

## BREACH OF THE VICTORIAN ELECTORAL ACT

### Victorian Electoral Commission records

466. During my investigation, I was concerned to find the names and details of tens of thousands of Victorian citizens on the council laptop provided to Cr Capar.
467. The information was found within Excel Spreadsheets entitled, 'ALP [Australian Labor Party] members not yet renewed', 'Brimbank City', 'Derrimut SECC', 'Maribyrnong FEA [Federal Electorate Assembly]', 'POSC [Public Office Selection Committee] Committee', 'Grassland Individuals', 'Grassland Families', 'Harvester Individuals' and 'Harvester Families'.
468. The information on each list varied; however, it included full names of all voting individuals residing in a property, addresses, dates of birth, gender, identification numbers, telephone numbers and email addresses. The ALP list also noted the date the individual joined the ALP and whether their membership fees were up-to-date.
469. My office made enquiries with the Victorian Electoral Commission (VEC) to determine whether the information was from VEC records. My officers provided the VEC with a selection of the identification numbers on the 'Grassland Individuals', 'Grassland Families', 'Harvester Individuals' and 'Harvester Families' lists. The VEC confirmed the information on these lists was from VEC records.
470. The Electoral Act requires that the VEC provide 'a list specifying electors and their particulars' to Members of Parliament (MPs) and registered political parties free of charge. According to the VEC, it fulfils this role by providing each MP with a new roll for the electorate they represent at the beginning of each month, except for January (due to the holiday period). A cover letter is sent with the roll, which states, *inter alia*:
- You are reminded of the confidential nature of the data, which is provided for permitted purposes only, and the need for secure use and storage of this information.
471. Section 36 of the Electoral Act states that MPs and political parties must not use the enrolment information provided by the VEC except for permitted purposes.

472. Section 36(3) of the Electoral Act defines permitted purpose:
- (2) The permitted purposes in relation to a registered political party or a candidate are—
    - a. any purpose in connection with an election; and
    - b. monitoring the accuracy of information contained on an electoral roll or on the register of electors.
  - (3) The permitted purposes in relation to a member of the Assembly or the Council are—
    - a. any purpose in connection with an election; and
    - b. monitoring the accuracy of information contained on an electoral roll or on the register of electors; and
    - c. exercising the functions of a member in relation to the member's constituents.
473. The Electoral Act definition of 'election' is limited to State Parliament elections. Therefore, use of the electoral information for council elections is not permitted. The penalty for an offence against section 36 is 600 penalty units in the case of a natural person and 3,000 penalty units in the case of a body corporate or registered political party.
474. At interview, Cr Capar was asked how he used the lists. He said:
- Sometimes you do leafleting, sometimes you do letters, sometimes you just - yeah, yeah - for community group contacts.
475. Cr Capar stated that he was unaware he was not permitted to use the information for local government election campaigning.
476. I note in accordance with section 24(C) of the Local Government Act, any candidate for a council election may request that the CEO provide the candidate, free of charge, with 'a copy of the voters' roll for the ward or municipal district for which the candidate has nominated'. Section 24(C)(3) states the candidate must only use the voters' roll for the purpose of conducting the election campaign and they must destroy the copy and any copies made of it, or return the copy and any copies made of it, to the CEO within 30 days after the day of the election. The voters' roll provided includes the full name of the elector, the address at which they are enrolled and their postal address. Candidates are not provided with dates of birth, or the details of silent electors.

477. Cr Capar acknowledged he received the voters' roll when he nominated for council in 2005. He also requested and received additional electoral information in April 2006, August 2006 and September 2008 from the ALP. He requested names, dates of birth, gender, ethnicity, postal and email addresses, and telephone numbers.
478. Section 37 of the Electoral Act states a person must not disclose enrolment information that has been provided under section 33 or 34, unless the disclosure would be a use of the information for a permitted purpose.
479. My office interviewed the ALP's IT Data Manager from whom Cr Capar obtained most of the lists, Mr Sel Sanli. Mr Sanli is also the Deputy Mayor of the City of Maribyrnong. Mr Sanli stated he had been providing electoral information to councillors since he started at the ALP five years ago, as this is what his predecessor had done. Mr Sanli stated he discussed the issue with a former ALP colleague. According to Mr Sanli, the colleague 'found the Act that says you can use the electoral role [sic] for election purposes'. Mr Sanli did not know which Act his colleague had referred to and stated he 'didn't go read the Act' himself. Mr Sanli stated:
- my understanding was that I could send the information to ALP members or council - the representatives.
480. He stated he had used the information for his campaign in November 2007,<sup>15</sup> during which he was assisted by Cr Capar, Cr Suleyman and Mr Suleyman. Mr Sanli stated he had previously given the electoral information to other councillors who were ALP members. He was unable to name the councillors to whom he had provided the information. However, he 'assumed' he had provided the information to Cr Suleyman and another candidate, as Mr Sanli helped the candidate with his campaign.
481. According to Mr Sanli, he only became aware that he was not permitted to provide the information to councillors two days prior to being interviewed by my office. He provided my office with a copy of an email he received from Mr Stephen Newnham, State Secretary and Campaign Director, ALP, Victoria Branch on 27 October 2008. Attached to the email was legal advice from Holding Redlich Lawyers, dated 4 September 2008. The advice was provided in response to a request for:
- advice as to whether the ALP can provide copies of the electoral rolls which it receives from the Australian Electoral Commission (AEC) and the Victorian Electoral Commission (VEC) for use in connection with a local council election.

