

**INDEPENDENT CANDIDATES' SUBMISSION:  
*"Making Victorian Elections Safer and Fairer"***

to the  
**2022 STATE ELECTION INQUIRY**  
by the  
**ELECTORAL MATTERS COMMITTEE**

**Carol Altmann**, Candidate for South-West Coast, 2022

**Dr. Ian Birchall**, Candidate for Melton, 2018 & 2022

**Ali Cupper**, Member for Mildura 2018-2022

**Felicity Frederico OAM**, Candidate for Brighton 2022

**Jacqui Hawkins**, Candidate for Benambra 2018 & 2022

**Dr. Kate Lardner**, Candidate for Mornington 2022

**Melissa Lowe**, Candidate for Hawthorn 2022

**Nicole Seymour**, Candidate for Rowville 2022

**Suzanna Sheed**, Member for Shepparton 2014-2022

**Sophie Torney**, Candidate for Kew 2022

**June 2023**

**Contacts:**



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## **Executive Summary & Recommendations:**

1. The Organization of American States (OAS) lists competitive elections as one of the basic foundations of a democratic system. The OAS explores competitive elections by asking:
  - a. Do candidates compete on a level playing field?
  - b. Do the voters have access to the information needed to make an informed choice when they cast their votes?
  - c. Is the physical security of all candidates and party personnel guaranteed?
2. The 2022 Victorian Election failed to reach any of these standards. Independent candidates competed for votes on an unlevel playing field. We were not able to provide voters information to support an informed choice, and our personal security and those of our supporters were often not safe.
3. We have joined together to share similar experiences from across Victoria in the hope of making changes, so Victoria can conduct a safer and fairer state election in 2026. **In doing so we make the following findings and recommendations:**
  - a. **FINDING 1:** Independent challengers must fundraise 100% of their campaign within the donation caps. This limits the ability to fundraise and compete financially with the major parties whose campaigns are predominately financed outside of the cap, allowing major party candidates to easily outspend Independent challengers.
  - b. **RECOMMENDATION 1:** Allow Independents to fundraise the first \$250,000 for their campaigns outside of the cap or subject a party's nominated entity donations and membership/affiliation fees to the cap.
  - c. **FINDING 2:** Public funding for Independents goes to 'waste' when an incumbent retires or a previous candidate decides not to recontest the next election.
  - d. **RECOMMENDATION 2:** Establish a new entity type within the act known as an Independent Campaign Entity that can register (subject to signatures from a reasonable number of electors) in a particular electorate to run Independent campaigns. This new entity type would be able to manage public funding for an Independent candidate or incumbent and pass that funding on to the next Independent candidate as required. The Independent Campaign Entity would also be able to receive tax-deductible donations and access the electoral roll (for the electorate in question) all year round. The Independent Campaign Entity would

**essentially be responsible for all aspects of campaign management, including disclosures, authorisations and annual returns. This would also resolve the additional disadvantage of campaign income being subject to the personal income tax return of the Independent candidate, where public funding is taxable income for an Independent but not a political party.**

e. **FINDING 3: Major party candidates have a significant funding advantage over Independent candidates as they receive millions of public funding that can be strategically allocated to key seats. First-time Independent candidates receive no public funding.**

f. **RECOMMENDATION 3: Legislate new rules that prevent parties from reallocating public funding, essentially forcing them to spend public funding in the electorate where it was received.**

**Establish a mechanism to publicly fund first-time Independent candidates, matching their first \$30,000 in donations with the option to apply for the funding in advance. Alternatively, eliminate advanced public funding for all candidates and parties.**

g. **FINDING 4: Political parties can pay for their accounting, auditing and other financial or general management matters from their publicly funded Administrative Expenditure. Independent candidates must pay for this out of their campaign budget and within the donation caps.**

h. **RECOMMENDATION 4: Allow Independent candidates and Independent Campaign Entities to pay for any services covered by Administrative Expenditure via donations outside of the donation cap provided this spending is clearly documented in the annual return.**

i. **FINDING 5: Political parties use their communications budget for defacto campaigning.**

j. **RECOMMENDATION 5: Prevent all spending from the communications budget four months out from a general election. In addition, develop a Public Register for all sitting MPs that use public money for all communications expended in the calendar year of an election that is updated in real time.**

k. **FINDING 6: Political parties can receive tax deductible donations all year round but an Independent challenger can only receive tax deductible donations a few weeks out from election day.**

