

CORRECTED EVIDENCE

ELECTORAL MATTERS COMMITTEE

Inquiry into the conduct of the 2014 Victorian state election

Melbourne — 12 August 2015

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Mr Anthony van der Craats.

The CHAIR — Mr van der Craats, thank you very much for the very comprehensive submission you have provided to us, and for appearing at the committee today. In fact I think you have sat through most of the hearing, so thank you for that. That means you do not need an introduction to the members — you have heard it ad nauseam — so I will not proceed with that. But I do want to let you know — I know you know, but I want to make particular reference to it — that you are covered by privilege for this hearing but you are not covered by privilege for what you say outside this hearing.

If you could just state your name, your business address if you have one and whether you are appearing as an individual or are representing an organisation. Perhaps you would like to then present your rather complex submission in a succinct manner.

Mr VAN DER CRAATS — Thank you, Chair, for the opportunity to speak to the committee. My name is Anthony van der Craats. I am from South Yarra. I was formerly a research officer and adviser to the Honourable Evan Walker, at which time I was responsible for research and the implementation of the Australian Labor Party's policy in respect of electoral reform for local government and the reforms that eventually were implemented for the Legislative Council. I am a systems analyst by profession and I have counted elections ever since I was 16 years old. Like yourself, I am a political animal to a large extent — although as I get older I have come to realise that the party divisions are not as significant as I thought they were when I was younger.

Before I get to the details of my submission I would like to comment that I thought the Victorian Electoral Commission did a far better job this time around than they did in previous elections, particularly in respect of the scrutiny of the ballot, which is the issue of my main concern, particularly when it comes to the Legislative Council. On that I congratulate the commissioner, who I think has provided a very good leadership role. I have noticed that significant improvement in the professionalism has taken place. However, that does not mean that there is not room for improvement, and there certainly is room for changes in the system itself.

I would like to touch on the issues of pre-polling, because that has been something that has been raised and I attended the pre-poll in Prahran. I thought the pre-poll was a good activity but it was certainly not as well administered as it could have been. That was predominantly due to the physical locations of the pre-polling itself and perhaps, as you have pointed out, the longer duration of the pre-poll. I felt that the City of Stonnington should have made available the former Prahran town hall as a pre-polling centre. Had it done so, I think it would have been a lot more conducive to a pre-polling casting of the vote.

I have read the Liberal Party's and the Labor Party's submissions and I would have to concur with most of what both of those parties have said. Unfortunately I did witness at the pre-polling what I consider was a form of harassment that was unfortunately aimed at the Liberal Party's candidate's children, which I found somewhat distasteful. I will not get into great details, but it is something that some candidates should reflect upon and I just thought it was uncalled for.

The focus of my submission relates to the method of counting the vote. I think Antony Green and a number of other submitters here have already highlighted the fact that the system that is in place is something that has developed over time to facilitate a manual count and it does not really properly reflect the voters' intentions to a large extent. We decided to go back and look at it from scratch, not having any preconceived methodology in place, and we tried to look at what it is and how the vote itself should be counted. It is on this basis that we have come up with this model which I have referred to. It is called the Wright system, and it introduces a reiterative counting system to determine the distribution of preferences. It effectively brings the Legislative Council voting system into line with that used for the lower house, which by default is a reiterative-type counting system although you might not see it in the physical distribution. I think it is pretty important and there is a pretty broad consensus on it. If I go back, there are a number of guiding principles that I have adopted that we have considered are very important when analysing the counting system. I have listed them as 1 to 5 on page 2 of my submission:

1. All votes should be treated equally and in the same manner.
2. No vote should ever increase in value as the count progresses in any single iteration.

3. Preferences from excluded candidates should be redistributed as if the excluded candidate had not stood.

That point 3 I think is fundamentally important. That goes to the thrust of my submission, which continues:

4. All votes should be transferred in a single transaction without segmentation.
5. A full-value vote should always be attributed to the first available continuing candidate — without skipping or jumping —

irrespective of whether they have been provisionally elected earlier in the count or not.

There is broad consensus amongst most of the submissions, if not all, that we need to adopt the Gregory weighted surplus transfer system by which the vote is weighted according to the value of the vote, as opposed to the number of ballot papers. Antony Green has correctly pointed out the distortion that took place in Northern Victoria Region as a result of not having that weighted system in place, and I concur that that is a must in the list of priorities that has to be adopted.

