Counting the votes and the return of the writs
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Counting the votes

Once voting finished on election night, Saturday, 18 September 1999, each polling place was locked and the votes counted on the spot. All ordinary first-preference votes (votes cast by voters voting at polling places in their own electorate) were counted for the Legislative Assembly and the Legislative Council.

After the counting of first-preference votes, a two-candidate-preferred count was conducted, whereby preferences were distributed to the two candidates considered most likely to be in the lead after the distribution of preferences. The purpose of the two-candidate-preferred count is to estimate an early picture of the likely result in each electorate, and is for information purposes only. (The candidates included in the two-candidate-preferred count are selected by the Electoral Commissioner before election day.)

After election night, absent votes (votes cast at polling places outside voters’ own electorates on election day) and votes cast either in person or by post before election day were counted.

Rechecks and preference distributions were undertaken in electorates where no candidate obtained more than 50 per cent of the first preference votes.

The counting of votes at the 1999 State election involved counting votes for eighty-eight Districts, twenty-two Provinces and three Province by-elections, during which there were a total of:

- 30 rechecks;
- 27 preference distributions; and
- 2 recounts (Geelong District and Gippsland Province).

Processing declaration votes

Declaration votes are made by voters who vote outside their own District as absent or postal voters or by voters whose name cannot be found on the electoral roll when they attend a polling place in their own District to vote. The voter must provide details of their entitlement to vote and their ballot papers are not admitted to the count unless their entitlement is confirmed.

In the case of absent and most postal votes, assessment of whether the vote should be admitted to the count is initially undertaken by the returning officer for the District where the vote is claimed. The vast majority of absent and postal votes are admitted at this stage. If the returning officer is unable to determine entitlement, the vote is referred to the VEC for final checking. Voters whose names cannot be found on the roll when they attend to vote in their own district cast an unenrolled vote. All unenrolled votes are referred to the VEC for central processing.

In the 1999 state election, 57,650 declaration votes (26,762 unenrolled votes, 29,206 absent votes and 1,682 postal votes) were centrally checked by the VEC over seven days, compared with 47,644 votes at the 1996 State election. Thirty-three per cent of declaration votes referred to the VEC for central processing were finally admitted to the count.

The return of the writs

The writs for the State election were returned on Thursday, 30 September 1999 to His Excellency, the Governor, Sir James Gobbo, AC. They were returned twelve days after election day, which was a record for the return of the writs after a State election.
Frankston East supplementary election and Province by-elections
Frankston East supplementary election

Background

A supplementary election was required in the Frankston East electoral District due to the death, during the election, of the sitting Member and candidate, Mr Peter McLellan, MP.

The supplementary election was held on 16 October 1999. The key dates for the supplementary election were:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue of writ</td>
<td>21 September 1999</td>
</tr>
<tr>
<td>Close of roll</td>
<td>27 August 1999 (same date as the State election)</td>
</tr>
<tr>
<td>Close of nominations</td>
<td>12 noon, 1 October 1999</td>
</tr>
<tr>
<td>Election day</td>
<td>16 October 1999</td>
</tr>
<tr>
<td>Return of writ</td>
<td>on or before 29 October 1999</td>
</tr>
</tbody>
</table>

Conduct of the supplementary election

The election was conducted from the same premises used for the State election. Voting arrangements and the number of polling places were the same as for the State election, except that voters could not vote outside the electorate on election day (as absent voters).

A near-record sixteen candidates nominated for the election.

The key dates for the registration of how-to-vote (HTV) cards were:

- submission to the returning officer: 4 October to 12 noon, 7 October 1999; and
- submission by registered political parties to the Electoral Commissioner: 2 October to 12 noon, 9 October 1999.

Thirty-eight HTV cards were registered for the supplementary election.

Voters unable to vote at a polling place on election day could vote beforehand at the returning officer’s office, or at the VEC’s office in Melbourne or by post. There were eleven polling places throughout the District on election day.

Voter information campaign

An enrolment campaign was not required as, by law, the roll was the same as that used at the 1999 State election held four weeks earlier.

Advertising for the supplementary election included information for candidates (press), as well as voting arrangements (radio, press, and a leaflet mailed to all voters on the roll).

Media centre

As State and national media interest intensified nearer to the election date, the VEC considered that it should respond to requests to provide a media focus for election night by establishing a media centre.

An area adjacent to the returning officer’s office provided an ideal venue for the media centre, and a tally board was constructed to show progressive first-preference results.

On election night, ABC Radio 3LO, 3AW, ABC TV and Channel 9 presented live crosses to the media centre.

In addition to the summary information presented on the tally board, a series of detailed printed results bulletins were provided to the media attending the media centre. These bulletins listed progressive first-preference and two-candidate-preferred results by polling place. The first results bulletin was provided at about 7 pm, and the last at about 10 pm, with clear indications of the result and swing being evident by about 8 pm.

Feedback received from the media indicated that the media centre and the provision of results bulletins on election night were well received.
Voter participation and rate of informal voting

The voter turnout for the supplementary election was 92.95 per cent. This compares very favourably with the voter turnout of 93.23 per cent for the State election.

