

Change that Counts

Submission to the Victorian State Parliament Electoral Matters Committee

by Anthony van der Craats

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The views and opinion expressed in this submission are my own and do not represent or necessarily reflect the views of member associations.

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Statement of Principles

Open and transparent systems permit everyone to make informed choices, and give everyone access to information in an easily understood format

Accountability is acting responsibly and being answerable for actions taken

A lack of openness, transparency and insufficient accountability creates the conditions in which corruption flourishes

The Internet is the ideal medium for cost effective delivery of information maintaining open and transparent government (eGovernance)

Counting votes

All votes should be treated equally and be of equal value. A vote should never increase in value disproportionately to its original value

Votes attributed to an excluded candidate should be redistributed as if the excluded candidate(s) had not stood.

No Full value vote should skip or jump any continuing candidate who has not been excluded from the count.

Introduction

This submission builds on previous submission to the Electoral Matters Committee.

It recommends that

1. the State Parliament review the way the vote is counted in Victorian Legislative teg Legislative council removing a number of processes and practices that distort the proportionality and results of the ballot
2. the State Parliament implement a weighted Surplus Transfer Value system
3. the State Parliament implement a re-iterative counting system were the ballot is reset and restarted following the exclusion of any candidate.
 - 3.1 That votes from excluded candidates be redistributed as if the excluded candidates had not stood.
 - 3.2 The number of iterations continuing until all vacant positions are filled in a single iteration.
 - 3.2 The quota for election being recalculated following the distribution of primary “full value” votes in each iteration.
 - 3.3 the process of distribution to implemented by a single transaction per candidate without segmentation(distribution of surplus vote to be considered as a single transaction per candidate per iteration)
4. votes that express no valid preference for any continuing candidate in each iteration to be exhausted without value.
 - 4.1 votes that exhaust during the distribution of any surplus transfer to be recorded with value proportional to the distributed value of the vote
 - 4.2 a vote should never increase in value proportionally to its original value
5. remainders of any calculation of the surplus transfer value to remain with the ballot paper as it is distributed as a result of any surplus distribution
6. the State Parliament consider abandoning the use of the so called Droop “Wasted” Quota $(X/(y+1))$ in favour of a full proportional quota (x/y)
7. that “above the line” voting system be retained with “above the line” votes being equally distributed to all members of the group

- 5.1 the order of exclusion within a group to be determined by the group being the reverse order of candidates listed on the ballot paper as registered by group.
8. the voting system should encourage voters to number, in order of preference, all candidates on the ballot paper and not just a nominated minimum number of preferences.
9. copies of the electronic preference-data-file, used to determine the results of the election be made available to scrutineers during the count and published as part of the declaration of the poll.
10. votes recorded electronically be recorded on a write only log on a optical drive or data storage device(s)
 - 10.1 that a copies of the data transaction log be made available to scrutineers at nominated sequences during the voting period on the condition that the information recorded be sequestered until the conclusion of voting.

Voting system (Proportional representation)

Weighted Surplus Transfer

Surpluses should be weighted and proportional to the vote. The calculation of Surplus Transfer Value should be determined by $(\text{The Candidate's Total number of votes} - \text{Quota}) / \text{Candidate's Total number of votes}$ multiplied by the value of the vote received by the candidate whose surplus is being distributed

Any remainders as a result of the Surplus Transfer value should be retained with the value of the vote

Currently the system used calculates the Surplus Transfer Value by dividing a candidate's surplus of votes by the number of ballot papers. Votes that that were received at a fraction of value are transferred at the same value as full valued votes. This seriously distorts the proportionality and outcome of the results of the election

By introducing a weighted Surplus Transfer Value system and the introduction of a reiterative distribution count (See below) with a single transfer transaction per candidate tis distortion in the value of the vote would be removed and in the process voters intentions would be reflected.

