

ELECTORAL MATTERS COMMITTEE

Inquiry into the Conduct of the 2022 Victorian State Election

Melbourne – Friday 11 August 2023

MEMBERS

Will Fowles – Chair

Evan Mulholland – Deputy Chair

Brad Battin

David Ettershank

Sam Hibbins

Emma Kealy

Nathan Lambert

Lee Tarlamis

Emma Vulin

WITNESSES

Melissa Lowe,

Dr Ian Birchall,

Felicity Frederico,

Hayden O'Connor, and

Tim Wade.

The DEPUTY CHAIR: I declare open the public hearings for the Electoral Matters Committee's Inquiry into the Conduct of the 2022 Victorian State Election. All mobile phones should now be turned to silent.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us are gathered on today, and pay my respect to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings.

I am Evan Mulholland, Member for Northern Metropolitan Region. Other members of this committee here today are –

Nathan LAMBERT: Nathan Lambert, Member for Preston.

Lee TARLAMIS: Lee Tarlamis, Member for South-Eastern Metropolitan Region.

Sam HIBBINS: Sam Hibbins, Member for Prahran.

Brad BATTIN: Brad Battin, Member for Berwick, online.

The DEPUTY CHAIR: I welcome Ms Melissa Lowe, Dr Ian Birchall, Ms Felicity Frederico OAM, Ms Sophie Torney and Mr Tim Wade. I think we have Hayden O'Connor as well here today.

All evidence taken by this committee is protected by parliamentary privilege –

Melissa LOWE: Sorry, Sophie is not here today.

The DEPUTY CHAIR: Oh, excellent. All evidence taken by this committee is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, including on social media, those comments may not be protected by this privilege.

The committee does not require witnesses to be sworn, but questions must be answered fully, accurately and truthfully. Witnesses found to have given false or misleading evidence may be in contempt of Parliament and subject to penalty.

All evidence today is being recorded by Hansard and is also being broadcast live on the Parliament's website. You will be provided with a proof transcript for you to check as soon as possible. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

I invite you to proceed with a brief 5-minute opening statement to the committee, which will be followed by questions from the committee.

Melissa LOWE: Thank you, Deputy Chair. I just want to acknowledge that I am on Wurundjeri country, and we thank you very much for having us here today.

We will be doing this – Felicity and I. I am starting out and then Felicity will follow.

Thank you for having us here today to discuss the strengthening of democracy. The foundation of democracy, as many of you would be aware, and its overarching purpose is to ensure citizens have the power to participate in decision-making as active and engaged citizens, and informed. The central tenets of our democracy are

freedom of elections and being elected; freedom of assembly and political participation; freedom of expression of religion and beliefs; and amongst other human rights, the right to be treated fairly – to be afforded a fair go. We are here today to talk about a level playing field.

Today with me I have Felicity Frederico, the independent candidate for Brighton; Dr Ian Birchall, the independent candidate for Melton; Hayden O'Connor, campaign director for Kew; Tim Wade, volunteer coordinator for the mel4hawthorn campaign; and me, Melissa Lowe, the independent candidate for Hawthorn. We are here representing 10 independent views from diverse communities – rural, regional, diverse backgrounds, diverse genders – across the state and a range of political viewpoints. We are here. We want to level the playing field.

Felicity FREDERICO: We came together to share our experiences in the hope of making changes that will strengthen and build democracy in Victoria. I have to be honest: at times it was like herding cats, but we got there in the end. The one thing that we all agreed on through our personal experiences was that we really felt that they needed to be shared, because there were so many learnings, individually and collectively, from our experiences. This was so we could take the opportunity to improve the status quo, which we unanimously felt is not a level playing field. The 2022 state election, in our experiences, was not always a safe environment, and in fact at times it was quite intimidating.

We do ask the committee one thing: that every recommendation that this committee makes is viewed through a singular lens – that is, does this recommendation build and strengthen democracy here in Victoria? If it does not, get rid of it. In pursuit of that quest and through your questioning today we have five key issues that we would like to discuss: (1) how-to-vote cards – alignment with the VCAT decision; (2) ballot paper – recognition of the word 'independent' on the ballot paper, and I will give you a copy of this if you like; (3) funding – five sources of funding for majors, one source, that is capped, for independents; (4) signage – two signs for independents, six for majors; (5) behaviour – where do I start? At the moment it is an intimidating environment for candidates, volunteers and voters.

The DEPUTY CHAIR: Excellent. Thank you for your opening statement. It certainly adds a lot to the committee's process. I just wanted to start particularly on – this might be more directed to Hayden. Kew Independents Pty Ltd was a private company incorporated on 5 July 2022 by you as the sole director and the sole member and then began advertising online for candidates on the same day. On what date did Sophie Torney submit her application for endorsement as a candidate?

Hayden O'CONNOR: I would have to take that on notice, the actual date that she submitted her application.

The DEPUTY CHAIR: No worries. Can you just take me through the preselection process – how many people attended a preselection convention, and how were these individuals selected by the community?

Hayden O'CONNOR: We had a selection committee of about five people, I believe. Again, I would have to go back and check my records.

The DEPUTY CHAIR: Take it on notice, yes.

Hayden O'CONNOR: Basically we had a set of criteria and we met with probably about 30 to 50 people in the community to find out what was important to them – what they wanted in a candidate – and indeed whether they wanted to proceed with an independent candidate, following obviously Monique Ryan's success at the federal election. The people that we met with did. Obviously these people we knew were sort of volunteers in the independent movement, the logic there being if these volunteers did not want to support an independent candidate, there was no point. But they did, so then from that we established the committee and started the candidates –

The DEPUTY CHAIR: So it was five people that decided –

Hayden O'CONNOR: I think it was five, but I would have to check.

The DEPUTY CHAIR: In your submission it is argued – and I was quite interested in this part – public funding of independents goes to waste when an incumbent retires, so if that candidate decides not to recontest

the next election, then that funding should be passed on to another independent candidate. In Kew there were three independent candidates. If there are three independent candidates, under your suggestion would all these candidates receive the same public funding?

