

# **CORRECTED EVIDENCE**

## **ELECTORAL MATTERS COMMITTEE**

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

Melbourne — 11 August 2015

#### Members

Ms Louise Asher — Chair

Ms Ros Spence — Deputy Chair

Ms Lizzie Blandthorn

Mr Martin Dixon

Mr Russell Northe

Ms Fiona Patten

Mr Adem Somyurek

#### Staff

Executive officer: Mr Mark Roberts

Research officer: Mr Nathaniel Reader

#### Witness

Mr Darren Mark Bain, independent candidate, Northern Metropolitan Region.

**The CHAIR** — Mr Bain, thank you very much for your submission, and for appearing before the Electoral Matters Committee. Can I just remind you that you are covered by parliamentary privilege when you appear before the hearing, but parliamentary privilege does not cover you for anything said outside this particular hearing, and you might wish to bear that in mind. Can I now ask you please to state your full name and your business address, and whether you are attending in a private capacity or representing an organisation?

**Mr BAIN** — Thank you. Darren Mark Bain. I am an independent, representing myself. I do not formally have a business address; I have a private address, do you want me to list that?

**The CHAIR** — Does any of the committee want a private address? I am relaxed about not having a private address. Just proceed then.

**Mr BAIN** — Thank you very much, and thank you to the committee for taking the time for this process. I want it on record that I fully respect this process and the effort you are making.

You have my submission, and there are three parts to that submission. I ran as an independent candidate for the Northern Metropolitan Region in the 2014 election. It is my view that the Legislative Council ballot paper is prejudicial, and by that undemocratic. In my view the Victorian state Parliament via the Victorian Electoral Act, which sets out the structure and guidelines of the Victorian state elections, has dealt the independent candidate — and by that I mean all independents — an uneven hand.

I will tackle this in three ways. First of all, terminology. I do not believe the terminology for the voter, who is by all means casual and is asked to be there by the state, is very clear. The terms ‘grouped’ and ‘ungrouped’ I believe are confusing to voters who are generally unaware of terminology and the structure of the grouped and ungrouped layout of the paper. In my experience, voters when confronted with the term ‘ungrouped’ are often confused and left unsure as to how to cast their vote, due to the terminology that is used but unexplained.

The feedback I have received from voters is that they are unsure — and this is my anecdotal feedback. I have not surveyed individuals in a formal sense, but anecdotally, because the term ungrouped is not explained, the terminology was perplexing to them. In fact, they were not even sure when they saw that terminology whether it was to be held at the same legitimacy levels as other votes.

Further to this, I would also like to add that independents who form groups — that is, individuals who for the sake of the ballot paper come together and form a group ticket to go above the line — are really an unregistered party. I think that should be explained better to voters, who are not told why. I can give you copies of an example of a ballot format.

**The CHAIR** — Thank you.

**Mr BAIN** — I also have a copy of the November ballot paper for the Northern Metropolitan Region, which if you do not mind I will pass you in a minute as well.

I think it might be C above the line on your paper, where typically if you are on a group ticket you are an unregistered party — you are independents who came together for a collective vote. Something like group C. On my paper during the actual election it was group N. There is not even mention of a name under group N. I will pass this to the Chair for your review also. One might hesitate when trawling the top line and wonder what N should stand for. Now, I believe there is an explanation for that, but my argument is that it is not explained in a well-enough fashion for the voter who might be new to the process or simply is not encouraged to read further.

Moving on, it is not only terminology which is confusing. I also believe format plays a key role in making the process rather prejudicial, and prejudicial in the sense it gives an upper hand to the majors and an uneven hand to the independents. The current format, unfairly in my mind, partitions parties and candidates. The current format places parties above the line and ungrouped candidates below the line. This

format may lead the voter to believe that a hierarchical system is in place, with ungrouped candidates appearing as an inferior selection due to the structure of the ballot paper.

In my anecdotal post-poll interviews voters confirmed they were confused by the line and the legitimacy of voting below the line. These are not my words. While, in a sense, I have not given you a direct quote, people did feed back to me thoughts such as, 'If you're below the line, I wasn't sure that it had the same level of legitimacy'. I would propose removing the partition line, which would allow all candidates to be represented in terms of format on equal terms. I believe there may be prior evidence that may be touched on regarding the above-the-line and below-the-line format. I am raising that as a rather large concern this morning.

The system for placing a no. 1 above the line with the alternative of marking 1 to 5 in sequential order below the line suggests that a preferential system is in place instead of a proportional system. What I am saying there — and you can read this on the ballot paper, even on your generic copy and on the formal copy I gave you — is that on the top right-hand corner you are requested to vote for five candidates for the Legislative Council for the Northern Metropolitan Region. I believe that is probably true for all the regions. That is not actually possible to do if you only choose to vote above the line. You are asked to put a single 1 in the box — that is, 1 from 20 candidates, or 1 from however many parties are running — and it is simply a singular mark. You are leaving it to those group tickets to make the choice for the other four seats remaining.

While it is possible to understand and find out what parties' preferences are, once again on the actual date of the vote it is not available to the public voter, who may not have done the level of research parties assumed they could have done and may not have even known such research was required. The ballot paper for the Northern Metropolitan Region in the Legislative Council clearly states choosing five. My sense, if you have got the copy there, is that I am the humble ungrouped servant down below the line to the far right. I do not appear above the line, and neither does another candidate on that paper, hence a simple 1 is not afforded the voter in my case.

