level of mutual respect for each other’s political beliefs. At the 2014 poll I am of the firm view that there was a definite shift in the polling booth and the pre-poll behaviour. Never before have I witnessed such levels of aggression and inflammatory behaviour, to the point of bullying, during voting periods. I am aware that at the Carrum early voting centre the police were called on two separate occasions by the Victorian Electoral Commission due to a paid campaigner becoming aggressive and intimidating not only towards other volunteers but, alarmingly, also towards electors attending to cast their vote”.<sup>360</sup>

During the inquiry Liz Williams, Deputy Electoral Commissioner, in response to the committee’s correspondence, advised that election officials at the Carrum District early voting centre did not call Victoria Police.<sup>361</sup>

### **Whether campaign workers should be authorised or registered by political parties or candidates**

In Victoria campaign workers do not need to be authorised by a political party, candidate or organisation. However, s76 of the *Electoral Act 2002* (Vic) regulates the appointment and activities of scrutineers at Victorian state elections.

Scrutineers are appointed by candidates to represent their interests at an election by ensuring the integrity of the election process. This is distinct from the role of campaign workers and political party / candidate workers or supporters whose activities are not defined. Scrutineers “have the right to observe all stages of voting and the counting of votes and may challenge decisions on the formality of ballot papers made by Election Managers or election officials. Nevertheless they must not, when in a voting centre, attempt to influence or unnecessarily talk to electors”.<sup>362</sup>

At the August 2015 public hearings Simon Frost, State Director, Liberal Party of Victoria, recommended that campaign workers be authorised by political parties or candidates, in much the same way that scrutineers are authorised by the VEC.

<sup>360</sup> Donna Bauer, Member, Administrative Committee, Liberal Party of Victoria, Transcript of Evidence, p.p.5-6.

<sup>361</sup> Liz Williams, Deputy Electoral Commissioner, Victorian Electoral Commission, Correspondence, 6 April 2016, p.3.

<sup>362</sup> Victorian Electoral Commission, “Scrutineers’ Handbook 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, June 2015, p.3. Retrieved 10 March 2016 from [www.vec.vic.gov.au/files/ScrutineerHandbook2014.pdf](http://www.vec.vic.gov.au/files/ScrutineerHandbook2014.pdf).

He said:

“Anyone handing out material at an early voting centre or polling booth must at least submit on arrival a written form identifying themselves, similar to those that are used to register scrutineers...at a minimum, this would allow returning officers some point of reference and evidence to use in adjudicating on an incident at a polling booth, or if police are called, which is often the case, providing evidence for them to investigate”.<sup>363</sup>

In contrast, some inquiry participants felt that requiring campaign workers to be registered by political parties or candidates would be difficult to enforce. At the August 2015 public hearings a committee member asked Mr Frost whether the registration process might deter a person from expressing a point of view about an election issue:

“Committee member — Just to explore further the suggestion of registration of volunteers, I am interested in where you would draw the line between somebody who is handing out how-to-vote cards specifically at a polling booth on Election Day versus somebody who might just be expressing a democratic view, whether they are a member of a political party, a union organisation or any other organisation, or whether they are just Joe Blow in the street suggesting to people that they think they should vote in a particular way for a particular policy reason. Where, if you had a registration process, would you draw that line?

Mr FROST — Through the registration process people would be authorised to hand out a how-to-vote card.

Committee member — You do not think that would curb people’s democratic freedoms to express a political view if they were not registered?

Mr FROST — If they were not handing out how-to-vote cards, they could still attend a polling booth and talk, yell or scream”.<sup>364</sup>

Further, while the VEC did not directly comment on any proposal for the registration of campaign workers by political parties and candidates, in 2015 Warwick Gately AM, Victorian Electoral Commissioner, discussed his views about this matter in a paper prepared for the University of Melbourne’s Electoral Regulation Research Network.

Mr Gately noted that, “while there may be a perception that campaign worker behaviour outside voting centres has descended to a new low...I think we need to be alert to the problem and act in a measured way and not immediately resort to regulation”.<sup>365</sup> Mr Gately said that “further regulation brings with it enforcement and its overheads and a heavy handedness uncharacteristic of elections in Australia”.<sup>366</sup>

<sup>363</sup> Simon Frost, State Director, Liberal Party of Victoria, Transcript of Evidence, 13 August 2015, p.3.

<sup>364</sup> Simon Frost, State Director, Liberal Party of Victoria, *Transcript of Evidence*, 13 August 2015, p.p.7-8.

<sup>365</sup> Warwick Gately AM, “Campaigning and Regulation: Time for Change”, Electoral Regulation Research Network Working Paper 32, University of Melbourne, Melbourne, November 2015, p.7. Retrieved 10 March 2016 from [law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0005/1773554/WP\\_32\\_Gatley.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0005/1773554/WP_32_Gatley.pdf).

<sup>366</sup> Warwick Gately AM, “Campaigning and Regulation: Time for Change”, Electoral Regulation Research Network Working Paper 32, University of Melbourne, Melbourne, November 2015, p.7. Retrieved 10 March 2016 from [law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0005/1773554/WP\\_32\\_Gatley.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0005/1773554/WP_32_Gatley.pdf).

Rather than adopt a formal requirement for campaign workers to be registered by political parties, Mr Gately suggested strengthening the how-to-vote card protocol governing the activities of campaign workers at voting centres. Mr Gately also called for stronger engagement strategies around the enhanced protocol – he particularly noted that the success of the protocol was dependant on the “commitment of [parties and candidates] to promulgate and adhere to the protocol”.<sup>367</sup>

**Assigning public safety officers at each voting centre to ensure the safety of electors, campaign workers and candidates, and to prevent intimidation. Also, the use of security cameras and other recording devices at voting centres.**

As noted earlier, Australian election campaigns are recognised internationally as peaceful, orderly and for their lack of electoral violence. Unlike some Western nations, such as the United States of America, where law enforcement officials in some states (such as New York)<sup>368</sup> may enter voting centres on Election Day, campaigning at voting centres is generally uneventful and electoral participants, on the whole, conduct their campaigns with respect for electors and competitors.

Despite this, as noted earlier, s174 of the *Electoral Act 2002* (Vic) authorises the police to assist Election Managers or election officials in the exercise of their powers.

In light of allegations of intimidation and threatening behaviour at some voting centres at the 2014 Victorian state election, some inquiry participants suggested there was a need for additional enforcement assistance at voting centres.

Rise Up Australia Party, Victoria Branch, called for security guards at voting centres. They noted:

“Should sensitivities increase between political parties canvassing voters as they attend at voting centres, like what is occurring in many places overseas, then the VEC may need to engage professional security services (either [Victoria Police] or private contractors) to pre-empt and constrain such a possibility”.<sup>369</sup>

Other inquiry participants did not support the need for additional enforcement at voting centres. Noah Carroll, State Secretary, Victorian Labor, addressed this issue in passing at the August 2015 public hearings. He said that enhancing security at voting centres would be a “retrograde” step for Victoria’s electoral process, given the state’s history of successful elections and peaceful changes of government.<sup>370</sup>

<sup>367</sup> Warwick Gately AM, “Campaigning and Regulation: Time for Change”, Electoral Regulation Research Network Working Paper 32, University of Melbourne, Melbourne, November 2015, p.8. Retrieved 10 March 2016 from [law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0005/1773554/WP\\_32\\_Gately.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0005/1773554/WP_32_Gately.pdf).

