

7 July 2023

Ms Elizabeth Williams  
Chair  
Electoral Review Expert Panel, Victoria  
[electoral.review@dpc.vic.gov.au](mailto:electoral.review@dpc.vic.gov.au)

Dear Ms Williams,

The Liberal Party of Australia (Victorian Division) (“the Liberal Party”) welcomes the opportunity to contribute to the independent review of Victoria’s electoral and political donations system, including a review of the 2018 amendments to the *Electoral Act 2002* (the Electoral Act).

The Liberal Party believes that electoral law reforms should be aimed at better facilitating the conduct of free and fair elections, and not directed towards entrenching sectional interests.

Our submission addresses issues regarding donation caps, exclusions from the general donations cap, expenditure caps, the disclosure regime and electronic voting.

Kind regards



Stuart Smith  
State Director

## Donation Caps

### Cap Value

Victoria's donation caps are the lowest of any state in the country. There has been no clear justification for the specific limits imposed in Victoria, other than a general belief that reducing the role of private fundraising in Victorian politics reduces the opportunity for individual citizens to wield influence over Victorian politics.

Victoria's donation laws balance limitations on the freedom of Victorians to spend their own money to support causes or political parties of their choosing with the promotion of transparency and reduction of perceived corruption in Victoria's political system. However, it is not clear that Victoria's spending caps are necessary or proportionate to achieving their stated objective. Queensland, New South Wales, and South Australia all have higher limits on private fundraising than Victoria. There is no evidence that those jurisdictions are corrupt, or that the difference in donation caps has significantly changed the culture of their politics compared to Victoria, or that the introduction of strict fundraising caps has eliminated corrupt conduct in Victoria's public life.

Victoria should raise its current general cap from the current annually indexed general cap of \$4,670 over four years to an annually indexed general cap of \$4,670 each financial year. This change would enhance the freedom of Victorians to freely express themselves while still seriously curtailing the potential influence of political donations in Victoria.

**Recommendation 1:** The Liberal Party recommends that Victoria adopts a general donations cap of \$4,670 each financial year with indexation tied to CPI.

### Cap Structure

Victoria's general donations cap treats registered political parties and candidates for registered political parties as a single entity. This model can be contrasted with Queensland and New South Wales' approach where there are two components to their general donations cap. One cap for donations to candidates, and another cap for donations to political parties. The panel should consider the merits of allowing direct donations to candidates as well as the political parties under separate caps.

**Recommendation 2:** The Liberal Party recommends adopting a donations cap mechanism which allows individuals to donate to both political parties and candidates, each with separate caps.

### Indexation

The indexation of caps and thresholds prevent the decrease of the value private individuals can contribute in real terms to the political process in Victoria. Annual indexation in line with CPI ensures that the value of Victoria's paltry caps are not further eroded by inflation. There is no justification for removing annual indexation of fundraising thresholds and caps which are already small enough. Alternatives, such as applying indexation once every four years, or

removing indexation completely, would result in the severely detrimental reduction of the each of the cap values in real terms.

**Recommendation 3:** The Liberal Party recommends that the annual indexation of the general cap, the disclosure threshold, and the small contribution cap, should be maintained.

### **Supplementary elections and by-elections**

There is no mechanism that provides relief from the general cap where the recipient of an individual's donations is forced to contest a by-election or supplementary election. This means that a donor who supports a candidate at a by-election or supplementary election to the value of the general cap will not be able to support that party or candidate financially in the lead up to the next general election.

This gives rise to inequities under the caps between those candidates and parties who have to ask donors to support them to fund two elections during an election period, and those parties and candidates who do not have to contest a second electoral event during an election period.

This also further limits the freedoms of affected Victorians to participate in the political process for no valid reason.

In the case of supplementary elections, the difficulties of funding two election campaigns within a single election period are compounded by the fact that candidates who participate in a failed election are unable to use the costs incurred in relation to the failed election to make a claim for public funding. Given that the sole mechanism for apportioning public funding between candidates is based on the calculation of votes following the conclusion of the election, there is no mechanism which allows candidates in failed elections to receive funding following the failed election.

