



Electoral Matters
Committee

The conduct of the 2022 Victorian state election

Volume 1: Key reforms

Inquiry

July 2024

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d. Member from 22 February 2023 to 3 October 2023. Deputy Chair from 27 February 2023 to 3 October 2023.

About the Committee

Functions

The Electoral Matters Committee is constituted under section 9A of the *Parliamentary Committees Act 2003*.

The Committee's functions are to inquire into, consider and report to the Parliament on any proposal, matter or thing concerned with:

- (a) the conduct of parliamentary elections and referendums in Victoria
- (b) the conduct of elections of councillors under the *Local Government Act 2020*
- (c) the administration of, or practices associated with, the *Electoral Act 2002* and any other law relating to electoral matters.

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Terms of reference

Inquiry into the conduct of the 2022 Victorian state election

On 9 March 2023, the Legislative Assembly agreed to the following motion:

That this House refers an inquiry into the conduct of the 2022 Victorian state election to the Electoral Matters Committee for consideration and report no later than 1 May 2024*.

*The reporting date was extended to 1 August 2024 by resolution of the Legislative Assembly on 6 March 2024.

Chair's foreword

Our democratic system relies on elections being conducted fairly, securely and accurately. This is not an easy task. Elections in Victoria are large, complex events, involving millions of people. The Victorian Electoral Commission (VEC) needs to manage time pressures, thousands of temporary workers and some very passionate participants.

Successfully delivering an election is a major accomplishment. This was particularly the case in 2022, which saw record numbers of candidates and voters for Victoria.

This Inquiry examined the way that the 2022 election was conducted. The Committee found that the election was generally conducted fairly and democratically, and the Committee was not presented with any evidence that the election result was not correct. The successful work of the VEC in 2022 should be recognised and the many workers who contributed to this should be commended.

However, this Inquiry also identified several areas where the electoral system could be improved to better meet the needs of stakeholders and to better align with community expectations.

There are four major areas where the Committee has recommended changes:

- adjusting the election timeline, including reducing the early voting period from twelve to seven days, closing the electoral roll earlier and bringing forward the close of nominations
- improving the VEC's training procedures and products to ensure that election officials are familiar with the rules and provide a good experience for voters
- reducing inappropriate behaviour by candidates and campaigners by establishing an enforceable code of conduct, limiting the number of campaigners at voting centres when necessary, introducing truth in political advertising laws and other actions
- eliminating group voting tickets for Upper House voting.

In addition, the Committee has identified two important issues that require further investigation:

- additional possible reforms to the Upper House and their impacts, including changes to Upper House regions and numbers of members
- allocating some electoral responsibilities to bodies other than the VEC, such as enforcing electoral law and hosting information for voters about candidates, parties and their policies.

These matters are covered in Volume 1 of this report. Volume 2 discusses the large quantity of evidence received by the Committee through this Inquiry and makes additional recommendations designed to ensure that the electoral system is inclusive, trustworthy, transparent and fair, and that the VEC meets its obligations in delivering elections.

Among other matters, Volume 2 discusses three important measures of the electoral system's health—enrolment, turnout and formality. The enrolment rate is high, having risen across multiple elections, and the formal voting rate increased for both houses in 2022. These are good outcomes. Turnout, however, fell to its lowest level since 1945. The Committee makes multiple recommendations aimed at better understanding and responding to declining turnout.

Volume 2 also discusses several incidents that occurred in 2022 that should not have happened, including:

- voting centres running out of ballot papers on election day
- 60,000 postal ballot packs being returned with the declaration envelope incorrectly filled out, leading to them not being counted
- commentary by VEC staff on the Leader of the Opposition that would have been better avoided
- the VEC publishing inaccurate information on social media
- the coordination of preference deals in a way that is seen by many as unethical.

These incidents are serious and it is important that action be taken to ensure that similar incidents do not occur in the future.

There are 98 recommendations in this report. Some are addressed to the Government, some to the VEC. Implementing these recommendations will be important for keeping Victoria's electoral system healthy and robust. I commend this report to all members of Parliament for consideration.

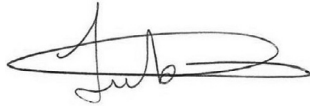
I would like to thank the many people who have contributed to this report through written submissions, by meeting with the Committee at public hearings, by attending the community roundtable and by completing surveys. The information people provided to the Committee was crucial for the Committee to understand what occurred at the 2022 election and how elections can be improved. On behalf of the Committee, I would like to gratefully acknowledge the time and effort that people put into making these contributions.

I would also like to recognise and thank the many parliamentary officers who assisted with this Inquiry, including the Committee's Secretariat, Hansard staff, the community engagement team and the graphic design and publishing team.

In addition, I would like to thank Scope Australia and Inclusion Melbourne for their input to our survey and Tarang Chawla from the Victorian Multicultural Commission for

facilitating the Committee's community roundtable. The work of these groups is greatly appreciated by me and the other Committee members.

Finally, as Chair of the Committee, I would like to thank my fellow Committee members for their contributions and for the collegiate approach that they have taken to working on this Inquiry.

A handwritten signature in black ink, appearing to read 'Luba Grigorovitch', with a large, sweeping flourish at the end.

Luba Grigorovitch MP
Chair

Executive summary

This Inquiry looked at the conduct of the 2022 Victorian election, including the experiences of voters, candidates, parties and other stakeholders.

The 2022 election was the largest in the state's history, with record numbers of voters and candidates. With this increasing scale came increasing complexity for the Victorian Electoral Commission (VEC) and others.

The Committee's overall assessment is that the election was conducted fairly and democratically, though there were some areas where improvements are needed.

This report has been divided into two volumes:

- this Volume 1 explores four key areas where the Committee would like to see changes
- Volume 2 explores the evidence in more detail and covers topics not included in Volume 1.

Volume 1

Improving the election timeline

The current timeline for a general election is tight and results in challenges for the VEC, parties and candidates. Some dates in the timeline would require a referendum to change. Other dates can be changed by the Parliament, and the Committee has focused on adjusting these dates to provide a more workable timeline.

The biggest change recommended by the Committee is reducing the early voting period from twelve to seven days. With this change, early voting would start on the Saturday before election day. To compensate for the reduced voting period, the Committee believes that late-night voting should be offered on two nights in most voting centres and that voting should be available on the Sunday before election day (which was not offered in 2022). Reducing the length of the early voting period will make it easier for candidates and parties to provide information to voters. It will also lengthen the period between the deadline for candidate nominations and the beginning of voting. This will reduce some of the pressures experienced by the VEC, parties and candidates to produce ballot papers, how-to-vote cards and other election material.

The Committee has also recommended changes to the dates for registering political parties, closing the electoral rolls, nominating as a candidate and returning the writs. These changes will further reduce some of the pressures in the election period.

Equipping the VEC with the staff it needs

The VEC employs over 20,000 people in temporary roles at a state election, which provides a number of challenges.

One challenge involves training those people. The Committee heard from stakeholders that there were multiple areas where the VEC's training needs to be improved. This concern was also raised after previous elections, suggesting an ongoing problem. The Committee would therefore like to see an independent expert evaluate the VEC's training processes and their effectiveness. Accompanying this, the VEC needs to establish fast and effective escalation processes for when there are disagreements between candidates or campaigners and election officials. Escalation processes are critical for managing problems when staff are not fully aware of electoral rules.

The Committee also considers that there may be benefits to bodies other than the VEC having some electoral responsibilities. A separate body dedicated to enforcing electoral law could supply specialised staff trained to deal with breaches of the law and could reduce some of the workload of VEC staff, especially at voting centres. In addition, a different body could host non-partisan information about candidates, parties and their policies. This has been identified as a need by voters but the VEC has been reluctant to undertake this role. The Committee considers that more research is needed to explore how these responsibilities should be allocated and has recommended that the issue be considered in a new inquiry.

Managing poor behaviour by candidates and campaigners

The Committee heard from many stakeholders about poor behaviour by candidates and campaigners. This particularly involved behaviour at voting centres, though the Committee also heard of poor behaviour in the broader community. Experienced members of Parliament told the Committee that the behaviour in 2022 was the worst of any election that they had been part of. The VEC agreed with this assessment.

The Committee believes that a suite of changes is needed to address poor behaviour. There needs to be a clear code of conduct establishing the standards of behaviour expected of candidates and campaigners. There needs to be a system for actively monitoring the behaviour of candidates and campaigners. Legislative changes are needed to give the VEC (or an alternative body) powers to investigate and penalise breaches of the code of conduct and electoral rules. These should include a range of graduated responses to manage less serious offences and a system of registering campaigners to provide a mechanism for enforcement. All these elements will be needed to effectively address poor behaviour.

During the 2022 election, there were two early voting centres where the VEC restricted the number of campaigners to reduce problematic behaviour. The Committee would like to see this practice more readily implemented in situations where the number of campaigners is hindering people from voting or contributing to disorderly conduct.

The Committee also reiterates the importance of a recommendation from the previous Electoral Matters Committee that laws should be introduced requiring truth in political advertising.

Reforming the Upper House

The Committee believes that the structure of the Upper House regions needs to be reconsidered. The Committee has not identified a preferred set of changes, as there are many complex issues to be considered which are beyond the scope of this Inquiry. In addition, any change to the regions would require a referendum and should therefore include more community input. The Committee considers that a new inquiry specifically looking at possible reforms and their impacts should be undertaken.

The voting system used for Victoria's Upper House came under a lot of scrutiny in 2022. Many people raised concerns and called for changes. Similar issues were raised after the 2018 Victorian election as well.

In the Committee's view, the main concerns about the system are that:

- voters do not always understand how their votes will be distributed when they vote above the line on their ballot papers
- the final results do not necessarily reflect voters' preferences.

The Committee believes that change is needed. The Committee has recommended a similar voting system to the one used for the Commonwealth Senate. This would include eliminating group voting tickets and allowing voters to indicate multiple preferences above the line.

Volume 2

Volume 2 of this report explores the evidence received by the Committee in detail and considers matters not covered in Volume 1. In Volume 2, the Committee assesses the 2022 election based on four fundamental questions:

- Was the election inclusive?
- Was the election trustworthy and transparent?
- Did the VEC meet its obligations?
- Was the election fair?

To answer these questions, the Committee examined election data from the VEC, the experiences that people shared via written submissions and public hearings, an evaluation of services commissioned by the VEC, the Committee's own surveys and a community roundtable.

Was the election inclusive?

The Committee was pleased to see a higher proportion of people enrolled and fewer people voting informally than at previous elections. However, the number of people actually turning out to vote has dropped over the last two elections. In addition, although the overall rate of informal voting has reduced, there is an increasing number of districts with particularly high informality. Further research is needed to understand what is driving these changes, and the VEC has already begun that process.

The VEC offered a wide variety of ways to vote in 2022. However, it struggled to support voters who were interstate or overseas. It also encountered a major problem with postal ballot packs. Over 60,000 people returned ballot packs in 2022 that could not be counted because the declaration envelope had not been filled out correctly. These matters need to be addressed. The VEC has recommended expanding the range of people eligible for telephone-assisted voting, but the Committee considers that a more cautious approach to increasing the scale of this method of voting is needed.

The Committee would also like to see more done to support the participation of people with disability, including the development of a framework for improving the inclusion of people with intellectual and cognitive disability.

Providing clear communication about the election is an important part of making an election inclusive. The VEC expanded its use of social media in 2022. However, the VEC needs to return to its previous practice of mailing hard copies of the *EasyVote guide* to households. There are also potential improvements to the VEC's communication with electors from culturally and linguistically diverse backgrounds.

Was the election trustworthy and transparent?

Ensuring that people can trust the VEC and its processes is critical for a robust democracy. The VEC increased its efforts to tackle inaccurate rumours online in 2022, which the Committee supports. However, it also published some inaccurate information about problems at voting centres. The VEC will need to review its processes to ensure that this sort of thing does not occur again in the future.

The Committee was not provided with any evidence indicating errors in the results or electoral fraud. However, the VEC should provide more information in its post-election reporting, including:

- more details about its investigation of multiple voting
- details about its checks on the security of ballot papers
- audits of computer counts
- the reasons for significant changes to vote tallies during the counting process.

This information would help to demonstrate that the results are fair and accurate.

Scrutineers also play a key role in ensuring that vote counting is correct. There is scope for the VEC's communication with scrutineers to be improved so that they can be present whenever counting is taking place.

Did the VEC meet its obligations?

Before an election, the VEC sets out its performance targets through a service plan and through plans focused on specific groups. After an election, it produces a report to the Parliament. While the VEC has improved its reporting following the 2022 election, the Committee has identified a number of changes to the performance measurement system and post-election reporting which would make them more robust and more comprehensive.

Multiple stakeholders raised concerns about the way that the VEC enforced rules at the 2022 election, especially at voting centres. In some cases, the Committee considers that legislative change to adjust some rules would be appropriate. These include rules about the authorisation of electoral matter, what is permitted on how-to-vote cards and the timeline for sending data about postal voters to parties and candidates.

Unfortunately, ballot paper shortages were an issue in 2022, with a number of voting centres running out of ballot papers on election day and at least one voting centre closing early. The VEC has indicated that it plans to implement electronic roll mark-off at future elections, which will provide the VEC with another tool to help prevent this occurring again.

Was the election fair?

For an election to be fair, there needs to be a level playing field for all candidates. This includes voters understanding how their votes will be counted and being informed about the different parties and candidates. It also includes the VEC providing candidates and parties with good service so that they all have a fair chance at election.

Changes have been recommended in several areas to make elections fairer. The group voting tickets used to elect Upper House members can make it hard for voters to understand how their votes will be counted and the Committee would like to see the voting system changed. Difficulties finding volunteers to campaign at voting centres through the election period can also make it hard for voters to be fully informed, as can the lack of a central source of information about parties and candidates. The poor behaviour of some candidates and campaigners also made it harder for voters to connect with campaigners and be fully informed.

Feedback from candidates suggested that they were less satisfied with the VEC's information products than they were at previous elections. They also found the process of registering how-to-vote cards particularly onerous. The Committee's view is that there is little value in registering the cards and that the requirement should be removed

from the Electoral Act. Overall, some candidates felt that some VEC staff approached candidates and campaigners with an adversarial attitude and the Committee would like to see training to reduce this.

Several aspects of Victoria's electoral system can provide advantages to major parties over minor parties and independents. The recent recommendations of the Electoral Review Expert Panel would address some aspects of this. A change to the way that Upper House results are calculated would also help.

Chapter 7 of this volume provides a summary of the recommendations in Volume 2.

Findings and recommendations

Volume 1

1 Introduction

FINDING 1: The 2022 election was conducted fairly and democratically. However, there are several areas where the system could be strengthened to improve the quality of election delivery in Victoria.

2

3 Improving election timelines

FINDING 2: The VEC has warned that the tight timeline for conducting elections in Victoria, combined with the increasing complexity and scale of elections, means that there is an increasing risk of problems causing a failed election in the future. The VEC has proposed four changes to the election timeline to reduce some of the pressure. The Committee supports these changes with some adjustments.

19

RECOMMENDATION 1: That the Government introduce legislation amending the Electoral Act to adjust the timeline for fixed-term, general elections so that:

- parties may not submit applications to register as a party less than 180 days before the election
- the VEC is required to decide on applications to register political parties no later than 100 days before the election
- the close of rolls happens at 8 pm on the day that the writs are issued
- the close of nominations for independent candidates happens 16 days before the election
- the writs must be returned by 23 days after the election.

19

RECOMMENDATION 2: That the Government consult with the VEC about the practicality of further shortening the nomination period so that nominations close seven days after the issue of the writs.

19

RECOMMENDATION 3: That the Government note the VEC’s concerns about the tightness of the election timeline and monitor the issue at future elections. Consideration should be given to additional changes to the timeline if required, including possibly a referendum to change the date of fixed-term elections. **19**

FINDING 3: The current early voting period covers 12 days (including one day on which all voting centres were closed in 2022). Parties and independent candidates have indicated that they struggle to find volunteers to campaign at voting centres to cover the early voting period, meaning that voters do not have the opportunity to receive how-to-vote cards and information about all candidates. There is also currently only two clear days between the close of nominations and the start of early voting, which puts significant pressure on the VEC, candidates and parties. **21**

RECOMMENDATION 4: That the Government introduce legislation amending the Electoral Act so that early and mobile voting cannot begin until the Saturday seven days before election day. **21**

RECOMMENDATION 5: That, if Recommendation 4 is implemented, the VEC provide for early voting on the Sunday before election day and provide extended hours on Tuesday and Thursday evenings during the early voting period (except in locations where there is unlikely to be significant demand). **22**

FINDING 4: To ensure that postal voters receive their ballot packs in time to vote, the VEC should start sending the ballot packs in the week after the close of nominations. Postal vote ballot packs can be sent before the proposed new start time for early and mobile voting. **22**

RECOMMENDATION 6: That the Government introduce legislation amending the Electoral Act to specify that the VEC should send ballot packs to people who have successfully applied to vote by post at just one specific election ‘as soon as practicable after the final nomination day’ (for those applications received before the close on nominations). The legislation should explicitly state that postal vote ballot packs can be mailed before early and mobile voting commence. **22**

4 Equipping the Victorian Electoral Commission with the staff it needs

FINDING 5: Problems with the VEC’s training products and processes have been identified repeatedly in recent elections. Feedback indicates that the products could be made more accurate, clearer and more comprehensive. The VEC was also not able to fully train all staff, with only 88% of election staff completing the online training in 2022.

27

RECOMMENDATION 7: That the VEC engage an independent expert to evaluate the effectiveness of its training procedures. This evaluation should include:

- a thorough review of training products and procedures before the 2026 state election
- observing the behaviour of election officials in early voting centres, election-day voting centres and count centres during the 2026 state election to assess the effectiveness of the training products and procedures, and to identify potential improvements.

27

FINDING 6: Fast and effective escalation processes are essential for when there are disagreements about election rules between election officials and campaigners. Some stakeholders were not satisfied with the processes in 2022.

29

RECOMMENDATION 8: That the VEC review and improve its processes for managing disagreements between election officials and candidates/campaigners. For the 2026 election, there should be a clear escalation process, which all candidates and campaigners can easily access, which can quickly resolve any disagreements in accordance with the law and communicate any rulings to VEC staff at voting centres or count centres.

29

FINDING 7: There may be advantages to allocating some election-related responsibilities to bodies other than the VEC. This could reduce the workload of VEC staff, reduce concerns about partisanship and allow more specialised staff to undertake certain roles.

33

RECOMMENDATION 9: That the Parliament refer to the Electoral Matters Committee an inquiry into whether bodies other than the VEC should be given responsibility for investigating and prosecuting breaches of the Electoral Act and for hosting non-partisan information about candidates, parties and their policies. This inquiry should include consideration of the experience in jurisdictions where similar arrangements have operated.

33

5 Managing poor behaviour by candidates and campaigners

FINDING 8: The 2022 election saw an increase in poor behaviour by candidates and campaigners at voting centres and elsewhere. A code of conduct applying to all campaigners which explicitly sets out what behaviour is unacceptable would clarify what is permitted and provide a basis for action to be taken against people who breach the code.

38

RECOMMENDATION 10: That the Government work with the VEC, political parties and other stakeholders to develop a legally enforceable election-period code of conduct for candidates and campaigners.

38

FINDING 9: To effectively manage poor behaviour by candidates and campaigners, the VEC or another suitable body needs to have powers to enforce electoral rules. These should include the ability to use a range of graduated responses to manage poor behaviour. It is also necessary for the behaviour of candidates and campaigners to be monitored to identify breaches of the rules.

40

RECOMMENDATION 11: That the Government introduce legislation amending the Electoral Act to provide the VEC or an alternative body with the power to enforce appropriate behaviour at voting centres through:

- empowering the VEC or another suitable body to penalise breaches of the code of conduct recommended in Recommendation 10
- introducing a range of graduated responses to manage less serious breaches of electoral rules, including infringement notices, cautions, warnings and enforceable undertakings
- making it an offence for a person removed from a voting centre to return to the voting centre
- providing the VEC or another suitable body with investigative tools to enable the investigation of serious breaches of electoral laws.

40

RECOMMENDATION 12: That plans for the 2026 state election include a system for actively monitoring the behaviour of candidates and campaigners to identify breaches of electoral rules, rather than relying on reports from campaigners.

40

FINDING 10: It would be easier to take action against any campaigners who break the rules if people who want to campaign at voting centres were required to register with the VEC or an alternative body. Registering would also prevent people from campaigning anonymously, which may make them less likely to break the rules, as well as allowing for enforcement actions such as issuing infringement notices. Any registration process must be quick and easy to ensure that campaigners are not put off participating by the registration process.

42

RECOMMENDATION 13: That the Government introduce legislation amending the Electoral Act to require all people who wish to campaign at a voting centre to register their details with the VEC or an alternative body involved with enforcing electoral law. The legislation should give the appropriate body the power to revoke a person's registration if they behave inappropriately or if they refuse to provide evidence of their identity. The registration system should:

- be quick, easy and centralised
- allow campaigners to register before or during the election period, including on election day
- not require campaigners to indicate whom they are campaigning on behalf of
- allow election officials to add notes about any actions taken in relation to the individual which can be viewed by other election officials
- delete people's details within 30 days after the election unless the person is part of an ongoing investigation.

42

FINDING 11: Campaigners play an important role at voting centres. However, excessive numbers of campaigners can create an intimidating situation for voters and make it difficult for other campaigners to engage with voters.

44

RECOMMENDATION 14: That the VEC inform all stakeholders that there is a general expectation that no more than three campaigners for each party and independent candidate will be actively campaigning at any voting centre entrance at any time (excluding candidates and members of any parliament). If the number of campaigners at a voting centre is hindering people from voting or is contributing to disorderly conduct (reaching a threshold established in legislation or regulation), the limit should be established as a firm rule for that voting centre and should be actively monitored and enforced until the matter is resolved.

45

FINDING 12: Current restrictions in relation to misleading and deceptive electoral matter only apply between the issue of a writ and election day. However, much campaigning for a general election occurs before the issue of the writs.

46

RECOMMENDATION 15: That the Government introduce legislation amending section 84 of the Electoral Act so that its provisions apply for two months prior to election day for general elections occurring according to fixed terms.

46

FINDING 13: The VEC has recommended that the current provision in the Electoral Act about misleading and deceptive electoral matter be clarified. The VEC has called for the current narrow application of the law to be clearly stated in the legislation. However, the previous Electoral Matters Committee and other stakeholders have called for broader provisions that require truth in political advertising.

47

RECOMMENDATION 16: That the Government introduce legislation amending the Electoral Act to introduce truth in political advertising laws, as recommended by the previous Electoral Matters Committee in its *Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration*. When implementing systems of this nature, it is best for a consistent approach to be adopted with the Commonwealth. If Commonwealth legislation is introduced regarding truth in political advertising, then the Victorian Government should seek to align Victorian laws with the Commonwealth laws. However, if changes are not introduced at the Commonwealth level in a timely manner, the Victorian Government should seek to introduce its own legislation.

48

6 Reforming the Upper House voting system

FINDING 14: Group voting tickets may result in some above-the-line votes for the Upper House being distributed in ways that voters do not expect or want. This can occur because many voters do not consult the group voting tickets before voting and, even if they do, some group voting tickets can be hard to understand. The Upper House voting system can lead to some candidates with small numbers of first-preference votes being elected based on the flow of preferences, while other candidates with more first-preference votes do not get elected. If voters have not chosen those preferences, this is problematic. Group voting tickets also lead to distrust in the system, encourage more candidates on ballot papers and enable 'preference whispering', which some people see as unethical.

55

FINDING 15: Eliminating group voting tickets and allowing multiple preferences above the line would improve Victoria's Upper House voting system. These changes would enable voters to better understand where their votes would be transferred, while also being relatively simple for voters and minimising the proportion of votes that do not count towards any candidates.

59

RECOMMENDATION 17: That the Government reform the Upper House voting system by introducing legislation amending the Electoral Act to:

- eliminate group voting tickets
- allow voters to indicate multiple preferences for parties/groups above the line, where a preference above the line is interpreted as a preference for all of the candidates of that party/group, in the order listed on the ballot paper
- have ballot papers direct voters to select at least five preferences above the line
- include savings provisions similar to those in the Commonwealth Electoral Act that a vote is still valid if fewer than five preferences above the line are indicated.

The current system for voting below the line should be retained.

59

RECOMMENDATION 18: That, if Recommendation 17 is implemented, the Government provide the VEC with additional funding to develop and conduct an education campaign about the new voting system for the Upper House before the first election with the new system.

60

FINDING 16: The Committee's proposed changes to the Upper House voting system may make it more difficult for smaller parties to be represented in the Upper House. Changes to the number of members and/or regions would compensate for this by lowering the quota for election.

62

RECOMMENDATION 19: That the Parliament refer an inquiry into possible reforms of the Upper House electoral system and their impacts to the Electoral Matters Committee.

62

FINDING 17: In some jurisdictions, 'Robson Rotation' is used to vary the order of candidates within a party from one ballot paper to another to eliminate any advantages from ballot paper order. However, this would not be practical in Victoria, where people are not necessarily familiar with their Upper House candidates and where how-to-vote cards are an established part of elections.