<sup>368</sup> Board of Elections in New York City, “Poll Worker Guide”, Board of Elections, New York, 2016. Retrieved 10 March 2016 from [vote.nyc.ny.us/html/workers/guide.shtml](http://vote.nyc.ny.us/html/workers/guide.shtml).

<sup>369</sup> Rise Up Australia Party, Victoria Branch, Submission No.47, p.2.

<sup>370</sup> Noah Carroll, State Secretary, Victorian Labor, Transcript of Evidence, 11 August 2015, p.p.6-7.

### Committee's view

One of the positive, defining features of Australian and Victorian election campaigns is that political parties and candidates may contest opinions expressed by others in the public domain, free from intimidation, threats and bullying. Notwithstanding this, the committee broadly agrees that campaigning in some cases at the 2014 Victorian state election was robust, and that some groups were mobilised to new levels of engagement with electoral campaigning.

During the inquiry the committee agreed on the following points:

- The VEC should strengthen its protocols relating to the conduct of campaign workers during elections and at voting centres, particularly relating to intimidation and bullying. The protocol should clearly acknowledge that intimidation, bullying and harassment of campaign workers, candidates and especially electors not be tolerated. Any incidences of such behaviour, when reported to Election Managers, must be dealt with pursuant to s174 of the *Electoral Act 2002* (Vic), and where appropriate, s152 of the *Electoral Act 2002* (Vic);
- In Australia and Victoria, elections are a celebration of democracy and an important time in civic life when the community comes together to select its elected representatives for Parliament;
- The committee acknowledges that the *Electoral Act 2002* (Vic), as it stands, provides some prescription in relation to threatening and intimidating behaviour at voting centres. Section 152 makes it an offence for anyone to hinder or interfere with the free exercise of a person's vote. Section 174 also empowers Election Managers to maintain peace and order at voting centres and, where appropriate, engage the police to assist them with their responsibilities under the *Electoral Act 2002* (Vic);
- While there have been no prosecutions in Victoria under the *Electoral Act 2002* (Vic) in relation to intimidation or bullying behaviour at voting centres, the VEC and other Australian electoral authorities have narrowly interpreted the provisions around deceptive, misleading behaviour in electoral legislation as they relate only to the casting of the vote.

### 6.7.3 The responsibilities and training of Election Managers

As noted earlier, s174 confers responsibilities on Election Managers to maintain order and peace at any election or voting centre.

Some inquiry participants suggested that Election Managers should receive additional training on how to manage disputes and ensure legislative compliance at voting centres.

In their submission the Liberal Party of Victoria recommend that the VEC “provide more comprehensive training on electoral laws to polling booth and election staff to allow them to adequately enforce the law at early voting centres and at polling booths”.<sup>371</sup> Simon Frost, State Director, Liberal Party of Victoria,

<sup>371</sup> Liberal Party of Victoria, Submission No.45, p.2.

reiterated this recommendation at the August 2015 public hearings.<sup>372</sup> In addition, some inquiry participants also discussed their perceptions about understaffing at voting centres, and the perception that understaffing meant that Election Managers were unable to effectively arbitrate disputes between campaign workers. In her submission Sarah Krumins said that when she tried to complain to [an Election Manager] about the behaviour of a campaign worker, she was told “they were in their words “under staffed” and didn’t help my claim”.<sup>373</sup>

Warwick Gately AM, Victorian Electoral Commissioner, also examined these issues in his paper for the University of Melbourne’s Electoral Regulation Research Network. Mr Gately agreed there had been incidences of poor behaviour at some voting centres at the 2014 Victorian state election. He also noted there was scope to “enhance election staff training such that there is a better understanding of current legislative requirements, the existence of the protocol and restrictions”.<sup>374</sup>

However, Mr Gately again cautioned against overregulation. Discussing the VEC’s ‘constructive engagement’ strategy towards enforcement issues at voting centres, Mr Gately noted that the role of Election Manager is becoming increasingly complex, and that asking election officials to assume additional responsibility for legislative compliance and enforcement might otherwise be expecting “too much” of people who are not full-time electoral officials. Mr Gately wrote:

“The role of the Election Manager is increasingly complex. Their internal focus at voting centres principally goes to compliance, client services and engagement. Thereafter their attention is given to security, staff performance and efficiency, accuracy and numeracy. They are dealing with more technology and imposed accountability requirements. They are constantly juggling public demand against resources and dealing with public frustrations all the while under a very close public scrutiny. They must manage their time to not only observe operations in the voting centre and its entrance but ensure their readiness to transition from voting centre to a results centre. These requirements are placed on a casual employee with varying skills and work experiences and different motivations in undertaking the role. Invariably their skills tool kit will not contain law enforcement experience. Nor would such a skill be desirable.

But can the Election Manager now take on additional roles? Do they have the capacity to maintain a campaign worker register and ensure that only authorised workers are handing out election material? How often during an already busy day would this be policed noting likely worker changeover rates? Does the Election Manager now take on responsibility for the allocation of advertising space at each voting centre and arbitrate on related disputes? Instead do we employ a “compliance officer or a private security officer” at each voting centre to manage these aspects of the election conduct and at considerable cost. I think the answer to all the questions posed is no”.<sup>375</sup>

<sup>372</sup> Simon Frost, State Director, Liberal Party of Victoria, Transcript of Evidence, 13 August 2015, p.3.

<sup>373</sup> Sarah Krumins, Submission No.14, p.1.

<sup>374</sup> Warwick Gately AM, “Campaigning and Regulation: Time for Change”, Electoral Regulation Research Network Working Paper 32, University of Melbourne, Melbourne, November 2015, p.p.5-6. Retrieved 10 March 2016 from [law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0005/1773554/WP\\_32\\_Gately.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0005/1773554/WP_32_Gately.pdf).

<sup>375</sup> Warwick Gately AM, “Campaigning and Regulation: Time for Change”, Electoral Regulation Research Network Working Paper 32, University of Melbourne, Melbourne, November 2015, p.p.6. Retrieved 10 March 2016 from [law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0005/1773554/WP\\_32\\_Gately.pdf](http://law.unimelb.edu.au/__data/assets/pdf_file/0005/1773554/WP_32_Gately.pdf).

### Committee's view

As noted by Warwick Gately AM, Victorian Electoral Commissioner, the role of Election Manager has become increasingly complex at recent Victorian state elections. While Election Managers are primarily responsible for the appropriate and fair conduct of an election and election count, they also have responsibility, pursuant to s174 of the *Electoral Act 2002* (Vic), for safety and security at voting centres.

To meet these responsibilities, the committee accepts that the workload of an Election Manager for Victorian state elections has increased in recent years. Election Managers oversee voting centres alongside other important roles, such as staff management and community engagement, and with an expectation of greater awareness and knowledge of information technology. Finding an appropriate balance between, on the one hand, what can reasonably be expected of a part-time employee who is not necessarily a professional electoral administrator, and on the other, the need to ensure that Election Managers meet their obligations to maintain order at voting centres pursuant to s174 the *Electoral Act 2002* (Vic), was an important issue for the committee during this inquiry.

The committee agreed there is scope to improve how Election Managers are trained. Pursuant to Mr Gately's advice in his 2015 paper for the Electoral Regulation Research Network, the committee notes the VEC should enhance staff training so that Election Managers are informed, during their orientation training programs when they join the Senior Election Official pool, about their obligations under s174 of the *Electoral Act 2002* (Vic). Training modules should also focus on the VEC's how-to-vote card protocol – all Election Managers should be aware of the protocol, what it contains and the importance of ensuring that all political parties and candidates follow the standards called for by the protocol.