- l. **RECOMMENDATION 6: Allow Independent candidates to receive tax-deductible donations as soon as they publicly announce their candidacy and allow registered Independent Campaign Entities to receive tax deductible donations all year round.**
- m. FINDING 7: Electoral roll access two weeks out from election day is meaningless and Independent candidates are significantly disadvantaged in field tactics due to this delayed access.
- n. **RECOMMENDATION 7: Allow Independent candidates access to the electoral roll six months out from a general election (provided reasonable criteria is met) or from the moment they publicly declare their candidacy (provided there is further clarification around what counts as a public declaration) and provide permanent access to a registered Independent Campaign Entity.**
- o. FINDING 8: The Liberal party mailed how to vote cards out in early September using the AEC form for how to do postal voting. This was considered within the rules because it was not a VEC form.
- p. **RECOMMENDATION 8: Postal Mailing. Ensure the VEC is the only entity mailing out postal vote information for Victorian elections.**
- q. FINDING 9: A How To Vote card design with the placing of number “1” or reference to the word “Independent” is valid in Victorian State elections.
- r. **RECOMMENDATION 9: We recommend that the EMC instruct the VEC to publicly state that they will abide by the ruling in *Torney v Victorian Electoral Commission* for the 2026 Victorian Election.**
- s. FINDING 10: Threatening candidates with incarceration and heavy handed legal action unnecessarily contributed to a decline in confidence in the conduct of the election by the VEC and contributed significant emotional and financial stress for campaigns that in turn diminished the quality of their campaigns.
- t. **RECOMMENDATION 10: The VEC should re-evaluate the approach to compelling candidates to comply with election rules and VEC rulings to minimise future incidents and maintain confidence in their ability to conduct the elections fairly.**
- u. FINDING 11: Candidates who had issues with HTV cards were prevented from taking part in mobile voting and were advised by the VEC they could not hand out how to vote cards.

- v. There is insufficient time between the ballot draw and the opening of early voting to facilitate the design, registration, and printing of HTV cards in line with VEC specifications.
- w. **RECOMMENDATION 11: We recommend the EMC change Section 79 of the *Electoral Act 2002* to:**
- i. **Make HTV card registration consistent for Election Day and early voting (registration is not required for the pre-poll HTV card)**
  - ii. **Incorporate the ruling in *Torney v Victorian Electoral Commission***
  - iii. **Allow one week between the ballot draw and the opening of pre-poll to provide:**
    - **campaigns more time to design, register, and print HTV Cards before Pre-Polling begins.**
    - **the VEC more time to print ballots****This recommendation is consistent with the current practice at the AEC.**
- x. **FINDING 12: The entire HTV card registration process is unclear, inconsistent across early voting and election day, poorly planned, and inconsistently enforced leading to significant challenges for all candidates.**
- y. **RECOMMENDATION 12: We recommend that the Committee instructs the VEC to develop new revised and more detailed guidelines for all campaigns on HTV card design elements. This could include several examples from recent elections, direction on registration language, direction on representation of the ballot and other items. We propose that this be completed at least one year before the 2026 election and be open to a period of public comment before being finalised. The VEC complies with the wording of the Act and ensures that the candidate listing on the How to Vote cards are copied exactly from the ballot paper.**
- z. **FINDING 13: There is insufficient VEC support for Independent candidates when it comes to registering HTV cards and interpreting design requirements.**
- aa. **RECOMMENDATION 13: Ensure the VEC allocates dedicated personnel to independent candidates to support them in interpreting registration rules.**
- bb. **FINDING 14: Campaigns for Independent candidates are unfairly hurt by restrictions on the number of signs at polling places.**
- cc. **RECOMMENDATION 14: We recommend the Committee either change the signage rules to limit signage to two per candidate in the Legislative Assembly and two per party/voting bloc in the Legislative Council (Removing the parties' entitlement to an additional two signs). With this**

**rule to apply to polling locations in the District the candidate is competing in, or polling places within 1km of the District boundaries, whether those locations are used for Pre-Polling or on Election Day. Or to increase the number of signs allowed at a polling booth from two per Legislative Assembly candidate to up to ten signs per Legislative Assembly candidate to enable Independent campaigns to compete more fairly with the naturally higher awareness enjoyed by political parties.**

- dd. FINDING 15: Victorian State election ballots do not give voters access to the information they need as they do not designate Independent Candidates as “Independent” or allow the use of a logo.
  
- ee. **RECOMMENDATION 15: We recommend the Committee make changes to Schedule 2 of the *Electoral Act 2002* to allow the word “Independent” on the ballot and to allow the use of initials or logos for Independent candidates. (this is allowed at on the Federal ballot paper)**
  
- ff. FINDING 16: Intimidation is a constant feature of Victorian State elections, for the public, the candidates and their supporters. Neither the Election Act of 2002 nor VEC procedures to deter bullying or cyber-squatting. The Police treat this behaviour as a civil matter unless a serious threat is received, and generally do not investigate complaints. Local governments are having to dedicate resources to review and remove signage.
  
- gg. **RECOMMENDATION 16: We recommend that the Committee instructs the VEC to develop a Code of Conduct. This should include setting standards of behaviour that promote respect, tolerance and democracy, both in the community and online. We propose that this be completed at least one year before the 2026 election and be open to a period of public comment before being finalised.**
  
- hh. FINDING 17: It is very hard to stop poor behaviour at Polling Places as the VEC staff is managing the booths.
  
