

Submission to the Victorian Parliament's Electoral Matters Committee

Antony Green
July 2015

Disclaimer

My submission to the Committee is being made as a private citizen, not in my role as Election Analyst for the Australian Broadcasting Corporation (ABC). While some of the views expressed in this submission stem from my work, the opinions are my own and in no way reflect the views of the ABC.

Counting of Early in Person (Pre-Poll) Votes

The 2014 Victorian election saw another increase in the proportion of early votes, in particular of early in person (pre-poll) votes cast at early voting centres.

The volume of early in person votes, as well as procedures set out in the Victorian Electoral Act, prevented these votes being counted on election night.

In Victoria, all early in person votes are cast as ordinary votes without the need for a declaration envelope. This differs from procedures in other states, and under the Commonwealth Electoral Act, where a distinction is made between pre-poll votes cast within and outside of a division. Outside of district pre-poll votes are declaration votes, while only within district pre-poll votes are cast as ordinary votes.

The procedures interstate mean that within district pre-polls will all be from the same district and the ballot box seals can be broken and votes counted on election night.

In Victoria, the uncertainty over whether an early vote ballot box contains votes from more than one district makes it difficult to count early votes. 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 districts from the same ballot box.

The rise on early in person votes presents other difficulties. On a night when the Victorian Electoral Commission has its pool of more experienced casual staff distributed across the state supervising polling places, the counting of early in person votes on election night requires the VEC to find more staff. The number of early votes to be counted for each district may be greater than then number of votes in the largest polling place.

Where two decades ago it was normal for more than 80% of votes to be reported on election night, in 2014 the figure was below 60%. Fortunately the 2014 result was sufficiently clear to remove doubt. This may not be the case at future elections.

I would suggest the Committee examine several options that would help overcome the problem of counting early in person vote.

- (1) Amend the Victorian Electoral Act to draw a distinction between within and outside of district early in person votes, allowing those early votes cast within a division to be counted on election night.
- (2) Recommend the VEC re-structure some of its pre-poll centres so that votes cast in a 'home' division can be properly separated from ballot papers cast for other divisions.
- (3) That at least a trial of electronic voting be used, which would permit the reporting of results irrespective of whichever electorate the electronic votes were cast for.

On this last suggestion, I am recommending this be a trial of electronic voting, not internet voting. This would permit the VEC to be more certain with security and with consistency between voting software and the deployed hardware.

Internet voting continues to have doubts about security, and there have also been problems with people trying to use small devices such as mobile phones to cast votes on large and complex electronic ballot papers.

Check-Count of Polling Place Preference Counts

On election night the VEC conducts indicative preference counts in all counting centres. This count is undertaken for the benefit of candidates and the media, allowing there to be greater certainty of the result than if only first preference counts were reported.

The procedure involves two candidates being nominated before polling day as likely to be the final two candidates in each district. On election night, ballot papers for all candidates other than the two nominated final candidates are re-examined. A determination is made for each ballot paper as to which of the final two candidates receive the preference of each ballot paper.

The tally of the preference determinations and the first preferences are reported to the media and to the VEC's website as an indicative preference count. If it eventuates that the VEC has chosen the wrong two candidates, the VEC can re-conduct the indicative preference counts in the days that follow.

In 2014 the VEC selected the wrong candidates in a small number of seats, most noticeably Shepparton. In Shepparton, the VEC conducted a new indicative preference beginning the following day using the correct pairing of final candidates.

It also turned out the VEC chose the wrong candidates in Prahran, but it took a check count and the final distribution of preferences to determine that the wrong candidates had been chosen. Given the closeness of the count in a seat like Prahran, and the possibility of a court challenge to the result, the VEC understandably concentrated on ensuring that standards were maintained in the conduct of its statutory requirements for a first preferences count and a formal distribution of preferences. In

close contests the formal procedures need to be followed in case of a court challenge. It would not be appropriate for the VEC to be second-guessing the final candidates in a close contest such as Prahran, or be conducting multiple indicative preference throws.

While the VEC conducts a check count of first preferences after election night, it does not re-conduct the indicative preference count. This means that in the final published results, there are discrepancies between the first preference and two-candidate preferred results by polling place, and between the total of two-candidate preferred counts and the two-candidate preferred result derived from the formal distribution of preferences.