The committee also notes that the how-to-vote card protocol could be distributed more widely. At present, the protocol is included in the Candidates Handbook for an election. This document should be available on the VEC's website in a prominent location. By doing this, the committee is of the view that the VEC could play a greater role in encouraging acceptable standards of behaviour at voting centres, without necessarily intervening in the realm of political debate and campaign conduct.

**FINDING 6:** The committee finds that intimidation of volunteers and party workers occurred at the 2014 Victorian state election.

**RECOMMENDATION 20:** The committee recommends the VEC enhance training for employees joining the Senior Election Official pool, emphasising an Election Manager's responsibility under s174 of the *Electoral Act 2002* (Vic) to maintain order and peace at voting centres. This training should also acknowledge the remedies and actions available to Election Managers when incidences of intimidation, bullying and threats occur at voting centres.



**RECOMMENDATION 21:** The committee recommends the VEC more widely distribute its how-to-vote card protocol, including displaying the protocol in a prominent location on its website. This will encourage greater awareness in the community of acceptable standards of behaviour at voting centres.

**RECOMMENDATION 22:** The committee recommends the VEC provide additional training for political parties and independent candidates regarding the VEC's how-to-vote card protocol.

#### 6.7.4 Discussion about the regulation of deceptive and misleading electoral material and conduct in Victoria

As noted earlier, section 84 of the *Electoral Act 2002* (Vic) provides for misleading or deceptive electoral material. Section 84 makes it an offence to print, publish or distribute, or cause, permit or authorised to be printed, published or distributed any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the vote of the elector. In addition, Section 148 of the *Electoral Act 2002* (Vic) also makes it an offence to provide orally or in writing any false or misleading information under the *Electoral Act 2002* (Vic).

In addition, and as noted earlier, the VEC receives some complaints at each Victorian state election referring to misleading and deceptive conduct under s84. However, due to the High Court's decision in *Evans v Crichton Browne 1981* 146 CLR 169, the VEC has no capacity to regulate publications or material that influence the political judgement of voters, only matters influencing the casting of the vote.

##### Amending s84 to strengthen the provisions around misleading and deceptive material

Some inquiry participants suggested that s84 of the *Electoral Act 2002* (Vic) required strengthening to cover misleading and deceptive conduct, not just material.

Jeremy Orchard, an individual who participated in the inquiry, argued that s84 of the *Electoral Act 2002* (Vic) should be amended to make it an offence for public sector employees to be involved in political activities.

The Liberal Party of Victoria also called for amendments to s84 of the *Electoral Act 2002* (Vic). At the August 2015 public hearings Simon Frost, State Director, Liberal Party of Victoria, explained the rationale behind this recommendation:

“Given the unprecedented behaviour at polling booths during the 2014 state election, I submit that the committee must give careful and thorough consideration to amending this clause to not only cover printed, published or distributed material but also to ensure deceptive conduct is not undertaken by those canvassing support from voters on the day. This strong action must be taken to ensure the integrity of our electoral system”.<sup>376</sup>

<sup>376</sup> Simon Frost, State Director, Liberal Party of Victoria, Transcript of Evidence, 13 August 2015, p.3.

### Amending s148 to strengthen the regulation of visual communications

As noted earlier, section 148 of the *Electoral Act 2002* (Vic) makes it an offence to provide orally or in writing any false or misleading information under the *Electoral Act 2002* (Vic).

Some inquiry participants called for amendments to s148.

In their submission The Nationals Victoria contended that s148 was not appropriate in relation to the use of visual messaging at the 2014 Victorian state election. The Nationals Victoria noted:

“Visual messaging was heavily utilised during the 2014 Victorian [s]tate [e]lection and took many forms, it is our contention that a number of these forms relayed false information. A number of simple examples follow:

- Digital/social media comments and graphics (sharables, websites content) that were clearly false and could be argued to have been defamatory;
- People dressed up and masquerading as fire fighters and nurses handing out literature at polling booths; and
- Photographs doctored and circulated via social media. While many will argue these are legitimate campaign techniques, there is a great deal of false information circulated in these formats and the Act as it stands appears to have limited if any power to address what is arguably the most powerful form of communication, visual messaging”.<sup>377</sup>

A CFA volunteer firefighter, who requested and was granted confidentiality by the committee, also made allegations relating to the false and misleading provisions in s148 of the *Electoral Act 2002* (Vic). In his submission he provided a copy of a print advertisement in the *Midland Express*, from 18 November 2014. The advertisement features an image of a volunteer firefighter and a fire appliance and statements about the former Napthine government’s alleged policies on Victoria’s firefighting services. He notes:

“...I’m advised that the “firefighter” in the advertisement is Peter Marshall, an office-bearer of the UFU and not an active firefighter. If this is correct, the advert should have carried a statement that actors were used to depict real firefighters, as well as an authorisation statement”.<sup>378</sup>

The committee notes that an official office bearer of the UFU, who is currently on leave, retains the classification of an active firefighter.

In April 2016, in response to correspondence from the committee, the Victorian Government Solicitor’s Office declined to provide the committee with legal advice regarding s148 of the *Electoral Act 2002* (Vic).

<sup>377</sup> The Nationals Victoria, Submission No.43, p.10.

<sup>378</sup> Name Withheld, Submission No.26, p.2.

## Regulating 'third party' support for political campaigns

Section 206 of the *Electoral Act 2002* (Vic) provides for political donations and expenditure for Victorian elections.

The only provision relating to political donation disclosure in the *Electoral Act 2002* (Vic) requires those political parties registered in Victoria, and which are also federally registered, to lodge a copy of their annual return with the VEC.

The committee notes that independent candidates are not required to lodge a copy of their election returns with the VEC. However, s208 (2) of the *Electoral Act 2002* (Vic) provides that, in order to receive an entitlement for public funding, “a candidate in the election who was not endorsed by a registered political party must, before the expiration of 20 weeks after Election Day, give the Commission a statement in an approved form specifying that the candidate has spent or incurred in relation to the election which is not less than the entitlement, or less than the entitlement, being the amount specified in the statement”.

During the inquiry the committee received two submissions relating to electoral campaigning in Morwell District at the 2014 Victorian state election. The submissions discuss allegations that Tracie Lund, an independent candidate in Morwell District, received financial and campaign support from third party organisations, including Get Up and Friends of the Earth (FOE).

One submission was from a group of residents in Morwell District, Cheryl Wragg, Lisa Sinha and John Stratford. The submission alleges that:

“Two organisations, Get Up and Friends of the Earth together with their candidate, Tracie Lund, misled and deceived voters during the 2014 Victorian state election in Morwell District. In the lead up to the election and during the entire election period, Ms Lund was misrepresented as an independent community candidate backed by a local and independent campaign group (LV First). This misrepresentation appeared on all printed campaign materials, in electronic advertising, in media reports and during public appearances”.<sup>379</sup>

The submission contends that allegations of this nature require legislative amendment to improve the transparency and accountability of groups and organisations providing support to candidates. To this end, the group recommends:

“That during an election campaign period, groups and organisations (as defined by the Act) that are supporting candidate/s must be required to notify voters of their support in prominent print media;

...During an election campaign, groups and organisations must be required to file a report to the Victorian Electoral Commission providing details of their support for candidate/s;

<sup>379</sup> Cheryl Wragg, Lisa Sinha and John Stratford, Submission No.48, p.1.