- ii. **RECOMMENDATION 17: VEC to staff one person outside all day at Polling Places.**
  
- jj. FINDING 18: Truth in advertising is an essential part of a healthy democracy but the current rules are inadequate for preventing candidates from spreading significant disinformation during the ‘actual’ election period rather than the legislated election period.

kk. **RECOMMENDATION 18: The truth in advertising period should be extended to encompass the entire two months prior to election day in order to minimise disinformation that may mislead, deceive, or confuse voters.**

4. Thank you for the opportunity to submit to the Inquiry. We would be pleased to appear in public testimony to support making the 2026 state election safer and fairer,

Carol Altmann  
Ali Cupper  
Jacqui Hawkins  
Dr. Kate Lardner  
Nicole Seymour

Dr. Ian Birchall  
Felicity Frederico OAM  
Melissa Lowe  
Sophie Torney  
Suzanna Sheed



## **An Unlevel Playing Field Full report:**

5. The Organization of American States requires that “*candidates compete on a level playing field*” for a competitive election.
6. Victoria’s campaign funding laws, donation caps and public funding entrench incumbency and significantly disadvantage Independent and minority party candidates, particularly first-time Independent challengers.
7. The below details the benefits provided to the major parties and demonstrates how it is simply not possible for an Independent candidate to match or outspend a major party candidate. This is a fundamentally flawed and undemocratic outcome of the new funding rules.

### **8. Donation Caps**

- a. On the surface, an identical donation cap for a party candidate and an Independent candidate seems fair and balanced. However, the new funding laws have created a system where the major parties are funded almost exclusively outside of the donation cap through public funding, membership/affiliation fees and their nominated entity.
- b. The Labor Party’s public funding total going into the 2022 election was \$17,055,984 and the Coalition’s total was \$13,589,731. In addition to this, both major parties each receive approximately \$1.5 million every year in party membership and union affiliation fees outside of the donation cap.<sup>1</sup>
- c. Only 3.36% of Labor’s total income and 8.08% for the Coalition has come via donations during the 20-21 and 21-22 financial years, meaning the major parties are rarely having to combat the new donation caps to fund their campaigns.<sup>2</sup>
- d. In contrast, a first-time Independent challenger starts with no public funding and must fundraise the entirety of their campaign within the donation cap, a restriction that the major parties realistically do not actually contend with given less than 10% of their campaign finances are received within the donation caps.
- e. Additionally the Labor, Liberal and the Nationals Parties each have a nominated entity that can make unlimited donations outside of the cap. This provides the major parties with unlimited financial resources to top up priority campaigns as

required.<sup>3</sup> Independent candidates are not allowed to nominate a similar entity to facilitate their own fundraising.

- f. Our submission respectively asks the committee to consider what practical purpose donation caps actually serve when the major parties are receiving over 91% of their funding outside of these caps.
- g. **FINDING 1: Independent challengers must fundraise 100% of their campaign within the donation caps. This limits their ability to fundraise and compete financially with the major parties whose campaigns are predominately financed outside of the cap, allowing them to easily outspend Independent challengers.**
- h. **RECOMMENDATION 1: Allow Independents to fundraise the first \$250,000 for their campaigns outside of the cap or subject a party's nominated entity donations and membership/affiliation fees to the cap.**

## **9. Public Funding**

- a. As previously mentioned The Labor Party and the Coalition received \$17,055,984 and \$13,589,731 in public funding respectively heading into the 2022 election. This provides the major parties with a significant head start over first-time Independent candidates who do not receive any advanced public funding for their campaigns. This is particularly important because a competitive campaign at a state level costs \$400,000 (as evidenced by [the Labor party officials quoted in this article](#) which indicates for Labor to be competitive at the Warrandyte byelection they must spend \$400,000)
- b. With the way the rules currently stand, the major parties put all of their public funding and membership fees into one big pot and distribute it across their campaigns strategically as they see fit. The parties are not required to spend their public funding in the electorate where that money was received. In practice, the major parties can run a \$500,000 campaign to drastically outspend a strong Independent challenger by spending only \$10,000 or less on unwinnable seats.
- c. Additionally, communities with an Independent incumbent are disadvantaged when that Independent retires. Their public funding cannot be passed onto the next Independent candidate, yet a first-time party candidate will always have public funding available for their campaign. This also means should a previously unsuccessful Independent candidate decide not to run again, their advanced public funding also cannot be passed onto the next Independent candidate.