63

RECOMMENDATION 20: That Robson Rotation not be adopted for ballot papers in Victoria.

63

7 Summary of recommendations in Volume 2

FINDING 18: The Electoral Act was passed more than 20 years ago. Many changes have occurred in elections since then, such as larger numbers of voters and candidates, more people voting early and the rise of social media. The Committee has recommended multiple amendments to the Electoral Act to keep up with these and other changes.

71

RECOMMENDATION 21: That the Government consider undertaking a holistic review of the Electoral Act to bring it up to date and to incorporate the recommendations of this report, other reports by the Electoral Matters Committee and appropriate recommendations by the VEC.

71

FINDING 19: The Electoral Regulations can include key electoral rules that can impact on the fairness and inclusivity of elections. It is important for any changes to be well informed.

71

RECOMMENDATION 22: That the Government consult with the Electoral Matters Committee whenever it is considering changes to the Electoral Regulations, giving the Committee an opportunity to provide input based on its work.

71

Chapter 1

Introduction

1.1 An inquiry into the 2022 state election

In March 2023, the Victorian Parliament asked its Electoral Matters Committee to conduct an inquiry into the conduct of the 2022 Victorian state election. Similar inquiries have been conducted after each state election since 2006. These reviews help the Parliament understand what happens at elections and what can be done to ensure that Victoria's electoral system remains strong.

This report presents the Committee's findings from the inquiry into the 2022 election. The report has been published in two volumes—this volume focuses on four key areas where the Committee believes that important changes are needed. The second volume explores the evidence gathered by the Committee in more detail and makes recommendations on other matters.

In conducting the Inquiry, the Committee invited parties, candidates, experts, members of the public and organisations to contribute their views and share their experiences of the election. The Committee:

- received written submissions from 114 people, groups and organisations
- held 27 public hearings with 50 witnesses
- organised a community roundtable with members of culturally and linguistically diverse communities
- conducted a survey of members of the Victorian Parliament
- conducted a survey of voters with disability
- sought specific information from the Victorian Electoral Commission (VEC)
- conducted its own research, analysing electoral data, media articles and social media posts.

The Committee gratefully acknowledges the time and effort put in by the many people preparing written submissions, attending public hearings, participating in roundtables and completing the Committee's surveys. The information and ideas that people shared have been critical for the Committee in undertaking this Inquiry. The Committee extends sincere thanks to all participants.

More details about the inquiry process are set out in Appendix A in Volume 2 of this report.

1.2 Overall assessment

The Committee considers that the 2022 Victorian election was generally conducted fairly and democratically. All legislated requirements were met. The Committee has not been presented with any evidence indicating that the election result was not correct. There were some areas, though, where problems occurred and where improvements need to be made for future elections.

The Committee notes that Victorian elections are growing in scale and complexity and that the responsibilities of the VEC are expanding (see Chapter 2 of this volume). Delivering elections is an increasingly difficult challenge. The VEC is conscious of these challenges and has generally responded appropriately. However, there are a number of areas where things could be done better, which are discussed throughout this report. In particular, the Committee notes:

- ensuring that there are sufficient ballot papers at every voting centre so that people do not miss out on voting (see Chapter 10 in Volume 2)
- improving services to voters interstate and overseas (see Section 3.4 in Volume 2)
- needing better ways to manage poor behaviour by candidates and campaigners at voting centres (see Sections 3.3.3 and 12.2 in Volume 2)
- finding new ways to recruit staff to work for the VEC during the election period (see Section 4.1 in this volume)
- ensuring that election officials at voting centres are familiar with relevant laws (see Section 9.2 in Volume 2)
- more clearly communicating key information to stakeholders (see Sections 7.5 and 13.2 in Volume 2)
- improving processes to make sure that all information published online by the VEC is accurate (see Section 6.4 in Volume 2)
- strengthening VEC reporting (see Section 8.4 in Volume 2).

The recommendations in this report seek to address these and other concerns.

FINDING 1: The 2022 election was conducted fairly and democratically. However, there are several areas where the system could be strengthened to improve the quality of election delivery in Victoria.

1.3 Structure of the report

This report sets out the Committee's findings from the Inquiry, along with its recommendations for change. The report has been divided into two volumes.

This shorter volume contains the major findings and recommendations relating to four key areas of concern:

- the election timeline
- VEC staffing
- poor behaviour by candidates and campaigners
- the Upper House voting system.

Volume 2 sets out the evidence received by the Committee in much more detail and contains recommendations relating to topics not covered in this volume. A summary of these recommendations is included in Chapter 7 of this volume.

Chapter 2

Overview of the 2022 election

2.1 Introduction

The 2022 Victorian state election was conducted in November 2022. The election was larger in scale than any previous Victorian election, with record high numbers of voters, candidates and other aspects of the election. In addition, the Victorian Electoral Commission (VEC) had increased responsibilities compared to previous elections, including managing higher numbers of campaigners at voting centres, administering a new political funding, donations and disclosure system, and dedicating increased resources to social media.

This chapter gives a broad overview of the 2022 election, identifying key issues and comparing 2022 with earlier elections:

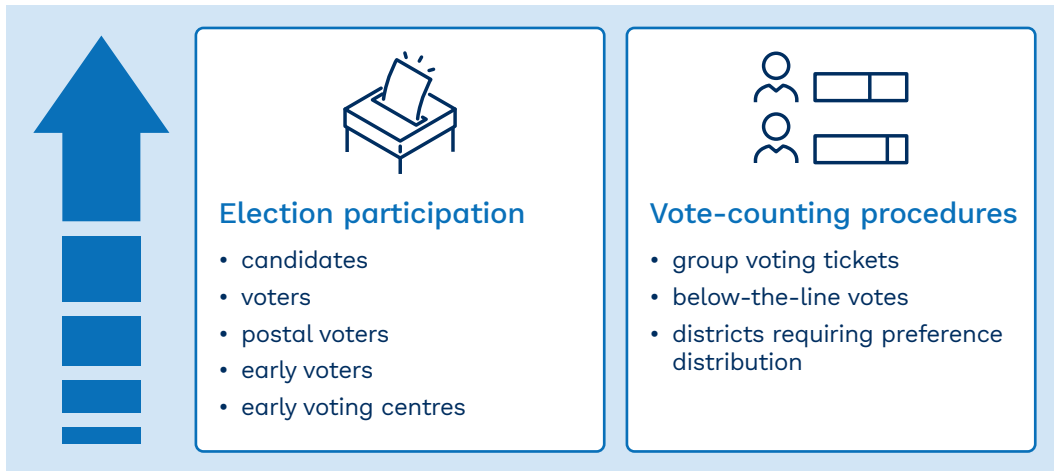
- Section 2.2 outlines the scale and complexity of the 2022 election
- Section 2.3 discusses the trends in voter participation levels
- Section 2.4 shows how Victorians cast their vote in 2022, and how that compares to previous elections
- Section 2.5 outlines the election experience for voters and candidates, with a focus on voting centres.

Volume 2 of this report provides in-depth analysis of the 2022 election and discusses the issues presented in this overview in greater detail, along with many other matters.

2.2 Victoria's largest and most complex election ever

The 2022 election was the largest and most complex election in Victoria's history. Figure 2.1 shows some of the areas where record high numbers were recorded.

Figure 2.1 Record high numbers at the 2022 election



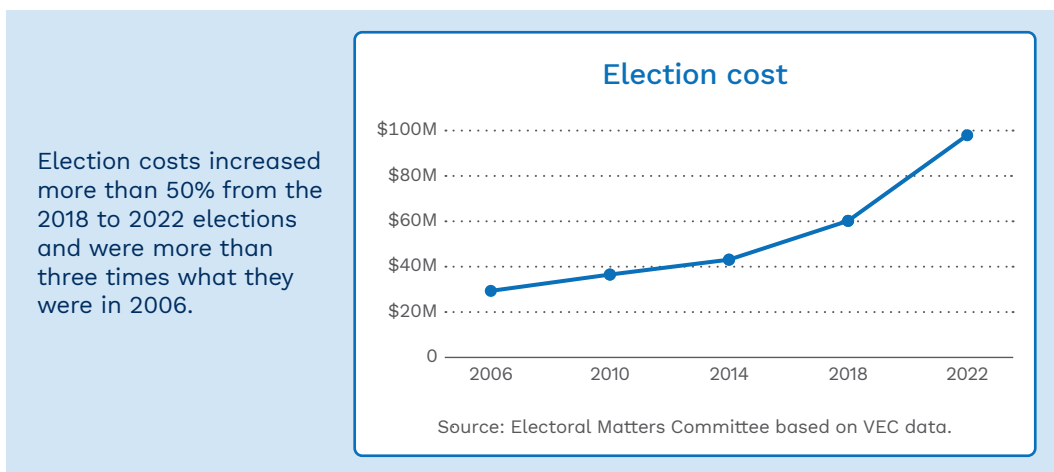
Source: Electoral Matters Committee based on VEC data.

Multiple factors are increasing the size and complexity of Victorian elections, including:

- population growth
- the changes to Victoria’s electoral system in the early 2000s, which have encouraged more candidates and parties to stand for election
- an increasing proportion of votes for minor parties, which makes vote counting more complicated
- an increase in early voting, which requires more early voting centres and people to staff them.

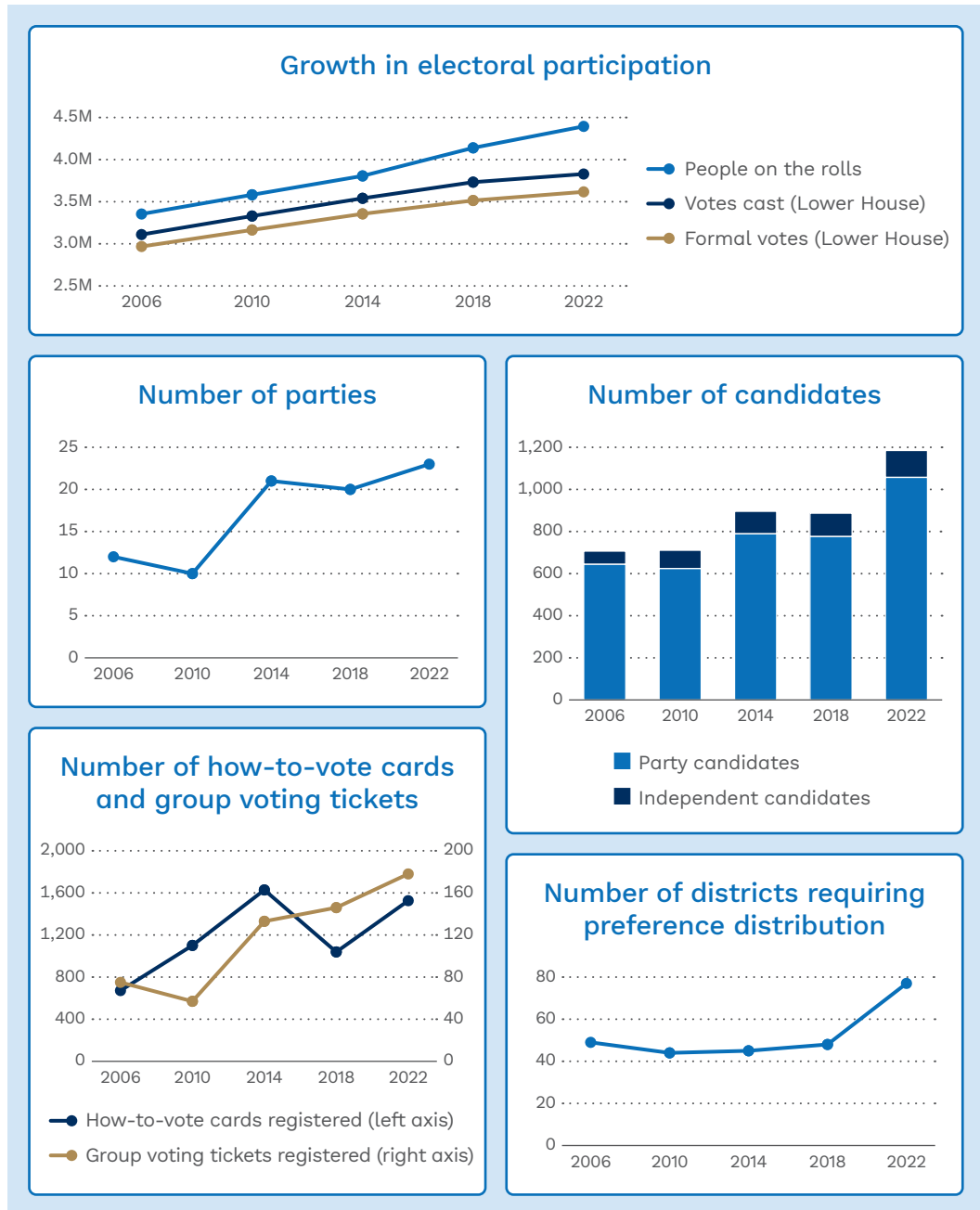
Figure 2.2 shows the growth of some key aspects of Victorian elections.

The overall cost of an election can give an indication of its complexity and scale.



Election costs increased more than 50% from the 2018 to 2022 elections and were more than three times what they were in 2006.

Figure 2.2 Growth in various election components, 2006 to 2022



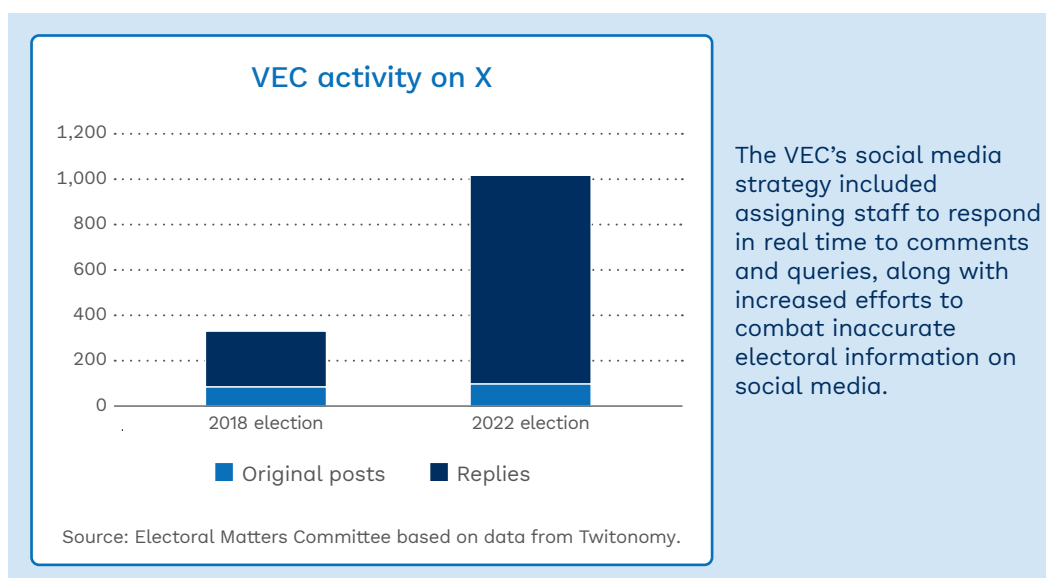
Source: Electoral Matters Committee based on VEC data.

The VEC also had growing areas of responsibility at the 2022 election.

Many Inquiry stakeholders reported an increased number of campaigners and an increase in poor behaviour and conflict outside voting centres (see Sections 3.3.3 and 12.2 in Volume 2). Some experienced politicians described the election behaviour in 2022 as the worst they had ever seen. The complexity of running the election was increased by having to manage this behaviour.

Another area of increased responsibility for the VEC was administering Victoria's new political funding, donations and disclosure system. This came into full effect for the first time with the 2022 election. Donation disclosures grew substantially as the election approached. Of the 2,196 donations published from December 2018 to June 2023, 1,342 (61.1%) were published in the six months from June to November 2022. The VEC was also required to manage an increased number of funding streams for a growing number of parties and candidates.¹

The VEC's social media workload also increased in 2022 as it worked to be more responsive to community comments and questions (see Sections 5.3 and 6.3 in Volume 2 for more details).



2.3 Voter participation

Enrolment numbers increased in the lead-up to 2022, with 4,394,465 people enrolled to vote at the election. This is an estimated 97.8% of the eligible population. The proportion of the population enrolled has risen across multiple elections, driven (at least in part) by the VEC's and Australian Electoral Commission's efforts to automatically enrol people (referred to as 'direct enrolment').

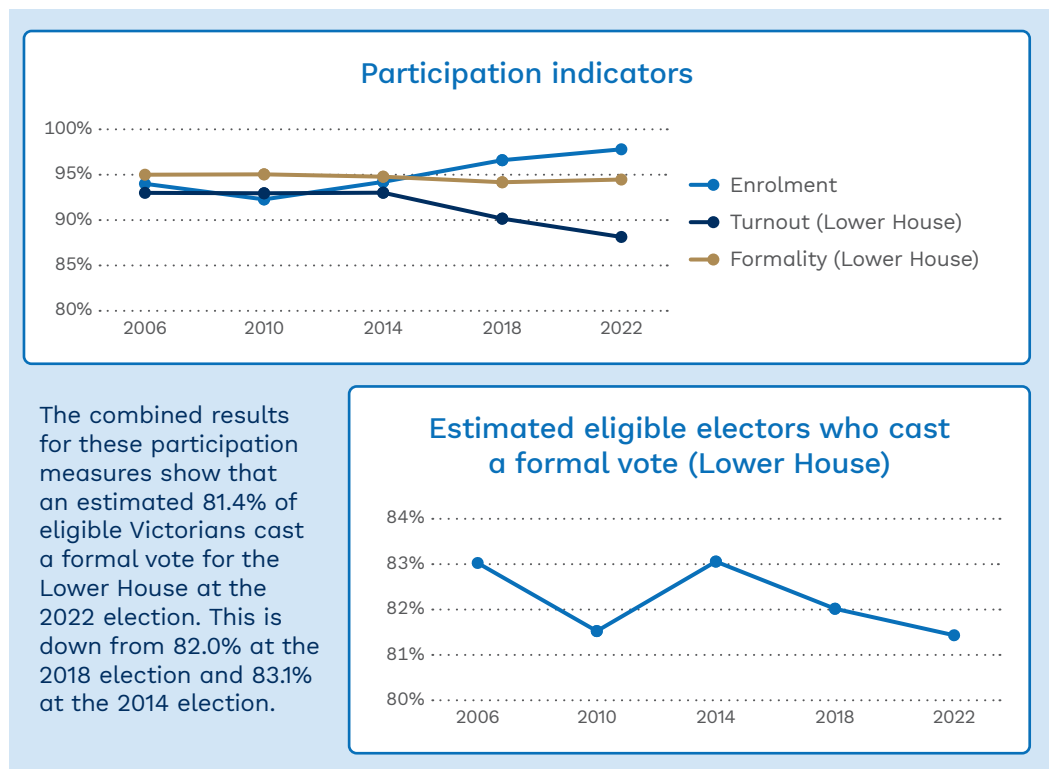
¹ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, pp. 38–41.

Turnout declined in 2022, as it did in 2018. Only 88.1% of enrolled electors turned up to vote in 2022. This is almost 5 percentage points less than the average turnout rate for Victoria between 2002 and 2014, and the lowest level since 1945.

For the Lower House, 94.5% of votes met the formality rules in 2022. This is a slight increase from 2018, though lower than in each of the four elections from 2002 to 2014. The increase in 2022 appears to be due to fewer people voting informally by accident (as opposed to people deliberately voting in a way that is informal). The formality rate in the Upper House was 96.8%, the highest rate since the current Upper House voting system was introduced in 2006.

Figure 2.3 shows the changes in these key participation measures at recent elections.

Figure 2.3 Participation measures

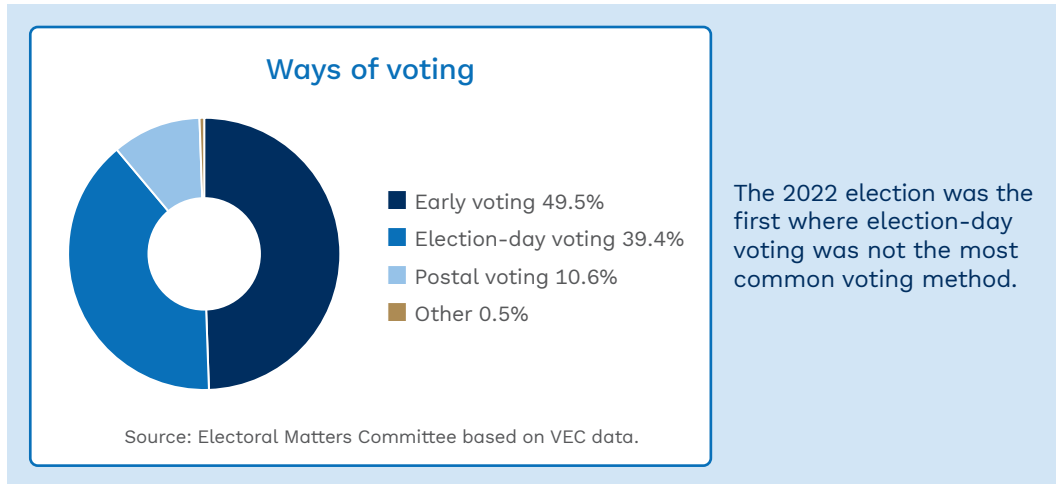


Source: Electoral Matters Committee based on VEC data.

Enrolment, turnout and informality are explored in more detail in Chapter 2 of Volume 2.

2.4 How Victorians cast their votes

Victorians had a variety of options for casting their vote at the 2022 election, including voting in person early, voting in person on election day, voting by post or more specialised voting options (see Chapter 3 in Volume 2 for details).

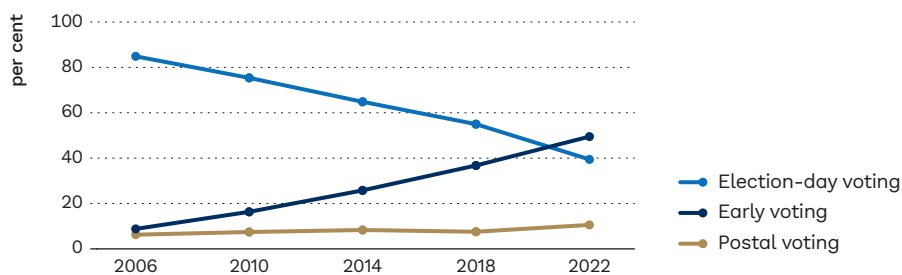


The early voting rate has consistently risen across recent elections and continued to do so in 2022. The majority of early voters surveyed in 2022 (69%) said that they voted early because it was more convenient than voting on election day.

The postal voting rate has grown more slowly since 2006. However, the postal voting rate jumped from 7.6% to 10.6% between 2018 and 2022.

With more people voting early and by post, the proportion of people voting on election day has decreased from 84.9% in 2006 to 39.4% in 2022 (see Figure 2.4).

Figure 2.4 Election-day voting, early voting and postal voting trends



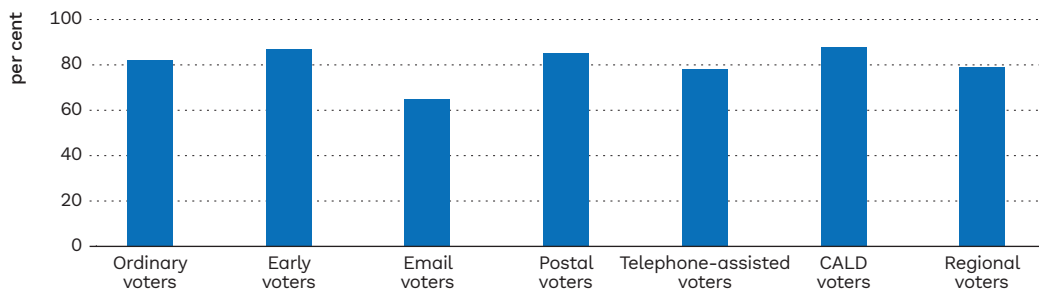
Source: Electoral Matters Committee based on VEC data.

Chapter 3 in Volume 2 of this report explores the factors impacting on early voting and postal voting rates. That chapter also outlines concerns about the length of the early voting period, challenges for people voting from interstate or overseas and a marked rise in the number of general postal voter registrations.

2.5 Voting centres and the election experience for voters, candidates and campaigners

While most voters surveyed (82%) were satisfied with their experience at the election, this result was slightly lower than in 2018 (84%) and lower than the VEC's target of 88%. Candidates reported lower satisfaction than voters. Around two thirds (68%) of candidates were satisfied with the way the VEC managed the election, while 70% were satisfied with how voting centres were operated for voters.²

Figure 2.5 Voter satisfaction^a across demographics



a. Satisfaction is defined as a rating of 7 or more out of 10.

Source: Kantar Public, *Victorian Electoral Commission: evaluation of services at the 26 November 2022 Victorian State election*, report for the Victorian Electoral Commission, 2023, pp. 15, 93.

