Dear Ms Teague

Thank you for your email of 24 November 2020 and the attached report. I appreciate your interest and that of your colleague Mr Conway in this very important subject.

Firstly, the ACT Electoral Commission remains committed to delivering the highest possible quality electoral services. The integrity and security of the election, as verified by independent audit and certification of the electronic voting and counting code ahead of every election, is always paramount in the planning and delivery of the election by the Commission.

I will address your concerns in the order in which you have raised them below.

'Error 1: incorrect grouping by transfer value'

I do not accept the matter you refer to in this section is a coding error as you have characterised it, but rather a matter of legislative interpretation and determination. This is a particularly important distinction given the relative weight you assign to this issue, reflected in your report title and abstract. In redeveloping eVACS in preparation for the 2020 ACT election, Elections ACT analysed this particular element of the Hare-Clark counting system in great detail in relation to how the Electoral Act 1992 seeks to ascertain a result of the poll. I note that the interpretation you describe in your report correctly describes the manner in which eVACS performed prior to 2020. However, in redeveloping the counting module for 2020, Elections ACT closely reviewed the interpretation of the relevant clauses.

As you have correctly stated, the Electoral Act at Schedule 4, Part 4.2 section 9(1) provides that if a candidate is excluded in accordance with clause 8, the ballot papers counted for the candidate shall be sorted into groups according to their transfer values when counted for him or her.

The meaning of 'transfer value' in this context is defined by Schedule 4, Part 4.1, section 1C(3). It prescribes that ballot papers allocated as first preferences are given the value of 1; while ballot papers transferred from an elected candidate's surplus are allocated a new transfer value determined in accordance with the number of ballot papers allotted to the elected candidate at the point that candidate reaches the quota. These ballot papers retain these respective transfer values as they are transferred from excluded candidates to continuing candidates.

Upon reviewing the meaning of this provision, Elections ACT determined that the Electoral Act intends each separate transfer value applied to the various events – such as ballots received as first preferences and ballots transferred following the election of a particular candidate – to be considered as separate transfer values, even where they are calculated to be the same numerical value.

This is particularly so in relation to ballot papers given the value 1 where they are received as first preferences, compared to ballot papers allotted the value of 1 following an election of a candidate. As these two transfer values are defined in separate sub-clauses in section 1C(3), these are considered to be two different transfer values for the purposes of section 9(1), even though they are the same numerical value.

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In making this determination Elections ACT carefully considered the logic behind the transfer value process and the wording of the Act.

The approach taken within eVACS 2020 is logical in that papers that come from a surplus are by their nature of a different category to those that stem from a first preference count. The logic for this holds true to the manner in which Hare-Clark counts have always been processed when counting by hand. In a hand count ballot papers are commonly attributed a 'surplus code' of the name of the successful candidate from which the surplus originated. Accordingly, all papers with the same 'successful candidate surplus code' are amalgamated and dealt with separately from those with a different 'successful candidate surplus code'. It is not the numerical value that matters, it is which particular transfer value is attributed at each particular surplus and the above determination made by Elections ACT provides for this approach.

Going back through the history of Single Transferable Vote based proportional representation counts, past practice was to painstakingly transfer each parcel for individual counts separately, regardless of value; this of course took considerable time. The process therefore changed to allow for transfer values of the same value, emanating from the same surplus event, to be amalgamated, allowing for faster counts. Ballots received as first preferences and ballots allocated the value 1 following an election of a candidate, as described above, do not emanate from the same surplus event. They are an event of their own to which a value of 1 is given after section 1C(4) is applied. Accordingly, eVACS treats these papers differently.

On this matter Elections ACT has determined that eVACS 2020 correctly undertakes the Hare-Clark count in line with the *Electoral Act 1992*.
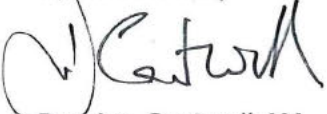
In conclusion, disregarding your statements of speculation and disparagement, I thank you and your colleague Mr Conway for your efforts in compiling this report and your interest in ensuring the continued delivery of the highest quality electoral services to the ACT community.

Yours sincerely

Damian Cantwell AM
Electoral Commissioner

30 November 2020