

**ELECTORAL MATTERS COMMITTEE**

**Inquiry into the conduct of the 2006 Victorian state election and matters related thereto**

Melbourne—29 August 2007

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Mr A. van der Craats, life member of the Proportional Representation Society of Australia  
and Senior System Analyst (IT)

**The CHAIR**—Anthony, hi, it is Adem Somyurek here.

**Mr van der CRAATS**—Hi Adem, is the sound quality okay?

**The CHAIR**—It is good for us.

**Mr van der CRAATS**—It is good for me.

**The CHAIR**—Good. With me is Murray Thompson, member for Sandringham, and Robin Scott, member for Preston. Anthony, welcome to the public hearings of the Electoral Matters Committee inquiry into the 2006 Victorian state election and matters related thereto. All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation in other Australian states and territories. I also wish to advise witnesses that any comments you make outside the hearing may be afforded such privilege. Anthony, have you received the pamphlets on giving evidence at a public hearing?

**Mr van der CRAATS**—Yes, I am familiar with it.

**The CHAIR**—No problem. For the benefit of Hansard, can you please state your full name and address, please?

**Mr van der CRAATS**—I'm Anthony van der Craats and I am currently in Ukraine, former secretary to the Honourable Evan Walker MLC in Melbourne. I am a systems analyst, life member of the Proportional Representation Society of Australia and Senior System Analyst (IT).

**The CHAIR**—Anthony, can you please state if you are attending in a private capacity or representing an organisation; if representing an organisation, what your position in the organisation is.

**Mr van der CRAATS**—I am making the submission as an individual.

**The CHAIR**—Thank you. Your evidence will be taken down and become public evidence in due course. I now invite you to make a verbal submission and the committee will ask questions of you after your submission. Over to you.

**Mr van der CRAATS**—Thanks very much for this opportunity. I greatly appreciate it. I very much welcome the initiatives made by the state parliament to undertake a review of the electoral procedures. It is something that hopefully will become a regular feature. There are a number of issues that I have identified in the 2006 election that I believe needs to be addressed. They are critical of the operations of the Victorian Electoral Commission in particular. I am not seeking to whitewash in any shape or form, nor am I seeking to particularly criticise but to hopefully put forward some constructive comments that will improve the system and avoid some of the mistakes that I know took place in the 2006 election.

First of all, I want to point out that the 2006 election was very special in the sense that it was a historical event. It was the first time that the Victorian upper house was elected by a system of proportional representation. It is a system that I have been advocating for most of my adult life. It was a system that I was involved with in terms of the development of the initial policies of the Australian Labor Party, particularly when I worked for Evan Walker for a time.

I am pleased to see that the Victorian parliament has adopted the initiative that has eventually come about.

However, in respect to the way in which the election in 2006 was conducted I think there are a number of issues that need to be raised of particular concern. My main concern is related to issues moving towards an electronic counting system. I welcome the use of computer technology in a count but I believe there is a need for it to maintain an open and transparent system through the provision of data. I am very much concerned that information and data was not provided by the Victorian Electoral Commission as requested, nor in a consistent manner. I assume the commission has copies of my written submission. Is that correct?

**The CHAIR**—We have, yes.

**Mr van der CRAATS**—I will run through the written submissions quickly and hopefully get in some question time. The first issues of concern was the lack of detailed information in the lead up to the election itself. The Victorian Electoral Commission is not in a position of providing detailed statistics in respect of the absentee, postal vote or pre-polling votes that were issued prior to the count. This concerned me greatly as this information is used in order to determine any outstanding votes that might come later on in the count. In most of the election procedures that I have been involved with as a scrutineer or a booth captain, this sort of information is extremely valuable and has a very important role in respect of the scrutiny of the ballot. The Victorian Electoral Commission was unable to provide that statistical information in a timely fashion. That is something that should be addressed.

On the election day there were some issues of concern that I have noted, particularly with respect to an item of correspondence that had been forwarded to the media and myself in which one of the members of staff of the Victorian Electoral Commission indicated that they had accessed the data files of the electronic kiosk voting system prior to the close of the poll on November 25. I think this raises a number of serious issues of concern as to the appropriateness of that action. I believe that parliament should look into that a lot further.

Other issues of concern that I have come later in the lead up towards the counting of the ballot papers. We had requested for a range of election campaigns that I was involved with a whole range of information, including the number of postal votes, the number of absentee votes, the number of pre-polling votes that the commission had issued and had received back. That information was not made available. During the counting process there were a number of anomalies that had been registered and recorded. Many of these anomalies came about due to a lack of due diligence on behalf of the Electoral Commission. One of the requirements that is normally undertaken in the counting of the voting system, or the count of the election itself, is to tally up the total number of votes that had been issued and the total number of votes that had been returned back. In fact, if you look at the Victorian Local Government Regulations, it sets the conduct of elections. Regulation, I think it is 110, requires the Victorian Electoral Commission to ascertain the total number of ballot papers that have been returned and to ensure that any information entered into a computer data system reconciles that information.

