

ELECTORAL MATTERS COMMITTEE

Inquiry into the Conduct of the 2022 Victorian State Election

Melbourne – Friday 25 August 2023

MEMBERS

Luba Grigorovitch – Chair

Evan Mulholland – Deputy Chair

Brad Battin

David Ettershank

Sam Hibbins

Emma Kealy

Nathan Lambert

Lee Tarlamis

Emma Vulin

WITNESS

Carlo Toncich.

The 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 telephones should be on 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 respects 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 this committee or who are watching the broadcast of these proceedings.

I am Luba Grigorovitch. I am the Chair of the committee and the Member for Kororoit. The other members of the committee here today are Evan Mulholland, Member for Northern Metropolitan; Sam Hibbins, Member for Prahran; Nathan Lambert, who is on the screen with us, Member for Preston; Lee Tarlamis, Member for South-Eastern Metropolitan; and Emma Vulin, who is also on the screen, the Member for Pakenham. We have got an apology for from Emma Kealy, the Member for Lowan.

I welcome Mr Carlo Toncich. Welcome here today.

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 be giving false or misleading evidence may be in contempt of Parliament and subject to penalty.

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

I do not believe there is any media here, so I invite you to proceed with a brief 5-minute opening statement to the committee, which will be followed by questions from the committee.

Carlo TONCICH: All right. Thank you, committee members, for the privilege of appearing at this hearing today. Over the course of this election and these hearings, I have worked as a volunteer in a campaign for Brighton district, written a lengthy submission and now I appear before a parliamentary inquiry discussing this election. The reason I do these things is that I have a strong belief in democracy and what I believe to be its underpinning values – those of equality and fairness. I wish to bring to the attention of the committee ways in which we can improve the way that Victorians select our Parliament and ultimately our government.

The most pressing of these issues, in my view, is the way we conduct elections in the Legislative Assembly. While I could have campaigned in a seat where the government's fate was more likely to be determined, the reason I put effort into campaigning in Brighton is because I want my vote to matter. However, under our current system I do not believe that it does. The reason for this is that if the statewide vote is particularly close, it is likely that the Liberal Party will win my seat by a large margin. This makes an individual voter much less powerful, where their vote might be the vote that determines the winner of the statewide vote but has no real impact because the individual seat they live in is decided by a greater margin. This, to me, runs in opposition to the democratic principles that I fundamentally believe in, when the winner of the statewide vote can lose the election. What I ask the committee to consider is to change the electoral system of the Legislative Assembly so that whether you are in Brighton or Broadmeadows, Thomastown or Mildura, Morwell or Lara, you have an equal say in determining who forms government – in other words, an electoral system where every vote matters.

Turning to discussion of the conduct of this election, I found that with the exception of the VEC staff at my local booth on election day, who were fantastic, the VEC in general were unprofessional in the way they managed the election. Most concerning of these observations, which I did not go into great detail about in my

submission, because I did not see it personally, was that two separate volunteers told me that scrutineers were offered ballot papers by VEC staff and asked to handle them and count them. This is unacceptable. We require the highest standards of neutrality for election officials, a policy which is significantly undermined if they hand ballot papers to people who have an active interest in not counting them correctly. The VEC also failed to pass information on to scrutineers regarding things such as the location and time of vote-counting activities and interpretations of ballot paper formality rules. Concerningly, in one instance reported to me, VEC staff were telling people that counting had finished, allowing scrutineers to leave, before pulling out ballot boxes and counting ballot papers again. A friend of mine who works for the VEC also told me that he was tasked with transporting ballot papers from voting centres to central counts by himself, which is concerning because if the outcome of the count is changed between the count on the booths and the more formal count after election day, as it was in the Pakenham district, we do not know if the ballot papers are interfered with in that process.

Recommendations to improve election processes that I personally observed can be found in section 2 of the appendix to my submission. For those processes that I did not observe, I thought it appropriate to bring them to the committee's attention but have not made specific recommendations.

