

ELECTORAL MATTERS COMMITTEE

Inquiry into the Conduct of the 2022 Victorian State Election

Melbourne – Monday 27 March 2023

MEMBERS

Will Fowles – Chair

Evan Mulholland – Deputy Chair

Brad Battin

David Ettershank

Sam Hibbins

Emma Kealy

Nathan Lambert

Lee Tarlamis

Emma Vulin

WITNESSES

Mr Warwick Gately, Electoral Commissioner,

Mr Ben Sutherland, Director, Elections, and

Ms Sue Lang, Director, Communication and Engagement, Victorian Electoral Commission.

The CHAIR: I declare open the public hearings for the Electoral Matters Committee's Inquiry into the Conduct of the 2022 Victorian State Election. Please turn any mobile telephones 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 respects to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings.

My name is Will Fowles. I am the Chair and the Member for Ringwood. The other members of the committee today are Evan Mulholland, my Deputy Chair and Member for Northern Metro; Brad Battin, the Member for Berwick; David Ettershank, on the screen there, Member for Western Metropolitan; Sam Hibbins, the Member for Prahran; Emma Kealy, to my left, the Member for Lowan; Nathan Lambert the Member for Preston; Lee Tarlamis, Member for South-Eastern Metropolitan; and Emma Vulin – we have two Emmas, which is confusing – up there, the Member for Pakenham.

I welcome Commissioner Warwick Gately; Sue Lang, Director, Communication and Engagement at the VEC; and Ben Sutherland, Director, Elections.

All evidence taken by this committee is protected by parliamentary privilege; therefore you are protected against any action for what you say here today. But if you go outside and repeat any of those things, including on social media, those comments may not be protected by this privilege.

The committee does not require that witnesses 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 our Hansard team 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 is available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

To begin, Commissioner, I invite you to perhaps give an opening statement to the committee, and we will go with questions from there.

Warwick GATELY: Chair, members, good morning, and thank you for the introduction. As you state, I am joined by Sue Lang, Director, Communication and Engagement; and Ben Sutherland, Director, Elections.

As we start, I wish to advise that notice to appear before the committee today was quite short, and it is many months before such an appearance occurred after the 2018 state election. Also, the VEC is still completing its analysis and review of the election, with this work to be reflected in an EMC submission in about October and the report to Parliament, which is due by mid-November. This necessarily means that we may not be able to answer all your questions at this point in time and that a return visit by the VEC will likely be necessary. I also ask the committee to note that I stepped aside from the commissioner role on 18 November – one week before election Saturday – and did not return to the VEC until 18 January. The deputy electoral commissioner Dana Fleming assumed the role of acting electoral commissioner during this period, and this was a necessary action given critical health matters that I faced. This means that my knowledge of election day and counting activities thereafter is limited.

But now on more important matters, the election itself, and I offer as an observer and the leading program manager, if you like, before the election that the election was very well conducted by the VEC and its many staff. Naturally every state election is bigger than the previous. This election: 4.4 million electors on the roll.

This was some 255,000 more than we had in 2018, and since the *Electoral Act* came into play in 2002 it is about 1.2 million electors.

There were 1194 candidates. This was 307 more than in 2018, and on average there were eight candidates per district. The lowest number of candidates in one district was six and the maximum number was 15. We were required to do preference distributions in 77 districts, compared to 48 districts in 2018, and that adds time to the counting process as well.

Twenty-three registered parties contested the election. Early voting attracted 1.87 million electors. This was nearly half a million more than in 2018, with just under 61 per cent of electors voting before election day, and that includes in-person early voting, mobile voting, postal voting, telephone-assisted voting and the interstate and overseas component. And there were 481,000 postal votes counted in the process. 3200 votes came from interstate or overseas, and that was from seven venues interstate and 26 drop-off points that we operated around the globe. Telephone-assisted voting accounted for 5500 votes versus 1100 in 2018. We had 1764 voting centres and 155 early voting centres, and that number had increased from 103 in 2018 because of the demand on early voting, and that demand is still there. We had about 18,500 independent electoral roles – I mean casual staff roles – so just under about 20,000 people were employed for the election period.

Drive-through voting – we can talk about that if you choose. That took about 519 votes.

Turnout – there has been some media on turnout. That was just over 88 per cent and down from 90 per cent in 2018, and the committee might want to give that consideration in their inquiry. Why is that occurring? But I will add that on the electoral roll we have 98 per cent of the estimated eligible Victorian population on that roll, given direct enrolment and our programs and our work with the AEC. So we have got a very, very good roll in terms of integrity and numbers, but turnout is declining. Informality was down marginally at 5.5 per cent.

Other highlights from my perspective – Legislative Council results were counted on 14 December, which was in accordance with our established schedule. The incoming government was sworn in 10 days after election day. I also observed a very effective call centre operation and a well-considered advertising campaign, and Sue is well able to talk about that. Our systems and our applications performed to a high standard and the investment that we have made in those systems over many years, complying with ACSC and ASD essentials –

The CHAIR: Sorry, could I ask you to expand the acronyms, please.

Warwick GATELY: Yes. The Australian Cyber Security Centre and the Australian Signals Directorate Essential 8 requirements. So our work in that regard has paid off, and this must continue for the foreseeable future. I acknowledge here the federal government consideration that electoral infrastructure is national critical infrastructure and that investment must continue, and it is costly. I have mentioned there the state of the roll – high participation, high integrity. To some extent we had the federal election last year, which assisted that as well. Our Legislative Assembly vote counting on election night was effective, and 50 per cent of the vote that we held had been counted on election night.

Support to early voting is there – I mentioned that before – across our 155 venues. I also note the VEC's response to flood-affected electors as well through the telephone-assisted voting process was very effective also. Also, Legislative Council vote counting, and particularly the below-the-line data entry – those numbers continue to go up election by election. We of course did declare all districts and the upper house on schedule, and the writs were returned on schedule.

Chair, that is as much as I will say at the moment. I am certainly very happy to take questions, and I may have Ben or Sue address those as well.

The CHAIR: Terrific. Thank you, Commissioner, and thank you for that opening statement. If I could begin by asking you: you said that it was a very well acquitted election by the electoral commission. Was it the best in your experience, do you think?

Warwick GATELY: That is an interesting question, Chair. Look, I have worked for the VEC for many years. I believe they are the leading jurisdiction in relation to the work they do in elections and in terms of our programs as well and our conduct of the election, and the fact that there were no court challenges in relation to

this election as well I think speaks for itself. I think every election is harder. It is getting more demanding, more difficult. Time lines are now very tight. But I believe it was well conducted.

The CHAIR: Thank you. So after 10 years as commissioner, what do you see as being the key challenges for the commission moving forward, and what would you view as your successes and perhaps areas for improvement over the life of your term?

Warwick GATELY: Chair, thank you. I will say that I have recently written to the Minister for Government Services, and the committee might choose to seek that correspondence, and I have laid out some matters to him that would be relevant to this committee in terms of where we go.

The first observation I would make: the electoral time line, writ to writ, is 47 days. That was probably appropriate in 2002. It is very difficult now to achieve all we need to achieve in that period of time, and it is probably the shortest time line of any jurisdiction. It backs up against the Christmas leave period as well. What I would like the committee to do is look at that time line. Now, we can make some adjustments to it. For example, close the roll a few days earlier, because with direct enrolment the roll is in good shape. Look at combining the registered party nomination day with the independent candidate nomination day – bring them both together to the Thursday. That will buy me 24 hours. Also, do not open early voting until the Tuesday. That will buy me 48 hours.

The difficulty we have, and Ben can talk at length to it, is that we close nominations on the Friday, we do a ballot paper draw, I go straight to the printer Friday evening and I have got to have ballot papers in early voting centres on Monday morning at 9 o'clock. We know from the print industry and our experience this last election how difficult that was. With some mechanical failures, we were under extreme pressure. In fact on the Monday, I think it was 21 early voting centres did not open until lunchtime because we could not get the material to them. I need more time for that. Indeed a lot of the production was done in New South Wales. We split the production work, and we trucked material down to Victoria. So the time line needs looking at, I believe.

Another part of it is that at the moment the return of the writs is for the Saturday – I think 21 days after election Saturday, which requires the commissioner to go to the Governor. Ordinarily we have done that on the Friday. I see no harm in going to the Governor on the Monday with the return of the writs. That just buys more time in the event I have an upper house recount or two upper house recounts, where we have to data enter again all the upper house ballot papers. That would give me more time. They are marginal improvements, on the periphery. Perhaps the committee needs to look at the holistic time line and see if there are adjustments needed there as well. That is the first one. I will pause there and continue.

The CHAIR: Sure. Perhaps if I can clarify that for the benefit of those who maybe do not follow these matters quite as closely as some of us may, are all of those deadlines laid out in statute? Or to what extent does the VEC have any influence over exactly when certain things occur?

Warwick GATELY: They are in statute.

The CHAIR: Yes, thank you. There are things, though, that fall within your remit in terms of timing like, for example, when you advise early polling centres – where they will be – and making that advice available. Is that correct?

Warwick GATELY: Yes, indeed. But again in that regard the early voting centres invariably are leased private properties and it is becoming increasingly difficult to find relevant properties in the right location to manage that component. Ben might offer a little more on that. The VEC will be criticised for the locations of those voting centres, but quite often there has been no alternative. This time around we attempted to operate at least two early voting centres in every district [witness later clarified that this should read: 'in every district where a large number of early votes were anticipated'] and we achieved that. Ben?

Ben SUTHERLAND: We found that fundamentally the market availability was the lowest it had ever been, particularly when we spoke about sites that provided accessibility to all electors. In that same sense we were challenged by the want for the market to produce six-month leases as opposed to our normal three-month leases, and in turn we found that the sites that we had previously used, because of experiences delivering other events earlier in the year, were no longer open to us so our focus was on identifying those that were available, that were accessible and that met obligations of the commission in providing successful venues.

The CHAIR: Yes. When were parties and candidates informed that there would be second early voting centres in each electorate?

Ben SUTHERLAND: As part of the commission's commitment to communicating with registered political parties and independent candidates, we advised quite openly our intended operational footprint. I believe the draft service plan articulated both an increase in early voting and then the final service plan also articulated 155 with a commitment of there being at least two in every district [witness later clarified that this should read: 'in every district where a large number of early votes were anticipated']. I believe Melbourne and Geelong received three.

The CHAIR: When was that final service plan circulated?

Ben SUTHERLAND: It would have been earlier in the year possibly – I might have to come back with the exact date.

Warwick GATELY: Chair, the draft certainly was at least 12 months in advance of the election period, so it was at the end of 2021.

Ben SUTHERLAND: Yes.

The CHAIR: Okay, thank you.

Brad BATTIN: Can I just clarify. You said there were two in every district. Obviously I can speak biasedly on my own, Berwick. We only had one, and then the other one that would have been classified as one was not classed as a split booth – it was classified as Cranbourne. So it was not one for Berwick, which caused us issues then around signage because obviously there is legislation around signage, around ballot papers because of what ballot papers are given out there, numbers that are going to go through it. Even though it was on our border – literally from me to you away was how far it was from my border – it was not classified as Berwick, so there were not two in every district. And if there were, it was not relayed to the parties very well. So just something for advice. It was definitely relayed that was not our booth.