The Victorian Electoral Commission clearly did not do this. As a result there were a number of major errors that were identified in the first count, particularly in respect to Northern Metropolitan and Western Metropolitan electorates. The extent of inconsistencies should have been identified at a much earlier date than where they were. We should not have had to have waited until a second re-count took place in order to determine the correct or accurate results, particularly in respect to the total number of ballot papers issued. I can understand there may be some mistakes in determining where preferences should have been allocated to, but the total number of votes should have been more or less well and truly determined before even—once the data entry process took place. This was an error on behalf of the Victorian Electoral Commission who had cut corners in an effort to try and speed up the process. It certainly did

not deliver any confidence at all in terms of the way in which the election was conducted.

There is a significant need also, I believe, to ensure that, particularly if there are moves towards an electronic counting system, that the Victorian Electoral Commission maintains an open and transparent administration of the ballot. Under a manual counting system, scrutineers and individuals involved in the election can physically watch the transfer of ballot papers and have multiple opportunities to observe the allocation of preferences as they move throughout the manual counting cycle. With a computerised counting system a different approach is required. One of the areas that I have been concerned about and I feel is essential in order to have good governance and to maintain confidence in the electoral system is that the detailed data files obtained for the count must be made available in a timely fashion. Ideally the information should be published and certified prior to the hitting of the execution button to determine the results of the election. This was not done by the Victorian Electoral Commission.

Without access to the detailed data files, it is virtually impossible to properly scrutinise or verify the count of the election. Why the Victorian Electoral Commission has not provided this information I fail to understand. It has been requested by myself and others on numerous occasions in previous elections. In one case an application had to be made to the Victorian Civil Administrative Appeals Tribunal to consider the case versus myself and the City of Melbourne. [VCAT] clearly had ordered that this was a public document and it was in the public interest. There is no legal impediment to prevent the publication of these details, election results. Unfortunately the legislation that is currently in place does not specify exactly what information needs to be published and where and when. I think this is an unintended hindsight because ultimately the conduct of the election relies on good faith on behalf of the administrators. I believe that not providing this information has really brought the whole election process into some sort of disrepute. The question must be asked, why was this information not made available? Had the detailed preference data been made available, obviously more detailed comparisons would have taken place of the vote itself and the analysis of that vote. It may have shown up other errors in the data entry processes that were not identified.

The other concern I have is in respect to a situation that may occur where there is a change of the result between the first count and the second count. It is my concern that perhaps data entry errors could have been entered into a count on the second occasion. Given they are liable to errors that occur on the first count there is no reason why similar errors could not occur on a second count. It would be prudent for the legislation to have some provision to allow for a third count if necessary, if the margin between the difference of the result is a very tight margin, ie, around about 150 votes. I think this was the case in terms of the Western Metropolitan Electorate. There are a number of questions that I have in terms of the information and the data that was provided that do not tally up. The total number of votes between the Lower House, the Upper House and the various counts that were presented by the Victorian Electoral Commission certainly do not match. I think perhaps some consideration needs to be given under what terms and what conditions a third re-count could take place to at least confirm the results of the elections won.

In respect to other issues related to the Victorian Electoral Commission, in order to obtain access to data, data that I believe should have been made available through the election count itself, should have been made available to scrutineers and certainly should have been published on the internet site, I was placed in a position where I had to forward an FOI request in order to obtain information pertaining to the results of the election. It took something like three months before the Electoral Commission was able to provide this information. I think that this has been an abuse of process. This information was readily available on the [VEC]'s computer database system. It should have taken them probably no more than one hour in order to compile this information. Ideally this information would have

been published on the internet site and it would not have required an FOI application to take place.

There are a number of issues related to the way in which the FOI application was dealt with administratively. I think I have outlined those to a large extent in the context of my written submission. Suffice that I am somewhat concerned when I was going through this process to find that the Victorian State Ombudsman has no jurisdiction over the review of the Victorian Electoral Commission. I think this is something that the Victorian parliament probably should reconsider and re-look at. It would be prudent to give the Victorian Ombudsman the right on its own volition or at a request to undertake reviews in the administration of the Victorian Electoral Commission. I would urge that the state parliament give further consideration to amending the Ombudsman Act accordingly.