Hayden O'CONNOR: No. If you look at our submission, we made the recommendation of a new entity within the Act called an 'independent campaign entity'. The idea is if I am living in the Kew electorate and we want to support an independent candidate with an actual, proper structure, then we would create an independent campaign entity. Obviously there would be requirements to actually register that independent campaign entity. That independent campaign entity would, through its own rules that it has determined, select candidates. Say in this case it was Sophie Torney and if she does not win but does not want to run again, the next candidate the community picks should be able to receive that public funding.

The DEPUTY CHAIR: Would the next candidate be chosen, though, with the same level of transparency? I am hearing a group of five and a structure that was set up and started advertising for a candidate on the same day. How would we ensure that the process would go onto a correct candidate when the previous process has been so opaque?

Melissa LOWE: In our submission I think it talks about having 100 votes or 150 votes from the community.

Hayden O'CONNOR: Yes. Obviously in setting up an independent campaign entity there would be registration requirements. One of the suggestions was 100 electors to form an entity. There would also be office bearers with significant legal requirements, like you would have with a party as well, so if people are doing the wrong thing, there would obviously be jail time and other penalties. The independent campaign entity would pick its candidate within the rules set up by the community who created this group within its constitution.

The DEPUTY CHAIR: Wouldn't that problem be solved by becoming a registered political party?

Hayden O'CONNOR: Well, there is a difference between being a party and being an independent. If you talk to any independent candidate that has run – I am sure these three would talk to that – voters sort of say, 'I am voting for you because you're independent.' As soon as you form a party, you are no longer independent, even if you were not going to – for example, if Melissa formed a party and said, 'Well, it's just for me, in Hawthorn', the legal definition of a party means she can technically run candidates in Kew or Melton or any other electorate. That is, really, when you come down to it, the key difference: the fact that an independent campaign entity would only be able to run a candidate in a single electorate. If I was to register Kew Independents as an independent campaign entity, if the Act was indeed amended to allow that, it would be registered in Kew and it could only nominate one candidate in Kew.

Melissa LOWE: If I may say something actually.

The DEPUTY CHAIR: Yes.

Melissa LOWE: We had this question at the funding matters committee as well, and one of the things that I am perplexed by is that it is a democratic parliament set up by a constitution and nowhere does that constitution dictate that we need to be part of a party, and democracy does not dictate that there need to be parties, but communities need to be able to represent themselves. What we are finding, through and through, is the two-party system that has set up this democracy – which, thank you all, because you have really done a great job, to be honest – but we should be able to, as a community, decide who we want to represent us, and we should not have to fit within the two-party system to do so.

The DEPUTY CHAIR: Okay. I just want to ask Felicity a couple of questions. I saw an image of you on social media outside your campaign office with Zoe Daniel, the federal Member for Goldstein. Did the Voices of Goldstein movement provide any particular support to your campaign?

Felicity FREDERICO: No. They had campaign fatigue.

The DEPUTY CHAIR: Your campaign office, did you occupy it for long?

Felicity FREDERICO: From memory, it was about four or five weeks.

The DEPUTY CHAIR: Okay. How was the use of that campaign office declared to the electoral commission?

Felicity FREDERICO: We paid rent, and that rent came from our capped donations. Have I answered your question?

The DEPUTY CHAIR: Yes.

Felicity FREDERICO: It was like a pop-up shop. I think it was \$1000 a week or something.

The DEPUTY CHAIR: Was there any in-kind contribution from the landlord of that office to –

Felicity FREDERICO: No, but that included gas, electricity, everything like that. There was nothing provided in kind.

The DEPUTY CHAIR: Are you aware of any discount made to that campaign office?

Felicity FREDERICO: No, and in fact we had a look at about four or five shops, and they were all roughly about the same price. So I would –

The DEPUTY CHAIR: So that came from your contributions within the cap?

Felicity FREDERICO: I would suggest what we paid was market rate, because we only wanted it for a short period of time.

The DEPUTY CHAIR: I want to take you to part 15 of your submission on postal voting applications. Point b, finding 8, says:

The Liberal party mailed how to vote cards in early September using the AEC form for how to do postal voting. This was considered within the rules because it was not a VEC form.

Just looking at the finding, given it was September, are you sure it was how-to-vote cards that were sent out?

Melissa LOWE: Yes, we have photos of them.

The DEPUTY CHAIR: How-to-vote cards in September?

Melissa LOWE: Well, not – sorry, not how-to-vote cards, actually they were –

Felicity FREDERICO: It was a postal mailing application.

The DEPUTY CHAIR: I understand that, but the finding says how-to-vote cards were sent out in September.

Melissa LOWE: They were Liberal Party cards that we saw, in our –

The DEPUTY CHAIR: But they were not how-to-vote cards.

Melissa LOWE: No, they were not.

The DEPUTY CHAIR: Okay. I will move –

Felicity FREDERICO: Maybe that is a mistake we have made in the submission, but it was definitely a postal mailing application.

The DEPUTY CHAIR: Okay. Do you understand and appreciate that similar forms are sent out by all political parties for the existing members?

Melissa LOWE: With the vote 1 in it, within an AEC postal vote? Because it was an AEC envelope and inside it it was vote 1 for the candidate that was in Hawthorn and inside that was how to make a postal vote.

The DEPUTY CHAIR: Hawthorn or Brighton?

Melissa LOWE: Well, that was in a number of electorates actually.