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<sup>15</sup> A by-election was held in November 2007 owing to the resignation of former councillor Joseph Cutri. Cr Sel Sanli was elected and was re-elected in the November 2008 elections.

You have instructed us that the ALP receives a Commonwealth electoral roll from the AEC and a Victorian electoral roll from the VEC which the ALP then has combined into a single roll.

482. The legal advice stated:

In our view, on the basis of the above, the ALP is prohibited from using the Victorian electoral roll it receives from the VEC in connection with a local council election but it may use the Commonwealth electoral roll it received from the AEC in connection with a local council election. On the basis of the prohibitions under the Victorian Electoral Act, however, we do not consider that the ALP can use the roll which it has combined for use in connection with a local council election.

483. My officers asked Mr Sanli if he informed his manager, Mr Stephen Newnham, that he had been providing the information to councillors for five years. He stated that he did not. Mr Sanli stated:

He knows I send that out for campaign purposes but I don't know - I don't know if he knows whether I send it out to councillors or not.

484. In response to my conclusions, Mr Sanli stated:

I would like to stress the point that I only gave Cr Capar Electoral information relating to the Brimbank council area.

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Since I began working in this position, it was accepted practice to assist ALP members with their elections. [A former ALP colleague] who was working with me checked the Act through a website (AEC or VEC). I also read the section with him that states that 'there is permitted use in connection with an election' prior to the 2005 Local Government Elections. We had come to an understanding that the word 'election' refers to any elections whether it is Federal, State or Local Government.

Leading up to the 2008 Local Government elections, the ALP had taken legal advice as to whether it was permitted use of the Electoral information for Local Government elections. The advice that came back from the lawyers was that their understanding of the word 'election' would be referring to state elections only.

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although I believe I was within the law, I have stopped sending out information in relation to Local Government elections after receiving the advice from the lawyers.

485. I note that in his response, Mr Sanli stated he read the relevant section of 'the Act' in 2005 and came to an understanding that 'the word "election" refers to any elections'. This is inconsistent with Mr Sanli's earlier statement at interview that he 'didn't go read the Act' himself, but relied on oral advice from his former ALP colleague.
486. In response to my conclusions in relation to the ALP, Mr Newnham stated that he sought legal advice after 'a number of requests from ALP members for access to the electoral roll'. He stated a copy of the legal advice was circulated to State and Federal ALP MPs on 24 September 2008 and to the State ALP Municipal Co-ordinating Committee on 26 September 2008. Mr Newnham stated:
- when contacted by MPs about the legal advice I consistently advised caution & made it clear that our office would NOT be providing a copy of the roll to local council candidates in the 2008 elections.
487. I note Mr Newnham did not provide the legal advice to Mr Sanli until 27 October 2008. I also note that Mr Newnham made no comment about what the ALP's practice was in relation to providing access to the electoral roll prior to receiving the legal advice.
488. Mr Newnham also stated:
- It should be noted that Mr Sel Sanli is not an employee of the Australian Labor Party. He in fact works for the Parliament of Victoria in servicing the database requirements of state ALP MPs & is funded by them.

## Conclusions

489. I consider that there appear to have been serious breaches of the Electoral Act by the ALP and, possibly, by Mr Sanli in relation to electoral material that was obtained from the VEC pursuant to section 33 of the Electoral Act and which was used and disclosed for purposes other than those permitted. The use and distribution of the material appears to amount to offences under sections 36 and/or 37 of the Electoral Act.
490. I am concerned that the ALP's IT Data Manager disclosed the information to Cr Capar and that the ALP's IT Data Manager appeared to be unaware of the legitimate uses of the information. The ALP is reminded each month by the VEC when it receives the electoral roll of the confidential nature of electoral information.

491. The VEC should consider how other registered political parties and MPs are using the VEC electoral information, as the concerns identified in my investigation may be indicative of wider issues.
492. The ALP also appears to have breached its own *Privacy Policy* by releasing the 'POSC Committee', 'Brimbank City' and 'ALP members not yet renewed' lists to Cr Capar. These lists detail full names, addresses, dates of birth, gender, membership numbers, telephone numbers and email addresses. In addition, the lists note the date the individual joined the ALP and whether their membership fees are up-to-date.
493. The ALP's *Privacy Policy* states:

Personal information provided by you will not be disclosed to any third party except where it is legally required, such as in the investigation of a criminal offence, and in compliance with a search warrant or subpoena.

## Recommendations

I recommend that:

- 10) The Victorian Electoral Commission investigate possible breaches of the Electoral Act by the Australian Labor Party.
- 11) The Victorian Electoral Commission consider how other registered political parties and MPs are using the VEC electoral information.
- 12) The Victorian Electoral Commission amend its correspondence to Members of Parliament and registered political parties to ensure they are regularly made aware of the permitted uses for electoral information under the Electoral Act, including the definition of 'election', which excludes local council elections.