Reiterative Count

Principle: *Votes for excluded candidates should be redistributed as if the excluded candidate had not stood*

In previous elections where a manual process was required the time and resources required to undertake a reiterative counting process was prohibitive. With the introduction of computerised electronic counting this limitation is no longer prohibitive

The count should be reset and re-started following a candidates exclusion from the count

There should be a Single transfer per candidate, (Weighted Surplus Transfers distribution only per iteration). No segmentation distribution of excluded candidate votes. Remainder to remain with the vote.

The number of iterations would continue until all vacant positions are filled in any single iteration and would in general be equal to the number of candidates minus the number of vacant positions.

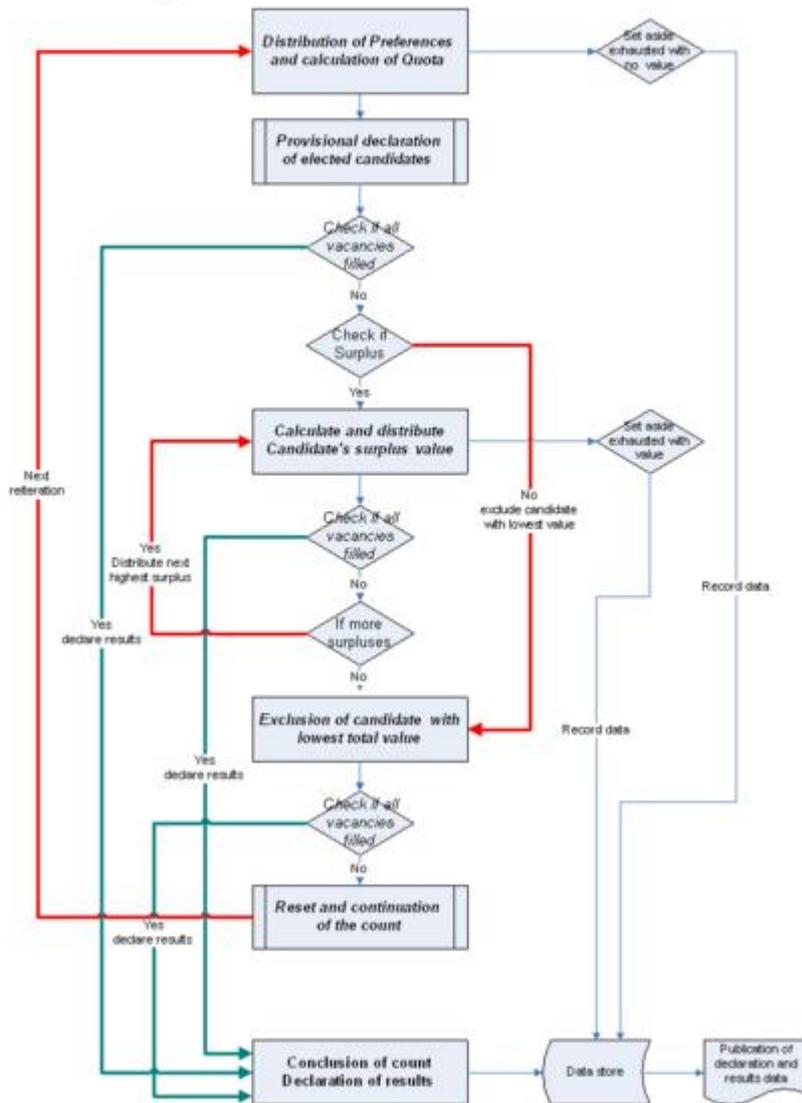
This system is simple to follow and comprehend removing the distortions in the way the vote is counted.

