



Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration

Discussion Paper

Electoral Matters Committee

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Parliament of Victoria
Electoral Matters Committee
Inquiry into the impact of social media on Victorian elections and Victoria's electoral administration
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The Electoral Matters Committee

Functions of the Committee

The Electoral Matters Committee is a Joint Investigatory Committee of the Parliament of Victoria. The Committee comprises five Members of Parliament drawn from both Houses.

The powers and responsibilities of the Committee are determined by the *Parliamentary Committees Act 2003 (Vic)*. The functions of the Committee, as defined by Section 9A, are, if so required or permitted under this Act, to inquire into, consider and report to Parliament on any proposal, matter or thing concerned with—

- The conduct of parliamentary elections and referendum in Victoria;
- The conduct of elections of Councillors under the *Local Government Act 1989 (Vic)*; and
- The administration of, or practices associated with, the Electoral Act 2002 (Vic) and any other law relating to electoral matters.

Matters are referred to the Committee either by resolution of the Council or the Assembly or by Order of the Governor in Council. The *Parliamentary Committees Act 2003 (Vic)* also enables a Joint Investigatory Committee to inquire into and report to Parliament on any annual report or other document relevant to its functions and which have been laid before either House of Parliament.

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Terms of Reference

Self-referenced by the Committee on 26 February 2014.

That the Electoral Matters Committee, pursuant to Section 33(3) of the *Parliamentary Committees Act 2003 (Vic)*, inquires into the impact of social media on Victorian elections and Victoria's electoral administration.

The Committee should consider:

- a) The impact of social media technologies on the Victorian electoral process, focusing on how social media platforms such as Twitter and Google are used for political communication and whether current regulations regarding the authorisation of political content on social media are appropriate;
- b) Whether online electoral advertising, such as Google Adwords, is appropriately regulated in Victoria; and
- c) How social media and new communications technologies are used by the Victorian Electoral Commission and the Victorian Parliament to engage Victorians and improve knowledge of electoral processes.

Introduction

This chapter outlines the conduct of this inquiry to date and the structure of this discussion paper.

Conduct of inquiry

- 1.1 The proposal for this inquiry stemmed from the Committee's previous inquiry into the future of Victoria's electoral administration, the final report for which was tabled in Parliament in March 2014. As part of the inquiry process the Committee sought evidence about the impact of social media on Victorian elections and electoral administration. Despite its efforts, the Committee was surprised to receive little, direct evidence from inquiry participants. Accordingly, the Committee concluded there was scope – and sufficient time remaining in the 57th Parliament – to commence a short, highly-focused inquiry into relevant matters.

Preliminary research

- 1.2 One of the first steps the Committee customarily takes as part of the inquiry process is to review relevant academic secondary literature. The Committee commenced this work in late March 2014, focusing on literature in the fields of political science, election studies and civic administration generally.

Call for submissions

- 1.3 On 10 May 2014 the Committee placed advertisements calling for public submissions in three major metropolitan newspapers, *The Age*, *Herald Sun* and *The Australian*. In addition to printed advertisements, the Committee 'tweeted' the call for submissions on the Parliament of Victoria's Twitter feed. The Parliament's feed provided updates on the inquiry process.
- 1.4 Submissions closed on 6 June 2014.
- 1.5 The Committee received nine submissions. Appendix One lists the submissions. One submission was submitted using the Parliament of Victoria's 'e-submission' website portal.

Public hearings

- 1.6 The Committee also advertised the dates for its public hearings in the call for submissions.

- 1.7 The public hearings were held on 18 June 2014 at 55 St Andrews Place, East Melbourne. Appendix Two lists who appeared before the Committee and the organisations they represented.

Role of discussion paper

- 1.8 This is the second discussion paper prepared by the Committee in the 57th Parliament.
- 1.9 The first discussion paper was prepared as part of the Committee's inquiry into the future of Victoria's electoral administration. It was generally well-received by key stakeholders. The Committee noted that the discussion paper helped solicit more focused responses from inquiry participants about particular issues. In some cases, inquiry participants elaborated on their initial evidence with an additional submission, using the summary of key issues in the discussion paper as a reference point for further insights and comments. The Committee saw this as a particular procedural strength of its previous inquiry.
- 1.10 The Committee decided to prepare this discussion paper based on these considerations.

Structure of discussion paper

- 1.11 This discussion paper is comprised of three sections. After this Introduction, Chapter Two defines some of the key terms in the inquiry and provides background about the Committee's interest in the impact of social media on Victorian elections and Victoria's electoral administration, including why it chose to self-reference this inquiry. Chapter Three discusses the key issues raised by the submissions and evidence, and the Committee's responses where appropriate.

Chapter Two: Background to inquiry

This chapter defines some of the inquiry's key terms. It then discusses the background to the inquiry.