...In the event that groups and organisations fail to advertise their support for a candidate and/or file a report with the Victorian Electoral Commission penalties should apply to the groups, organisations and candidates in receipt of their support”.<sup>380</sup>

The submission also recommends that Tracie Lund return her public funding entitlements.<sup>381</sup>

In response to these claims, the committee received a submission from Cam Walker, representing FOE. The submission states that FOE had no involvement in campaigning in Morwell District prior to the 2014 Victorian state election.<sup>382</sup> It also notes:

“We wish to categorically state that at no point was Shaun Murray or any other member of FoE employed to work on the state election in the Seat of Morwell. We did carry out activities in the build up to the 2014 election, but these were not in the Seat of Morwell. Shaun Murray was employed by FoE for three months (from March 26 until June 26, 2014) as part of our renewable energy campaign, which was seeking to ensure the national Renewable Energy Target was not reduced. Additionally, we worked with, and provided support to Voices of the Valley in the aftermath of the Hazelwood fire. FOE’s involvement in the Seat of Morwell ended on June 26.

FoE did not collaborate in any way with GetUp in the 2014 state election”.<sup>383</sup>

### Committee’s view

The committee notes that independent candidates who contest Victorian state elections should be required, like federally registered political parties, to lodge a statement of election return with the VEC, pursuant to s206 of the *Electoral Act 2002* (Vic). Given the significant increase in candidates at the 2014 Victorian state election, this measure will assist electors to identify independent candidates’ major sources of funding, and increase the transparency of Victoria’s electoral processes.

The committee notes that this recommendation was also supported by the then Electoral Matters Committee in the 56<sup>th</sup> Parliament. As part of its inquiry into political donations and disclosure the then committee found that disclosure and reporting provisions which apply to federally registered parties should also apply to independent candidates for Victorian state elections.

**RECOMMENDATION 23:** The committee recommends the *Electoral Act 2002* (Vic) be amended to require independent candidates to lodge a statement of election return with the VEC within 60 days after the election, with the return noting the sources of funding received during the appropriate election campaign.

<sup>380</sup> Cheryl Wragg, Lisa Sinha and John Stratford, Submission No.48, p.2.

<sup>381</sup> Cheryl Wragg, Lisa Sinha and John Stratford, Submission No.48, p.2.

<sup>382</sup> Cam Walker, Friends of the Earth, Submission No.57, p.p.1-2.

<sup>383</sup> Cam Walker, Friends of the Earth, Submission No.57, p.p.1-2.

# 7

## Evaluation of the 2014 Victorian state election's electoral administration, and the Victorian Electoral Commission

### AT A GLANCE

- Despite some unique challenges due to increased early voting, the committee acknowledges that the 2014 Victorian state election was well-managed.
- Following each state election the VEC commissions an independent evaluation of key stakeholders in the electoral process. Political parties and candidates expressed positive views about the VEC's overall performance in the 2014 Victorian state election.
- Electors were also positive about the voting experience at the 2014 Victorian state election, although queueing at early voting centres was a concern for some electors.
- During the inquiry the Victorian Auditor-General completed the first performance review of the Victorian Electoral Commission.
- Following the 2014 Western Australian Senate re-election, ballot paper security is a major issue for all Australian electoral commissions. The committee acknowledges the VEC's heightened security processes at the 2014 Victorian state election.

Overall, the committee notes that the 2014 Victorian state election was well managed. Despite facing some unique challenges, such as unprecedented demand for early voting services and considerable public scrutiny of ballot paper security following the 2013 federal election, the committee commends the VEC for its continued efforts to provide high quality electoral services to all Victorians.

As mentioned in Chapter One, parliamentary oversight of Victoria's electoral administration is an important component of Victoria's democratic system. This inquiry, and others by the Electoral Matters Committee, provide opportunities for members of Parliament to scrutinise Victorian elections and receive evidence directly from members of the public, experts and organisations about the conduct of the election. In addition, these inquiries stimulate public debate about the conduct of Victorian state elections, electoral administration and the VEC's performance.

This chapter evaluates the views of key stakeholder groups about the management of the 2014 Victorian state election, the VEC's performance and additional administrative matters arising from the 2014 Victorian state election. The chapter first reviews inquiry participants' perceptions about the administration of the 2014 Victorian state election, including the views of political parties, candidates and electors. The committee then considers findings from the Victorian Auditor-General's performance audit – the first ever of its kind – of the VEC, which was tabled in Parliament in February 2016. The chapter concludes with the committee addressing some administrative matters arising from the 2014 Victorian state election, specifically the VEC's measures to ensure ballot security in the aftermath of the 2013 federal election, when 1,347 votes were lost by the AEC.

## 7.1 VEC's election evaluation activities

As part of its election evaluation activities the VEC surveys key stakeholder groups, seeking their views about the election and the VEC's performance. In 2014 the VEC surveyed political parties, candidates and electors.

## 7.2 Political parties and candidates

As noted in the VEC's report to Parliament on the 2014 Victorian state election, "political party representatives were unanimously positive about the VEC's overall performance in the 2014 Victorian state election".<sup>384</sup> Communication from "the VEC and voting services provided to the public were all generally considered to be of a high standard, well run and professional. Communication from the VEC and that delivered to voters was believed to have been relevant and useful".<sup>385</sup>

<sup>384</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.49.

<sup>385</sup> Victorian Electoral Commission, "Report to Parliament on the 2014 Victorian state election", Victorian Electoral Commission, Melbourne, September 2015, p.49.

Political party representatives suggested some areas for improvement. These were:

- “Shortening of the early voting period (as addressed in Chapter Three);
- Faster counting of early votes (as addressed in Chapter Three);
- A requirement for all postal votes to be returned directly to the VEC, rather than political parties (as addressed in Chapter Three);
- More attention to voting centre logistics, such as accessibility, shade, toilets (as addressed in Chapter Five); and
- Improved training of voting centre staff to ensure that they operated appropriately within their areas of responsibility; (as addressed in Chapter Six).<sup>386</sup>

### 7.3 Electors

Electors surveyed by the VEC were “nearly unanimous in their praise for the services provided at the 2014 Victorian state election”. Election officials “were praised for their helpfulness, assistance and efficiency, and the layout and organisation of voting centres was well received”.<sup>387</sup>

The overall satisfaction rates of all electors surveyed was high:

- 92 percent of ordinary and absent voters were satisfied with the voting experience;
- 95 percent of electors from CALD backgrounds were satisfied with the voting experience;
- 92 percent of electors who voted at an early voting centre were satisfied with the voting experience; and
- 91 percent of electors who voted via post were satisfied with the voting experience.<sup>388</sup>

The committee notes only 60 electors were surveyed.

Amongst all categories of electors, one of the common concerns was queuing:

- The survey indicates that the amount of time spent voting was important to ordinary [Election Day] electors. As noted by the VEC, most ordinary electors surveyed wanted voting to “be quick and easy with no queues. Nearly half of voters queued for five minutes or less (22 percent – 6-10 minutes; one percent – 11-15 minutes; six percent – 16-20 minutes; 14 percent – longer than 20 minutes);

<sup>386</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.51.

<sup>387</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.50.

<sup>388</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.50.