Warwick GATELY: Mr Battin, we will take that on notice and we will come back through the Chair, just simply in response to that question.

The CHAIR: Thank you, Commissioner. I do have some further questions about early voting centres. I might just defer that and allow you to complete your answer about your successes and failures in your term and some of those other matters.

Warwick GATELY: Look, I think on the success front, over the three state elections that I have delivered, they certainly have been compliant in every way. We have operated within that time line. We have delivered effective services, I believe, to all electors. I am very pleased with the VEC's outreach programs, particularly getting into the CALD communities and those other disadvantaged groups. We had particular success this time around with presence, and we were very pleased with that. I think if there is one area that concerns me, it is still our inability to service overseas electors, and I raised that I think in 2018. It was the same circumstance here as well. I am not advocating an electronic voting solution, but for this election a telephone-assisted voting solution would have worked for electors that were overseas. We do not always have those that are travelling in the larger overseas centres – they will be well dispersed. The 26 venues that we operated were predictably in London, in Hong Kong, in America, for example, but we cannot get to the bulk of the people that are travelling overseas. And those numbers were quite low. I think the figure I saw with some survey work – there could have been 300,000 eligible Victorians out of the state and out of the country that were not able to cast a vote, and our email solution is not really viable.

The CHAIR: When you say your email solution, there is an email solution in place?

Warwick GATELY: There is an email solution there. You apply for a vote: we email it to you, you will print that, you will stick and paste it together, cut it out and put in an envelope or a courier and try and get it back or drop it off at a location.

The CHAIR: Right.

Warwick GATELY: So not entirely satisfactory. That needs to be looked at.

The CHAIR: Clunky. And all of that is laid out in statute – that is not a matter for regulation?

Warwick GATELY: It is our interpretation of that statute. That is how we operate, that is how we operationalise it.

The CHAIR: Did you have anything else to add?

Warwick GATELY: Look, perhaps, in terms of for the future. I have mentioned there the time line, how-to-vote cards as well. How-to-vote card management is a very difficult area, and the parties will know that. It is a difficult area for us as well. Some of the statistics that I have on that, without boring you. We do not have to register a how-to-vote card for the early voting period, yet we go through this very painful process to register a how-to-vote card for election Saturday. Now, I would ask the committee: what is the distinction? What are we trying to differentiate there for election Saturday only, with only 40 per cent of voters using election Saturday and 60 per cent voting early? We do not register there, yet we register here. So I would ask the committee to have a look at that. It is time-consuming for the parties, for the candidates, because if a how-to-vote card gets rejected, they can take it to VCAT. They have got to look at it again, they have got to come back again. They have got to re-register it, and I have got staff that can be focusing on other more critical matters than that, but I will leave that with the committee to look at. That is probably enough, Chair, on that.

The CHAIR: Thank you. Sure. Before I hand over to Evan to ask some questions, I am interested to explore a little bit the kind of culture inside the VEC. There is an impression that sometimes candidates and parties are seen as the enemy, that there is a presumption of candidates behaving poorly or candidates trying to push the boundaries the whole time. It strikes me that attitudinally it would be helpful if the VEC saw us all working to further the democratic process rather than a kind of us-and-them mentality. What do you say about that perception?

Warwick GATELY: Look, I find that an interesting observation, which I do not agree with. The VEC culture in relation to an election is one of assistance. That is evident across all parts of it. The time that is spent in political party registration, for example – I could talk at length about that – if you choose to help parties get across the line in relation to their registration process. The time we spend dealing with candidates, the time we spend dealing with registered officers, the time we spend within the nomination process, the time we spend on the how-to-vote card matters as well – that is a VEC culture that is quite evident to me. And it is appropriate in dealing with the participants in the electoral process.

The challenge becomes where those participants, through perhaps naivety or inexperience, do not know the ground rules, and it is the role of the commissioner and the commission to implement those ground rules so that everybody at this table approaches it in a similar manner, has a similar understanding and is dealt with equitably. So the culture in the VEC is appropriate. The VEC is the regulator, let us not forget that, and the VEC will do what it needs to do to apply the law compliantly and consistently with all participants. It is not a matter of us and you, not at all.

The CHAIR: Do you do any kind of testing for consistency from polling place to polling place? It has been my experience and the experience of many of my colleagues that at the individual polling places it comes down very much to who the polling place manager is and that it is not necessarily consistent across the board.

Warwick GATELY: Look, I have no doubt there is that occurrence – no doubt. But again, 1800 voting centres on election Saturday, every one of those with a voting centre manager, with a very short time line to train them all as well, and that cascade training down across a casual workforce – there will be inconsistencies. Look, I accept that entirely. We do everything we can, and potentially there are voting centre managers and others that we have recruited that perhaps are not up to the task, that perhaps do not understand their obligation to stay within their training guidelines. A key message I put to all our senior election officials is just that: you are there to comply, you are there to deal with the public, you are providing a service. But I do accept that there will be, from voting centre to voting centre, some different interpretation of their role and the law.

The CHAIR: So for example, in the early polling place in Rowville, candidates and campaigners were told that they could not use the toilet facility at the polling place, they had to go to McDonald's down the road and use their toilet facilities. At one of the early polling centres in Ringwood, candidates were initially advised that

not only could they not erect a marquee close to the line, they also were not able to advance to within the 6 metres if it was raining – so it was basically a ‘you must stand in the rain’ mandate in order to interact with voters. Those pieces of petty tyranny are the ones that candidates and campaigns and parties find enormously frustrating.

Evan MULHOLLAND: I will just jump in there because there were several other examples, particularly with inclement weather, where some polling stations would, at a brief period where there was a rainfall, allow the campaigners to go under a shelter that might have been within that. There were others where the electoral commission, the manager at a booth, would not accept anyone going into shade area and would allow them to get rained on. And that is –

The CHAIR: I guess what we are asking, culturally – when we move into the domain of common sense it is applied inconsistently and sometimes with no common sense at all.

Warwick GATELY: Chair, Mr Mulholland, look, I acknowledge that entirely, I do, and there is no answer I can give you today other than that we will remain conscious of that. It falls within Ben’s domain, and we will take that seriously.

The CHAIR: So can I ask about another example, and this is an example that I experienced. There was a habit of – or my perception of the way in which the VEC were approaching the management of the polling centres was that they would be proactive on some of the minor matters and not necessarily engage on things that I considered to be more serious. So for example, I was directed at one point to stop discussing with voters what suburb they were in and then directing voters who were voting out of area to the second queue. Now, that was not a lawful direction, and so I said, ‘That is not a lawful direction. I refuse it.’ But it happened half a dozen times over the course – the VEC staff attempted again and again to give me this direction which they had no lawful basis for.

And then on the flip side somebody turned up to the polling place wearing party-political – well, independent candidate, Team Cook, were wearing their paraphernalia. I brought it to the attention of the staff, and because they had not heard of this particular candidate – it was a candidate in Mulgrave – they simply did not do anything about it.

They are examples I think of that sort of dichotomy between that petty tyranny and going after what one might consider minor transgressions – or in the case of my thing, not a transgression at all – but not going after the big ones.

Warwick GATELY: Chair, look, again I accept that entirely. There are probably any number of cases and examples like that across, again, the 2000 voting centres that we operated. I accept that entirely.

The CHAIR: But I guess my question, which I am inviting you to expand on, is: does that speak to individual, compartmentalised errors or is there something culturally that could be done or should be done to change the way in which those sorts of interpretations are made?

Warwick GATELY: My view would be that they are isolated. They are not necessarily reflective of the entirety of the VEC’s operations and the staffing that we recruit. Do not forget we recruit, on the whole, well-meaning people to work for us for one day. For them to become interpreters of electoral legislation and service-delivery champions, then sometimes we can fall short.

The CHAIR: So how extensive is the training for polling centre – polling place – managers?

Warwick GATELY: Ben, are you able to talk?

Ben SUTHERLAND: Yes. Well, first we need to distinguish between election day voting centres and early voting centres. So in that sense, which is the one you are focusing on?

The CHAIR: Both.

Ben SUTHERLAND: So if we were talking voting centres, then it is generally two days worth of training, whereupon they are provided the online module and they are effectively then put in contact with the election manager to collect their resources, set up and then run the day. Early voting centre managers generally have a

far increased presence because of the duration of employment and a closer link to election managers, so it is beyond that two-day process. The early voting centre manager also has a close working relationship with the election manager for a variety of reasons, one of which is obviously the ongoing consistency of operations.

Lee TARLAMIS: I am just going to jump in and say there is a slightly different example, where I think it speaks to a slightly different scenario. There were plenty of examples that we had where it was a bit more than just a different interpretation. We clearly had advice from the commission where it basically said that we were allowed to display a certain number of signs, certain things, which we showed to the returning officer at a particular location, and the response was, 'We don't care. We're the returning officer. We make the decision.' We said, 'That's fine. We understand that. Can you seek clarification further up the line?' They said, 'No. We make the decision. We're not doing that.' Then it fell to us to go back through our parties to then go back through the system that way. It takes a lot of time to go through that process. I think that becomes a problem, because it is less about an interpretation of the legislation and more about, in terms of the training module, if there is an issue where clearly we have got information from the commission that says you can do something, them just refusing to actually seek guidance from the commission or clarification.

Warwick GATELY: Well, that should not have occurred.

Lee TARLAMIS: And that happened at a number of different locations. I think that sort of speaks to the individuals in those roles or that communication to them that if there is an issue where there is a difference of opinion, you should always seek guidance from the commission centrally to clarify the issue.

Warwick GATELY: And I agree entirely. That should not have occurred, and further advice should have been sought in that circumstance – and that is what we are there to do on the day.

Lee TARLAMIS: Absolutely.

The CHAIR: I will hand over now to my Deputy Chair.

Evan MULHOLLAND: No worries. Thank you, Commissioner, for coming in today. I note my colleagues might jump in at any point, but I just wanted to go through ballot paper shortages and cover off that issue. I wanted to reflect on how the VEC interprets and approximates how many ballot papers they will need, particularly in growth areas. Is it a matter of looking at how many people voted in the previous election? I will note a lot of my colleagues have particular examples where there have been new PSPs or whatnot going in since the previous election where some of that has been underestimated. In that regard I will go to particularly the seat of Bass, and I will refer to reports in the local paper there that suggested that at least eight of 24 polling booths in the electorate ran out of ballot papers. There were further reports that some polling stations in that electorate were significantly understaffed. I understand the VEC began issuing handwritten ballots in many of these instances, but how did it get to a situation where one-third of all polling places in an electoral district did not have enough ballot papers?

Warwick GATELY: Thanks, Mr Mulholland. I will defer that to Ben. Ben dealt with the detail of that on the day and can also inform as to how we evaluate the numbers. Ben?

Ben SUTHERLAND: Focusing on the forecasting, yes, we did take into account the 2018 state election, but we also took into account the voting trends that were prevalent within the federal election earlier that year, particularly the uplift in early voting and the tendency towards postal voting. There is an appropriate formula that we utilise in that regard that covers what we anticipate to be growth in certain districts, noting of course the application of the redistribution, which occurred earlier in that year and which as a result caused further out-of-district voting, because, as I am sure you are candidly aware, not every elector understands which district they are in, particularly after a redistribution. In that same sense Bass was a circumstance where we were made aware of a number of voting centres that had reported that they were out of ballot papers. You are aware of our operating model, where in which we have travelling election liaison officers who actually deliver ballot papers once they have been informed that they are running low. It is our practice, and it has been our practice in previous elections, to print ballot papers. We effectively provide them with a blank set of ballot papers to respond to this specific issue. It is a circumstance whereby we are aware of a very limited number of voting centres that ran short. No voter was turned away. In fact they were provided with the opportunity to travel to other voting centres or alternatively return later in the day.

