

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

WITNESS (*via videoconference*)

Kristina Temel, Manager, Legal and Policy, New Zealand Electoral Commission.

The CHAIR: I declare open the public hearing for the Electoral Matters Committee Inquiry into the Conduct of the 2022 Victorian State Election. All mobile telephones should now have been 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 is 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 the issue to the committee or who are watching the broadcast of these proceedings.

My name is Luba Grigorovitch. I am the Chair of the committee and also the Member for Kororoit. The other members of the committee here today are Wayne Farnham, the Deputy Chair and Member for Narracan; Brad Battin, the Member for Berwick; David Ettershank, who is going to be joining us shortly on Zoom, I believe; Sam Hibbins, who is the Member for Prahran; Emma Kealy, who has just walked in, the Member for Lowan; Nathan Lambert, who is also joining us on Zoom; Lee Tarlamis, who is here to my right; and Emma Vulin, the Member for Pakenham.

I welcome you here today, Kristina. We are very excited to hear from you, so thank you very much for coming along. I should let you know that all evidence taken by this committee is protected by parliamentary privilege in Victoria. 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 this transcript for you to check as soon as it is available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

We do not have any media here, so I would now like to invite you to introduce yourself and make any brief introductory comments that you would like to make. You have got just on 5 minutes to do so, and it will then be followed by questions from the committee. Thank you.

Kristina TEMEL: Good afternoon. Thank you for the welcome. My name is Kristina Temel. I am the Manager of Legal and Policy at the electoral commission in New Zealand. I have been invited along today because you have some areas of interest where you would like to know more about what we do in New Zealand around the rules for campaigning on election day, the enforcement of electoral advertising rules and the use of tools such as policy.nz for the publication of information about parties.

I have not prepared a presentation because I understand that the committee has some specific questions that they would like to ask, but if you would like me to, I can talk to any of those three things.

The CHAIR: Look, I think if you are happy to elaborate on those three items, that would be great, and then we will take it from there and open it up to questions. Thank you.

Kristina TEMEL: Great, no problem at all. In terms of campaigning on election day, in New Zealand you are not allowed to campaign on election day or do anything which obstructs or influences a voter. That involves – you cannot display or distribute campaign material; you cannot keep your signs up, so all the signs have to come down at midnight on the Friday night before the Saturday election; you cannot influence voters or tell them who to vote or not vote for. These rules apply to everyone involved, including the public, so even websites and social media. An individual cannot post anything to social media or a website on election day that could influence voters.

The rules around demonstrations and processions – you are not allowed to do exit polling in New Zealand. That applies on election day and also polling of advance voters.

Parties, candidates and any supporter can wear a rosette, and that can also be worn inside voting places to identify particularly scrutineers who may be present to supervise what is happening.

Parties and candidates sometimes have initiatives to encourage voting such as doorknocking and offering people assistance to travel, and so they tend to ask the commission to review their scripts. That could be a canvasser or a telephone script, just to make sure that they are not doing or saying anything that gets them to the things that would be prohibited on election day. So it is an offence that is subject to a fine of up to \$20,000. We do not proactively regulate, but we do get a lot of complaints from members of the public. If they are driving to the polling place and they see a sign still up, because this rule has been around in New Zealand for such a long time, members of the public are pretty vocal about reporting things. In the recent election in 2023 we had a lot of phone calls about signs still being up where parties and candidates had just forgotten signs in certain locations, so we worked with them to get those down. If they are taken down immediately, then there is a defence to the person responsible.

Door-to-door activity – we did not get a lot of complaints this election, but we do get a lot of complaints about online activity. As you can imagine, it is not necessarily the first thing that electors think of on the day. They are used to just communicating with their friends online about everything, and we do get a lot of complaints, particularly where the individual involved has a big following. So if a celebrity says something online, we get a lot of complaints about that, or if it is a group that has a wide following we will get complaints.