Felicity FREDERICO: It was a number of electorates. The example we used was the Brighton one, but it could have been Hawthorn or it could have been –

Brad BATTIN: Can I just clarify something on that, Chair? The form that would have been sent out – and as has been said by the Chair, all parties are permitted to do this, to send out general postal voter. The envelope does not say ‘AEC’. The internal envelope has a reply paid to the AEC, which is compliant. It has an AEC form for a general poster voter, which is compliant, and a letter that is authorised by the Parliament of Victoria, which is compliant. This is actually, in my view, trying to distort the fact that it was sent out through Brighton to say that it was inappropriate, when it is actually 100 per cent appropriate based on rules recommended by this committee, which I was not on last time. There was no how-to-vote card sent out with this at any time. We are not allowed to put political material with it at any time. We are only allowed to put specific items, and that was complied with. I believe that putting this into the application was just a way to try and smear one person who was the Member for Brighton at the time. I think it is unfair, and actually it is my view that it should be requested that you guys withdraw it from this.

Felicity FREDERICO: Sorry, can I ask – I am just reading through it now. On page 14 of our submission, where does it say that it was how to vote? I cannot find it.

The DEPUTY CHAIR: Part b.

Felicity FREDERICO: Part b.

The DEPUTY CHAIR: Mr Tarlamis has got it there.

Felicity FREDERICO: Okay, my apologies – ‘how to vote cards’.

The DEPUTY CHAIR: I have gone a bit over time. I might come back for questions, but I will go to Mr Tarlamis.

Lee TARLAMIS: I will maybe just pick up on this issue around postal voting. Just on that, it would be difficult to send out voting material in September when it is very early on in the piece before the election.

Felicity FREDERICO: Yes. Your point is taken.

Lee TARLAMIS: Just on the issue of postal voting, political parties are prohibited from sending out application forms for postal votes now under the current system. Effectively, the only thing they can do with regard to postal votes is send out a how to vote to people that have applied, and that data is available to all independent candidates and all candidates.

Melissa LOWE: Excuse me, Lee. As I understand – and you are probably quite right – it was an envelope with the AEC, applying for a postal vote through the AEC, in September, with party information in it. And because it was under the AEC, not the VEC, it was actually permitted, because it is the Australian Electoral Commission and not the Victorian Electoral Commission; however, they do obviously have the same role. That is what I understand to be true.

Lee TARLAMIS: I think you might be conflating things, because currently there is a difference between general postal voters and a postal vote. The current Act prevents –

Melissa LOWE: It was to apply for a postal vote.

Lee TARLAMIS: No, it was to register as a general postal voter, not to apply for a postal vote. You cannot apply for a postal vote until the writs have been issued, which you could not have done in September. The point I am making is the current Act says that you cannot mail out any applications – you have to apply for a postal vote through the electoral commission. What currently is available, which is what has been done here, is that you can send out an application to become a general poster voter if you meet the criteria for a general postal voter – not everyone is eligible to become a general postal voter.

Melissa LOWE: Yes, it is over a certain age.

Lee TARLAMIS: Yes.

Melissa LOWE: That is what the Act is meant to do, so you could all do that then.

Lee TARLAMIS: Well, the Act talks about postal ballot applications, it does not –

Melissa LOWE: It is not meant to stop people sending out information.

Lee TARLAMIS: Well, it is a part of – it is about people –

Melissa LOWE: I mean, I wonder what the intent of the Act is.

Lee TARLAMIS: Okay. I am just trying to explain the difference so you understand that there is a difference, and then I will come to a question.

Melissa LOWE: Yes.

Lee TARLAMIS: Currently under the Act you can send out information to people to ask, ‘If you are eligible, you can apply to become a general postal voter,’ and that is all processed by the VEC and goes back to the VEC. The question is: do you think that should also be prohibited, as well as being able to send out applications for postal votes?

Melissa LOWE: I just think that that should happen through the VEC or the AEC or whoever is responsible and not through the parties.

Lee TARLAMIS: So you think that should be brought into line with the postal vote applications and if you want to apply for that, only the VEC can process your application and be involved in that aspect of it?

Melissa LOWE: Well, if it is Victorian Electoral Commission information, it should be sent out by the Victorian Electoral Commission.

Lee TARLAMIS: When you do your enrolment there is a joint roll arrangement, so basically you would generally apply through the AEC to change your enrolment. That is why. It is more about conceptually. I think what you are trying to say is that political parties should not be able to send out applications for general postal voters as well.

Felicity FREDERICO: Yes, that is exactly what we are saying.

Melissa LOWE: It would be like getting my Medicare report with something in there saying ‘Change to HCF’ or something.

Lee TARLAMIS: Whereas with the system now, the data for people who have applied is provided to all candidates so they can provide a how-to-vote card at their own expense if they choose to, so that when people get their ballot papers from the VEC people can make an informed choice.

Felicity FREDERICO: Yes, and I just also want to say that the illustration here used was not to smear a particular candidate, so I do take umbrage at that – not from you, but from Mr Battin.

The DEPUTY CHAIR: Did you have any other questions, Mr Tarlamis?

Lee TARLAMIS: No. We can circle back around if we have time.

The DEPUTY CHAIR: Mr Hibbins.

Sam HIBBINS: Thank you, Chair. I really hear in the submission the unlevel playing field that you referred to in terms of independent candidates, in terms of the difficulties around donations, funding, signage and other matters. I want to ask about the proposal that you put forward, the independent campaign entity. Are you proposing that that entity would be attached to an electorate, or would it be attached to a candidate?

Hayden O’CONNOR: An electorate.

Sam HIBBINS: In that happening, how do you envisage that would work operationally to prevent it from acting like a quasi-party? I mean, would it be limited to one per electorate?

Hayden O'CONNOR: Per electorate, yes. For example, say you are in the electorate of Kew and there is a group of people in the community who want to run an independent candidate, they could establish an independent campaign entity to get the formal structures of a campaign. But, for example, another individual who is not part of, I guess, that group of people, might also want to run as an independent and get the benefits of a formal campaign structure, so they should also be able to, if they can get the hundred nominators, set up an independent campaign entity.

Felicity FREDERICO: But then on the other side – for example, I set up an entity called Brighton Independent Pty Ltd. We had a slightly different process in selecting me to run because the Voices of Goldstein were not active like the Voices of Kooyong. So if I decide not to run again, I would like to be able to, if you like, hand over Brighton Independent Pty Ltd to either who the community chooses or who I choose so they can access that public funding.