I also wish to draw attention to the parts of my submission that discuss electronic voting. In my view, our paper-based system should be retained as it is less vulnerable to either accidental or deliberate mistakes. I am concerned by the VEC's efforts to make elections electronic, and while I understand the way we count Legislative Council votes forces the VEC to use counting software, using computers to conduct ballot draws and count Legislative Assembly ballot papers is unnecessary and compromises the security of the election especially with regard to ballot draws, I think the fact that the *Commonwealth Electoral Act* has a provision for these draws to be done manually can provide sufficient guidance on how we can bring back a manual draw that is much more likely to be a random selection.

One final point of disclosure I will make before concluding my remarks is that on page 14 of the appendix I noted discrepancies in provisional vote totals for Sunbury district that I now realise are easily explained by voters claiming enrolment in the incorrect district but the correct region, and I apologise for the error. Thank you for considering my submission and for inviting me here today. I am looking forward to your questions.

The CHAIR: Thank you, Mr Toncich. Would anyone from the committee like to kick off with a question?

Evan MULHOLLAND: Yes, I am happy to. I wanted to touch on the part of your submission that talks about how someone could possibly vote twice by requesting a postal vote and then voting in person and putting their ordinary vote and the postal vote in the ballot box. Could you expand on this?

Carlo TONCICH: Well, it was sort of like a thought that popped into my head when I was handing out in front of the pre-poll booth, and I think I actually mentioned it in the very first section of the submission. It was when somebody, an innocent elector I assumed, was just coming in with their ballot papers not in an envelope or anything – just walking into the voting centre. I kind of expected that they would be told by election staff, and I assume they were told by election staff, 'No, you can't just bring in postal votes outside of an envelope and bring them in.' It got me thinking that maliciously somebody could just put the ballot papers in their pockets where I could not see them, walk in, take an ordinary voting paper and then cast two votes, essentially.

The reason why I thought it was appropriate to bring to the committee's attention is because I thought it was a rather easy solution to sort of add a marker to the ballot papers that are sent out saying 'postal vote' or 'provisional vote', depending on the type of vote that is cast, just so it is obvious to scrutineers that those ballot papers are different to the ones that were handed out on election day and put in the ballot box or at the pre-poll centre. I would note that I believe that the signatures for postal votes are printed on, so technically there is a way to tell the difference. But if scrutineers are not informed that that difference exists, if it is not in the scrutineers handbook et cetera, it is not much of a check, and I think it allows people to potentially vote twice.

Evan MULHOLLAND: Very interesting. Thanks for that. I might ask the VEC about how often they think that might occur, because it is not something I have heard before. You discuss similar names of the parties, like Labour DLP and Liberal Democrat, and your experience as a scrutineer in seeing the differences in their vote depending on where they are placed. There have been laws implemented federally to rule out minor parties taking on similar names to the major parties. Do you think those kinds of laws should be implemented in Victoria?

Carlo TONCICH: The short answer to your question is yes. I will just pick you up. I do not think I talked about the fact that I thought the ballot placement of a Labour DLP candidate or a Liberal Democrat candidate affected their vote share. I do think that it would actually affect the vote counts – like if a Labour DLP candidate appears first on the ballot paper and an ALP candidate appears fifth, I reckon there are going to be people who confuse the two.

Evan MULHOLLAND: It certainly happened in my electorate.

Carlo TONCICH: Exactly, yes. But the concern that I had was more that there were people canvassing for votes for the Labour DLP who were saying, ‘No, no, we are Labor,’ which is sort of technically correct if they want to call themselves the Labour DLP and campaign that way, you know, as a Labour party. Under the current system they are within their rights to do so. But I do not feel like they were doing it because they were advertising their individual position. As I say in the headline of section 1.5, purposeful confusion was what it was. It is saying, ‘Oh, yeah, we’re the Labor Party,’ and then I am standing about five people back saying, ‘Do you want to vote for Daniel Andrews’s Labor Party?’ And they are like, ‘Oh, no, we’ve already got the Labor card’ because they have taken this Labour DLP one, confusing it for the Australian Labor Party. That is more my experience with Labor, but of course the same would be true with the Liberals and Liberal Democrats.