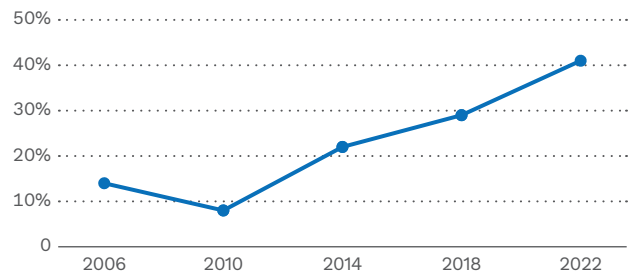
Voting centres are the embodiment of the election experience for the vast majority of voters. They are also an important location for candidates and campaigners seeking to present their case to voters.

The VEC provided over 1,700 election-day voting centres and 155 early voting centres at the 2022 election. In line with the trend towards early voting, the VEC intends to provide more early voting centres and fewer election-day voting centres in the future (see Section 3.3.1 in Volume 2).

2 Kantar Public, *Victorian Electoral Commission: evaluation of services at the 26 November 2022 Victorian State election*, report for the Victorian Electoral Commission, 2023, pp. 15, 101, 120; Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 135. Satisfaction is defined as a rating of 7 or more out of 10.

Queueing is a persistent and worsening problem at election-day voting centres—41% of election-day voters reported queuing for more than 10 minutes in 2022. This continues a trend of increasing election-day queueing across recent elections.

Proportion of election-day voters who queued for more than 10 minutes



Source: Electoral Matters Committee based on data from Kantar Public/Colmar Brunton.

Other issues with voting centres are discussed in Volume 2 of this report. These include:

- running out of ballot papers at multiple voting centres and at least one voting centre closing early on election day due to shortages (see Chapter 10)
- dissatisfaction with the types of venues used for early voting centres (see Section 3.3.1)
- large numbers of campaigners and poor campaigner behaviour at voting centres, creating an uncomfortable environment for voters and other campaigners (see Sections 3.3.3 and 12.2)
- VEC officials implementing electoral law inconsistently or enforcing rules that do not exist (see Section 9.2)
- a lack of facilities for candidates and campaigners (see Section 13.4).

Chapter 3

Improving election timelines

3.1 Problems with the current timeline

During the election period, it became apparent that several key issues to do with electoral administration are caused, in whole or part, by the timeline that the VEC has to administer pursuant to the Act.

Victorian Labor Party, *Submission 82*, p. 12.

The timeline for elections is set out in the Electoral Act. Figure 3.1 shows what this looks like for a fixed-term general election.¹ Warwick Gately AM, the former Electoral Commissioner, noted that this timeline is tight:

the electoral timeline, writ to writ, is 47 days. That was probably appropriate in 2002. It is very difficult now to achieve all we need to achieve in that period of time, and it is probably the shortest timeline of any jurisdiction. It backs up against the Christmas leave period as well.²

The VEC, candidates and parties identified several points where the timeline causes particular pressure.

3.1.1 The period between the close of nominations and early voting

The deadline for candidate nominations is 12 noon on the Friday 15 days before election day.³ The ballot draw (determining the order of candidates on the ballot paper) occurs later that day. Early voting begins on the following Monday (12 days before election day). This leaves two clear days (both weekend days), in which:

- the VEC needs to design, print and distribute ballot papers (see Section 3.2.2 in Volume 2)
- candidates need to determine their preferences, submit group voting tickets, design their how-to-vote cards, print them and distribute them for early voting (see Sections 13.3.1 and 14.4 in Volume 2).

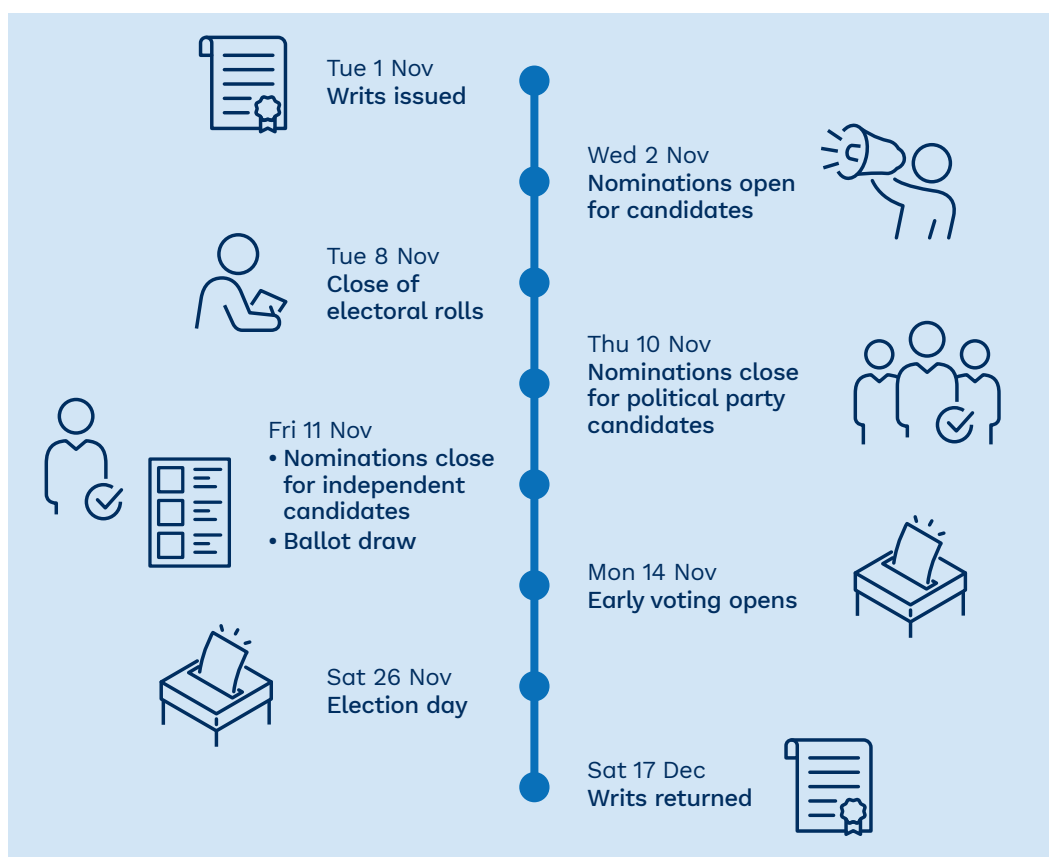
None of these things can be done before the ballot draw and all must be done before early voting begins.

1 Different timelines apply to by-elections, supplementary elections and a general election that is caused if the Parliament is dissolved early (as opposed to the fixed-term expiration every four years).

2 Warwick Gately AM, Electoral Commissioner, Victorian Electoral Commission, public hearing, Melbourne, 27 March 2023, *Transcript of evidence*, p. 4.

3 Party candidates and Upper House groups must register by 12 noon on the day before (16 days before election day).

Figure 3.1 2022 election timeline



Source: Electoral Matters Committee.

The tight timeframe meant that, in 2022, issues with printing the ballot papers resulted in 67 of the 155 early voting centres not opening on time on the first day of early voting (see Section 3.2.2 in Volume 2).

In addition, the VEC does not give independent candidates access to electors' details until after the close of nominations,⁴ which means that they only have two clear days to use that information before voting begins (see Section 14.2.1 in Volume 2).

The timeframe can also be a challenge for voters, who have limited time to find out about candidates between the close of nominations and when they vote.⁵

3.1.2 The close of rolls

The deadline for enrolling or updating your enrolment is 18 days before election day. The VEC noted that this leaves little time for a number of tasks that rely on the rolls:

Many election operations depend on the timely and accurate production of the electoral roll, including processing postal vote applications, and preparing roll products

⁴ Victorian Electoral Commission, correspondence, 16 May 2024, p. 3.

⁵ Hunter Cullen, *Submission 43*, p. 1; Stephen Capon, *Submission 52*, p. 5; Polipedia, *Submission 68*, p. 5; Prabha Kutty, *Submission 97*, p. 1; name withheld, *Submission 111*, pp. 2–3.

for candidates, registered political parties, early voting and election day voting centres, as well as validating the eligibility of candidates who have nominated for election.

The current deadline requires the VEC to complete enrolment processing, quality assurance and generate key roll products within 48 hours after the roll closes.⁶

3.1.3 The early voting period

The total length of the early voting period (12 days) was a challenge for both party candidates and independent candidates (see Sections 3.2.2 and 14.4 in Volume 2). In particular, it was difficult to organise campaigners to be present at voting centres throughout that period.

As discussed in Section 11.5.1 in Volume 2, campaigners at voting centres can play an important role in helping voters make an informed vote. Campaigners provide information about parties and candidates, hand out how-to-vote cards (which are important for a significant numbers of voters) and help with information about how to correctly fill in ballot papers.

3.1.4 The return of the writs

The length of time between the close of voting and the return of the writs was seen as a challenge for the VEC. All vote counting needs to be finalised within this 21-day period. The VEC noted that other comparable jurisdictions have longer to count the votes and that the short timeframe ‘places considerable risk on the health and safety of the VEC’s workforce’.⁷ The Committee notes that some of the changes to the Upper House voting system recommended in Chapter 6 of this volume would increase the amount of work required for the Upper House count, putting additional pressure on this part of the timeline.

3.2 An improved timeline

Changes to the election timeline were proposed by multiple submitters, including the VEC. The Committee generally agrees with the VEC’s proposed changes, with some modifications. The Committee would also like to make additional changes to the early voting period.

A major barrier to changing the timeline is that two key dates are specified in the Constitution for general elections and would require a referendum to change:

- election day is set as the last Saturday in November
- the issue of the writs is set as 25 days before that.⁸

⁶ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 13.

⁷ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 14.

⁸ Issue of the writs: *Electoral Act 2002* (Vic) s 61(1)(a) with *Constitution Act 1975* (Vic) ss 38(1) and 18(1B); election day: *Constitution Act 1975* (Vic) ss 38A(1) and 18(1B).

Changes to the timeline between these dates can be made by the Parliament without a referendum. The Committee has confined its recommendations to changes between these dates at this stage. However, as the scale and complexity of elections increases, it may become necessary to conduct a referendum to alter the dates set in the Constitution.

The changes discussed in this chapter are specific to fixed-term general elections—that is, regular planned elections, where the election date is known well in advance. The Committee recognises that the timeline needs to be different for supplementary elections, by-elections and general elections that occur when the Parliament is dissolved early. In these cases, the upcoming election is not known as far in advance and more time may be necessary for some steps than is necessary with fixed-term elections. The Committee acknowledges that some of the same pressures occur with these elections,⁹ but the solutions in some cases will need to be different.

3.2.1 The VEC's proposed changes

The VEC called for four changes to the timeline:

1. Not allowing parties to be registered in the 120 days before the election. Currently applications must be submitted at least 120 days before an election but the subsequent registration process can take months, meaning that decisions about whether or not to register a party are made very close to the election period. Moving the deadline so that decisions must be finalised by 120 days before the election would push registrations to happen earlier, providing time for parties to dispute decisions and providing more certainty about who will be running in an election, which would help the VEC with planning.¹⁰
2. Changing the close of rolls to happen 'as soon as practicable' after the writs are issued. Currently there is a very short time frame between the close of rolls and when roll products are needed, leaving little time for enrolment processing, quality assurance and producing roll products (see Section 3.1.2 of this chapter).¹¹
3. Bringing forward the close of nominations for independent candidates by one day, making it the same as the close of nominations for parties. There is currently 67 hours between the close of nominations and when early voting commences, during which time both candidates and the VEC are required to complete multiple tasks (see Section 3.1.1 of this chapter).¹²
4. Extending the time for the return of the writs by two or seven days to allow more time for counting. This would reduce the pressure on vote counting and provide for future increases in scale and complexity (see Section 3.1.4 of this chapter).¹³

The VEC's proposals in comparison to the existing timeline are set out in Figure 3.2.

⁹ See, for example, Liberal Party of Australia (Victorian Division), *Submission 103a*, p. 4.

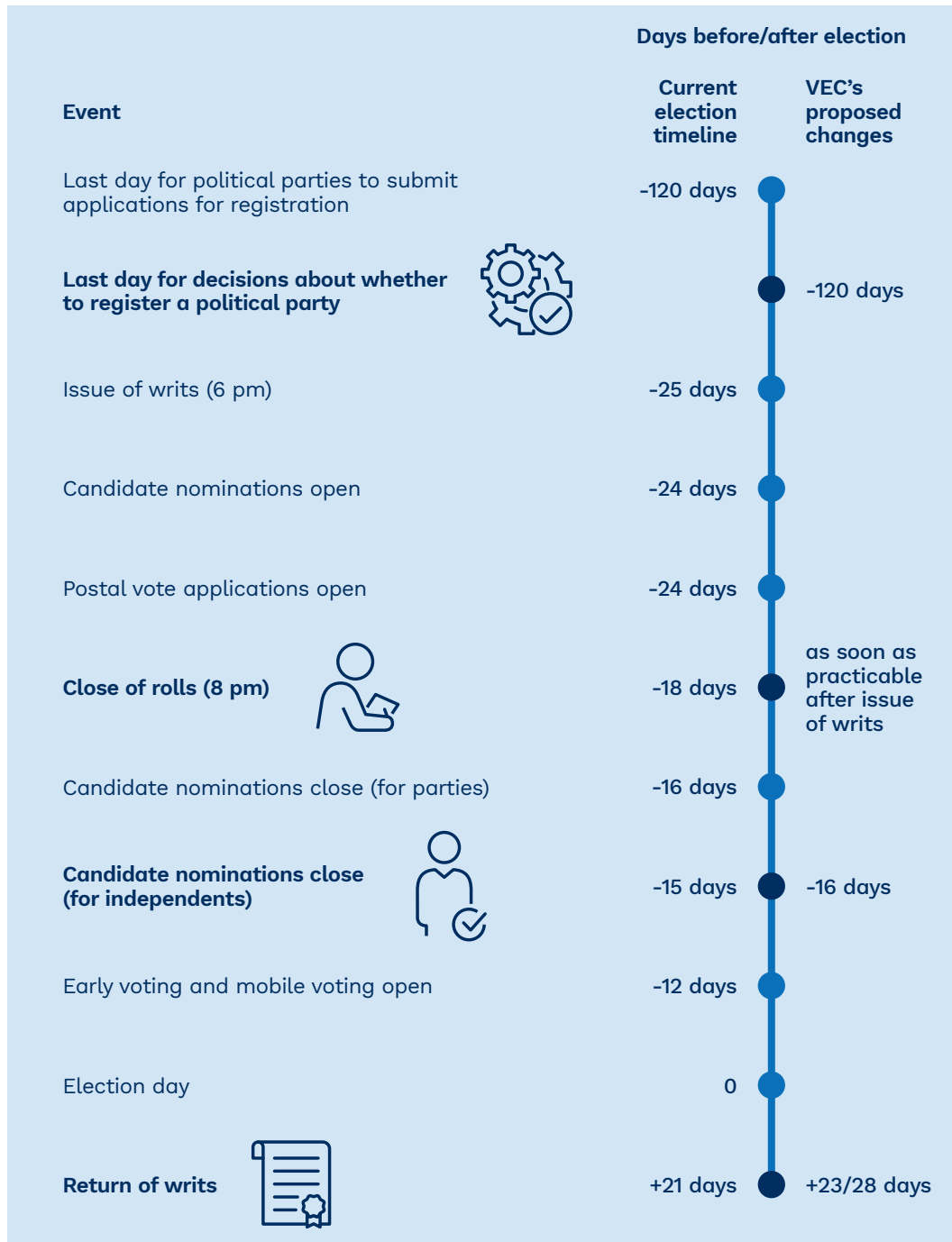
¹⁰ Victorian Electoral Commission, *Submission 59*, p. 26.

¹¹ Victorian Electoral Commission, *Submission 59*, p. 22.

¹² Victorian Electoral Commission, *Submission 59*, p. 32. See also Victorian Labor Party, *Submission 82*, p. 12.

¹³ Victorian Electoral Commission, *Submission 59*, p. 56.

Figure 3.2 Current election timelines and the VEC’s proposed changes



Source: Based on Victorian Electoral Commission, *Submission 59*, pp. 12, 14.

Supporting these changes are two important facts about fixed-term general elections in Victoria:

- as the dates for fixed-term, general elections are set in legislation, they are known in advance—people can prepare for the election as far in advance as they want and the VEC can launch communications campaigns about things like updating enrolment or nominating as a candidate at any time

- people who are eligible to enrol but not on the roll can make a provisional vote—people therefore do not miss out on voting if their details are not on the electoral roll by the close of rolls.

The Committee notes the VEC's warnings that there is a risk of a failed election if the timelines are not extended:

The prescribed timelines for State elections are no longer sustainable for an electoral landscape growing in complexity and scale. As enrolment grows in Victoria and the State's elections become increasingly complex, the absence of any contingency in many parts of the legislated timeline means the risk of an election failure event is now real. Victoria's election timeline from issue of the writ to its return is the shortest in Australia, despite the State having the second highest overall population and the highest metropolitan population.¹⁴

This timeline would come under more pressure with the Committee's recommended changes to the Upper House voting system (see Chapter 6 of this volume). These changes would increase the complexity of the data that would need to be entered during the counting period to calculate the results.

In addition to assisting the VEC, the VEC's proposed changes would also supply an extra day between the close of nominations and the opening of voting, which would help candidates with producing how-to-vote cards and other tasks (see Section 3.1.1 of this chapter).

The Committee generally supports the VEC's proposed changes, with some modifications:

1. The Committee agrees that decisions about party registration should be finalised earlier. However, the Committee is cautious about setting a deadline that is too far away from an election. The Committee therefore believes that a decision on whether or not to register a party should be finalised at least 100 days before the election (rather than the 120 days recommended by the VEC). In addition, the Committee considers that a deadline for parties to submit applications for registration should be set at 180 days before the election. This would give parties clarity about when to make their applications and set an expected standard in terms of the length of registration processes.
2. The Committee supports the rolls closing earlier. However, rather than making it 'as soon as practicable' after the writs are issued, the Committee would like to see it specified in the legislation as 8 pm on the day on which the writs are issued.
3. The Committee agrees that nominations should close on the same day for both independents and party candidates and supports the date being brought forward by one day. It may be worthwhile to make the close of nominations (for both parties and independents) even earlier, as suggested by the Liberal Party.¹⁵ With the rolls

¹⁴ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 13.

¹⁵ Liberal Party of Australia (Victorian Division), *Submission 103*, p. 12.

closing earlier, there may be little benefit to having nine days for candidates to nominate. As noted above, with fixed election dates, parties and candidates can start planning at any time.

4. The Committee supports changing the return date for the writs to 23 days after the election. The Committee does not support extending the return of the writs to 28 days after the election, as this would make it impossible for the Parliament to have its first sitting before Christmas, which is its usual practice. If the length of time between election day and the return of the writs needs to be longer, the best approach may be to make election day earlier. The Committee notes that this would require a referendum.¹⁶

FINDING 2: The VEC has warned that the tight timeline for conducting elections in Victoria, combined with the increasing complexity and scale of elections, means that there is an increasing risk of problems causing a failed election in the future. The VEC has proposed four changes to the election timeline to reduce some of the pressure. The Committee supports these changes with some adjustments.

RECOMMENDATION 1: That the Government introduce legislation amending the Electoral Act to adjust the timeline for fixed-term, general elections so that:

- parties may not submit applications to register as a party less than 180 days before the election
- the VEC is required to decide on applications to register political parties no later than 100 days before the election
- the close of rolls happens at 8 pm on the day that the writs are issued
- the close of nominations for independent candidates happens 16 days before the election
- the writs must be returned by 23 days after the election.

RECOMMENDATION 2: That the Government consult with the VEC about the practicality of further shortening the nomination period so that nominations close seven days after the issue of the writs.

RECOMMENDATION 3: That the Government note the VEC's concerns about the tightness of the election timeline and monitor the issue at future elections. Consideration should be given to additional changes to the timeline if required, including possibly a referendum to change the date of fixed-term elections.

¹⁶ *Constitution Act 1975* (Vic) ss 38A(1) and 18(1B).

3.2.2 Changing the early voting period

The original intent of the early voting was for people who could not vote on election day itself. We have drifted away from that to make it more straightforward for people to vote, and vote when it is convenient to them, as opposed to having to turn up on the Saturday itself. With the growth in postal votes I think there is ample opportunity for people who know they cannot vote in that week before the election or on election day to do a postal vote. A week allows people if, particularly in regional communities, they are in town for the day. They come into their local large town. That is enough time for them to be able to plan to go and vote. I think having to have it open for two weeks or more as we have had in the past is an incredible cost to Victorians in a time when we do not have a lot of money, and I am not sure what the benefit is.

Matthew Harris, State Director, The Nationals Victoria, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 16.

The early voting period currently covers 12 days (including a Sunday on which all early voting centres were closed in 2022). A number of submitters to this Inquiry (especially parties and candidates) called for shortening the early voting period. It was argued that candidates struggle to organise campaigners to be at voting centres throughout the period, resulting in voters being less informed. This can be a bigger struggle for smaller parties and independents, putting them at a disadvantage. The Committee was also told that the long period leads to increased tension between campaigners, increased cost to run the election and to people voting before they have all relevant information.

It was argued that one week should be long enough for people to vote, especially given that there are other options if people cannot make it to an early voting centre and cannot vote on election day, such as postal voting. For more details on the arguments made, see Sections 3.2.2 and 14.4 in Volume 2.

In addition to the evidence from submissions, 21 of the 25 members of Parliament completing the Committee's survey (see Section B.4.8 in Appendix B in Volume 2) would prefer a reduced early voting period.

As discussed in Section 3.2.2 in Volume 2, 63.5% of early voting took place on the Saturday before election day or the weekdays before election day (early voting was not offered on the Sunday before election day). Days with extended hours also tended to be popular,¹⁷ though Matthew Harris from The Nationals noted that extended hours were not always appropriate in smaller regional locations.¹⁸

At the 2023 Mulgrave District by-election, the VEC reduced the early voting period to ten days (including one day with no voting centres open). The VEC concluded that this 'did not impact the number of votes cast in person during the early voting period in any

¹⁷ See discussion in Victorian Electoral Commission, *Report to Parliament: 2023 Mulgrave District by-election*, Melbourne, 2024, p. 14.

¹⁸ Matthew Harris, State Director, The Nationals Victoria, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 16. See also Austin Cram, *Submission 88*, p. 2.

significant way'. The VEC noted that 40.1% of the people who voted at the Mulgrave by-election voted early, compared to 38.1% for Mulgrave District at the 2022 election (when a 12-day early voting period was offered). The Committee does note, though, that both of these rates are lower than for the state as a whole at the 2022 election (47.9%).¹⁹

With these factors in mind, the Committee recommends a revised structure for early voting consisting of:

- reducing the early voting period to seven days, starting on the Saturday before election day
- making early voting available on the Sunday before election day
- having extended hours on two days at all early voting centres except where there is unlikely to be significant demand (such as smaller regional locations)
- requiring mobile voting to begin no earlier than the Saturday before election day.

This new arrangement would provide a longer period between the close of nominations and the beginning of voting (see Section 3.1.1 of this chapter). This would give the VEC more time to print and distribute ballot papers. It would give candidates more time to develop, check and print how-to-vote cards. A shorter voting period would reduce the pressure on candidates to find volunteers to campaign at voting centres. It may make it easier for the VEC to find staff (see Section 4.1 of this volume) and would provide cost savings. It would give more time for voters to become familiar with their candidates and for candidates to release policies before voting commences.

While removing the first week of early voting may affect some voters, the additional Sunday and extended hours will partly compensate for that. Postal voting would remain an option for people unable to attend during the shorter early voting period or on election day.

FINDING 3: The current early voting period covers 12 days (including one day on which all voting centres were closed in 2022). Parties and independent candidates have indicated that they struggle to find volunteers to campaign at voting centres to cover the early voting period, meaning that voters do not have the opportunity to receive how-to-vote cards and information about all candidates. There is also currently only two clear days between the close of nominations and the start of early voting, which puts significant pressure on the VEC, candidates and parties.

RECOMMENDATION 4: That the Government introduce legislation amending the Electoral Act so that early and mobile voting cannot begin until the Saturday seven days before election day.

¹⁹ Victorian Electoral Commission, *Report to Parliament: 2023 Mulgrave District by-election*, Melbourne, 2024, p. 11. The figures here were calculated in a different way to early voting numbers used elsewhere in this report.

RECOMMENDATION 5: That, if Recommendation 4 is implemented, the VEC provide for early voting on the Sunday before election day and provide extended hours on Tuesday and Thursday evenings during the early voting period (except in locations where there is unlikely to be significant demand).

Given that mail can take some time to arrive, postal votes should continue to be sent out as soon as practicable after nominations close. The Committee does not see any reason to delay the postage of ballot packs to coincide with the beginning of early and mobile voting, even with the Committee's proposed changes to the early voting period.

The Electoral Act already specifies that ballot packs for general postal voters must be sent as soon as practicable after nominations close²⁰ but does not specify when ballot packs should be sent for voters who apply to vote by post for a specific election only. To remove any doubt about the Parliament's intention, the Committee would like to see a provision added to the Electoral Act stating that ballot packs for election-specific postal voters (whose applications are received before the close of nominations) should be sent out as soon as practicable after the close of nominations.