Sam HIBBINS: But if that was applied to this proposal, that could be problematic if the previous candidate then chooses who they are going to give the name to for the following –

Felicity FREDERICO: But in this instance I am the sole director of Brighton Independent Pty Ltd.

Sam HIBBINS: That model that you have got, would that be applicable to the independent campaign entity that is being proposed?

Felicity FREDERICO: I think we have to come up with a flexible solution, because not every electorate will be selecting a candidate via the community.

Sam HIBBINS: Because I do just sort of raise the issue of how you prevent it from turning into a bit of a circus: 'No, no, no, we're the independents,' 'No, no, you don't represent us.'

Felicity FREDERICO: But in my instance, I am the director of Brighton Independent Pty Ltd, so it is whoever I would assign that directorship to.

The DEPUTY CHAIR: There seems to be quite a vast difference between your suggestion and the suggestion that was put forward.

Hayden O'CONNOR: But they both fit in with the same model.

Felicity FREDERICO: But the outcome is the same.

Hayden O'CONNOR: Because you could have independents selected by the community, or I can just decide I am going to – I am not going to – run in 2026. And again it is important to make the point that with the benefits that parties have, there is no legitimate or constitutional reason for those structural benefits to belong purely to a party, so an independent, in my view, has the right to have those formal structures. In our submission we talk a lot about tax returns and that sort of stuff. So again, if you are in the electorate of Kew, and you have got a community group that wants to set up an independent campaign entity and a self-selecting independent, they both should be able to coexist. I do not see why that would be a circus. I think that is more democracy at work.

Melissa LOWE: Is that more people running for office? More active citizens?

The DEPUTY CHAIR: What if a former Family First candidate or far-right person has 100 people and Kew Independents or whatever is not running. Do they get the benefit of Sophie Torney's campaign under this structure?

Melissa LOWE: Well, an independent entity is Kew Independents in that sort of case.

Hayden O'CONNOR: It would be up to the members of Kew Independents to select the next candidate.

The DEPUTY CHAIR: That seems very complex.

Lee TARLAMIS: Can I just quickly pick up on a point that Ms Frederico said. The example you gave was: you are the sole director of a company, people have donated money and resources to you –

Felicity FREDERICO: To Brighton independent proprietary limited.

Lee TARLAMIS: Yes, which is owned by you –

Felicity FREDERICO: By me, yes.

Lee TARLAMIS: and that approves you as the candidate.

Felicity FREDERICO: Yes.

Lee TARLAMIS: But then you could hand that over to someone else. So when someone has given money to you and your company that you have registered, you should be able to give that over to someone else. What if that person who gave you the money, they thought they were giving it to you, but you are then passing it on to someone else to use?

Felicity FREDERICO: You are making an assumption that there is money there.

Melissa LOWE: But don't parties do that?

Lee TARLAMIS: But you are saying you are not a party.

Melissa LOWE: No, but I am saying parties do that because, you know, somebody would run in an electorate and only get 5 per cent of the vote. Then if they get over 4 per cent, you might shift that funding from one electorate to another, and that is not very transparent in the public either.

Felicity FREDERICO: And I just want to make the point you are making an assumption that there was money left over. I can promise you there was no money left over.

Lee TARLAMIS: No, I am using your example. You said that you should be able to give that over to someone else. I am not making assumptions.

Felicity FREDERICO: Okay, yes. I am sorry. I am talking about the public funding. Because I exceeded the 4 per cent threshold, I am now entitled to public funding if I decide to run at the next election. That is what we are talking about here. So we are actually not talking about donations.

The DEPUTY CHAIR: I think Mr Hibbins wanted to ask another question.

Sam HIBBINS: Yes, I just wanted to continue on, just to further interrogate this proposal. And when I refer to a circus, I mean it ending up in courts, basically. I mean, I think we had a famous example of one particular political party where they had two executives operating and they had to go to court or what have you. If you were setting up this sort of new entity, would there be certain things that would be codified, for example, to demonstrate community support – you know, codifying how you would select candidates to guard against any circumstances where it suddenly turns into people competing for control or what have you of the entity?

Hayden O'CONNOR: Obviously you would have registration requirements – so whether that is 100 members or a different number – to justify your support, and obviously those hundred people would have to come from that electorate. In terms of how candidates are selected, that is up to the constitution of the entity, as it would be with any party, on how they select their candidates.

Felicity FREDERICO: But I think the key thing we are trying to get to here is trying to level the playing field. So at the moment we are saying that Greens, Liberal and Labor are eligible for the public funding. If you decide not to run, your party will still be a beneficiary of that. What we are saying is as independents, unless we change the framework that we are discussing now, we will never level the playing field. And that is what we said in our submission, that the money is I use the word 'wasted' because that money is not transferred on.

The DEPUTY CHAIR: Sorry. I want to move on to Brad Battin if I can, but we have had cases in the past with independent teal candidates where there has been a breakaway and there has been basically two independent candidates. What if both of those candidates had over 100 people that were intermixing and were

part of the previous 100 group where the entity and money was going to? As Mr Hibbins said, wouldn't we end up in the High Court with some of this stuff?

Hayden O'CONNOR: No, because in the same way that when you register a party those, I think, 500 members cannot be a member of any other party. So you would have the independent campaign entity's hundred members that cannot be a member of another party or another entity.

The DEPUTY CHAIR: But wouldn't you rather just become like a political party? This seems very complex.

Hayden O'CONNOR: No, because that comes with extreme political disadvantage.

Melissa LOWE: It is about the community making the decisions about the policy, not about the party making the decision. That is what people think.

The DEPUTY CHAIR: I will go to Mr Battin.

Hayden O'CONNOR: Can I just also add, there would be a difference between a party and an independent campaign entity in the Act. Again, as I mentioned, the party can run candidates wherever. And for a voter, if you are looking at an independent that has registered a party, you are questioning whether they are independent or not. But if they have got an independent campaign entity, you can understand that they can only run in that one electorate, and you are not going to then find out later that you elect this candidate who has got a party and then all of a sudden they are setting up candidates across the whole state.