Definitions

Social media

- 2.1 During the Committee's inquiry into the future of Victoria's electoral administration the Committee learnt that social media is a contested term and that there is no accepted definition of what a social media platform is. This is due to a number of factors, including, chiefly, the fast pace of development of social media technology. The Committee favoured a conception of social media developed by the University of Technology Sydney, for the Australian Electoral Commission (AEC). The Committee continues to prefer this definition:

...Social media have been defined as 'online tools and Web sites that facilitate...many communications between users'. Specific examples include Facebook and Twitter, but may also include more regional or niche services, and more longstanding collaborative environments such as web-based forums and 'wikis'. Social media [is also seen] as internet-based applications built on the technology and ideological foundations of Web 2.0, described by Tim O'Reilly, who coined the term as a second generation of Web-based services that feature openness for participation, collaboration and interactivity.¹

Twitter

- 2.2 Twitter is a free 'microblogging' service. Registered members can broadcast short posts called *tweets* and follow other users' tweets using different platforms and devices. Tweets and replies to tweets can be sent by mobile phone text message, using a desktop client or by posting at the Twitter.com website.
- 2.3 Launched in 2006, Twitter was 'initially conceived as a social network to keep friends and colleagues informed throughout the day'.² As of 2012 the service had over 500 million registered users and handled over 1.6 billion search

¹ Australian Electoral Commission, 'E-lectoral Engagement: Maintaining and Enhancing Democratic Participation Through Social Media', University of Technology Sydney, Sydney, 2012, p.6. Retrieved 11 August 2014 from http://www.aec.gov.au/about_aec/research/files/social-media.pdf.

² PC Magazine, 'Twitter Definition', PC Magazine, Ziff Davis, August 2014. Retrieved 11 August 2014 from <http://www.pcmag.com/encyclopedia/term/57880/twitter>.

queries per day. In Australia, there are approximately 2,500,000 active Twitter users.³

2.4 In terms of electoral administration, the Parliament of Victoria has an official Twitter feed which is used to publicise events in the chamber and inform the public about what is going on at Parliament. As noted in the Introduction, the Parliament's feed is also used to promote the work of parliamentary committees, including calls for submissions, public hearings and when reports are tabled.

2.5 Electoral authorities in Australia and Victoria have also adopted Twitter as a tool to communicate with electors and promote awareness of elections and electoral participation. In Victoria, the Victorian Electoral Commission (VEC) has used Twitter since July 2012 as part of its social media strategy and efforts to raise awareness of Victorian elections. As noted in the VEC's submission to this inquiry, the VEC's Twitter profile is usually dormant outside major electoral events.⁴

Facebook

2.6 Facebook is a free social networking website that allows registered users to create profiles, upload photos and video and send messages to other users. The site, which is available in 37 different languages, includes public features such as:

- 'Marketplace – allows members to post, read and respond to classified ads.
- Groups – allows members who have common interests to find each other and interact.
- Events – allows members to publicise an event, invite guests and track who plans to attend.
- Pages – allows members to create and promote a public page built around a specific topic.
- Presence technology – allows members to see which contacts are online and chat'.⁵

2.7 As of September 2012, Facebook had approximately one billion active users, with approximately 13 million users in Australia.⁶

³ Victorian Electoral Commission, *Submission No.8*, p.11.

⁴ Victorian Electoral Commission, *Submission No.8*, p.8.

⁵ Whatis, 'Definition of Facebook', TechTarget, August 2014. Retrieved 11 August 2014 from <http://whatis.techtarget.com/definition/Facebook>.

⁶ Victorian Electoral Commission, *Submission No.8*, p.11.

- 2.8 Since 2010 the VEC has used Facebook to communicate with electors and raise awareness of Victorian elections. As with Twitter, while the account is not actively used during non-election periods it is monitored for inappropriate content.⁷

Google AdWords

- 2.9 Google AdWords is an advertising platform by Google, an internet search engine company, for businesses wanting to display advertisements on Google and its advertising network. The AdWords program allows ‘businesses to set a budget for advertising and only pay when people click on particular advertisements’.⁸ The service is based around keywords. Businesses that use AdWords can create advertising keywords related to the terms internet users would use Google to search for. The keyword, when searched for, ‘triggers an advertisement to be shown, with AdWords appearing under the heading ‘Sponsored Links’ found on the right-hand side or above Google search results. If a link to an AdWord is clicked on, Google users are then directed to that website’.⁹
- 2.10 AdWords are used extensively by Australian political parties as advertising tools for political campaigning.
- 2.11 The VEC used Google Adwords at the 2010 Victorian state election and the 2012 Victorian local government elections. As noted in the VEC’s submission:

In each case, search terms were selected that indicated a user was after general electoral information, rather than political information. Furthermore, the advertisements returned based on these searches were engineered to respond to specific topics of interest such as enrolment, nomination and voting locations.¹⁰

Background to inquiry

- 2.12 In 2012 the Committee self-referenced an inquiry into the future of Victoria’s electoral administration. This inquiry was the first of its kind by a Victorian parliamentary committee, examining all aspects of Victoria’s electoral administration for areas of improvement and ways to enhance electoral participation in Victorian elections.
- 2.13 As part of the inquiry the Committee anticipated evidence from a range of stakeholders in the electoral community about the impact of social media on Victorian elections and Victoria’s electoral administration. The Committee’s reasoning for this was based on growing interest in social media as a tool for electoral engagement, particularly focusing on how Australia’s electoral commissions are using new technologies to encourage electoral participation.

⁷ Victorian Electoral Commission, *Submission No.8*, p.6.

⁸ Webopedia, ‘What is AdWords (Google AdWords)’, Quinstreet Enterprise, August 2014. Retrieved 11 August 2014 from <http://www.webopedia.com/TERM/A/adwords.html>.

⁹ Webopedia, ‘What is AdWords (Google AdWords)’, Quinstreet Enterprise, August 2014. Retrieved 11 August 2014 from <http://www.webopedia.com/TERM/A/adwords.html>.

¹⁰ Victorian Electoral Commission, *Submission No.8*, p.8.

