

WITNESSES

Mr Rohan Leppert, Acting State Director, and

Mr Michael Butler, Victorian Campaign Convener, Australian Greens Victoria.

The CHAIR: Welcome to the public hearings of the Electoral Matters Committee Inquiry into the Conduct of the 2018 Victorian State Election. Can I just remind everybody to turn their mobile phones to silent, including me.

I would like to say welcome to Mr Rohan Leppert, Acting State Director for the Greens, and Michael Butler, Victorian Campaign Convener for the Greens political party.

Before we begin I would also like to note that there have been many submissions, including your own, that have gone to the issues of upper house voting and vote counting. The Committee, whilst recognising that these are very important matters, has decided to take evidence on these issues at a later date rather than today.

All evidence taken at this hearing is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you repeat those things outside the hearing, including on social media, those comments may not be protected by this privilege. All of the evidence given today is being recorded by Hansard. You will receive a proof of the Hansard transcript to check as soon as it is available. The verified transcripts, along with PowerPoint presentations and supporting documents, will be placed on the Committee's website as soon as possible.

So with those introductory comments aside, again welcome and thank you for your submission to the Inquiry, and thank you for presenting evidence to us today. I will hand over to you to provide a 5-minute summary, and then we will go to questions from Committee members.

Mr LEPPERT: Thank you, Chair, and thank you very much for the opportunity. I am just going to start by apologising for the state of my voice. I had lost it this morning, but it is starting to come back; this is why I have backup in case I lose my train halfway through.

Thank you for the opportunity. We do not propose to go outside the scope of our written submission, but we will expand on some of the arguments there, particularly in light of the new information in some of the other written submissions you have received, particularly from the VEC. As you have noted, our submission is overwhelmingly concerned with the fairness of the upper house voting system. We are not going to go into that today. We eagerly await news on what that process will be to investigate that aspect of the elections, save to say that the fairness of our voting systems is intricately linked with other aspects of the conduct and accessibility of our elections generally and with public trust in our democratic institutions. So it is linked to other things that we are talking about today.

Let me turn to the VEC and its role in facilitating a fair and accessible democratic process. We support the electoral commission. By and large it is full of dedicated and loyal staff who undertake their jobs diligently and professionally. The institution, like its people, is committed to facilitating fair democratic processes. The VEC has not, however, kept up with contemporary political trends and the threats they pose to fair elections. Unfortunately we experienced significant problems with some individual VEC officers and constant problems with obviously understaffed legal and complaints teams.

We found the behaviour of abusive far-right groups at polling booths in 2018 to be the worst of any general election we have contested. Harassment levelled at our party's candidates and supporters was considerably greater in 2018 than ever before, and we noticed more voters waiting to vote who visibly appeared to be feeling unsafe than ever before. We all know that it is an offence to interfere with political liberty and to intimidate any person into voting in a particular way. In fact this is explicit in section 152 of the *Electoral Act*. We acknowledge that enforcement of these provisions is never easy. Notwithstanding this, we found in the 2018 election that too many officers in charge of polling booths were unfamiliar with the offences under the Act and had no sufficient processes in place to liaise with police and, just as troubling, that police tended to be unfamiliar with the offences as well.

We held so little confidence in the ability of the police working in conjunction with the electoral commission to provide clear and calm advice to violent and intimidatory persons in and around polling booths that we felt we had no other choice but to employ security guards to protect our supporters at some polling booths. We resent this. We do not want this precedent to stand. It should not be up to political parties to choose between harassment and hiring private security. Our democracy cannot function if this is the norm, because the end result will always be the suppression of votes and the suppression of candidates from minority backgrounds.

The result in the district of Caulfield, for example, may have been influenced by the intimidatory behaviour that our candidate and supporters experienced, given the success that racist and violent people had in stopping us from campaigning as fully as we had planned. The final margin there was 204 votes. The margin may have been closer if we had been allowed to campaign fully. I cannot predict if that margin was able to be overturned; just 103 voters needed to change their votes for the Labor Party to have won instead of the Liberal Party. But I am very serious when I link the behaviour of extremists with the final margin in that district. I will not go into more detail given that the matter is before the courts.