Other issues that I have listed in my submission relate more of a technical nature to the way in which the legislation is currently formed in respect to the counting or the calculation of the surplus transfer and the allocation and segmentation of a vote. Do I assume that the committee understands the technicality of the processes of proportional representation?

**The CHAIR**—Yes.

**Mr van der CRAATS**—I am advocating that a review be taking place. The current system that is in the legislation was designed to facilitate a manual counting system. It was a trade-off between the benefits of proportional representation and the need to be able to have a manageable system that could be counted manually. With the advent of computer technology and particularly the internet, those sorts of systems that have been put in place are no longer warranted. In fact, they are probably undesirable, particularly the current paper based calculation system which is in place is a distortion of the one vote one value system. It would be preferable to see that Victorian parliament adopted a value based voting system as opposed to one based on the number of ballot papers itself. It would certainly maintain the correctness of the proportionality of the vote. It becomes significantly important in respect to local government elections where there is no above the line voting. In many cases the distortion that occurs in the value of the vote—and I have indicated a short table to give you an example as to what extent and how that distortion can occur—it could and would produce a different outcome. The question might be asked as to, 'Well, what is the correct principle that should be applying in this particular case?' and I think it is the one vote one value principle.

Similar aspects relate to the segmentation process that has been adopted. This is again designed to facilitate a manual counting system. In my view there should be one transaction per candidate and a computerised system can readily accommodate this aspect, particularly if you adopt the one vote one value transfer calculation process that I have talked about. This would simplify the counting process in terms of the computerisation and it certainly would be a lot easier for any person wanting to read the various count sheets and readily understand what is going on. They are of a technical nature but they are ones I believe that should be taken into consideration. The days of a manual counting system have long gone, there is no need to maintain the inaccuracies that exist within the system.

Other issues that I have identified in my report relate to the possibility of abolishing by-elections and putting in place an alternative democratic process in filling casual vacancies. This idea was canvassed at one stage by the Hon. Jeff Kennett at some stage when he was Premier. It is an issue that perhaps the state government should reconsider in whatever way it can. One of the options, of course, would be in respect to the Legislative Council to consider the idea of a count-back system, similar to what takes place in local government. I am concerned particularly about the City of Melbourne in terms of fulfilling the vacancies of the lord mayor and the deputy lord mayor in the event that a vacancy occurs. The current legislation would require complete—holding a whole new by-election for the City of

Melbourne. To me this cannot be justified cost-wise let alone administrative processes that would be involved. There is a system in place but at the moment it only applies for the last six months for the term of office of the lord mayor or the deputy lord mayor.

**The CHAIR**—Anthony, if we can just stick to the conduct of the 2006 election. That is our brief for the moment.

**Mr van der CRAATS**—I thought your brief was to include local government as well.

**The CHAIR**—For this inquiry, no, it is just the 2006 state election.

**Mr van der CRAATS**—Sorry. The documentation—I spent a whole weekend trying to add all the local government stuff into it.

**The CHAIR**—There might be opportunities in later inquiries but this one certainly is for the conduct of the 2006—

**Mr van der CRAATS**—The terms of reference document seemed to me to imply that local government stuff was—I am happy to concentrate on the 2006. I have outlined most of the issues that are of great concern to me—accountability, openness and transparency; the need unfortunately for the parliament to prescribe what information and how and when it should be covered. Unfortunately it is a pity that the Victorian Electoral Commission finds itself in a position where it cannot self-govern in the interests of maintaining an open system and that we have now been placed in a position where we have to perhaps look at legislation to give some sort of direction to ensure that our election processes are effectively open and are no longer hidden behind a mystique of technology or bureaucracy. This may change in the future because in the future there will not be an intermediate data entry process. The voters themselves will most likely enter the preferences or cast their votes directly on line in some form. That would require a further review.

In the meantime it is important that the principle of providing information is very much addressed. It should not be required to wait three months to get what should have been made available on the election night or soon after on the declaration itself. I think it is an indictment against the Victorian Electoral Commission. The facts speak for themselves. The commission has failed in due diligence to follow through with common practices, it has failed to ascertain the number of ballot papers that have been issued and returned, it has failed to provide information in respect to postal votes and pre-polling votes and absentee votes, of course.

I think there is a need for a serious review and unfortunately the legislation must address these issues. I particularly want to see the state parliament ensure that the detailed data files are publicly made available at all times for an educational purpose as well as for scrutiny of the ballot. This is something that has concerned me for the last 10 years of the various—the Victorian Electoral Commission and the Australian Electoral Commission have moved towards a computerised counting system. Without access to this information I believe the public will just lose confidence overall with the electoral process.

