

4 November 2020

Mr Lee Tarlamis MP
Chair
Electoral Committee
Parliament of Victoria
Spring Street
East Melbourne Vic 3002

By email: emc@parliament.vic.gov.au

Dear Mr Tarlamis

Inquiry into the Impact of Social Media on Elections and Electoral Administration

Thank you for the opportunity to make a late Submission to this Inquiry.

Context

The Victorian Local Governance Association (VLGA) is an independent organisation supporting councils and councillors in good governance. We provide opportunities for councillor networking, professional development and information exchange. We also actively engage with key policymakers and broader stakeholders to inform, influence and lead the conversations that determine the priorities for the local government sector in Victoria.

Preamble

The VLGA's Submission is directed primarily to those elements of the *Terms of Reference* that have an impact on the local government sector. In particular we respond in the context of the 24 October 2020 Victorian Local Government elections.

The Victorian local government sector is a \$9b sector, employing over 44k staff and delivering over 100 essential services to 79 municipal communities on behalf of the state and federal government. These elections saw over 600 vacancies in 76 Victorian Councils. Unlike elected officials at the state and federal level, and the VLGA would assert perhaps not particularly well understood by the voters, councillors have legislated governance responsibilities which include the employment of the council CEO who is tasked with leading an operational business ranging in size, depending upon municipal district, with annual budgets up to \$400m.

Whilst our comments are in the context of the local government elections, we are also mindful that the use of social media in elections is an emerging global trend. The global issues include, but are not limited to, foreign interference in elections and large scale campaigns of misinformation and trolling.

We do not propose to canvass these global issues other than to suggest that they signal the existence of similar threats to local government, save for the likelihood that the threats to local democracy are likely to be present, albeit on a smaller scale with local, not international, actors.

Our focus therefore relates to reported misuse of social media, particularly over recent weeks, in the local government election context.

Responses to each of the Terms of Reference

The VLGA's responses to each of the Terms of Reference are as follows:

1. *The impact of social media technologies on the Victorian electoral process, focusing on how social media platforms are used for political communication and whether current regulations regarding the authorisation of political content on social media are appropriate*

Use of Social Media

As a result of COVID-19 pandemic, normal face-to face campaign activities (including community meetings, door knocking and placement of posters) were severely curtailed in the recent Victorian local government elections. This saw a commensurate increase in reliance by candidates on the use of social media for campaign purposes.

Whilst it is likely that Instagram, Twitter and Snapchat were also used, it appears that Facebook was the predominant social medium used by candidates. In many cases candidates (or their supporters):

- established a purpose-built candidate page; and/or
- paid social media providers for 'boosted' or 'promoted content'; and / or
- made comment on the social media posts of themselves or others.

It would appear from our observations that the overwhelming majority of such social media posts as described above were appropriate and in keeping with the spirit of an election campaign. However, candidates have reported and provided evidence of trolling (i.e. disparaging comment) and misinformation via public social media posts and direct messaging.

Whilst respectful, robust public debate is a healthy element of a democratic society, it is evident that this line has been crossed in these elections.

Current Regulation

Section 287 of the *Local Government Act 2020* (the 'Act') provides as follows (emphasis is mine):

- 1) A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, electoral material unless the name and address of the person who authorised the electoral material is clearly displayed on its face.

The *Local Government (Electoral) Regulations 2020* are silent on the matters relating to authorization of electoral material.

Section 288 of the *Local Government Act 2020* (the 'Act') provides as follows (emphasis is mine):

- 1) A person must not—
 - a) print, publish or distribute; or
 - b) cause, permit or authorise to be printed, published or distributed— any matter or thing that the person knows, or should reasonably be expected to know, is likely to mislead or deceive a voter in relation to the casting of the vote of the voter.

The *Candidate Handbook - Local Government Postal Elections 2020*, published by the Victorian Electoral Commission (VEC), restates the requirements of s287 and 288 above. It also includes the following:

Social media, blogs and emails

Electoral material published through social media must comply with the terms and conditions of the relevant platform, as well as the requirements of the *Local Government Act 2020*.

All electoral material posted to social media (including platforms like Facebook, Twitter, blogs, websites, and other social media sites) must carry or directly link to an authorisation statement (see 'Authorisation of electoral material' above).

Just like in real life, messages sent through social media that defame, threaten, or harass another person are against the law. Significant penalties apply, including prosecution and imprisonment, for any person convicted of threatening or harassing another person

At face value the above controls might seem adequate. There is a requirement that electoral materials:

- be authorised (s287),
- not be misleading (s288)
- not defame, threaten or harass (other sources of law)

Issues Arising

Notwithstanding the above, the VLGA is aware that some candidates (as well as their supporters),