Our strength as a party is in on-the-ground campaigning, not in the metropolitan advertising market, and if we cannot talk to voters in public, we are not campaigning. VEC officers are not substitute police officers, but as the body conducting the election and responsible for making sure that elections are conducted according to the *Electoral Act*, it is vital that the commission responds appropriately and effectively when any candidate or their campaigners report obvious examples of harassment or intimidation. There must be a role for electoral commission staff, particularly those in charge of polling booths, to liaise with Victoria Police quickly and efficiently before and throughout election campaign periods. A stronger and more formal agreement between the commission and Victoria Police setting out the protocols and processes that must be put in place to provide enough resources to enforce section 152 of the Act during the polling period in particular is necessary. As adequate resources for both institutions to respond as necessary.

Let me be as blunt as I can be: we cannot allow white supremacists to prevent peaceful political canvassing. The VEC and the police need to be adequately resourced to deal with this. We have recommended to you in our written submission that you in turn recommend to the Treasurer and Parliament that additional and adequate funds be appropriated to enable the VEC and Victoria Police to increase staff tasked with responding to and handling serious complaints relating to alleged offences under the Act, to train officers in charge of polling booths in identifying offences and in unconscious bias and inclusion, and to create stronger agreements between the institutions to facilitate better communication between them and to enable swift police responses. This is set out in our recommendation 3. Caulfield was the most serious example, but I have to emphasise too that the general complaints handling process was clearly under-resourced by the commission, as were other administrative processes.

As is common for all registered political parties to do, I highlight the very slow turnaround time for the approval of registration of how-to-vote cards. This is far too slow. If we are to maintain a how-to-vote registrations process, it must be resourced adequately.

Secondly, there is no doubt that the increased use of social media and online communications to influence voters brings with it a series of complications and difficult enforcement issues for the commission. The tactic of bombarding opposition campaigns with incendiary, false and damaging online messages is increasingly in use. Unchecked, the prevalence of false and misleading campaigning will have a toxic influence on the freedom and fairness of our elections. It is not possible for the commission to determine the truth of every piece of political communication. Instead the commission focuses on the requirement to authorise materials. Online communications greatly expand the sheer number of published political messages that need to be authorised. The challenge for the commission is that its resources must also increase if it is to respond to the increasing number of complaints about political communications that have been incorrectly authorised or not authorised at all.

For so long as the Act makes it an offence not to authorise materials and publish communications correctly, which it should continue to do, the commission must have a team big enough to be responsive to those complaints. As a party we had particular difficulties in the district of Northcote due to the prevalence of false and offensive published political communications online that were designed to mislead voters but which were

also completely anonymous. Our requests to the commission to issue directions to remove the offending communications were simply not addressed.

The VEC claims, on page 53 of its submission to you, that:

In the lead up to the 2018 State election, the VEC established formal agreements with Google, Facebook and Twitter to manage content potentially in breach of the Act. These agreements ensured that the VEC had direct reporting pathways to executives at each of the three digital platforms to ensure issues could be resolved in a timely manner.

Issues may well have been resolved in a timely manner between the VEC and those online companies, but no issues were resolved in a timely manner between the VEC and our party. We established our own relationships with Facebook, and in most instances Facebook was much faster than the VEC in remedying examples of unauthorised materials online. The commission was simply not able to keep up with the pace of responding to obvious breaches of the Act. Much of this is a moot point when you consider that the impact of untrue online statements is greatest when they are first made and most of the damage is done before the online statement is removed, whenever it is removed.

This Committee, albeit with a different membership, conducted an inquiry into the provisions of the Act relating to misleading or deceptive political advertising in 2010. I would strongly encourage members to refamiliarise themselves with the report and its consideration of alternative legal frameworks for regulating truth in political advertising. The recurring theme here is that, more than ever before, we believe that the 2018 election period exposed a significantly under-resourced electoral commission. Members, please give it more resources. The commission must be adequately resourced if it is to meet its obligation under the Act. The freedom and fairness of our democratic processes are at threat if this does not occur.

Mr MELHEM: In your submission you talked about pre-poll and doing a daily count.

Mr LEPPERT: Yes.

Mr MELHEM: Can you expand on that? Are you sort of looking at every day after 6.00 pm they do the count and they publish it nationally, or would that be required?

Mr LEPPERT: So they do not publish anything before.