Most of the discrepancies stem from first preference tallying and formality errors not being reflected in the indicative preference counts because the indicative counts are not re-checked.

I have made suggestions to the VEC concerning its procedures with the re-check count to minimise the preference count tally discrepancies.

I must stress that none of these discrepancies reflect on actual results. Close contests are always determined by a formal distribution of preferences, not by indicative preference counts. Most of the discrepancies occur in electorates that are not close, but the existence of discrepancies can cause confusion and raise doubts that the count is being conducted accurately.

Zeroing Totals for Re-Check Counts

When the VEC begins to enter the results of its re-check count, the current procedure with its computer system is to zero all first preference totals for the electorate.

At the 2014 election this caused confusion as the vote totals on both the VEC and ABC websites reverted to zero.

I have made suggestions to the VEC that a change be made to its computer procedures so that re-check totals be zeroed on a polling place by polling place basis rather than for an entire electorate. Until a polling place is re-entered, the election night polling place result would continue to be reported.

This will result in minor changes to totals occurring over a day or two, but is a better outcome than removing totals and beginning the count from zero.

Group Ticket Voting in the Legislative Council

Voters at Victorian Legislative Council elections are only required to give five preferences 'below the line' on the ballot paper to cast a formal vote. This is much more convenient than at Federal Senate elections where a 'below the line' vote requires preferences for all candidates.

Despite this, the rate of 'below the line' voting was little higher at the 2014 Victorian Legislative Council election than it had been on much larger ballot papers at the 2013 Senate election.

As a result, the complex group ticket vote preference lists lodged by parties largely determined the final seat in each province.

While no candidate matched the extraordinary election to the Senate from Victoria of Ricky Muir with just 0.5% of the vote, five candidates were elected from party totals of less than 4% , and all five leap-frogged higher polling parties via group ticket vote preferences.

The candidates were

- Eastern Victoria Region, Jeffrey Bourman (Shooters and Fishers Party), party vote of 2.5% and passing two other parties to win election.
- Northern Metropolitan Region, Fiona Patten (Australian Sex Party), party vote of 2.9% and passing one other party to win election.
- Northern Victoria Region, Daniel Young (Shooters and Fishers Party), party vote of 3.5% and passing one other party to win election.
- Western Metropolitan Region, Rachel Carling-Jenkins (Democratic Labour Party), party vote of 2.6% and passing two other parties to win election.
- Western Victoria Region, James Purcell (Vote 1 Local Jobs), party vote of 1.3% and passing seven other parties to win election.

These results reflect the same issues that have emerged in recent years with 'preference harvesting' at Senate elections. Along with a surge in the number of parties nominating for election, group ticket vote preferences have become increasingly complex and difficult for voters to understand.

I believe the 2014 Victorian Legislative Council election suffered from the same problems as the 2013 Senate election in having overly large ballot papers and opaque preference deals that made it difficult for even a well informed voters to be certain where their vote would end up.

I would recommend the Committee examine the arguments and solutions set out in the report "Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices" produced by the Commonwealth Parliament's Joint Standing Committee on Electoral Matters. The report can be found at http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2013_General_Election/Interim_Report

Changes to Transfer Value Formulas for the Legislative Council

I would suggest the Committee recommend two changes to the calculation of transfer values for the Legislative Council. These are

- (1) 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.
- (2) That transfer values be based on the number of 'votes' held by a candidate on their election, not on the number of 'ballot papers'.

This latter point proved to be important in Northern Victoria Region at the 2014 election. The current formula based on ballot papers gave excessive weight to Liberal/National preferences in the surplus of the fourth elected Shooters and Fishers Party candidate, resulting in Labor winning the fifth seat in the region.

Had a formula based on votes been used, then the final seat in Northern Victoria Region would have been won by the Australian Country Alliance.

There is no 'right' formula for the calculation of transfer values, but the Committee should consider whether it feels the current formulas sufficiently weight the value of votes for different parties.

While the formulas are important, I would stress that counting issues are of less importance than ballot paper issues. It is more important that the Committee examine whether the current system of group ticket voting offers the best choice to voters. Formula issues should only be addressed having first settled on any possible changes to the ballot paper and voting options.

I will supply the Committee with further details on possible changes to transfer value formulas before the public hearings in August.