Emma KEALY: Mr Sutherland, can I speak from a regional perspective or inquire around that. You have stated that you look at previous voting trends in terms of the provision of ballot papers to polling booths. In the electorate of Lowan, which is my electorate, there is a booth at Rainbow, a community which is over an hour from Horsham, which was where the nearest VEC office was. Now, in 2018 there were 374 votes cast, at the June federal election there were 400 votes cast, and yet they run out of ballot papers with only 360 votes being cast at this particular booth. Now, this is one case of many across my electorate where there simply was a big gap in terms of the number of ballot papers provided, and people were turned away. Because it takes such a long time: if you run out at 4 o'clock in the afternoon, there is a lack of time and ability for the VEC staff to be able to send ballot papers out to these remote areas. How do you calculate the number of ballot papers when we can see that previous elections have shown a much higher level than the number of ballot papers that were provided to that location in this election?

Ben SUTHERLAND: I appreciate your comment. I would again refer you to the trend to early vote and postal vote, which is captured, which would more than likely result in the reduction of the provision of ballot papers for election day voting. I am not aware of that specific circumstance. I will need to take that on notice.

The CHAIR: Can I ask, though: clearly it is cheaper to provide an extra 100 pieces of paper at one centre than it is to have staff racing around trying to service these outlying electorates. What buffer do you normally put in? If in this case there have been 360 votes and then 400 votes, wouldn't you ordinarily just provide 500 or 550 ballots for a polling centre like that?

Ben SUTHERLAND: To be frank, it is not a circumstance of providing an additional 500 to every voting centre when we have 1800 voting centres.

The CHAIR: No, no, no – I was talking about an extra hundred. Like, you know, I am asking you: how much fat is there in the system? It cannot be calculated down to the nearest vote because there is always going to be movement.

Ben SUTHERLAND: No, and it does depend upon the geographical location of the voting centre and in turn the trends in the past. But I will have to take that question on notice and come back to you.

The CHAIR: Sure. But if I can put it to you again: what buffer – if you anticipate that there are 1000 votes due to be cast at a particular centre, how many ballots do you send to that centre?

Ben SUTHERLAND: Again, it depends upon that particular voting centre.

The CHAIR: Give us a range.

Ben SUTHERLAND: I will feel far more comfortable giving you a range once I have had an opportunity to look at the data myself.

The CHAIR: Okay. So you cannot tell us what buffer you ordinarily put in for any polling place, not this specific one –

Ben SUTHERLAND: I would be reluctant to give you a number now without looking at the data and then coming back to you.

The CHAIR: Right. But this is a matter of planning, not of votes cast. You are involved in the planning of these polling places. Presumably at some point you have made a decision about the kind of tolerance levels around your estimates – that 'We think our estimate is going to be 1000 votes', as I said, 'for a place.' There must be some formula that says, 'Well, if it's regional, we send an extra 20 per cent; if it's metro, it's an extra 10 per cent.'

Ben SUTHERLAND: As a ballpark figure, we generally print approximately 9 million ballots for 4.4 million electors. The actual allocation of those ballot papers – I would need to review the data and come back to you.

The CHAIR: Okay. Thank you.

Emma KEALY: Mr Sutherland, there was also a significant shortage of ballot papers in the Stawell region – at the Stawell booth, at the Stawell West booth and at Concongella, which is just outside of Stawell, which is a popular polling booth because they have lovely food stalls there organised by the school. But they were hundreds of ballot papers short, to the point where all of those booths, I understand, ran out of ballot papers before midday. There are, again, people who have reported that they were unable to cast a ballot because of the lack of ballot papers provided. Are you able to provide some insight as to why there was such a significant shortage of ballot papers, which for the purposes of this inquiry has impacted on not just voter turnout but the democratic right of people to be able to cast their ballot on polling day?

Ben SUTHERLAND: I feel like that is an unfair assessment considering the already acknowledged trend of participation generally declining. I note as well that the matters that you have raised I have attempted to take on notice on two separate occasions, and I will do that again.

Emma KEALY: I am speaking about a different location, Mr Sutherland. I am speaking about the Stawell region. By way of background, and I am surprised that you are not aware of the issues around Stawell because Stawell was previously in the Ripon electorate and it had an early voting centre. In this election it did not. It was in the Lowan electorate. It did not have an early voting centre and there were thousands of additional votes cast in comparison to the 2018 election. There were massive shortages of ballot papers in that area. What attempts did the VEC use, and this is something that Mr Fowles, our Chair, has attempted to find out – how do you provide that estimate of ballot papers? Because there are numerous examples within my own electorate of Lowan. Mr Mulholland has raised issues around the electorate of Bass. There were numerous polling places right across the state on election day where people were unable to cast their vote because there simply was not the provision of ballot papers that would have been able to be seen based on the federal election numbers.

Warwick GATELY: Ms Kealy, can I come in, if you don't mind. I am certainly not aware of Stawell, and you are raising some specific locations in all the discussions that I am not familiar with, but we will take it away and look at it. It is also very difficult to anticipate the out-of-district voting, the absent votes, as well. Now, we do not know who is travelling on the day. That of itself is complicated because at every voting centre we provide ballot papers for all the other 87 districts. You can have an influx – you can have a bus turn up on the day that has come from perhaps Gippsland up to Mildura and they want to vote. There are a number of factors there, but I appreciate what you are saying. I understand what you are saying. Those locations – Rainbow, Stawell – that you are indicating to me, I am not familiar with. But I will take it away and I will come back specifically on this question of how we estimate and where potentially we get it wrong and what we do to make sure we get as close to the numbers, if you are satisfied with that.

The CHAIR: If I can just ask you to take on notice that you come back to us and report every booth that experienced a shortage, when those shortages were and to what extent the shortage was. I think it is important for this committee to have a picture of the totality of the issues. We are only informed collectively by probably, if you included the upper house, maybe 20 or 25 districts out of 88. Our colleagues of course will have things to say over the course of the submissions in this inquiry, but I think a very useful starting point would be that report.

Ben SUTHERLAND: Just quickly –

The CHAIR: Sorry, I am handing over to Emma.

Emma KEALY: Thank you, Commissioner. I guess the complaints that I have heard across the state are specific not to people who were voting out of electorate, but people who are turning up to a polling place within their own electorate and there are insufficient ballot papers being provided.

When you were talking about early voting, you reflected upon mechanical issues that meant that on the first day of polling there were insufficient ballot papers available. Are there any other external elements that led to a huge shortfall in the number of ballot papers in some of the booths and a smaller shortfall in other booths? Is there anything like a mechanical failure that was to blame, or is it simply a matter of the VEC not getting the projections right when it comes to the number of people who would be casting their vote at the polling places on election day itself?

Warwick GATELY: Again, I am not sure that there were huge shortfalls as you describe –

Emma KEALY: They were massive in Stawell – hundreds of people. Stawell itself ran out of ballot papers before lunchtime.

Warwick GATELY: All right. Again, I will take that and I will come back to you on that.

The other challenge of course is the logistic challenge. We go out to contract to provide courier, if you like, transport services as well. That provider did struggle in some particular areas and that took a lot of attempts from us as well, so the logistic concept of the centralised printing of ballot papers and then the distribution across those 155 and then 2000-odd locations. I will come back on that matter of every booth from our experience that experienced a shortfall. You may have others that we are not aware of, but we will look at it from our perspective and come back.

The CHAIR: Thank you.

Emma KEALY: So it was nothing beyond mechanical failure that you are aware of in the lead-up to polling day. Was there anything apart from planning which led to a deficiency in ballot papers?

Warwick GATELY: No.

Emma KEALY: So it was just VEC planning?

The CHAIR: Yes, okay. Thank you, Emma.

Evan MULHOLLAND: And also in regard to that: does the VEC factor in postal and early voting data in the days leading up to the election when provisioning for election day, as to what has already been recorded?

Ben SUTHERLAND: Yes.

Evan MULHOLLAND: Okay. Just quickly back on Bass. In a statement the VEC advised that voters were allowed to sign information reports as a record of attendance because voters were unable to receive ballot papers and did not want to be fined for not voting – in some examples that I have heard of, of people that may appear before the committee – or were even encouraged to do so so as to not be fined. In that regard, is this not an admission regarding the VEC's other statements that replacement ballots were not able to be provided at all?

Warwick GATELY: Again I will defer to Ben. My understanding there is that in the circumstances of one voting centre a number of options were put to the elector: you can wait, you can go to another location or you can provide what we call an information report to note that you attempted to vote. So there was not an immediate recommendation that you just put in an information report and you will be exempt; they were given every option available to them. And some, we think, chose to vote elsewhere. Some took the information report and perhaps did not return. There might have been some that waited – I am not quite sure.

Evan MULHOLLAND: As you would be aware, the seat of Bass was one of the closest contests, if not the closest contest, at the 2022 election – I think it was 202 votes. It dropped, in terms of voter attendance, by just under 2 per cent compared to 2018. Now, I am not saying the result would have changed, but does the VEC accept that the decrease in voter attendance might have something to do with the lack of ballots?

Ben SUTHERLAND: I think I would challenge that directly by noting that the state average for participation rate was 87 per cent and in fact Bass was 89 per cent, so it actually had a higher turnout rate than anywhere else. And if we note the number of voter information reports we received, it was quite a small number compared to the margin that Bass actually dealt with.

Evan MULHOLLAND: What steps has the VEC taken since the incidents in Bass, in terms of ballot papers, to ensure that those kinds of things do not happen again?

Warwick GATELY: It is still very early days in the post-election analysis and reporting. The lessons to be learned from Bass and generally in relation to ballot papers will be taken clearly on board. There will be more comprehensive information in our submission to the EMC and to Parliament, and that will provide the entree to the next state election. So at the moment we are still looking carefully at the data, but there are lessons to be learned – yes, I accept that – and they will be learned.

Evan MULHOLLAND: No worries.

The CHAIR: Before I hand the call on, Commissioner, I would not mind just asking you to please frame up for us. You are coming to the end of 10 years of service, and we thank you for that service. You will be handing over, presumably, to an acting for a period of time and then government will appoint a new commissioner. Given that your in-office days end in a week or so, should the government consider having the end point of any appointment be, say, 12 months or 14 months after the election so that there is that continuity all the way through to the post-election analysis? And to what extent will the VEC be hampered in its post-election submission by the fact that there is a change in leadership in the relatively immediate aftermath of the election?

Warwick GATELY: They will not be hampered in any way, shape or form. The deputy electoral commissioner Dana Fleming, as allowed by the *Electoral Act*, immediately stepped into the vacancy that I created and became the acting electoral commissioner. That will apply for the month of April, while I take leave. The same circumstance will apply. The absence of me in relation to preparing the submission and/or the report to Parliament is inconsequential to the nine other directors that operate the VEC that have been intimate with the planning from two years ago. My role will be inconsequential to that – to the submission, to coming back to the committee and to the report to Parliament.