Now, in terms of how it regulates websites on election day, there is not the requirement, for instance, for everybody to take down all of their website content, as long as they do not advertise that on the day or add new content. Unfortunately, there is not an exemption for the media. One problem that we have in the modern age of media platforms is it is hard for media platforms who want to advertise their election night coverage because if they advertise their website then it potentially opens up all their website content.

There has been some discussion in New Zealand about whether the election day rules are now superfluous because about two-thirds of electors are voting in advance. Just to compare the two different sets of rules, for advance voting we do have a 10-metre buffer – so 10 metres within or inside an advance voting place you are not allowed to campaign. Otherwise, the stakeholders are free to campaign during the advance voting period, but just not within 10 metres of the entrance to the voting place. So some people have asked, ‘Well, now that two-thirds of people are voting in advance, are the election day rules still fit for purpose?’ That will be interesting in the upcoming inquiry that we have in New Zealand to see what Parliament makes of that issue. But at the moment those are the rules that we have. So those are the election day rules.

In terms of the enforcement of the electoral advertising rules, I was not entirely sure whether what you were talking about here is: what is the role of the commission in enforcement? We do not have an enforcement responsibility. If the commission believes that there has been noncompliance with the rules that we are required to administer, we have to report the matter to the police. There is also potentially what was behind the question from the committee, which was the roles of different agencies within New Zealand around election advertising in the broader sense.

The electoral commission is responsible for things like promoter statements, election expenditure, donations et cetera, and we are responsible for regulating breaches of those things. But when it comes to the content of advertising there are other agencies who have responsibilities. For instance, the Advertising Standards Authority are responsible for overseeing advertising in all media other than TV and radio, but they will not consider complaints about unpaid or organic material. The Broadcasting Standards Authority regulates broadcast content, including the ads that are run by parties and candidates. And the media council is responsible for editorial content complaints. So hopefully that sort of explains the role that the commission has.

We do not even have investigative powers, so we do not have the powers to compel documents, to require people to comply with our requests for information, and so there has been some discussion in New Zealand about the role of the commission in that regard. Whether there is more of a case for some of the current offences to be dealt with more through administrative penalties which the commission could have a role in – but at the moment, as I say, we do not prosecute anybody. We do not have any powers to impose administrative penalties. We simply have the power to refer matters to police for investigation.

The third area is around there being interest in third-party platforms that publish information about parties. An example is policy.nz. The other big example that we have in New Zealand is Vote Compass, which is the tool that was used by Television New Zealand, which is our state broadcaster. With both of these tools, they are run independently of the commission. We do not have any input into the methodology they use or the information that they gather. We do buy advertising on the sites because they are frequented by voters and they are popular with voters who want further information about parties' policies.

A significant issue for people who do not vote is them saying that they do not know who to vote for, and 22 per cent of non-voters in our 2020 election survey said that that was the reason, so there is definitely some demand for this type of tool. It is usually run by social and data scientists with quite a strong academic input. Party positions are determined in a range of different ways. For Vote Compass the parties are surveyed and invited to participate and to provide information about the various policy positions that Vote Compass academics have said are important for the campaign.

The Vote Compass tool is at the party policy level because in New Zealand the party vote is really important. It encourages participation by helping voters decide who to vote for. In New Zealand we do not provide, for instance, candidate profiles or party profile information to voters. Local elections do provide that in the mail-out that goes out to voters, but in the parliamentary election we do not do that.

Vote Compass was established in 2010, and we have had a Vote Compass in New Zealand elections since 2014. Voters answer an online survey to give their views on a range of policy issues, and then Vote Compass uses an algorithm to compare their responses to the policy positions of political parties and shows the users their views but compared to the views of the parties.

The data sources are used by journalists to inform their reporting. For example, in 2020 we had 438,000 voters who used the survey, and we benefited from our advertising relationship with Vote Compass because the number of click-throughs that we got to our enrolment page was really high from that tool, much higher than the baseline for advertising.