Evan MULHOLLAND: Run me through your experience as a scrutineer with the upper house and your suggestions for what could be improved.

Carlo TONCICH: I think that was probably the most lengthy part of the submission, where I was talking about scrutineering, because initially when I thought, ‘I’m going to write a submission to this committee,’ it was just about the ballot paper draws, and then as I experienced more about what was happening to the election, I just found more and more issues to the point where it just became such a lengthy document. So I apologise to the committee for its length.

Evan MULHOLLAND: No, that is all right.

Carlo TONCICH: In terms of going to your question of running through my experience in scrutineering, going back to what I was saying in the opening statement, I found the VEC to be unprofessional in the way they went about stuff. The scrutineering I believe in your region of Northern Metropolitan – I noticed a discrepancy in the votes, and I felt like I had to go through staff member after staff member after staff member to find the batch of votes that related to the discrepancy that I had identified. So when the Legislative Assembly count has finished and the Legislative Council count has more votes in that particular district, I sort of thought it was something that as a scrutineer I should go have a look at to see, ‘Well, what’s happening with these votes? Do they look genuine? Has some misclassification occurred?’. I think after the election one of the VEC staff did provide a reasonable explanation for that discrepancy, but they seemed rather dismissive of our role as scrutineers in observing the conduct of the counting of votes and particularly hostile if you tried to ask for reports that the scrutineers handbook says you are entitled to.

I will go through one more bit that I also found particularly frustrating as a scrutineer. It is pages 7 to 9, I think section 2.5.2, where I talk about formality of above-the-line votes. They had this really weird interpretation of the words in the formality rule that ‘if a single tick, cross, non-numeric mark of any kind or the word “yes” appears in a single box and the voter’s intention is clear’. That was a formality rule that they sort of expanded to include votes that by no definition should be counted as formal. Looking at the figure 2 that I have supplied there, there is absolutely no way in my view that it is clear that that vote is a formal ballot paper. But because of ballot paper formality rules that they did not think of passing on to scrutineers and that I only found out about because I challenged a ballot paper that I thought was legitimately formal, they then they told me, ‘Oh, we’re actually observing a different – really weird – interpretation of the rules.’ It is something that really frustrated me. It seems that they may have interpreted these ballot paper formality rules to allow ballot papers that really should not be counted in my view.

Evan MULHOLLAND: No worries. We will move on.

The CHAIR: Do we have any other questions?

Lee TARLAMIS: Just following up on your observations during the scrutineering: did you get the impression that it was a systemic thing, or was it some isolated staff that were, in that particular way, better than others? Or do you think it is a problem in how they are trained? What are your observations about that?

Carlo TONCICH: I think there is probably a little bit of everything that you are saying there. Going back to what I was saying in my opening statement today, the VEC staff that I had on the election day for ordinary voting were absolutely fantastic. They were flawless. It was honestly kind of frustrating as a scrutineer trying to find a mistake that they were making, but they were just too good at what they were doing and they had seemingly done their job very correctly. I commend them for that. But then I got to the scrutineering after the election at the central activity site, and I found it to be subpar. Some of the issues that I just discussed in the answer to the previous question made me feel a little frustrated as a scrutineer. But then as I was telling people, ‘Hey, I’m writing a submission to the committee,’ they gave me their experiences of what it was like to scrutineer or whatever it was they were doing, like being a VEC staff member, and they basically all concurred with the view that the VEC were not particularly professional, that there were systemic issues and it did not seem that a lot of staff knew what they were doing. Not one but two people told me that they were asked by VEC staff to handle ballot papers, which I think we all know is a massive no-no. I talk to a range of people regarding these matters, because I like talking about electoral matters, but you know, I do not have the breadth of knowledge that the committee can get from speaking to a wide variety of witnesses. But the fact that I have managed to find two people who have found they were handling ballot papers made me think, ‘Okay, someone needs to know about this, and something should be done.’