The CHAIR: Thank you. Mr Battin.

Brad BATTIN: Thank you very much. Mr Gately, first of all, thank you for your 10 years of service, and I note you said due to health; I hope everything is going well and we wish you well for wherever you go in the future from here.

My first one is just around postal voting. Postal voting has become more and more popular; however, there were changes in legislation in relation to the time line – and we understand that some of these time line changes were changes in what Australia Post has done with how they date stamp. When you used to go in to the letterbox, you used to get date stamped. It was a very simple process for VEC. I know it is a lot harder to deal with now. Are there any numbers, statistics et cetera for around how many postal votes came in post the deadline that was put through? And the reason I ask is that when the legislation changed, Australia Post also decided not long after to go from Monday to Friday post to Monday, Wednesday, Friday, Tuesday, Thursday – so that is a five-day fortnight – which does not impact as much in my electorate, but out in the regional areas it can mean one- and two-week delivery delays. Are there statistics on how many did not get in within that seven-day period that those votes were cast?

Warwick GATELY: Mr Battin, there likely will be. Ben may have it to hand, but if not, we will locate that.

The CHAIR: Did you have anything –

Ben SUTHERLAND: Yes, I would just like to add in that regard that in part postal voting is definitely on our radar and we work very closely with our communications team to ensure that that message, particularly the need to return those ballots at a timely point, is out there in the community, and we run a very targeted campaign to effect that outcome.

Brad BATTIN: As I said, from down our way we saw that campaign, but I just wanted to make sure, to see if it is still impacting it with the amount of numbers coming in, particularly as some electorates get very, very close in their voting. We want to make sure everyone has got their say. There is no –

Warwick GATELY: Just on that, I think there was almost a doubling in people that applied to be a general postal voter. So I think we have gone from about 92,000 to about 195,000 in the course of that election as well. So in a way that was a positive.

The CHAIR: So to what extent was that doubling in the GPV applications, general postal voter applications, driven by efforts by candidates and parties to get people enrolled as general postal voters because of the prohibition now against encouraging people to just do a single postal vote?

Warwick GATELY: There was some party activity in that space. We also – Sue might talk to this – made contact with electors that were over the age of 70 and said, ‘An option available to you is to apply to be a general postal voter.’ Is that correct, Sue?

Sue LANG: That is correct. And further to that we had democracy ambassadors go out to some of the aged care facilities that Ben's team were not able to service through mobile voting to assist people to complete GPV forms so that they could vote in the election.

The CHAIR: Thank you.

Brad BATTIN: I am just going to do quickly three topics, but the second one is just in relation to campaigns on the day of election as well as at the pre-polling centres. I will be interested to see – and again, you probably will not have everything on hand today – obviously behaviour complaints and issues that come back to your management around polling, volunteers et cetera out the front, and hopefully not, but candidates as well, and where you have issues that are raised out the front, particularly around numbers. I can only speak from experience of mine, but then anecdotally speaking to others, at some stages we had up to 19 people from individual parties handing out how-to-vote cards. I know we restrict the signs, we restrict the plastic, we restrict everything else now, but what is the feedback or have any complaints been put forward, particularly around intimidation et cetera? Because walking through a group of 19 from one party, let alone – and I can tell you at ours we had 19 from one, 12 from another and then you add in some very, very rowdy smaller independent parties and all of a sudden you have got 45 or 50 people to walk through. Has there been anything, in doing the statistics, on the number of complaints through polling booths as well as in pre-polling?

Warwick GATELY: Mr Battin, that will come quite comprehensively in the report. But the number that comes to mind – I think there were some 300 that the VEC received that went to candidate/party worker/campaign worker/party behaviour matters. Just a couple of quick examples for you: I know the acting electoral commissioner limited campaign worker numbers at Watergardens and also at Derrimut; and I know there were complaints about party workers by several traders, including in Pacific Werribee and also Carlton North. So that is just a small example of that. Those matters are there that you are familiar with, and you are on the ground more than I am, particularly on election Saturday, so you are seeing that.

So that is a factor, and you are aware that the VEC protocol, hopefully complied with consistently across the voting centres, is that the election manager will encourage cooperation. If that does not occur, we will go to the party or the candidate. If that does not occur, then the election manager will go and contact VicPol. There were instances of that, and I think that will be included in the report as well, on the day. And I also believe that one party was asked by the acting electoral commissioner to attend the VEC, and their behaviour was discussed at length and personally.

Evan MULHOLLAND: Was that the Victorian Socialists party?

Warwick GATELY: I am not in a position to say.

Brad BATTIN: Does it also take into consideration then the feedback from managers? So not just actual complaints – a physical complaint is one thing, because it generally gets to a position of a proper complaint. Does it take into consideration feedback from managers who turn around and go, 'We didn't quite get to the day of a complaint, but the behavioural standards on the day were X.' Will that be highlighted in your report? Will that be –

Ben SUTHERLAND: Yes. In effect we derive the evaluation from a number of different sources, some of which are the voting centre managers because they maintain their own report of the day, some of which are from the party workers who are able to write into us directly. We have our own complaint stream, and of course we have the election manager. We also combine that with the candidate survey –

The CHAIR: Sorry, Mr Sutherland, I am told that some people are having difficulty hearing you. Would you be kind enough to address more directly the microphone?

Ben SUTHERLAND: Apologies.

The CHAIR: Use your outside voice, maybe.

Ben SUTHERLAND: If only I was a cricketer. In short, we derive the evaluation report from a number of different sources, being the voting centre managers, the election managers, the early voting centre managers, the staff themselves, the party workers – who are able to write into us – the scrutineers through the process of

counting and of course the candidate services team, which liaises directly with the registered political parties and independent candidates themselves. That will all be pulled together, along with our own compliance team's experience out in the field, and that will form the basis of the report and our position that we will capture therein.

Brad BATTIN: No worries. Thank you, Mr Sutherland. My final one is to you, Commissioner, and it is just in relation to an issue that came up during the election. On 17 November the VEC put out a statement of a referral to IBAC. The VEC authorised this matter to come out just prior to a state election, and in releasing that document it concluded that VEC would have no further comment to make – at the bottom of that statement. Can I ask why then the VEC was out in the media after that statement and still commenting through all different elements of media, during an election campaign, on a topic that should have been, from my view and I believe from the VEC, a totally confidential matter that should not have been run or put into the public light at all, but I saw as the VEC putting fuel on the fire to add that into the public comment?

Warwick GATELY: Look, I dispute that. I am not going to discuss the matter at length here with this committee because the matter is before IBAC and I need to let IBAC deal with it. I will say to the committee that I have got an obligation under the *Electoral Act* to refer relevant matters to IBAC in relation to their functions and their duties. That referral is not determined by the political environment or the political consequences or the political scenarios that are prevailing at the time. My media release of 17 November says sufficient that goes to that matter, and I will say no more on it other than that was necessary because at every step of the day up to that point in time the VEC was constantly being questioned as to 'What are you doing in relation to this matter? What are you doing in relation to this matter?', and having taken action, appropriate action, under the *Electoral Act* – that was taken to take the pressure away from the VEC and arguably to put that matter to bed for the moment. I will say no more than that.

Brad BATTIN: I do not believe putting a media statement out, though, at the time when you have said even now that you will not continue to talk about the matter – and I totally respect the fact that once these are referred, they should not be spoken about – but putting out a media release at that time indicated that the Victorian Electoral Commission had a view on that matter. I know you will say that the statement said differently. Up until that stage effectively the VEC had declined to comment at all. I do not understand why on 17 November, just days before the election, the VEC felt it appropriate then to put a media release out, but on top of that, after saying there would be no more comments, sent staff out to do media. Media were not chasing you down. You had staff then go out onto radio to make further comments on this by saying, 'There's nothing to see here. We are passing it on.' I do not understand why during an election campaign, during that period, the VEC should be out on the radio. My view would be if you had put a media release out, which you said at the time you had the right to – I do not think you had to, but you had a right to – after that anything else should have been 'no comment'. There should have been no VEC person going onto the radio, no VEC person doing commentary on TV at all. If it is what you have just said then, it should had ended at that media release with no further comment. We have to do that occasionally as members of Parliament, and I believe most departments have to. But I think at the time, during the election, it was something that did not need to go to the stage that it did, and I think it is unfortunate because it does raise queries around some of the independence of the VEC. But I think that is something that needs to be raised and put on the record, and as I said, I do not believe the VEC needed to go and make further comments. Your media release may be one thing, but the further comments I think just threw fuel onto a fire that did not need to be there.

The CHAIR: Okay. So the point has been made. Thank you, Brad. I invite the Commissioner to respond.

Sue LANG: I would like to address that point if I may. Once that media release went out there were actually a number of other live issues that we were dealing with in the media at the time. After that statement went out, Mr Neil Mitchell called us and asked us to come on air to talk about that particular release and we said, 'We will not be making any further comment about that release.' So we knocked that interview back. The following day there was another release that we put out around the behaviour of party workers at the time. He asked us to come on to talk about that and another issue. We expressed to his producer several times before going on air that we would not be talking about the IBAC referral. Regardless, he asked the question. I did not say anything further than what was in the contents of the release at the time. I also remonstrated with him afterwards about having been put on the spot to talk about that given that we had said that we were making no further comment.

If you liken it to MPs being put on the spot sometimes and having to say, 'No comment', you will also appreciate that sometimes when you are put on the spot by the media it is very difficult to try and extricate yourself from a situation. I did the best I could. However, we did not specifically go on to that program, In fact if you would like to have a look at our media logs, you will see that when he specifically called and invited us on to talk about that situation, we declined. You will also see that there is advice recorded in our media log to his producer the following day to say that we would not be talking about it when we were coming on to talk about another issue again.

Brad BATTIN: I will leave it at that. But you cannot go on to media the next day and expect them not to ask, no matter how much you tell them. We do not control the producers. We do not control the media from departments or government, and I think that you must have known they were going to ask you, no matter how much you put it in writing.

Emma KEALY: In hindsight, Ms Lang, would you have done that interview or would you have handled that interview any differently given that the Commissioner has stated that the intention of the media release was to put the matter to bed?

Sue LANG: It is always easy in retrospect to reflect on what you would do differently, and I may have done that differently had I done that interview again the following day.

The CHAIR: Do you accept, though, that it was highly likely, notwithstanding whatever undertakings were given, that the IBAC referral would be canvassed in any media interview post the issuing of that release?

Sue LANG: Yes, that would be a logical conclusion, and we had said to Mr Mitchell's producer that we would not be talking about it. It was still raised, and I did say that we had no further comment to make than what was in the media release. He kept on going about what was in the media release and wanted me to name who was going to be referred to IBAC and I just kept repeating what was in the release. Then I said to him, 'You need to move on.'

Emma KEALY: Did you seek guidance on how to respond to that question if it were put to you? There seems to be some level of consideration over how you handled the matter. You intended to put the matter to bed. You have agreed, as a spokesperson for the VEC, to do an interview. Was there any media training or support that you received before that interview to say, 'This question will likely be asked. This is how you should respond.'

Sue LANG: Not to that specific situation, no. But there was media training conducted for all of our senior staff, including myself.

Emma KEALY: Do you acknowledge it was an error and could have shifted and influenced the outcome of voters by providing commentary through the media even if you were repeating the same statement on a secondary day, that that could have influenced some numbers of how people cast their ballot over the 2022 election?