To a lesser extent, the Committee also anticipated evidence about how social media is used for political campaigning. Despite this, to the Committee's surprise, inquiry participants chose to address other issues in their evidence, and the Committee received little, if any, direct information about social media.

2.14 Reflecting on the inquiry's key findings after the final report was tabled in March 2014, the Committee noted that several factors may have contributed to the lack of evidence about issues related to social media and Victoria's electoral administration. Some were:

- Timing: The Committee's inquiry was the fourth occasion in the 57th Parliament when the Committee sought public participation in an inquiry.
- Technical nature of social media: The Committee recognises that, while social media is used by many Australians on a daily basis to communicate with family, friends and colleagues, many people have little interest in how social media is regulated, and perhaps even less in the relationship between social media and elections. A lack of prescription in the Committee's terms of reference for its inquiry into the future of Victoria's electoral administration may have contributed to confusion amongst some inquiry participants about what matters the Committee was specifically interested in.
- Focus on electoral reform: The Committee also concluded that the previous inquiry's stated focus on electoral reform, including early voting at Victorian elections and potential changes to Victoria's voting system, may have drawn the bulk of critical attention from inquiry participants.

2.15 Accordingly, the Committee concluded there was a need to revisit how social media is impacting on Victorian elections and Victoria's electoral administration, with more prescriptive terms of reference and a specific set of guidelines around issues which the Committee is interested in. Doing so would be consistent with the Committee's stated commitment, through its previous inquiry, to examine all aspects of Victoria's electoral administration. With only a few months remaining in the 57th Parliament, this inquiry seemed reasonable and timely.

Chapter Three: Key issues in the evidence

This chapter considers and summarises key issues in the evidence received by the Committee corresponding to the three specific issues noted in the terms of references: the authorisation of electoral content on Twitter, Facebook and weblogs; the use of Google AdWords for online electoral advertising, and; how Victoria's electoral authorities use social media to encourage engagement with electoral processes.

Key issue one: Authorisation of electoral content on social media, focusing on Twitter, Facebook and weblogs

Victorian legislation

- 3.1 In Victoria all electoral content must be authorised at all times, not just during an election cycle or campaign. The *Electoral Act 2002 (Vic)* refers to electoral content as 'electoral matter'. According to the VEC's submission 'electoral matter is generally defined as matter which is intended or likely to affect voting in an election. This can include (but is not limited to) express or implicit reference to or comment upon the election; the Government or Opposition; members of Parliament; a political party or candidate; or an election-related issue'.¹¹
- 3.2 The *Electoral Act 2002 (Vic)* provides for several offences related to electoral matters. Section 84(1) makes it an offence to publish material that is considered to be misleading in relation to the casting of a vote by an elector.¹² Section 84(2) makes it an offence to publish material that is likely to induce an elector to mark their vote otherwise than in accordance with the direction of the ballot paper, or in other words, to vote informally.¹³ In addition, Sections 83, 85 and 86 make it an offence to not properly authorise electoral matter.
- 3.3 In addition, 'electoral matter' published in Victoria must also comply with Commonwealth legislation. As noted by the VEC's submission, the publication

¹¹ Victorian Electoral Commission, *Submission No.8*, p.3.

¹² *Electoral Act 2002 (Vic)* s84(1).

¹³ *Electoral Act 2002 (Vic)* s84(2).

of electoral matter must comply with Commonwealth defamation law and legislation making it an offence to use the internet to harass or offend (*Commonwealth Criminal Code Act 1995*) (Cwth).¹⁴

Material to be authorised

- 3.4 In Victoria authorisation requirements apply to all forms of electoral advertisements, handbills, pamphlets or notices that are printed, published or distributed.
- 3.5 In 2010 the *Electoral Act 2002* (Vic) was amended to extend the definition of 'publish' to materials published on the internet. This means that effectively, all electoral matter, including electoral content on social media and weblogs, must be authorised.¹⁵
- 3.6 The Committee also notes that there are often discrepancies between the print and online versions of newspapers when newspapers have issued a correction regarding an incorrect report. It is the Committee's view that the online versions of some newspapers do not record the redaction.

Authorisation of electoral matter in other Australian jurisdictions

- 3.7 All Australian jurisdictions require the authorisation of electoral matter. Queensland, Tasmania, the Northern Territory and the Australian Capital Territory (ACT) have similar authorisation requirements to Victoria, with the exception that the provisions only apply during the election period. NSW also has similar regulations to Victoria through amendments to the *Local Government Act 1993* (NSW) regarding paid internet advertising.
- 3.8 Some jurisdictions have removed the requirement for electoral matter published on the internet to be authorised if it formed part of general commentary on a weblog, survey or internet forum. One example of such a forum is ABC Election Analyst Antony Green's weblog, which attracts a high level of public comment and posts. In Western Australia, the *Electoral Act 1907* (WA) was amended in 2006 to remove the requirement for electoral matter published on the internet to be authorised if it formed part of a general commentary on an internet website.¹⁶ In South Australia, the *Electoral Act 1985* (SA) and the *Electoral Regulations 2009* (SA) were amended in 2010 so that authorisation is not required for material in a public forum within a journal published in electronic form on the internet. Public forum in this context includes a weblog, survey or other form in which members of the public may post comments.
- 3.9 For Commonwealth elections, the *Electoral Act 1918* (Cwth) requires authorisation for paid electoral advertisements on the internet but not for electoral matter on the internet that forms part of a general commentary on a website.

¹⁴ Victorian Electoral Commission, *Submission No.8*, p.4.