Separately, where candidates or political parties that participated in the failed election contest the subsequent supplementary election and following the conclusion of the election are eligible to submit a claim for public funding, they will still not be able to use costs incurred in relation to the failed election as the basis for their public funding claim. This is because the costs included in a public funding claim must be related to the election for which the writ giving rise to the public funding was issued.

These circumstances can create significant inequality in access to financial resources among candidates and parties in the lead up to general elections through no fault of their own. The panel should consider that there is no identifiable benefit to allowing this deficiency in the law to continue.

**Recommendation 4:** The Liberal Party recommends that the Electoral Act should be amended to ensure that affected candidates and parties can recover at least part of their costs following a failed election through public funding.

**Recommendation 5:** The Liberal Party recommends that the Electoral Act should be amended to provide a specific exemption for political donations during an election period made

for the purpose of funding political or electoral expenditure that relates to a by-election or a supplementary election.

## **Fundraising Events**

Fundraising events comprise a significant component of the fundraising activities undertaken by candidates and political parties. In its outline of the key matters for consideration the panel noted that there has been some debate about the application of the general cap in relation to fundraising events.

Currently, the definition of a gift in s 206(1) specifically includes “the making of a payment or contribution at a fundraising function” without consideration in money or money’s worth or with inadequate consideration. There is a view that this definition means the status of payments made in advance to enter an event are unclear and may not be included within the definition of a gift. However, the definition of gift in s 206(1) is not limited by the specific inclusion of the example of “the making of a payment or contribution at a fundraising function” and still includes “any disposition of property otherwise than by will made by a person to another person without consideration in money or money’s worth or with inadequate consideration”.

It follows that to the extent that the price paid for entry to a fundraising event exceeds the cost of the event, that surplus should still be considered a transfer of property with inadequate consideration and therefore a gift and be eligible for disclosure.

Changing the definition of gift in s 206(1) to make an explicit reference to the entry price of fundraising events should not change the treatment of profits arising from fundraising events.

It also follows that only the net profit from an event may be considered a gift under the current law. This should continue to be the case.

Candidates and political parties incur costs when running events. It is logical that amounts raised and paid towards the costs of running a fundraising event should not be considered gifts as they constitute a fee for service. It would be inappropriate to include amounts that are properly fees for service within the definition of a gift.

It is also worth noting that there is no practical electoral or political benefit obtained by the candidate or political party from receiving the part of the gross revenue of any event that is used to meet the costs of running the event.

The administrative burden of conducting cost-benefit analyses on each fundraising event to determine which part of the proceeds may properly have been used to meet costs, and which part should be considered a gift does not justify the imposition of a cap which would further inhibit political fundraising in Victoria.

Imposing caps on the component of entry prices to a fundraising event that may be considered not to be a gift, either as a proportion of the entry price or in dollar terms, would not lead to the

disclosure of any donations not already captured by the scheme, but would further inhibit candidates and party's ability to legitimately fundraise under the donation disclosure scheme.

**Recommendation 6:** The Liberal Party recommends that the part of any revenue from a fundraising event that is used to meet the costs of the fundraising event should continue to not constitute a gift.

## Registered Political Party Membership Fees

Membership Fees for political parties are currently excluded from individual disclosure requirements. They should continue to be.

Victoria has many registered political parties, each with different constitutional arrangements, administrative practices, and cultures. Many of these parties are state branches of national political parties. The organisational structure of parties is often a reflection of their philosophical or ideological dispositions, or their relationship to other state branches and their national organisation. The size of a political party will also contribute significantly to the nature of its organisational arrangements.

Given the diversity of party organisations, and the inherent value of that diversity in fostering political participation, the internal management and structure of political parties should be left to political parties.