The DEPUTY CHAIR: Very complex. Mr Battin.

Brad BATTIN: Thank you very much, and complex it does sound. I will go on. First of all in relation to caps, I know you have mentioned specifically around donation caps and how it impacts independents with how they raise their money, where they can get it from and what it can do. Is there any way people have or could have donated to the Kew Independents Pty Ltd and to Sophie Torney's campaign at any stage to total \$8600 in donations?

Hayden O'CONNOR: No. We made sure that did not happen.

Brad BATTIN: So there were absolutely no donations where they have donated to an independent as well as donated to the Kew Independents Pty Ltd?

Hayden O'CONNOR: No, no-one donated to both.

Brad BATTIN: No worries at all.

Hayden O'CONNOR: No, definitely not.

Felicity FREDERICO: I am assuming you only had the one bank account, didn't you?

Hayden O'CONNOR: No, there would have been two bank accounts.

Felicity FREDERICO: Oh, okay.

Hayden O'CONNOR: If there was an independent campaign entity, we could send all the funds to that entity rather than having this confusion where there is Kew Independents and Sophie Torney, which is confusing for voters and confusing for donors. If there was an entity, that would really clarify that situation.

Brad BATTIN: We know Climate 200 Pty Ltd, which is obviously another private company, endorsed and solicited for donations particularly around Melissa Lowe's and Sophie Torney's campaigns, it was also stated. Was there any money provided to them through direct funding as well?

Hayden O'CONNOR: Sorry, what was the question?

Brad BATTIN: Was there any money paid to Climate 200 which ended up going back directly to the campaigns?

Hayden O'CONNOR: Climate 200 provided us with some in-kind services, not money.

Brad BATTIN: And I am assuming that has all gone through the process for declaration.

Hayden O'CONNOR: It has all been declared. Yes, absolutely.

Brad BATTIN: Yes. That is all right. The other thing I wanted to raise is particularly around obviously another thing you have raised around access to the electoral roll, and I know that started because of the postal vote applications in there. I will not go back down that path again. But access to the electoral roll, can you just quickly let us know: when did you say you are entitled to access the electoral roll?

Hayden O'CONNOR: About a few weeks, is it? It is when the roll is closed presumably when you are nominated as a candidate.

Felicity FREDERICO: It was after we nominated.

Melissa LOWE: I think it was pre-poll. It was after the ballot was drawn.

Hayden O'CONNOR: And at that point it is entirely useless.

Melissa LOWE: Yes, and so it was like 15 days as compared to – how many days in three years, four years?

Hayden O'CONNOR: It is the same with tax deductibility as well. We only get it for when the rolls are done and the ballot paper is drawn.

Brad BATTIN: Was there any stage that the federal Member for Kooyong provided access to any of the database for the electoral roll – that it was used directly for any of the independents through Kew Independents Pty Ltd or Hawthorn Independents Pty Ltd?

Hayden O'CONNOR: Absolutely not. We started with a completely new database – so we started from zero. We did not have a mail list or any information on anyone.

Brad BATTIN: So any mail-outs that went out prior to that date – how did you get any of that data?

Hayden O'CONNOR: Mail-outs at – sorry?

Brad BATTIN: Any mail-outs that went out prior to you getting the electoral roll. How did you –

Melissa LOWE: We did letterboxing.

Brad BATTIN: So there was no direct mail, no –

Melissa LOWE: No, putting people – walking around the electorate.

Hayden O'CONNOR: Oh, you mean physical mail?

Brad BATTIN: Physical mail.

Hayden O'CONNOR: Any physical mail was sent to the entire electorate, not based off the electoral roll. You just go to Australia Post, you say, 'I want to mail this letter to everyone in this electorate' and they just do it for you.

Brad BATTIN: No worries. Okay. A lot of that stuff – obviously I know there have been concerns raised about it. I am going to quickly close off, and I will pass back to others in there. In relation to the section you were talking about just before with independents creating independent entities et cetera, I think it was Felicity that said – people have donated to your campaign, Felicity, under your name; I think it was Brighton Independent Pty Ltd.

Felicity FREDERICO: Yes, Brighton Independent. We had one bank account, so people could not donate twice.

Brad BATTIN: So they have donated to that bank account and you have got X amount of dollars – and I know you said that it is not left – and then you have also got the money from the public funding, which you say you should be able to allocate to somebody else. You say it is unfair compared to the political parties – and I think it was Evan that said maybe consider looking at political parties. Isn't it a fact that an independent then would have an opportunity to pass that public funding to another independent that was not aligned with someone in the original place that others would have been supportive of? Independents can have various views – and very far-ranging, as we know. I am not saying, Felicity, that you would pick someone who was or was not aligned with what you were doing, but wouldn't it be almost unfair that money could be used for other campaigns that were not supported at the campaign before? So if you were running on one issue in Brighton that was a very effective one and had gotten your 5 per cent but then the money went to somebody else who was totally anti that and would not have got 5 per cent of that campaign, wouldn't it be unfair on the community that they then have to fund an independent's campaign based on the fact of such a big change?

Felicity FREDERICO: But that is happening anyway with the majors, isn't it?

Brad BATTIN: No, that is not correct, because the major parties have a value set. We have got everything put out very publicly on what we stand for. Yes, we have people in the parties – both parties have people with different views. But the reality is you are voting for a party and what that party is going to deliver overall, whereas independents can have a much vaster range than what we can. We can see examples where people in the parties – the major parties – get pushed out. So this is actually opening up, in my view, a can of worms where you can have someone campaign on one issue, knowing it is going to be a strong issue, to get that public funding and in the future have totally different views and values from what they had originally set forward.