- Amongst the electors surveyed who voted at an early voting centre, there was a considerable increase in queueing. Twenty percent “felt they had to queue for too long in 2014 as opposed to one percent in 2010”. The VEC suggests this could be due to increased demand for early voting services at the 2014 Victorian state election; and
- Amongst those electors from CALD communities surveyed, 22 percent felt they had to queue for too long.<sup>389</sup>

Chapter Three addresses concerns about queueing at voting centres at the 2014 Victorian state election.

## 7.4 Victorian Auditor-General's performance audit of the VEC, 2015/16

In February 2016 the Victorian Auditor-General completed the first ever performance review of the VEC. The audit was conducted pursuant to s4B of the *Audit Act 2004* (Vic).

This audit assessed whether the 2014 Victorian state election was effectively planned and encouraged full participation in the voting process. This involved reviewing the VEC's “planning, recruitment and logistical processes, its performance against indicators in the state election service plan, and complaints and satisfaction data”.<sup>390</sup> The audit also assessed the VEC's engagement programs.

The audit noted that VEC faced several challenges in its administration of the 2014 Victorian state election;

“The VEC faced unique circumstances in the 2014 state election, including unprecedented numbers of political parties registering to contest the election and high early-voter turnout across the state. This created challenges to deliver services that were high quality, inclusive and responsive to changing voter and candidate needs. Yet, [the] VEC delivered an election that kept pace with previous levels of timeliness, accuracy and voter satisfaction. There were no security breaches—in fact, [the] VEC strengthened its processes for the movement and storage of ballot materials.

The VEC performed well against its key performance indicators, which were published prior to the election, for the first time, in 2014. This made [the] VEC more accountable for its election services. However, the indicators can be improved by including a greater range of key performance indicators that demonstrate accountability to all voters—including those who have difficulties voting or are unlikely to do so. There are a range of positive engagement programs for under-represented communities that VEC currently undertake. VEC could publicly commit to these initiatives and be held accountable through public performance

<sup>389</sup> Victorian Electoral Commission, “Report to Parliament on the 2014 Victorian state election”, Victorian Electoral Commission, Melbourne, September 2015, p.50.

<sup>390</sup> Victorian Auditor-General, “Performance Audit: Victorian Electoral Commission, 2015/2016”, Victorian Auditor-General, Melbourne, February 2016, p.x.



indicators and outcomes that target culturally and linguistically diverse, Indigenous and other communities. Ensuring that targets and indicators promote inclusiveness and are sufficiently ambitious is the next step”.<sup>391</sup>

The audit's key findings are in three areas: planning, performance and accessible voting. The audit recommended the VEC:

- “Further develops and publishes election performance indicators for activities aimed at improving participation among those traditionally under-represented in the electoral system;
- Implements a complaints policy that includes a clear, documented escalation process; and
- Evaluates its election accessibility and participation outcomes as a basis for developing an evidence-based strategy for the 2018 state election”.<sup>392</sup>

Regarding planning, the audit found:

“VEC has developed planning tools to assist staff in setting up and rolling out voting centres across the state. These tools helped VEC to meet its planning milestones in relation to office set up and readiness to open. Senior election staff are trained to solve problems with the support of a network of experienced staff. The major problem faced by staff in early voting centres—open two weeks prior to Election Day—was the unprecedented rise in early voting. Guidance and advice was available to those managing early voting centres, but queue lengths grew in centres across the state. VEC's planning allowed for an increase in the number of people voting in the early voting period, however, demand was unprecedented—almost 70 per cent higher than in 2010. This had some impact on voter satisfaction with queue lengths but did not, on the whole, interfere with VEC's ability to conduct the election in a secure and accurate manner”.<sup>393</sup>

Chapter Three addresses concerns about queuing at voting centres at the 2014 Victorian state election.

Regarding the VEC's overall performance, the audit found:

“Satisfaction with the voting experience remained high in 2014 across different categories of voters—over 90 per cent of early voters satisfied with their experience. However, the proportion of early voters who felt they had to queue for too long jumped from 1 per cent in 2010 to 20 per cent in 2014. VEC acknowledges that some voters experienced long queues when voting early.

While first-preference results were counted at a slightly faster rate than for the 2010 election, only around 60 per cent of votes were counted on Election Night. A high number of early votes can impact on VEC's ability to complete early vote counts on Election Night. This can impact upon their capacity to identify on Election Night, which party may have enough seats to be able to form government, where the

<sup>391</sup> Victorian Auditor-General, “Performance Audit: Victorian Electoral Commission, 2015/2016”, Victorian Auditor-General, Melbourne, February 2016, p.x.

<sup>392</sup> Victorian Auditor-General, “Performance Audit: Victorian Electoral Commission, 2015/2016”, Victorian Auditor-General, Melbourne, February 2016, p.xii.

<sup>393</sup> Victorian Auditor-General, “Performance Audit: Victorian Electoral Commission, 2015/2016”, Victorian Auditor-General, Melbourne, February 2016, p.x.

outcome is close. However this was not the case in 2014. Early votes are not typically counted until the Monday following the election. Following the 2014 election, VEC recommended to Parliament that legislation be amended to allow pre-sorting of votes, to improve its ability to count early votes on Election Night and provide greater certainty to parties”.<sup>394</sup>

Chapter Three addresses the counting of early votes on Election Night.

Regarding accessible voting, the audit found:

“Providing sufficient numbers of voting venues that accommodate wheelchair users is an ongoing challenge for VEC. It relies on a mix of government and privately owned buildings with often limited accessibility. A comprehensive accessibility tool is used to rate venues, and VEC provides a range of information on its website. VEC set an ambitious target for fully wheelchair accessible voting centres, but this target was not met. At the request of its disability advisory group, VEC will provide additional information online for future elections, so that voters with particular accessibility requirements can determine which voting centres are accessible to them, rather than relying only on the rating provided by election staff.

The accessibility super centres were a pilot, designed to provide additional supports to people with disabilities and language difficulties. The electronically assisted voting system, vVote, designed for people with low or no vision and communication difficulties, was poorly utilised by these cohorts. It will be difficult to expand vVote for broader use. Due to their complexity both vVote and the super centres require extensive staff training. The super centres—based in six locations across Victoria—were not practical for those who prefer to vote locally, where the route and venue itself are more familiar.

VEC’s civic participation programs attempt to reach parts of the community who traditionally do not vote or who find it difficult to vote. VEC’s promising ‘Democracy Ambassadors’ project aims to build the capacity of leaders in Horn of Africa communities to engage others in the democratic process. Other projects raise awareness of voting and democracy to people in disability group homes, homeless people and young Aboriginal leaders, among others. The impact of these projects is difficult to assess. VEC has started to record information to assist with evaluation of these projects and understanding improvements in enrolments”.<sup>395</sup>

Chapter Five addresses the VEC’s community engagement initiatives.

### **Committee’s view**

The committee thanks the Auditor-General for the 2015/2016 performance audit of the VEC.

Nevertheless, the committee is of the view that the audit’s final report does not address some key issues in relation to the VEC’s performance.

<sup>394</sup> Victorian Auditor-General, “Performance Audit: Victorian Electoral Commission, 2015/2016”, Victorian Auditor-General, Melbourne, February 2016, p.x.

<sup>395</sup> Victorian Auditor-General, “Performance Audit: Victorian Electoral Commission, 2015/2016”, Victorian Auditor-General, Melbourne, February 2016, p.x.