I suppose where the system that I want to advocate differs from other existing systems is that we want to introduce a reiterative counting system where, on the exclusion of any particular candidate, the ballot is reset and started fresh and the distribution starts afresh. This is fundamentally important in order to give expression to the voter's intention. There was one above-the-line ticket vote presented in Northern Metro that gave the impression, if you read their how-to-vote card, that they were giving a vote to the Labor Party, then the Liberal Party, then the Labor Party, then the Liberal Party — they jumped their preferences across the various parties. That was somewhat misleading because under the current existing system that vote would have skipped both the Labor and the Liberal Party and ended up landing at a full or higher value on a smaller party such as the Greens, or in that case I think it may have landed on the Sex Party. To me that is unfair and it is not giving true expression to the voter's intention.

On a reiterative counting system a no. 2 vote that went to the Labor or Liberal Party would land on that candidate, become a part of their primary vote and would then flow on as a surplus, along with all other votes that contributed towards that surplus. That is a fairer system and it is a more accurate way of tallying the vote. My estimation is that it reflects the roughly 99.01 per cent of the voters' intention, having done some analysis based on the last electoral count.

Once you get around the concept of having a reiterative count, the rest of it is pretty simple. In each iteration you basically distribute surpluses and surpluses only, and if the number of vacant positions have not been filled you would then exclude the lowest polling candidate and start the count afresh. This reiterative system has a huge advantage, particularly if you implement a threshold system, or in particular if you implement optional preferential, be it five or a lower number, because on each reiteration, every time you re-start, a number of ballot papers may exhaust because they have nowhere to go. Because you are starting the count afresh, you are altering and recalculating that quota accordingly and therefore you are taking into consideration that those votes no longer exist. And that proportions out the count a lot — considerably more.

Unlike the previous submission that was made to this committee, I do not support the Robson rotation. Nor do I support the Tasmanian system, which is the last bundle system. It distorts the count. I would not look at a system of Robson rotation until or unless we begin to implement an online voting system, because it is just too complicated and in my view it does not really deliver the advantages that have been claimed. It makes it more confusing, if anything.

An alternative, and a preferred alternative to that, would be to allow for parties or above-the-line vote — which I think should continue — to be equally distributed amongst all the candidates within that group and to give the party the option and the right to determine the order of elimination within that group. That would give more of a balance to the major parties. At the moment major parties are strongly disadvantaged in the way that the votes are counted. Of course some people probably will not go and support the merits for major parties because they see them as the big boys in the game, but the reality is people do vote for parties and if people vote 2.4 quotas for the Labor or Liberal parties, that is equivalent to three 0.8 quotas,

and that is how it should be recorded on the ballot paper. It would also allow for a situation where the major candidates or the major parties would stay alive a little longer in the count and they would be weighted accordingly to the other minor candidates.

As I indicated before — and I think Antony Green also indicated such — people do vote for parties more than they vote for individuals. It would be naive for most people to assume that they know or have themselves even met any of the candidates on the ballot paper, and that is understandable. It is pretty difficult when the electorate is becoming so big. People do rely on the party system. I think you were correct, Ms Chair, when you said that the party itself has a filtration process that it adopts, not only in policy development but also in preselection. This is already being taken into account when the parties put forward their candidates in the order in which they have put them forward. I think that is a strength of our system, not a weakness.

As I have indicated before on the technicality of it all, at the moment we segment the votes where we divide them into the values or various little segments that come across and we allocate those segments individually and separately. In some cases a candidate may be elected after the distribution of segment B and then the rest of the segments that may exist with that candidate skip the preference orders that they have and end up landing on a lower poll candidate. This segmentation distorts the allocation of the vote in itself also, because these votes have not been weighted equally amongst all the other votes that got that candidate elected in the first place.

Basically when we looked at the system, we decided to strip it back; we decided to go back to the very basics of proportionality. Once we made the decision to weight the surpluses, the rest of the system became more systematic and simpler. There was one transaction that we could apply per distribution of the vote, and that is all we had to do. You would continue this iteration until every vacant position was filled. Once all positions were filled in a single iteration, that is the result of the election. It is a fairer system, and whilst in the past it was prohibitive because to do it manually it would have taken forever and a day, with the use of computer-based technology it is no longer prohibitive and we should be taking advantage of that computer technology to ensure that we have the best updated electoral system that we can implement. That is what this review is seeking to do.