Sue LANG: I would not consider that that would necessarily be the case. I think voters make up their own minds based on what is happening in a wider frame than one specific incident or one specific thing that may or may not be heard on radio.

Warwick GATELY: Chair, if I may come in on this matter. As I said earlier, I have obligations under the *Electoral Act* that are quite clear. It did not matter when I went to IBAC, before or after the election, I was going to be criticised in any event. If I had gone after the election, they would have said, 'We should have known this information prior to election Saturday.' The *Electoral Act* and the dealing with IBAC does not give me discretion in relation to timing. I will say no more.

The CHAIR: I appreciate that, Commissioner. The question does not go to the matter or the referral. I think the questions are purely around the process and the response and the public engagement in it. These do not go to the substance or otherwise, the merits of whatever it was that was referred. The questions, if I understand them correctly, they go to what the commission does, what the commission shares publicly, having taken any action.

Warwick GATELY: I think Ms Lang has described that perfectly satisfactorily, in that, with some hindsight, things might have been dealt with differently on the day. As you all know, when you are under the pressure of the media spotlight, sometimes things are said that could have been expressed differently and/or better or not at all.

Brad BATTIN: I understand that, and Ms Lang said – I note the question from Ms Kealy around would it have influenced votes, could it have influenced votes, those kinds of things which we do have to take into consideration when the VEC is commenting. The statistics tell us that many people – you say it would be a whole range of things – do not switch onto the election until they are at, just before or considering going to the booth. Sixty per cent of people pre-poll: that is the two-week period where most people are listening. That is when most people are making up their decision. During that 14-day period we had three days of a topic that was from a media release. You can do the referral without telling anyone. There is nothing in the IBAC Act that said you, as the commissioner, had to put a media release out, and there is definitely nothing saying we had to have someone from VEC out in the media the next day, which created three days of media that was negative towards one party, started from VEC. I think that is where our concern is.

This is not something that is going to be party political because this could end up being any party in the future, but I think there need to be protocols. It is something that needs to be reviewed. You cannot have statements coming out effectively against one party, particularly in those 14 days when most people are switched on for the first time. We all know the polls. Four weeks out from an election no-one will know who the Leader of the Opposition is, 80 per cent will know who the Premier is because he has been there for a long period of time, but other than that most people are switching onto the election at that time. A lot of new voters are coming in and switching on for the first time, and the only media they heard for a three-day period then was against one party from what they would see as an independent organisation. That is not right, and I think it needs to be addressed in your report as well as, I think, it is something that needs to be addressed in ours.

Warwick GATELY: The decision to go with that media release on 17 November was my decision. Any subsequent routine media matters thereafter were dealt with by the Director of Communication and Engagement, and the fact that that director was put under pressure at the point in time is not a reflection on a conscious decision to roll out media three days thereafter and keep the issue alive. That was not the intent. That was never the intent.

Members interjecting.

The CHAIR: Hang on.

Members interjecting.

The CHAIR: Order! I appreciate that it was not the intention. I think these questions go to foreseeable consequences. All of us with our relative experience would go, ‘Well, if you are out on day two, that kicks the story down another 24 hours; if you are out on day three, it kicks it out for another 24 hours.’ Irrespective of the merits of the issue, which we are not canvassing here, the question I think goes to: is it appropriate for VEC to be engaging on multiple days on any issue?

Warwick GATELY: So the VEC just stops media?

The CHAIR: No. That is not what I said, Commissioner. I said: is it appropriate for the VEC to engage on multiple days on any given issue? I pose that not as a rhetorical question; I am asking you what your view is?

Sue LANG: Yes, it may do. There are a number of media outlets that are trying to get into a limited number of media spokespeople, so it may take two or three days to canvass any particular issue. I know that by the time we do all the regional radio, regional television et cetera, and metro print and radio, that can take a number of days. And certainly on the poor behaviour of party workers and campaign workers outside of voting centres, that went for three days.

The CHAIR: In the world of strategic communications, we talk a lot about audience and purpose: who is your audience? What is the purpose of the communication?

Sue LANG: Yes. Correct.

The CHAIR: What was the purpose in going out to do interviews regarding candidate behaviour as opposed to dealing with it by press release alone?

Sue LANG: The media are interested in what is going on out in voting land during the voting period.

The CHAIR: I understand they are interested –

Sue LANG: As you say, when people are interested in that – they were interested in a number of issues that both parties were facing at the time, which we were trying not to buy into. The issues that we addressed during that period were specifically in relation, typically, to either issues that we needed to deal with, such as ballot papers being delivered late on the first day of early voting, or issues around poor behaviour – there were lots of complaints from voters about the behaviour of campaign workers. We know this anecdotally, and we will look at this in research, that is being conducted as we speak, around whether that is driving people away from wanting to vote in person. That may well be why more people are voting by post. That is certainly a factor in the number and the commentary of people who are voting early. I will just leave it at that.

Evan MULHOLLAND: Just one very –

The CHAIR: Hang on. I am cognisant of the time. I am keen to close this issue out. If I can allow Evan one, and then I will take Lee and I will give the crossbench the opportunity to have their say on this issue. But really, I am also cognisant of the fact that two members need to attend other matters this morning. So if we can close this out in the next 5 minutes, I would be grateful. Thanks.

Evan MULHOLLAND: Just very quickly, Commissioner, with these communications things always get approved. In a yes or no manner, did you approve that subsequent media? Was it a decision of Ms Lang or yourself in terms of the approval process?

Warwick GATELY: Ms Lang, as Director of Communication and Engagement, routinely does live media. We do not have an approval process for that because we do not know where the live media is going to go. So I entrust –

Evan MULHOLLAND: Were you aware of that prior to or after that interview?

[Witness later clarified that she misspoke and that the indented lines below are incorrect, as Mr Gately was not on leave at that time. She further clarified that, 'I accept or reject invitations to be interviewed. Generally, I advise the Executive Management Group (which includes the Electoral Commissioner) of the Invitation and general topic. I do not seek permission.']

Sue LANG: You were not there then because that was when you had gone off to have your surgery.

Evan MULHOLLAND: Was the acting commissioner aware?

Sue LANG: The acting commissioner was aware that I had been invited onto the program to speak about two other issues in particular.

The CHAIR: And she was aware that you had accepted that invitation?

Sue LANG: Yes, she was.

The CHAIR: Okay. Thank you.

Evan MULHOLLAND: Thank you.

The CHAIR: Mr Tarlamis.

Lee TARLAMIS: Just briefly, I think we just need to be cognisant of the fact that – I mean, I am not buying into the sort of argument on this particular issue – the VEC have a comms strategy, and during an election campaign there are any number of times that they are going to have to do media about any number of issues, whether it is responding to something that has occurred during an election campaign or in terms of rolling out a comms strategy about promoting particular programs they are doing or particular issues, voter education or whatever that may be. So whether they went out the next day or three days later, we could well be sitting here

saying, because there was an interview that was done a week later about a totally different issue, where the media asked this question as well – and again they would have made the same stipulation, ‘We’re not going to comment on that.’ We have all been in those situations as well. There is every chance that a week later Ms Lang may have been asked the same question by a journo as well about the referral. So I think we just need to be cognisant of the fact that the VEC would not have been able to shut down all of their comms post that matter and not have any communications with the media for the rest of the campaign on the basis that they may have been asked a question about it. I just put that on the record.

The CHAIR: Thank you. Mr Hibbins?

Sam HIBBINS: I have got questions in relation to other matters.

The CHAIR: Well, I will come to those if we can. I just want to close out this one. Do any of our video attendees wish to address this particular topic? All right. Thank you. We will move on then. Perhaps I will give the call to Mr Hibbins, and we will see how we go from there.

Sam HIBBINS: Great. Thanks, Chair. And thank you, Commissioner and your team, for appearing this morning. I want to ask, first, about voter turnout. Obviously it has gone down again – the second election in a row. Can I ask: is the VEC undertaking or has the VEC undertaken any specific research into the declining voter turnout, and have you got any observations on exactly why this is the case – who it is, demographics, what have you?

Warwick GATELY: I will make general observations. I mentioned there the state of the state roll, with 98 per cent of estimated eligible electors on that roll. There is a number of electors there who get forced onto the roll through the direct enrolment program that do not want to be there. They do not want to be located. They do not want to be bothered with that. So I would argue that group probably does not turn out.

Sam HIBBINS: For the benefit of the committee, just, you know, give an example of who is being directly put on the electoral roll through what means.

Warwick GATELY: As we deal with various other agencies and people change their address and move, from births, deaths and marriages and the AEC as well, we find they are not on the roll. We will write to them and say, ‘We know you’re at this address, we’re going to enrol you’ and they go on the roll.

Sam HIBBINS: Does that cut across a range of demographics?

Warwick GATELY: Yes, it does.

The CHAIR: If I can ask you to take on notice perhaps the data sources and the quantum around how many people are directly enrolled and whether that has come through land titles or births, deaths and marriages, the AEC or whatever. That would be helpful, thank you.

Warwick GATELY: So there is that issue there as well. Whether that has a significant impact, I am not quite sure. But the roll is in the best state it has been in terms of participation for many, many years, if not ever. That is the first one. Federal elections of course would have maybe had an impact there in May – people are tired of the whole thing. Also, COVID is still languishing as well: ‘I’m not going to turn out. It’s too risky.’ They are some of the factors there at play. I did mention in some media that I did after the event that perhaps running the gauntlet of the many, many party workers and campaign workers puts people off. So that is some observations.

Brad BATTIN: It puts me off, and I was there to go and actually get elected.

Warwick GATELY: I do not know if Sue wants to talk to the research component around that.

Sue LANG: Yes. We are working closely over a three-year – in fact it will be the largest in the country and possibly the world – study on informality and why people intentionally vote informally and looking at some of the reasons for that. We are doing that with the University of South Australia and Deakin University at the moment. We are analysing all of the informal votes from the state election – not just this state election, the previous state election and council elections as well – to try and get a better fix on that. No doubt, though, you know, with 300,000 people out of the state during the month of November last year on average – I think it was

about 310,000, according to department of immigration stats – we know through our research that most of them would be necessarily in a higher socio-economic bracket and more likely or more inclined to want to vote if they have an easy mechanism through which they could do that. There really is not, as the Commissioner said earlier, a convenient and viable method of being able to vote if you are interstate and overseas during the election period. And also people who had COVID, who may not have wanted to attend a voting centre for fear of infecting others, were not able to vote on election day.

Sam HIBBINS: You said you are doing research into informal voting, but are you doing any specific research into declining turnout?

Sue LANG: We have got a lot of research that points to it declining around not just Australia but around the world in First World countries, absolutely.

Sam HIBBINS: Okay. As you have sourced research here – you have not undertaken any?

Sue LANG: Yes. No, this has been a trend for quite some time.

The CHAIR: When is this informality research due to conclude?

Sue LANG: That is due to conclude I think it is either late this year or early next year, but I can come back to you on that one.

Sam HIBBINS: Is it your intention to do anything or undertake or commission any research specifically into declining turnout?

Sue LANG: Well, we have looked at some of the research from around the world, and there are a number of reasons that people are turning away from electoral participation. They are participating in different ways, whether it be through petitions, boycotts, other forms of political participation but small-p politics. That is something that we are seeing around the world. It is not uniquely Victorian, or Australian for that matter.

