

ELECTORAL MATTERS COMMITTEE

Inquiry into the Conduct of the 2022 Victorian State Election

Melbourne – Monday 5 February 2024

MEMBERS

Luba Grigorovitch – Chair

Wayne Farnham – Deputy Chair

Brad Battin

David Ettershank

Sam Hibbins

Emma Kealy

Nathan Lambert

Lee Tarlamis

Emma Vulin

WITNESSES (*via videoconference*)

Damian Cantwell, Electoral Commissioner, and

Ro Spence, Deputy Electoral Commissioner, Elections ACT.

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

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us have 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 broadcasting of these proceedings.

My name is Luba Grigorovitch, and I am the Chair of the committee and the Member for Kororoit. The other members of the committee here today: my Deputy Chair, Mr Farnham, the Member for Narracan, and the Member for Berwick, Mr Battin. David Ettershank is an apology. Sam Hibbins is an apology. I have got Ms Kealy down the end, the Member for Lowan. Mr Lambert is online, the Member for Preston. There are Mr Tarlamis, a Member for South-Eastern Metropolitan, and Ms Vulin, the Member for Pakenham.

I welcome both Mr Cantwell and I believe Mr Spence 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 repeat the same things elsewhere, 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 it becomes available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

I do not believe that there is any media present. I would now like to invite you both to introduce yourselves and make any brief introductory comments that you would like to make. You have got about 5 minutes or so, and then we will open it up to questions from the committee. Thank you. Over to you, Mr Cantwell.

Damian CANTWELL: Okay. Thank you. It is a pleasure to be with you today briefly. I gather from the invitation that you are interested to hear our thoughts around how-to-vote cards as such for our legislation with respect to restrictions on canvassing within or near a polling location, and the second thing I think is in relation to candidate statements. But in the time we have permitted or any time I am happy to assist you in deliberation or answering any questions you may have. We do not have legislation particularly around how-to-vote cards, but rather we have longstanding restrictions on canvassing within 100 metres of a polling place. I am sure it is something you are familiar with. The legislation as defined here is that candidates and the like cannot canvass within 100 metres of a polling place, defined as within 100 metres of a building in which there is polling occurring, and that gives the electors that sort of canvassing-free zone as such within 100 metres of the building as polling is being conducted, in which they are free to consider how they are going to vote until such time as they head into the voting location. You do not have, as I understand, having read the VEC commissioner's reports and the like, registration procedures in relation to how-to-vote cards. So the manner in which candidates [Zoom dropout] the campaign stuff there within the bounds of the *Electoral Act*, but in particular it relates to canvassing within 100 meters of a polling place. That is the situation here for the ACT, and all the info about that is both contained within our website but also in the candidate information handbook, which is also located on our website, and I am happy to share it with you as a committee if you so wish. That 100-metre boundary relates to all forms of canvassing. It also applies where mobile polling teams are conducting mobile polling, and it is meant to give a 100-metre buffer around each of the locations for any elector to consider their choices before casting their vote.

The other thing I thought you wanted to talk about or I understood you wanted to talk about was candidate statements. This was new to us in 2020 for the 2020 election, introduced quite late in our preparations for the election. Effectively, despite the commission recommending otherwise to the Assembly, legislation was passed which enables candidates the opportunity to, once within the nomination period, two weeks prior to the election, lodge with me for posting on my website, the Elections ACT website, a statement of no more than 500 words and a photograph. It basically gives information. It can speak to their campaign points as such. It can include a link to a website, which gives those who are using the service an opportunity to delve into their campaign details more fully. But it is really a quick 500-word snapshot as to a bit of that information. I check that once lodged with me to make sure it is not obscene, defamatory or otherwise unlawful and then publish it. Each candidate, once lodged, has an opportunity to amend once their candidate information statement, and that is the service that we provide in legislation. It is a pretty straightforward process. I have to say I had some doubts about it. At an official level I certainly was against hosting it, for fear of being seen, rightly or wrongly, as not being entirely impartial, as is an absolute necessity for any electoral body. But having said that, my experience post 2020 was that I got some feedback that it was quite useful for voters to review the candidate statements to get a good sense of who was who. In the ACT under the Hare–Clark system it is largely about candidates as opposed to parties, and it gives those candidates an opportunity to message more clearly what they have got to say in a one-stop shop, so to speak.