**The CHAIR**—Thanks, Anthony. You are quite damning of the VEC. How would you compare the conduct of the 2006 election compared with other Victorian elections and also compared to other elections in other jurisdictions?

**Mr van der CRAATS**—It is a different situation mainly because the change of voting systems took place. That is the main difference. Where there is a single member elected I do not believe a computerised counting system is warranted or needed. There is no need to do a data entry process.

**Ms CAMPBELL**—Sorry, can you say that again, I missed what you were saying.

**Mr van der CRAATS**—Where there is a single member constituency there is no need for a computerised counting process, like a data entry of preferences. I believe it is just a total waste of time and it destroys the ability to scrutinise that particular election. It is unwarranted—

**The CHAIR**—Sorry, Anthony, by the way, Christine Campbell has just joined us.

**Ms CAMPBELL**—Yes, I joined halfway through.

**Mr van der CRAATS**—Hi, Chris. So in a single member electorate I think the idea of data entry preferences is a total waste of time. The conduct of the City of Melbourne in 2004, I thought that was better managed than the 2006 election. The information was readily available, scrutineers and candidates had access to the return rate on a daily basis. I thought the cooperation from the Victorian Electoral Commission on that particular occasion was excellent and I would give them credit for that. Certainly it is a big improvement from the previous election. The Australian Electoral Commission overall I would indicate are probably more professional. It has obviously time spent more time and has more systems put in place in the way in which it undertakes an election. In terms of the counting of the votes, the Australian Electoral Commission back in 1996 undertook its first computerised counting of the City of Melbourne election, what was called a double-entry verification process.

That made me very much aware of the number and percent of errors that take place in the data entry process itself. Of course the double-entry process dramatically reduces the extent of data entry error. The system adopted by the Victorian Electoral Commission is more of a random sampling verification process. That is flawed to a large extent. There is a double-entry process check that takes place in the event of a re-count, but unless you have access to the data file for both the re-count and the preliminary count, there is no way in which you can do a proper analysis between the two. The information that the Victorian Electoral Commission has provided me only relates to the detailed preference data for the final count. I still do not have the information in respect to the preliminary count for Northern Metropolitan and Western Metropolitan electorate, and Western Victoria, I believe, as well.

**Ms CAMPBELL**—Would you be suggesting that be a recommendation of our committee that both the preliminary vote figures and the final count figures be publicly available as a matter of priority after the election?

**Mr van der CRAATS**—I think even during, in the middle of the process of the election. Ideally they should be published just before they press the button. I am talking about the detailed preference vote, the detailed information that is tabulated and calculated that is telling you the result. It would allow a scrutineer or an individual to go away and analyse that data and highlight potential incorrectness. Most of the problems, I believe, occur as a result of data entry problems. Obviously if the voter ends up putting in preferences themselves then that is a different question altogether. But certainly the detailed information must be published and available to scrutiny. There is no reason why it cannot be made available to the public in the same way as on election night. You see the results appearing up on the Victorian Electoral Commission screen. I want to see a full account of all the votes that have taken place. I want to know how many postal votes were issued, how many were returned, how many pre-polling votes were issued. All that information, there is no reason why it cannot be on the internet. This is the magic and the beauty of the internet nowadays: it provides access to this information; it provides an ability for people to analyse that and scrutinise it without having to physically be in the presence of the ballot paper—

**The CHAIR**—Anthony, having a computer background yourself, it was put to us yesterday—I think Antony Green suggested that all this information would be almost impossible to put on to the internet because of the memory—

**Mr SCOTT**—No—

**Ms CAMPBELL**—No, that was Simon Wright for the media.

**Mr SCOTT**—what Antony Green said was slightly different. He was saying that there was a separation between the audit function and the reporting function.

**The CHAIR**—And the reporting function, but, no, this is different too. He also suggested that—

**Mr van der CRAATS**—It is a cover up.

**The CHAIR**—too much information, that they could not handle too much information.

**Mr SCOTT**—No. What he was suggesting was that too much information at the point in time you are doing a reporting process, that they are two separate processes and that too much information given at the time of the reporting makes it difficult to conduct that task and the audit function, which is a separate function which requires more information. But that is not the same thing as the reporting function; get the results out immediately on the night.