¹⁵ Victorian Electoral Commission, *Submission No.8*, p.4.

¹⁶ Victorian Electoral Commission, *Submission No.8*, p.4.

- 3.10 The ACT is also currently considering easing authorisation requirements for electoral matter.

Issues arising from submissions and public hearings

- 3.11 Relevance of current Victorian legislation: One of the key issues discussed during the inquiry was the relevance of current Victorian legislation regarding the authorisation of electoral matter. Broadly speaking, inquiry participants supported the provisions relating to the authorisation of 'traditional' electoral matter, such as pamphlets and newspaper advertisements, seeing them as appropriate. However, there was some concern that current legislation may not have kept pace with changes in internet technology, or the increasing use of social media as a communication tool and platform for political and electoral advertisements.
- 3.12 The VEC's submission discussed the context and background to the amendments to the *Electoral Act 2002 (Vic)* expanding the definition of 'publish' to include electoral matter published on the internet. At the time the legislation was drafted, the VEC suggests, it is possible that the internet was thought of as a medium consisting predominantly of websites and forums and that social media was only used to a limited extent in Victoria for the purposes of electoral advertising. Because of this, the VEC notes the '[drafting]...did not contemplate some of the issues associated with social media and its almost constant evolution'.¹⁷
- 3.13 The Victorian Local Governance Association (VLGA) also discussed the implications of increasing use of social media for Victorian local government elections. The VLGA's submission considered how local government bodies have readily adopted social media as a tool to improve municipal governance and communication with ratepayers.¹⁸ The submission also summarised the results of a survey completed by the VLGA at the time of the 2012 Victorian local government elections, and assessed data about how candidates used social media to communicate with electors.¹⁹
- 3.14 Further to this, the VEC's evidence highlighted a pertinent example of how the development of certain social media technologies has outpaced Victorian legislation regarding the authorisation of electoral matter. As noted in Chapter Two, one of the distinct features of Twitter is that tweets are limited to 140 characters or less. The character limit of Twitter therefore makes it difficult to include authorisation messages in the actual body of the message. As a solution, the VEC proposed 'including a link to an authorised website in the tweet itself'.²⁰ Broadly, the Committee notes this would require clarification of authorisation requirements where word limit restrictions apply generally.

¹⁷ Victorian Electoral Commission, *Submission No.8*, p.8.

¹⁸ Victorian Local Governance Association, *Submission No.5*, p.p.2-4.

¹⁹ Victorian Local Governance Association, *Submission No.5*, p.p.2-4.

²⁰ Victorian Electoral Commission, *Submission No.8*, p.9.

3.15 Incidence of breaches of Victorian legislation regarding the authorisation of electoral matter: The incidence of breaches of the authorisation provisions in the *Electoral Act 2002* (VIC) has been low. As noted by the VEC, until the 2010 Victorian state election there had been no complaints about social media/lack of authorisation on social media, most 'likely due to the fact that most of the current platforms were only created in the latter half of the previous decade'.²¹

3.16 The VEC's submission summarised the complaints received by the VEC regarding the authorisation of electoral matter, for the following Victorian elections:

- 2006 Victorian state election: No complaints were received about social media. Six complaints regarding unauthorised websites.
- 2008 Victorian local government elections: Four complaints about social media were received, but they were in relation to defamatory/offensive comments on blogs rather than a lack of authorisation (one complaint regarding an unauthorised website).
- 2010 Victorian state election: Two complaints were received about the one issue at the 2010 Victorian state election. Four unauthorised (anonymous) Google advertisements (AdWords) appeared with potentially defamatory comments about an independent candidate.
- 2012 Victorian local government elections: Five complaints were received about unauthorised Twitter and Facebook comments, three complaints about an unauthorised website and four relating to misleading/defamatory comments on a website.²²

3.17 Discussion about the authorisation of electoral matter on social media in Victoria: At the public hearings on 18 June 2014, the Committee and some inquiry participants considered how electoral matter is authorised on social media in Victoria, and whether the current level of regulation was appropriate.

3.18 Some inquiry participants suggested that Victoria was sufficiently regulated. The VEC, represented at the public hearings by Mr Warwick Gately, Victorian Electoral Commissioner, and Ms Liz Williams, Deputy Electoral Commissioner, viewed current levels of regulation as appropriate and proportionate to the number of offences received by the VEC:

Mr GATELY— I guess it gets into the whole issue now of regulation. We have heard other commentators on that as well and other submissions. Is regulation necessary? One of the principles under which we operate is the guiding principle to avoid anonymous, mischievous conduct. We have had legislation for that Australia-wide. It still has not prevented anonymous letterbox drops; it is not necessarily preventing use of social media in that context as well.

²¹ Victorian Electoral Commission, *Submission No.8*, p.p.5-6.

²² Victorian Electoral Commission, *Submission No.8*, p.p.5-6.