Lee TARLAMIS: Yes. You also spoke about the upper house count, and even in terms of the Assembly count too, we know there is pressure to get a result as quickly as possible. The VEC have recommended that the period of time before the writ is returned should be extended, and they have suggested a slight increase in terms of the lower house – understanding the significance that government is formed in the lower house, so you want to get that result as quickly as possible. But a later return of the writ for the upper house, which means you can prioritise the Assembly and then conclude the Council later on, is that something you think is a good idea?

Carlo TONCICH: It is probably not something that I am qualified to comment on, but if I have to give an answer to your question, I would probably say that I would, because I think a lot of the issues that I have identified are not just confined to the time that they took to do the count right. A lot of the stuff that I am talking about with the VEC and my experience as a scrutineer could easily be heavily influenced by the fact that these are people probably under a lot of staffing stress and under a significant amount of pressure who do not have a lot of time – I think they have only got three weeks to go from, you know, 6 o’clock on election day to when they have to return the writ and declare members elected. I think that it probably should be extended, but I think that is something to discuss. I note that you did, in your discussion with the Electoral Commissioner when he appeared at the hearings here back in March, discuss that. I would probably concur with his remarks on the fact that there is just not enough time, especially if there is a recount that needs to be done. If they have only got two or three days left to do it, then something can go wrong.

Lee TARLAMIS: Thank you.

The CHAIR: Thank you. We have still got a few more minutes.

Sam HIBBINS: Thanks. Just in terms of what occurred at the central activity site, you have listed a couple of examples of a lack of information from the VEC in terms of what was being counted that day or where the count was being undertaken: do you have any more reflections on the level of information given to scrutines and candidates about what is actually happening at the central activity centre?

Carlo TONCICH: Sorry, can I get you to clarify that question a bit?

Sam HIBBINS: So this is on page 6. You have listed a couple of examples of the VEC telling scrutineers that they were only conducting rechecks; the scrutineers left, and then the checks occurred. The other one about giving candidates sufficient information about when and where votes were being counted. What was, from your reflection, the level of information given by the VEC to scrutines and candidates? What was occurring on the day?

Carlo TONCICH: It is a bit difficult for me to judge, because my experience of the central activity site was limited to the final days of the count, where people were like, ‘Hey, can you come and help out?’ and I was

like, 'Yeah, I'll come help out.' So a lot of the reports that I was talking about were things that other people told me. You would note that in those dot points there were just other people I know that had spoken of that. But I just found it beyond belief really that the VEC would tell scrutineers that the counting was done for the day and then allow the people who were supposed to observe them doing the count and make sure they were doing it properly to leave, and then to the one person who was just waiting for a tram to go back to the city, as I was told, who stayed back, to go, 'Hey, you're actually opening boxes containing ballot papers and counting them again.' You know, it sort of shocked me. But in terms of my experience in getting information, I found it a bit difficult to find where they were counting votes at the central activity site. I was also told of an instance where they were counting some votes for Northern Metropolitan in Coburg, but they told them that they were counting them at a completely different place at a completely different time. While I understand the VEC is under time pressure – I do not think they were deliberately misleading scrutineers – I cannot think of a satisfactory explanation of why, regarding the things that I was told in terms of scrutineers being misled by the electoral commission, that sort of disclosure is appropriate, if that makes sense.

Sam HIBBINS: Okay. All right. Thank you. Just in terms of the electoral system and the Legislative Assembly electoral system, what would your preferred model be?

Carlo TONCICH: I did leave my submission a bit vague as to what exactly I would like to see change, partly because I do not think that as one person of 100 submissions it would be particularly useful to do it. But the real thing that I wanted to emphasise – and I hope that my opening remarks emphasised it – is that I just want my vote to matter. I do not feel like we should have a system where, to paraphrase Kevin Bonham, we could have a uniform swing where the Liberal Party wins the two-party vote by 52–48 and yet Labor still not only does not lose government, but they do not even fall into minority. I just feel like it is a clear instance of votes simply just not mattering.