I raise this issue also because it affects local government. This committee, as you are no doubt aware, also has a responsibility in its terms of reference for local government elections. Unfortunately there has not been a review undertaken by this committee of the local government provisions themselves. I would love it if this committee did take that on because it is much needed. Ideally it should review these issues prior to the 2016 municipal election because the changes that I am recommending should also apply to local government.

There are a number of other issues that are quite unique to local government at the moment that I think need to be addressed. The method of countback that is adopted in the regulations is further distorting the count. It does not reflect accurately the results of the voters. It is a majority of the subset of preferences and it is certainly not equally weighted. If a reiterative count system was adopted, then it would address a lot of those issues and you would need to go back to review the issues related to a recount provision. I think that is important.

In respect of the scrutiny of the ballot, the 2014 upper house election was substantially superior to the previous elections. The VEC made available to scrutineers — and I was one of the scrutineers at the central count tally — copies of the data files that were available. Without access to the data files, it would have been impossible for us to properly scrutinise or have confidence in the outcome of the election. Those data files are what determines the election result itself. Having access to them is very important. I like to refer to — in fact it happened to me yesterday, I went to a supermarket and I bought a trolley of goods. I thought something was wrong with the tally that was given to me at the end of the day. It turned out that the person checking out the goods had double counted one of the items that I had purchased. If I did not have a detailed receipt for those items that I purchased, I would not have picked up the fact that there was this double counting taking place.

With the computerised counting, it is fundamental and essential that this data file is made available to scrutineers and published at the point of time when the writ of the election is returned. The public should have the right to be able to view those data files and to recreate and reanalyse the election results based on accurate information. I am somewhat concerned, as I said, that these data files are readily available in respect to the upper house nowadays. They could be made available in a more timely fashion, but at least they are made available. We get similar information related to the Senate. For the City of Melbourne it is a requirement that they provide a copy of these data files. In my view there is a provision in the Local Government Act, which is currently under dispute.

Whilst other municipalities have provided access to this information, the City of Stonnington has come to the view and the opinion that it believes that this information should be sequestered and held in secrecy in some shape or form. This is the only municipality in my experience to date that has refused to provide access to this information. It is also an issue that is currently before VCAT under an appeal under freedom of information.

The rules that are being relied upon in respect of the City of Stonnington make strong emphasis to the words 'safe and secret for the storage location for which ballot papers and electoral materials are stored'. It is my contention that this was never, ever designed to sequester this information and deny the public right of access to this data. This is what is being debated in VCAT at the moment. Perhaps it is important that this committee — if it gets around to looking at the Local Government Act and the regulations — clarifies that provision. It may also need to do so in respect to the Victorian Legislative Council election because I think it is fundamentally important that this information is readily available.

I would like to touch upon a last point of concern, which is the issue related to deposits and potentially having a threshold. It is my contention that the deposits should be substantially increased to somewhere in the vicinity of \$5000 per candidate and that the refund of the deposit should be made only on the basis of every 5 per cent of the primary vote that each candidate or group achieves. For example, if a group gets 15 per cent of the overall primary vote, they should be entitled to three deposits refunded. If a candidate falls below the 5 per cent, then I think they should not be entitled to that refund at all. I think that would begin to weed out some of the non-serious candidates that have been put forward.

In respect of a possible implementation of a threshold, I think it is a little misleading because it really depends on the details as to how you go about implementing a threshold. To just say that you are going to discard anyone that is below that threshold I would not agree with, but if you are going to redistribute those preferences according to the preferential system, then I think that is something worthy of consideration. It clearly is a problem when these minor parties get together and game the system and climb up the stack. This probably would not happen if a large section of the minor parties did not collude in that regard. In particular I would say that the Holy Trinity — as I refer to them — that is, the DLP, the Christian groups and Family First, got together and participated in that sort of fold-up collusion. Had they not participated, then I do not believe we would have seen the situation where a minor party would have been able to get above it.

The last point that I wish to raise — and it is one that stands aside from the other issues that I have already mentioned — is the desire to review what is known as the droop quota. The droop quota, if you are not familiar with it, is where we calculate the surplus quota by adding up the number of vacant positions plus one. I personally believe in proportional representation in a pure form. Again, with computerised technology, I think it is appropriate that perhaps we go back to a more pure system, where it is X divided by Y. Remainders can be maintained and stay with the vote, and we will not see a situation occurring where it is possible for a surplus or a value of exhausted votes outpolling a quota in itself. I am more than happy to take questions in respect of some of the technical issues.

The CHAIR — Thank you very much for your presentation and for your interest in our proceedings overall.