Mr MELHEM: What are we talking about?

Mr LEPPERT: I understand the question. Thank you very much. The suggestion here is not that any ballots are counted before election day, but that the ballots are bundled on every single day so that when they are counted they can be published in daily bundles after 6.00 pm on election day.

Mr MELHEM: So not the result; you are talking about how many votes each candidate is getting, or just the total number of ballots cast?

Mr LEPPERT: So currently pre-poll votes are counted all together by pre-poll booth or generally. We are suggesting that the commission does that, but also for each of those groups it breaks them down into daily results and daily vote counts. You are removing all risk for fraud. It is quite easy to tamper with ballots on one particular day, but if you are not bundling these ballots by day and separating out the results, you cannot expose which day fraud may have occurred. So it is a relatively minor recommendation in the scheme of what we are proposing to you, but we believe that it is a simple and effective way of removing the potential for fraud.

Mr MELHEM: I am not sure about 'minor'. That is why I was talking about the result. Are you then suggesting, for example, ballot place A, you ask the VEC to say the Greens party on the 26th of whatever got 200 votes, the Labor Party got 300 votes, the Liberal Party got 500 votes, and that would then get published every day? Is that what you are talking about?

Mr LEPPERT: It would only be published after election day, so no ballots would be counted before election day. We do not ever want to disclose any results before election day. That would undermine—

Mr BUTLER: But if you saw the published results after election day, you would say, for example, if one party had received all the votes for Tuesday—day X—that would flag a risk of potential fraud. Whereas now if someone had committed fraud on an individual day of pre-poll, that would just be bundled in amongst the statistics for all of pre-poll, so the level of fraud for a single day could be hidden amongst the general statistics for all of pre-poll for that booth.

Mr MELHEM: So who gives the result? The manager of that particular pre-poll? Who gives the stats?

Mr BUTLER: Again, none are counted before election day.

Mr MELHEM: Right.

Mr BUTLER: It is just that the box for that day is locked with that day and is counted individually, and they are reported individually. So nothing is counted until election day, as is the status quo.

Mrs McARTHUR: Are you suggesting there was fraud committed by VEC officers at polling booths with the tampering of votes?

Mr BUTLER: Certainly not, certainly not.

Mr LEPPERT: We are observing that the incidence of early voting is expanding greatly at every election. Pre-poll booths have much larger votes than polling day booths for many, many electorates. In some instances the size of the booths are three or four times the size of some of the larger polling day booths in some electorates, particularly metropolitan electorates. We are just observing that that is going to increase. The incidence of pre-poll voting only ever seems to increase, and in order to ensure that future elections are conducted without the potential for fraud it would be a commonsense thing to implement. We are not alleging that there have been any incidents, but we note that we should be wary of what could happen in the future given the sheer size of the pre-poll voting booths.

Mrs McARTHUR: But what is your anecdotal evidence that concerns you about the security of early votes?

Mr LEPPERT: The increase in early voting—that is it.

Mrs McARTHUR: So you have no evidence that votes were tampered with?

Mr LEPPERT: No.

Mr BUTLER: No, but during the count process it was evident that all of the votes get unpacked together, and because of the size of those votes there is increased potential for risk. We do not have any evidence that anything has occurred, but it occurred to us during the scrutineering process that there is a high level of risk that we are now exposed to because in some instances that proportion has doubled in the past couple of elections.

Ms BLANDTHORN: Thank you very much for your presentation. We have had this discussion with the other parties this morning, but I am interested in your view as well in relation to the suitability of venues for early voting. Bearing in mind all aspects of the process, they need, in my view, to be appropriate for both the candidate and the campaign workers as well as for the staff of the VEC, and of course most importantly the voters. It seems that in this election just gone and in others before it there has been an unsuitability about some of the places that have been selected. Can you just tell us about what your party's experience was with those venues?

Mr LEPPERT: It sounds like it is quite similar. We have a fair bit of communication with the commission, arguing for accessible pre-poll booths and, for that matter, accessible polling day booths as well. I think cost is the driving factor for the commission in which venues it hires. That is unfortunate if those venues are inaccessible. It should not be up to the voters to figure out which booths are accessible or not. People should be able to vote at their local booth, and so certainly when we talk about the resourcing of the VEC this is just another aspect to that. We believe that all booths should be fully accessible to all members of the public.