FINDING 4: To ensure that postal voters receive their ballot packs in time to vote, the VEC should start sending the ballot packs in the week after the close of nominations. Postal vote ballot packs can be sent before the proposed new start time for early and mobile voting.

RECOMMENDATION 6: That the Government introduce legislation amending the Electoral Act to specify that the VEC should send ballot packs to people who have successfully applied to vote by post at just one specific election 'as soon as practicable after the final nomination day' (for those applications received before the close on nominations). The legislation should explicitly state that postal vote ballot packs can be mailed before early and mobile voting commence.

²⁰ *Electoral Act 2002 (Vic)* s 105.

Chapter 4

Equipping the Victorian Electoral Commission with the staff it needs

4.1 Problems with VEC staffing

Staffing an election is a major challenge. The Victorian Electoral Commission (VEC) needs staff to work at voting centres throughout the state during the early voting period and on election day. It also needs considerable numbers of people to count the votes and undertake other roles. The work can be difficult and stressful, and it includes multiple time pressures.¹

The VEC employed over 20,000 people in temporary roles at the 2022 election. This included 300 ‘senior election official’ roles requiring specific skills, training and expertise.²

Many participants in this Inquiry spoke highly of VEC staff and expressed their appreciation for the work that they do. However, multiple parties and candidates also spoke of problems that they encountered with some staff.

These problems included staff at voting centres not being familiar with the electoral laws that apply at voting centres. The Committee was told that, as a result, officials applied rules inconsistently, interpreted laws incorrectly and, in some cases, enforced rules that had no basis in law (see Section 9.2.1 in Volume 2). In addition, some staff struggled to manage poor behaviour by candidates and campaigners at voting centres (see Section 12.2.2 in Volume 2).

Concerns were also raised about staff behaviour towards scrutineers during vote counting. These include not notifying stakeholders about vote counting, giving insufficient or incorrect information about vote counting, being uncooperative with scrutineers and treating scrutineers poorly (see Section 7.5 in Volume 2). The Committee was also told of staff asking scrutineers to touch ballot papers (which is not permitted under the Act), suggesting a lack of familiarity with the rules.³

1 Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, pp. 99–101.

2 Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, pp. 23–4.

3 Carlo Toncich, *Submission 71*, Appendix, p. 6; Carlo Toncich, public hearing, Melbourne, 25 August 2023, *Transcript of evidence*, p. 4; Craig Cole, *Submission 94*, p. 2.

Overall, several candidates and parties reported experiencing an adversarial attitude from some VEC staff (see Section 13.6 in Volume 2).

The Committee has not investigated all the incidents that were reported to it. However, incidents were reported by a variety of parties and candidates and are consistent with evidence from the 2018 election.⁴ While the extent of these problems is unclear, the weight of the evidence suggests that there are serious problems that need to be addressed.

The two key areas where the Committee would like to see action are:

- improving training for election staff (discussed in Section 4.2 of this chapter)
- creating better escalation processes for resolving problems with staff (Section 4.3).

The VEC noted that it faced challenges recruiting and retaining staff to work at the 2022 election. In particular, it faced problems with senior election officials and ended up with a number of staff in senior roles for the first time.⁵ In terms of its broader workforce, the VEC was still advertising two days before election day for people to register to work on election day,⁶ and had to rely on labour hire agencies to fill some positions, which it has not done before.⁷

In this context, it is particularly important for the VEC to have high-quality training and instructional products, as well as efficient escalation processes for when problems arise.

The Committee considers that there may be benefits to reducing the VEC's workload by giving the responsibility for enforcing electoral law to a different body. It may also be beneficial to give an alternative body the task of hosting a single source of non-partisan information about candidates, parties and their policies and facilitating other opportunities for candidates, such as community forums. The Committee has not conducted enough investigation at this stage to form a view on these ideas, but believes that more research should be undertaken (see Section 4.4).

The Committee notes that other changes to election procedures may also help the VEC with staffing challenges. The VEC has indicated that it plans to reduce the number of election-day voting centres at future elections, which would reduce the number of staff needed (including the number of voting centre managers).⁸ Reducing the length of the early voting period (see Section 3.2.2 in this volume) may make it easier for the VEC to attract staff.

4 Parliament of Victoria, Electoral Matters Committee, *Inquiry into the conduct of the 2018 Victorian state election*, August 2020, pp. 116–19, 169–71.

5 Victorian Electoral Commission, *Submission 59*, p. 17; Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, pp. 3, 24.

6 See, for example, Meta, *Ad Library*, <<https://www.facebook.com/ads/library/?id=1276445089874764>> accessed 19 February 2024.

7 Victorian Electoral Commission, *Submission 59*, p. 17; Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, pp. 3, 25.

8 Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, pp. 10, 64.

4.2 Improving training

Electoral law around the use of signage is complex, so it is unsurprising that there is confusion in the administration of the rules by temporary election staff. We request the VEC closely examine its current guidance provided to the officer-in-charge of each polling booth, to ensure it provides the clearest possible instructions that can be replicated across the state.

Liberal Party of Australia (Victorian Division), *Submission 103*, p. 14.

Many submitters suggested that inadequate training was the cause of many of the problems set out in Section 4.1 of this chapter. Deficiencies in the VEC's training processes have also been noted by Electoral Matters Committees in previous parliaments.⁹

Areas where there appears to be a need for improved training include:

- assessing the formality of ballot papers (see Section 2.4.3 in Volume 2)
- helping voters with disability (see Sections 4.5, 4.6, D.4.5 and D.4.13 in Volume 2)
- working with scrutineers during vote-counting processes (see Section 7.5 in Volume 2)
- enforcing rules at voting centres (see Section 9.2 in Volume 2)
- managing ballot paper shortages (see Section 10.3 in Volume 2)
- managing campaigners at voting centres (see Section 12.2 in Volume 2)
- taking a non-adversarial attitude towards candidates, campaigners and scrutineers (see Sections 7.5 and 13.6 in Volume 2).

It appears that one key problem with the existing training products is that they are sometimes unclear or inaccurate. In response to surveys from the VEC, 20% of VEC staff identified more clarity in the instructional products as one of the two things that would be most helpful during the election period.¹⁰ Submitters to the Inquiry told the Committee that VEC training was, in some cases, inaccurate. For example, Bernadette Thomas, who ran as a candidate, told the Committee:

one VEC manager I spoke to gave me incorrect information about the number of signs, when I pointed out that this was incorrect and we checked the 'rule book' together, she realised she was wrong and had been given the wrong information in VEC training.¹¹

⁹ Parliament of Victoria, Electoral Matters Committee, *Inquiry into the conduct of the 2018 Victorian state election*, August 2020, pp. 170-1; Parliament of Victoria, Electoral Matters Committee, *Inquiry into the conduct of the 2010 Victorian state election and matters related thereto*, May 2012, p. 82.

¹⁰ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 100.

¹¹ Bernadette Thomas, *Submission 67*, p. 1.

Noting that election officials at different voting centres had different understandings of the rules for signage, the Liberal Party similarly suggested that the guidance provided by the VEC may be unclear.¹²

A second key problem is that not all staff completed the required training. The VEC reported that only 88% of election officials completed the VEC's general online training and only 90% of the relevant staff completed the VEC's core values training¹³ (see further discussion of the related performance measures in Section 8.2.4 in Volume 2).

This was echoed in evidence to the Committee. One person employed by the VEC noted that staff were expected to use software that they were not familiar with.¹⁴ One campaigner told the Committee, 'An election official was speaking with me and said she had only finished her online training early that morning and did not really understand it all.'¹⁵

A third problem was election officials not following the instructions in their training. It is unclear whether this is a result of a lack of training, unclear training, training not emphasising the importance of following processes or other issues (such as inadequate oversight by senior election officials). The most notable example of this in 2022 was a voting centre manager who closed a voting centre early because they ran out of ballot papers and did not notify the election manager until the next day. This was not the protocol established by the VEC (see Section 10.3 in Volume 2). Another example came from a party representative who stated that:

regional managers read rules differently to head office. Election Managers and Poll Booth Managers and Regional Managers were refusing to comply with the instruction of head office – there was a rule about signage – we got clearance – then the managers had a different interpretation which was inconsistent with head office.¹⁶

The VEC has recognised the need for improved training for senior election officials. The VEC noted the increasing complexity of the election manager role and that 'instructional products and training can struggle to fully equip SEOs [senior election officials] for all required tasks'.¹⁷ The VEC indicated that it will:

increase the focus in election management training on common areas of difficulty for election managers, including managing additional staff, splitting tasks, effective delegation, managing conflict and maintaining oversight over a greater number of tasks.¹⁸

¹² Liberal Party of Australia (Victoria Division), *Submission 103*, p. 14.

¹³ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 133.

¹⁴ Ron Townsend, public hearing, Melbourne, 2 October 2023, *Transcript of evidence*, pp. 1, 3.

¹⁵ Veronica Monaghan, public hearing, Melbourne, 25 August 2023, *Transcript of evidence*, p. 10.

¹⁶ Kantar Public, *Victorian Electoral Commission: evaluation of services at the 26 November 2022 Victorian State election*, report for the Victorian Electoral Commission, 2023, p. 141.

¹⁷ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 100.

¹⁸ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 100.

The Committee recognises the value of the VEC's internal review processes. However, problems with training have been an ongoing issue across multiple elections.¹⁹ After the 2018 election, the previous Electoral Matters Committee identified specific areas where training could be improved and also recommended:

That the VEC engage an independent expert to evaluate the effectiveness of its training procedures at the 2022 election. This evaluation should include examining the actual behaviour of election officials in voting centres to understand how effectively the training is translated into practice.²⁰

The VEC indicated that it will action this as part of 'a full post-event training evaluation for both election management teams and election casuals'.²¹ However, it is not clear to the Committee whether this will involve an independent expert. In addition, it is not clear how effectively this process will be able to consider the actual behaviour of election officials.

This Committee agrees with the previous Electoral Matters Committee that it is important for the VEC to bring in an independent expert to conduct a review of the VEC's training materials and processes. It is important for this work to include observing staff activity in voting centres during the 2026 election. This will assist them to better identify weaknesses that can be used to improve training processes for the 2030 election.

FINDING 5: Problems with the VEC's training products and processes have been identified repeatedly in recent elections. Feedback indicates that the products could be made more accurate, clearer and more comprehensive. The VEC was also not able to fully train all staff, with only 88% of election staff completing the online training in 2022.

RECOMMENDATION 7: That the VEC engage an independent expert to evaluate the effectiveness of its training procedures. This evaluation should include:

- a thorough review of training products and procedures before the 2026 state election
- observing the behaviour of election officials in early voting centres, election-day voting centres and count centres during the 2026 state election to assess the effectiveness of the training products and procedures, and to identify potential improvements.

¹⁹ See, for example, regarding the 2010 election: Parliament of Victoria, Electoral Matters Committee, *Inquiry into the conduct of the 2010 Victorian state election and matters related thereto*, May 2012, p. 82. Regarding the 2014 election: Colmar Brunton, *Victorian Electoral Commission: evaluation of services at the 29 November 2014 Victorian State election*, report for the Victorian Electoral Commission, 2015, p. 192. Regarding the 2018 election: Parliament of Victoria, Electoral Matters Committee, *Inquiry into the conduct of the 2018 Victorian state election*, August 2020, pp. 169–72; Colmar Brunton, *Victorian Electoral Commission: evaluation of services at the 24 November 2018 Victorian State election: parties and candidates report*, report for the Victorian Electoral Commission, 2019, pp. 4, 8, 16, 42.

²⁰ Parliament of Victoria, Electoral Matters Committee, *Inquiry into the conduct of the 2018 Victorian state election*, August 2020, Recommendation 43, p. 172.

²¹ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, pp. 122, 124.

4.3 Better escalation processes

In order to provide for the smooth resolution when these issues arise, we have historically had a point of escalation in the VEC who can contact booth managers and provide direction on the correct interpretation of the rules. In 2022 there did not seem to be a clear or effective escalation point.

The Australian Greens Victoria, *Submission 87*, p. 5.

Several stakeholders noted the importance of having clear escalation processes available for when there is a disagreement between campaigners and election officials. That is, when a disagreement about the rules arises, there should be somebody with expertise that the issue can be raised with, so that the disagreement can be resolved. This was particularly mentioned in relation to:

- enforcing rules at voting centres, such as signage restrictions or zones where campaigning is prohibited (see Section 9.2 in Volume 2)
- managing poor behaviour by candidates and campaigners (see Section 12.2.2 in Volume 2).

Escalation processes are especially important in an environment where training is inadequate and where not all staff have been able to undertake the required training (see Section 4.2 of this chapter). In an election environment, escalation processes must enable issues to be dealt with quickly, as delays can lead to candidates being unfairly disadvantaged.²²

Some stakeholders expressed dissatisfaction with the VEC's escalation processes in 2022.²³

The Liberal Party called for establishing direct lines of communication between senior VEC officials and parties' registered officers. This would make it easier for parties to contact someone senior in the VEC to resolve disagreements or problems with VEC staff. It would also make it easier for the VEC to contact someone in the party who could help deal with campaigners behaving inappropriately or breaches of electoral rules.²⁴

The Liberal Party and the Greens noted the importance of the VEC clearly communicating to its staff about any rulings or determinations resulting from escalated issues.²⁵ The Greens told the Committee that, when they escalated issues

²² Victorian Socialists, *Submission 81*, p. 8; Leonie Schween, *Submission 84*, p. 2; The Australian Greens Victoria, *Submission 87*, pp. 5–6; Martin Shield, State Director, The Australian Greens Victoria, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp. 25–6.

²³ The Australian Greens Victoria, *Submission 87*, p. 5; Martin Shield, State Director, The Australian Greens Victoria, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp. 25–6; Kantar Public, *Victorian Electoral Commission: evaluation of services at the 26 November 2022 Victorian State election*, report for the Victorian Electoral Commission, 2023, p. 141.

²⁴ Liberal Party of Australia (Victorian Division), *Submission 103a*, pp. 6–7.

²⁵ The Australian Greens Victoria, *Submission 87*, pp. 5–6; Liberal Party of Australia (Victorian Division), *Submission 103*, p. 14; Martin Shield, State Director, The Australian Greens Victoria, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp. 25–6.

in 2022, they were asked to pass the information to the voting centre manager. This put campaigners into ‘a very uncomfortable position’.²⁶

The VEC told the Committee that it assisted its field staff by establishing a ‘regulatory advice and incidents desk’:

Staffed with experienced electoral law and regulatory experts, this service had 2 main purposes. First, to provide prompt and reliable advice on regulatory or legislative queries or requests for assistance to VEC staff and election officials receiving queries or alleged breaches of electoral law, and second, to coordinate visits to VCs [voting centres] or venues where a need for additional compliance support was identified.²⁷

The team responded to 408 cases, providing advice (on matters such as authorisation requirements, how-to-vote cards, signage and misleading/deceptive material) and assisting voting centre staff to manage poor behaviour by campaigners.²⁸

The VEC intends to expand the capacity of the regulatory advice and incidents team at future elections.²⁹ As part of this expansion, the VEC may consider making some members of the team available to candidates and campaigners to assist with problems that they are having with election officials.

FINDING 6: Fast and effective escalation processes are essential for when there are disagreements about election rules between election officials and campaigners. Some stakeholders were not satisfied with the processes in 2022.

RECOMMENDATION 8: That the VEC review and improve its processes for managing disagreements between election officials and candidates/campaigners. For the 2026 election, there should be a clear escalation process, which all candidates and campaigners can easily access, which can quickly resolve any disagreements in accordance with the law and communicate any rulings to VEC staff at voting centres or count centres.

4.4 Allocating responsibilities to other bodies

The Committee heard from multiple stakeholders about problems that VEC staff had enforcing rules and managing poor behaviour by campaigners at voting centres (see Sections 9.2.2 and 12.2.2 in Volume 2). The VEC may be able to manage these problems more effectively in the future with additional training, protocols and staff. However, a better solution may be making a different body responsible for enforcing electoral laws.

²⁶ The Australian Greens Victoria, *Submission 87*, p. 5. See also Martin Shield, State Director, The Australian Greens Victoria, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp. 25–6.

²⁷ Victorian Electoral Commission, *Submission 59*, pp. 59–60.

²⁸ Victorian Electoral Commission, *Submission 59*, p. 60.

²⁹ Victorian Electoral Commission, *Submission 59*, p. 60.

The Committee has also heard repeatedly that there is a need for a body to provide a single source of information about candidates, parties and their policies (see Section 11.7.1 in Volume 2). The VEC considers that it is not the appropriate body to provide this service. Further consideration should be given to whether this should be part of the VEC's responsibilities or, if not, identifying a separate body for this task.

4.4.1 Enforcing electoral law

Ron Townsend, sharing his experience working in the Mulgrave District early voting centre, noted that staff were so busy dealing with issues inside the voting centre that they were not able to spend much time outside the voting centre.³⁰ One consequence of this is that campaigners may have followed election officials' instructions when the officials were outside, but then reverted to their previous behaviour when they went back inside. Mr Townsend explained:

[VEC staff] would rectify it and then they would go inside and wait for another complaint to come in. They did not go outside to make sure half an hour later that the information that was conveyed to that area was actually being complied with. They were just short staffed. They had no-one outside controlling the area.³¹

In addition, the casual workforce typically employed by the VEC are not necessarily the right people to deal with poor behaviour. The former Electoral Commissioner told the Committee:

the well-meaning citizens that we employ are not law-enforcement officers. They are not there for that role; they are there because they want to be part of the process and they enjoy that work. And for them, dealing with difficult, non-compliant candidates, party workers, and even electors, is not necessarily what they are there to do.³²

A separate body dedicated to enforcing electoral law may be better able to attract the right sort of people and give them the appropriate training. The separate body could focus on problems outside the voting centre, leaving VEC officials to manage things inside. The VEC has noted that the role of election manager has become too large.³³ Moving some of the responsibilities away from that role may make the role more manageable.

This separate body could also handle other issues (such as unauthorised content or claims about misleading material) which typically arise when the VEC is busy with other aspects of delivering elections.

³⁰ Ron Townsend, public hearing, Melbourne, 2 October 2023, *Transcript of evidence*, pp. 4, 6.

³¹ Ron Townsend, public hearing, Melbourne, 2 October 2023, *Transcript of evidence*, p. 8. See also Natalie Kopas, Advocacy Manager, Animal Justice Party, public hearing Melbourne, 10 August 2023, *Transcript of evidence*, p. 35.

³² Warwick Gately AM, Electoral Commissioner, Victorian Electoral Commission, public hearing, Melbourne, 27 March 2023, *Transcript of evidence*, p. 19.

³³ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 100.

For local government elections in Victoria, the Chief Municipal Inspector enforces electoral offences rather than the VEC. The Inspector has the power to examine, investigate and prosecute any matter relating to local council elections and any breaches of the Local Government Act (which establishes the rules for local government elections).³⁴

A similar arrangement exists in Canada for federal elections, where the Commissioner of Canada Elections is responsible for ensuring that the *Canada Elections Act* is complied with. The Commissioner has the power to conduct investigations and to enforce the act in a variety of ways, including issuing fines and instigating prosecutions. In making these decisions, the Commissioner acts independently of the Chief Electoral Officer (the equivalent role to electoral commissioners in Australia).³⁵

Warwick Gately AM (the former Victorian Electoral Commissioner) was not in favour of separating the roles of election administration and the regulation of participants. He believed that processes worked effectively with the current arrangement.³⁶

However, there may be a number of advantages to separating the enforcement of electoral legislation from the running of elections in Victoria:

- it would reduce the workload of VEC staff
- it may improve the relationship between VEC staff and candidates/parties, as it would reduce some of the points of conflict
- staff from the body enforcing electoral legislation could be specifically trained to manage difficult situations.

Responsibilities for an organisation enforcing electoral law could include managing complaints about breaches of the Electoral Act (such as unauthorised or misleading electoral matter), monitoring the behaviour of campaigners at voting centres, enforcing rules at voting centres and liaising with the police where necessary.

4.4.2 Providing information about candidates, parties and their policies

Participants in this Inquiry and previous inquiries by the Electoral Matters Committee have indicated that people need for more information about candidates, parties and their policies. This need has been identified among general voters, but also specifically among voters from culturally and linguistically diverse backgrounds and voters with disability. The evidence received by the Committee is discussed in Section 11.7.1 of Volume 2.

³⁴ *Local Government Act 2020* (Vic) s 183(2); Local Government Inspectorate, *Local government elections*, <<https://www.lgi.vic.gov.au/local-government-elections>> accessed 7 March 2024.

³⁵ *Canada Elections Act* (Canada) ss 509.2–509.21; Commissioner of Canada Elections, *Enforcing the Canada Elections Act*, <<https://www.cfe-cce.ca/content.asp?section=abo&dir=bck&document=index&lang=e>> accessed 7 March 2024.

³⁶ Warwick Gately AM, Electoral Commissioner, Victorian Electoral Commission, public hearing, Melbourne, 27 March 2023, *Transcript of evidence*, pp. 19, 24.

In 2021, the VEC argued in favour of ‘an impartial, single source of reliable information on election candidates and parties’, though the VEC did not consider that it was the most appropriate body to host this information.³⁷ The Electoral Matters Committee at that time supported this idea and recommended further action be taken by the Government to explore options for funding an independent organisation to create online resources with information about candidates, parties and their policies.³⁸ The Government supported this recommendation in principle,³⁹ but no action has been taken to date.

As discussed in Section 11.7.1 of Volume 2, several bodies have tried to bring information together for Victorian voters, but each has encountered various challenges. Different approaches have been taken in other jurisdictions, such as having the electoral commission publish statements from candidates or having third parties bring together information.

Several participants in this Inquiry also called for community forums to be organised in which all candidates are invited to speak before members of the community (see Section 11.7.2 of Volume 2).

The Committee believes that there is a need for information about candidates, parties and their policies to be brought together into one place and made accessible to the community. Community forums could also be helpful for many voters. Further consideration would need to be given to whether the VEC is best placed to coordinate these tasks or whether they would be better done by another organisation. On the one hand, the community looks to the VEC as a source of information on electoral matters. On the other hand, it has been argued that providing information about candidates and parties might damage the VEC’s reputation as an impartial body.

4.4.3 Further work to allocate electoral responsibilities

The Committee considers that a separate inquiry is needed to properly investigate whether bodies other than the VEC should be given responsibility for enforcing electoral legislation and providing information about candidates, parties and their policies.

To properly assess these options, it would be worth consulting in detail with jurisdictions where these sorts of separation of responsibilities exist. This consultation would enable the Committee to better understand how these arrangements work in practice and what the potential benefits and disadvantages are.

³⁷ Victorian Electoral Commission, *Submission 77*, submission to the Parliament of Victoria, Electoral Matters Committee, Inquiry into the impact of social media on Victorian elections and Victoria’s electoral administration, p. 22.

³⁸ Parliament of Victoria, Electoral Matters Committee, *Inquiry into the impact of social media on Victorian elections and Victoria’s electoral administration*, September 2021, Recommendation 14, p. 137.

³⁹ Government of Victoria, *Response to the Parliament of Victoria, Electoral Matters Committee, Inquiry into the impact of social media on Victorian elections and Victoria’s electoral administration*, 23 March 2022, p. 4.

FINDING 7: There may be advantages to allocating some election-related responsibilities to bodies other than the VEC. This could reduce the workload of VEC staff, reduce concerns about partisanship and allow more specialised staff to undertake certain roles.

RECOMMENDATION 9: That the Parliament refer to the Electoral Matters Committee an inquiry into whether bodies other than the VEC should be given responsibility for investigating and prosecuting breaches of the Electoral Act and for hosting non-partisan information about candidates, parties and their policies. This inquiry should include consideration of the experience in jurisdictions where similar arrangements have operated.

Chapter 5

Managing poor behaviour by candidates and campaigners

5.1 Problems with candidates and campaigners

Stakeholders to this Inquiry experienced many different types of poor behaviour from candidates and campaigners. Section 12.2.1 of Volume 2 sets out the multiple claims about poor behaviour at voting centres, including aggressive, harassing and intimidating behaviour towards other campaigners and voters. The VEC and several experienced campaigners told the Committee that behaviour at voting centres has been getting worse in recent elections (see Section 12.1 in Volume 2).

Poor behaviour was not confined to voting centres. Several submitters to this Inquiry noted threats of violence that had occurred during campaigning. One candidate was widely reported to have publicly called for the Premier to be turned into ‘red mist’, which has been interpreted as suggesting he be killed. Claims were also made about people interfering with other candidates’ signs in the community, putting up signs where they are not allowed and producing material deceptively appearing to come from other parties. Similarly, the Committee was told about campaigners using internet addresses and social media accounts with rival candidates’ names to prevent candidates from using them and to spread negative messages about the candidates. These claims are explored in more details in Sections 11.6 and 12.3 of Volume 2).