We had a lot of submissions from independent candidates and smaller parties because all the parties are written to and all the independent candidates, so there is a preponderance of submissions from

independents who broadly feel that the big parties have got it all their way. They have suggested a number of reforms, such as not having how-to-vote cards at all, having them in the booth — all of that. When it comes to the big parties, and as a member of the Liberals, I know what my own party would say to that.

But in relation to the higher level of deposit for candidates, a lot of the independent candidates find that it is not only difficult to learn new things and then to run as a candidate but it is also incredibly expensive for them and if they do not reach the threshold value they do not get any public funding at all. I would imagine that their response to a higher deposit — and yours is not the highest recommended deposit in the submissions that have appeared before the committee — —

Mr van der CRAATS — I would be happy for a higher one, to be honest.

The CHAIR — How would you explain to an independent candidate that this higher deposit, according to your suggestion, would be introduced to keep the number of candidates manageable? They would come at it from a perspective of, ‘We want lots of democracy to happen and the upper house is largely where it is going to be because we can run in the hope of getting elected’. Are you able to give a rationale for why you would make it more difficult for candidates to run?

Mr van der CRAATS — The aim is to reduce the number of candidates that have no real chance of even climbing up above the poll or have no real community base. They are only getting there because of the gaming of the preferential system. If they get elected, they would be entitled to the deposit back. That is part of the refund criteria. If they do not get elected or they had no chance of being elected, then that is unfortunately a part of the cost.

One of the other alternatives that has been suggested which can parallel a high deposit is that if they do not want to pay the high deposit they can provide a larger number of nominated signatures. That may be equivalent to 5000 signatures that are required to show that they have community-based support. I do not think the deposit is there to prevent democracy taking place, I think it is designed to lubricate democracy.

Mr DIXON — I have just one small question. The count that you are talking about, your main proposal, is that happening anywhere else in Australia or in other jurisdictions overseas?

Mr van der CRAATS — It is happening in a different form. Obviously, each iteration is equivalent to the similar method of counting we have now. The only reason we don’t have a reiterative count — and bear in mind that Australia is the leader when it comes to preferential voting — is that in the past it would have been prohibitive to do it manually. So in that sense we are breaking ground by going back and looking at it.

Victoria used to do a reiterative count in the local government system prior to introducing proportional representation, when we had a reiterative counting on the single member preferential system, so the concept of a reiterative count is not new. The marking of the ballot papers would remain the same, the data entry process would remain the same, so from a voters point of view they would not see any real difference except that the allocation of their preferences would be taken into consideration and reflect their intentions.

If I vote 1 for a candidate I respect and I like and I feel safe in knowing that my second preference will go to Labor or Liberal, then I expect my second preference to land where it goes. With the current process, because we have these quick shortcuts, we are skipping that vote. It is not getting to where I want it to go. I want it to form part of the surplus. I want it to be part of their overall ticket and support base and that is what I think principally should happen. That is why I stressed that principle when I said that votes should be redistributed as if the excluded candidate did not stand at all. That is what the reiterative system is seeking to achieve.

It puts back a balance into the major parties. The major parties are being devalued as a result of having already secured more than one quota. When I say major parties, I am including the Greens in this case, because they have gone in some cases above quota. I have done some analysis on the various electoral results, and I can assure the committee that, whilst I will not get into the details as to who would be the winners and the losers as a result of this situation, because I think you have to look at it on the basis of

principle, the Greens overall got elected in at least two regions in which perhaps they should not have been elected.

The CHAIR — Thank you very much, Mr van der Craats, for your very thoughtful presentation and for your willingness to add some explanation to that. You will of course, as you know, because you have heard me go through this, get your copy of the Hansard transcript, and you will be free to amend that if you think there have been some errors of fact in the transcript.

Mr van der CRAATS — Could I urge the committee to give urgent consideration to the issues I have raised, particularly in respect of the forthcoming municipal election. I know it is not specifically in your schedule of issues, but it is something that you should be looking at.

Mr DIXON — The government just announced a review of the Local Government Act.

Mr van der CRAATS — It is a departmental review, so unfortunately it is not a parliamentary — —

The CHAIR — The committee can self-reference. The committee can receive a reference from the cabinet, which is generally what happens, or the committee can receive a reference from either house. At the moment we have this reference, and will work our way through this reference. I note your desire to have us look at that — —

Mr van der CRAATS — 2016 is just around the corner.

The CHAIR — It is.

Mr DIXON — We know that!

Witness withdrew.