In particular, the committee notes that under the original scope of the audit, the Auditor-General was to examine the VEC's "planning, procedures, systems and arrangements used during the 2014 Victorian state election". This was to include a review of the "electronic election management system, procurement processes and handling of election staff training". While the committee accepts that the audit's findings in relation to these matters were communicated in a management letter to the VEC, the committee notes this information should be made available to the public. With this information in the public domain the committee, and the Parliament, would be better positioned to assess the VEC's performance in relation to the "cost-per-vote type" of conducting Victorian state elections.

Such advice would have also assisted the committee's deliberations in relation to the training of Election Managers, and the counting of early votes on Election Night.

## 7.5 Ballot paper security at the 2014 Victorian state election

As noted in Chapter Two, the 2013 federal election was affected by the AEC's loss of 1,370 ballot papers in Western Australia. As a result of this, the AEC petitioned the High Court of Australia (acting as the Court of Disputed Returns) seeking an order "that the Western Australian Senate Election of six senators be declared void".<sup>396</sup> The AEC conducted a re-election for six senators for Western Australia on 5 April 2014.

In early November 2013, the AEC commissioned Mr Mick Keelty AO APM to undertake an inquiry into the circumstances of the missing ballot papers identified during the recount of Senate votes in Western Australia. The Keelty report was released in December 2013. It concluded that the AEC's administrative processes in Western Australia contributed to the loss of the ballot papers, and "the fact that the fate of the missing ballot papers will likely never be ever fully explained".<sup>397</sup>

The final report included 32 findings and recommendations. Some of the key findings were:

- "The implementation of material management policies and systems for the management of all aspects of ballot paper movement and storage that are consistent with the long term sensitivity of ballots and that reflect industry best practice. Specific recommendations include introducing 'tamper-evident' materials for the transfer and storage of ballot papers,

<sup>396</sup> Australian National Audit Office, "The Australian Electoral Commission's Storage and Transport of Completed Ballot Papers at the September 2013 Federal General Election", Australian National Audit Office, February 2014. Retrieved 10 March 2016 from <http://www.anao.gov.au/Publications/Audit-Reports/2013-2014/The-AECs-Storage-and-Transport-of-Completed-Ballot-Papers-at-the-2013-Federal-Election/Audit-summary>.

<sup>397</sup> Australian National Audit Office, "The Australian Electoral Commission's Storage and Transport of Completed Ballot Papers at the September 2013 Federal General Election", Australian National Audit Office, February 2014. Retrieved 10 March 2016 from <http://www.anao.gov.au/Publications/Audit-Reports/2013-2014/The-AECs-Storage-and-Transport-of-Completed-Ballot-Papers-at-the-2013-Federal-Election/Audit-summary>.

both to and from vote counting centres, as well as for long term storage in warehouses. The installation of CCTV and alarms at warehouses is recommended;

- The introduction of controls for disposal of recycling or other materials to ensure that no ballot material is inadvertently lost;
- That all relevant staff have skills in contract management and contract enforcement;
- That the AEC's approach for the training of electoral staff (permanent and casual) ensure adequacy, national consistency, effectiveness, and the rigour of assessment measures; and
- That measures are implemented to ameliorate the pressures on staff arising from the expectation that all results will be known on polling day, and the logistical issues arising from the size of the Senate ballot papers".<sup>398</sup>

### 7.5.1 VEC's response

As a result of the 2013 federal election and subsequent investigations by Keelty, many of Australia's electoral commissions, including the VEC, have strengthened their ballot paper security measures.

For the 2014 Victorian state election, the VEC instigated a review of its logistical integrity and materials management practices and procedures. The review:

"...closely examined the lifecycle of a ballot paper and identified more than 90 instances where a ballot paper may be handled, transferred, or stored by or between election officials. Each instance was considered and a number of recommendations were made. The recommendations included specific areas for further training of Senior Election Officials, election office staff and Election Day staff, as well as changes to labels, forms and procedures to improve the accountability of materials and packaging. The VEC incorporated the review recommendations into its 2014 Victorian state election planning".<sup>399</sup>

In addition, the Victorian Auditor-General's final report on the performance audit of the VEC noted that there were "no security breaches [at the 2014 Victorian state election] – in fact, VEC strengthened its processes for the movement and storage of ballot materials."<sup>400</sup>

<sup>398</sup> Australian National Audit Office, "The Australian Electoral Commission's Storage and Transport of Completed Ballot Papers at the September 2013 Federal General Election", Australian National Audit Office, February 2014. Retrieved 10 March 2016 from <http://www.anao.gov.au/Publications/Audit-Reports/2013-2014/The-AECs-Storage-and-Transport-of-Completed-Ballot-Papers-at-the-2013-Federal-Election/Audit-summary>.

<sup>399</sup> Victorian Electoral Commission, "Selections 19", Victorian Electoral Commission, Melbourne, July 2014, p.3.

<sup>400</sup> Victorian Auditor-General, "Performance Audit: Victorian Electoral Commission, 2015/2016", Victorian Auditor-General, Melbourne, February 2016, p.ix.

### **Committee's view**

Elections are the key tenet of Australia's and Victoria's democratic system. As noted by the Victorian Auditor-General, electors must be confident that their ballot paper is secret, securely transferred and counted using robust and verified methods.

The committee notes the VEC's efforts to strengthen and improve its ballot paper security processes for the 2014 Victorian state election.

The committee also encourages the VEC to continue enhancing its ballot paper security protocols.

**Committee Room  
Parliament House  
14 April 2016**



# Appendix 1

## List of submissions

Submission No.	Name	Organisation
1	Malcolm Mackerras AO – Part A, Part B and Part C	
2	Bernard Harris	
3	Sandra Isaacs	
4	Ryan Ebert	
5	Victor Bennett	Independent candidate for Melton
6	Colin Watson	Geelong and Districts Branch, Blind Citizens Australia
7	Michael Challinger	
8	Francesco Timpano	Candidate for Pascoe Vale
9	Thuy Hung Vo	Independent candidate for Keysborough
10	Mark Furner MP, Chair - Part A and Part B	Legal Affairs & Community Safety Committee, QLD
11	Jack Medcraft	
12	Dr Roland Wen and Associate Professor Richard Buckland	School of Computer Science and Engineering, University of New South Wales
13	Matthew Potocnik	
14	Sarah Krumins	
15	Noah Carroll	Victorian Labor
16	Warwick Gately AO Electoral Commissioner	Victorian Electoral Commission
17	Appollo Yianni	Independent candidate for Niddrie
18	Pauline Williams, Housing Rights Co-ordinator on behalf of AMIDA	Action for More Independence and Dignity in Accommodation (AMIDA)
19	Ralph Ross	Kallista - The Patch Fire Brigade
20	David J. Stanton - Part A and Part B	Independent candidate for Nepean
21	Jacqueline Rose	Independent candidate for Morwell
22	Dr Vanessa Teague and Professor Rajeev Gore	
23	James C. Murphy	
24	Ray Jordan	
25	Darren M. Bain	Independent candidate for Northern Metropolitan Region
26	NAME WITHHELD	PERSONAL DETAILS REDACTED