The CHAIR: Just a question on your comments in regard to misleading and deceptive advertising and truth in advertising, I have just been skimming through the submission, because I thought I had missed it, and I still

cannot find it. Did you have any jurisdictions where you thought that there was a preferable model that should be looked at?

Mr BUTLER: There have been previous submissions to the Inquiry that this group ran in 2010 that referenced submissions from both the Greens and others to the federal inquiry and also the South Australian inquiry. The South Australian model is the one that I would recommend that this group look at, but we do not have a formal position on that at the moment. But we would encourage all members of this Committee to read those submissions from the previous report.

Ms LOVELL: One of the other key discussions we have had with the other parties this morning has been about the length of pre-poll and also the hours of pre-poll operation. It seems to be that there is a bit of a consensus coming through that perhaps we could come back to just a one-week pre-poll if we opened longer hours each day so people who are working could get there after hours et cetera. Do the Greens have a view on that?

Mr LEPPERT: Generally we would not support the reduction in options for voters to vote in a variety of ways. We note that the nature of work is changing, such that the case for before 8 and after 6 voting is going to keep on becoming greater and greater. It does then become a significant resourcing issue for all parties. It is difficult to have someone stationed at polling booths at all times. But that is secondary to what should be the primary concern, which is: do all voters have access to exercise their democratic right? And a reduction in those options would be problematic for us.

Ms LOVELL: And also, do you have a view on the number of pre-poll booths per electorate?

Mr LEPPERT: It depends on the size of the electorate. We think the AEC and the VEC tend to strike reasonable balances in the metropolitan areas. You will always have arguments about which towns should or should not have a pre-poll booth outside of Melbourne and Geelong. But, yes, we would not like to see a reduction.

Mr MEDDICK: Thank you, gentlemen, for both presenting today. I want to return if I can perhaps to what I would refer to as the ugly side of your submission. I am terribly sorry that you had candidates that suffered abuse out on the booths. No-one, no-one at all—not just candidates but volunteers—should have to suffer through that. I want to establish whether this is a problem right across the state. So my question relates around: did you have any feedback from your people, from Greens members, or indeed from members of other parties that might have spoken to you, that this has occurred outside of, say, the city electorates? And if so, are you aware, then, of any other candidates or any other volunteers that suffered any of this other sort of abuse as well?

Mr LEPPERT: So we do measure this from election to election. We have been contesting elections since 1992 when we were formed as a state organisation, and we have run a full contingent of candidates since 2002 for state elections. We do think it is getting worse generally. We have focused on an individual example just to highlight where we think things are going to go if it is unchecked in Caulfield. But certainly that is not the only example. We are detecting a gradual trend for worse and worse behaviour. We have more of our winnable seats in certain parts of the state compared to others. That is very clear, and so we tend to have more volunteers out on the streets in inner-city electorates. So that is where we get most of our data from. So you will not be able to rely on me for good data for all parts of the state. All I can give you is an indication that generally behaviour tends to be getting worse, and because we as a political organisation do strive to run a large number of candidates from very diverse backgrounds we have found that that can often be a target for poor behaviour as well, which is very unfortunate.

Mr BUTLER: I would also say that we received feedback that in the lead-up to election day, and not just at polling booths, some of the negative or intimidatory behaviour was occurring on materials and other things put up around electorates. That also seemed to increase quite substantially this election with the vandalising of materials and intimidatory behaviour to volunteers out on the street. So I would note the general feel that that was substantially greater in 2018.

Mr MEDDICK: Did you get any feedback from other people that this occurred to other parties as well—did you have your people coming back to you—so, for instance, occurring to Liberal candidates or Liberal volunteers, or Labor or ourselves or anybody?

Mr LEPPERT: Yes, our log of incidents tends to focus on our own candidates—

Mr MEDDICK: Of course.

Mr LEPPERT: because we have a duty of care to our supporters. So I can only say anecdotally again that, yes, we do detect issues for all candidates and incidents generally that happen in the public that we happen to observe. But, yes, we are obviously disproportionately relying on our own incidents register for our own supporters.

