

ELECTORAL MATTERS COMMITTEE

Inquiry into the Conduct of the 2022 Victorian State Election

Melbourne – Friday 11 August 2023

MEMBERS

Will Fowles – Chair

Evan Mulholland – Deputy Chair

Brad Battin

David Ettershank

Sam Hibbins

Emma Kealy

Nathan Lambert

Lee Tarlamis

Emma Vulin

WITNESS

Matthew Potocnik.

The ACTING CHAIR (Lee Tarlamis): I declare open the public hearings for the Electoral Matters Committee Inquiry into the Conduct of the 2022 Victorian State Election. All mobile phones should now be turned to silent.

I would like to begin this hearing by respectfully acknowledging the Aboriginal peoples, the traditional custodians of the various lands each of us are gathered on today, and pay my respect to their ancestors, elders and families. I particularly welcome any elders or community members who are here today to impart their knowledge of this issue to the committee or who are watching the broadcast of these proceedings.

I am Lee Tarlamis, Member for South-Eastern Metropolitan Region. The other members of the committee here today are –

Emma VULIN: Emma Vulin, Member for Pakenham.

Nathan LAMBERT: Nathan Lambert, Member for Preston.

Sam HIBBINS: Sam Hibbins, Member for Prahran.

David ETTERS HANK: David Ettershank, Member for Western Metro.

Brad BATTIN: Brad Battin, Member for Berwick, online.

The ACTING CHAIR: I welcome Mr Matthew Potocnik. Thank you for coming along today.

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

The committee does not require witnesses to be sworn, but questions must be answered fully, accurately and truthfully. Witnesses found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty.

All evidence given today is being recorded by Hansard and is also being broadcast live on the Parliament's website. You will be provided with a proof version of the transcript for you to check as soon as available. Verified transcripts, PowerPoint presentations and handouts will be placed on the committee's website as soon as possible.

I now invite you to proceed with a brief 5-minute opening statement to the committee, which will then be followed by questions from the committee.

Visual presentation.

Matthew POTOCHNIK: Thank you for welcoming me to present today. I acknowledge the traditional owners of the land. I would just like to pay my respects to Rosie Crossley, who passed away on 10 May this year, and Jason Watt, an innovative advocate lawyer with disability. Jason, although blind, designed an NFC chip he used to hover his mobile over. It read out the different medications, all of which he could do by himself. Tell me – I do not know why the VEC has not got that for people who are blind so that they can fill it out themselves, just on an embossed form, and write it in in the appropriate spaces.

Today I hope to break this cycle in regard to citizens with disability who are profoundly disabled, and I hand the torch to the parliamentary Electoral Matters Committee – Will, Brad, Evan, David, Sam, Emma, Nathan, Emma and Lee – to see these changes implemented and processes established to prevent this from recurring once again.

Just a quick recap on what this presentation is about: for this presentation, as in my submission, I describe people with disability as those who cannot self-advocate. They cannot ask for supports. They lack equity. They cannot carry their own burden of proof and require individual engagement and support in order to vote. I am

referring to them as ‘these citizens’. Not every person with disability is like this, but this is probably the most profound group of people with disability. They have supports, they have everything, but they are not being engaged.

I am a disability professional and the father of Levi, who is present here today, who is 22 years of age and voted in this last Victorian state election. The disability sector has been in reform since the 1980s with people with disability being moved out of institutions and into houses in the community.

In 2006, when the government introduced the four-year span of government and hence the period of four years between elections, the *Disability Act 2006* was introduced, as was the Victorian human rights charter in 2007. Disabled citizens in the care of the state were fully supported and all eligible citizens were supposed to vote – if not for the apathy and laziness of what was then the Department of Health and Human Services. In 2010 I asked the manager: ‘How are we supporting the residents to vote this year?’ I was told, ‘We must not be seen to be leading them, Matthew.’ I witnessed eligible citizens in support of government services by government employees ignored and neglected and not given the necessary supports to vote, which would have cost no more because those citizens were already fully supported.

In 2014, as an employee of the Victorian Electoral Commission, I had to argue accountability for the rights of citizens with disability in the same situation who were fully supported. We could not get accountability for a project I was working on from DHHS. The VEC would not insist on the accountability despite my encouragement. It was very difficult at the VEC. Another example of the type of thing I am talking about was on a poster. The top of the poster read, ‘If a resident wants to vote.’ Let us stop there. That sounds quite legitimate and an ordinary sort of thing to say, but the VEC mandate is to ensure that all Victorian citizens participate in a Victorian election. This mandate is about the compulsory nature of electoral law. It is mandatory. So to put on a poster ‘If a resident wants to vote’ is very wrong and apathetic. It should be ‘If a resident can vote’.