Any tool will establish criteria for who qualifies to be involved, particularly if you have an algorithm that relies on parties having a policy position on a number of areas. In New Zealand for Vote Compass a political party has to at least have a member of Parliament at the last election, or they have to field candidates in a majority of electorates. They have to have policies on the issues that the tool is measuring, and they have to participate in the consultation process undertaken on issues that are being sought in terms of policy positions. For example, in 2020 only nine of the 17 political parties contesting the election were represented on the platform, and that is a cause of some criticism from particularly the smaller parties. A single-issue party, for instance, may struggle to meet these requirements because they do not necessarily have developed policies on all of the areas that the methodology requires. So that is Vote Compass.

The policy tool, unlike Vote Compass, does get down to candidate level. Instead of surveying the parties, they use publicly available information to glean what the parties' policies are, but they do survey all of the candidates, and they can obtain candidate contact details from the commission because during the nominations process we ask candidates if they will make their email addresses and phone numbers available to people who want to contact them for the purposes of their candidacy. The policy tool does invite all candidates to participate, and candidates are asked to describe their policies, what they stand for. All candidates who are contesting the election will be named, but only the candidates who participate in the process will have their profiles populated. For instance, they ask candidates questions about their background, their motivations and their priorities.

One of the other things that these tools – they do generate a bit of noise. You know, sometimes the commission gets a bit of criticism for 'Why do you buy advertising on these sites?' When people use the tools or answer the questions or say which policies they favour, they can sometimes be surprised about what the tool says about which party they are most closely aligned to in terms of their preferences and policy, and they say, you know, 'They're telling me who to vote for and this is inappropriate.' But the tools are very robust in terms of being clear with voters that what they are doing is providing them information about parties' policies. They are not telling them how to vote; the voting choice is completely up to the elector. And then also we will have to explain to electors why, for instance, some parties are not represented in the tool.

The CHAIR: That is great. Thanks, Kristina. That is incredibly informative and vastly different to what we do here in Australia, so really great to hear from you. Thank you.

I am mindful that everyone has got a lot of questions, and we are running short of time – we will stick to the 2:30 – so I will hand it over to my Deputy Chair. Do you have anything that you would like to raise?

Wayne FARNHAM: Yes. Look, I do have a query in regard to no content on election day. So if someone is a private property owner, they cannot put advertising material in their front yard at all?

Kristina TEMEL: No, that is correct.

Wayne FARNHAM: And are there penalties attached to that – fines et cetera?

Kristina TEMEL: Yes, up to a \$20,000 fine.

Wayne FARNHAM: Up to \$20,000 – that is pretty significant. Has anyone ever been fined?

Kristina TEMEL: No. Mostly, as I talked about, the signs that are still up on election day – there is that defence that if you are notified and you take it down and, you know, you were not aware that it was still up, you have a defence to prosecution. So that is generally how it proceeds. I am aware of an old, old case where there was somebody protesting on election day who was convicted of an offence, but I am not aware of any recent prosecutions of these rules.

Wayne FARNHAM: Probably my only other query is – I do not know what the New Zealand postal system is like, but Australia Post is not that good – what if some material has been mailed out and happens to land on a letterbox on election day? Whoever the party are, do they get in trouble for that one?

Kristina TEMEL: Yes and no. One of the things that we do ahead of the election is we work with our New Zealand Post to say: when is the cut-off from which you need to be lodging postal material to ensure that you do not have material landing on election day? We advised in 2023 that nine days before election day is the cut-off, so the Thursday of the week prior to the election – you should not be lodging information to be sent by post. But just an interesting observation is that one of the areas that is very difficult is the unaddressed mail that may be an insert into a local rag. And it goes out. The young lad who may have been paid a small amount to deliver papers is issued instructions: 'Please do not do this on Saturday.' But almost every election without fail we will have somebody who did not quite get around to it and they deliver it and then we get a whole lot of complaints. So that sort of thing can happen, and we would work with the party or candidate to understand what happened. How did it come to be delivered? Yes, we would look into it and decide what if any action should be taken. If it was a breach, we would have to refer that on to police, and they would decide whether to do anything with it.