- d. **FINDING 2: Public funding for Independents goes to 'waste' when an incumbent retires or a previous candidate decides not to recontest the next election.**
- e. **RECOMMENDATION 2: Establish a new entity type within the act known as an Independent Campaign Entity that can register (subject to signatures from a reasonable number of electors) in a particular electorate to run Independent campaigns. This new entity type would be able to manage public funding for an Independent candidate or incumbent and pass that funding on to the next Independent candidate as required. The Independent Campaign Entity would also be able to receive tax-deductible donations and access the electoral roll (for the electorate in question) all year round. The Independent Campaign Entity would essentially be responsible for all aspects of campaign management, including disclosures, authorisations and annual returns. This would also resolve the additional disadvantage of campaign income being subject to the personal income tax return of the Independent candidate, where public funding is taxable income for an Independent but not a political party.**
- f. **FINDING 3: Major party candidates have a significant funding advantage over Independent candidates as they receive millions of public funding that can be strategically allocated to key seats. First-time Independent candidates receive no public funding.**
- g. **RECOMMENDATION 3: Legislate new rules that prevent parties from reallocating public funding, essentially forcing them to spend public funding in the electorate where it was received.**

**Establish a mechanism to publicly fund first-time Independent candidates, matching their first \$30,000 in donations with the option to apply for the funding in advance. Alternatively, eliminate advanced public funding for all candidates and parties.**

## **10. Administrative Expenditure and Communication Budgets**

- a. In addition to the public funding and membership fees, both major parties receive Administrative Expenditure funding and each incumbent MP receives a yearly communications budget.
- b. Whilst this funding is not for campaigning, Determination 7 2018 allows Administrative Expenditure to be used for accounting, auditing and general management for the party. An Independent candidate must pay for these

financial and management-related services out of their campaign budget, further limiting their ability to financially compete in terms of overall election spending. The same ATO and VEC reporting requirements exist for both parties and Independent candidates but a party can handle these centrally, with the benefit of public funding.

- c. The major parties also have the benefit of long-standing brand recognition and an incumbent would also have the benefit of their Electorate & Communications Budget. The average Communications Budget for a lower house MP in the 2021-2022 financial year was \$105,373.
- d. Whilst the communications budget is not for campaigning, an MP can use the budget to promote their work. Electorate-wide mail outs and other forms of communication highlighting an MP's achievements and the policies of their party are campaigning in all but name.
- e. To win an election, a first-time Independent candidate must spend the majority of their money lifting their name recognition, in order to compete with an incumbent who has had roughly \$100,000 to spend on self-promotion each year over the past four years and potentially \$500,000 or more to spend on their campaign, a total that an Independent simply cannot match under the current rules.
- f. FINDING 4: Political parties can pay for their accounting, auditing and other financial or general management matters from their publicly funded Administrative Expenditure. Independent candidates must pay for this out of their campaign budget and within the donation caps.
- g. **RECOMMENDATION 4: Allow Independent candidates and Independent Campaign Entities to pay for any services covered by Administrative Expenditure via donations outside of the donation cap provided this spending is clearly documented in the annual return.**
- h. FINDING 5: Political parties use their communications budget for defacto campaigning.
- i. **RECOMMENDATION 5: Prevent all spending from the communications budget four months out from a general election. In addition develop a Public Register for all sitting MPs that use public money for all communications expended in the calendar year of an election that is updated in real time.**

## **11. Tax Deductible Donations**

- a. Donations to Independents do not become tax deductible until candidate nominations open (incumbents excluded) and the Independent is listed as a candidate. This significantly disadvantages an Independent candidate as some donors will not donate until there is a tax incentive to do so. This decreases the spending capability of an Independent at the start of the campaign when funds are needed most.
- b. **FINDING 6: Political parties can receive tax deductible donations all year round but an Independent challenger can only receive tax deductible donations a few weeks out from election day.**
- c. **RECOMMENDATION 6: Allow Independent candidates to receive tax-deductible donations as soon as they publicly announce their candidacy and allow registered Independent Campaign Entities to receive tax deductible donations all year round.**

## **12. Electoral Roll Access:**

- a. Independent candidates can only gain access to the electoral roll approximately two weeks out from election day. Yet political parties have permanent, year-round access to the electoral roll. This gives the parties a ridiculously unfair and undemocratic advantage in field tactics.
- b. The electoral roll facilitates the conduct of addressed mail outs. Addressed mail is far more likely to be read by electors than unaddressed mail. As a result access to the electoral roll early confers a significant advantage currently only enjoyed by political parties.
- c. This is particularly impactful when it comes to targeted mailouts. Wherein electors are sent addressed mail optimised to their interests as assessed against their demographic profile. This enables candidates to inform voters about the issues most likely to be important to them.
- d. Independent Candidates are disadvantaged by their limited access to the electoral roll due to the lead times of Australia Post and other mail houses for personalised direct mail campaigns. Getting the mail files two weeks from election day means an Independent Candidates cannot realistically do a personalised direct mail campaign leveraging bulk mail discounts or Australia Post bulk mail automated processing.
- e. This adds cost and resource drain to Independent Candidates campaign if direct mail envelopes need to have stamps manually applied. There is also a significant risk mail won't be received in time for the election.