It follows that political parties should retain the right to set their own membership fees, including establishing premium supporter categories, or giving away memberships for free where they see fit to do so, as this revenue supports the legitimate organisational activities of the political party. These practices are consistent with other membership-based organisations such as sporting organisations.

The panel should consider changes to the law that would explicitly allow political parties to establish and maintain different levels of membership fees as they do currently.

The panel should consider whether changes to the law that provide greater clarity around the nature of a membership fee, or the process by which parties may determine their membership fees for the purposes of complying with the disclosure scheme, is worthwhile.

The panel may consider recommending that political parties are required to publish or register their membership fee levels, and that any amount exceeding their published or registered membership fee levels must be disclosed. This would prevent private or secret membership fee offers being used to circumvent the disclosure regime.

The panel should avoid recommending explicit caps on membership fees and instead focus on developing manner and form provisions which provide better clarity around what may and may not be considered a membership fee.

**Recommendation 7:** The Liberal Party recommends that the definition of gift in s 206(1) of the Electoral Act should continue to specify that an annual subscription paid to a registered political party by a person in respect of the person's membership of the registered political party is not a gift.

**Recommendation 8:** The Liberal Party recommends that the right of political parties to charge different levels of annual subscriptions should be affirmed and clarified under the law.

**Recommendation 9:** The Liberal Party recommends that if it is considered necessary to clarify what may be considered an annual membership subscription fee, that this be achieved through manner and form prescriptions, rather than through the introduction of dollar amount caps or thresholds.

**Recommendation 10:** The Liberal Party recommends that political parties should be required to make their membership fee amounts public, and that only those membership fees which are made public should be eligible to be treated as an annual subscription paid to a registered political party by a person in respect of the person's membership of the registered political party.

## Gifts in Kind - Volunteer Labour

The provision of volunteer labour does not constitute a gift currently under s 206(1). However, there is a lack of clarity surrounding the difference between volunteer labour and the provision of a service which is considered a gift.

Volunteer labour is essential to the operation of political parties and campaigns. It would be appropriate to consider revising the Electoral Act to strengthen the exclusion of volunteer labour from the definition of a gift, in order to protect volunteers.

Political campaigns draw upon large and talented groups of volunteers each of whom bring a unique skill set and perspective to the campaign. Currently, the Electoral Act provides little clarity around what constitutes volunteer labour and what constitutes the voluntary provision of a service. The consequence of this uncertainty is that candidates, political parties and willing volunteers are left with a great deal of uncertainty as to when they risk crossing the line towards a gift in kind. It's important to note that the obligation to disclose gifts in kind rests with volunteers who are unlikely to be aware of the opaque restrictions on volunteer labour.

It should be recognised that the potential roles filled by volunteers on a campaign go well beyond participating in direct voter engagement activities. There is a raft of logistical, operational, support roles that volunteers can and often do fulfil including providing advice in relation to advertising and marketing, assisting with social media and digital marketing, building signs, data entry, installing signs, cleaning, painting, providing legal advice, sourcing and negotiating campaign office lease arrangements, co-ordinating and managing other volunteers, and advising on policy development among many other tasks.

It would be appropriate to undertake any revisions necessary to ensure that volunteer labour was interpreted as broadly as possible, to avoid discouraging volunteer participation in Victorian elections.

In contrast, the loaning of employees paid by an affiliated or associated entity or third party campaigner to work on the campaign of a political party would already likely be a breach of gift in kind caps.

It would be helpful if any clarification around volunteer labour also clarified that the loaning of paid employees was a reportable gift subject to caps.

**Recommendation 11:** The Liberal Party recommends that the distinction between volunteer labour and the voluntary provision of services be clarified in a way which promotes the participation and empowerment of volunteer labour on Victorian political campaigns. Such a clarification should also make clear that loaning to political parties of paid employees by an affiliated or associated entity or third party campaigner is a reportable gift in kind subject to caps.