The rate of informal voting at the supplementary election was 4.77 per cent.
By-elections for Ballarat Province, Melbourne Province and Melbourne North Province

On 24 August 1999 writs were issued for three by-elections to be held simultaneously with the State election.

The by-elections were required for:
- Ballarat Province—due to the resignation of the Hon Rob Knowles, MLC;
- Melbourne Province—due to the resignation of the Hon Barry Pullen, MLC; and
- Melbourne North Province—due to the resignation of the Hon Caroline Hogg, MLC.

The key dates for the Province by-elections were the same as for the 1999 State election.

Special arrangements were required for the by-elections to avoid any voter confusion which might result from voters in these Provinces receiving three ballot papers. In addition to the white ballot paper for the Legislative Assembly and pink ballot paper for the Legislative Council for the State election, voters were given a yellow ballot paper for the by-elections being held in these Provinces.

Advertisements were placed in The Age, Herald Sun, Ballarat Courier and appropriate suburban newspapers to explain these arrangements.

The table below shows the first-preference votes at the three by-elections.

The voter turnout rates for the by-elections were very similar to those for these Provinces in the State election. The informal voting rates in the by-elections (and for these Provinces in the State election) were somewhat higher than in the 1996 State election, suggesting that a small number of voters were confused by having three ballot papers to complete instead of two.

<table>
<thead>
<tr>
<th></th>
<th>Ballarat</th>
<th>Melbourne</th>
<th>Melbourne North</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enrolment</td>
<td>133,541</td>
<td>152,440</td>
<td>142,672</td>
<td>428,653</td>
</tr>
<tr>
<td>Formal votes</td>
<td>121,751</td>
<td>131,008</td>
<td>125,654</td>
<td>378,413</td>
</tr>
<tr>
<td>Informal Votes</td>
<td>3,631</td>
<td>5,555</td>
<td>6,798</td>
<td>15,984</td>
</tr>
<tr>
<td>Informal (%)</td>
<td>2.90%</td>
<td>4.07%</td>
<td>5.13%</td>
<td>4.05%</td>
</tr>
<tr>
<td>Total votes counted</td>
<td>125,382</td>
<td>136,563</td>
<td>132,452</td>
<td>394,397</td>
</tr>
<tr>
<td>Turnout (%)</td>
<td>93.89%</td>
<td>89.58%</td>
<td>92.84%</td>
<td>92.01%</td>
</tr>
</tbody>
</table>
Voter turnout and informal votes at

Notes:
1. Voter turnout at a by-election is generally lower than that for a State election.
2. Voter turnout is generally greater in country electorates.
3. Voter turnouts at the Doutta Galla Province by-election held on 30 March 1996, and at the three Province by-elections held on 18 September 1999 were particularly high as these by-elections were held in conjunction with a State election.
Recommendations for legislative change
Recommendations for legislative change

A number of significant changes were made to Victoria’s electoral law when Parliament passed The Constitution Act Amendment (Amendment) Act 1999 in April 1999, and these changes made a positive contribution to the conduct of the 1999 State election. The implementation of the amendments was reported on earlier in this report.

Victoria’s electoral law is contained in The Constitution Act Amendment Act 1958 (the Act). At the conclusion of a State election, it is appropriate to inform the Parliament of further areas that are in need of legislative change.

Rewrite of Victoria’s electoral legislation

Victoria needs coherent electoral legislation written in plain English. The Act has not been thoroughly reviewed since 1958, yet in the intervening period (some 42 years), it has been amended on numerous occasions. The result is that Victoria’s electoral legislation has a number of deficiencies: it is extremely prescriptive in some areas and lacking in detail in other key areas; it is written in difficult language; and it does not provide for modern election management practices.

It is now necessary for a complete review of electoral legislation so that it is easy for candidates and other election stakeholders to understand, without having to seek legal advice; is consistent in prescribing procedures; and provides for modern management practices and the use of technology in the administration of parliamentary elections.

I will be recommending to the Attorney-General a major review of Victoria’s electoral legislation during the term of the present Parliament.

During the 1999 State election the following specific areas of electoral law came under question and have become priorities for legislative change.

Only those electors who are enrolled and live in the electorate should be entitled to vote in an election

A cornerstone of an electoral system based on multiple, geographically defined electorates is that only those electors who are enrolled and continue to live in the electorate should be permitted to vote for that electorate.

Current electoral law provides that an elector who changes address must enrol at their new address one month after changing address. In practice, however, if an elector does not change their enrolment to the new address, and the elector’s name remains on the electoral roll for their ‘old’ address, then the elector will vote in the ‘old’ electorate. This is the case even though the elector may have long since left the electorate.

Prior to 1988, Victoria’s electoral legislation was clear in cases where electors no longer lived at the address for which they were enrolled. If they moved to an address within the same District, they were entitled to vote in the electorate where they were previously enrolled. If they moved to an address outside the District, within three months of election day, they were permitted to vote. If they moved to an address outside the District more than three months before election day they were not permitted to vote.