Submission No.	Name	Organisation
27	Douglas Leitch, Federal Director	Australian Sex Party
28	Gerard Donohue	
29	Steven Armstrong	Independent candidate for Albert Park
30	Jeremy Orchard	
31	Bill Watson AFSM	President, District 13, Volunteer Fire Brigades Victoria
32	John Barry Myers	Independent candidate for Caulfield
33	Sam Campbell	Director, ScytI Australia Pty Ltd
34	Clare Le Serve	Independent candidate for Bass
35	Stephen Morey	Secretary, PRSAV-T Inc.
36	Algimantas Kacinskas	Potential Independent Candidate
37	Clive Jackson	Candidate for Southern Metropolitan Region (Endorsed by Australian Democrats)
38	Peter Campbell	Independent candidate for Burwood
39	Tim Wilms, Victorian Treasurer, LDP	Liberal Democratic Party Victoria
40	Anthony van der Craats – Part A, Part B, Part C, Part D	
41	Spero Katos, Secretary	Australian Christians Victoria
42	Jacob Clifton, Manager, Government Relations and Policy	Vision Australia
43	Jenny Hammett, State Director	The Nationals
44	Chris Curtis	
45	Simon Frost, State Director	Liberal Party of Australia (Victorian Division)
46	Alan Menadue	Independent candidate for Prahran
47	Anthony Moore, Team Member	Rise Up Australia Party (Victorian Division)
48	Cheryl Wragg, Lisa Sinha, John Stratford	
49	Luke Hilakari, Secretary	Victorian Trades Hall Council
50	Luzio Grossi – Part A, Part B	Independent candidate for Southern Metropolitan Region
51	Me'ad Assan, Policy Officer - Part A and Part B	Ethnic Communities' Council of Victoria
52	Antony Green	Election Analyst
52A	Antony Green Supplementary	Election Analyst
53	Peter Marshall, Secretary	United Firefighters Union, Victorian Branch
54	Dr Katrina Rainsford	Independent candidate for Lowan
55	Arthur Ranken	
56	Maria Rigoni	Candidate for Palmer United Party – Northern Metropolitan
57	Cam Walker	Friends of the Earth



# Appendix 2

## Public Hearings

### 11 August 2015

No.	Witness	Organisation
1	Noah Carroll, State Secretary	Victorian Labor
2	Jenny Hammett, State Director	The Nationals
3	Darren Bain	Independent candidate Northern Metropolitan Region
4	Douglas Leitch, Federal Director	Sex Party
5	Anthony Moore, Secretary and interim President Patrick Thomas, Committee Member	Rise Up Australia Party ( Victorian Division)
6	Colin Watson, President	Geelong and Districts Branch of Blind Citizens Australia
7	Peter Marshall, State and National Secretary	United Firefighters Union – Victorian Branch
8	Antony Green	In capacity as private individual
9	Warwick Gately, Electoral Commissioner Liz Williams, Deputy Electoral Commissioner Glenda Frazer, Manager, Election Services Sue Lang, Manager, Communication, Education and Research	Victorian Electoral Commission

### 12 August 2015

No.	Witness	Organisation
10	Simon Frost, State Director Donna Bauer, Member Administrative Committee, former member for Carrum	Liberal Party of Victoria
11	Chris Curtis	
12	Maria Rigoni	Palmer United Party Candidate
13	Luke Hilakari, Secretary	Victorian Trades Hall Council
14	Geoffrey Goode, President Dr Jeremy Lawrence, Treasurer	PRSAVT (Proportional Representation Society Australia (Victoria - Tasmania) Inc)
15	Anthony van der Craats	
16	Cheryl Wragg John Stratford	
17	Bill Watson, President	Volunteer Fire Brigades Vic, District 13

## 14 September 2015

No.	Witness	Organisation
18	Maryanne Diamond AO, General Manager, Advocacy and Engagement	Vision Australia
	Karen Taranto, Advocacy Advisor, Advocacy and Engagement	
	Julie McKay, Government Relations Advisor, Advocacy and Engagement	
19	Me'ad Assan, Policy Officer	Ethnic Communities' Council of Victoria

## 5 October 2015

No.	Witness	Organisation
20	Matthew Potocnik	
21	Malcolm Mackerras AO	

# Appendix 3

## Interstate and international investigations

### Meeting schedule – Sydney

No.	Meeting date	Participants	Organisation
1	24 August 2015 10.00am -11.45am	Mr Colin Barry, Electoral Commissioner	NSW Electoral Commission
2	24 August 2015 12.30pm - 2.00pm	Hon Robert Borsak MLC, Deputy Chair Mr Adam Crouch MP The Hon Melinda Pavey MP Mr Mark Taylor, MP Ms Anna Watson MP The Hon Ben Franklin MLC The Hon Courtney Housson MLC The Hon Dr Peter Phelps MLC The Hon Peter Primrose MLC	NSW Parliament Joint Standing Committee on Electoral Matters

### Meeting schedule – Brisbane

No.	Meeting date	Participants	Organisation
3	25 August 2015 9.30am – 11.00am	Mr Walter van der Merwe, Electoral Commissioner Mr Dermot Tiernan, Assistant Electoral Commissioner Mr Lesley Trost, Principal Executive Officer Mr Peter McGraw, Director, Elections, Operations and Planning Mr Greg Rowe, Director, Elections Support and Change Commission Mr David Gottke, Assistant Director, Funding, Disclosure and Regulation	Queensland Electoral Commission
4	25 August 2015 11.15am – 12 noon	Dr Graeme Orr, Professor of Law	University of Queensland
5	25 August 2015 12.30pm – 2.00pm	Mr Mark Furner, Chair Mrs Tarnya Smith, Deputy Chair Mr Jon Krause MP Mr Jim Madden MP Mr Tony Perrett MP Mr Mark Ryan MP	Queensland Parliament's Legal Affairs and Community Safety Committee

## Meeting schedule – Adelaide

No.	Meeting date	Participants	Organisation
6	21 September 2015 9.30am – 11.15am	Mr David Gully, South Australian Acting Electoral Commissioner	Electoral Commission South Australia
		Mr Russell Parkins, Manager, Elections	
		Ms Sue Gosden, Manager, Community Awareness and Research	
7	21 September 2015 11.30am – 12.15pm	Ms Jenni Newton-Farrelly, Electoral Specialist	South Australian Parliamentary Library
8	21 September 2015 12.30pm – 2.15pm	Hon Russell Wortley MLC President	Legislative Council
		Hon Michael Atkinson MP Speaker	Legislative Assembly

## Meeting schedule – New Zealand

No.	Meeting date	Participants	Organisation
9	29 February 2016 9.30 am – 11.00am	Ms Kristina Temel Manager, Electoral Policy	New Zealand Electoral Commission
		Ms Mandy Bohte, National Manager	Electoral Enrolment Centre, Division of New Zealand Post
10	29 February 2016 11.15am – 12.30pm	Dr Mike Reid, Principal, Policy Advisor	Local Government New Zealand
		Ms Anusha Guler, Manager Democratic Services	Wellington City Council
		Ms Pallavi Chhibber, Senior Policy Analyst	Department of Internal Affairs
		Ms Clare Sullivan, Principal Governance Advisor, Democratic Services	Local Government New Zealand
11	29 February 2016 2.00pm – 3.15pm	Ms Alanna McKay, First Secretary Political	Australian High Commission, New Zealand
		Ms Emma Goodwin, Third Secretary	
		Mr Tony Wilson, Political Policy Analyst	
		Mr John Brown, Trade Commissioner	
12	29 February 2016 3.30pm – 4.30pm	Mr Cameron Cotter, Deputy Party Secretary	New Zealand National Party
		Mr Stuart Mullin, Membership Development Manager	
13	1 March 2016 9.00am	Rt Hon David Carter MP, Speaker	Parliament of New Zealand
14	1 March 2016 11.00am -12.00pm	Professor Andrew Geddis, Professor of Public Law	University of Otago