**Recommendation 12:** The Liberal Party recommends that changes to the Electoral Act which clarify the distinction between volunteer labour and the voluntary provision of a professional service, avoid discouraging voluntary participation on Victorian campaigns.

## Candidates and Members contributions to their own campaigns

There is an immense difference between the motivations of an external donor contributing to a campaign versus a Candidate or Member contributing to their own campaign. Candidates and Members should be able to continue to contribute to their own personal election campaigns, and this should remain un-capped.

**Recommendation 13:** The Liberal Party recommends that no restrictions should be placed on the ability of candidates and members of parliament to donate to their own campaigns.

## Expenditure Caps

There has been no valid argument put forward for electoral expenditure caps that justify the imposition of expenditure caps in Victoria. Many of the arguments put forward for the creation of expenditure caps ignore the practical realities that shape Victoria's political landscape.

Expenditure caps where they exist in Australia are only applied to candidates, political parties, associated entities, and third-party campaigners. There is no expenditure cap that accounts for Government expenditure on political advertising (which benefits the governing party of the day). Introducing an expenditure cap would further restrict the ability of private citizens, candidates, and political parties to campaign for their values and policies, while providing no

mechanism to account for the use of public funds for political purposes by the Government of the day.

Compare the current New South Wales total statewide expenditure cap of \$12.3 million to the \$13.2 million the Victorian Auditor General's Office found that the Andrews Labor Government had previously spent on two government advertising campaigns that contained political messaging. It was also revealed that between 2016 and 2022 the Andrews Labor Government had spent \$2 million on focus group research organised by the Labor-aligned research firm QDOS Research. It is worth noting that advertising and research are both explicitly listed forms of electoral expenditure under Victoria's existing donations regime.

Unless the expenditure caps can account for this use of Government funds that significantly benefit one political party and its electoral prospects, by deducting them from that party's allowable expenditure, expenditure caps may just be another mechanism introduced under the guise of promoting integrity that undermine free and fair elections in Victoria.

Given that the procurement of funds to run election campaigns is already capped, there is no effective benefit from expenditure caps as the funds used for such expenditure are already limited. The introduction of expenditure caps would only introduce a new and costly regulatory burden that would have no meaningful impact other than limiting free and fair elections.

**Recommendation 14:** The Liberal Party recommends that Victoria should not adopt expenditure caps.

**Recommendation 15:** The Liberal Party recommends that any proposed expenditure caps should include taxpayer-funded Government advertising and research that significantly benefits one political party, as an expenditure for the purposes of the calculating that party's expenditure cap.

Noting the panel's focus on this reform as part of the terms of reference for this review, the Liberal Party makes the following observations relating to factors the panel might consider when recommending the design of expenditure caps.

### **State-wide Expenditure Cap**

If the panel considers the adoption of a state-wide expenditure cap, they should give particular consideration to whether state-wide caps should be constructed as an aggregate of the number of electoral districts and/or Legislative Council regions contested.

Such a model, as adopted in New South Wales, Queensland and South Australia, ensures a sliding scale whereby parties with a broad coalition of support are not disadvantaged for providing voters across the state the opportunity to support their platform at the ballot box.

Such a model needs guardrails to ensure that parties enjoy a genuine broad coalition of support. There should be parameters that prevent political parties with limited community support from running 'paper candidates', for the sole purpose of increasing their electoral spend in other districts.



Possible options to address this concern could be to introduce a minimum signature requirement for endorsed candidates to run in an electorate (for example, 25 local signatures), and an increase to the current deposit required to stand a candidate for election in the Legislative Assembly.

**Recommendation 15:** The Liberal Party recommends that the panel, if it intends to recommend a state-wide expenditure cap, should consider the implementation of state-wide expenditure caps based on the number of aggregate of the number of electoral districts and/or Legislative Council regions contested.

**Recommendation 16:** The panel should consider additional measures to prevent parties running not-serious 'paper' candidates.