Concerns were also expressed in submissions about electoral matter which could mislead voters.¹

These sorts of behaviour can have multiple negative effects on an election. They can discourage voters from participating. As set out in Section 3.3.3 of Volume 2, some voters described their experience with campaigners at voting centres as annoying, pressuring, stalking, hassling, harassing, confronting, distressing, disrespectful and abusive. Some voters chose to vote by post to avoid campaigners.² Poor behaviour may also prevent voters from getting information that they need from campaigners to make an informed vote. The poor behaviour of some campaigners may also discourage others from running as candidates.³

1 The Australia Institute, *Submission 77*, pp. 3–5; Austin Cram, *Submission 88*, p. 2; Animal Justice Party, *Submission 104*, p. 17.

2 In addition, the VEC’s efforts to better cater for neurodiverse and sensory-sensitive voters were hindered by poor behaviour by campaigners during a trial of new arrangements at the Warrandyte District by-election (see Section 4.5.2 of Volume 2).

3 Melissa Lowe et al., *Submission 62*, p. 21; Animal Justice Party, *Submission 104*, p. 14.

The Committee has identified four major areas where changes are needed to manage the poor behaviour of candidates and campaigners:

- a clear code of conduct which can be enforced (see Section 5.2 of this chapter)
- a limit to the number of campaigners that are active at a voting centre at any point in time (see Section 5.3)
- extending the length of time that the existing provisions about misleading material apply (see Section 5.4.1)
- introducing new ‘truth in political advertising’ laws (see Section 5.4.2).

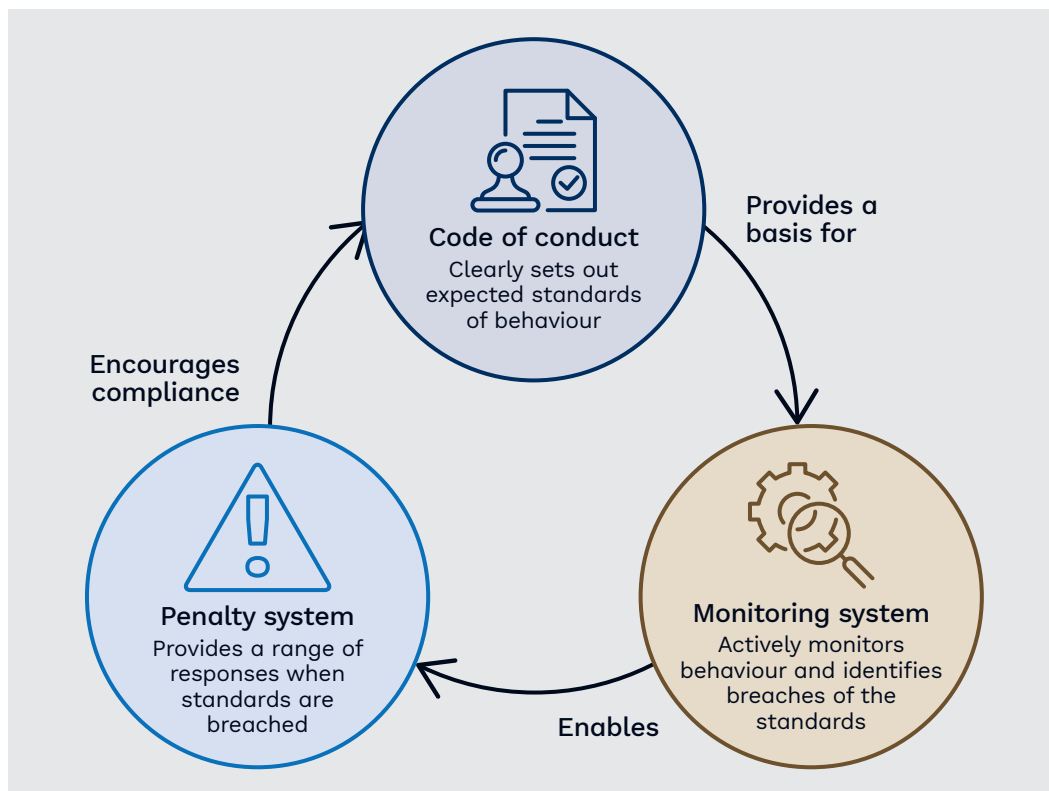
5.2 Establishing clear and enforceable standards of behaviour

The Electoral Act establishes some rules for behaviour by campaigners at voting centres.⁴ In addition to that, laws that apply in all circumstances (such as laws against assault) also apply at voting centres. However, there are many acts which are not prohibited by legislation that people consider inappropriate, both at voting centres and as part of campaigning elsewhere.

The Committee believes that a code of conduct with a more comprehensive set of standards would help to reduce the problem. For the code of conduct to be effective, though, it must be accompanied by systems that monitor compliance and penalise people who breach the standards, as set out in Figure 5.1. Without these systems, a code is unlikely to change candidates’ and campaigners’ behaviour.

⁴ See especially *Electoral Act 2002* (Vic) ss 152, 156–60.

Figure 5.1 Necessary components of a system to manage candidate and campaigner behaviour



Source: Electoral Matters Committee.

5.2.1 A code of conduct

Multiple stakeholders in this Inquiry called for a code of conduct establishing what is acceptable in election campaigning. This could include things such as:

- appropriate behaviour at voting centres (see Section 12.2 in Volume 2)
- not interfering with other candidates' signage (see Section 12.3 in Volume 2)
- appropriate behaviour online, including not taking accounts and domains using other candidates' or parties' names (see Section 11.6 in Volume 2).

It was argued that a code of conduct would reduce problematic behaviour by defining unacceptable behaviour and providing a basis to penalise people who behave poorly. In addition, it was argued that 'a perceived endorsement' is given to poor behaviour when there no code of conduct prohibiting it.⁵

Some submitters were sceptical about the effectiveness of a code of conduct. Matthew Harris from The Nationals was in favour of there being a 'very high-level statement of expectations about conduct' which could be posted near voting centres

⁵ Melissa Lowe et al., *Submission 62*, p. 21.

and distributed to campaigners. However, he did not believe that a formal process to ensure all campaigners had seen and agreed to it would be practically possible, given that many campaigners are friends who may turn up for just an hour or two rather than party members.⁶

Steph Price from the Victorian Socialists argued that there was little value in additional regulation, as the problematic conduct was most often from parties that are unlikely to be influenced by regulation.⁷

Several parties advised the Committee that they already have internal guidance for campaigners about appropriate behaviour. However, the Committee considers that it would be helpful for there to be one set of guidelines which applies to all campaigners, rather than multiple different sets. It would also be helpful for rules to be established for those parties and independent candidates that have not created their own guidelines. Importantly, an independent code of conduct could also have legal force.

Several people noted the importance of enforcing a code of conduct,⁸ including the Deputy Electoral Commissioner. She told the Committee, 'I would have some concerns about something as simple as a code of conduct unless there were consequences for the behaviour and breach of that code of conduct.'⁹

The Committee recognises this concern, which is why the Committee believes that monitoring and penalising breaches of a code of conduct are critical to its effectiveness.

FINDING 8: The 2022 election saw an increase in poor behaviour by candidates and campaigners at voting centres and elsewhere. A code of conduct applying to all campaigners which explicitly sets out what behaviour is unacceptable would clarify what is permitted and provide a basis for action to be taken against people who breach the code.

RECOMMENDATION 10: That the Government work with the VEC, political parties and other stakeholders to develop a legally enforceable election-period code of conduct for candidates and campaigners.

6 Matthew Harris, State Director, The Nationals Victoria, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp. 15–16.

7 Steph Price, Treasurer, Victorian Socialists, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 45.

8 Melissa Lowe et al., *Submission 62*, p. 21; Victorian Labor Party, *Submission 82*, p. 10; Animal Justice Party, *Submission 104*, pp. 8–9.

9 Dana Fleming, Deputy Electoral Commissioner, Victorian Electoral Commission, public hearing, Melbourne, 25 August 2023, *Transcript of evidence*, p. 22.

5.2.2 Monitoring and enforcing the standards

The VEC at this location did good work under difficult circumstances. The experience of these officials was, in my view, limited. Their ability to enforce rules proved quite difficult.

Gary Maas MP, Member for Narre Warren South, *Submission 101*, p. 4.

As noted above, there is little value in a code of conduct if there are no penalties for breaching it. Currently, the VEC has limited capacity to monitor behaviour outside voting centres. The VEC's powers to respond to poor behaviour are also very limited—the VEC is restricted to either removing a person from a voting centre or referring a matter to the police.

Section 12.2.2 of Volume 2 looks at the VEC's current approach to managing poor behaviour, the limitations on its ability to act and various suggestions that have been made to respond to poor behaviour.

The VEC has called for it to be given the power to use a range of tools to manage electoral offences: infringement notices, cautions, warnings and enforceable undertakings.¹⁰ The VEC also called for a new offence prohibiting someone removed from a voting centre from returning and for investigative tools to allow it to investigate serious breaches of electoral laws.¹¹ Dana Fleming, the Deputy Electoral Commissioner, explained:

In terms of the VEC and our ability to manage this situation on the ground, I do believe there is a gap. So we are at the moment left with, 'Could you please behave nicely or we remove you from the voting centre and charge you with a criminal offence.' I do not believe they are good tools to have in your toolkit when we are clearly seeing a need for intervention on an escalation basis and some intermediary actions that could be taken to create consequences for behaviour that might circuit-break a situation before it escalates to needing to call the police.¹²

The Committee agrees that a more graduated set of tools to manage poor behaviour would be appropriate.

In addition to having the appropriate tools to manage poor behaviour, it is important for campaigners' behaviour to be monitored to identify when people are breaching the rules.

¹⁰ Victorian Electoral Commission, *Report to Parliament on the 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 81.

¹¹ Victorian Electoral Commission, *Report to Parliament on the 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, pp. 62, 81.

¹² Dana Fleming, Deputy Electoral Commissioner, Victorian Electoral Commission, public hearing, Melbourne, 25 August 2023, *Transcript of evidence*, p. 22.

One candidate suggested that the responsibility for identifying and reporting poor behaviour should not be left to campaigners, as this made the environment less harmonious.¹³ Several submitters proposed that the VEC designate specific staff to monitor behaviour outside voting centres.¹⁴

The Committee agrees that some system for monitoring the behaviour of candidates and campaigners should be built into future election planning.

If a new body is established to enforce electoral law (see Section 4.4 in this volume), it may be more appropriate for that body to have the responsibility for monitoring behaviour and penalising people who break the rules. Otherwise, this must be factored into the VEC's planning.

FINDING 9: To effectively manage poor behaviour by candidates and campaigners, the VEC or another suitable body needs to have powers to enforce electoral rules. These should include the ability to use a range of graduated responses to manage poor behaviour. It is also necessary for the behaviour of candidates and campaigners to be monitored to identify breaches of the rules.

RECOMMENDATION 11: That the Government introduce legislation amending the Electoral Act to provide the VEC or an alternative body with the power to enforce appropriate behaviour at voting centres through:

- empowering the VEC or another suitable body to penalise breaches of the code of conduct recommended in Recommendation 10
- introducing a range of graduated responses to manage less serious breaches of electoral rules, including infringement notices, cautions, warnings and enforceable undertakings
- making it an offence for a person removed from a voting centre to return to the voting centre
- providing the VEC or another suitable body with investigative tools to enable the investigation of serious breaches of electoral laws.

RECOMMENDATION 12: That plans for the 2026 state election include a system for actively monitoring the behaviour of candidates and campaigners to identify breaches of electoral rules, rather than relying on reports from campaigners.

¹³ Sally Gibson, *Submission 80*, p. 11.

¹⁴ The Solis Foundation, *Submission 70*, pp. 2–3; Victorian Labor Party, *Submission 82*, p. 11; Leonie Schween, *Submission 84*, p. 1; Animal Justice Party, *Submission 104*, pp. 8–9; Cameron Petrie, Assistant State Secretary, Victorian Labor Party, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp. 4, 9; Ron Townsend, public hearing, Melbourne, 2 October 2023, *Transcript of evidence*, p. 4.

5.2.3 Registering campaigners

Enforcing behavioural standards at voting centres would be easier if campaigners had to be registered with the VEC or an alternative body enforcing electoral law (see Section 4.4 of this volume). This idea was recommended by a number of people participating in this Inquiry¹⁵ and is supported by the Committee. The Committee does not envision election officials checking every campaigner's registration when they arrive at a voting centre. However, the registration could be checked if problems arise—this would help election officials to identify the individuals involved and to take appropriate action.

Registration would make it easier to penalise individuals breaking the rules, including banning them from voting centres. A campaigner behaving inappropriately could have their registration revoked. This would mean that the person could no longer campaign at the place where they behaved poorly or at any other voting centre.¹⁶

Registration may also discourage people from behaving poorly and prevent some bad behaviour. As campaigners would no longer be anonymous, they would know that they would be accountable for what they say and do. The registration process could also be used to remind campaigners of the rules for conduct at a voting centre.¹⁷

The Committee recognises that there could be practical challenges associated with registering campaigners. The Labor Party, for example, noted the lack of a single, regulated point of entry to campaigning areas.¹⁸ In many cases, campaigners may only volunteer to hand out how-to-vote cards for a short period or at short notice and bureaucratic hurdles may dissuade them from participating. In some cases, people may campaign on behalf of more than one candidate or on behalf of an organisation rather than a party.

Any system for registering campaigners must be quick, easy and centralised to be practical. For example, it may simply involve entering a person's name and contact details into an online form, either before or during the voting period. This should include volunteers being able to quickly register when they turn up at a voting centre (for example, using a QR code and their mobile telephone). The central registry could then be checked by election officials at voting centres if any problems arise. The campaigners' details could be used to direct any penalties. A history of any actions taken could be added by election officials for officials at other voting centres to see, including whether a campaigners' registration has been revoked.

¹⁵ Bernadette Thomas, *Submission 67*, p. 1; EMILY's List Australia, *Submission 92*, p. 3; Gary Maas MP, Member for Narre Warren South, *Submission 101*, p. 8; response to the Committee's survey of members of Parliament—see Section B.4.2 in Appendix B of Volume 2.

¹⁶ The VEC has called for legislative change which would make it an offence for a person removed from a voting centre to return—Victorian Electoral Commission, *Report to Parliament on the 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 62.

¹⁷ Bernadette Thomas, *Submission 67*, p. 1.

¹⁸ Victorian Labor Party, *Submission 82*, pp. 10–11.

Campaigners should not be required to identify who they are campaigning on behalf of when registering.

It is also important for any such registration system to be designed with data privacy in mind. People's personal details should be deleted from any campaigner registration system within 30 days of the election unless the person is part of an ongoing investigation.

FINDING 10: It would be easier to take action against any campaigners who break the rules if people who want to campaign at voting centres were required to register with the VEC or an alternative body. Registering would also prevent people from campaigning anonymously, which may make them less likely to break the rules, as well as allowing for enforcement actions such as issuing infringement notices. Any registration process must be quick and easy to ensure that campaigners are not put off participating by the registration process.

RECOMMENDATION 13: That the Government introduce legislation amending the Electoral Act to require all people who wish to campaign at a voting centre to register their details with the VEC or an alternative body involved with enforcing electoral law. The legislation should give the appropriate body the power to revoke a person's registration if they behave inappropriately or if they refuse to provide evidence of their identity. The registration system should:

- be quick, easy and centralised
- allow campaigners to register before or during the election period, including on election day
- not require campaigners to indicate whom they are campaigning on behalf of
- allow election officials to add notes about any actions taken in relation to the individual which can be viewed by other election officials
- delete people's details within 30 days after the election unless the person is part of an ongoing investigation.

5.3 Limiting the number of campaigners

Multiple submitters to this Inquiry observed excessive numbers of campaigners at some voting centres (see Section 12.2.1 in Volume 2). This inflamed tensions between campaigners and made voting more difficult for voters.

In response, some submitters suggested either limiting the number of campaigners or prohibiting campaigning at voting centres altogether.

Campaigning at voting centres is prohibited in some other jurisdictions, such as Tasmania, the Australian Capital Territory and New Zealand (on election day).

However, the Committee is not in favour of a complete ban for Victoria. Campaigning at voting centres gives candidates and parties an opportunity to talk directly to voters and to inform them about what they stand for (see further discussion in Section 11.5.1 in Volume 2). It provides voters with an opportunity to seek information and engage with campaigners. Campaigners provide how-to-vote cards, which many voters rely on—research by the VEC on seven districts found that 29.7% of Lower House votes fully matched with how-to-vote cards.¹⁹ In a post-election survey after the Warrandyte District by-election, 32.9% of respondents indicated that they liked having campaigners at the voting centre.²⁰ Campaigners are also an important source of information for people about formality rules for filling out ballot papers.²¹

More generally, the freedom to advocate for your preferred candidate is an important part of a healthy democracy.

The Committee notes that Tasmania, the Australian Capital Territory and New Zealand, where campaigning at voting centres on election day is prohibited, use different voting systems, where there is less need for how-to-vote cards.²²

While the Committee is not in favour of banning all campaigning at voting centres, the Committee does believe that restrictions on the number of campaigners would be appropriate. It is important that campaigners' behaviour does not make it harder for people to vote or for other campaigners to interact with voters.

The VEC currently has the power to limit the number of campaigners at voting centres but has used it sparingly. In 2022, the VEC issued directions restricting the number of campaigners at two early voting centres.²³

The Labor Party supported the implementation of limits at specific voting centres in response to problems but opposed a general cap on campaigner numbers. The Labor Party argued that a general cap would be difficult to administer and may prevent third-party campaigners from participating. The party also noted situations where campaigners may support multiple candidates, which would make implementing caps difficult.²⁴ Steph Price from the Victorian Socialists believed that a limit on campaigners would disadvantage smaller parties, which rely more on conversations with voters at voting centres than major parties do.²⁵

¹⁹ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 180.

²⁰ Victorian Electoral Commission, *Report to Parliament: 2023 Warrandyte District by-election*, Melbourne, 2024, p. 9. The VEC did not disclose how many respondents there were to this survey.

²¹ Bernadette Thomas, *Submission 67*, p. 2; community roundtable with people from culturally and linguistically diverse background (see Sections C.3 and C.7 in Appendix C in Volume 2).

²² Antony Green AO, *Should how-to-votes be banned at Australian elections?*, <<https://antonygreen.com.au/should-how-to-votes-be-banned-at-australian-elections>> accessed 9 April 2024.

²³ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 77.

²⁴ Victorian Labor Party, *Submission 82*, p. 11; Cameron Petrie, State Secretary, Victorian Labor Party, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 9.

²⁵ Steph Price, Treasurer, Victorian Socialists, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp. 43–4.

The Committee is not convinced that it is necessary for there to be more than three people actively campaigning on behalf of a party, independent or organisation at a voting centre entrance at any one time. However, the Committee recognises the challenges and workload that would be involved with monitoring and implementing a blanket cap on campaigner numbers.

The Committee therefore considers that an expectation should be established (potentially as part of the code of conduct recommended in Section 5.2.1) that parties, independent candidates and organisations should not have more than three people actively campaigning at a voting centre entrance at any one time. Candidates and members of parliament (both from Victoria and other jurisdictions) should not be included in this number, as they may drop in to multiple voting centres for relatively short periods.

The Committee does not recommend that this generally be monitored and enforced. However, if the number of campaigners at a particular voting centre is hindering people from voting or is contributing to disorderly conduct, then the VEC should monitor and enforce the limit at that voting centre until the matter is resolved.

A threshold should be established in legislation or regulation for when the limit should be monitored and enforced.

Once the threshold has been triggered, campaigners would be required to identify whom they are campaigning on behalf of. Further consideration should be given to whether organisations other than parties should be permitted to campaign when the threshold has been triggered or whether it would be more appropriate for them to be restricted when limits are being enforced.

Many voting centres have multiple entrances and it is important for candidates and others to have campaigners at each entrance. If limits on the number of campaigners are introduced, they should be related to the number of entrances at a voting centre. In addition, it will be important for candidates, parties and other organisations to have accurate information before a voting centre opens about how many entrances there will be. This information is important when organising campaigners. The Committee therefore requires the VEC to provide this information to all relevant parties at the earliest appropriate time.

FINDING 11: Campaigners play an important role at voting centres. However, excessive numbers of campaigners can create an intimidating situation for voters and make it difficult for other campaigners to engage with voters.

RECOMMENDATION 14: That the VEC inform all stakeholders that there is a general expectation that no more than three campaigners for each party and independent candidate will be actively campaigning at any voting centre entrance at any time (excluding candidates and members of any parliament). If the number of campaigners at a voting centre is hindering people from voting or is contributing to disorderly conduct (reaching a threshold established in legislation or regulation), the limit should be established as a firm rule for that voting centre and should be actively monitored and enforced until the matter is resolved.

5.4 Prohibiting misleading and inaccurate material

Misleading and inaccurate information was a concern for several stakeholders in this Inquiry. It was also a source of 94 complaints or pieces of feedback to the VEC.²⁶

The Electoral Act currently specifies that:

A person must not during the relevant period [the period between the day a writ is issued and 6 p.m. on election day]—

- (a) print, publish or distribute; or
- (b) cause, permit or authorise to be printed, published or distributed—

any matter or thing that is likely to mislead or deceive an elector in relation to the casting of the vote of the elector.²⁷

The VEC follows courts in interpreting ‘likely to mislead or deceive an elector in relation to the casting of the vote of the elector’ very narrowly. The narrow interpretation means that the law is only applied to statements about obtaining, marking and depositing ballot papers.²⁸ Other misleading or deceptive statements (such as what a party stands for or claims about rival candidates) are not covered by this law. This is often not in line with the expectations of members of the public.

The VEC has called for the law to be clarified.²⁹ The Committee would like to see two changes: extending the timeline of the provisions and introducing stronger restrictions.

²⁶ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 90.

²⁷ *Electoral Act 2002* (Vic) s 84(1).

²⁸ *Evans v Crichton-Browne* (1981) HCA 14; 147 CLR 169.

²⁹ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 79.

5.4.1 Extending the timeline of existing provisions

The existing provisions about misleading and deceptive material only apply between the day a writ is issued and election day.³⁰ Independent candidates told the Committee:

This means parties and candidates can spread as much disinformation as they like in the lead up to an election and in effect defame other candidates and mislead voters.

The most common example of this when it comes to Independent campaigns is “A vote for ‘x’ Independent candidate is a vote for ‘y’ political party.”³¹

They called for the provisions to be extended to cover the period starting two months before election day.³² The Committee agrees that this is appropriate for fixed-term general elections, as a significant amount of campaigning happens prior to the issue of the writs. This would not be practicable for by-elections, supplementary elections or general elections that occur due to the Parliament being dissolved early, as people would not have as much warning that an election is coming prior to the issue of writs in these cases.

FINDING 12: Current restrictions in relation to misleading and deceptive electoral matter only apply between the issue of a writ and election day. However, much campaigning for a general election occurs before the issue of the writs.

RECOMMENDATION 15: That the Government introduce legislation amending section 84 of the Electoral Act so that its provisions apply for two months prior to election day for general elections occurring according to fixed terms.

5.4.2 Introducing stronger restrictions

Regarding what is covered by the current legislation, the VEC has called for a clarification, stating that:

Courts have interpreted these provisions narrowly and, in some cases, inconsistently. This contributes to an uncertain regulatory framework in which the VEC must operate. In general, the VEC regulates materials likely to influence how or whether an elector casts their vote for a party or candidate they have decided to vote for. It does not regulate matter that would influence a voter in forming a political judgment about who they want to vote for.³³

³⁰ *Electoral Act 2002 (Vic)* s 3 s.v. ‘relevant period’.

³¹ Melissa Lowe et al., *Submission 62*, p. 22 (see also examples on p. 30).

³² Melissa Lowe et al., *Submission 62*, p. 22.

³³ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 79.

The VEC called for its current, narrow interpretation of the Act to be clearly set out in legislation ‘to provide certainty in the regulatory landscape and mitigate the possibility of contentious litigation.’³⁴

However, others have called for the provisions to be broadened. Some submitters called for general ‘truth in political advertising’ laws.³⁵ This was recommended by the previous Electoral Matters Committee in 2021³⁶ and supported in principle by the Government.³⁷ Truth in political advertising laws exist in South Australia and the Australian Capital Territory, and have recently been recommended by the Commonwealth Joint Standing Committee on Electoral Matters for Commonwealth elections.³⁸

The independent Electoral Review Expert Panel noted that truth in political advertising was outside its terms of reference but that ‘recent events, domestically and abroad, demonstrate that such laws may be required.’ The Panel noted that candidates and parties can use public funds for political expenditure and argued that public money should not be used to spread misinformation or disinformation.³⁹

The Liberal Party, on the other hand, was concerned about the practicability of such legislation and the potential for the VEC to be opened to accusations of bias.⁴⁰ These concerns were explored by the previous Electoral Matters Committee, which found that these had not been major problems in South Australia.⁴¹

The Committee does not believe that the current limited application of the law about misleading and deceptive material is in line with community expectations. Overall, the Committee considers that truth in political advertising laws are important to improve the quality of election discourse and to help build trust in the democratic system.

FINDING 13: The VEC has recommended that the current provision in the Electoral Act about misleading and deceptive electoral matter be clarified. The VEC has called for the current narrow application of the law to be clearly stated in the legislation. However, the previous Electoral Matters Committee and other stakeholders have called for broader provisions that require truth in political advertising.

³⁴ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 79.

³⁵ Meaghan Capell, *Submission 56a*, pp. 10, 11; Australia Institute, *Submission 77*, pp. 3–5; Animal Justice Party, *Submission 104*, p. 17.