If you live in a safe seat, and most people do – in a seat that does not decide the election or that is not particularly important when government is truly on the line – you feel powerless and disenfranchised. I note that the Electoral Matters Committee tried to invite submissions from young people, and while I do not feel like I can speak on behalf of an entire generation, I feel like a lot of people feel that politics does not work for them. They feel quite powerless, and when you have systems like this where a 52–48 margin would be, just as a back-of-the-envelope figure, tens of thousands of people who would prefer one government to another and then not achieve that result is something that I find unjust.

But going specifically to your question on what specific solution I would like, I would probably prefer just a Legislative Assembly that would guarantee majority government to a winner of the statewide vote and that would be kept in check by crossbenchers and proportional representation based systems in an upper house – which is, you know, I think sort of like the essence of the system that we have now, what our system tries to do but does not quite do because we split people up into districts and regions to allow most people's votes to not particularly matter while allowing a few people, on the basis of lines being drawn that put them in a seat which is roughly 50–50, to have a significant amount of power. And that is something that I do not like, if that makes sense.

Sam HIBBINS: That is okay. All right. Thank you.

The CHAIR: Thank you so much for that. I am mindful of time. Do we have any questions? Yes, Mr Lambert.

Nathan LAMBERT: Yes. Thank you, Carlo, for your submission, which was well written and succinct and wideranging. I think there were a lot of good technical points there which really raised questions for the VEC as opposed to questions for you. I would pick up on two of the questions from the Deputy Chair. I think your point about putting a postal vote ballot paper into the ordinary booth ballot box is a really interesting one and, having done this stuff a long time, not one I have actually heard before, so I particularly appreciate you picking that up. It may be that we can talk to the VEC. I mean, clearly they will have marked off that person as having requested a postal vote and then marked them off as having come in on the day, so in theory it should be possible to get some statistics on the likely size of that problem, which, again, we might do with the VEC.

I just want to sort of pick up where the Member for Prahran left off. I think we agree about a lot of the technical stuff. There is a more interesting question about models that you were just discussing with him. I think in

point 3.3 of your submission you came to what you have just been discussing, which is sort of your proposed model. Am I right in saying that would be a pure party-list model you are proposing there – everyone just votes for a party and then the party on a first-past-the-post basis would form government?

Carlo TONCICH: No, I would think that you could do a ranked-choice vote where you could just have a ballot paper where it just says Labor, Liberal–National coalition, Greens – any party that would want to form a majority government. They could have a slate of, say, 20 MPs. The winner gets a certain amount of MPs, and the winner would get, you know, control of the functions and processes of government, but then you probably could have, say, the party that finished second in that ranked-choice ballot form an opposition. That is just an idea that I had. But even something as simple as retaining exactly what we have got now but adding a couple of extra compensatory members, if we ended up in a situation where, with the winner of the two-party preferred vote, or rank-choice vote, as determined by votes for political parties, basically the votes did not match up to the seat counts, and giving compensatory members to the side that ended up losing the seat count but winning the vote would be sufficient, in my view. Again, I would probably go back to just emphasise that the reason why I did not pick out something specific is because it is not the specific model that I am interested in. It is to be able to go to the ballot box, whether I am in Brighton or Shepparton, and truly say that my vote matters.

I have talked a lot about margins, but I will also quickly touch on the fact that even though we have provisions in the *Electoral Boundaries Commission Act* – I think that is the Act – that say that we have got to keep the electorates roughly even in the amount of voters in each electorate, they are not even. There are gaps of, like, 10,000 people. For 2018, for instance, Tarneit had 44,875 voters, while Forest Hill had 34,907 voters. I know a lot of people, when they talk about democracy, say you need to get out to the ballot box because every vote matters. But when you have a system where you have one MP representing 10,000 more people than another, even when we got a system that is supposed to even that out, I feel like a lot of Victorians, if you sat down and went through the system with them, would probably agree that that is not ideal.