### **District-level Expenditure Cap**

If alongside a statewide cap, a district-level expenditure cap is considered by the Committee, any such cap should provide equal status between endorsed and unendorsed candidates. There is no rational reason as why, for example, a Shooters, Fishers and Farmers candidate, a Labor candidate, or a Victorian Socialists candidate should have a higher expenditure cap to an independent or unendorsed candidate at a district level, and vice-versa.

District-level expenditure caps could also cause an unintended and perverse incentive for some candidates to seek local non-monetary in-kind support as a way of getting around a strict expenditure cap that they might consider too low in a competitive contest.

**Recommendation 17:** If a district-level expenditure cap is introduced it should apply equally to endorsed and unendorsed candidates.

### **Expenditure Caps for Associated Entities**

If expenditure caps are to be placed on candidates and political parties, it is clear from the evidence of other jurisdictions that for the purposes of expenditure caps, the expenditure of a party and its associated entities should be treated as one. A fundraising vehicle, or an associated or affiliated campaign arm supporting a political party should evidently be treated as the same as that party for the purposes of calculating electoral expenditure.

To ensure consistency, the definition of associated entities would need to be extended to match the definitions applied by the Commonwealth. This would ensure entities that operate for the dominant purpose of assisting either a political party, or an individual candidate or group of candidates through fundraising or electoral expenditure, are required to register as an associated entity. Laws should be clarified to ensure that entities that endorses/supports an individual candidate, group of candidates, or political party are deemed associated entities of that candidate, group of candidates, or political party.

Current Victorian laws should be examined to ensure that affiliated organisations that currently are appropriately registered as associated entities would not re-register as third party campaigners for the purposes of evading the joint expenditure cap. A failure to properly police these entities could inadvertently incentivise the creation of US-style 'Super PACs'.

**Recommendation 18:** The Liberal Party believes that if expenditure caps are going to be introduced, then expenditure by associated entities should be included within the expenditure caps of major political parties.

## Expenditure Caps for Third Party Campaigners

If expenditure caps are to be placed on candidates and political parties, they should also apply to third party campaigners. Any such expenditure cap should likewise apply at both the district and the state-wide level to the extent either are applied to political parties and candidates. This is to ensure that third party campaigners can maintain a voice, but not drown out the broader political debate in any individual district. Adjusting the current New South Wales limit to reflect the lower number of electors per seat in Victoria would amount to an approximate \$25,000 limit per electorate for third party campaigners, and in the Liberal Party's view strikes the right balance.

**Recommendation 19:** The Liberal Party believes that if expenditure caps are going to be introduced then expenditure caps should apply to third party campaigners.

## Disclosure & Reporting

Victoria's current donation disclosure & reporting regime provides for a high level of transparency. Any further reductions to reporting and transparency timelines or lowering the disclosure threshold would be counterproductive as these measures would unnecessarily increase compliance burdens without delivering a meaningful benefit in terms of the transparency achieved under the scheme.

The Liberal Party notes that since 2018 the introduction of the lower donation disclosure threshold in Victorian politics has resulted in a significant number of donors receiving intimidatory pressure not to contribute to the Liberal Party.

## Electronically Assisted Voting

The use of traditional paper ballots contributes significantly to the fairness, security, and transparency of Victorian elections. We do not support an expansion of electronic assisted voting as it would unnecessarily weaken public confidence in the system.

**Recommendation 20:** That Electronically Assisted Voting should not be further expanded beyond the current eligibility criteria.

## Public Funding Payments for Joint Legislative Council Tickets

The Electoral Act has for many years permitted two parties to run a joint ticket for the Legislative Council. However, payment of public funding is currently only made to the Party that holds the first position on the ticket (even though the funding has been earned by two parties). This is clearly absurd and contradictory to the intent of the Act to allow joint tickets.

Amendments to the Act should be made so that two parties running a joint ticket may jointly nominate to the Electoral Commission an agreed proportion of the public funding associated with the joint ticket to be paid to each party.

**Recommendation 21:** 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.