Looking back from 2006, with disability supported by government people should have been voting. They should have been supported in voting. It was all supported by government and primarily by government employees and certainly by government funding. That is 17 years ago. With the legislation – the mandatory Commonwealth law; we have the 2006 *Disability Act*, which is about inclusion for people with disability; we have the Victorian charter of human rights – these citizens are legally already included. However, our bureaucracy fails in its accountability.

For people with disability, supports are essential. Levi’s NDIS two-year plan is worth about \$1.3 million. I manage over 111 hours of funding every week – 111 every week. I pay between \$10,000 and \$20,000 worth of invoices each week, and I can tell you that accountability has a huge significance for people with disability, as do essential services.

Recently the COVID pandemic taught us about accountability. While at the VEC in 2014 I identified, after speaking with Alexandra Gunning, an NDIS director, that the VEC could use NDIS participant registers to capture all NDIS participants in receipt of supports who are eligible citizens. I took this information back to the VEC at the time, in 2014. I spoke to Warwick about it. The VEC project where I disseminated voting kits to 5400 residents failed through a lack of accountability – and only 54 voted. We will meet Heather a little later on, who did not vote in the 2014 state election and subsequently in the 2016 election.

Last year, in 2022, people with disability were supported by the federal government. It is compulsory to vote, and they are supposed to be supported, but people with disability are not voting. And the VEC does not incorporate NDIS participants who are eligible citizens in receipt of NDIS supports directly onto their electoral roll. This must change. This is government’s adverse action. It fails in three legislative areas. One, its fiduciary obligation, because government essentially is the funding body, but it is not providing implemented support to deliver necessary equity – the equity that these citizens can be enabled to comply with the mandatory electoral law. It is an adverse action because government is asking for compliance but not providing the equity to enable it. Two, this same dynamic means that these citizens are unable to exercise their human rights. I mean, we are signatories to the international Convention on the Rights of Persons with Disabilities. We have a great electoral system and democratic process, which is mandatory. We have the basis to be able to include all of these people, mainly because it is a mandatory requirement – and are they are supported? It is not happening. Again, this same dynamic means that these citizens are neglected, which is a breach of duty of care, known as abuse. So it

is really quite bad. Three, mandatory electoral laws fail. It fails for the citizen, but it fails for our Australian democracy. This is the Australian government's adverse action ostracising hundreds of thousands of eligible citizens. I ask you to reflect on what I have just said. It is important to understand that these citizens essentially have not been ostracised because of their disability. None of the failing to vote has anything to do with the ability of any individual citizen. It is a systemic failure which is ostracising these citizens.

The VEC with all its empire building has ignored societal and health reforms and siloed against the positive change. They have got a lot to maintain, I understand that, and there is a lot of accountability when going through the process of running an election, but these citizens are not being heard – as in Warwick Gately's hearing, where he said he does not need to go blue in the face to get citizens to the voting centres on voting day. And I am saying – I did say to him and I am saying now – that he just needs to pick up the phone and start engaging the NDIS to ensure eligible NDIS participants have registered on the electoral roll and that the NDIS provides the accountability of supports and implementation. That is not a requirement for the VEC. That should already be done, and I will be meeting with the joint standing committee on the NDIS later this month.

I do not mind telling you it has taken a huge amount of time to get to this stage: questions on notice; writing to many politicians, government departments and commissioners; and submissions to multiple government inquiries and to the royal commission, who were particularly useless and uninterested in ensuring the rights of people with disability – their duty of care and human rights regarding this adverse action. But moving on, we can go through the slide show where I can unpack this a little bit further.

In this first slide I am drawing your attention to the three criteria in order to be an eligible citizen. You have to be 18 years of age, you have got to be Australian and you have to be able to make an informed decision, which is the capacity element. But outside that, you need to do a lot as well. This is a big area that needs to be supported, and this is what I am talking about: you need to know that there is an election, and when. How are you going to vote? How are you going to lodge your vote? Which voting centre? The list goes on.

There are two other elements up there: the burden of proof and equity. The burden of proof is that the majority of us have the equity and have the means to be able to say, 'We've got to go and vote, because it is mandatory.' What we are doing is we are carrying a burden of proof; we are saying we are here to do this and we are required to do this by law. A person, or these citizens, cannot carry their own burden of proof. They may not know that there is an election on. They may not know where the election is. They may not know any of this, and they require individual engagement. And they require the other one, which is equity – for perhaps somebody to actually put them on the electoral roll, engage them, get it all happening and be there on the day if they are voting on the day et cetera. It is an accountability that the NDIS must achieve to ensure these citizens participate and are included.