³⁶ Parliament of Victoria, Electoral Matters Committee, *Inquiry into the impact of social media on Victorian elections and Victoria’s electoral administration*, September 2021, Recommendation 11, p. 124.

³⁷ Government of Victoria, *Response to the Parliament of Victoria, Electoral Matters Committee, Inquiry into the impact of social media on Victorian elections and Victoria’s electoral administration*, 23 March 2022, pp. 2–3.

³⁸ Parliament of Australia, Joint Standing Committee on Electoral Matters, *Conduct of the 2022 Federal election and other matters: interim report*, Canberra, June 2023, p. 106.

³⁹ Electoral Review Expert Panel, *Report on Victoria’s laws on political finance and electronic assisted voting*, [Melbourne], 2023, p. 302.

⁴⁰ Liberal Party of Australia (Victorian Division), *Submission 103*, p. 7.

⁴¹ Parliament of Victoria, Electoral Matters Committee, *Inquiry into the impact of social media on Victorian elections and Victoria’s electoral administration*, September 2021, pp. 117–24.

RECOMMENDATION 16: That the Government introduce legislation amending the Electoral Act to introduce truth in political advertising laws, as recommended by the previous Electoral Matters Committee in its *Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration*. When implementing systems of this nature, it is best for a consistent approach to be adopted with the Commonwealth. If Commonwealth legislation is introduced regarding truth in political advertising, then the Victorian Government should seek to align Victorian laws with the Commonwealth laws. However, if changes are not introduced at the Commonwealth level in a timely manner, the Victorian Government should seek to introduce its own legislation.

Chapter 6

Reforming the Upper House voting system

6.1 Problems with the current system

For the Upper House in Victoria, voters can either vote ‘above the line’ or ‘below the line’ (see Figure 6.1):

- if people vote above the line, they indicate a preference for one party or group (and one only) by putting a 1 in the square for that party/group
- if people vote below the line, they select individual candidates in the order of their preference—they must give preferences to five candidates and can also give preferences to as many additional candidates as they wish.

Figure 6.1 Sample Victorian Upper House ballot paper

Directions	Ballot paper			Sample Metropolitan Region
<p>For your vote to count, you must vote in either one of the two ways described below.</p> <p>Either</p> <p>Place the number 1 in one, and only one of these squares to indicate your choice.</p>	<p>A</p> <p>OR</p> <input type="checkbox"/> <input type="checkbox"/> Logo Party Name	<p>B</p> <p>OR</p> <input type="checkbox"/> <input type="checkbox"/> Logo Party Name	<p>C</p> <input type="checkbox"/> <input type="checkbox"/> Logo Party Name	
	<p>Or</p> <p>Place the numbers 1 to at least 5 in these squares to indicate your choice.</p>	<p>A</p> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i>	<p>B</p> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i>	<p>C</p> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i> <input type="checkbox"/> CANDIDATE, Name Party Name <i>Location</i>

Source: Electoral Matters Committee.

When people vote for a party/group above the line, their votes are interpreted according to a ‘group voting ticket’ decided by that party/group. A group voting ticket consists of preferences for all candidates on the ballot paper. An above-the-line vote is essentially translated into a below-the-line vote for all candidates in the order of preference decided by the party/group as set out in the group voting ticket.

If the candidates for a voter’s most preferred party/group are not elected, their votes are transferred to candidates in other parties/groups according to the group voting ticket. If the candidates for the voter’s preferred party/group get more than the required quota to be elected, then their votes are also transferred to other candidates according to the group voting ticket, although with a reduced value. More details about the vote-counting system used for the Upper House is set out in Box 6.1.

Two major concerns have been raised about this system during the Committee’s Inquiry:

- that voters do not understand how their votes will be distributed when they vote above the line
- that the final results do not reflect voters’ preferences.

The same concerns were raised during the previous Electoral Matters Committee’s inquiry into the 2018 state election.¹

Group voting tickets were once used in several Australian states and for the Commonwealth Senate. However, all other jurisdictions have changed their systems and Victoria is now the only jurisdiction that uses group voting tickets.

1 Parliament of Victoria, Electoral Matters Committee, *Inquiry into the conduct of the 2018 Victorian state election*, August 2020, Chapter 11.

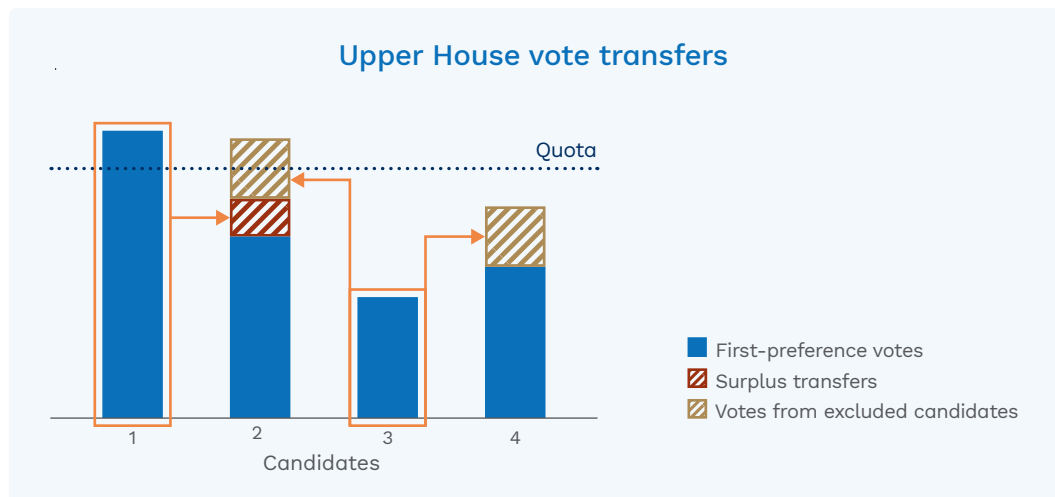
Box 6.1 Vote counting for the Upper House

To be elected to the Upper House, a candidate must achieve a **quota** of votes ($\frac{1}{6}$ of the total number of votes + 1). Candidates gain votes from:

- **first-preference votes**—that is, the votes in which a candidate was given a '1' by the voter (either directly below the line or through a group voting ticket)
- **surplus votes**—when a candidate receives more votes than a quota, their votes are transferred (at a reduced value) to other candidates, based on the voters' below-the-line preferences or the group voting ticket
- **votes from excluded candidates**—if there are still vacancies once all surplus votes have been distributed, the candidate with the fewest votes is excluded and each vote for that candidate is transferred at full value^a according to the voter's below-the-line preferences or the group voting ticket.

Upper House elections typically involve surplus votes being distributed and votes being transferred from excluded candidates multiple times.

In the simplified example below, Candidate 1 achieves their quota based on first-preference votes and is elected. Because they achieved more than the quota, their votes are transferred to the voters' next preference (Candidate 2) at reduced value. Candidate 3, with the lowest number of votes, is excluded and their votes are transferred to Candidates 2 and 4 (according to the voters' preferences) at full value. After this, Candidate 2 has reached the quota and is elected.



a. Except when the votes are received at a reduced value.

Source: Electoral Matters Committee.

6.1.1 Do voters understand how their vote will be distributed when they vote above the line?

A vast majority of voters I spoke to in the six months leading up to the election period have no idea how the Upper House preference voting system works. They assume that if they give their #1 vote to a party that party will automatically end up with that vote – they don't understand their vote can end up electing someone they don't want to represent them.

Bernadette Thomas, *Submission 67*, p. 1.

A major concern that has been raised about this system is that voters do not understand how their votes will be distributed when they vote above the line. Section 11.2 in Volume 2 explores the arguments on this topic provided by submitters and witnesses to this Inquiry.

It was suggested that most people do not consult group voting tickets before casting their votes. It was argued that this is a problem because some parties' group voting tickets do not align with the party's ideology or voters' expectations. As a result, people's votes may be transferred in ways that they do not expect and would not want.

Even if voters do consult group voting tickets, they can be difficult to interpret. In some cases, it is not clear where the votes will be transferred if the voter's preferred party/group is unsuccessful or achieves more than a quota. This can make it difficult for a voter to understand the effect of their vote. In some cases, later preferences may be crucial in determining who is elected (the 32nd preference on a group voting ticket determined one seat in 2022). Voters may not expect this and may therefore not understand the importance of these later preferences on group voting tickets when deciding how to vote.

Concerns were also raised about people establishing a party with a deceptive name to 'harvest' votes. The votes could then be transferred to another party with a different policy platform through the group voting ticket. While it is not clear that this has actually occurred, it is certainly a risk with the existing system.

It has also been argued that group voting tickets have had several negative impacts on the system which make it harder for voters to make informed decisions. Group voting tickets have facilitated the 'preference whispering' business, in which people are paid to coordinate preference deals between parties. Many people consider this unethical. It advantages parties that pay for this service over parties and groups that do not. It also pressures parties to give preferences that they do not want to give and may result in group voting tickets which do not reflect a party's ideology. Preference whispering puts pressure on parties to run candidates in both Upper and Lower Houses that have little chance of winning. This increases the number of candidates on ballot papers, which tends to increase the number of informal votes. Similarly, group voting tickets may lead to a larger number of parties competing for elections, which also increases the size of ballot papers.

Several of these factors may also contribute to distrust in the system, as voters perceive the system as being manipulated by preference deals rather than reflecting the will of the voters. For example, multiple submissions to this Inquiry referred to people ‘gaming the system’ with the current arrangements.

All of these concerns are explored in more detail in Section 11.2 in Volume 2.

The Committee recognises that group voting tickets are not the only cause of these problems and that eliminating group voting tickets would not necessarily eliminate these problems. Ballot papers with large numbers of candidates, people coordinating preferences and parties with deceptive names have been seen in other jurisdictions without group voting tickets. Nonetheless, the Committee considers that group voting tickets do contribute to these problems and also make it difficult for voters to know where their above-the-line votes will be distributed.

6.1.2 Do the final results reflect voters’ preferences?

The Victorian system has resulted in some candidates being elected with very low first-preference votes due to the flow of preferences. When this happens, parties with higher numbers of first-preference votes usually miss out. Some people consider this result to be a poor representation of voters’ preferences.

In 2018, two candidates were elected who received less than 1% of the first-preference votes.² As noted in Section 11.2.1 in Volume 2, this did not occur in 2022, due to fewer parties participating in preference deals. However, there were examples of candidates with low numbers of first-preference votes gaining significant numbers of votes through group voting tickets to leap over candidates with higher numbers of first-preference votes (see, as an example, Table 6.1).

² How this occurred is discussed in Parliament of Victoria, Electoral Matters Committee, *Inquiry into the conduct of the 2018 Victorian state election*, August 2020, pp. 206–11.

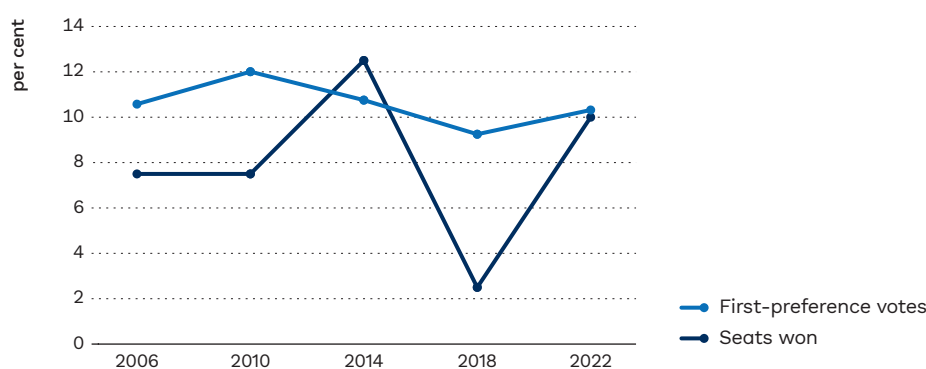
Table 6.1 Selected candidates in Northern Victoria Region, 2022 election

Candidate	Party	First-preference votes	Elected
Wendy Lovell	Liberal	159,945	✓
Gaelle Broad	The Nationals	1,210 ^a	✓
Jaclyn Symes	Australian Labor Party – Victorian Branch	132,001	✓
Cate Sinclair	Australian Greens	30,966	✗
Josh Knight	Shooters, Fishers & Farmers Vic	23,374	✗
Adam Miller	Legalise Cannabis Victoria	21,691	✗
Rikkie-Lee Tyrrell	Pauline Hanson's One Nation	17,091	✓
Tim Quilty	Liberal Democrats	9,039	✗
Tania Maxwell	Derryn Hinch's Justice Party	8,926	✗
Michael White	Family First Victoria	7,476	✗
Georgie Purcell	Animal Justice Party	7,123	✓

a. 2nd candidate on the Liberal/The Nationals group voting ticket. There were enough above-the-line votes for the Liberal/The Nationals group, together with some first preferences below the line, to elect two members.

Source: Victorian Electoral Commission, *Northern Victoria Region results*, <<https://www.vec.vic.gov.au/results/state-election-results/2022-state-election-results/results-by-region/northern-victoria-region-results>> accessed 11 April 2024.

Overall, the system can lead to parties with significant numbers of first-preference votes struggling to get representation in Parliament. Figure 6.2 shows how the results for the Greens have varied considerably from one election to another, despite the proportion of first-preference votes being stable. As Ben Raue noted, there can sometimes be a considerable disconnect between the proportion of first-preference votes that a party receives across the state and the number of seats it gets in Parliament: ‘in 2018 the Greens polled 9.2% of the primary vote and won one seat, the Derryn Hinch Justice Party polled 3.75% and won three seats.’³

Figure 6.2 First-preference votes for the Australian Greens for the Upper House (state-wide) and the number of seats won in the Upper House

Source: Electoral Matters Committee based on VEC data.

³ Ben Raue, *Submission 39*, p. 5.

The Committee does not see any issue with people being elected based on the flow of preferences if that is what voters intend. As mentioned in Section 6.1.1, however, the evidence suggests that voters do not necessarily consult or understand group voting tickets. In this case, it is hard to argue that the preference flows reflect voters' intentions.⁴

In addition, confusion between the systems used for the Victorian and Commonwealth Upper Houses has led to some people's votes being counted in a different way to their intentions. For the Commonwealth, voters can indicate multiple preferences above the line and their votes are transferred between parties or groups in the order indicated by voters above the line. However, if voters in Victoria indicate multiple preferences above the line, the vote is distributed according to the group voting ticket of the party or group that the voter gave their first preference to. If this does not align with the voter's preferences entered above the line, these people's votes are distributed in a different way to their intentions.

The VEC analysed a sample of Victorian Upper House votes and found that 3.7% of above-the-line votes had multiple preferences above the line in 2022.⁵ This is a significant number of people whose votes were potentially counted differently to their intentions.

FINDING 14: Group voting tickets may result in some above-the-line votes for the Upper House being distributed in ways that voters do not expect or want. This can occur because many voters do not consult the group voting tickets before voting and, even if they do, some group voting tickets can be hard to understand. The Upper House voting system can lead to some candidates with small numbers of first-preference votes being elected based on the flow of preferences, while other candidates with more first-preference votes do not get elected. If voters have not chosen those preferences, this is problematic. Group voting tickets also lead to distrust in the system, encourage more candidates on ballot papers and enable 'preference whispering', which some people see as unethical.

6.2 Eliminating group voting tickets

Considering all of these issues, the Committee believes that the Upper House voting system should be reformed. There are a number of different ways that these issues could be addressed. These include modifying the voting system, restricting 'preference whispering' activities through legislation, requiring candidates to reach a threshold of first-preference votes to be elected or making it harder for people to nominate as candidates.

⁴ The Committee does note the argument that voters may trust the parties/groups when they vote above the line (The Australia Institute, *Submission 77*, p. 7; Chris Curtis, *Submission 40* to the Inquiry into the conduct of the 2018 Victorian state election, p. 16). However, the Committee notes other reasons why people may choose to vote above the line in Section 11.2.1 in Volume 2.

⁵ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 184.

The Committee's view is that the best outcomes would be achieved by modifying the voting system. The existing system should be replaced by a system where voters can easily understand who their votes will be distributed to.

The Committee's preferred model is a similar system to what is used for the Commonwealth Upper House:

- group voting tickets are eliminated
- voters indicate multiple preferences above the line, where a preference above the line is interpreted as a preference for all the candidates of that party/group, in the order listed on the ballot paper
- voters are directed to select at least five preferences above the line, and may continue to indicate as many more preferences as they wish
- savings provisions should be in place as in the Commonwealth,⁶ at least initially, allowing a vote to be counted as formal if it has at least one preference above the line
- voters should still be able to vote below the line as in the current system.

This proposal maintains the existing system's simplicity by allowing above-the-line voting for voters who wish to support parties or groups but do not have any preferences for individual candidates within those parties or groups. At the same time, voters who wish to express preferences for individual candidates can continue to do so.

The savings provision allowing votes with just one preference above the line is designed to give people time to adjust to the new system. Although the savings provision would allow people to include fewer than five preferences above the line, people must not encourage this. It may be worthwhile to include provisions in the legislation that prohibit advocating ways of voting other than the intended way, as is the case in South Australia.⁷

Using a similar system to the Commonwealth Upper House has the advantage of reducing voter confusion. The one difference between the Commonwealth system and the Committee's proposal is that the Committee suggests only requiring voters to number five squares above the line (rather than six, as in the Commonwealth). This has been suggested to maintain continuity with current requirements for below-the-line voting and the Committee does not consider that this is likely to cause significant voter confusion. However, the Committee would not oppose six being introduced as the minimum number of preferences above the line, so long as the legislation is adjusted to make six the minimum number for below-the-line voting as well.

⁶ *Commonwealth Electoral Act 1918* (Cth) s 269.

⁷ *Electoral Act 1985* (SA) s 126. Similar provisions were also in the *Commonwealth Electoral Act 1918* (Cth) as section 329A from 1992–1998 (see *Electoral and Referendum Amendment Act 1992* (Cth) s 27). For a discussion of issues associated with the Commonwealth provision, see Parliament of Australia, Joint Standing Committee on Electoral Matters, *Report of the inquiry into all aspects of the conduct of the 1996 Federal election and matters related thereto*, June 1997, pp. 27–33.

The key advantage of the proposed system is that voters would understand where their votes would be distributed because they would have to choose the preferences for themselves. Even if voters were to follow how-to-vote cards, they would have to write the preferences in themselves, which would ensure that they were aware of what they were choosing.

One potential concern with this change is that it will lead to higher numbers of ballot papers ‘exhausting’. A ballot paper exhausts when the vote is due to be transferred to another candidate but cannot be transferred because none of the candidates/parties that a voter has given preferences to is still in the count or the vote has reached the last of its preferences. This can occur with votes which are transferred because the preferred candidates/parties have been excluded and with votes which are transferred because the preferred candidates have received more than a quota of votes and the surplus value is being transferred (see Box 6.1 in Section 6.1).

However, the exhaustion rates for the Commonwealth Upper House, which has a similar system to what the Committee is proposing, have been reasonably low. At the 2022 election, 5.0% of the ballot papers for states⁸ exhausted at full value (that is, they exhausted without counting towards any candidates) and an additional 15.9% exhausted at partial value (that is, they were counted towards the election of at least one candidate but some of the surplus value could not be transferred). At the 2019 election, 4.5% exhausted at full value and 18.3% at partial value.⁹

Malcolm Mackerras AO argued against this system because he believes that voters should select individual candidates rather than selecting parties. His preferred approach was to eliminate above-the-line voting altogether (as is the case in Tasmania and the Australian Capital Territory). This would require voters to give preferences to individual candidates. He believed that parties should still be allowed to determine the order of their candidates on ballot papers, which could act as a guide to voters when giving their preferences. However, he considered that it should be just as easy to vote for candidates in a different order to what a party recommends as it is to vote in the way that a party recommends. He considered that above-the-line voting made it much easier to vote for candidates in the order that the party has selected and therefore biases the system in favour of what parties want.¹⁰

The Committee is not convinced that most voters have preferences for individual Upper House candidates. Lower House candidates in Victoria tend to get more public attention and there are large numbers of Upper House candidates in each region that many voters are not familiar with.

⁸ The figures in this paragraph only relate to the election of senators from states and not territories. States elect six members at a usual Commonwealth Upper House election, but territories only elect two members. Six-member elections are more comparable to what the Committee is proposing than two-member elections.

⁹ Electoral Matters Committee calculations based on Australian Electoral Commission data.

¹⁰ Malcolm Mackerras AO, *Submission 1*, pp. 3, 8, 11–12; Malcolm Mackerras AO, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 53. The Proportional Representation Society of Australia also called for eliminating above-the-line voting—Dr Stephen Morey, President, and Geoffrey Goode, Treasurer, Proportional Representation Society of Australia (Victoria-Tasmania) Inc., public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, pp. 36, 38.

In any case, the Committee is not proposing changes to below-the-line voting. Voters who do have preferences for individual candidates would still be able to vote below the line. By making five the minimum number of preferences for both above-the-line and below-the-line voting, the system makes it equally easy to vote either way and does not push voters to complete their ballot papers one way or the other.

By allowing multiple preferences above the line, the proposed system would give voters an easy way to cast a vote that is less likely to exhaust than if above-the-line voting were removed. That is, expressing five preferences above the line would equate to preferencing between 10 and 25 candidates (depending on how many candidates were nominated for each party/group). Requiring voters to indicate this number of preferences below the line would likely lead to higher rates of informality. Requiring all voters to vote below the line with a minimum of five preferences would lead to votes exhausting more quickly than under the Committee's preferred option.

Chris Curtis argued against the proposed system because different above-the-line votes would count towards different numbers of candidates, depending on how many candidates were nominated for the selected parties/groups. Voters selecting five parties/groups may be expressing preferences for anywhere from 10 to 25 candidates. Moreover, with the savings provision suggested, an above-the-line vote may include as few as two candidates. Alternatively, a vote may also count towards all candidates if a voter were to number all squares. Voters who vote below the line can have a formal vote with five preferences. As a result of these variations, some votes may have more influence on the result than others, depending on when they exhaust.¹¹

Chris Curtis noted that, ideally, all voters would number all candidates. However, he recognised that this is not practical and that compromises need to be made so that it is easier for voters to cast a vote that counts. On this basis, he preferred a system with modified group voting tickets (allowing only 12 preferences) and encouragement for below-the-line voters to enter at least 12 preferences.¹²

When recommending the Commonwealth system, the Commonwealth Parliament's Joint Standing Committee on Electoral Matters similarly noted the importance of compromising when designing electoral systems. Considering whether voters should be required to number all squares above the line or just some, that committee noted:

there is an obvious trade-off between higher informality with compulsory preferential voting above the line, and higher vote exhaustion with optional preferential voting.¹³

This Committee similarly believes that it is important to balance multiple factors when determining the most appropriate voting system. The factors to be considered include the ones noted above: the ease of casting a vote, minimising informality, minimising

¹¹ Chris Curtis, *Submission 41*, p. 14; Chris Curtis, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 16. See also the discussion (with alternative solutions) in Antony Green AO, *Submission 98*, pp. 14–15.

¹² Chris Curtis, *Submission 41*, pp. 12–13; Chris Curtis, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, pp. 15–16.

¹³ Parliament of Australia, Joint Standing Committee on Electoral Matters, *Interim report on the inquiry into the conduct of the 2013 Federal Election: Senate voting practices*, May 2014, p. 49.

the exhaustion rate and giving all votes a similar influence on the results. In addition, the Committee considers it important to enable voters to easily understand how their vote will be counted by knowing where their vote may be transferred.

The Committee believes that its recommended changes strike the best balance when considering all these factors.

Chris Curtis noted that the informality rate for the Commonwealth Upper House increased after group voting tickets were eliminated there.¹⁴ If the proposed system is introduced in Victoria, it will therefore be important for the VEC to run a substantial education campaign prior to the first election under the new system. The Government should provide additional funding to the VEC to undertake this work.

The Committee also notes that multiple submitters considered that the instructions on the Commonwealth Upper House ballot papers are misleading.¹⁵ The ballot papers instruct above-the-line voters to number at least six boxes, even though the vote will be counted if fewer boxes are numbered. In designing a new ballot paper, the Committee encourages the Government to develop careful instructions that are accurate while encouraging five or more preferences above the line.

FINDING 15: Eliminating group voting tickets and allowing multiple preferences above the line would improve Victoria's Upper House voting system. These changes would enable voters to better understand where their votes would be transferred, while also being relatively simple for voters and minimising the proportion of votes that do not count towards any candidates.

RECOMMENDATION 17: That the Government reform the Upper House voting system by introducing legislation amending the Electoral Act to:

- eliminate group voting tickets
- allow voters to indicate multiple preferences for parties/groups above the line, where a preference above the line is interpreted as a preference for all of the candidates of that party/group, in the order listed on the ballot paper
- have ballot papers direct voters to select at least five preferences above the line
- include savings provisions similar to those in the Commonwealth Electoral Act that a vote is still valid if fewer than five preferences above the line are indicated.

The current system for voting below the line should be retained.

¹⁴ Chris Curtis, *Submission 41*, p. 9.