Wayne FARNHAM: Yes. No worries.

The CHAIR: Thank you very much. Ms Vulin.

Emma VULIN: Thanks, Kristina. With the ban on campaigning on election day, do you think the lack of visible paraphernalia and activity impacts the turnout on the election day for voters, or does the commission have signs up at polling places?

Kristina TEMEL: Yes, we do have some signs out, obviously, to let people know where voting places are. We do a mail-out to all electors which we call our EasyVote pack, which tells people where they can go and vote. So that helps inform people where they can go on election day. Two-thirds of people are voting in advance, but there are still a lot of people who enjoy voting on election day. They prefer that, and so we have to respect that. I think those who support greater flexibility on election day would say that sense of occasion is lost; there is not that sort of festive environment. I have visited Australia on election day and seen the sausage sizzle and the pomp and ceremony. We just have a different tradition, and some people enjoy the relative peace and quiet of voting on election day and not having to run the gauntlet. But I would say that there are different views on it, and it will be interesting to see how that plays out in the next Parliament select committee here.

Emma VULIN: Thank you.

The CHAIR: Thanks, Ms Vulin. Mr Battin.

Brad BATTIN: First of all, just to pick up on something you said then before I go back to my question, did you just say we cannot have a democracy sausage on election day?

Kristina TEMEL: Often the schools do. They do it is as a bit of a fundraiser, and we encourage that kind of activity. But in terms of the sort of paraphernalia and pomp that you see around handing out the how-to-vote cards, that sort of thing just would not happen in New Zealand. That is real tumbleweed. Even the media are not allowed to report on the day before the polls are closed on anything that could influence a voter. So they could not, for instance, speculate about poll results or somebody close to the threshold for getting seats. It has to be very, very benign. 'Today is election day. Polls are open from 9 till 7. We will be bringing you our coverage after 7 o'clock.' It is very benign.

Brad BATTIN: Just on that, when did you start doing it where you could not have them there? Obviously, we have still got them there. Some states have not, but Victoria still does have them. So when did you change it for that, and is there any consideration about changing it with the 10-metre rule that you have got on the pre-polling? Can people hand out how-to-vote cards at the pre-polling centres or early voting centres outside that 10 metres?

Kristina TEMEL: Yes. The election day rule has been in place forever as far as I know. It is not a recent change. I have been involved in elections for a long time, and it has never been any different. In terms of the 10-metre buffer zone, outside of that area you could have signs up and be handing out material, but not within the 10 metres.

Brad BATTIN: Okay. That is all.

The CHAIR: Okay. Thank you for that. Ms Kealy.

Emma KEALY: Thank you very much. Thanks for presenting to us today. We have had some questions come up around the 2022 election in terms of tight time frames for the electoral commission to process or go through all the steps in regard to setting out the election – so the tight time frames around candidate registration and then the ballot draw, then pre-poll opens early. Can you give a rundown of your time frames or an approximate time frame? I realise we are running short of time, so if you can provide that at a later date, that would be fabulous – if it is better for you, Chair.

Aside from that, are there any pressure points which are under review at the moment? In your opinion, where are the areas that require a little more time to allow the electoral commission to do its work more effectively and make sure ballot papers are at polling booths in time or from a party or a candidate perspective of being organised and ready for pre-poll to open?

Kristina TEMEL: Yes, a very good question, and yes, there are issues for the New Zealand Electoral Commission. I would be happy to send you a timetable that shows you the breakdown so you can compare it to your system.