I will just go to the next slide. So this basically shows the dynamics, but it is also showing the dynamics in relation to Commonwealth electoral law, because without these elements we do not have any Commonwealth electoral law and we do not have that accountability of the electoral process. I put a red box around the burden of proof and the equity, because that is what service providers need to be providing in this equation. So these elements – and I mean, they are funded; there are workers to support people with disability. It is all there. But these citizens must rely on that, and we need to ensure that there is accountability for those services. Neither can exist without the other: you take away the burden of proof, you are not going to get Commonwealth electoral law; you take away the equity, you are not going to get it.

Nathan LAMBERT: Sorry, Mr Potocnik – with your indulgence, Chair – I am just conscious that these slides we can all reflect upon later and we would certainly like to, but I think certainly some of us would like the opportunity to go back and forth on some questions, how best we can help you in your advocacy. I am just conscious that if we do not have time at the end, we will miss that opportunity here today.

Matthew POTOCHNIK: Yes, certainly. I might just go through these; I will not comment much. I have tried to introduce a practical element. I have called the paddle 'equity', I have called the canoe 'burden of proof'. You have got a citizen carrying his canoe. You rent the canoe and the paddle from the shop that provides it. Here it shows eligible citizens travelling across to vote and getting their equity and their paddle and their burden of proof from the service provider, remembering that it is not going to cost more. That is how it would look on an NDIS participant's form, where I have highlighted those aspects that need to be included. That is a letter from the Department of Health and Human Services saying what they do to support people. That is some

correspondence from the Australian Electoral Commission saying they are talking to the Department of Health and Human Services. That is Heather, who I actually linked up with the department of human services – she was supported by them – and contacted the Electoral Commissioner and said, ‘Can we have supports for her?’, because she did not vote. I received correspondence from the Electoral Commissioner that the director had agreed. He had contacted her and all of that. I rang Heather’s house on the day of the election and asked how she was going. They had never heard of it. Now, that is something that a parent like me would be doing for Levi if he was in supported care, and really, that level of accountability should not be my job if this is mandatory legislation.

I think that is about it. That letter there is from the disability minister Linda Reynolds. She outlines that there are supports available, she talks about statistics, she talks about the NDIS quality framework and she talks about ways that it can be implemented. That is the VAGO, the Victorian Auditor-General, where I requested an audit of the VEC after going through this in 2014. And that is it. Thank you.

The ACTING CHAIR: Thank you, Mr Potocnik. I will just flag that if we do run out of time to ask questions today, committee members will be able to provide some questions. Would you be happy to answer follow-up questions?

Matthew POTOČNIK: Oh, most certainly. Yes, I am available in any capacity, even ongoing, to try and get this solved.

The ACTING CHAIR: I will throw over to Mr Lambert for a question or two – or Ms Vulin.

Emma VULIN: Hello. I just want to start off by saying thank you. Thank you for your advocacy, not only for your son Levi, but for being such an important man in this journey for many people that live with disability. I think that is really commendable, and thank you for that.

Matthew POTOČNIK: Thank you, Emma.

Emma VULIN: Your submission highlights ways in which the VEC can ensure people with disability are enfranchised. You acknowledge some people may not have the necessary capacity to qualify to be entitled to enrol to vote, and suggest the NDIS Quality and Safeguards Commission play a role in attesting to a person’s capacity. Can you please explain this further?

Matthew POTOČNIK: Well, I think I put that in to try and really – and that is where the ‘I can vote’ or ‘I want to vote issue’ comes up. I have spoken to the Victorian Equal Opportunity and Human Rights Commission about this, and we have to look at inclusion before exclusion. Basically we need to see if these people can participate, and we cannot really exclude them until they have actually been engaged to see if they can participate. So in relation to the law and in relation to the rights of these citizens, they really need to be enrolled – everyone that is over 18 years of age and that is an Australian. That is generally how it is done. If people are removed from the electoral roll because of capacity reasons, it is done retrospectively. There are all sorts of communication issues in trying to enable people with disability to vote, and that will have to be something that cycles over the period of a person with disability and their life. We have so many things like day programs and things that people with disability attend, and there is no mandatory communication process required for them. So a big growth area in this area would be speech therapists to support communication and decision-making.

Emma VULIN: Just one more, sorry. Given it is a federal body, the NDIS, to your knowledge does the NDIS commission have such an arrangement with the Commonwealth level of the Australian Electoral Commission? Are they doing it better than the VEC?

Matthew POTOČNIK: No. I do not think they really want to talk to each other either.

Emma VULIN: Okay.

The ACTING CHAIR: I will just go to Mr Hibbins. Have you got a question? **Sam HIBBINS:** Thank you. Yes. In terms of automatic enrolment, obviously there are provisions for automatic enrolment that a lot of people living with disability just are not captured by, what have you – drivers licences, that sort of thing. Yet you are putting forward that if you are on the NDIS, that would then be captured as automatic enrolment.