I will just ask Ro if he has anything to add in those two areas in terms of candidate statements or the 100-metre ban. Otherwise I am happy to take any questions you may have about those or any other aspects of our legislation.

Ro SPENCE: I have got nothing more to add, other than happy to answer some questions.

The CHAIR: Wonderful. Thanks very much, Mr Cantwell and Mr Spence. Very much appreciated. I will just kick off with one. From my readings I note that mobile polling staff are not allowed to distribute campaign material on behalf of candidates, nor can it be given to institutions like hospitals, nursing homes, prisons et cetera. Is that only by polling staff, but an individual could go and drop it off at nursing homes and hospitals?

Damian CANTWELL: Yes.

The CHAIR: Okay. Perfect. That makes complete sense.

Damian CANTWELL: Ro can talk in more detail on that. We did not run mobile polling in the 2020 election, the first of my elections as Commissioner. Happy for Ro to give some background experience on that as we rolled it out at the elections.

The CHAIR: Yes, that would be great, if you do not mind elaborating, thank you.

Ro SPENCE: The limit on canvassing within 100 metres of a polling place, which includes mobile institutions, is during the hour of voting or hours of voting. Outside of the period in which voting is actually occurring there is no prohibition, so if a resident of an institution was to be provided with how-to-vote material during a non-voting period from a candidate, that would be entirely permissible. But leaving campaign material within 100 metres of the polling place at the time when voting is occurring is prohibited. All canvassing is prohibited during that time.

The CHAIR: Understood. Okay, thank you, Mr Cantwell. I will now pass to my Deputy Chair Mr Farnham.

Wayne FARNHAM: Thank you. Thank you for coming online today. What I have got a question about is your upcoming truth in political advertising, which I think is very important. I suppose my question is: who is going to determine the truth? Because with so many mediums today that put out various opinions, who determines what is true and what is not true?

Damian CANTWELL: That is a great question. Again, part of those pieces of legislation introduced, which actually were put in place post the 2022 election but are now in place for the 2024 election, the commission had views around. We did not wish to go down that pathway, but here we are. I am more about unpacking the legislation. The process is pretty straightforward but really requires in the first instance for the complainant to lodge the complaint with me and to provide evidence with which I can commence the investigation. I have a couple of courses of action required from there in. I first need to make sure that it is a statement of fact as

opposed to an opinion, and then I can acquire for all parties concerned further information to assist me in making the determination. Then I will make the decision as best I can. I will adopt legal and staff advice to assist me in that respect. At all times I will seek to make the decision in a timely manner so as to be able to have an impact as appropriate in the election period. I would also make it clear, hopefully, also to anyone who lodges such a complaint that I cannot guarantee that I can make the decision within that period. It depends upon the nature of the complaint and how forthcoming or how accessible the information is to me that I need to make a good, informed and balanced decision. We have thought up some guidelines for that. We have published the fact sheet, and we have sought the operational experience and advice of my colleague commissioner in South Australia. The legislation here mirrors that of South Australia, and their experience has been invaluable in our preparations for that. We will work through that. We have got a couple of rehearsals coming up soon where we will practise that and use some practical experiences of South Australia to assist in our preparations. But the danger here is that as the commissioner I have to be across all the operational matters, and there is some risk of me going so much into the detail that it will require my full attention for some period of time, which might distract me from other matters at hand. You know, we will work through it. We will make it happen, and, you know, it is [Zoom dropout]. We have got a plan to deal with it, and we will make it so.

Wayne FARNHAM: Thank you.

The CHAIR: Wonderful. Thank you very much. I will now pass it over to Mr Tarlamis.

Lee TARLAMIS: Thank you for your contribution. I just want to pick up on that truth in political advertising element as well. You mentioned that the legislation in the ACT is based on, largely, the South Australian legislation. I was part of a previous committee that looked into this and actually recommended truth in political advertising, and we had some discussions with the South Australian electoral commissioner. He said – or words to the effect – that the biggest aspect of it was the time it took him as an electoral commissioner to deal with the issue of determining whether or not it was truthful. One of the problems with the legislation in South Australia was that the electoral commissioner did not have the authority to defer some of those decisions to the deputy, for instance, which meant that it made it difficult to focus on what was happening in terms of running the election and also dealing with this aspect of it. They were sort of saying, if they had to do it over, having that delegative authority between the commissioner and electoral commissioner would have helped. Is that something that was considered or has been picked up in your legislation?