- f. Significantly, without access to the electoral roll Independents are unable to identify where electors live and so are compelled to spend significant time and effort campaigning in parts of the electorate which have a much lower proportion of electors to residents.
- g. Accessing the electoral roll during the entirety of a campaign would revolutionise field tactics for Independent campaigns, allowing them to fairly compete with the political parties.
- h. **FINDING 7: Electoral roll access two weeks out from election day is meaningless and Independent candidates are significantly disadvantaged in field tactics due to this delayed access.**
- i. **RECOMMENDATION 7: Allow Independent candidates access to the electoral roll six months out from a general election (provided reasonable criteria is met) or from the moment they publicly declare their candidacy (provided there is further clarification around what counts as a public declaration) and provide permanent access to a registered Independent Campaign Entity.**

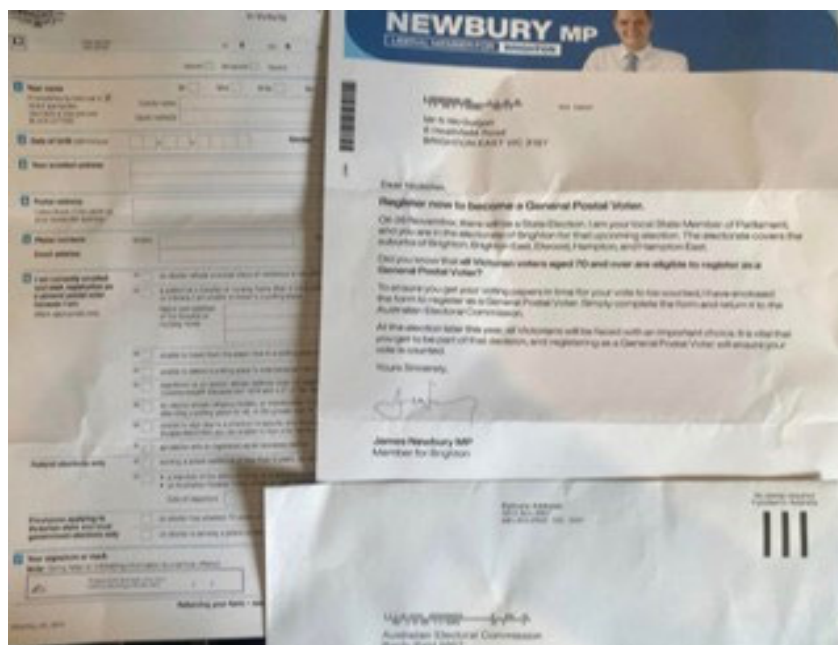
## Restricted Access to Information for Voters

13. The Organization of American States requires that voters need access to the information needed to make an informed choice when they cast their votes.

14. Independent candidates are prevented from presenting information to fully inform voters in the following ways:

### 15. Postal Mailing Applications

- a. This is an example of a Postal Mailing application which could deceive voters that it is from the AEC as it used an AEC form, but is actually from the Liberal Party.



- b. **FINDING 8:** The Liberal party mailed how to vote cards out in early September using the AEC form for how to do postal voting. This was considered within the rules because it was not a VEC form.
- c. **RECOMMENDATION 8: Postal Mailing.** Ensure the VEC is the only entity mailing out postal vote information for Victorian elections.

### 16. How To Vote Cards (HTV)

- a. The most prominent How To Vote (HTV) card issue during the election was the failure of the VEC to approve and register submitted designs from several of our campaigns. Independent candidates tried to comply with VEC requests

when it came to HTV registration but found the threat of incarceration from VEC officials unhelpful when it came to resolving these issues as it induced significant emotional stress. Something which was compounded first by the financial stress of hiring lawyers and facilitating reprinting and then by the stress caused by an uptick in unpleasant interactions from voters and volunteers for other candidates at polling booths resulting from their perception of the incarceration threats and associated legal action.

- b. It is hoped that the outcome of the Torney (& Lowe & Lardner) campaigns in the *Torney v Victorian Electoral Commission* case in the Victorian Civil and Administrative Tribunal has settled this matter. Justice Michelle Quigley ruled that *'There is nothing in the material that I have been provided with which leads me to the conclusion that the placing of number "1" or reference to the word "Independent" on the HTV cards is likely to mislead or deceive the hypothetical gullible and naïve elector.'* We expect that further litigation on these design choices by Independent candidates in the lead up to the 2026 Election will be unnecessary, and that the VEC will abide by this ruling.
- c. However, this was not the only challenge our campaigns encountered with HTV cards. The rules that require HTV card registration for Election Day but not for Pre-Polling are inconsistent and contributed to the confusion involved in attempting to register HTV cards. Particularly because several of our campaigns received conflicting information from the VEC on design elements, including whether the Registration verbiage was required on both sides of the paper or just one, or if the full name on the ballot was required on the HTV card.
- d. One notable inconsistency was that although the Electoral Act states the How to Vote card needs to be an exact copy of the ballot paper. Liberal How to Vote cards were not an exact copy as they used only the first initials for all candidates except for Liberal candidates (who had the full name of the candidate displayed). Despite this these cards were registered by the VEC without a fuss and without a VCAT ruling or the threat of legal action.
- e. The registration issues also impacted the ability for candidates to campaign fairly. During the early voting period candidates are allowed to have their HTV cards distributed during Mobile Voting in settings like Aged Care. This allows older or less mobile voters to engage fully in the democratic process. However, because the VEC refused to allow the distribution of HTV cards of many independent candidates during the election, these candidates were unable to distribute their HTV cards via Mobile Voting.
- f. This had a significant impact on Independent campaigns. For example, in Hawthorn and Kew the only HTV cards distributed by Mobile Voting teams came from the Liberal Party. Numerous voters and volunteers within Aged Care



raised concerns about the fact that they were denied access to HTV cards from other candidates. Given how close some of these elections were this form of discrimination could have significantly impacted the election results.