Matthew POTOČNIK: I think I am, and it is mainly because we cannot exclude people. I have had carers that have worked with Levi for many years and they have not even been able to acknowledge that he has capacity. The fundamentals of him participating in an electoral process are extremely difficult. Yes, it is very difficult.

Sam HIBBINS: And just going on from that, let us say someone is automatically enrolled and then for whatever reason – either they do not have capacity or there are issues that did not allow them to vote, and whatever, the fine came in the mail – then I presume you would be supportive of just that being a legitimate reason then for the fine to be waived or those sort of, you know –

Matthew POTOČNIK: That is part of the reason why – pardon me. Sorry, I am interrupting.

Sam HIBBINS: No, that is alright.

Matthew POTOČNIK: Sam, part of the reason I introduced the component the canoe to take the place of burden of proof is that that is part of what the service provider needs to provide. The service provider needs to be accountable for the delivery and implementation of the supports that a person requires to vote. When I mentioned COVID, I mean, that is where the accountability has got to lie. There has got to be someone registered – and when I showed the slide with the plan, there was actually a company that was identified as providing that, and that should be booked for every election.

Sam HIBBINS: Yes. Okay. Thank you.

The ACTING CHAIR: Mr Lambert.

Nathan LAMBERT: Thank you, Acting Chair. And thank you, Mr Potocnik. I will just echo the Member for Pakenham's comments: I appreciate your advocacy. We all work with people within our communities who are Victorians with disability. Some of us of course also have within our own families people who are Victorians with disability and indeed people who have rare genetic disorders. I just want to thank you for your advocacy on all their behalf.

Matthew POTOČNIK: Thanks, Nathan.

Nathan LAMBERT: You have touched a lot on the role of the NDIS, and the previous questions have picked up I suppose that this is not directly within scope for us. The Member for Prahran I think has touched on then automatic enrolment for NDIS recipients or participants, which has its obvious appeal. Are you then also suggesting that at the Victorian Electoral Commission's end they would record on what is basically the roll database which Victorians were NDIS participants so that they would have visibility over that?

Matthew POTOČNIK: Yes, and that is what I was trying to get happening in 2014. I mean, the VEC have a smart roll process. I think Nathan was mentioning that people could be enrolled automatically, or if someone moves out of an electorate and changes their address on their licence then that is tracked down and they are notified by the electoral commission. I mean, the electoral commission should know that there are people with disability under the NDIS who are totally funded, and they should understand that accountability for this person to vote is covered and that they should be enrolled and registered to vote in the Victorian election.

Nathan LAMBERT: Am I right in saying that another benefit of that arrangement would be that we would actually have some visible statistics on the degree to which we are managing to include NDIS participants, which we do not have currently?

Matthew POTOČNIK: Yes. And you would have the growth – as someone turns 17. I mean, they send out notifications to students saying that, 'You're eligible to vote in the next election.' That sort of thing can also take place so that it is capturing people. As the NDIS grows – I did not mention people with mental health conditions, but that certainly fits into that category of these citizens for whom on some days it is hard to be able to do anything.

Nathan LAMBERT: I was just going to ask whether you had thought about that aspect, which is that, if you like, you can measure the raw number of NDIS participants who successfully vote, because under this system they would automatically be enrolled – you can measure the number who vote. Do you think you make any effort in those statistics to allow for the capability component of that – that not all would fulfil that criteria?

Matthew POTOCHNIK: I think that is something that we would potentially learn from the use of this sort of data, and we could then look at other components that are symbiotic to it. I mean, Levi now has I think his third or fourth speech therapist and it is a completely different process that we are using now, and I think that it is going to be more successful. I think these things need to be trialled. For people that are non-verbal and have intellectual disability, sometimes it is really hard to have them communicate as well as you need. So that would be yes.

But you are closer to it, and this is really the benchmark that the VEC needs to look at. There is so much dissension in the disability sector. Bill Shorten used to say that the groundswell is an inch deep, but it is a mile wide. It is because everyone is struggling with their own issues – a person in a wheelchair has a different disability to Levi, for example. We cannot just say, ‘Oh, people with disability’; we have got to look at the very bottom process in which we can support them. And those supports are there, thank goodness, through the NDIS, but it needs to be coordinated and it needs accountability.

Nathan LAMBERT: Thank you.

The ACTING CHAIR: All right. Well, again, Mr Potocnik, thank you for your submission and for coming along today, and for your ongoing advocacy over a long period of time to try and enfranchise people with a disability. That ends this session, and as I said, if anyone does have any additional questions, we can submit those to you as well.

Witness withdrew.