Felicity FREDERICO: Well, I do not agree with that. If I was to select someone to be eligible to pass that public funding on to, it would be someone whose values align with me and whose policies align with my policies. I will give you an example, Brad. Like, I am –

Brad BATTIN: You have also said it is 'I'. I think there is a big concern about it when it is 'I can', whereas a party has a lot more protections around it and has a lot more restrictions on what they can and cannot do. You are put in a position where it is just 'I can allocate that funding.' This is public funding; it is not for an individual to allocate.

Felicity FREDERICO: Yes, but we are talking about funding that will come to Brighton Independent Pty Ltd, which I am the sole director of. Okay, I have used the word 'I', but I use the word 'I' in a sense that I am talking about the process. So it is not necessarily me alone that chooses who the candidate is, but at the end of the day it is somebody that will take over that nominated entity.

The DEPUTY CHAIR: That is quite different to the joint submission, though.

Felicity FREDERICO: Yes.

Brad BATTIN: Yes, it is a lot different. They have had a few different points put forward here. And the parties have administrative committees. They have a range of other things that have to make these selections and preselection processes. It just concerns me that a process could be put forward where the power is put to one person.

Felicity FREDERICO: I bring us back to what we are striving for here; it is a level playing field.

Melissa LOWE: I would like to just add: I cannot imagine that you would be put yourself financially, emotionally or physically through what we have been through in this last state election. I have had to submit an audit three times at my own personal cost because somehow or another it was not worded correctly for the VEC. I have to get tax advice – special tax advice – to find out whether or not the tax is my tax or whether it is Hawthorn Independent's tax, and whether it is my own personal earnings or not. I am a single mum. I took off three months of work. So I do not know how on earth you can sit there and think that somebody would do that just for the fun of it or just to get another political idea across. I did it because I believed in what my community wants to do, and my community selected me because they believed in what I wanted to do for them. What we are saying here is a level playing field is around funding and administration. It is around not being intimidated. It is around not taking us to court – not threatening to take us to court. My mum thought I was going to go to prison from what the VEC said, and that is not fair. These are the sorts of things that make it desperately unfair,

and it stops democracy. It does not need to be a party system. Independent people in our democracy – our young people want to be able to be represented by people like them. They want representation, women want representation and diverse communities want representation, and the old rules do not work.

Felicity FREDERICO: I think the other really important thing when we talk about funding – majors have got five sources of funding. Independents have got one source of funding: capped donations. Capped donations are 100 per cent of our total funding. For majors, it is around 10 per cent. Majors have got public funding, administrative funding, membership and affiliation fees and levies, nominated entity funding and the capped donations. I have not even talked about the sixth one, which is the electoral office communications spend in the 12 months prior. We are focusing on one particular aspect here, but we really need to get our head around funding.

The DEPUTY CHAIR: Mr Lambert, do you have any questions?

Nathan LAMBERT: I might, if we have got time – just a few quick ones. Thank you for your submission, and thank you to the other authors who were involved. You obviously covered how-to-votes, code of conduct, campaigner and candidate safety and a number of other issues that we have discussed, as you might have seen, with earlier witnesses, because they are general challenges and to a certain degree in the 2022 election they were general challenges in particular for all us. So we appreciate your contributions on that. I perhaps won't go to the independent campaign entity idea, which has been well canvassed, but turning, I suppose, to those things that are really a level playing field issue for independent candidates sort of regardless of the model they set up. Signage and funding you have identified as the two key ones. Funding we have just been touching on. One thing you have put forward is the sources of funding, which have just been going on. Then there is the shifting of funding that you mentioned as well. Is your proposal there that anyone, including parties, who raised money from primary votes within a certain electorate would only be able to then spend that in the next election within the same electorate?

Felicity FREDERICO: Yes.

Nathan LAMBERT: I am just thinking about your own intention here – how would you handle the fact that the parties of course will have upper house candidates who will be funded, so they have retained some ability presumably to use that funding in any part of that upper house region?

Felicity FREDERICO: Our submission was based on our experiences as lower house candidates, and we were really specifically talking about funding for lower house candidates.

Melissa LOWE: I just would like to make the point too that since these decisions have come through there is less diversity in the Parliament now than ever before. There are no independents in the lower house, and I wonder if you cannot see that structurally this has had a bit of an impact.

Nathan LAMBERT: Sorry, which decisions would that be? You mean the specific political donations reforms of 2017?

Melissa LOWE: All of the reforms. The way it is now if you look at it, there are no independent candidates there.

Felicity FREDERICO: Independent MPs.

Melissa LOWE: MPs, sorry. Yes.

Nathan LAMBERT: So your hypothesis is if we reverse those funding reforms –

Melissa LOWE: I am not saying reverse them. We have given you some really good –

Felicity FREDERICO: Review them.

Melissa LOWE: Review them and look at them and look at – well, you obviously are reviewing, so thank you, but look at the recommendations that were made from people, 10 of us, that actually were running as independent candidates who believe deeply in our communities. We are not about to flip-flop and change our

minds and throw money around everywhere. We just want an opportunity to be able to have our community voices heard.

Hayden O'CONNOR: The point on the level playing field as well is if you are running in, say, Kew and the incumbent there is concerned they might lose the seat, they can always outspend the independent in the current model because you have got the nominated entity and you can shift public funding from other electorates. Probably the most you can fundraise within the cap is about 230-ish, but with unlimited donations from a nominated entity you can easily exceed that spending amount. We note, and it was quoted in the article in the *Age* about the Warrandyte by-election, that Labor would spend about – I think it was \$400,000 that they would probably spend on that seat in that by-election if they were to run.

Nathan LAMBERT: That \$230,000 figure, where does that come from, sorry?

Hayden O'CONNOR: I am just saying that is the most you could probably raise within the cap as an independent.

Nathan LAMBERT: I am conscious of time, but I just have one other thing to touch on really quickly. You mentioned I think it is recommendation 10 discusses some, I think your quote is 'heavy-handed enforcement' from the electoral commission. I read the media reports of that case like everyone else, but was there – I appreciate that Ms Torney is not here, but is there something really specific you would like to see changed –

Felicity FREDERICO: All I can say, it was pretty confronting getting a cease-and-desist letter threatening you with incarceration – jail, prison – if we continued to hand out our how-to-vote cards.