Nathan LAMBERT: Yes. It sounds like you are interested person. You might have read the transcripts or caught some of the earlier discussions we had. I do think proportionality is an aspect of the political system that has benefits but also is traded off against other benefits. I will not reiterate all that here but perhaps just put to you one final thing, if I can, Chair, which is: would you at least recognise – and I think certainly those of us who are practitioners recognise – that there is a trade-off here with democratic accountability? There is an old saying that when two people are responsible for something, nobody is responsible for it. With the fullest of respect to the upper house members on this committee I think it is the observation of everyone involved in the system that having a single MP who is responsible for a person produces on average a higher standard of democratic accountability. People can ring up their local MP, and they know the person who is responsible, to a level I personally find very surprising. Most MPs are very responsive to that, even in safe seats. So I suppose I just put it to you that you are trading their office system whereby if it is a statewide vote, especially a statewide party list vote, the individual who has accountability to them for democratic decision-making would be much less obvious, wouldn't it?

Carlo TONCICH: Yes, I understand where you are coming from. I would probably go to the fact that: sure, an individual MP would sort of be accountable to their constituency. But in my view, I think government by its very nature requires working as a team, right? As somebody put it to me, Daniel Andrews cannot do everything by himself. With the greatest of respect to the coalition members of this committee, even if Matthew Guy was elected as Premier, I do not feel like he would be able to do everything either, right? He has a cabinet. He is responsible for the decisions of 20 or so people. I would argue that, yes, there needs to be some sort of individual accountability, but ultimately government is a team sport, and not only is it a team sport but you are representing 5 to 6 million Victorians who have cast their vote in that election. I do not think it is right that we can have a system in the Legislative Assembly, for instance, where you can have a government that is formed by half the voters in half the seats. If you are someone like me who does not live in a government seat, or if you live in a safe seat held by the government but where it is unlikely the government will be determined, you feel disenfranchised by that. I think it is probably a service to the Victorian people that our electoral system be changed so that it reflects the way that the whole state votes, because that is who the government is ultimately accountable to.

Evan MULHOLLAND: Sorry, if I can interrupt, Nathan, given you do not live in a government seat, aren't you also represented by the fact that you have got two upper house members in your upper house region who are responsible for that –

Carlo TONCICH: I am, yes, and I love them. I think they are fantastic. But the lower house is where government is determined, realistically, so it does not particularly matter if I have two upper house MPs or 10. Even if we moved to a statewide electorate system where we had 40 MPs, I think Labor would be entitled to about 16, and I could go to any one of them – sorry, that is just a sort of guess. But the lower house is where government is formed and is determined, and ultimately it is the government that makes the decisions – like how often my trains run, how much money goes to my local council, on what projects money gets spent, what schools get upgraded or what hospitals get upgraded – and if I do not have a meaningful say in that, like most Victorians in my view do not, then I feel like there is a systemic issue in the way that we elect our representatives that needs to be addressed.

The CHAIR: You raise some really great points. I am mindful we are 7 minutes over time, but I also know that the Member for Pakenham, Ms Vulin, has a question. I might just limit you to a quick one and then just a very quick response before we wrap it up, if that is okay.

Carlo TONCICH: Yes. Easy.

Emma VULIN: Hi. I will not go over everything that you have already gone over today. Thank you for coming. It was a really great submission. I will just do a really brief one. You reflected about how you felt like the VEC forgot that scrutineers have an important role to play in the election. Do you feel that the VEC's training of their staff is adequate in teaching them the roles, rights and responsibilities of scrutineers? Do you think that it is adequate?

Carlo TONCICH: Again, I would probably say that is not something I can give a proper answer to. What I can say is that I feel like whatever the training is it needs to be improved, because I think, from my personal experience, it is just not working. But it could be the situation that the staff are trained adequately, it is just that those instructions are being ignored, or on some level there is some operational procedure where not every i is dotted and t crossed, if that makes sense.

Emma VULIN: Thank you.

The CHAIR: Thanks, Ms Vulin. Thank you so much for your time. Thank you so much for your submission. I am mindful it would have taken you quite a while to put that together, so well done, and again, thank you. As mentioned at the beginning, you will be sent a proof copy of the transcript to check as soon as it is available. This session is now concluded.

Witness withdrew.