

# Submission to the Independent review of Victoria's electoral and political donations system

## Introduction

1. The Nationals Party of Australia - Victoria (The Nationals) appreciates the opportunity to present a submission to the Independent review of Victoria's electoral and political donations system.
2. The Nationals Constitution explicitly commits the Party to the "Preservation of democracy in Australia through the Westminster Parliamentary system" and the "Preservation of freedom of speech". It is through the lens of those constitutional requirements of the Party that this submission is drafted.
3. The submission will address relevant questions raised in the Panel's discussion paper.

## Donation caps

4. The Nationals believe that Victorians should be free and able to support parties as they wish and in an ideal world should be able to support a party or candidate with their own money without limit.
5. However we recognise that there is a delicate balance between supporting Victorians' right to participate in the democratic process and to be able to financially support parties or candidates with their own money, and ensuring that the State's political system is able to operate in such a way that actual or perceived corruption is reduced or eliminated.
6. The Nationals note that the current donations caps are the lowest in the country and believe that the Panel should give consideration to raising the cap to at least the average of other jurisdictions in Australia. Regardless of the limit, continuing to index the cap to CPI is sensible.
7. Currently the Act considers all candidates for a party, and the party itself, as a single entity when considering donation caps. Other jurisdictions allow one donation cap for candidates and one separate donation cap for parties. The Nationals would likely support similar rules in Victoria, but note that this would further increase the compliance burden on registered political parties.
8. The Nationals strongly object to any proposals to ban or restrict donations from legal, law-abiding individuals or organisations. Freedom of speech and the right to participate in the political process are fundamental parts of our system of government. Restricting the rights of some to participate in our democracy based on a section of the community's view on an issue is wrong.
9. Given the transparency now in place around political donations, should Victorian voters have an objection to a party because of who may or may not have supported them financially, they are able to express that objection at the ballot box.
10. The Panel may wish to consider a raising of the small donation threshold (currently \$54 or less). Increasing this relatively small limit to around \$100 would have no material impact on the transparency of our political system

but would allow volunteer supporters of candidates and parties to conduct low level fundraising events – such as local party branch raffles – without being required to comply with burdensome red tape designed to provide transparency of much larger donations.<sup>1</sup>

## Expenditure caps

11. The Nationals do not support the introduction of expenditure caps, and can see no argument for their introduction.
12. Expenditure caps would penalise candidates or parties for being well supported and for their ability to effectively fundraise within the donation caps. Such caps would further limit the opportunity for Victorians to support issues and candidates that they support.
13. The Nationals have previously expressed the view that the implementation of donations caps has effectively created expenditure caps in any case, and the compliance burden of regulating both the income and expenditure of election campaigns serves no purpose.
14. Should the Panel consider expenditure caps, it must consider how such limits would in practice be complied with. For example, it would be almost impossible to effectively monitor and report on electoral spending on digital advertising without significant regulatory resources.
15. In terms of whether any hypothetical caps should be at a state or district level, the Nationals are strongly of the view that any cap should be at state wide level, based on the number of districts or regions being contested. District level caps would increase the regulatory burden on local volunteers supporting candidates and would in practise be impossible to regulate given that both traditional and digital media markets cross district boundaries.

## TPCs, small community groups and not-for-profit entities

16. These groups will be able to provide the Panel with details on how the 2018 changes effected the activities.
17. The Nationals are clear however, that any proposed expenditure caps must also apply to third parties campaigners. If there are rules for one set of actors with the political process they should be applied equally to other actors. To have any differing rules creates an uneven playing field that could distort the political process.

## Disclosure and reporting

18. The current disclosure and reporting rules provide for a high level of transparency, albeit with a significant red tape burden on participants in the electoral system.
19. The Nationals consider that the current timelines are adequate and that any reduction would significantly increase compliance activities for no obvious benefit.
20. Without a doubt, the 2018 changes have discouraged participants in the electoral process. Examples cited by potential donors include:
  - Confusion about how to register and use the Commission's disclosure website.

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<sup>1</sup> A further example is a party member who bought pizzas for a team of volunteers and then was concerned that they had breached the donation rules. This is not what the legislation is intended to cover.

- Lack of willingness to complete the extra paperwork required to ensure compliance.
- Fear that public disclosure of any donation would lead to them or their business being targeted by other candidates or parties, or by the government of the day.

21. The Panel may wish to suggest to the Commission that it undertakes a consultation processes with stakeholders to understand how it can improve both the operation of its disclosure website and its interactions with donors and recipients.

## Interaction with other jurisdictions and the Commonwealth regime

22. The Federal Parliament's Joint Standing Committee on Electoral Matters has recently published its initial report into the *Conduct of the 2022 federal election and other matters*. The Panel may wish to review the contents of that report, including the Dissenting report by Coalition members of the Committee.

23. The National Party of Australia – Victoria is an independent entity that affiliates with The National Party of Australia in contrast to the structure of both the Liberal and Labor parties.

24. Despite the current variations between federal and Victorian donation frameworks the current Victorian legislation clearly ensures that only appropriate monies on Victorian elections is expended.

## Electoral funding

25. Should the Panel consider any changes to the current regime, it should give consideration to the increase on the regulatory burden on registered political parties. The current level of administrative funding would not be sufficient to support the additional resource required to effectively comply with any further regulation.

26. The current legislation provides the same level of administration funding for registered political parties and for independent members. This parity does not consider that the compliance and administrative burdens of being a RPP are significantly higher than those of being an independent member of parliament. The Panel may wish to consider the NSW Electoral Commission's administration funding and consider whether there is merit in adopting a system that recognises the difference between an RPP and an independently elected member.

27. Administration funding is also currently capped at 45 members. The Panel may wish to consider whether this cap should be lowered (it is 22 members in NSW), with a consequent increase in the amount of funding per MP. This would recognise that the marginal cost of supporting additional members over a lower cap is significantly less than the current per member rate.

## Public Funding Payments for Joint Legislative Council Tickets

28. The Electoral Act allows two parties to run on a joint ticket in Legislative Council regions. The Nationals and the Liberal Party have done this on multiple occasions.

29. Prior to the 2018 changes to the Act, both parties would request that the VEC make any eligible funding ascribed to the joint ticket be paid to each party by an agreed proportion.

30. Subsequent to the 2018 election, this request was again made by both parties, however the VEC interpreted the amended Act in such a way that it would only make payments to the party that held first position on the

ticket. The VEC then considered any payment from the Liberal Party to the Nationals as a “donation” and therefore subject to the donation cap.

31. Following *Harris v Victorian Electoral Commission (2020)* the Liberal Party were able to transfer the agreed proportion of the funding to the National Party, however after the 2022 election, the VEC again determined that it was only able to make similar public funding payments to the Liberal Party (as the Party in first position on the joint ticket).
32. The VEC have written to both parties that given the judgement in *Harris v Victorian Electoral Commission (2020)* they will not consider any future transfer between the two parties as a donation, however this remains unsatisfactory given the clear intention of the Act is to allow joint tickets.
33. The Panel should consider recommending that the Act be amended so that parties running a joint ticket for the Legislative Council be permitted to jointly nominate an agreed share of public funds associated with the joint ticket to be paid to each party.