- g. Contributing to this was the short interval between the ballot drawing on the Thursday before Pre-Polling begins and the opening of early voting on the Monday. This short period means all campaigns need to rush to design and then print their HTV cards over the weekend. This impacts Independent candidates more as their campaigns have limited funding and fewer organisational resources. The tight turn around also meant the VEC were also short on voting papers across several electorates for the first few days of pre-poll.
- h. In contrast, the AEC during federal elections has a week between the ballot draw and the start of pre-poll. This provides candidates and parties time to design, fine tune, and print their HTV cards. It also takes into consideration the reality that most printers do not operate over the weekend.
- i. Overall the HTV process as conducted by the VEC caused tens of thousands in legal costs and reprinting costs for Independent candidates and so greatly impacted their ability to campaign.
- j. In addition to the high legal costs for defending proposed designs, several issues with HTV cards interrupted our campaigns from providing voters the best information to make an informed choice. Notably the delay in receiving clear feedback from the VEC on their issues with proposed HTV cards.
- k. The major parties had a centralised and dedicated VEC team to sign off their cards. The process for Independent Candidates was decentralised and laborious, ineffective timewise and inconsistent. Independent Candidates need a centralised team that is easily accessible. There should be a better process for first time submission of a HTV card versus approval of amendments to a proposal.
- l. FINDING 9: A How To Vote card design with the placing of number “1” or reference to the word “Independent” is valid in Victorian State elections.
- m. **RECOMMENDATION 9: We recommend that the EMC instruct the VEC to publicly state that they will abide by the ruling in *Torney v Victorian Electoral Commission* for the 2026 Victorian Election.**
- n. FINDING 10: Threatening candidates with incarceration and heavy handed legal action unnecessarily contributed to a decline in confidence in the conduct

of the election by the VEC and contributed significant emotional and financial stress for campaigns that in turn diminished the quality of their campaigns.

- o. **RECOMMENDATION 10: The VEC re-evaluate the approach to compelling candidates to comply with election rules and VEC rulings to minimise future incidents and maintain confidence in their ability to conduct the elections fairly.**
- p. **FINDING 11: Candidates who had issues with HTV cards were prevented from taking part in mobile voting and were advised by the VEC they could not hand out how to vote cards.**
- q. **There is insufficient time between the ballot draw and the opening of early voting to facilitate the design, registration, and printing of HTV cards in line with VEC specifications.**
- r. **RECOMMENDATION 11: We recommend the EMC change Section 79 of the *Electoral Act 2002* to:**
  - i. **Make HTV card registration consistent for Election Day and early voting**
  - ii. **Incorporate the ruling in *Torney v Victorian Electoral Commission***
  - iii. **Allow one week between the ballot draw and the opening of pre-poll to provide:**
    - 1. **campaigns more time to design, register, and print HTV Cards before Pre-Polling begins.**
    - 2. **the VEC more time to print ballots****This recommendation is consistent with the current practice at the AEC.**
- s. **FINDING 12: The entire HTV card registration process is unclear, inconsistent across early voting and election day, poorly planned, and inconsistently enforced leading to significant challenges for all candidates.**
- t. **RECOMMENDATION 12: We recommend that the Committee instructs the VEC to develop new revised and more detailed guidelines for all campaigns on HTV card design elements. This could include several examples from recent elections, direction on registration language, direction on representation of the ballot and other items. We propose that this be completed at least one year before the 2026 election and be open to a period of public comment before being finalised. The VEC complies with the wording of the Act and ensure that the candidate listing on the How to Vote cards are copied exactly from the ballot paper.**

- u. FINDING 13: There is insufficient VEC support for Independent candidates when it comes to registering HTV cards and interpreting design requirements.
- v. **RECOMMENDATION 13: Ensure the VEC allocates dedicated personnel to independent candidates to support them in interpreting registration rules.**