**The CHAIR**—We might have confused you. But Antony Green also—

**Mr van der CRAATS**—I understand. I understand what Antony Green is saying. There is no technical limitation whatsoever that would prevent the detailed preference data files being published on the night, or immediately prior to the hitting of the calculation button. There is no technical problem to explaining how many postal votes have been issued prior to the conduct of the election. There is no technical issue preventing the data being published. The main problem is, by publishing that information is that it is potentially open for the Victorian Electoral Commission's to expose their dirty linen in the event that there are errors and mistakes. For example, what took place in the Northern Metropolitan election was a clear data entry error that should never had occurred. In fact, had they applied due diligence it would not have occurred. Had they tabulated—by ensuring that the tabulation of the information stored on the computer reconciled with the expected number of ballot papers, then obviously they would have realised there was a mistake before they hit the run button. They did not do that.

**Ms CAMPBELL**—From your perspective, what you are essentially saying is applying these measures beforehand in fact leaves the VEC open to less criticism because the corrections are made prior to the announcement, albeit an incorrect announcement, of the winner in a seat where it is clear when you add up the numbers they are nonsensical.

**Mr van der CRAATS**—Exactly. If they are aware that they are open to scrutiny and the scrutiny is exposed to the world, then obviously they are going to put in place proper processes to make sure they do not rush the job.

**Ms CAMPBELL**—Yes. How long would you—

**Mr van der CRAATS**—Clearly in the 2006 election they rushed it.

**Ms CAMPBELL**—Can I ask you, how long would you suggest that that data

information be available to scrutineers prior to hitting the final count button?

**Mr van der CRAATS**—Ideally at the point where they finish data—we are talking about the data entry process.

**Ms CAMPBELL**—Yes.

**Mr van der CRAATS**—If the voters themselves in the future enter the preferences, it is a different question, but ideally copies of that information should be made available at various stages throughout the data entry process so the trends and information can really be built up and scrutineers can begin to analyse how the day is beginning to look. Clearly at the point of time that the data entry has finished, at that point prior to any other analysis the Victorian Electoral Commission should provide a copy of the preference data. We are talking about the below the line preference data. It should be given to scrutineers to analyse. Whether there is a period of 24 hours I do not think matters so much on the first count because the reality is I think they have something like 24 hours in which to decide whether to call for a re-count. But it is important that they have a certified copy of the data prior to the calculation. That way there they can do some independent analysis, be it overnight or be it live on the phone. We are talking about a data file that is less than half a megabyte. You can run the entire state election count on a laptop. I do it. I have calculated all those results on my laptop for every election. In fact, I have even done the entire country in terms of analysing the Senate. It is not a question of technicality. It is not a question of vast computer resources. We are talking about tabulation on a mainframe of, say for example, polling place for physical data which obviously has to be stored before you get summary data. We are talking about 20 seconds, if that. We are talking about files that are certainly no bigger than one megabyte and can readily be published on the internet. There is no technical provision whatsoever, no restriction. It is a matter of ensuring that there is an open and transparent process. I particularly wanted to compare, for example, the preliminary count—

**The CHAIR**—Anthony—

**Mr van der CRAATS**—versus the final count because that would have showed me that there was some potential common patterns that had never been picked up before on the data set.

**The CHAIR**—Anthony—

**Mr van der CRAATS**—I have not got that information in respect of a preliminary count because the VEC was reluctant to provide that data, even though it is a public document.

**The CHAIR**—Anthony, we are out of time but Christine really does want to ask you one more question. If we can have the question briefly and not an expansive answer please because we are out of time.

**Mr van der CRAATS**—I appreciate it.

**Ms CAMPBELL**—You raised where there is a dispute between the numbers in the first count and the second count, the second count obviously designed to verify the first. You said sometimes there might need to be a third count to confirm whether one or two is the accurate figure. Have you ever had experience of any election where that was done?

**Mr van der CRAATS**—I cannot recall a third count, Nunawading maybe. I think it really depends on the circumstances. Obviously in some cases it would probably require a court procedure. Again this is a different planning process when you are talking about

proportional counting. My concern in respect of the difference between the two counts is not so much the result but the differences in the total number of ballot papers.

**Ms CAMPBELL**—I got that point. I wondered if a third count was—

**Mr van der CRAATS**—I cannot recall a third count, Nunawading maybe.

**Ms CAMPBELL**—No, I cannot either.

**Mr van der CRAATS**—But then that relates to a single number electorate. It is a slightly different counting process to apply when you are dealing with proportional representation.

**The CHAIR**—Thank you Anthony. If I can point out—

**Mr van der CRAATS**—If there are any issues—

**The CHAIR**—Yes. If I can point out to you that you will receive a transcript of your submission today. Typing errors may be corrected but matters of substance cannot be corrected. Thank you very much.

**Mr van der CRAATS**—Thank you very much for the opportunity and I again congratulate the parliament for taking this initiative of holding this committee.

**Witness withdrew.**

**Hearing suspended.**