¹⁵ Malcolm Mackerras AO, *Submission 1*, pp. 7, 17, 19; Chris Curtis, *Submission 41*, p. 13; Chris Curtis, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 16. See also Ben Raue, *Submission 39*, p. 7; Ben Raue, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 31.

RECOMMENDATION 18: That, if Recommendation 17 is implemented, the Government provide the VEC with additional funding to develop and conduct an education campaign about the new voting system for the Upper House before the first election with the new system.

6.3 Changing the regions

Proportional representation aims to represent parties in proportion to their support—that is, if a party has the support of 20% of voters, it should have 20% of the seats. However, because Victoria is divided into eight regions, each electing five members, a candidate cannot be elected unless they gather 16.7% of votes in one region (either from first-preference votes or the flow of preferences). This makes it harder for smaller parties to achieve representation.

The coordination of preferences using group voting tickets has been used by smaller parties to counteract this effect. If group voting tickets were eliminated but the current structure of regions continued, major parties would likely be over-represented in the Upper House and there would likely be fewer minor parties and less diversity.¹⁶

To compensate for this effect, the Committee believes that the ‘quota’ for election (the minimum proportion of votes that a candidate needs to be elected) should be reduced.

To achieve this, it is necessary to increase the number of candidates being elected from each electorate. This could be done in a number of ways:

- maintaining the existing regions but increasing the number of members for each region (increasing the total number of members in the Upper House)
- maintaining the same total number of members in the Upper House but reducing the number of regions (so that more members are elected from each region)
- changing both the number of regions and the total number of members in the Upper House
- eliminating regions and electing all members from the state as a whole.

A variety of different options was proposed during this Inquiry, with models ranging from four to eight regions, with each region electing between seven and 11 members. One submitter suggested dividing Victoria into one metropolitan electorate and multiple regions for the areas outside Melbourne. Multiple submitters proposed eliminating regions altogether and electing all members from the state as a whole (either all at once or with only half of the positions at each election). This model is used in New South Wales and South Australia, and will be used in Western Australia from 2025.

¹⁶ The Australia Institute, *Submission 77*, pp. 8–9; Craig Kealy, National Psephology Manager, Animal Justice Party, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp 33–4; Dr Kevin Bonham, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 12; Ben Raue, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 30.

There are complex issues to be considered in relation to the different possible models. A model where all members are elected from the state as a whole involves the lowest quota and the results will most closely match voters' preferences. However, it may lead to larger numbers of candidates on ballot papers. The current system ensures that Victorians from different parts of the state have representation and that Melbourne is not over-represented—changing to a whole-of-state model would remove that protection. If Victoria is to be divided into multiple regions, those regions should reflect meaningful communities of interest. That may be more possible with some structures than others.

These and many other factors would have to be considered in determining a new structure. This is a matter that requires more investigation than the Committee has been able to undertake in this Inquiry.

In addition, any changes to the number of regions or number of members would require changes to the Victorian Constitution via a referendum.¹⁷ It would therefore be necessary for any process determining a new structure to incorporate the wider community to gain public input, buy-in and support.

Some psephologists who were in favour of eliminating group voting tickets argued that eliminating group voting tickets should be done together with changes to the structure of regions or the number of members.¹⁸ However, they also argued that it would be an improvement for group voting tickets to be eliminated even without changes to the structure of the regions.¹⁹

A large number of submitters to this Inquiry called for changes to the Upper House electoral system, including group voting tickets and changes to the regions.

Eliminating group voting tickets should occur independently of changes to the regions and must not be delayed in order to take place after or at the same time as changes to the regions.

The proposed changes involve serious and complex issues, with changes potentially having significant consequences for the make-up of Victoria's Parliament. They may make it more difficult for smaller parties to be represented in the Upper House. Changes to the number of members and/or regions would compensate for this by lowering the quota for election.

While the Committee believes that the best outcome for Victoria would be the elimination of group voting tickets together with a change to the regions, the Committee considers that eliminating group voting tickets would be beneficial even without changes to the regions.

¹⁷ *Constitution Act 1975 (Vic)* s18(1B).

¹⁸ Ben Raue, *Submission 39*, pp. 8–9; Dr Kevin Bonham, *Submission 89*, pp. 5–6.

¹⁹ Dr Kevin Bonham, *Submission 89*, pp. 5–6; Dr Kevin Bonham, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 14; Ben Raue, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 30. See also Geoffrey Goode, Treasurer, Proportional Representation Society of Australia (Victoria-Tasmania) Inc., public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 38.

Given the complex nature of these changes, the Committee believes that the Parliament should refer an inquiry into possible reforms of the Upper House electoral system and their impacts to the Electoral Matters Committee for careful consideration.

FINDING 16: The Committee’s proposed changes to the Upper House voting system may make it more difficult for smaller parties to be represented in the Upper House. Changes to the number of members and/or regions would compensate for this by lowering the quota for election.

RECOMMENDATION 19: That the Parliament refer an inquiry into possible reforms of the Upper House electoral system and their impacts to the Electoral Matters Committee.

6.4 Other suggested changes

6.4.1 Robson Rotation

Some submitters called for the introduction of ‘Robson Rotation’, which is used in Tasmania and the Australian Capital Territory. This system varies the order in which candidates’ names within a party or group are printed on different ballot papers. This eliminates any advantage that candidates get from ‘donkey votes’ and means that voters pick their preferred candidates from a party/group, rather than the party/group deciding which of its candidates should be elected.²⁰

Antony Green AO argued against this for Victoria, noting that the system:

works well in the small, geographically and historically established Tasmania seats, and in the city state of Canberra. The quota for election is around 10,000 votes, and the elections are conducted for one chamber only.

In the case of the Victorian Legislative Council [Upper House], few voters would be aware of their Council Region, the quota for election is around 80,000, and the Council election is drowned out as secondary to the contest for government in the Legislative Assembly [Lower House] ...

Randomised listing was introduced ... as a way of randomising the ‘donkey vote’ in a system where competition between party candidates had already existed for decades.²¹

Malcolm Mackerras AO also argued against Robson Rotation for Victoria, noting that both houses in Victoria have elections at the same time and that how-to-vote cards are a customary part of elections in Victoria, but would be difficult with Robson Rotation.²²

²⁰ Proportional Representation Society of Australia (Victoria-Tasmania) Inc., *Submission 54*, p. 5; The Australia Institute, *Submission 77*, pp. 9–10; Geoff Powell, *Submission 85*, p. 1; response to the Committee’s survey of members of Parliament—see Section B.4.7 in Appendix B of Volume 2.

²¹ Antony Green AO, *Submission 98*, p. 13.

²² Malcolm Mackerras AO, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp. 49–50.

Overall, the Committee does not consider that Robson Rotation would be appropriate for Victoria.

FINDING 17: In some jurisdictions, ‘Robson Rotation’ is used to vary the order of candidates within a party from one ballot paper to another to eliminate any advantages from ballot paper order. However, this would not be practical in Victoria, where people are not necessarily familiar with their Upper House candidates and where how-to-vote cards are an established part of elections.

RECOMMENDATION 20: That Robson Rotation not be adopted for ballot papers in Victoria.

6.4.2 Making Upper House and Lower House instructions consistent

Malcolm Mackerras AO suggested that the formality rules for both the Upper House and Lower House should be the same, with a minimum of five preferences required and additional preferences being optional. This would make for simpler instructions to voters and would reduce the higher levels of informality that are correlated with larger numbers of candidates on Lower House ballot papers.²³ Establishing the same rules for local councils may also be worth consideration.²⁴

The Committee considers that this idea may have some merit, but notes that changing the Lower House voting system to optional preferential would be a major change with potentially significant effects. Among other things, it may cause confusion for voters, as there would be different formality rules at Victorian and Commonwealth elections.²⁵ Any such change would need to be investigated in more depth.

²³ Malcolm Mackerras AO, *Submission 1*, pp. 2, 21; Malcolm Mackerras AO, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, pp. 51–2.

²⁴ Chris Curtis, *Submission 41*, p. 13.

²⁵ See further discussion in Parliament of Victoria, Electoral Matters Committee, *Inquiry into the conduct of the 2018 Victorian state election*, August 2020, pp. 37–8.

Chapter 7

Summary of recommendations in Volume 2

This volume of the report sets out the Committee's findings and recommendations regarding four key areas of concern.

Volume 2 of the report discusses the 2022 election in more detail. It includes an analysis of the evidence that supports the recommendations made in this volume. It also includes further evidence and recommendations relevant to the 2022 election. The sections below summarise the recommendations in Volume 2.

7.1 Making elections more inclusive

Inclusivity is an important goal for elections. High participation is critical to election legitimacy and the electoral system should provide all electors with the opportunity to vote.

The Committee recommends various actions to increase inclusion for groups with lower rates of participation—young electors, electors automatically enrolled through the 'direct enrolment' program, 30-to-44-year-old electors and voters aged 70 and older. The Committee further recommends improved reporting and research on the factors driving enrolment, turnout and informal voting rates, along with more information on what the Victorian Electoral Commission (VEC) intends to do to address declining turnout ahead of the 2026 election. The Committee also notes the work being undertaken to educate people about how to vote formally and encourages further work in this area.

The Committee would also like to see changes to legislation that would increase the number of members required to register a party and the number of people required to support an independent candidate. These measures may reduce the number of candidates who have minimal public support. Having fewer candidates on ballot papers is likely to reduce informal voting.

Multiple concerns were raised about the venues used at the 2022 election, especially for early voting. The Committee supports a recommendation from the VEC that suitable publicly funded venues (such as community facilities owned and operated by local councils) should be required to be available for use as early voting centres. The Committee also recommends that the VEC establish more robust performance measures to track its success at finding more suitable venues at future elections and at minimising queue times.

Providing appropriate services for electors who were overseas or interstate proved to be challenging in 2022. The Committee would like to see more detailed reporting about programs to serve these electors in the future. This will enable a better understanding of the effectiveness of future efforts.

The VEC has recommended expanding access to telephone-assisted voting as a way to improve participation among multiple cohorts. However, the Committee recommends more investigation into the risks, costs and challenges posed by expanding access to better inform a decision about any large-scale increase in eligibility. The VEC should also provide targeted information to telephone-assisted voters, as a significant proportion wanted additional information in 2022.

The Committee believes that only electoral commissions should send postal vote applications to voters and recommends closing a loophole which allows political parties to send general postal voter applications to electors. However, it is also important for the VEC to ensure that paper-based postal vote application forms are available through appropriate channels, that sufficient numbers are supplied to the venues where people can access them and that people are aware of how they can access paper-based forms if they need them.

In addition, there is a need for postal voting packs to be redesigned. Over 60,000 electors in 2022 returned postal votes which could not be counted due to problems with the way the declaration on the envelope was completed. This was not discussed in the VEC's report to Parliament on the 2022 election and the Committee recommends reporting around this issue in the future.

Several participants in this Inquiry discussed improving electoral inclusion for Victorians with disability. A particular area where more work is needed relates to supporting people with intellectual and cognitive disability. The Committee recommends that the Government fund an organisation with relevant expertise to develop a framework for improving the inclusion of these people in Victorian elections. The VEC should also be given the power to designate a larger campaigning exclusion zone at certain voting centres at certain times to provide in-person voting that is more accessible for neurodiverse and sensory-sensitive voters.

The VEC should investigate using data from the National Disability Insurance Agency to get more people with disability on the roll. The VEC also needs to revise its training and processes to better support people who have difficulty standing. The VEC should more generally consider the feedback to the Committee's survey of voters with disability.

Clear and comprehensive reporting about election participation is important for tracking and responding to changes. The Committee would like to see improved reporting across a range of areas, including broad inclusivity measures and particular voting channels.

The VEC's communication plays a key role in making elections inclusive by providing helpful and accurate information to voters in accessible ways. The Committee recommends a range of actions to improve VEC communication, including:

- providing all electors with an *EasyVote guide* before elections, including sending it by post to people who have not provided electronic communication details to the VEC
- allowing people to make complaints through social media
- considering additional services to inform people from culturally and linguistically diverse backgrounds.

The Committee discusses election inclusivity in Chapters 2 to 5 of Volume 2.

7.2 Making elections more trustworthy and transparent

To provide confidence in the election results, people must be able to see that the election was conducted fairly and that the votes were counted accurately. Transparent processes during an election and during the counting process allow stakeholders to see that things are done correctly. Clear post-election reporting is needed to show that no significant fraud or errors occurred.

The way that the VEC communicates with candidates and parties is a key part of being transparent and maintaining trust in elections. The Committee has identified areas where the VEC's communication with key stakeholders could be improved, particularly around vote counting.

The VEC's mass communication with the broader electorate is also vital to election trustworthiness. The VEC undertook a considerable amount of work combatting inaccurate information at the 2022 election. The Committee recommends building on this with some additional work informing people about the VEC's role and its powers and responsibilities under electoral legislation. Despite reaching agreements with social media platforms regarding inaccurate content, the VEC's requests to have platforms remove problematic content were sometimes ignored or not agreed to. The Committee recommends that the Government consider whether legislation may help to address this issue.

In 2022 the VEC made errors in its social media communication about ballot paper shortages and voting centres closing early. The VEC needs to improve its processes to prevent similar mistakes in the future.

The way that election candidates and other political participants behave can impact on election trustworthiness. The Committee saw some candidates spreading inaccurate information on social media at the 2022 election and recommends that parties establish codes of conduct for online behaviour to address this and other problems.

The VEC uses computerised processes to deliver some aspects of elections. While this can improve efficiency, it is more difficult to demonstrate the trustworthiness of computerised process compared to manual processes. The Committee recommends returning to a manual random draw to determine ballot paper order and requiring audits of computer counts to ensure and demonstrate the trustworthiness of the VEC's processes.

To prevent potential fraud, the Committee would like to see postal ballot papers marked in a way that distinguishes them from ballot papers issued at a voting centre. However, the Committee believes that the requirement for election officials to sign ballot papers is not necessary and causes confusion without providing benefits, as ballot papers are still counted even if not signed.

Providing full and accurate reporting on election procedures contributes to more trustworthy elections. The Committee recommends improved VEC reporting around multiple voting, ballot paper security and vote counting at future elections.

The Committee discusses election trustworthiness and transparency in Chapters 6 and 7 of Volume 2.

7.3 Ensuring that the VEC meets its obligations

Some Victorians were unable to cast their votes on election day due to ballot paper shortages and because at least one voting centre closed early. This is a serious failing that needs to be addressed. The Committee recommends that the VEC thoroughly investigate what happened. The VEC needs to take action to prevent similar occurrences at future elections, including reviewing the number of ballot papers it prints, introducing electronic roll mark-off and reviewing its systems for monitoring and communicating what occurs at voting centres.

On this matter, the VEC did not meet the standards of transparency that the Committee expects. The Committee therefore recommends that the VEC produce a special report on this issue to supplement its report to Parliament on the 2022 election. The VEC should also include information about ballot paper shortages in reports on future elections.

The VEC is subject to regulatory and self-imposed obligations regarding elections. The Committee has identified changes to improve the way that the VEC delivers and reports on these obligations.

The Committee recommends specific adjustments to some of the performance indicators and targets set by the VEC in its service plan. In particular, the Committee recommends that the VEC reinstate indicators for fundamental election measures around enrolment, turnout and formality.

The Committee also recommends that the VEC include concrete actions, measures and quantified targets in all future plans and strategies, as well as including election participation outcomes in the evaluation of its access and inclusion plans.

The authorisation rules for electoral matter that the VEC is required to enforce are no longer appropriate for modern communication methods, particularly social media. The Committee recommends that the Government review these rules based on Commonwealth practice, suggestions from the VEC and previous Electoral Matters Committee recommendations. Similarly, the provisions in the Electoral Act regarding misleading or deceptive material should be clarified to reduce confusion about what is permitted in how-to-vote cards.

In addition, the Committee recommends changes to improve the way that postal vote application data is provided to parties and candidates and the processes for counting early votes.

The Committee discusses the VEC's efforts to meet its obligations at the 2022 election in Chapters 8 to 10 of Volume 2.

7.4 Making elections fairer

For an election to be fair, it is important that the system provides a level playing field for all candidates. To improve the current system, the Committee recommends changes to the vote-counting method for the Upper House.

Another aspect of election fairness is ensuring that voters are fully informed. To be fully informed when they vote, voters need to understand what candidates their vote will be counted towards and they need accurate information about those candidates. The Committee would like to see initiatives to reduce potential sources of confusion:

- prohibiting political parties from using similar names and logos to other parties
- allowing political parties to register a colour logo to be printed on ballot papers
- empowering a party to have a candidate removed from the ballot paper when they are disendorsed, rather than relying on the candidate.

To keep elections fair, the VEC needs to treat all election participants appropriately and without bias. Some parties and candidates at the 2022 election reported feeling that their interactions with the VEC were adversarial. The Committee recommends that the VEC listen to candidate and party feedback and improve its staff training and communication processes in response. The Committee also considers that there is scope for improvement to the VEC's information products and communication processes with candidates and parties.

Registering how-to-vote cards was a source of tension between the VEC and some parties and candidates. Some felt that the processes around registration led to unequal campaigning opportunities. Many considered the process to be difficult and inefficient. For these and other reasons, the Committee recommends removing the requirement to register how-to-vote cards. This should be accompanied by legislation making it illegal to publish material falsely purporting to be from a political party or election candidate, to prevent people distributing false how-to-vote cards.

The VEC needs to be extremely judicious in its public commentary to avoid perceptions of bias when delivering elections. Some commentary at the 2022 election generated criticism towards the VEC that included questioning its impartiality. The Committee recommends that the VEC review its communications strategy to prevent a similar situation at future elections.

Local laws should also not unduly prevent people from expressing their support for candidates and parties at elections and the Committee has recommended new legislation to prevent that from occurring.

The Committee discusses making elections fairer in Chapters 11 to 14 of Volume 2.

7.5 Previous recommendations

Following up previous recommendations is important for accountability and can help identify issues from previous inquiries that still need to be addressed. Chapter 15 of Volume 2 looks at the recommendations that were made by the previous Electoral Matters Committee after the 2018 election. The chapter assesses the VEC's responses to these recommendations, highlights what still needs attention and recommends improvements to the way that the VEC responds to recommendations and reports on its progress.

7.6 Reviewing the Electoral Act

The Committee has made a significant number of recommendations for changes to the Electoral Act across the two volumes of this report. The VEC has also recommended multiple changes to the Act in its report to Parliament on the election. The Act is over 20 years old and many things have changed since it was passed. There are now larger numbers of voters and candidates, more people vote early and social media has become a key method for candidates to communicate with voters. Many of the recommendations in this report reflect a need to keep up with these and other changes.

The VEC has recommended:

that a holistic review of the Electoral Act is undertaken, to address the unsustainability of the election timeline and respond to the complexities of the modern electoral landscape.¹

The Committee agrees that it may be appropriate to address the recommendations made in this report and elsewhere through a holistic review of the Electoral Act.

¹ Victorian Electoral Commission, *Report to Parliament: 2022 Victorian State election and 2023 Narracan District supplementary election*, Melbourne, 2023, p. 13.

FINDING 18: The Electoral Act was passed more than 20 years ago. Many changes have occurred in elections since then, such as larger numbers of voters and candidates, more people voting early and the rise of social media. The Committee has recommended multiple amendments to the Electoral Act to keep up with these and other changes.

RECOMMENDATION 21: That the Government consider undertaking a holistic review of the Electoral Act to bring it up to date and to incorporate the recommendations of this report, other reports by the Electoral Matters Committee and appropriate recommendations by the VEC.

In addition, there may be changes required to the Electoral Regulations. As a general rule, the Committee considers that it would be best practice for the Government to consult with the Committee whenever it changes the regulations. This would provide an opportunity for the Committee to represent the issues presented to it by stakeholders and the results of the Committee's investigations. This input would help to ensure that any proposed regulations are the most appropriate for Victoria.

FINDING 19: The Electoral Regulations can include key electoral rules that can impact on the fairness and inclusivity of elections. It is important for any changes to be well informed.

RECOMMENDATION 22: That the Government consult with the Electoral Matters Committee whenever it is considering changes to the Electoral Regulations, giving the Committee an opportunity to provide input based on its work.

**Adopted by the Electoral Matters Committee
Parliament of Victoria, East Melbourne
17 June 2024**

Extracts of proceedings

The Committee divided on the following questions during consideration of this volume of the report. Questions agreed to without division are not recorded in these extracts.

Committee meeting—17 June 2024

Chapter 3, Section 3.2.1

David Ettershank MLC moved that the sentence ‘In addition, the Committee considers that a deadline for parties to submit applications for registration should be set at 180 days before the election.’ and the consequent point in Recommendation 1 be **omitted**.

The Committee divided.

Ayes	Noes
David Ettershank MLC	Brad Battin MP
	Wayne Farnham MP
	Luba Grigorovitch MP
	Sam Hibbins MP
	Emma Kealy MP
	Nathan Lambert MP
	Lee Tarlamis OAM, MLC
	Emma Vulin MP

Amendment negatived.

Chapter 6, Section 6.3

David Ettershank MLC moved that the following paragraph be **omitted**:

While the Committee believes that the best outcome for Victoria would be the elimination of group voting tickets together with a change to the regions, the Committee considers that eliminating group voting tickets would be beneficial even without changes to the regions. Eliminating group voting tickets should occur independently of changes to the regions and should not be delayed in order to take place after or at the same time as changes to the regions.

and that the following finding and recommendation be **inserted**:

FINDING XX: A large number of submitters to this Inquiry called for changes to the Upper House electoral system including group voting tickets and changes to the regions. The proposed changes involve serious and complex issues. Any changes could potentially have significant consequences for the make-up of Victoria’s Parliament. Changes to the Upper House electoral system should therefore be carefully considered as part of an inquiry specifically focused on that topic.

RECOMMENDATION XX: That the Parliament refer an inquiry into possible reforms of the Upper House electoral system to the Electoral Matters Committee.

The Committee divided.

Ayes	Noes
David Ettershank MLC	Brad Battin MP
	Wayne Farnham MP
	Luba Grigorovitch MP
	Sam Hibbins MP
	Emma Kealy MP
	Nathan Lambert MP
	Lee Tarlamis OAM, MLC
	Emma Vulin MP

Amendment negatived.

Lee Tarlamis OAM, MLC moved that the following paragraph be **omitted**:

While the Committee believes that the best outcome for Victoria would be the elimination of group voting tickets together with a change to the regions, the Committee considers that eliminating group voting tickets would be beneficial even without changes to the regions. Eliminating group voting tickets should occur independently of changes to the regions and should not be delayed in order to take place after or at the same time as changes to the regions.

and that the following text be **inserted**:

A large number of submitters to this Inquiry called for changes to the Upper House electoral system, including group voting tickets and changes to the regions.

Eliminating group voting tickets should occur independently of changes to the regions and must not be delayed in order to take place after or at the same time as changes to the regions.

The proposed changes involve serious and complex issues, with changes potentially having significant consequences for the make-up of Victoria's Parliament. They may make it more difficult for smaller parties to be represented in the Upper House. Changes to the number of members and/or regions would compensate for this by lowering the quota for election.

While the Committee believes that the best outcome for Victoria would be the elimination of group voting tickets together with a change to the regions, the Committee considers that eliminating group voting tickets would be beneficial even without changes to the regions.

Given the complex nature of these changes, the Committee believes that the Parliament should refer an inquiry into possible reforms of the Upper House electoral system and their impacts to the Electoral Matters Committee for careful consideration.

and that the following recommendation be **omitted**:

RECOMMENDATION 19: That the Government consider alternative options for possible changes to the structure for Upper House regions, including changes to the number of regions, the number of members in each region and the total number of members in the Upper House.

and that the following recommendation be **inserted**:

RECOMMENDATION 19: That the Parliament refer an inquiry into possible reforms of the Upper House electoral system and their impacts to the Electoral Matters Committee.

The Committee divided.

Ayes	Noes
Brad Battin MP	David Ettershank MLC
Wayne Farnham MP	
Luba Grigorovitch MP	
Sam Hibbins MP	
Emma Kealy MP	
Nathan Lambert MP	
Lee Tarlamis OAM, MLC	
Emma Vulin MP	

Amendment agreed.

Chapter 6

Brad Battin MP moved that Volume 1, Chapter 6 as amended be adopted and stand part of the Report.

The Committee divided.

Ayes	Noes
Brad Battin MP	David Ettershank MLC
Wayne Farnham MP	
Luba Grigorovitch MP	
Sam Hibbins MP	
Emma Kealy MP	
Nathan Lambert MP	
Lee Tarlamis OAM, MLC	
Emma Vulin MP	

Motion carried.

Minority reports



Inquiry into the Conduct of the
2022 State Election
Dissenting Report

June 2024

Executive Summary and Introduction

The 2022 State Election – as with every election in Victoria – was an opportunity for Victorians to have their say in the future of their government. The Inquiry into the Conduct of the 2022 State Election has shown, however, that while the election was a free and fair contest between candidates in the main, there are genuine concerns about the conduct, fairness, and efficiency of elections in this State.

This dissenting report is a genuine attempt to engage with the evidence provided to the Inquiry, and represents the view of the Liberals and Nationals Members of Parliament on the Electoral Matters Committee.