At the 2023 election there was concern about the arrival of the EasyVote packs. Those are the packs that tell the electors where they can vote and who their candidates are in their electorate, and they include the party lists, which are important given that we have a mixed member proportional voting system. We cannot print those until nominations are closed, and nominations close about five days after the writ is issued. So the pressure points are around the cut-off for parties to be registered, which is writ day, the ballot papers needing to be produced and the EasyVote packs needing to be prepared and sent out to electors before voting starts. So that is a pressure point. Probably we had only been able to get two-thirds of the voting packs out by the start of advanced voting. People's expectations around that are high, but the volume of printing and the ability to get that out with postage pressures are, as you have alluded to, a pressure point.

The other area was – is – just the official count. In New Zealand you can enrol on election day, and special voting is growing and special votes take longer to process. There was concern from politicians that they had to wait three weeks for the final, official result, particularly given the complexities of government negotiations and formation in a coalition arrangement. There were certainly some politicians saying, 'We're looking for ways to speed the official count up.' So it will be interesting to see what that means politicians' appetite will be around

that, because probably the biggest cause of special votes in New Zealand is people enrolling after writ day, but that raises issues around accessibility. So I am sure there will be a range of views on that.

Emma KEALY: Just one more, because I know we are heading towards 2:30, and it is around compulsory voting versus your system, where voting is not compulsory. Have you undertaken any analysis over the demographics or typical features of people who do not turn out to vote on election day, and if so, are you able to share that with this committee, please?

Kristina TEMEL: Sure. I mean, our enrolment is compulsory but voting is not, and all of our data tells us that you are more likely to enrol and vote if you are older and if you are not a new migrant or an ethnic minority. We have lower rates of participation amongst youth, Māori, Pasifika and Asian voters. We did have a higher turnout from our younger voters this time, but they are still lower than their older counterparts. We do not have automatic enrolment in New Zealand. You still have to apply to enrol, so there is a bit of a debate and discussion about that. But because Māori electors can choose to be either on the general or the Māori roll, they need to make that choice for themselves. So that does raise a slightly different issue in New Zealand around automatically enrolling people if you are not sure about their ethnicity. But compulsory voting has not been raised seriously as an issue, or there being an appetite for that, in New Zealand of late.

The CHAIR: Thank you very much for that answer. I will now just skip to Mr Lambert, who is online. He has got one quick question.

Nathan LAMBERT: Thank you, Chair. Kristina, I am just wondering, going back to the election and the ban on electioneering on election day: are there any ways in which candidates try to push the limits, if you like, on that particular rule? Are there things you see where people are effectively trying to find a way to push their political message on election day?

Kristina TEMEL: No. Because we get a lot of complaints and it would be a nuisance for a party administrator constantly have to be phoned on the day to get their people out and take this down, I think there is generally good cooperation. Sometimes people argue that a sign has been put up by guerrilla activity to get them in trouble. I think there is generally pretty good adherence to the rules, and it is usually more just an enthusiastic supporter who may not realise or may not have gathered all of the signs that were out there. The one area I suppose that can be difficult is those personal interactions, trying to get people out, offering transport. The elector will say, 'Well, that person who came to the door was wearing a big rosette. Of course they were telling me who to vote for,' and that is a bit of a he-said, she-said situation. That can be interesting. But the one area I think that is blurry is if you can go door to door and invite people, give people information about where they can go and offer assistance. Can you do that on your website on the day if it is just information about how to vote, how to get to a voting place where they are or who is eligible to vote? That is something that we did get a few complaints about, where some of the parties were doing that and others would probably say, 'Well, I didn't think you were allowed to do that on the day.' I think that is an area of interest from 2023.

Nathan LAMBERT: That makes sense, I suppose. If we were to do something like that here without the cultural norms that you have got, certainly that one-on-one stuff feels like it would be very hard to enforce. But anyway, thank you. I appreciate your contribution.

The CHAIR: Thank you so much for your time today. We really appreciate you giving us that information. It has been well and truly appreciated by all, 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, and we will now conclude the session.

Witness withdrew.