Damian CANTWELL: Again, I think we have passed the point [Zoom dropout]. The commission made a considered submission and appeared before the inquiry at the time, and the Assembly have now passed that into law and now have to get on with it. Would it be helpful to be able to delegate that power? Yes, it would be, but that is not the way it is written for us, and the operating procedures reflect my requirement to get as much information as I can in order to be able to make a timely and well-informed decision. It is in everyone's interests. Again, I am not speaking for the South Australian commissioner, but they have been very useful in giving that practical feedback to us.

So I do not think it was one of those points in particular that I sought by way of reply to the draft legislation. And it does not matter now anyway; we have got to get on with it. That is not to say that the commission would not consider – subject to a process that we are going to work through for the 2024 election – recommendations for the Assembly to consider. That might be one of them. But I will reserve that until I get some experience for myself, and we will see how it plays out.

Lee TARLAMIS: Thank you. Just to follow-up, taking on board your concerns around the impartiality of the electoral commission and making decisions about what is and is not fact or truthful, do you think a model whereby the electoral commissioner can receive complaints, then refer them to a third party to make a decision and then convey the results – so that way they are not part of the decision-making process, but they as the body that runs the election convey the results, and that third party could be any number of things, a former judge or something along those sorts of lines – would be worth consideration?

Damian CANTWELL: I think there are other models. That may be one of them. Again, I would rather not pass conjecture on how that might work, because it would need to be considered in its entirety and the process attached to that should really be examined and considered in more detail. Again, all I would offer is that it is not one of those that – it is on the record. Our response is there on the Assembly [Zoom dropout]. It was not something we wanted to engage in, because stepping into that decision-making process we did not think was

the domain of the commission. It is now, under law, and we will make it work on the processes that we have adapted from the South Australian experience and try to meet everyone's interests here of course and work within the law.

Again I will reserve any recommendations on behalf of the commission to the Assembly here until, should we think that is appropriate, subsequent to this process. In that context I will offer other advice here, which is that even the late legislation which was introduced in 2020 for the 2020 election was COVID impacted of course. I put to the Assembly that I would rather not have any legislation being passed beyond the 12-month point prior to delivery of the election, because we need 12 months in which to put in place any amendments that the new legislation might bring into the operational procedures, particularly for us if it impacts on electronic voting and counting, which we rely upon in the ACT. So the Assembly has accepted our advice, by and large, and we are now in a period whereby we have enacted the legislation which had been in place for the 12 months prior and are getting on with it. And I do not want to muddy the waters by getting ahead of [Zoom dropout] recommendations that we might seek to introduce subsequent to the election in October in the ACT.

Lee TARLAMIS: Thank you.

The CHAIR: Wonderful. Thank you so much. I will now pass over to Ms Vulin, but I am just mindful of the time.

Emma VULIN: Okay. Thanks. In Victoria we are really culturally diverse, and I was wondering: with the 500-word candidate statements, what if anything is done to accommodate CALD communities with limited or no English or a preference to read material in another language, or is this something that the candidate has to provide?

Damian CANTWELL: Yes, great point. Again, we have placed accessibility as one of our four key tenets in how we deliver elections – trusted, transparent, secure and accessible. We have established the electoral accessibility advisory committee, which I will draw advice from – both national and local bodies, representatives of those bodies and members of our community here who feel they, through lived experience, have a voice that needs to be heard and [Zoom dropout]. So I will take all that on board. And this is one of those areas where we look to adapt our operational procedures. Again, it was only brought in late in the 2020 election, and we rolled it out as quickly as we could and put it into practical effect. But the capacity for accessibility to all of our electoral services, not just electoral information, is a key determinant of how we deliver our services. And I will work closely with the recommendations of that committee in determining how we can best accept and publish those candidate statements. There are a raft of other interpretation services and other roles available to individuals or groups that can access such information, but we are committed to providing that accessible service. If candidate statements are one of those that need to be accessible in a range of formats, then we will do our best to make sure that is the case, and we will take advice as I can find it.

Emma VULIN: Thank you.

The CHAIR: Thank you so much, Mr Cantwell. We really appreciate your time, and sorry about the technology stuff-ups at the start. We have got a lot of information, which is great to go through, so 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. The session has now concluded.

Witnesses withdrew.