A reiterative count would give a more accurate reflection of the voters' intention as a full value vote would not skip or jump any continuing candidate

Further more a reiterative counting system would take into consideration" optional preferential voting" as the quota for election would be recalculated and adjusted in each iterations

"The Wright System"

Procedures for a Reiterative Proportional
Single Transferable Vote – Count Process flow chart



Decision flow cart of a reiterative counting process – Wright System

Droop vs Hare Quota

Quota for election should be full proportional (x/y) without the application of the Droop Wasted quota $(x/(y+1)+1)$

The Droop quota distorts the proportionality of the election

The Droop quota disadvantages up to one sixth of voters in Victoria and excludes them in determining who should represent them.

The Droop quota was implemented to facilitate a manual count as it does not require the count to progress to the extent that every vote should be distributed

With the introduction of a computerised electronic counting process, a weighted surplus transfer value and a reiterative counting system there is no longer any justification in maintaining the Droop Quota. A full proportional quota (x/y) would be more democratic and accurately reflect the voters intentions.

Above the line voting

Any electronic voting system should maintain an "above the line" group voting

Optional Consideration:

Above the line group votes should be equally distributed to all continuing members within the group in the order of preference nominated by the voter.

It is rightfully argued that voters vote for groups of candidates and not just individual candidates. By distributing "above the line" votes equally across all continuing candidates the voters intentions to vote for the group, as opposed to a single candidate, would be reflected more accurately the voters intentions.

The border of exclusion with a group should be the reverse order of the ballot paper as determined by the group when nominating candidates.

A group distribution process as the additional advantage in that it gives equal weight to major parties as afforded to minor parties in determining the order of election

The current system of distribution of above the line votes disadvantages major parties/groups and conversely provides a distinct advantage to minor parties/groups of candidates.

The introduction of electronic voting would facilitate this option

Scrutiny of the electronic counting system

The Scrutiny of the ballot must be open and transparent. Copies of electronic data files must be made available to scrutineers during the voting process. Without access to this data it is impossible to properly scrutinize an electronic count. Legislation/Regulations MUST provide scrutineers the right of access to copies of recorded preference data files. Certified copies to be published prior to the declaration of the poll

Data transaction logs

Data logs of voting transactions must be recorded on one or more write once read-only data devices with copies provided progressively to scrutineers on a regular basis during the voting period. This information should be sequestered to prevent any detailed results of the election being made public prior to the close of the polls. On the close of the voting period a certified copies of the preference data files should be published prior to the calculation of the results of the election. *See additional statements below.*

Optional Preferential voting

Optional preferential voting should be discouraged whilst saving provisions should be adopted..

Any electronic voting system should be designed to encourage voters to cast a preference for all candidates in order of the voters choice.

The introduction of a reiterative counting system as outline above would allow for optional preferential voting by recalculating the quota for election in each iteration

Transparency

Previously public elections were counted in the open. scrutineers were able to fully observe the collation transfer and tabulation of votes. Information related to the number of votes issued at each polling place was readily available and as a result public confidence in the electoral process was maintained with its integrity not questioned.

Public elections in Victoria are no longer open and/or transparent.

Instead the election count is held in cyber space, hidden behind a computer screen and an electronic network. Information required to facilitate independent review and confirmation of the election results being withheld.

The Victorian Electoral Commission in the rush to adopt new technology and to justify their expenditure in software development and other technical “innovations” has failed to ensure that elections are subject to proper scrutiny, accountability and transparency. Their procedures and

practices they have adopted have not been given proper consideration or review. The Victorian Electoral Commission has taken short cuts and forsaken due diligence in its conduct of public elections and in the process undermined or prevented effective scrutiny of the ballot.

Poor quality of the data-entry, inadequate counting processes and the refusal of the Electoral Commission to readily provide access to vital information and its lack of due diligence has resulted in a number of errors and omissions which seriously undermined public confidence in elections in Victoria .

The availability and publication of information essential to the proper scrutiny of the election was not forthcoming, hidden from public view or not collated in a timely fashion. The Victorian Electoral Commission actively pursued a policy of avoidance, non-disclosure, lack of accountability and review. The quality of information that was published was of poor quality, lacking detail, false and misleading.