The CHAIR: But to Mr Hibbins's question: is there any research planned in our jurisdiction directed by you into the particular issue of turnout?

Sue LANG: Declining participation. What we do do is look at all of the data that we collect by age et cetera to see where the declines were most significant, and we try and target those areas for the next election. We certainly did that for this election. We certainly targeted directly enrolled electors for whom we had contact details through email and SMS to remind them that they were on the roll and that they were required to vote.

Warwick GATELY: Sue will correct me, but I think the 20 to 39-year-old age group is the declining one.

Sue LANG: It is typically the –

Sam HIBBINS: Will some of that information be made public?

Sue LANG: I can certainly put that in the report, but certainly some of the theories around that are different forms of participation and also the later transition to adult milestones experienced by young people now. So they are staying at home longer, it is taking them longer to buy their own home, they are getting married later, they are having children later. All of those milestones are typically what starts engaging a person in more active political engagement.

Sam HIBBINS: All right. Interesting.

Warwick GATELY: We will address turnout specifically in the report and with those observations.

Sam HIBBINS: Okay, thank you. I just want to go on now to volunteer behaviour. Have you noticed any changes in terms of particular tactics to solicit votes at polling booths: preventing voters from engaging with other volunteers? And just a point of clarification: is it legal to solicit a vote at a polling booth? You indicated that you have called a party in to address some of these matters. Do you actually have the legal powers to actually be able to control some of this behaviour?

Warwick GATELY: I will pass on to Ben. Thanks, Ben.

Ben SUTHERLAND: I think it is clear to see that the increase in number of registered political parties that we experienced in 2022 provided a variety of familiarity with our particular operating environment and the legislative framework, and in part that represented itself in behaviour matters that we will of course cover off in the report to Parliament and focus on directly. There is a circumstance that we are very much aware of, which is commitment to educating those who participate in the process, and the examples that you talked to, we may very well have particular complaints about that where we have responded. I am not in a position to talk to that right now, but I am happy to take them on notice. But it is a circumstance whereby our interaction with those parties was largely, in the first instance, to ensure compliance through a constructive relationship as distinct from a disciplinary approach. In part the media release was also a targeted strategy to try and uplift everyone's commitment to those same values and approaches that we have. I will take the question on notice in regard to whether or not it is an offence, as you described, to solicit.

Sam HIBBINS: Thank you. And do you feel overall that you have got the powers that you need, or do you feel that you may need further powers?

Warwick GATELY: I would say we have the powers that we need, but I said this to the committee in 2018: the well-meaning citizens that we employ are not law-enforcement officers. They are not there for that role; they are there because they want to be part of the process and they enjoy that work. And for them, dealing with difficult, non-compliant candidates, party workers, and even electors, is not necessarily what they are there to do. But I mentioned that before, in 2018.

Sam HIBBINS: Thank you.

The CHAIR: Is there, then, a structural issue this committee ought to be contemplating between the VEC as the election administrator and the VEC as the regulator of participants? Are they roles that carry an internal conflict in your view and should there be consideration given to separating those roles?

Warwick GATELY: No. I do not think there is a conflict there with that. The election process, as you well know, relies upon trust amongst all the participants, compliance with the laws that are there, the basic standards of good, decent behaviour. I know it is competitive. We should not expect it to be any different, but you do it within the spirit of the elector and the elector being given the opportunity to cast their vote without harassment and to take in the information they need to make an informed vote. We are all in that together; it is not just one role. So I am there to make sure that the playing field is level, all participate to the best of their ability and the elector can make reasonable choices.

Sam HIBBINS: Thank you. Can I just ask one final. Just in terms of pre-poll booths, we found in some of our smaller geographical areas two pre-poll booths actually felt like too much, and the numbers were not great, they were actually quite quiet – obviously very challenging for resourcing. Is it the VEC's plan to continue with two pre-poll booths per electorate for the foreseeable future?

Warwick GATELY: I would say, like all these things, we look at them. There were a number of voting centres, for example, that we closed down that we did not need to operate in 2022, because in 2018 they were not that viable. So we constantly review that.

Look, I accept the matter that you raise about Berwick not having two early voting centres, and I will look at that. I did not know that that was necessarily the case. But Ben, is there any more that you want to talk about?

Ben SUTHERLAND: If you accept that our election day profile is largely schools and in most circumstances the available room that a school has to provide that service – we cannot always guarantee that they are effectively accessible and in turn meet the necessary compliance requirements for accessibility, parking and general amenities. We find that by going to the commercial market to secure early voting centres, we can actually better respond to what the public requires. And you will note that there is a higher turnout rate for early voting I believe tied to that actual outcome. But as the commissioner points out, we will review that, particularly when we see the actual votes taken at each site and decide whether or not there is a better way to deal with that.

Sam HIBBINS: Similarly with opening hours as well. There were some sort of interesting and curious opening hours that might not have made, to everyone on the ground, much sense – for example, a late night Thursday in the first week. Does that all come under review as well?

Ben SUTHERLAND: Very much so, and it is a focus on determining the vote throughput at that point in time – also with our own staff capacity, because we have to take into account that those staff are at the second week of a very big week of voting. One of the things that we want to do is provide accessible early voting but at the same time meet the demand that it is not at the cost of our staff and the operations that flow after election day.

Warwick GATELY: But even the late-night early voting has probably come about because this committee has said, ‘How do we deal with the person from 9 to 5 that’s working?’

Evan MULHOLLAND: Just a quick one to add to that, and then Brad and I have to go. Just with regard to those questions that you are coming back to, I just want to note the Islamic Museum in Thornbury booth in the seat of Northcote, which at some stages had one person come through per hour; it was completely out of the way from the rest of the electorate, with hardly any public transport links or accessibility at all. So just a note for your submission: I think that one would have been severely – well, basically a waste of money I believe.

Brad BATTIN: And I was just going to quickly ask – and you can take it on notice as well, because I and Evan have to leave – in relation to when you are selecting and finding booths for election day, even pre-polling, obviously schools, as you said, is the main one: are state schools obliged to take you on board as a lessee? Private schools, do they have any obligation? And have you found any more resistance from schools? I only note one school, and I will not say them because it will be unfair on them, who said to us they are very reluctant – they still had it this time – because every time, particularly during the federal campaign because our rules are a lot different now, they had to come back and cut plastic off the fences for the next 48 hours because they had all the cable ties, there was rubbish on the ground and all these things happened there. Is any more reluctance from schools to have booths now?

Ben SUTHERLAND: I would say that there is a very strong commitment from everyone on this side of the table to engage with the Department of Education and Training at the earliest point in time and communicate early for this particular event. We have created a number of different information guides to support principals. I do not believe there was a level of pushback that is notable for this conversation. It is a circumstance where the legislative requirements provide us the option to utilise a site if it receives government funding. That extends beyond schools to community halls and childcare facilities et cetera.

The CHAIR: Thank you. We will excuse Mr Mulholland and Mr Battin now; they have to go and tend to some important matters. I will ask our video attendees whether anyone would like the call.

Nathan LAMBERT: I have a quick follow-up question with respect to turnout. Is it just possible to get for the committee, off the top of your head, what percentage of people cast a vote as a proportion of the estimated eligible population? I suppose, Commissioner, this goes to your point about changes in the way we enrol people. Presumably it is possible to see what turnout was in effect as a proportion of the number of people we expected should be casting a vote.

Warwick GATELY: Look, Mr Lambert, I will take that one on notice and confirm there that the participation rate on the roll is what I said it was, and then also the turnout. We will do those numbers and come back.

Nathan LAMBERT: Thank you.

The CHAIR: Any other questions, Nathan?

Nathan LAMBERT: No, that is it from me.

The CHAIR: Thank you. Mr Ettershank.

David ETTERS HANK: Well, thanks, Chair. Firstly, thank you to the Commissioner and staff for turning up, and I think we are all appreciative of the effort that the VEC makes. A number of these issues have been ventilated previously, but I guess I retain a significant concern around the question of behaviour on the booth – in Western Metropolitan Region we had some pretty awful outcomes and some very inconsistent behaviours across booths. Then the other question I think that is writ large is that overall structural reduction in turnout over the last few elections, and possibly the degree to which those two might be connected. I guess my question

would be primarily in terms of the next stage of this inquiry, as to what degree the VEC will actually be providing specific recommendations for change on both of those issues.

Warwick GATELY: Mr Ettershank, thank you. Certainly the report to Parliament will contain recommendations where legislative change from the VEC's perspective is warranted, and that could go to operational matters; it could go to the time line matter that we spoke about earlier. You question whether behaviour at voting centres is linked potentially to turnout as well. I think there is an element of that there, and I spoke briefly about that when I addressed Mr Hibbins earlier. There are a number of factors I believe that are influencing elector turnout, and we will make some observations in relation to that in the submission here and also the report to Parliament. What are some of the factors that this committee could well consider in relation to arresting turnout? Now again, it is not a matter solely for me. I can encourage voting until I am blue in the face. If for some reason the elector is reluctant to turn out, nothing I do or say will change that perspective. That could go to behaviour. It could go to health matters. It could go to facility matters, for example. So we are all in this together in relation to turnout. But I believe behaviour could well be one component of that, particularly for the aged group, those that have particular disabilities, those that have, what is that term, sensory –

Sue LANG: Neurosensitivity.

Warwick GATELY: challenges as well – that do not enjoy that voting centre experience.

The CHAIR: Any follow-up there, David?

David ETTERS HANK: No, I think that will be it for the moment, Chair. Appreciate that.

The CHAIR: Thank you. Ms Vulin, did you want to chime in at this point? You do not have to.

Emma VULIN: No. I just want to say thank you for this morning and thank you for the work that the VEC does do. I am sure it was quite challenging, because as a candidate I found it challenging. A lot of my questions have been raised. Mr Tarlamis spoke about how different managers of booths had varying degrees of information, so, you know, there were disputes that were different between different booths. And the other thing that I would like to bring up is that we only had one pre-poll early voting centre in my electorate of Pakenham, and it probably was not enough. The closest one was quite far away in both directions, and it was also in a different location to what our local community was used to, so again, very hard to get to by public transport. I just think that that particular booth was not a good location for us.

The CHAIR: Thank you. If I can introduce a different topic now, and this is one of nomenclature issues. The Liberal Party is frequently referred to as the Liberals, and we have a party called the Liberal Democrats. The Australian Labor Party is frequently referred to as Labor, and there is also a party that, somewhat astonishingly in my view, calls themselves the Labour Democratic Labour Party – a certain repetition to it. To what extent do you think there was voter confusion about those names in the political marketplace?

Warwick GATELY: Look, I cannot offer a view on that because I have no evidence one way or the other, other than to say the *Electoral Act* itself determines what factors must be considered in relation to a party's application and the name and the abbreviation of that party. There is no doubt history in relation to that, court rulings in relation to that, and when a party is registered, we apply that very carefully and seek, if we need to, government solicitor advice at that point in time. But the *Electoral Act* determines that. I just make a decision in relation to that. Now, if there is impact or confusion that you are professing could exist, I have no evidence to say that is the case.

The CHAIR: Okay. And there has not been any research done into that, to your knowledge?

Warwick GATELY: No, certainly not for the VEC in relation to that.

