Dear Committee Members,

Thank you for this opportunity to make a submission to the Victorian Parliament Electoral Matters Committee Inquiry into the Conduct of the 2006 Victorian State Election.

I am concerned that the calculations of results for the Legislative Council elections at the 2006 Victorian State Election were not compliant with the relevant legislation. Non-compliance may occur when a candidate is excluded because relevant legislation has been misinterpreted or disregarded.

The Relevant Legislation
The relevant legislation prescribes the transfer of votes, other than the excluded candidate’s own first preferences, from the excluded candidate to continuing candidates.

The transfer of these votes is described in the Electoral Act 2002 Part7 (Election Results), S114A, 12(b) –

“the total number, if any, of other votes obtained by the excluded candidate on transfers are to be transferred from the excluded candidate beginning with the highest transfer value and ending with the ballot papers received at the lowest transfer value”

The Electoral Act 2002 Part7 (Election Results), S114A, 28(c) defines what “constitutes a separate transfer” as it applies to these votes -

“a transfer in accordance with subsection (12)(b) of all the votes of an excluded candidate that were transferred to that candidate from a particular candidate”.

Each separate transfer marks a critical decision point. For example, the Electoral Act 2002 Part7 (Election Results), S114A, 13 specifies election of a candidate who has a quota “on completion of a transfer of votes of an excluded candidate”. Subsection 17 prescribes that “no other ballot-papers of an excluded candidate are to be transferred to the candidate so elected”. Calculation of the transfer value applied to the surplus votes of an elected candidate (subsection 7) will be based on the value and ballot papers accrued at the transfer after which they were elected since they will receive no further votes.

The Correct Procedure
Together the above subsections determine that the transfer of these votes to continuing candidates should proceed so that:

- Each separate transfer will include all and only those votes received from a single other candidate, that is, a particular candidate.
• Votes received from each particular candidate will be transferred in descending order of transfer value within each separate transfer.

• A critical decision is made at the end of each separate transfer.

The legislation is silent regarding the order in which the separate transfers should proceed. That is, all votes of which particular candidate should be transferred first, second, and so on?

The Procedure used by the Victorian Electoral Commission (VEC)

The VEC procedure described in the document PRVotingSystem.pdf obtained from their web site\(^1\) clearly states (Description of Scrutiny, 6.) that votes are transferred in descending order of transfer value only. –

“… All ballot papers received by the candidate at a particular transfer value are transferred together, beginning with those with a transfer value of 1 and ending with the ballot papers of the lowest transfer value. …”\(^2\)

This document does not make clear the critical decision points in transfers to exclude a candidate. However, such a decision point is illustrated in the distribution report state2006WesternVictoriaRegionDistributions.xls obtained from the VEC web site\(^3\). In that report candidate Kavanagh is shown elected (at count 168) after the transfer of all votes with transfer value 0.186442 from excluded candidate Carbines. Kavanagh has accrued votes in excess of the quota on completion of that transfer. The decision to elect is made before the remaining votes have been transferred from the excluded candidate to continuing candidates. In the VEC procedure it appears that the transfer of votes of a particular transfer value is treated as a separate transfer for the purpose of deciding if any candidate is to be elected.

The VEC procedure applies subsection 12(b) while ignoring 28(c). The transfer of votes, other than the excluded candidate’s own first preferences, from the excluded candidate to continuing candidates proceeded so that:

• All votes of the same transfer value are transferred at the same transfer regardless of the particular candidate from whom the votes were received.

• Votes are transferred in descending order of transfer value regardless of the particular candidate from whom the votes were received.

• A critical decision is made at the end of each transfer of votes of a common transfer value.

This procedure differs obviously from the correct procedure already outlined.


\(^2\) The referenced document does not make clear that an excluded candidate’s own first preferences are transferred separately from other votes (Subsection 12(a)) although the separation is apparent on inspection of any of the 2006 Legislative Council elections distribution reports that are available from the VEC web site.

Impact of the VEC Procedure

The procedure used by the VEC to calculate Legislative Council elections may precipitate a number of errors. Votes will be transferred in the wrong order if excluded candidates have received votes from more than one other candidate during previous transfers. Critical decisions may be based on different accrued value and different ballot paper numbers than if the procedure complied with legislation. Calculated transfer values applied in the transfer of surplus value may be incorrect.

The consequences of these errors may compound over the course of calculation of an election result. The relative standing of candidates at each decision point may be so changed that the order in which candidates are elected and surpluses transferred or the order of candidate exclusion is incorrect.

Recommendations

I ask the Electoral Matters Committee to consider these recommendations that:

1. The interpretation and application the Electoral Act 2002 Part7 (Election Results), S114A, 28(c) be corrected in the procedure used by the VEC to calculate Legislative Council elections.

2. The Parliament act to clarify the order of transfer of votes required by the correct application of the Electoral Act 2002 Part7 (Election Results), S114A, 12(b) and 28(c).

Yours sincerely,

Mary Levens

Electronic attachments:
PRVotingSystem.pdf
state2006WesternVictoriaRegionDistributions.xls

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4 These impacts extend to proportional representation elections for local government multi-vacancy electorates and Community Health Centre Boards of Management via similarities in the Local Government Act 1989 Schedule 3, Part 4A, 11B sections 12(b) and 27(c) and the subsections of the Electoral Act 2002 cited above. In addition, the calculation of results in Countback elections (Local Government Act 1989, Schedule 3a) will be based on votes that may have been wrongly accumulated at the initial proportional representation election.