The Victorian Electoral Commission demonstrated, on many occasions, that it was unwilling or incapable of self regulation in order to ensure that public elections are open and transparent.

In 2006 the Victorian Electoral Commission took over three-months, and required an application under the Freedom of Information Act before it was prepared to make public information that should have been readily available throughout the election process. Information that, had it been available at the time of the election as requested, would have avoided the serious errors and omissions that occurred.

In 2008 the Victorian Electoral Commission ignored the recommendations of the Parliamentary Electoral Matters Committee, refused to undertake a preliminary sort of ballot papers prior to data entry in respect to local government elections and once again demonstrated that it was unwilling to publish vital information and statistics pertaining to the conduct of Municipal election. Whilst limited information was made available for the City of Melbourne elections, other municipalities were denied access to the detailed statistical data and detailed election results.

In addition there are serious concerns related to the security and access to electronic data which is no longer subject to review and proper scrutiny.

The Victorian Electoral Commission failed to ensure that data recorded in the primary count of the 2006 State election was protected and back copies of electronic data files maintained.

The Chief Electoral Commissioner when requested to provide a copy of the data files pertaining to the primary count of the Western Metropolitan Region indicated he was unable to do so stating that the data has been over written further preventing independent review and scrutiny of the conduct of the election.

In order to address these issues and avoid a repeat of the mistakes of the past more consideration needs to be given to the regulations and procedures governing the conduct of election so as to ensure that relevant information is readily available and subjected to independent review and scrutiny.

Recommendation 9 and 10

9. copies of the electronic preference-data-file, used to determine the results of the election be made available to scrutineers during the count and published as part of the declaration of the poll.

10. votes recorded electronically be recorded on a write only log on a optical drive or data storage device(s)

10.1 that a copies of the data transaction log be made available to scrutineers at nominated sequences during the voting period on the condition that the information recorded be sequestered until the conclusion of voting.

The availability of copies of the preference data files and transactions logs would go a long way to ensuring that an electronic voting system would remain open and transparent.

Publication of the detailed preference data file as part of the scrutiny and declaration processes is essential in order to maintain an open and transparent elections process in an electronic count.

Electronic counting of votes

Open Source Code:

In 2004 The Victorian Electoral Commission charged the City of Melbourne \$200,000 for “software development”. What costs and services were provided for this sum is not clear. Presumably the same software code was used to service the 2006 State Election and the 2008 Municipal election. Although the City of Melbourne paid for the development of software used by the Victorian Electoral Commission they do not maintain any copyright or ownership over the code.

The Australian Capital Territory has published the software code they use as ‘Open Source’ helping to ensure that the process and conduct of the election is open and transparent. The Victorian Parliament should consider adopting the A.C.T policy as part of its commitment to ensuring open and transparency in the software code used to tabulate the results of computerised count. The software code could be “Open Sourced” and published as part of the United Nations ACE project.

Multi-member electorates

The use of computer technology and a data-entry process in the counting of the ballot is justified in all multi-member proportional representation ballots . In particular in relation to Local government elections where a count back procedure is implemented in order to fill casual vacancies. However the current procedures and processes implemented by the Victorian Electoral Commission are in need of serious review in order to facilitate independent analysis and scrutiny.

Copies of preference data files

It is essential that copies of the preference data-files in electronic format are readily available to the public and subject to independent analysis and review. It is impossible to properly scrutinise an electronic count without access to this information. A certified copy of the data-files in electronic format MUST be published as part of the declaration process.

In 2006 The Victorian electoral Commission failed to provide copies of the preference data files during the conduct of the election. The Victorian Election Commission only provided access to this information two months after the election in response to an application made under the provision of the Freedom of Information Act. Even then the Commission did not provide a full set of data files as copies associated with the preliminary primary count for Northern Metropolitan, Southern Metropolitan and Western Metropolitan regions.