No.	Meeting date	Participants	Organisation
15	1 March 2016 12.30pm - 1.45pm	Ms Jacqui Dean, Chair Mr Jono Naylor MP, Deputy Chair Mr Denis O'Rourke MP Ms Jacinda Ardern MP Ms Charlotte Dawber-Ashley, Parliamentary Officer, Office of the Clerk of the House of Representatives Ms Esther Zorn de Reus, Clerk (Acting)	New Zealand Parliament, Justice and Electoral Committee
16	1 March 2016 3.15pm - 4.30pm	Hon David Parker MP Mr Trevor Mallard MP	New Zealand Labour Party
17	2 March 2016 10.30am - 11.15am	Ms Suzanne Snively, Chair Ms Janine McGruddy, Deputy Chair	Transparency International
18	2 March 2016 11.15am - 12.00pm	Professor Jack Vowles, Professor, School of History, Philosophy, Political Science & International Relations	Victoria University



# Appendix 4

## Electoral Matters Committee reports and discussion papers

Report no.	Title	Date
1	Inquiry into the conduct of the 2006 Victorian state election and matters related thereto	June 2008
2	Report on international investigations into political donations and disclosure and voter participation and informal voting	December 2008
3	Inquiry into political donations and disclosure	April 2009
4	Inquiry into voter participation and informal voting	July 2009
5	Inquiry into the provisions of the <i>Electoral Act 2002</i> (Vic) relating to misleading or deceptive political advertising	February 2010
6	Inquiry into the functions and administration of voting centres	June 2010
7	Inquiry into the 2010 Victorian state election and matters related thereto	May 2012
8	Inquiry into the future of Victoria's electoral administration - discussion paper	November 2012
9	International investigations into the future of Victoria's electoral administration	August 2013
10	Inquiry into the future of Victoria's electoral administration	March 2014
11	Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration - discussion paper	August 2014





# Extract from the minutes of proceedings

**Thursday 14 April 2016**

The Committee divided on the following questions during consideration of this Report, with the result of the divisions detailed below. Questions agreed to without division are not recorded in these extracts.

**No. 1.** The Chair moved the following text be included in section 6.7.2 – subtitled – **Whether representatives of public sector organisations should be allowed to campaign in uniform**

The committee finds that public property, such as fire trucks, were used during the 2014 Victorian State election. It is implausible to claim that there was only one decommissioned fire truck used in the 2014 Victorian state election campaign, given the number of fire trucks seen all over the state.

Seconded Hon Russell Northe.

**The Committee divided\***

**Ayes: 3**

Hon Louise Asher MP  
Hon Russell Northe MP  
Ms Fiona Patten MLC

**Noes: 2**

Hon Adem Somyurek MLC  
Ms Ros Spence MP

**Motion carried.**

*\* Ms Lizzie Blandthorn MP acted as pair in the absence of the Hon Martin Dixon MP.*

**No. 2.** The Chair moved the following recommendation be added to the report –

**Recommendation 19**

The committee recommends that the Public Sector Code of Conduct be amended to prohibit public sector workers using government property, such as ambulances, fire trucks and uniforms for political purposes and in election campaigns and that penalties be developed for a breach of this type.

Seconded Hon Russell Northe MP

**The Committee divided\***

**Ayes: 3**

Hon Louise Asher MP  
Hon Russell Northe MP  
Ms Fiona Patten MLC

**Noes: 2**

Hon Adem Somyurek MLC  
Ms Ros Spence MP

**Motion carried.**

*\* Ms Lizzie Blandthorn MP acted as pair in the absence of the Hon Martin Dixon MP.*

**No. 3.** The Chair moved the following recommendations be added to the report –

**Recommendation 6.XX**

That S152 of the *Electoral Act 2002* (Vic) be amended to include protection of anyone outside a voting centre from violence or intimidation.

**Recommendation 6.XX**

That S174 of the *Electoral Act 2002* (Vic) be amended to include a new power to give election managers the power to remove people who are engaging in intimidatory behaviour in the vicinity of either an early voting centre or a voting centre.

Seconded Hon Russell Northe MP

**The Committee divided\***

**Ayes: 2**

Hon Louise Asher MP  
Hon Russell Northe MP

**Noes: 3**

Ms Fiona Patten MLC  
Hon Adem Somyurek MLC  
Ms Ros Spence MP

**Motion negatived.**

*\* Ms Lizzie Blandthorn MP acted as pair in the absence of the Hon Martin Dixon MP.*

# Minority report

This report is submitted by Louise Asher, the Member for Brighton, Martin Dixon, the Member for Nepean and Russell Northe, the Member for Morwell.

The Electoral Matters Committee found that “intimidation of volunteers and party workers occurred at the 2014 Victorian State election.” However, the Committee did not suggest any remedies that could be applied to future elections.

We believe that the Electoral Act 2002 needs to be amended to include clauses that would prohibit the type of behaviour that a number of submissions addressed.

Section 152 of the Electoral Act reads as follows:

“ (1) A person must not hinder or interfere with the free exercise or performance, by any other person, of any political right or duty that is relevant to an election under this Act.”

and

(2) A person must not, by violence or intimidation, influence the vote of a person at an election.”

So, Section 152 of the Electoral Act covers hindrance and interference directed against voters. We do not believe that volunteers and party workers are covered by these sections because these people are not in the process of actually exercising a vote. They are exercising a democratic right to hand out election material but these activities are not covered under this section of the Act itself.

Section 174 of the Electoral Act defines the powers of election managers and officials as follows:

## 174

“ (1) Any election manager or election official has the power and authority –

- (a) to maintain order and keep the peace at any election or voting at a voting centre; and
- (b) to cause to be removed any person who –
  - (i) obstructs the approaches to a voting centre; or
  - (ii) wilfully or unnecessarily obstructs or delays the proceedings at a voting centre; or
  - (iii) behaves in a disorderly manner; or
  - (iv) remains in a voting centre for a longer time than is reasonably necessary for the purpose of voting; or
  - (v) causes a disturbance at any election.”

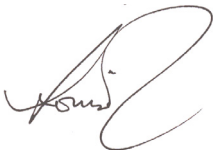
Section 174 of the Electoral Act, therefore, gives election managers the power to maintain order at a voting centre and to remove people under certain circumstances, for example obstructing “ the approaches to a voting centre.” Most of the election managers’ powers relate to behaviour actually occurring in a voting centre and there is no reference to a power to remove somebody for intimidating a volunteer.

We recognise that section 174 of the Electoral Act gives power to both the election manager and election officials. In considering broader powers, we are of the opinion that only the election manager should exercise these broader powers, not all election officials.

We are also conscious of the fact that the Victorian Electoral Commission is reluctant to act on complaints and would prefer to rely on goodwill on the part of those canvassing for votes outside voting centres. Unfortunately, whilst we strongly support the recommendation for the VE C to be given further training responsibilities for political parties and independent candidates, we believe that the type of behaviour both witnessed and reported outside voting centres in 2014 cannot be allowed to continue in the 2018 election campaign.

Recommendations

- 1) That section 152 of the Electoral Act be amended to include protection of anyone outside a voting centre from violence or intimidation.
- 2) That section 174 of the Electoral Act be amended to include a new power to give election managers the power to remove people from engaging in intimidating behaviour in the vicinity of either an early voting centre or a voting centre.



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Louise Asher, MP



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Martin Dixon, MP



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Russell Northe, MP