One of the most concerning matters uncovered by the Inquiry is the use of Group Voting Tickets to deliver election outcomes that do not reflect the will of the Victorian people. GVTs facilitate the election of candidates who lack genuine voter support, allowing political operatives like 'preference whisperer' Glenn Druery to game the system. This manipulation is not just a theoretical concern; it has real-world implications that erode public trust in our democratic institutions.

We also identified significant failings within the Victorian Electoral Commission (VEC) during the 2022 State Election. The VEC's overreliance on digital communication left many voters, particularly those from linguistically diverse communities, in the dark. Furthermore, the VEC at times failed to uphold its duty to remain impartial, raising serious questions about its role in ensuring fair and transparent elections.

We also differ from the view of the majority of the Committee on matters such as political advertising and conduct management. Our recommendations aim to preserve the efficiency and fairness of electoral processes while avoiding unnecessary bureaucracy and compliance costs. We believe that existing independent bodies are best equipped to handle issues related to political advertising and conduct, ensuring that government intervention remains minimal and non-intrusive, and our political discourse is robust and fearless.

The voices of Victorians must be heard and respected in every election. Our recommendations, if taken up, will reform and strengthen the integrity of Victoria's electoral system, improve the impartiality of the VEC, ensure the electorate is informed and equipped for elections, and preserve robust political debate.

Brad Battin MP

Emma Kealy MP

Wayne Farnham MP
Deputy Chair, Electoral
Matters Committee

Summary of findings and recommendations

Findings

Finding 1: Group Voting Tickets sometimes allow candidates with minimal primary votes to win seats and distort the true will of the electorate.

Recommendations

Recommendation 1: Introduce legislation to abolish Group Voting Tickets for Legislative Council elections to ensure that the election of Members of Parliament is the direct consequence of votes cast by the public and not open to manipulation.

Summary of findings and recommendations

Findings	Recommendations
<p>Finding 2: Group Voting Tickets have facilitated unethical practices and potential corruption, notably through the actions of 'preference whisperers' like Glenn Druery, who manipulated election outcomes for alleged financial gain.</p>	<p>Recommendation 2: Replace the current configuration of the Legislative Council to match the Federal Senate system</p> <p>Recommendation 3: Establish a Parliamentary Inquiry into the dealings of Mr Glenn Druery and Members of the Legislative Council, with the Inquiry report tabled in both Houses of Parliament and with immediate referrals to the Independent Broad-Based Anti-Corruption Commission (IBAC) of any adverse findings</p>
<p>Finding 3: The Victorian Electoral Commission at times failed to maintain an impartial and non-interventionist role during the 2022 State Election year.</p> <p>Finding 4: The VEC's reliance on digital communication and inadequate traditional mail strategies left many voters, including linguistically diverse communities, underinformed about elections.</p>	<p>Recommendation 4: That the Government introduce legislation to amend the <i>Electoral Act 2002 (Vic)</i> to:</p> <ul style="list-style-type: none"> • strengthen the obligations of the VEC to abstain from any political (and non-informational) communications; and • require the VEC to distribute hard mail communications to voters for all elections
<p>Finding 5: A mandatory code of conduct would impose a substantial regulatory burden on the VEC and could lead to time-wasting, resource-draining disputes and complicating election management, whereas a voluntary code would more effectively promote higher standards of campaign behaviour.</p>	<p>Recommendation 5: The Electoral Matters Committee write to each political party represented in the current Parliament asking them to develop and agree to a voluntary Code of Conduct for Volunteers.</p>
<p>Finding 6: Mandating the registration of campaign volunteers with the VEC would deter participation, infringe on privacy rights, and undermine grassroots political engagement</p>	<p>Recommendation 6: Allow volunteers to continue to maintain anonymity in their voluntary political activities</p>

Group Voting Tickets: a risk to probity, fairness, and voter outcomes

The authors of this report strongly support the abolition of Group Voting Tickets in Victoria. Evidence to the Committee emphasised the probity, fairness and corruption risks has exposed the Victorian electoral system to. The only adequate mechanism to mitigate these risks is to overturn Group Voting Tickets entirely.

Group Voting Tickets were first introduced in Australia to simplify the voting process for the Senate and were then adopted by New South Wales. The avowed purpose was to reduce the high rate of informal voting caused by the complex preferential voting system and to make the voting process more straightforward for the electorate.

Despite their initial intent, however, Group Voting Tickets have instead enabled minor parties and candidates with very low primary votes to secure seats through intricate preference deals, rather than genuine voter support. This has led to situations – particularly in Victoria - where candidates with minimal first-preference votes have been elected, raising concerns about the democratic legitimacy of such outcomes.

Prominent independent psephologist Kevin Bonham advised the Inquiry:

The biggest problems with group ticket voting in my view are, firstly, that it denies the voter the ability to easily distribute their preferences between parties as they now can do in the Senate. You can vote below the line, but for preferencing multiple parties, that is extremely inefficient. Secondly, it elects MPs who do not have a real mandate from the region that elected them even if, as in this case, the result might sometimes be proportional statewide. A party that gets a certain percent of the vote might get a certain percent of the seats, but you cannot guarantee that they will be the same people¹.

Mr Bonham's position was supported by fellow psephologist Ben Raue, who emphasised that Group Voting Tickets "distort the will of the people" and that candidates with "much smaller votes" can be elected over those with higher primary votes due to preference deals².

Support for a reformed voting system and the abandonment of Group Voting Tickets was also shared by representatives of mainstream political parties. Nationals State Director Matthew Harris advised:

A move towards a Senate-style system where voters choose their preferences and not party operatives, like me, or preference whisperers allocating them is something the committee should consider in its deliberations...The current group voting ticket system is failing the community. There is no way on earth that an average voter has any idea where their preferences are flowing based on the group voting tickets³.

Box 2.0 – The current framework for Group Voting Tickets

The *Victorian Electoral Act 2002* (Vic) (the Act) outlines the provisions for preferential voting in Victoria. Section 93A provides that voters in Legislative Council elections can vote either above the line or below the line⁴. In the case of above the line voting, voters place the number "1" in the square above the line for the group (usually a political party) of their first preference. By so doing, they accept that group's registered group voting ticket, which pre-determines the order of preferences for all candidates in that group. In the case

¹ Kevin Bonham, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, pp. 11-12.

² Ben Raue, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 28.

³ Matthew Harris, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 13.

⁴ *Victorian Electoral Act 2002* (Vic), s. 93A.

of below the line voting, voters number at least their first 5 preferences among individual candidates by placing consecutive numbers in the squares opposite the names of those candidates.

Section 114 details how votes are counted, ensuring that if no candidate has an absolute majority of first preference votes, the candidate with the fewest votes is eliminated, and their votes are redistributed according to the second preferences indicated on those ballot papers⁵. This process continues until a candidate achieves an absolute majority. Section 114A outlines the counting process for Legislative Council elections, including the transfer of surplus votes of elected candidates and the exclusion of candidates with the fewest votes, redistributing preferences until all positions are filled.

Victoria remains the only state still using Group Voting Tickets. The Australian Parliament, New South Wales, South Australia, and Western Australia have all eliminated Group Voting Tickets and replaced them with systems allowing voters to allocate their own preferences⁶. The Federal Senate, for example, has adopted a reformed voting system where voters are encouraged to number at least six boxes above the line, allowing voters to control their preferences directly.

Labor's witnesses to the Inquiry were less enthusiastic concerning the proposal to abolish group voting tickets, with Labor's State Secretary reserving his position⁷. It is illuminating that, according to evidence from the Angry Victorians party and the leaked recording, Druery explicitly stated his intention to support a Labor government: "because they are not going to change the group voting ticket".

The consensus from expert witnesses to the Inquiry, however, was clear: group voting tickets in Victoria are prone to manipulation and frequently deliver electoral outcomes that are not representative of the will of the Victorian voting public. Victoria should abandon Group Voting Tickets and replace the current configuration of the Legislative Council to match the Federal Senate system, which delivers a fairer, more representative outcome.

Mr Druery and his use of the preferential voting system

Misuse of Victoria's preferential voting system and 'gaming' of group ticket voting was a significant concern raised at the hearing: in particular, the conduct, tactics, and improper involvement of so-called 'preference whisperer' Glenn Druery in the conduct of the 2022 State Election.

Mr Druery, as established in public reports, manipulated preference exchange arrangements to improperly influence election outcomes via Victoria's proportional representation system. This was established in a clandestine recording of Mr Druery with candidates for the Angry Victorians Party, where he solicited payment for his assistance in preference negotiations.

Angry Victorians candidate Heston Russell, who had recorded the discussion in question, gave evidence to the Inquiry indicating the deep ethical concerns regarding Mr Druery's alleged attempts to 'game' the preference system and solicit illicit payments for his services:

⁵ *Victorian Electoral Act 2002* (Vic), s. 114.

⁶ Reid, B. (2023). Group voting tickets and Victoria. Parliamentary Library & Information Service, Melbourne, Parliament of Victoria.

⁷ Cameron Petrie, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 3.

We immediately identified that there was something at least immoral about this, if not illegal, and set about looking to expose that publicly. We took those steps, as you have seen from the recording, including capturing Mr Druery talking about engaging with current serving parliamentarians and using administrative funds to pay for his services right the way through to working with, particularly, governments, who were not going to change those laws as a condition of his supporting their maintenance of power, and we went about providing that to IBAC.

Glenn Druery's role in the electoral process included advising where minor parties should run candidates to maximise their chances based on his preference deals. For example, Druery suggested Burson should run in the north-east rather than Western Victoria and asked for a \$55,000 fee for his services. He also set conditions, such as minor parties agreeing not to vote against the group voting ticket system.

Evidence from the campaign team for Animal Justice further built out Mr Druery's business model:

My understanding of the way he operates is that there is a \$5000 'deal-in fee', and that if your party successfully has a member of Parliament elected through his system, there is then a fee of \$50,000 payable. I understand that there are different ways that that can be paid, and that that may include providing him with a period of employment⁸.

Evidence to the Inquiry indicated that minor parties, including Animal Justice Australia, had previously used Mr Druery's services:

The DEPUTY CHAIR: Animal Justice has in past elections gone in with the Druery wheel, and this election did but famously ratted on that, as has been spoken about, particularly in Dr Kevin Bonham's submission. Particularly in Northern Victoria, on 1.53 per cent, do you acknowledge that without those preferences the Animal Justice Party likely would not have won that seat?

Craig KEALY: We said in our submission that we benefited from the group voting ticket in that way. We had 1.5 per cent, as you mentioned. We have clearly mentioned that we have benefited from it⁹.

Prominent psephologist Kevin Bonham had this to say to the Inquiry:

Group ticket voting creates scandals. I think that there should be very, very great concern about the fact that we have had a preference consultant saying that they were holding MLCs to ransom, in effect, in that if an MLC proposed axing group ticket voting, then that was the end of future assistance for that MLC. That should be viewed as a corruption scandal of the highest order and should be discussed in Parliament regularly¹⁰.

The authors of this report believe a thorough Parliamentary Inquiry into the dealings of Glenn Druery and the Members of Parliament allegedly involved in his operations is imperative. This Inquiry must also rigorously investigate the post-election expenditures of MPs for up to one year to determine if any illicit payments were made to Druery, leveraging taxpayer funds to bankroll his alleged pre-election negotiation of Group Ticket Voting deals. Such payments may have been in breach of the *Parliamentary Salaries, Allowances and Superannuation Act 1968* (the Act) related to allowable expenses:

- Section 6A(1) specifies that Members' electorate allowances are provided to cover the costs associated with providing services to constituents, and additional costs incurred by

⁸ Currie, Bronwen. Transcript of evidence,

⁹ Craig Kealy, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 33.

¹⁰ Kevin Bonham, public hearing, Melbourne, 11 August 2023, *Transcript of evidence*, p. 12.

MPs in larger geographical areas¹¹. Using this allowance to pay for pre-election services would be outside the scope of its intended purpose.

- Section 6D provides that the Electorate Office and Communications Budget is allocated to fund the operating costs and maintenance of the electorate office¹². Using these funds for pre-election consultancy services would be a misuse of this budget.

If this Inquiry uncovers evidence that MPs have misused their post-election budgets to reward Druery for his preference whispering, these findings should be immediately referred to the Independent Broad-based Anti-Corruption Commission (IBAC).

This is not simply about holding a few individuals accountable; it is about restoring faith in our democratic institutions. Victorians should not be forced to tolerate backroom deals and financial impropriety that undermines their vote, such as the alleged arrangements with Mr Druery.

Finding 1: Group Voting Tickets sometimes allow candidates with minimal primary votes to win seats and distort the true will of the electorate.

Finding 2: Group Voting Tickets have facilitated unethical practices and potential corruption, notably through the actions of 'preference whisperers' like Glenn Druery, who manipulated election outcomes for alleged financial gain.

Recommendation 1: Introduce legislation to abolish Group Voting Tickets for Legislative Council elections to ensure that the election of Members of Parliament is the direct consequence of votes cast by the public and not open to manipulation.

Recommendation 2: Replace the current configuration of the Legislative Council to match the Federal Senate system

Recommendation 3: Establish a Parliamentary Inquiry into the dealings of Mr Glenn Druery and Members of the Legislative Council, with the Inquiry report tabled in both Houses of Parliament and with immediate referrals to the Independent Broad-Based Anti-Corruption Commission (IBAC) of any adverse findings

Communication with voters

The VEC's independence

The authors of the report agree it is vital that the VEC maintain independence in its public communications, particularly during the sensitive election campaign period. Evidence to the Inquiry, however, made clear the VEC failed to maintain an arms-length and non-interventionist role in the 2022 State Election campaign.

In relation to an interview and subsequent media release issued by the Victorian Electoral Commission concerning the then Opposition Leader, a VEC witness stated:

LANG: It is always easy in retrospect to reflect on what you would do differently, and I may have done that differently had I done that interview again the following day¹³.

¹¹ *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic), s. 6A(1).

¹² *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic), s. 6D.

¹³ Sue Lang, public hearing, Melbourne, 27 March 2023, *Transcript of evidence*, p. 14.

The VEC has also been criticised for its heavy-handed intervention in relation to communication by others. Andrew Bogut, a former basketball player, found himself at the centre of controversy in January 2022 (the election year), after posting a video on social media criticising the then Andrews government's pandemic legislation. The video encouraged viewers to vote against crossbenchers who had supported the legislation. The VEC subsequently sent Bogut a letter warning him that his post likely constituted an electoral advertisement, which could be subject to prosecution under Section 83(1) of the *Electoral Act 2002* (Vic). Mr Bogut was one of many to have posted the content: but was selectively warned by the VEC.

As advised in evidence from Matthew Harris, the then State Director of the Nationals, the VEC would do well to focus on its core communications role of informing voters about forthcoming elections:

The communications team at the commission needs to take a long hard look at itself and reflect on whether tweeting about cats is delivering their legislated role¹⁴.

The authors of this report are of the view that the recommendations of the majority Committee report fail to adequately address significant gaps in the VEC's communication and engagement with voters.

Limitations in voter engagement and communications

Evidence to the Inquiry highlighted the VEC's overreliance on digital communication channels and decision to retreat from traditional mail as a primary communication method in the 2022 election and, to a greater extent, during the Warrandyte by-election.

The VEC, during evidence, claimed its \$157,000 expenditure of taxpayer funds on media and social media in the Warrandyte by-election campaign – as well as the push notification VoterAlert service – had been comprehensive¹⁵. It also emerged in evidence, however, that approximately half of voters were not subscribed to VoterAlert; and, if this cohort was not also engaged with social or traditional media, they may not have been exposed to information about the forthcoming by-election¹⁶.

Matthew Harris from the Nationals expressed concerns in relation to the adequacy of the VEC's voter communications¹⁷. Linguistically diverse voter cohorts were not discussed at length in the Inquiry, but may also have been underserved by the digital-first approach: more than 42% of households in the Warrandyte electorate use a language other than English at home¹⁸.

The VEC must implement a robust mail communication strategy. This should include sending personalised mailouts to all voters with clear information about upcoming elections, voting requirements, and polling locations.

Finding 3: The Victorian Electoral Commission at times failed to maintain an impartial and non-interventionist role during the 2022 State Election year.

¹⁴ Matthew Harris, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 13.

¹⁵ Sue Lang, public hearing, Melbourne, 25 August 2023, pp. 17.

¹⁶ Sue Lang, public hearing, Melbourne, 25 August 2023, pp. 18.

¹⁷ Matthew Harris, public hearing, Melbourne, 10 August 2023, *Transcript of evidence*, p. 13.

¹⁸ Australian Bureau of Statistics. (2024). *ABS QuickStats – Warrandyte (Eastern Metropolitan) – 2021 QuickStats*, available at <<https://abs.gov.au/census/find-census-data/quickstats/2021/SED28301>>.

Finding 4: The VEC's reliance on digital communication and inadequate traditional mail strategies left many voters, including linguistically diverse communities, underinformed about elections.

Recommendation 4: That the Government introduce legislation to amend the *Electoral Act 2002* (Vic) to:

- strengthen the obligations of the VEC to abstain from any political (and non-informational) communications; and
- require the VEC to distribute hard mail communications to voters for all elections

A Voluntary Code of Conduct for campaigners

The mandatory code of conduct recommended by the majority Committee report would impose a substantial regulatory and enforcement burden on the VEC. The ALP, the Liberal Party, and the National Party have extensive volunteer bases, and while occasional misbehaviour occurs, the proposed enforceable code would expose volunteers to unnecessary complaints from other participants. This could lead to resource-draining disputes, significantly add to the taxpayer funded remit of the VEC, and would complicate the management of future Victorian elections.

The authors of this report advocate for a voluntary code of conduct to drive higher standards of behaviour amongst campaigners. This recognises that most campaigners – whether from a major political party or representing a minority or independent – behave courteously and collaboratively at polling booths and other election-related activities.

A voluntary code of conduct would define reasonable standards of behaviour, expectations concerning dealings with volunteers from other political parties and/or representing other candidates, and agreed standards for political parties dealing with complaints concerning breaches of the Code.

Box 1: Conservative Party of Canada's Code of Conduct for Volunteers

The Conservative Party of Canada's Code of Conduct for Volunteers, Campaign Staff, and EDA Staff emphasises integrity and honesty, setting out clear expectations for behaviour. Volunteers must act in good faith, exercise reasonable care and diligence, and maintain confidentiality. The code strictly prohibits personal gain from party activities and requires the disclosure of any conflicts of interest. Additionally, it outlines a process for resolving breaches, which includes internal discussion and formal reporting to party authorities. Regular reviews and the prominent display of the code in party offices ensure that all volunteers are aware of and adhere to these standards, thereby upholding the party's values and reputation.

Finding 5: Implementing a mandatory code of conduct would impose a substantial regulatory burden on the VEC and could lead to time-wasting, resource-draining disputes and complicating election management, whereas a voluntary code would more effectively promote higher standards of campaign behaviour.

Recommendation 5: The Electoral Matters Committee write to each political party represented in the current Parliament asking them to develop and agree to a voluntary Code of Conduct for Volunteers.

Preserving the privacy of campaigners

We strongly oppose recommendation 13 of the majority report, which calls for campaigners to register with the VEC.

This proposal is widely opposed by members of the Liberal and National parties; two of Victoria's largest political movements, would deter volunteer participation in election activities, would undermine the rights of casual campaign volunteers to privacy of their personal information, and would constitute Government overreach.

Introducing central registration for campaign volunteers presents significant challenges that could undermine the very foundation of grassroots political engagement. A large segment of the volunteer workforce on election days consists of individuals who, while deeply committed to the democratic process, prefer to remain unaffiliated with any formal political party or structure. These volunteers may, for example, have a personal relationship with a candidate; may be a local business owner who prefers not to publicise their political affiliations outside of volunteering at a booth on election day; or may simply be Victorians who are time-poor and dedicate a few valuable hours, every few years, at an election.

These dedicated volunteers are essential to campaign operations, providing crucial support while maintaining their right to privacy. Forcing them into a central registration system risks alienating this vital group, weakening the overall volunteer base and the vibrancy of Victoria's democracy.

Liberal Party State Director, Stuart Smith, had this to say:

One of my concerns I guess, being a relative newcomer, is that on some occasions the commission may have had staff that did not quite fully understand that the participation of parties and party workers is a good thing. All of us are members of parties, and we all give up a lot of time and effort and do this voluntarily to be part of a democracy that is vibrant, free and contested¹⁹.

Preserving an open and adaptable system – run by political parties and campaigners themselves - is crucial to ensuring that campaign volunteer efforts remain inclusive, robust, and reflective of the diverse voices that drive our democratic process.

Finding 6: Mandating the registration of campaign volunteers with the VEC would deter participation, infringe on privacy rights, and undermine grassroots political engagement

Recommendation 6: Allow volunteers to continue to maintain anonymity in their voluntary political activities

¹⁹ Stuart Smith, public hearing, Melbourne, 28 August 2024, *Transcript of evidence*, pp. 8-9.

Minority Report

The Electoral Matters Committee (EMC) inquiry into *The conduct of the 2022 Victorian state election* provides a valuable insight into the carriage of that election and contains many worthwhile observations and recommendations.

There are, however, several findings and recommendations that strike a disturbing and recurring chord, particularly as it pertains to restricting and disadvantaging smaller and new parties and independents. These findings and recommendations were supported by all the larger, “old” parties; Labor, Greens, Liberal and National.

Key issues included:

1. I believe that democracy should be dynamic and facilitate the ability of citizens, individually or collectively to participate in an election, sometimes at relatively short notice and/or with limited human or material resources.

There are two recommendations that I believe directly strike against this principle in both Houses of the Parliament of Victoria:

- a. In Chapter 3 of Volume 1, it is recommended that any application for registration of a new political party with the Victorian Electoral Commission must be completed and lodged 180 days prior to the scheduled election date.

A requirement to have a completed party registration lodged with the VEC, six months prior to a scheduled election is, I would contend, overly restrictive and undemocratic.

- b. We all know that large ballot papers can be a bit daunting and there is some evidence that such large ballot papers can potentially increase the level of informal voting.

In response to this marginally increased informal vote, one might expect positive action to better inform voters and this is recommended in the report. This is to be commended.

Unfortunately, the EMC has also recommended (with the exception of the Greens and Legalise Cannabis Victoria) that action be taken to discourage the registration of small and new parties and independents.

In Chapter 2 of Volume 2 of the report, the Committee has recommended to:

- increase the minimum number of members required for party registration from 500 to 750
- increase the number of people required to support someone to run as an independent candidate for the Lower House from six to 50 people.

Small and new parties and independent candidates are the fastest growing participants in the electoral landscape. Both of these reforms, clearly have the ability to stymie new and emerging democratic voices as they strive to participate in the democratic process through election to the Parliament.

2. Reform of voting arrangements in the Legislative Council was the subject of many submissions to, and consideration by the EMC. This is discussed extensively in Chapter 6 of Volume 1.

Group Voting Tickets (GVT) were rightly central to this discussion. The issue with GVTs is that it is not readily apparent to voters how their preferences will be distributed if they vote “above the line” without detailed study of the preference arrangements submitted to the VEC.

During the 2022 election, there was a great deal of publicity about GVTs, sparked by controversy around preference deals, including paid arrangements involving a “preference whisperer”. All major parties, including Legalise Cannabis Victoria, publicly supported comprehensive reform of voting arrangements in the Legislative Council.

Nevertheless, and despite all the publicity, well over 90% of Victorians voted above the line.

If there is to be a change to Upper House voting arrangements to eliminate or reform GVTs, there is an equally significant issue: How will the regions be structured to ensure a democratic and proportional representation? The reform of GVTs and corresponding changes to the structure of the regions was linked in most submissions addressing Upper House reform. (This was also recognised in the EMC review of the 2018 state election.)

Unfortunately, the old major parties supported the introduction of a Federal Senate style voting system, with no requirement for concurrent reform of the regions.

While this might sound harmless, the impact on smaller parties and independents will be devastating: If the voting distribution in the 2026 election is broadly similar to 2022, the “reformed” Upper House would see Labour and the Coalition each gain a few extra seats, the Greens roughly double and most of the existing smaller parties and independents would be eliminated.

For the old parties, who’s vote has at best plateaued, or is declining, this is a great outcome. For the rapidly expanding smaller parties and independents, this is a tragedy for democracy in Victoria.

It is important to note that the Committee has recommended (as it did in the 2018 Election Review) that:

“..the Parliament refer an inquiry into possible reforms of the Upper House electoral system and their impacts to the Electoral Matters Committee..”

However, and most disturbingly, the report also states that:

“While the Committee believes that the best outcome for Victoria would be the elimination of group voting tickets together with a change to the regions, the Committee considers that eliminating group voting tickets would be beneficial even without changes to the regions.”

It can only be hoped that a bona fide inquiry into the Upper House electoral system is supported by the Government and Parliament

Central to what makes this a great country, is our vibrant and diverse democracy. While the Electoral Matters Committee inquiry into *The conduct of the 2022 Victorian state election* makes many recommendations that will serve to enhance our democracy in Victoria, there is also a deeply disturbing undercurrent that seeks to contain and frustrate new and emerging voices.



David Ettershank