But it comes back to that balance between regulating — overregulating — political communication and allowing the elector to make their own determination as to what is truthful, what is not truthful and what is the issue or the matter. You asked me whether it is necessary to regulate. I would say, in accordance with my opening statement, that I think we are sufficiently regulated at this point in time. We have not seen an explosion in this that I would be cautious about regulating — overregulating — and cautious about who becomes the regulator.²³

3.19 Mr Gately also suggested the Committee consider whether it was appropriate for the VEC to have increased responsibilities to investigate complaints regarding the authorisation of electoral matter on social media. Mr Gately said the VEC is primarily a ‘service provision office’ and lacks the resources to pursue cases or breaches of legislation in the same way that other agencies, such as the Independent Broad-based Anti-Corruption Commission, might do.²⁴

3.20 On the theme of regulation, Mr Gately reiterated a proposal from the VEC’s submission that the Committee consider recommending the Victorian Government remove regulations on ‘private’ political commentary on some social media platforms, as in Western Australia and South Australia. Mr Gately noted:

I am suggesting that you could consider some changes to the Electoral Act, particularly, say, in relation to Twitter. Liz [Williams, Deputy Electoral Commissioner] mentioned where there might be a link to another site you go to where the authorising officer resides. I think the previous team spoke about putting a name on it as well. I suggest perhaps giving some wording, as other states have done, in relation to that whole idea of a general commentary — for example, blog matter — that that does not need to be authorised because it is fast moving, it is flowing.²⁵

3.21 The VEC’s submission suggests that Section 86(2) of the *Electoral Act 2002* (VIC), which exempts newspapers from authorisation requirements where they publish comments made by speakers at a meeting, could be extended to cover comments posted in an online forum or comments posted on online news articles.²⁶

3.22 Other inquiry participants favoured further clarification of the authorisation of electoral matter on social media in Victoria. The VLGA’s submission called for amendments to the *Electoral Act 2002* (VIC) to include reference to social media tools and platforms. According to the VLGA’s submission, candidates are unclear about the regulations pertaining to the authorisation of social media because social media is not explicitly mentioned in either the *Electoral Act 2002* (VIC) or the *Local Government Act 1989* (VIC). Greater clarity, suggest the VLGA, around what is required by legislation may reduce non-compliance.²⁷

²³ Warwick Gately, Victorian Electoral Commissioner, *Transcript of Evidence*, Public Hearing, Melbourne, 18 June 2014, p.34.

²⁴ Warwick Gately, Victorian Electoral Commissioner, *Transcript of Evidence*, Public Hearing, Melbourne, 18 June 2014, p.34.

²⁵ Warwick Gately, Victorian Electoral Commissioner, *Transcript of Evidence*, Public Hearing, Melbourne, 18 June 2014, p.35.

²⁶ Victorian Electoral Commission, *Submission No.8*, p.9.

²⁷ Victorian Local Governance Association, *Submission No.5*, p.1.

- 3.23 The VLGA also called for the VEC to develop manuals and reference materials for candidates for local government and state elections on how to use social media.²⁸
- 3.24 The Committee also received a submission from Joel Silver, on behalf of the Law Institute of Victoria's Young Lawyers Section, Law Reform Committee. Mr Silver's submission called for a cautious approach to regulation, particularly in relation to the delineation between 'private' and 'public' communication:

Our view is that, if further regulation is perceived as necessary, it should be on a "legacy" basis, that is, for communications analogous to those already regulated rather than to encompass more varieties. That a view is expressed publicly (for example, because a person does not set their social media account to "private") does not mean it is a political communication worthy of regulation. What are now public communications have previously been expressed in private forums, such as over the dinner table, or at the local pub. Such private editorialising should remain unregulated.²⁹

Use of Google AdWords for online electoral advertising

- 3.25 As noted in Chapter Two, Google AdWords is an advertising platform by Google, an internet search engine company, for businesses wanting to display advertisements on Google and its advertising network. The AdWords program allows businesses to set a budget for advertising and only pay when people click on particular advertisements.
- 3.26 In Victoria, all online political and electoral advertising, including Google AdWords, is covered by the provisions in the *Electoral Act 2002* (VIC) relating to misleading and deceptive matter. Section 84 provides that a person must not print, publish or distribute any matter or thing that is likely to mislead or deceive an elector in relation to the casting of their vote. Section 86 provides that the author of an electoral advertisement must be identified.

2010 Victorian state election

- 3.27 The Committee has followed the use of Google Adwords as a form of online electoral advertising in Victoria since late 2010, following a complaint to the VEC about an unauthorised electoral advertisement published using Google AdWords during the 2010 Victorian state election period.
- 3.28 As noted in the VEC's report to Parliament on the 2010 Victorian state election, the Google AdWords in question purported to be advertisements for the Victorian Greens and contained a link to the Victorian Greens' website. In reality the advertisement mentioned Cr Serge Thomann, a candidate for Albert Park District in the 2010 Victorian state election. According to the VEC, the advertisements were withdrawn before Google Australia received a complaint

²⁸ Victorian Local Governance Association, *Submission No.5*, p.p.2-5.

²⁹ Joel Silver, Co-Chair, Law Institute of Victoria's Young Lawyers Section, Law Reform Committee, *Submission No.6*, p.3.

about them. Subsequently, the VEC sought the assistance of Google Australia to provide information regarding those responsible for placing the advertisements.³⁰

3.29 The VEC's report to Parliament noted:

After investigation, Google Australia advised that although it held the information requested in accordance with 'commercial confidentiality practices', since Google Adwords was not conducted by Google Australia, the VEC should direct its request to Google Inc., of California, through an email to its Legal Investigations Support Team. This process appears largely automated. The Victorian Government Solicitor's Office (VGSO), acting for the VEC, received a response advising that 'valid legal process' was required for Google Inc. to make such disclosure, and indicating that it may accept 'an order signed by a judge or magistrate' served by registered mail.³¹

Issues arising from submissions and public hearings

3.30 Anonymous online electoral advertisements and enforcement: Much of the evidence received by the Committee about Google AdWords focused on the complexities of enforcing anonymous online electoral advertising.