## **17. Polling Places**

- a. While we appreciate that limiting the number of signs that can be hosted at Victorian State Election polling places may improve the democratic culture at polling booths and reduce waste, it unfairly hurts Independent campaigns in two ways.
- b. First, it is obviously unfair to limit Independent candidates in the Legislative Assembly to displaying a maximum of two signs, while political parties can display up to six signs.
- c. Second, the success of Independent candidates is largely predicated on their ability to raise awareness of their campaign. This is not a problem faced by major parties. The absence of major party signage at a polling booth is unlikely to significantly impact their vote as the overwhelmingly majority of voters are aware of the existence of the major parties.
- d. But the absence of Independent signage is likely to have a significant impact as voters are unlikely to vote for a campaign they don't know exists. Given many undecided or disengaged voters don't know who they'll vote for until they arrive at a booth the presence or absence of signage can have a significant impact on their voting intent.
- e. Throughout the voting period a significant number of voters and volunteers expressed surprise and dismay at the signage limits and the way in which it denied them access to important information about independent candidates.
- f. It is questionable as well to what extent these signage limits are constitutional and not an unjust limit on voters free of speech.
- g. FINDING 14: Campaigns for Independent candidates are unfairly hurt by restrictions on the number of signs at polling places.
- h. **RECOMMENDATION 14: We recommend the Committee either change the signage rules to limit signage to two per candidate in the Legislative Assembly and two per party/voting bloc in the Legislative Council (Removing the parties entitlement to an additional two signs). With this rule to apply to polling locations in the District the candidate is competing**

**in, or polling places within 1km of the District boundaries, whether those locations are used for Pre-Polling or on Election Day. Or to increase the number of signs allowed at a polling booth from two per Legislative Assembly candidate to up to ten signs per Legislative Assembly candidate to enable Independent campaigns to compete more fairly with the naturally higher awareness enjoyed by political parties.**

## **18. Ballot papers**

- a. Unlike in federal elections administered by the AEC, ballot papers do not currently display the word “Independent” against the name of Independent candidates. Including the word Independent on the ballot provides a crucial visual cue to voters. Particularly, those with a lower level of familiarity with elections.
- b. Here, we strongly agree with Justice Michelle Quigley who ruled that “the use of the word “Independent” assists electors in understanding those candidates are Independent candidates. Rather than deceiving them this information is designed to assist voters.” We would like this common sense to be extended from the How To Vote Card to the Legislative Assembly Ballot.
- c. It is worth noting that scores of voters expressed concern about the absence of the word independent. Reporting that they thought it might be a “printing error” or that it confused them during the process of voting or led them to believe no Independent candidate was running.
- d. **FINDING 15:** Victorian State election ballots do not give voters access to the information they need as they do not designate Independent Candidates as “Independent” or allow the use of a logo.
- e. **RECOMMENDATION 15:** We recommend the Committee make changes to Schedule 2 of the *Electoral Act 2002* to allow the word “Independent” on the ballot and to allow the use of initials or logos for Independent candidates. (this is allowed at on the Federal ballot paper)

## **Security of Candidates and their Supporters:**

19. The Organization of American States requires that the physical security of all candidates and their supporters be guaranteed for a competitive election. This is a key democratic principle echoed in various resolutions and statements made by the UN Security Council, the UN Office of the High Commission of Human Rights, UNESCO, and the Council of Europe.
20. The 2022 Victorian Election saw numerous instances of Independent candidates and their supporters intimidated during General campaigning, Online and at Polling places.

### **21. General Campaigning**

- a. Campaigning begins several months before election day with teams representing their preferred candidate at local shopping centres, railway stations and at community events.
- b. Even though election day was months away, many candidates experienced yelling and the invasion of personal space while campaigning. This aggression was directed at both the candidates and their volunteers. This intimidation came from candidates, their supporters and even unidentified members of the public. Most of our campaigns instituted a rule that campaigning had to be conducted in groups of two as a minimum for safety reasons. This deterred some volunteers from volunteering again, which was the point of such aggressive behaviour.
- c. One of the most disturbing challenges was constant video filming employed by some party candidates and members against candidates. While we are all responsible for our behaviour in public places, this included filming of events unrelated to campaigning, and including family members of some candidates.
- d. This intimidation also included posters, billboards and adhesive labels in some Districts. Candidates assigned supporters to report or remove this signage throughout their electorate instead of campaigning.
- e. Some municipalities had to use staff to assist in the sign removal on public property, though some signs were not able to be removed without physical damage to Council assets. Reports to the VEC and the Police had no action.

### **22. Online**

- a. Many of the attacks we encountered in person were also replicated online, especially in social media. This included continuous slurs against us, but reports to the VEC both during and after the election elicited no action.

- b. In addition, internet addresses using our personal names were registered and then used against our campaigns. This included Australian sites with the “.au” top-level domain, but also similarly worded American sites with “.com” and “.org”. While the peak body responsible for the registration of com.au, AuDA, are able to return “.com.au” domain names, the process takes more than 90 days, too long for an election. These websites were not authorised and were taken down the day after the election.