The CHAIR: On that, another submitter to the Inquiry mentioned that they thought there might be a role for the VEC in providing assistance to candidates that have had a particularly negative experience. I think it is fair to say all the political parties have probably got a couple of candidates that did have a terrible experience. Is there anything that, as a political party, you are doing to assist those candidates, and do you think that that is something that the VEC should be looking at?

Mr LEPPERT: That is an interesting question we have not given much consideration to. We certainly have processes in place to support our candidates. We tend not to take the view that the electoral commission owes a duty of care to our candidates for most things. Certainly they do in relation to how elections are conducted at the booths and so on, but I do not think the VEC has a remit to provide any sort of pastoral care or anything along those lines to our candidates. We do believe that we have a responsibility to do that. We do train our candidates, we support our candidates, we have processes and protocols in place to do that. I am not saying that it is easy. What is it—128 candidates that we insist on fielding at every general election? But the party does acknowledge that it owes a duty of care to its candidates.

Ms BLANDTHORN: I guess on the same point but with a slightly different nuance, do you feel the VEC has an obligation to protect the integrity of the process, and did you feel, to the extent that there were instances along the campaign rather than on election day, that there was a process for having those heard or being dealt with?

Mr BUTLER: I think the role of the VEC is certainly to maintain the integrity of the process, and I think part of where it has broken down is where enforcement becomes a part of their role. I mean they are obviously not resourced or trained in many individual and collective instances to deal with enforcement as opposed to conducting the process. There was no question to their desire to conduct the process in the best way possible, but when it comes to enforcement I think both in our submission and in submissions from many other members you can see that in many instances the enforcement was lacking or the enforcement was absent entirely. Subsequent to the election I would not say that there is a lot of evidence that any subsequent actions have been taken against individuals where there were perceived breaches in the act. So I think something for the Committee to determine is where is the role of the VEC in enforcement as opposed to the conducting of the process.

Ms BLANDTHORN: Did you feel there was even somewhere to take a concern to or a process to put their concern through? Do you think it is just about enforcement, or do you think that there is a process there to hear those?

Mr LEPPERT: Certainly the common thread in our submission is that, yes, we knew in principle, in theory, what those recourses were, but the electoral commission was not adequately resourced to pick up the phone, to respond to an email, to provide advice or to follow up a complaint. The sheer number of complaints—not from us, but from all political parties, members of the public and candidates generally—is such that the VEC is struggling to keep up. That would be our observation.

Mr QUILTY: Building on that, do you think there would be a role for the VEC to actually have an authorised officer, someone with enforcement powers, at the polling booths to keep out various peoples?

Mr LEPPERT: We do not have the solution. We have recommended to you that at the very least the electoral commission and Victoria Police need a stronger formal agreement between themselves so that where potential offences of the Act are identified—but truly only the police are adequately trained and resourced to remove the conflict or to put some downward pressure on that conflict—then quick and efficient communications between the institutions should result in faster police action. So we are not identifying what the exact solutions are. I am not sure that there should be a police wing of the electoral commission or anything like that, but we would like you to seriously investigate the options here.

Mr QUILTY: One more question: you are talking about unauthorised online materials, but are you suggesting that the VEC will have a role in enforcing all political speech by anyone on the internet? It seems to me that that is a pretty wide thing you are asking—

Mr LEPPERT: Yes. So currently under the Act there is a delineation between statements for a general audience and personal communications, and there is no role for the VEC to regulate or require authorisation of personal online communications. But these sections of the Act have been reviewed a few times, but not a fundamental review since the mass onset of social media changes, and this is a very fast-moving area. The electoral act—it is probably quite a natural thing but—it is struggling to keep up, whichever way you look at it. Testing the adequacy of the Act against contemporary styles of political communication is vital, and it is probably going to have to happen after every general election because of the sheer pace of the change in online communications.

Mr ATKINSON: Two things: the first one is do you have a view on identification by voters when they come in to vote?

Mr LEPPERT: Certainly. The current system is working very well at the federal and state levels. The incidence of double voting are found after every state and federal election to be overwhelmingly concerned with memory loss issues—people voting twice because they had forgotten that they had voted the first time—so we do not see a particular problem here at all. We do note that, whether it is at the state level or the federal level, the issue of voter ID does come up again and again, but we note that any process to require voter identification that has been attempted to be implemented anywhere around the world—and there is a wealth of literature from the United States in particular—always results in the suppression of votes of minorities, so we do not support it.