In 1988 the section of the Act dealing with this matter was amended in line with similar amendments to Commonwealth legislation made in the same year. The amendment removed the requirement that a polling official make further enquiries of an elector whose present address is different to their enrolled address.
It also removed the three-month provision mentioned above. At the time of making the amendment, there was insufficient consideration given to the effect that it would have on the important principle that only those electors who are enrolled and live in the electorate should be permitted to vote for candidates in that electorate.

The previous Electoral Commissioner twice reported to Parliament on this issue but the deficiency has not been corrected.

As matters stand, an elector who has long since left an electorate, but who remains on the electoral roll for that electorate, will in practice vote in the wrong electorate. It is recommended that the deficiency be corrected.

**Qualification to be a candidate**

It is necessary to put beyond doubt that a person who wishes to be a candidate at an election must be enrolled as at the close of roll for the election. During the 1999 State election there was a view that a person did not need to be enrolled at the close of the roll for the election in order to be a candidate at the election. The legislation should state this matter clearly.

**Death of a candidate on election day**

On election day at the 1999 State election, the Electoral Commissioner was advised that a candidate had died. There was no precedent for this having ever occurred in Victoria’s electoral history.

The Electoral Commissioner’s view was that in these circumstances Victoria’s electoral law required the election be declared a ‘failed election’ and a fresh election (called a supplementary election) be held. Prior to making the decision to direct polling officials to stop issuing ballot papers for the relevant electorate (Frankston East District), the Electoral Commissioner sought advice from the Victorian Government Solicitor. The Victorian Government Solicitor confirmed the Electoral Commissioner’s view on what was required.

The legislation needs to be amended to clearly specify that if a candidate dies at any time between the close of nominations and the close of voting on election day the election will have failed and a new election will be required.

**Web sites**

Victoria’s electoral legislation was drafted long before web sites were a part of modern communication. There is presently no specific provision for the authorisation of web sites that may contain candidates’ or parties’ election material. The Act needs to provide for the authorisation of web sites that contain election material. There also needs to be appropriate legislation that deals with the downloading of election material from a web site, and the possible further distribution and printing of material sourced from a web site.

‘Oral postal voting’ to be replaced with ‘pre-poll voting’

Currently Victoria’s electoral law provides for electors who meet certain qualifications to vote in person before election day at a returning officer’s office. This type of voting is termed ‘oral postal voting’. The term ‘oral postal voting’ is confusing, and should be replaced with the term ‘pre-poll voting’.

There are statutory qualifications that an elector is required to satisfy in order to be eligible for an ‘oral postal vote’. These relate to an elector’s reasons for not being able to vote at a polling place on election day. It is difficult to enforce these statutory qualifications as electors believe that they can vote as of right before election day, and many electors go to considerable effort to attend a returning officer’s office before election day in order to vote in this way. The legislation should be amended to reflect electors’ changing life styles and to provide for pre-poll voting as of right. Pre-poll voting as of right is already provided for in local government elections in Victoria.
‘Special hospitals’ to be appointed as ‘pre-poll voting centres’

The legislation currently provides for certain institutions (hospitals, nursing homes and convalescent homes) to be appointed by the Electoral Commissioner as ‘special hospitals’. When so appointed returning officers make arrangements to provide voting to the residents. Depending on the nature of the institution, the voting facility may be a fixed polling booth or a mobile voting service to the bedside of electors.

The term ‘special hospital’ should be removed from the legislation and be encompassed within the term ‘pre-poll voting centre’, and special hospital appointments by the Electoral Commissioner should be encompassed within provisions for the appointment of pre-poll voting centres (as recommended above). The returning officer should have the discretion as to whether the institution requires a pre-poll voting service (where residents are capable of attending a polling booth set up in the institution), or whether mobile polling is more appropriate.

Scrutiny of envelopes containing postal ballot papers

Presently the law requires a returning officer to inspect the postmark on the envelope containing postal ballot papers and, if the postmark includes a date after polling day, disallow the vote. This has the unwanted effect of disallowing postal votes that may have been posted on the Friday before election day or on election day, as Australia Post does not postmark mail processed on a Saturday. Such mail is postmarked on the Sunday or the following Monday.

The law should be amended to require the returning officer to use the date when the postal declaration was witnessed as the basis for determining whether the elector had voted prior to the close of the poll.

Review offences and penalties

There needs to be a review of the offences and the associated penalties under the Act. One example that regularly surfaces at elections is the offence of ‘treating’. The question that arises is whether a barbecue or a sausage sizzle paid for by a candidate constitutes ‘treating’. Legal advice has suggested barbecues or sausage sizzles would be most unlikely to come within the meaning of ‘treating’. This issue arises at almost every election and it is now time to make clear which activities or inducements are considered to be ‘treating’.

The penalties for conviction of offences are in desperate need of review. In some cases there is no prescribed penalty for conviction and in other cases the penalty does not match the seriousness of the offence. For example, there is no statutory penalty for conviction on an indictable offence. In other cases the penalty for conviction is a $100 fine.