The CHAIR: Yes. One elector in my electorate telephone voted, and the Labour Democratic Labour Party, as they are registered, appeared at the top of the ballot, and my party, the Australian Labor Party, appeared at number five or something but of course appeared as Australian Labor Party Victorian division, which at least in part is a matter for us. When they voted over the phone they were told, 'Oh, the first box is Labour' and they said, 'Yes, I'd like to vote Labor.' There was the reading through of the balance of the names, and that voter did not pick up that there was an Australian Labor Party or Australian Labor Party Victorian division was different

from the first one, where the name appeared as ‘Labour DLP’. I guess my question is: to what extent does that nomenclature issue have the potential to confuse voters at the time of voting?

Warwick GATELY: No doubt there is the potential there to confuse, but again, I cannot give you any facts in relation to that – as to how likely that is. There is the potential there, no doubt. But, you know, on the telephone assisted voting matter, the instruction to the operator was to read out exactly what was on the ballot paper – so the candidate name and the party or candidate name, independent. They do not deviate from that script.

Sue LANG: And there are two people listening in on the call to make sure that the vote is cast or recorded as the caller intimates. So if one had perhaps misunderstood, there is another there also listening to the call who could potentially have said –

The CHAIR: And are those calls recorded?

Ben SUTHERLAND: No, they are not.

Warwick GATELY: No, they are not.

The CHAIR: Right. So there is no way for a voter, as was the case in this particular circumstance, having later discovered that they had voted erroneously, to go back and say that there was a –

Ben SUTHERLAND: Other than the scripting process, which reiterates the elector’s decision on the ballot.

Sue LANG: Yes. So it is read back to them.

The CHAIR: Yes. But of course if it is read back as, ‘You voted, one, Labour DLP; two, this; three, that; five, Australian Labor Party Victorian branch,’ you would appreciate that that could be confusing. Particularly orally, it is harder to digest all those words, I think.

Warwick GATELY: And equally, if you have voted in an attendance vote, once you put your ballot in the box, and you change your mind thereafter –

The CHAIR: Sure. No, I am not talking about change of mind; I am talking about error as a result of I think quite reasonably misunderstanding that the word ‘Labour’ did not refer to the party of government, Labor, it referred to this other group.

If I can raise another matter, then I will open it up to the floor. There was a bit of a go at a kind of Trumpist election fraud narrative by some of the fringe political groups in New South Wales last weekend. To what extent has the commission observed any of that in Victoria, and what risk do you see to people running a narrative around there being voter fraud? I think Craig Kelly specifically claimed that the chain of custody had been broken in relation to a box of ballots because a ballot worker was seen loading those ballots from an early voting centre into his car to take to the counting place, which of course is a perfectly lawful activity, but I just wondered if you had any thoughts on that matter?

Warwick GATELY: Look, we were very conscious of misinformation and disinformation campaigns. You may recall that we lead the discussion and debate on that, and we called out misinformation or disinformation as we saw it. But I do not recall any example specifically of the nature that you described there reflecting in New South Wales.

Sue LANG: No.

Warwick GATELY: But it is a very demanding area, social media, as we know, and we need to be active in that space as best we can. But we did call out where we had to, where there was disinformation that would mislead the elector on any matter.

The CHAIR: Are there any powers you think you ought to have, to manage that in the future? If President Trump is running again, there is going to continue to be social media noise around stolen elections and the like.

Warwick GATELY: Chair, in relation to any powers, I will not commit to that at this point in time. Let that come out of our analysis and come up in the report to Parliament. That would be my recommendation.

Sam HIBBINS: Just on that, I presume that the issue around disinformation around elections must be a point of conversation between yourself and other electoral commissions.

Warwick GATELY: Absolutely.

Sam HIBBINS: And the idea of, 'Well, look, we can't just sit back and be passive in this. We need to be actually proactive in tackling disinformation as it occurs', I presume that is a conscious decision and probably a conscious decision amongst other electoral commissions as well.

Warwick GATELY: Absolutely.

Sue LANG: Correct.

Warwick GATELY: And we work very closely – you know, our 'stop and consider' campaign. The AEC run their own effective campaign as well. New South Wales, I note, did much the same as well. The Electoral Council of Australia and New Zealand look at what is overseas best practice in that regard as well.

We did work hard to establish a protocol with social media companies, with providers, to come up with an arrangement where we could contact them and they would take down. And I think we might have done a couple of takedowns, Sue, in the state election where we were successful in getting material removed. It takes a bit of time, but there is constant work there in that area as well.

The CHAIR: Can I ask that those takedown instances be outlined in your report, please?

Warwick GATELY: They will be.

The CHAIR: Thank you. Emma.

Emma KEALY: Thank you, Chair. I am just going back to some of the comments that you have made around complaints and that they will be included in your report to the Parliament. Could you provide, I guess, just some detail around what we can expect in terms of the breakdown of complaints? Do you record, you know, all specific complaints? What is your complaint management database? How do you actually record that? Is it at a higher level of being at, you know, corporate level, or how do you capture the complaints that happen at an electoral level or an office level and how are they then collated and handled?

Warwick GATELY: Indeed we will.

Emma KEALY: Is that included in your report, that was the question?

Warwick GATELY: It will be. I am just trying to reflect back to 2018 where there was a quite clear breakdown. It went to voting facilities, it went to candidate behaviour, it went to unauthorised material – they were all itemised.

Emma KEALY: Of course the thing that I am most concerned around, the lack of ballot papers and the like, is that also captured as part of that? I know how frantic it was in local offices. It put an enormous amount of pressure on our VEC office managers to not have the ballot papers. In the frantic behaviour of trying to secure ballot papers so people could cast their vote, I do not think that they would have necessarily had sufficient time to be able to lodge a complaint. Is that something you then look at? You know, after the election day, do you do any sort of debrief with staff for the VEC to elucidate what might have been handled better, where things went very, very badly, where people who work for the VEC feel like there may have been a compromised position in the ability to offer democracy to all Victorians, particularly the ones who turned out but could not vote because there was not a ballot paper at the time they turned up to the polling place?

Warwick GATELY: We have a very comprehensive debrief program.

Ben SUTHERLAND: Which is in the first instance led by our senior election officers, who run them with the election managers and in turn the casual staff that we deploy. We use a number of pulse surveys to capture

themes and trends as they are going through the early voting period. And of course every voting centre manager returns their material to the election management team and is able to articulate any issues that were not able to be recorded in the formal voting centre diary of the day. Matters such as you have outlined would be captured with either the voter information reports or the voting centre manager diary, and there is sufficient time throughout the evening in which that document is required to be packed up in an appropriate way and completed to capture the day's events.

Emma KEALY: And that all provides evidence into the complaint section of your report to Parliament?

Ben SUTHERLAND: The details of which are incorporated within our debriefs, which is themed up as part of our evaluation, yes.

Emma KEALY: Are we able to have a copy of that higher level report provided to the committee, please?

Ben SUTHERLAND: The themes and trends of what came out of the field? Yes.

Emma KEALY: Because obviously it will be summarised and truncated in terms of putting it in the report to Parliament. But in terms of, I think, the information and evidence that it could provide to this committee to inform us I think that having an opportunity to have that tabled would be beneficial to us all.

Ben SUTHERLAND: Happy to take that on notice, yes.

Emma KEALY: Thank you. Could I go back to a question that the Chair asked, but I am not sure it was interpreted in the fulsome way that it was intended. At this point in time the VEC has a dual role: it is a regulator and it is also an impartial election administrator. There is a tension ongoing with this in terms of maintaining performance. You have got the regulations and requirements under the Act, but then you also have to look at ensuring not just that you are meeting those legislative requirements but also that you are running an effective organization. There are tensions between those two roles. How could those tensions be better or more effectively managed? Should there be consideration given to separating those two obligations of the Victorian Electoral Commission?

Warwick GATELY: I guess it is the committee's role to provide that legislative oversight. Are we complying with the requirements of the *Electoral Act*? I am not quite sure that separating the regulator from the administrator, how you would go about that. I will let the committee reflect on that, whether that is relevant or not.

Emma KEALY: Would you reflect on your 10 years? You are an outgoing commissioner. You have got now the benefit of almost hindsight to look back over that period. Do you think that the VEC would work more effectively if some of those elements of oversight were taken away from the administrative side of the VEC delivering upon an election?

Warwick GATELY: What would replace the current arrangement?

The CHAIR: I think the question goes to might there be a better model, not 'Here's a model we've cooked up and could you please provide your analysis'. For example, if a VEC staff member gives an unlawful direction, you have to resolve that within the VEC, within its sort of administrative structure on election day. That creates at least the possibility of there being a conflict between those whose responsibility within your organisation is to enforce the rules and those who are there to physically administer an election. I guess I am hoping you might expound a bit more on the conceptual question, about whether that is best addressed under the current arrangement or whether some other hypothetical future arrangement might –

Warwick GATELY: I think they work effectively at the moment. As the Electoral Commissioner I have responsibility for delivering the event. I have responsibility for the operation of the VEC from a compliance governance perspective and as an employer as well – I have responsibility there. I would say that the current arrangement allows me clear oversight in addressing my responsibilities while leaving the detail of the matters to the specialists in the VEC to address. I see no conflict. I see both can be dealt with effectively by the one, supported by a strong and professional VEC team, and I would observe that every jurisdiction is structured in a very similar manner as well, where you have –

The CHAIR: Every Australian jurisdiction.

Warwick GATELY: Every Australian jurisdiction is structured in the same manner at the moment.

Emma KEALY: Can I go to workforce now, please?

The CHAIR: Yes, please.

Emma KEALY: I was speaking to a number of the VEC workers following the election. They were concerned that as a general collection they are getting older. They find that the working hours are intense and that it is very difficult to attract people to come in and work and fill all of the booths across just my electorate, and we have a huge number of booths. It was not until the day prior to polling day, the election day, that a complete tote of staff was found for all of those areas.

In terms of ensuring you have sufficient staff to be able to effectively operate an election, what is the VEC currently doing to ensure that you are treating your staff well? They might not want to work every day for three weeks until the late hours. That is a big obligation and impact on people. It is a large impost. What strategies is the VEC considering in terms of attracting casual staff over the election period going forward and how to ensure that you are not burning them out so that they are happy to put their hand up again in subsequent elections?

Warwick GATELY: They are very pertinent matters that you raise and ones that we are very conscious of, particularly getting appropriate staff in some of the regional areas – metro Melbourne is a little easier – I am conscious of that, and with an ageing workforce as well, particularly in the senior election official roles. We pay I think probably the best of most jurisdictions, and all the roles are linked to VPS roles, so if there is a VPS role remuneration change, it automatically flows through to our staff as well. Attracting casual staff – I will let Ben talk to that. It has been particularly challenging in this election, and we also observed that coming out of the federal election as well, so it is not just a Victorian problem. Ben has the detail of that. We worked very closely with VPS to try and get some contributions to our workforce in those areas where we had shortfalls. We engaged councils as well, we engaged other organisations, like –

Ben SUTHERLAND: We had a number of industry groups that we approached. We approached the APS more broadly, we approached labour hire firms, we went to the full staff list of the AEC. So it is probably best to approach this from the beginning as opposed to just at the tail end, being the apparent shortfalls that you report in staffing. It was a circumstance whereby the labour market within Victoria was the tightest it had ever been. We were very much aware of that and in turn learnt from the AEC's experience, whereby they experienced dropout rates of approximately 55 per cent, whereby they had booked staff and they failed to turn up. So one thing is actually confirming the staff. The other is –

The CHAIR: Sorry, 55 per cent – I am astonished by that number. More than half of the AEC rostered staff failed to show up?