Mr ATKINSON: I can understand forgetting to vote. I cannot understand forgetting that you have already voted.

Mr LEPPERT: The numbers are very, very low.

Mr ATKINSON: The second one is more at a tangent in the sense that your party would obviously have significant appeal to many young people. I wonder if you have any observations on the efforts of the VEC to actually engage more with young people and improve the voter turnout of young people and their level of understanding of the process?

Mr LEPPERT: We do not have a strong opinion on this. At a local level and at a state level we have been advocates in the past for a higher spend of advertising budget outside of print because young people tend to engage less in print than most—and in radio for that matter—but we have not conducted our own extensive analysis on what that should look like. Certainly just as enforcement around online communications needs to be constantly reviewed because of the changing nature of how we communicate, so too does how does the electoral commission advertises the fact of an election and how to vote. It is something that should be constantly reviewed as well, but we do not have a firm position for you now.

Mr BUTLER: I would say we would welcome further efforts to increase voter turnout, but just checking the numbers on my screen of young people, it is actually as low as 84 per cent voter turnout in the 2018 state election. So further efforts are definitely needed to address that and increase that turnout, because the age graph of 25 to 29-year-olds is the lowest voter turnout across the spectrum.

Ms HALL: Thank you for coming in. I am quite interested in how voters can be encouraged to turn out and vote formally. There are some areas of the state with very high levels of informal vote, particularly amongst

culturally and linguistically diverse communities. Do the Greens have a view on what can be done by the VEC to teach people how to vote formally and encourage greater formal voting in some of those communities?

Mr LEPPERT: Again generally we need to do more to ensure that where there are obvious demographic trends in particular parts of the state the electoral commission is anticipating the needs of voters generally. We know it is very expensive, but it is probably necessary: we have advocated in the past for translators at particular booths in particular parts of metropolitan Melbourne, in particular where you find the highest concentrations of ESL communities. Beyond that, we think that the commission generally does a reasonable job—as does the AEC for federal elections—with translation of materials, but as always it can be doing a lot more. It comes down to a question of resources, but certainly one-size-fits-all does not always work. There are parts of eastern and western Melbourne in particular where a tailored approach should be taken.

Mr BUTLER: I would speak more to formal voting. I know we are not specifically referring to the upper house voting in this session but note that in previous Senate reforms that that has had an impact on the level of formal voting. So the discrepancy between the voting styles between the upper and lower house has an effect on formality of votes as well.

The CHAIR: Final question, I think we are going to Tim.

Dr READ: We were talking earlier about postal voting, and some parties write to voters soliciting requests for postal vote applications. Now that we have got online applications for postal voting, do you have any view on the continued practice, the justifiability of parties writing and offering to transfer postal vote applications to the VEC?

Mr LEPPERT: We support recent reforms as a step in the right direction, and it would be good if those applications are instigated genuinely by voters rather than by political parties. It is the system that we have got, so I am not going to pretend that we have not looked in the past at participating in that system, but it is incredibly unfortunate that an aspect of voting can be controlled, at least to an extent, by a political party, rather than by a relationship between the voter and the commission. So we will always support moves to remove parties from that equation, and we note as well that with changing performance standards in Australia Post and generally that postal voting is not as reliable as it once was. So, as always, we need to constantly review whether all of the voting options that are being provided to voters are fit for purpose and will result in a high level of guarantee that the voter's vote will be counted.

Dr READ: Just on that, were you referring to the time it takes for a postal vote to get back and get counted? I think they were cut off a week after polling day, as the deadline for when you had to get your postal back by. Do you have any view on the suitability of that deadline?

Mr LEPPERT: We supported the increased deadline at a local level a couple of years ago, I believe. So we note that the commission has recommended in both instances—state and local—that the time for votes to come in be reviewed. We do not have a formal position on how long that time should be, but we note that those changes were introduced for a reason that seemed quite sensible.

The CHAIR: Any final questions? Thank you both.

Mr LEPPERT: Thank you very much.

The CHAIR: Thank you both for the evidence you provided today. Thank you for your submission again, and as mentioned, you will get a proof of the transcript from Hansard to have a look at.

Witnesses withdrew.