The Victorian Electoral Commissioner on questioning by the Parliamentary Electoral Matters Committee stated that copies of the preference had been destroyed as part of the second data-entry count process (See below for further discussion on this point)

In 2008 copies of the preference data files for the City of Melbourne were made available to scrutineers but denied to other municipalities.

Data-Backup and security of electronic preference data-files

It is essential that copies of electronic data files are protected against unauthorised access and/or accidental or deliberate destruction. A secured process of data backup must be established.

There is serious concern that the Victorian Electoral Commissioner may have deliberately misled the parliament in his submission and evidence presented to the Parliamentary Electoral Matters Committee in 2010.

Preference data-files

The Chief Electoral Commissioner when requested to provide a copy of the data files pertaining to the primary count of the 2010 Western Metropolitan Region claimed that he was unable to do so stating, that the data has been over written further preventing independent review and scrutiny of the conduct of the election.

If the statements provided by the Chief Electoral Commissioner are true then it raises further concern as to the Commission's data management and backup processes, which appear to be non-existent or inadequate? It also necessitates the need for comprehensive review of the software currently in use to ensure that information and data is not destroyed or deleted without backup copies being made.

The specious deletion of the preference data files pertaining to the primary count has prevented opportunity for full and comprehensive independent analysis and review of the election process.

Copies of the electronic preference data-files were requested prior to the commencement of data-entry.

The failure of the Commission to provide copies of the data-files, as requested, further undermined confidence in the conduct and management of the election leaving the commission open to the allegations of a cover-up, denial and avoidance and incompetence.

Given the seriousness of this issue it is recommended that the Committee investigates further the back-up processes that were in place during the 2006 State election and reason as to why copies of the preliminary data-files were not backed up and retained as a matter of course and due diligence.

The Electoral Matters Committee should seek evidence from the Victorian Electoral Commission's System administrator and or IT manager to determine if backup copies of the data files were made and if not why not? Steps need to be taken to ensure that the data is protected and proper backup procedures are implemented

Security and Scrutiny of Electronic Voting Kiosks or electronic voting

On November 24, 2006 Glenda Frasier in a media dispatch indicated that the VEC had accessed the voting data-files recorded on the Electronic Voting Kiosks prior to the close of voting. No security procedures or scrutineers were present. The Chief Commissioner at the time, Mr Steve Tully, in his submission to the Parliamentary Committee claimed that the information referred to in Ms Frasier's email related to "dummy data" in spite of the fact that the data recorded on the Electronic Voting Kiosks was live election data. The Chief Commissioner then went on and stated that three Commission Officials had accessed the data without the presence of appointed scrutineers.

The committee should investigate further this issue and should seek evidence from Ms Glenda Frasier as to the validity of her email amidst concern that the Chief Commissioner may have misled the parliament in his report.

Tighter regulations and control must be imposed to secure the integrity of Electronic Voting Kiosk or electronic data. .

The data recording device needs to be secure and sealed in such a way so as to ensure that there is no unauthorised access of the data files in the absence of duly appointed scrutineers. There should be no wireless data access option. A closed network system would need to be verified and secure external backup procedures be implemented. Access to the electronic data during the election period should be limited and the data sequestered until the close of the poll

The design and security of Electronic Voting system(s) needs to ensure that data is protected and appropriate fail safe backup options available. This can be achieved by implementing a "write-once"/ "read-only" optical drive or a suitable data recording device

ISO certification

The parliament needs to ensure that the process and administration of the Victorian Electoral Commission including the software used in the counting of electronic elections are subject to review and certification in accordance with recognised ISO standards.

The review should include all aspects of administration, security and management.

Current certification of software in use is inadequate as it is limited to partial modules and does not cover the system as a whole.

The parliament needs to ensure that any in-house software development is properly managed and subject to a comprehensive project management review as outlined in "Prince2" project management procedures.

Accountability

Oversight by the State Ombudsman Department

Currently the Victorian Electoral Commission is exempt from review and oversight by the Victorian State Ombudsman.