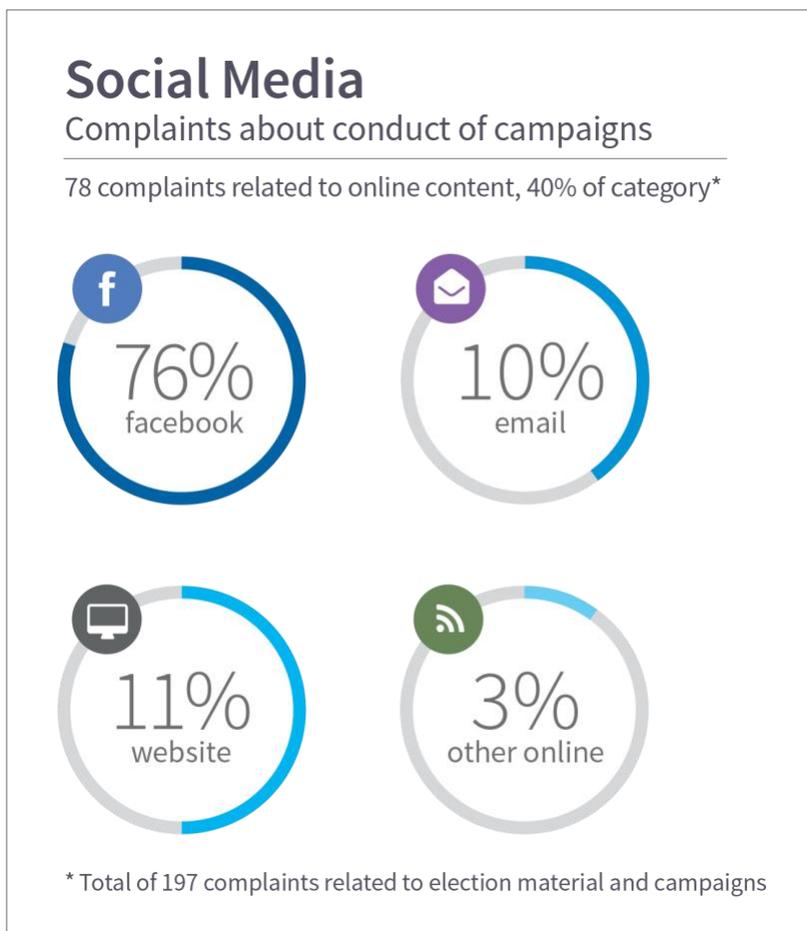
- at times had difficulty ensuring that posts of electoral material were authorized; and
- as with more traditional forms of election promotion, from time to time may have published material that was to a greater or lesser extent, misleading; and
- have reported instances of online harassment.

These themes are further explored under Term of Reference 2.

2. *Whether online electoral advertising is appropriately regulated in Victoria*

In its report, *Protecting Integrity: 2016 Council Elections*, the Local Government Inspectorate (LGI) reported processing of 78 formal complaints about social media use. There was a reported “increase of 43% in complaints about the authorisation of election material during the 2016 election period, where 40% of all issues raised were about content that was specifically published online.”

The Inspectorate further reported the following:



Advice to date from the Inspectorate indicates the number will be higher again in 2020.

Management of Complaints

Election campaigns provide a context of heightened anxiety for those involved - so complaints tend to range from the frivolous to the serious.

In response, many in the 'less serious' category will tend to fall away after the poll concludes and when it is determined/realised that they have not affected the result of the election.

However, the growth of social media would suggest an emerging trend that related breaches will be seen by more voters and therefore may have a greater potential to impact on the election. In relation to this Inquiry, it is on this point that trust in the election process – and therefore the democratic process - appears to be under threat.

Due to, 1) the workload of the Inspectorate; and 2) an absence of sanctions with immediate effect, it is quite conceivable that a campaign of misinformation via social media could be undertaken with direct impact on the outcome of an election.

The VLGA is aware of circumstances where the Inspectorate has communicated to candidates during the 2020 campaign issuing a 'warning' that social media activity appears to be in breach of the Act. However, due to the abovementioned points, it is the VLGA's view that should the activity continue, the prospects of further action during the campaign period appear remote.

Recommendations

As a consequence of the above we recommend:

1. further review with the prospect of expanding the current controls provided for under the 'Act' to specifically include offences in regard to social media activity;
 2. serious consideration be given to the expansion of the legislative powers of the Local Government Inspectorate, to enable the LGI to order that particular activity be ceased, or made good; and
 3. expansion of the budget of the Local Government Inspectorate to ensure sufficient staff are available to more promptly and thoroughly respond to, and resolve, election-related complaints.
3. *How social media and new communications technologies are used by the Victorian Electoral Commission and the Parliament to engage Victorians and improve knowledge of electoral processes*

We have no submission on this section, other than to support further initiatives by the Victorian Electoral Commission and the Parliament to engage Victorians and improve knowledge of electoral processes, including through use of emerging technologies.

The impact of social media harassment and vilification of women standing for election

The VLGA would also like to highlight the impact of online abuse and harassment of women candidates in elections (and those in office) - and in particular how such abuse influences the preparedness of women to stand for election generally.

Women currently account for 38% of Victoria's local government councillors which is not reflective of the gender breakdown of Victoria.



Nor does the profile of elected representatives reflect the ethnic and cultural diversity of Victoria's communities. Parity in leadership roles (including elected office) improves decision making and lack of representation contributes to inequality.

The VLGA has noted a number of concerns raised by women candidates in local government elections who report that they have been subject to online harassment and abuse that includes sexualized and image-based abuse with some more extreme examples including rape and death threats.

Women continue to be underrepresented in elected office and the VLGA encourages the Committee to consider specifically the impacts of social media harassment and vilification of women standing for election across all levels of government. The VLGA understands that the Committee has also received Submissions from agencies such as Gender Equity Victoria (GEN VIC) and ALGWA Vic in regard to this specific issue.

Thank you once again for providing the opportunity to make this Submission to the Inquiry.

Kind Regards



Kathryn Arndt
Chief Executive Officer