Ben SUTHERLAND: In some areas, yes.

The CHAIR: In some areas, okay. And did you have a similar experience in –

Ben SUTHERLAND: And so we were alert to that, so we began a very strategic approach to the recruitment of staff, and that led to us increasing our casual pool from 50,000 I think to 75,000 in a period of time. As the commissioner outlined, we then engaged strategically with learned resource bodies that we could then leverage. But fundamentally, when it came down to it, we needed to pivot to what was available, which was labour hire and those people who had a proven track record of delivering an event.

We have wellbeing at the front of our mind when we consider our workforce planning. We installed new roles in the model of this event to try and remove the significant hours that people were undertaking. We deployed significant operating model changes that effectively reduced the amount of pressure post election day. But as the commissioner pointed out, the time line that we operate within, with the increase in electors, is causing us a significant pressure point that we cannot resolve operationally anymore. I take your point that there is very much a culture in the VEC of getting the job done, and that is what we are committed to doing, but there is also a circumstance and an awareness around this table that that can only hold for so long before the staff say no.

Emma KEALY: I mean, you clearly communicate with the AEC also. I had a number of people who contacted my office – it is one of the strange things about being an MP; everyone thinks that you somehow operate the elections. This could not be further from the truth – the outcome may have been different last November, otherwise. There were a number of people who contacted me who had worked for the AEC at the federal election, but they were not contacted by the VEC to apply to assist in this election. Has there been any assessment done or is this an opportunity where you could more effectively look at the workers who work under the federal election and better communicate and recruit them for the state election?

Ben SUTHERLAND: Quite honestly, I am interested by that piece of information, as we had received the AEC staff list and deployed them to all of our offices for the purpose of filling those vacancies. It is important to understand that we apply different criteria for political neutrality, the highest in Australia, as opposed to the AEC. We also have different employment obligations as opposed to the AEC, which I believe requires citizenship, whereas we do not. But there are matters –

The CHAIR: So we require citizenship but the AEC does not?

Ben SUTHERLAND: I do not believe we do.

Warwick GATELY: No, we do not.

The CHAIR: Oh, right, so the other way round. Okay.

Ben SUTHERLAND: Yes. So fundamentally, the entire AEC's staffing list for all 39 divisions was provided across our 88 districts for our staff to effectively utilise to fill those roles. Whether or not an individual was contacted is outside of my remit, but it is something that we provided strong encouragement to do if they met the criteria, being that they were politically neutral and they did not disclose a criminal offence.

Emma KEALY: Can I ask – out of your remit; I mean, you are the Director of Elections. How –

Ben SUTHERLAND: I do not make each individual call, is what I am referring to.

Emma KEALY: No, but you have got responsibility for that. That is why you get paid the big bucks.

Ben SUTHERLAND: That is why I strongly encouraged them to contact everybody on that list to fill those vacancies.

Emma KEALY: Just also a difference in terms of the footprint of the polling places on election day – and even early voting, although we understand that can change with availability of location, but the number of polling booths in the towns is far more under the Victorian Electoral Commission than the AEC, the Australian Electoral Commission.

Warwick GATELY: Sorry, are you saying we operate far more?

Emma KEALY: Yes.

Warwick GATELY: Is that a bad thing?

Emma KEALY: I think it provides a level of inconsistency, in that people expect that a polling booth will or will not be there, and they turn up, and if it is not available at the next election, then it can be very confusing for people who travel, particularly in country areas. If you are expecting to travel half an hour in one direction and you turn up and there is no polling booth there, and they have been voting for the last 50 years of their life, that can be very confusing, particularly if they voted there just last May. The inconsistency between polling places at the federal level and the state level, where it is parallel – when it is at schools, when it is not in at least –

Warwick GATELY: We do work very closely with the AEC in relation to: where did they operate? We looked at it particularly carefully. Where did they operate in May? We looked at how we see Victoria needing to operate, not how the Commonwealth see their division needing to operate, and we will do what we think is right for us. So, yes, I think we do operate more than the AEC within the state for particular reasons.

Emma KEALY: But then if you do not have the staff, are you really delivering in terms of that? Are you reaching a flashpoint? Is it something you would consider better aligning with the AEC elections if you cannot staff them, or even –

Ben SUTHERLAND: I think it is clear to see that there is a trend to vote early as opposed to on election day, and we will take that into consideration when considering our physical footprint for the next event. That might mean a reduction in the number of voting centres and the more centralisation of services within a district.

Warwick GATELY: We did reduce this time around. Ben, can you recall? I can recall we went through maps and districts and every location, me personally with Ben, as we were deciding where to go. We did close down a number.

Ben SUTHERLAND: We did. I can provide that detail.

Warwick GATELY: It could have been 20 or 30 across Victoria.

Emma KEALY: When you consider shutting a polling place, what do you take into consideration?

Warwick GATELY: Where they were previously, the amount of votes that were taken at that location, what would be the furthest distance that an elector would have to travel to reach that location, and what were the AEC operating? So there are a whole lot of things –

The CHAIR: Is that a scored matrix, or is that just a criteria judgement –

Warwick GATELY: No, it is a judgement.

Ben SUTHERLAND: But we also do conduct a review of the site itself to ensure that it is still meeting code, so that is part of the review –

Warwick GATELY: Physical review of the site.

Emma KEALY: Do you also take into consideration where the early voting centres were located, because particularly in rural and regional areas if the nearest voting centre is in the town you live in, you are more likely to attend that centre. If the nearest early voting centre is half an hour away, it changes the uptake in certain areas. Do you consider that as well, or is it difficult for the VEC to have that oversight, I guess, of the geography and the vast distances that are covered in rural and regional areas versus the density that you see in metropolitan areas?

Ben SUTHERLAND: I think it is top of mind when we consider those locations. But to come back to a point I made previously, it is what the market provides for those early voting centres. Ultimately, we try and provide the best venue in the best location that is most accessible, and then in turn we have already got our established voting centre footprint.

Emma KEALY: That is not the point of my question. It is: if you are looking at the overall number of votes that will take place on election day itself, from what I understand and the evidence you have provided today, you see that there is a drift towards early voting, and so this flat rate is kind of applied that there will be fewer voters expected to turn up on election day, I am still not clear whether you take into account the location of the early voting centres in your calculations over where polling booths should be open on election day. And, going back to my earlier points around provision of ballot papers and how that is calculated as well, it seems like you are just interpreting things on election day and early voting rather than it being an overall election process.

Ben SUTHERLAND: I disagree with that. We do very much approach it in a formulaic way. I would also confirm that we do have preferred sites that we look to the market to respond to in the first instance. That is of course taken into account with what we can actually secure. Those projected numbers are affected by where the ultimate site is that we secure, and in turn trickles through our various voting channels, whether it be postal, whether it be early, whether it be election day or whether it be telephone-assisted voting.

Sue LANG: And we have a very good voting centre locator that we try and encourage everyone to check before they go to vote, whether it be for an early voting centre or election day voting centre. Our research shows that the majority of people will google it in the first instance, or they will come to our website in the

second instance, and then the third will be that they might be likely to go where they always go, because they will assume that there will be something there. But that is why we encourage them very strongly always to check before they go.

The CHAIR: I am cognisant of time. I wanted to give you, though, Commissioner, an opportunity. This will probably be the last time you appear before a parliamentary committee, certainly in your current role. You have had more than 10 years.

Nathan LAMBERT: One minor question on notice; it is a research question. I thought I might, if I can, just jump in before you give the commissioner an opportunity to finish up on a more reflective note.

The CHAIR: Please.

Nathan LAMBERT: Commissioner, just to go back to a matter that was raised by the Chair, which was just that there exist parties that have very similar names. You said that you were not aware of any evidence of voter confusion on that front. I was just wondering if it is possible to take on notice – there is a way of empirically testing this, which you are probably familiar with, which is that for most parties the order they appear in on the ballot paper should not affect their relative performance. Parties compete against each other in a lot of different places, and you would not expect that the Nationals would significantly outpoll the Greens just because they are ahead of them on the ballot paper, as a general rule. But I understand that there is some evidence that a very small group of pairs of parties that the Chair has referred to that have similar names see a stark increase in the extent to which their order on the ballot paper relates to their relative performance, if you like, or the relative proportion of the vote that they attract. I am just wondering if you could take that on notice – a straightforward one, I would hope, for your research team – just to see if that assertion is true, that there appears to be a stronger relationship between relative proportion of the vote and ballot order for the two pairs of parties that the Chair mentioned.

The CHAIR: Perhaps if I could assist the commission, to use the Labor example, and I know there is a New South Wales example that holds true for the Liberal Democrats versus Liberals and the senator that was elected from New South Wales, going back a couple of cycles. It has been suggested to me that there is evidence that where Labour DLP appeared above Australian Labor Party their vote was about double what it was in electorates where they did not appear ahead, in the ballot order, of the Australian Labor Party. Some analysis of that, I think, would assist the commission. Is that where you were going, Nathan?

Nathan LAMBERT: You have put it more succinctly than me. Thank you, Chair.

The CHAIR: Thank you. Are there any other comments before I invite the commissioner to –

Lee TARLAMIS: I had some stuff, but it will take a bit too long, and I think we have run out of time.

The CHAIR: We might park it for the next appearance of the VEC, if that is all right. Thank you.

Commissioner, again, you have had some 10 years with the Victorian Electoral Commission and prior to that you were with the Western Australian Electoral Commission. I will invite you to give us some reflections that do not necessarily have to be the organisational view, but if there are things you would love to see changed about anything to do with elections in Victoria or more broadly, I would welcome you sharing those thoughts with us.

Warwick GATELY: Chair, thank you. I will not spend a lot of time on this. I believe the democratic process and the electoral system in Victoria is sound. We can constantly look at it, we can constantly improve it. I said earlier the *Electoral Act* is now 21 years old. It might need a comprehensive review to make sure that it is fit for purpose, it delivers the democracy that we want and that every elector is getting their opportunity to cast their vote in an informed manner and without stress or disenfranchisement. The electoral roll is in good shape, the relationship with the AEC is strong. There are matters there. As I said, I would encourage the committee to go to the Minister for Government Services to look at my letter in relation to things there that you may consider.

The one issue, and Ben has mentioned it as well, is that of the time line. It is now very difficult to deliver a state election of some complexity in the 47 days that we have to do it, and that introduces risk at various critical parts

of the process – close of noms, ballot paper production, how-to-vote card, counting, declaration, return of writ. These are critical matters there that need consideration. I would leave all of that in the good hands of the committee, and I would ask you to look forward to receiving the VEC submission and ultimately the report to Parliament as well.

I thank the Electoral Matters Committee for my time here, in being open, in listening to what I have had to say – myself and my team – and today is no different to that. So thank you.

The CHAIR: Indeed. I would convey on behalf of the committee and indeed of the Parliament our thanks for your service as the Victorian Electoral Commissioner, and all the very best for a great retirement.

Warwick GATELY: Thank you.

The CHAIR: We will conclude the public part of today's hearing there. Thank you all for being here.

Committee adjourned.