Melissa LOWE: 'Sorry, kids, Mum's gone off to prison because she ran in a state election.'

Felicity FREDERICO: And I have to say that the day I nominated I actually gave the VEC a draft copy of my how-to-vote card, so there were lots of opportunities for the VEC to come back and work with my team, yet it came down to a cease-and-desist letter 10 days later.

Nathan LAMBERT: I know you had some appendices, but did you provide that letter in the appendices?

Felicity FREDERICO: No, we did not, but I am happy to provide you a copy.

Nathan LAMBERT: If you could, yes.

The DEPUTY CHAIR: If you could provide that on notice that would be great.

Tim WADE: I recommend you all read the decision by Justice Quigley. It was clear, it was five pages, and the VEC should be embarrassed by that decision. The fact that in their submission they came back and criticised that decision, they should also be ashamed of that as well. Justice Quigley was very thoughtful, and several campaigns went to court and won the issue, and the VEC is still fighting it. So can we please tell them to stop and that candidates should have some flexibility in how they advertise, and if they want to do all preferences they can, if they want to do none they can, but it is pretty disgraceful after that decision that the VEC still mentioned it in their submission.

Melissa LOWE: If I may, that decision came just as we were able to do the polling as well for –

Felicity FREDERICO: Oh, the mobile?

Melissa LOWE: mobile polling. So it meant we had to cease using our how-to-vote cards. We actually have been questioning whether the how-to-vote card thing was in the – because your how-to-vote cards are for election day; this was pre-election day. We were told to cease and desist using those prior to election day.

Felicity FREDERICO: The unregistered ones.

Melissa LOWE: The unregistered ones, which meant that we could not actually participate in the pre-polling. You know, when we came in at 1.6 per cent under – well, Hawthorn did – you have really got to question why that was done. That meant a whole week where we could not actually hand out our how-to-vote cards. That is a pretty significant thing at a massive pre-poll, three different pre-polling things – sorry, I do not

know how many pre-polling things. But that was all the postal votes, and if you look at the election results, it was very strongly lost in Hawthorn with postal votes.

The other thing about that is it was very, very overstretching and heavy-handed of the VEC to say things like was it 90 demerit points and/or six months in prison? And Quigley threw that out. It was actually – I forgot to bring it, I was going to bring my how-to-vote card – very clearly in red all over my how-to-vote card: ‘Put a 1’ ‘Melissa Lowe’ and number every box, ‘Vote 1 Melissa Lowe’ and number every box. Three times, which is what it states in the candidate book, you need to do that. You either number every box and a big bold ‘or’ right next to it or indicate it at least three times on the ballot paper, which is exactly what we did. So those things are –

The DEPUTY CHAIR: Do you have another question?

Nathan LAMBERT: No, that is all good.

The DEPUTY CHAIR: Just quickly, I note that you said that no independents were in the Parliament; there is one.

Felicity FREDERICO: We are talking lower house.

Melissa LOWE: Lower house, sorry.

The DEPUTY CHAIR: But the three – at least in the regional electorates, the independents that were defeated did have the advantage of public funding, and still were defeated.

Hayden O’CONNOR: Even with that, you are still disadvantaged against a party candidate if you do not have unlimited funding from your nominated entity.

The DEPUTY CHAIR: I just had one more question for Mr O’Connor: you said before that no person donated to both Kew and Sophie Torney. Just a quick glance of the declarations show that Fiona Torney donated to both Kew Independents and Ms Torney, and so did Brian Snape donate to Ms Torney and Kew Independents. I remind you that any false or misleading evidence may be in contempt of Parliament. Would you like to correct your record on that, and perhaps take on notice whether that was the case?

Hayden O’CONNOR: No, my understanding of those is that if you look at the date and the amount, it is probably the same, and they probably put it into the wrong – rather than putting ‘donating to Sophie’, they have lodged it as going to Kew, and we are waiting on the VEC to fix it. That is to the best of my knowledge on that. We certainly did not receive more than \$4300 from either of those people.

The DEPUTY CHAIR: Okay. You might want to take it on notice to clarify that remark, just that remark that in general –

Hayden O’CONNOR: No, I am 100 per cent certain that neither of them donated more than that to either Sophie or Kew Independents.

The DEPUTY CHAIR: Okay.

Melissa LOWE: There was a direction by the VEC to change over at some stage too.

Hayden O’CONNOR: We noticed this a few times – when someone is a donor who has donated to Sophie. You know how either the donor or the candidate can lodge the disclosure, so we had a few situations where the donor and us have gone and disclosed at the same time – you have got two of them. To get rid of one of them, even though it is clearly a duplicate disclosure, is quite an extensive process. I believe that is what happened there: the donor who has disclosed to Kew Independents and we disclosed it to Sophie, because the donor made a mistake, and the VEC have not cleaned it up yet.

Melissa LOWE: It is done with volunteers, no administrative costs. These are community volunteers that do all these things, and it is a lot of work and we are not professionals in that space. That is why we are saying that some funding to start with would actually help iron out some of those issues, because it is terrifying to think that you might have done the wrong thing, and how might you fix that. So, I mean, some funding would help us

– we would not make mistakes, if we did. But we managed to do it – anyway. It would also help level the playing field, which is the whole point.

Felicity FREDERICO: I think the other key thing with funding is that currently there are 1460 days of tax deductibility for the majors and 14 days of tax deductibility for independents.

Sam HIBBINS: Thanks, Chair. Just one thing that you have raised that could potentially level the playing field was that there is an opportunity for independents to apply for an advance on public funding. How would you see that working?

Hayden O’CONNOR: Well, that would obviously only be for a first-time independent candidate, and whatever amount – I do not know if we suggested a total. Did we suggest \$30,000 maybe?