Although the Victorian Electoral Commission is subject to review by the Victorian Privacy Commissioner and the State Auditor General the administration of the Victorian Electoral Commissioner of the Victorian Ombudsman is denied. Abuses in administration and Freedom of Information are not subjected to proper independent oversight.

The State Ombudsman is prevented from reviewing administrative procedures and actions of the Victorian Electoral Commission. Allegations of a serious nature are not properly dealt with by an independent and non-political process other than limited opportunity for judicial administrative review.

Recommendation: *That the Victorian State Ombudsman Act be amended to ensure that the Victorian Electoral Commission is subject to review by the office of the Ombudsman in administrative matters. Further that complaints of harassment outlined below by the Chief Commissioner are referred to the State Ombudsman for independent review.*

Threats, harassment and acts of intimidation by the Chief Electoral Commissioner - 2008

This issue does not apply to the current review, nor is it a reflection on the current Electoral Commissioner.

HOWEVER I wish to once again express my concern as the State Parliament and the Government of the day failed to properly address this issue and that the concerns of accountability of the Electoral Commission needs to be considered further .

Extract from previous submission

I wish to express serious concern in relation to acts of harassment and intimidation by the Victorian Electoral Commission and in particular acts of harassment by the Victorian by the Chief Electoral Commissioner in 2008 during the 2008 Municipal elections .

In the lead-up to and following the 2006 Victorian State election and the 2008 Victorian Municipal elections the Chief Electoral Commissioner, Mr. Steve Tully, in an attempt to deflect and prevent criticism in the way the State and Municipal elections were conducted, Mr Tully made a number of false and misleading statements, harassed, threatened and intimidated members of the public who had legitimate concerns and complaints in the way public elections are conducted in Victoria. Mr Tully had on a number of occasions exceeded his authority and obligations in pursuing his conduct of harassment.

Mr Tully's actions had been a deliberate attempt to deflect criticism and intimate witnesses to the Victorian State Parliamentary Electoral Matters Committee.

Normally such complaints would be subject to review by the Victorian State Ombudsman, However the Victorian Electoral Commission is currently exempt from administrative review by the State Ombudsman and as such the acts of the Chief Electoral Commission are not subject to review by the ombudsman.

On 3 July 2007 The Victorian Government Solicitors Office, Janie Hebiton, issued a threatening and intimidating letter acting on a instructions by the Victorian Electoral Commission following my application for information pursuant to the Freedom of Information Act in relation to the conduct of the 2006 State Election. The Victorian Electoral Commissioner had made a false and vexatious complaint to the Victorian Government Solicitor's Office. At the time of the complaint I was residing outside of Australia.

The Chief Electoral Commissioner was aware of my intention to make a complaint and submission to the Victorian State Parliament in relation to the Conduct of the 2006 State election. The Commission's actions were vexatious in that there was no case to answer and the complaint had no merit or substance. I had notified the Victorian Governments Solicitor's Office of this fact and express my concern that the actions of the Commission was an abuse of authority arising from a number of complaints I had made in relation to the conduct of the 2006 State election. The Victorian Government Solicitor's Office did not pursue the complaint.

In July 2008 I returned to Australia with the intention of making a further submission to the Victorian State Parliament Electoral Matters Commission in relation to the Victorian Electoral Commission's conduct of the 2006 State Election.

Whilst attending this meeting I was during the hearing approached by a member of Victorian Electoral Commission's staff who handed me a letter personally addressed and signed by the Chief Electoral Commissioner, Mr Steve Tully, in respect to my non-enrolment status. I expressed my concern at the time and showed a copy of the letter to members of the Electoral Matters Committee and Mr Mark Roberts, Committee Secretariat, as I considered this to be further harassment by the Victorian Electoral Commission and a direct act of intimidation by the Chief Electoral Commission arising from my submission and evidence presented to the Parliamentary Committee.