3.31 Several inquiry participants discussed whether the VEC was sufficiently empowered under Victorian legislation to investigate complaints regarding anonymous online electoral advertising. In the case mentioned, Google Inc. worked with the VEC to investigate the matter up to a point, before requesting a legal order from a Victorian court before disclosing the identity of the party who placed the Google AdWord advertisement. Some inquiry participants viewed this response in 'black and white' terms; according to a submission from Peter Holland, Cr Serge Thomann's campaign manager for the 2010 Victorian state election campaign, multinational companies such as Google should comply with Victorian electoral legislation whenever a breach is reported to the VEC.³² Relatedly, Mr Holland's submission also suggested that in the absence of effective regulation, the Committee should consider recommending making it an offence for Victorians to place online electoral advertisements with Google.³³

3.32 In contrast, other inquiry participants offered a more nuanced position. The VEC's submission discussed some of the challenges associated with effective enforcement, including the administrative and legal issues associated with working with companies, such as Google, who are incorporated outside Australia:

...internet service providers may refuse to provide details of account holders /registrants to electoral administrators, and the challenges of effective enforcement of activities that take place outside Victoria may come into play. Where malicious

³⁰ Victorian Electoral Commission, *Report to Parliament on the Niddrie District by-election held on 24 March 2012*, Victorian Electoral Commission, Melbourne, Melbourne, April 2012, p.21.

³¹ Victorian Electoral Commission, *Report to Parliament on the Niddrie District by-election held on 24 March 2012*, Victorian Electoral Commission, Melbourne, Melbourne, April 2012, p.21.

³² Peter Holland, *Submission No.4*, p.1.

³³ Peter Holland, *Submission No.4*, p.6.

breaches occur and the author can't be identified, candidates/parties/complainants may consider if the malicious action had an impact on the result of the election, and if so to petition the Court of Disputed Returns to consider the matter.

Lastly, attempts to investigate breaches by anonymous identities, particularly where the internet service provider/social networking services are headquartered outside of Victoria, can be time consuming and may extend well beyond the election period. Options to address the challenge of timely enforcement are not clear. This is further complicated by the fact that electoral administrators have no power to compel the provision of information regarding the identity of a person publishing electoral matter online. Public interest considerations quickly come into play where investigations become elongated and involve cross jurisdictional legal processes.³⁴

How Victoria's electoral authorities use social media for electoral engagement

- 3.33 There is a growing interest in how Australia's electoral commissions use social media for electoral engagement. As the VEC notes in its submission to the inquiry, Australia's electoral commissions have typically been slow to adopt social media as a communication platform. The 'primary reason for this is the absolute requirement to remain impartial as administrators of an election. It was held that social media comment might be difficult to manage and that electoral commission Facebook pages and Twitter feeds may become targets for inappropriate comments or activity that could damage the impartiality of the commission'.³⁵
- 3.34 In recent years there has also been a growing awareness of the impact of social media on citizen engagement. In 2010 the Australian Government publicly committed to increasing its attempts to engage with citizens through social media. In line with this policy, the Australian Electoral Commissioner's Advisory Board on Electoral Research (CABER) 'recommended that the AEC investigate the potential for new forms of social media to contribute to achievement of the objectives of the AEC, particularly in relation to engaging young people'.³⁶ To this end, the AEC commissioned a study from the University of Technology, Sydney, 'exploring how election management bodies (EMBs) in Australia and internationally, as well as how other relevant government bodies and agencies are using social media to engage citizens as part of achieving their goals'.³⁷ This report was mentioned by several inquiry participants and is seen as a benchmark in Australia for research relating to social media and EMBs.

³⁴ Victorian Electoral Commission, *Submission No.8*, p.p.9-10.

³⁵ Victorian Electoral Commission, *Submission No.8*, p.p.7-8.

³⁶ Australian Electoral Commission, 'E-lectoral Engagement: Maintaining and Enhancing Democratic Participation Through Social Media', University of Technology Sydney, Sydney, 2012, p.4. Retrieved 11 August 2014 from http://www.aec.gov.au/about_aec/research/files/social-media.pdf.

³⁷ Australian Electoral Commission, 'E-lectoral Engagement: Maintaining and Enhancing Democratic Participation Through Social Media', University of Technology Sydney, Sydney, 2012, p.4. Retrieved 11 August 2014 from http://www.aec.gov.au/about_aec/research/files/social-media.pdf.

How the VEC uses social media for electoral engagement

- 3.35 The Committee recognises the VEC's commitment to promoting electoral awareness. The VEC is well-regarded in Australia and internationally for its efforts to engage all Victorians in the electoral process. The Committee thoroughly supports initiatives such as the VEC's *Passport to Democracy* program.
- 3.36 In Victoria, the VEC has had an active presence on Facebook since July 2010 and Twitter since June 2012.³⁸ The VEC's 'ongoing strategy has been to leave [each] channel dormant outside major electoral events such as Victorian state elections, Victorian local government elections and Victorian state by-elections'.³⁹ During major events, a schedule of engaging posts aligned with the VEC's communication activities is drafted and approved. Nominated VEC personnel 'are authorised to respond to questions and engage with those who post. The VEC monitors activity on each platform for inappropriate content'.⁴⁰
- 3.37 The VEC is a relative newcomer to Google Adwords. As noted by the VEC's submission:

The two most recent occasions [were] the 2010 Victorian state election and the 2012 [Victorian] local council elections. In each case, search terms were selected that indicated a user was after general electoral information, rather than political information. Furthermore, the advertisements returned based on these searches were engineered to respond to specific topics of interest such as enrolment, nomination and voting locations.⁴¹

Issues arising from submissions and public hearings

- 3.38 All inquiry participants supported the VEC's efforts to use social media for electoral engagement. More specifically, some inquiry participants requested the Committee consider how the VEC could improve how it uses social media to engage with Victorian communities who face barriers to electoral participation.
- 3.39 Vision Australia's submission requested the VEC continue to ensure that its communication technologies are accessible for people who are blind or have low vision.⁴²
- 3.40 The Ethnic Communities' Council of Victoria's (ECCV's) submission discussed strategies to strengthen how the VEC raises awareness of electoral processes among culturally and linguistically diverse (CALD) communities in Victoria. In relation to social media, the ECCV recommend the VEC establish contact with:

³⁸ Victorian Electoral Commission, *Submission No.8*, p.8.

³⁹ Victorian Electoral Commission, *Submission No.8*, p.8.

⁴⁰ Victorian Electoral Commission, *Submission No.8*, p.8.

⁴¹ Victorian Electoral Commission, *Submission No.8*, p.8.

⁴² Vision Australia, *Submission No.2*, p.1.

- Ethno-centred organisations and community groups active on social media;
- Prominent people from CALD backgrounds who are active in their respective communities and prolific users of social networks; and
- Organisations that specialise in electoral matters and democracy monitoring groups.⁴³

Committee's preliminary comments

3.41 As noted in the Introduction, the Committee issued this discussion paper to solicit further information from inquiry participants about the impact of social media on Victorian elections and Victorian electoral administration. The Committee's decision to do so was based on the positive reception to its first discussion paper in the 57th Parliament, and the lack of specific evidence about social media received during its previous inquiry.

3.42 In general, the Committee supports the VEC's conclusion that the impact of social media on the Victorian electoral process to date has been 'negligible'. This conclusion is logical given the relatively low number of reported breaches of the *Electoral Act 2002 (Vic)* in relation to unauthorised electoral content on social media.

3.43 The Committee also supports the VEC's comments about how Victorian legislation will always struggle to keep pace with technology and how social media is used for political and electoral purposes. Placing firm guidelines around a constantly evolving communication tool may be impractical. In this context the Committee remains undecided as to whether the evidence received during the inquiry points to a need for less, or more, prescription regarding the authorisation of electoral matter on social media. In the absence of direct advice from the VEC, the Committee favours maintaining the existing provisions in the *Electoral Act 2002 (Vic)*, and the VEC's current enforcement initiatives.

3.44 Notwithstanding these comments, the Committee is conscious of the rapid pace of change in internet technology. It is likely that social media will play an increasingly important role in Victoria's election campaigns, and feature prominently in efforts by the VEC to promote elections. Accordingly the Committee will continue to monitor the issues raised in this discussion paper, focusing on:

- How social media is used in the lead up to and during the 2014 Victorian state election;

⁴³ Ethnic Communities' Council of Victoria, *Submission No.7*, p.p.4-5.

- Whether the VEC requires additional resources and responsibilities to pursue breaches of the *Electoral Act 2002* (Vic) in relation to unauthorised electoral content on social media and online advertising spaces like Google AdWords, particularly if the number of complaints received by the VEC increases markedly following the 2014 Victorian state election. This issue is related to the Committee's previous deliberations, as part of its inquiry into the future of Victoria's electoral administration, about the VEC's roles and responsibilities in Victoria's electoral administration; and
- Should the Victorian Government consider amending the *Electoral Act 2002* (Vic) to include references to specific social media technologies, as suggested by the VLGA? Could too much prescription – i.e, by specifically naming particular social media platforms like Facebook and Twitter in Victorian legislation – limit the effectiveness of regulations preventing the publication of unauthorised electoral matter on social media? What impact would removing authorisation requirements for private comments on social media and related internet forums, such as blogs, have on the Victorian electoral process?
- In addition, the Committee encourages the VEC to conduct a survey of how political candidates use social media during the 2014 Victorian state election. The Committee believes the results of this survey will provide additional insights into the use of social media for electoral purposes in Victoria.

Legislation

Electoral Act 2002 (Vic)

Local Government Act 1989 (Vic)

Electoral Act 1918 (Cwth)

Parliamentary Electorates and Elections Act 1912 (NSW)

Local Government Act 1993 (NSW)

Electoral Act 1985 (SA)

Electoral Regulations 2009 (SA)

Electoral Act 1907 (WA)

Appendix One: List of submissions

No	Organisation
1	Brian Woods
2	Vision Australia
3	Geoff Gledhill
4	Peter Holland
5	Victorian Local Governance Association
6	Joel Silver Law Institute of Victoria Young Lawyers Section Law Reform Committee
7	Ethnic Communities' Council of Victoria
8	Victorian Electoral Commission
9	Emily van der Nagel and Dr Scott Ewing Swinburne Institute for Social Research