Sam HIBBINS: \$30,000, yes.

Hayden O’CONNOR: Yes, so they would obviously apply to the VEC for that and get matched funding from them, and if they did not get enough of the vote to earn that back, then obviously they would have to pay the VEC back for that.

Melissa LOWE: Just exactly the way that the 4 per cent is paid, so if you do not get –

Sam HIBBINS: Yes, okay. So you see that there would be a threshold in terms of how you could apply for that or for any independent that would apply for that?

Hayden O’CONNOR: Yes, absolutely. There would have to be some sort of threshold. Obviously candidates start fundraising well before they nominate, because the nomination opens close to the election. You would probably want them to get their 30 signatures or whatever it is earlier, obviously. There would need to be requirements certainly for that.

Sam HIBBINS: All right. Thank you.

The DEPUTY CHAIR: No worries. Thank you all for your appearance today. Unless there are any other questions –

Felicity FREDERICO: Before we close, could I just raise one other issue?

The DEPUTY CHAIR: Sure.

Felicity FREDERICO: It is cybersquatting. At the moment I have a situation where a member of the Liberal Party registered felicityfrederico.com and felicityfrederico.com.au in August. I publicly declared that I was running in September. I went to register the domain names and could not. It was like a 60- to 90-day process through the Australian domain authority, auDA, to get back the .com.au one. At the moment felicityfrederico.com is still registered by [redacted], who works for the Liberal Member for Brighton. It is a fact. It is on the godaddy.com website that he has registered it, so it is a fact.

The DEPUTY CHAIR: I will just note that the committee has made a decision to redact that name from your submission, and you have just repeated it publicly. What proposal are you offering? Would you suggest that perhaps the VEC should intervene? What role does the committee have in private websites?

Felicity FREDERICO: Well, at the moment I have got no recourse other than spending US\$100 an hour on legal fees through godaddy.com. I do not really feel like spending money and investing time into getting that back through that process. I would suggest a code of conduct, and I would suggest that if we did have a code of conduct, cybersquatting on the domain names of other candidates would be a breach. At the moment I have gone to the VEC, and they cannot do anything. I have gone to VicPol, and they cannot do anything. I have gone to some federal stat authority around cybersecurity, and they cannot do anything. The person who has registered these domain names refuses to give them up, so I have got no recourse. As a female, it is very creepy having someone own your domain name not knowing what they will do with it, and it is not like I have got a common name.

The DEPUTY CHAIR: And just quickly, you mentioned ‘run by volunteers’ before, Ms Lowe. Mr O’Connor, you received a salary throughout the campaign.

Hayden O’CONNOR: Yes, it was a small amount of money, just so I could continue to pay rent.

The DEPUTY CHAIR: Who was that paid by?

Hayden O’CONNOR: By the campaign.

The DEPUTY CHAIR: The Kew Independents campaign?

Hayden O’CONNOR: Yes.

The DEPUTY CHAIR: I am not sure if any of you can answer this, but also on the subject of volunteers, Mr Rob Baillieu described himself as Ms Torney’s ‘chief of staff’. I assume he received a salary as well.

Hayden O’CONNOR: No.

Melissa LOWE: But some people received some bursaries after.

The DEPUTY CHAIR: How many staff was he chief of? Are you aware of how many staff he was chief of, and did they receive a salary?

Hayden O’CONNOR: He was more of like an adviser to the campaign.

The DEPUTY CHAIR: Not chief of staff.

Hayden O’CONNOR: I mean, that was the title he was sort of given at the time, but he was not paid for that role.

Melissa LOWE: No. There were a lot of volunteers, and a bursary you might give someone that we did pay after the campaign – I was hoping we would be able to. I really want to say too that I have heard a number of other submissions from EMILY’s List and all that sort of stuff. I 100 per cent support changing behaviour in elections. That has very strongly come out in this Electoral Matters Committee. A big part of our submission is about behaviours – about bullying behaviours and about intimidatory, appalling things that would not be allowed in any workplace and should not be allowed in the law. I think that when you allow these kinds of things to happen during an election, then you allow these things to rot through into Parliament House. I think that we have seen too much of this going on. If in the future we want to protect our youth and protect the future of democracy, then we need to start with elections as well.

Felicity FREDERICO: The standard we walk past is the standard we accept. Being filmed at on a constant daily basis, being yelled out, being shouted at, being abused was intimidating. I would not ever put myself or my volunteers or my family through it again, because it was just the most brutal experience, and there was nothing the VEC could do about it. The filming stopped when the compliance manager from the VEC visited, but the yelling and the abuse did not stop. And I do not know what happened to all those hours and hours of film – that footage. I do not know. Once again, as a female, it is not a safe environment.

The DEPUTY CHAIR: I am just conscious of time. Can you say how much, Mr O’Connor, you got as a salary?

Hayden O’CONNOR: I paid myself \$1000 a week.

The DEPUTY CHAIR: Okay.

Hayden O’CONNOR: I quit my job to run the campaign, and that is significantly less than what I was earning at the time.

The DEPUTY CHAIR: Yes. I would like to thank you all for your submission to the inquiry and for the conversations that we have had. Your submission and your witness testimony go a long way to helping us as the Electoral Matters Committee inform our review into the Victorian 2022 state election. I thank you very

much for your time. I will just note for Hansard that we do remove that name and remove it, hopefully, from video recording of the testimony as well. Thank you all for attending.

Felicity FREDERICO: Question: does that still mean that my issue about cybersquatting is all redacted?

The DEPUTY CHAIR: No, just the name that was mentioned.

Felicity FREDERICO: And just for the record, that name is available on the GoDaddy registration website.

Melissa LOWE: Thank you for hearing us out. We were 10 independents, so we are not all going to agree on everything. It was challenging to get 17 recommendations, but we did. We hope that you take them seriously as a big cross-section of the society.

The DEPUTY CHAIR: No worries. Thank you. The meeting is closed.

Committee adjourned.