In November 2008, I had attended a public meeting in relation to the conduct of the City of Melbourne Municipal election. At this meeting I had raised my concern in relation to the proposed method of counting the vote and requested that the Commission undertake a preliminary distribution of the vote based on first preference votes prior to transcribing preference data-entry of

ballot papers. In doing so I expressed concern at the limitations imposed in relation to the scrutiny of the ballot. I also pointed out to the Returning Officer the recommendations made by the Victorian Parliamentary Electoral Matters Committee in relation to the review of the 2006 State election and the need to undertake a preliminary distribution of preferences prior to any data-entry of the vote. In addition concern was raised as to the merit or justification in undertaking a computerised counting of the Lord Mayor and Deputy Lord Mayor's election with a request that the City of Melbourne "Leadership team" ballot be counted manually so as to ensure that the process was open and transparent and subject to proper scrutiny of the ballot. Similar concerns were expressed and supported by Mr Ray Collins who also requested that there be a preliminary distribution of first preferences and that the Lord Mayor "Leadership team" election be counted manually. The returning officer at the direction of the Chief Electoral Commissioner refused to act on the request.

The day following this event I was somewhat concerned and alarmed that the Chief Electoral Commission has issued a false statement alleging that members of the Victorian Electoral Commission were subjected to threats and bullying which required police intervention.

The statements made by Mr. Tully and members of other members of Staff of the Commission had a negative impact on the candidature of Mr. Peter McMullin and Mr. Tim Wilson's election campaign.

There was no act of bullying or harassment as claimed by Mr. Steve Tully, Chief Electoral Commissioner.

- Mr Steve Tully's accusations were false and not supported by the facts.
- Mr Tully was not present at the briefing in question.

Having spoken to a number of people present at the meeting all stated that Mr Tully's statement is a gross over-reaction to criticism at the way in which the VEC elections are to be counted.

The Chief Commissioner misused and abused his position of authority.

At no time had staff been subjected to any threats and/or any act that warranted or required police presence. Mr. Tully's statement calling for police intervention was a further act of intimidation and harassment against his critics and an abuse of his authority.

Information obtained under freedom of information indicated that there was no written complaint made by the returning officer for the City of Melbourne elections.

Mr. Tully failed to contact myself or Mr. Collins in order to ascertain the veracity or validity of any of any complaint.

The actions and of the Chief Electoral Commissioner, Mr Tully, had compromised the independence of the Victorian Electoral Commission and brought into question the professionalism and integrity of the Commission's staff.

There were no grounds or justification to Mr Tully's statement or his accusations.

The reason behind Mr Tully's emotive outburst is simple, Mr. Tully had come under serious criticism in relation to his conduct of the 2006 State election along with concern that he may have deliberately mislead the parliament in his evidence given to the State Parliamentary committee on Electoral matters.

Mr Tully had cut corners and in the process had made a number of serious mistakes during the conduct of the 2006 State election.

Under the terms of the Local Government Act and regulations the Returning Officer is required to preliminary sort ballot papers into primary votes which in turn are used to reconcile the number of votes pertaining to the election as part of the process of scrutiny of the ballot.

There was and is no merit or justification for a computerised counting of the Lord Mayoral 'leadership team' ballot. A majority of candidates had supported calls for the ballot to be counted manually so that it could be subject to proper scrutiny.

The Victorian Parliament in reviewing the conduct of the 2006 State Election recommended that the VEC undertake a preliminary pre-sort ballot papers into primary votes, as is the case with Federal elections. Mr Tully chose to ignore the parliament's recommendation and the request made by candidates' representatives and others. Mr Tully directed Mr Bill Lang, City of Melbourne's Returning Officer, to reject the request for the preliminary sorting of ballot papers undermining the independence of the appointed Returning Officer.

The actions of the State Electoral Commissioner are a further example of harassment and intimidation and should be subject to independent review by the Office of the State Ombudsman.