Appendix Two: Public hearings

Public Hearings, 18 June 2014
55 St Andrews Place, East Melbourne

No	Witnesses	Organisation
1	<p>Serge Thomann – Councillor, City of Port Phillip</p> <p>Peter Holland – Serge Thomann's campaign manager - 2010 Victorian state election</p>	
2	<p>Me'ad Assan – Policy Officer</p> <p>Sylvia Daravong – Policy Officer</p>	Ethnic Communities' Council of Victoria
3	<p>Jacob Clifton – Manager, Government Relations and Policy Advocacy and Engagement</p> <p>Marcus Bleechmore – Government Relations Advisor</p> <p>Nick Allan – Adaptive Technology Consultant, Equipment Solutions</p>	Vision Australia
4	<p>Joel Silver – Co-Chair</p> <p>Albert Yu – Co-Chair</p> <p>Jing Zhu</p> <p>Elle Bulmer</p> <p>Alex Foster</p>	Law Institute of Victoria – Young Lawyers Section, Law Reform Committee
5	<p>Warwick Gately – Electoral Commissioner</p> <p>Liz Williams – Deputy Electoral Commissioner</p> <p>Sue Lang – Manager, Communication, Education and Research</p>	Victorian Electoral Commission

Appendix Three: Excerpt from the VEC's 'Candidate's Handbook', Legislative Assembly, 2014 Victorian state election

7. ELECTORAL ADVERTISING

Reference - *Electoral Act 2002* - sections 83 to 86.

The following provisions operate all the time.

Electoral Material and Electoral Matter

Electoral material is an electoral advertisement, handbill, pamphlet, or notice that contains electoral matter. [EA s. 3]

Electoral matter means matter which is intended or likely to affect voting in an election.

Without limiting the generality of the definition of electoral matter, matter is taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- the election;
- the Government;
- the Opposition;
- a previous Government or a previous Opposition, of the State, Commonwealth, or any other State or Territory;
- a member or former member of the Parliament of the State or of the Commonwealth, or any other State or Territory;
- a political party, a branch or division of a political party, or a candidate in the election; or
- an issue submitted to, or otherwise before the electors in connection with the election. [EA s. 4]

Electoral Material must be Authorised

Electoral material may not be printed, published, or distributed unless:

- the name and street address (not a post office box) of the person who authorised the electoral material appears at its end; and
- in the case of electoral material that is printed or published otherwise than in a newspaper, the name and place of business of the printer or publisher appears at its end. [EA s. 83]

Note that 'to publish' includes to publish on the internet.

PENALTY: 10 penalty units for an individual and 50 penalty units for a body corporate

A person who makes copies for distribution of electoral material that is published on the internet is deemed to be the printer of those copies. [EA s. 83(2)]

Authorisation is not required for a car sticker, an item of clothing, lapel button, lapel badge, fridge magnet, pen, pencil, balloon, or a letter or card which bears the name and address of the sender, and does not include a representation of a ballot paper for an election. [EA s. 83(3)]

Candidates using social media for campaign purposes must ensure that authorisation details appear on the material or link directly to the required authorisation details.

Appendix Three: Continued

Headings of Electoral Advertisements

Newspaper proprietors must ensure that all paid paragraphs or articles containing electoral matter that appear in their newspapers are headed by the word 'Advertisement'. [EA s. 85]

PENALTY: Five penalty units for an individual and 25 penalty units for a body corporate

Local Laws

Candidates should check with their local council to see if there are any local laws that may apply to the distribution and display of advertising material within the municipality and with VicRoads for provisions covering the display of material on highways.

The following provisions operate only during an election period, that is, in the period between the issue of the writ and 6.00 pm on election day.

Identification of Authors

During an election period, all articles, reports, or letters containing electoral matter which are printed, published, or distributed in a newspaper, circular, or pamphlet must include the name and address of the author at the end ('Address' does not include a post office box number).

However, letters in a newspaper simply have to include the author's name and the suburb or locality in which the author's address is located.

The identification requirement does not apply to a newspaper leading article or an article that is solely a report of a meeting. [EA s. 86]

PENALTY: Five penalty units for an individual and 25 penalty units for a body corporate

Misleading or Deceptive Material

During an election period it is illegal to print, publish, distribute, permit, or authorise:

- anything that is likely to mislead or deceive an elector in relation to the casting of their vote; or
- electoral material containing a representation of a ballot paper that is likely to induce an elector to vote otherwise than in accordance with the directions on the ballot paper. [EA s. 84 (1) and (2)]

PENALTY: 60 penalty units or six months imprisonment for an individual and 300 penalty units for a body corporate

Refer to Chapter 22 'Complaints' for more information concerning misleading or deceptive material.

Matter Broadcast or Televised

The broadcast on radio or television of all political and election matter (including election advertisements), must comply with the requirements set out in Schedule 2 of the *Broadcasting Services Act 1992* (Commonwealth).

The VEC is not in a position to offer any advice regarding the operation of Commonwealth legislation. Any enquiries concerning the operation of the above Commonwealth Act should be directed to:

Australian Communications and Media Authority
PO Box 13112 Law Courts, Melbourne Vic 8010
Tel: (03) 9963 6800
Fax: (03) 9963 6899

Electoral Matters Committee Reports Presented to Parliament

No	Title	Date Tabled
1	Inquiry into the conduct of the 2006 Victorian state election and matters related thereto	June 2008
2	Report on international investigations into political donations and disclosure and voter participation and informal voting	December 2008
3	Inquiry into political donations and disclosure	April 2009
4	Inquiry into voter participation and informal voting	July 2009
5	Inquiry into the provisions of the <i>Electoral Act 2002</i> (Vic) relating to misleading or deceptive political advertising	February 2010
6	Inquiry into the functions and administration of voting centres	June 2010
7	Inquiry into the 2010 Victorian state election and matters related thereto	May 2012
8	Inquiry into the future of Victoria's electoral administration	March 2014