I did not have preferences. I did not list any. I did not want to. Even so, by keeping me below the line, it did not allow for the same level of voting. The quick-fix system of checking and leaving was not applied to me. You needed to study the card further. I do not have a problem with asking voters to study the card further, so long as that is applied evenly and to everybody. My suggestion there is that we remove the line, bringing it back to a truly proportional system where 1 to 5 is applied to all candidates, thereby allowing for an even voting system.

Thirdly, my point — and I will keep this short because I know you are pressed for time — —

**The CHAIR** — That would be good.

**Mr BAIN** — My third point is simply that the role of compulsory voting does not assist in the democratic values of voting in itself. We are worried about informal votes, but I believe that so long as people are asked to vote in a compulsory manner, they will generally vote for what is presented to them first. They are not necessarily encouraged to look at all the options. That is one argument. I believe that a forced vote is not a free vote. People have the right to exercise their right not to vote, particularly if the choices are not what they would vote for if they had the chance to vote.

I just want to conclude by saying that I believe the Parliament will benefit from reviewing the Victorian Electoral Act's voting system to ensure terminology, processes and structure evenly represent all candidates. Further, I would propose future elections be guided by the principles of the Charter of Human Rights and Responsibilities Act 2006, thereby making the rights of Victorian citizens paramount above politics and the parties that serve that.

**The CHAIR** — Thank you very much for coming along and expanding on that. You have indicated some things you do not like with the upper house ballot paper. I will just check some of those with you. You want the ungrouped thing removed completely, so then you and the other independent would have your own column, if you like, on the ballot paper. You want to remove the line, I understand. In terms of

the way you want these ungrouped people to be handled on the ballot paper, do you want every independent to have their own column? Is that what you are seeking?

**Mr BAIN** — No, it is not, but thank you for the clarification question. I believe the term ‘ungrouped’ should be removed and be explained as independent instead. It should be rephrased to an understandable term that perhaps more people would identify with.

**The CHAIR** — But you are still happy to have that hierarchy?

**Mr BAIN** — No, I do not want the hierarchy. I do not believe there should be a hierarchy, simply because if you have removed the top line and you are simply asking for five candidates and a selection of 1 to 5 rather than just the 1 above the line — that is, if everyone is on a 1-to-5 system — you can place an independent candidate wherever you like.

**The CHAIR** — I understand that, but I am having difficulty understanding what you want the format of the ballot paper to be. I think you are saying, by implication, that you want every independent to have their own column, but you are saying you are not saying that, so I am trying to elicit from you how you want the ballot paper to look for independent candidates.

**Ms BLANDTHORN** — Do you mean that there would be no columns at all?

**Mr BAIN** — That is correct. I do not believe that the columns should exist other than just for a structure’s sake. When the ballot paper is released it is put through a random sorter in any regard. So long as the name next to the independent states that they are an independent, that is okay by me. If there is no top line, where they appear on the ballot paper makes no difference at all. The fact that there is a top line means that being below the line matters.

**Ms BLANDTHORN** — Do you mean that the Labor Party, the Liberal Party and the independents would all be jumbled in with each other at random points?

**Mr BAIN** — Yes. Correct.

**Ms BLANDTHORN** — Do you mean by removing the top line and removing ‘Party 1’ as a heading almost, you would potentially have the independent candidates mixed in with The Nationals candidates?

**Mr BAIN** — Yes.

**Ms BLANDTHORN** — With all of them?

**Mr BAIN** — By issuing a group ticket and putting a preferential vote to them, you are making for a structure that says, ‘Vote for whomever you like’, but really these are the first people you are going to see and if you go below the line, it gets a little bit mired and murky. What I am saying is that if you are asking for five seats, and if you are asking for five seats to go through, how can a voter do anything but give five preferences? Also I am saying that if you remove the top line, they can give five preferences to whomever they like in whatever order it is presented. I do not mind the order it is presented in. I do mind if I am going to be referred to as an ungrouped candidate, because I do not believe anybody knows what ungrouped means. It is not explained. The ballot paper has not done that. I am simply saying to call me an independent, if you like, or call me something that the Victorian public understands.

**Ms SPENCE** — Individual?

**Mr BAIN** — Non-party individual — something like that. Yes, exactly. I do not mind particularly. I am not saying this on my own behalf, I am saying it simply to broaden the discussion. I do not mind what the terminology is, so long as it is explained. In this case it is not explained.

**Mr SOMYUREK** — You said people were forced to vote. They are actually forced to cross their names off the roll rather than to vote.

**Mr BAIN** — Which they have to turn up for.

**Mr SOMYUREK** — Whether they vote or not, that is all their ballot paper is.

**Mr BAIN** — You do not know that. We do not know that, do we? That is good. That is what Victoria started; it is a good thing that Victoria did.

**The CHAIR** — The point that you make is very clear.

**Ms PATTEN** — I concur with you that ungrouped and grouped are very confusing terms.

**The CHAIR** — Thank you so much for coming along. We appreciate your time. You will receive a copy of the transcript in about two weeks time. You will be able to correct an error, but obviously you can go no further than correcting an error. As I said, you will receive that in about two weeks time. Please send it back. Thank you for the thought you have put into your submission.

**Mr BAIN** — Thanks for the time of the committee.

**Witness withdrew.**