### **23. Polling Places**

- a. This same aggressive behaviour continued at polling places, including Pre-polling and on Election Day. This included Candidates and Supporters subjected to filming, yelling and threats. Several of us and our volunteers felt threatened on a daily basis and did not feel safe. Even when reported to the VEC Supervisor this had little impact until the VEC Compliance Team arrived on site.
- b. The experiences of aggressive behaviour shared in Appendix 4 occurred across the state. The behaviour diminishes participation in our democracy with every incident. It discourages the respectful discussion of different perspectives, that comprise a well functioning democracy. Without a Code of Conduct, we are giving a perceived endorsement of this behaviour, but bullying is never acceptable. Unless there is fundamental change in the behaviour during elections, many of us would not subject ourselves or our supporters to such an intimidating and unsafe environment again.

Defining unacceptable behaviour in clear terms helps us raise the standard of all campaigning in the state. We recommend that all candidates sign the Code of Conduct upon nomination, and instruct all staff and volunteers to do so too. A Code of Conduct needs to be enforceable to improve behavioural standards for electioneering. This will have a flow on affect to the Parliament.

Furthermore, breaches of the code can be shared with other campaigns in a standard terminology to prevent recurrences. Complaints can also be sent to the media to publicise offending behaviour.

- c. FINDING 16: Intimidation is a constant feature of Victorian State elections, for the public, the candidates and their supporters. Neither the Election Act of 2002 nor VEC procedures to deter bullying or cyber-squatting. The Police treat this behaviour as a civil matter unless a serious threat is received, and generally do not investigate complaints. Local governments are having to dedicate resources to review and remove signage.

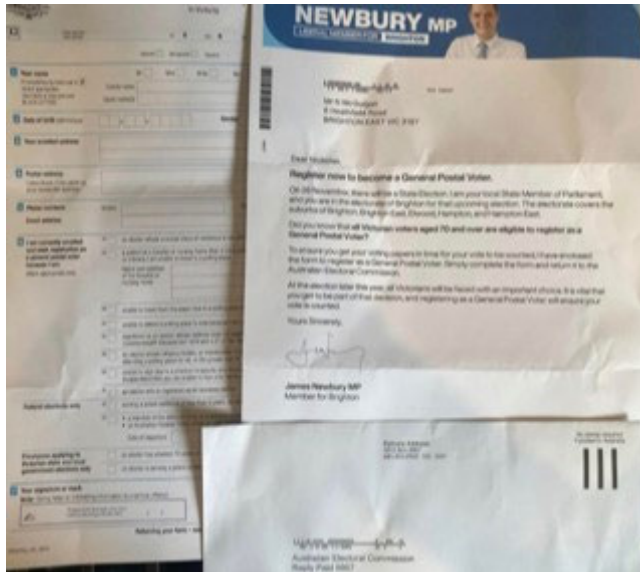
- d. **RECOMMENDATION 16: We recommend that the Committee instructs the VEC to develop a Code of Conduct. This should include setting standards of behaviour that promote respect, tolerance and democracy, both in the community and online. We propose that this be completed at least one year before the 2026 election and be open to a period of public comment before being finalised.**
- e. FINDING 17: It is very hard to stop poor behaviour at Polling Places as the VEC staff is managing the booths.
- f. **RECOMMENDATION 17: VEC to staff one person outside all day at Polling Places.**

#### **24. Truth in advertising**

- a. Legislation requires political candidates to abide by some level of truth in advertising during the election period. However, these rules don't apply in the months leading up to an election. This means parties and candidates can spread as much disinformation as they like in the lead up to an election and in effect defame other candidates and mislead voters. The most common example of this when it comes to Independent campaigns is "A vote for 'x' Independent candidate is a vote for 'y' political party."
  - b. This causes significant confusion for voters especially among communities that have a lower level of familiarity with Australian elections. I.e. migrants who have just moved to Australia or those who have a lower level of literacy.
  - c. The reality is that election campaigning starts much earlier than the officially designated election period. Particularly, given the increase in early voting. This means that there is good cause to consider extending the truth in advertising period from 1 month out from election day to 2 months out from election day.
  - d. FINDING 18: Truth in advertising is an essential part of a healthy democracy but the current rules are inadequate for preventing candidates from spreading significant disinformation during the 'actual' election period rather than the legislated election period.
  - e. **RECOMMENDATION 18: The truth in advertising period should be extended to encompass the entire two months prior to election day in order to minimise disinformation that may mislead, deceive, or confuse voters.**
-

# Appendix 1

## Liberal Party Postal Vote application mailer





## **Appendix 2**

Torney v Victorian Electoral Commission (Review and Regulation) [2022] VCAT 1337 (23 November 2022)

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2022/1337.html>

## **Appendix 3**

ELECTORAL ACT 2002 - SECT 79 Registration process

[http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol\\_act/ea2002103/s79.html](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/ea2002103/s79.html)

## **Appendix 4**

### **Instances of General Campaign Intimidation**

#### **Benambra:**

*“On Election Day there was some significant unpleasantness between Liberal Party volunteers and Jacqui Hawkins Campaign Volunteers in the form of Liberal Party complaints to the VEC regarding coloured decorations. These interactions were unpleasant for our volunteers and unnecessary as the Benambra VEC office had provided the Jacqui Hawkins Campaign with a ruling allowing for the decorations. It should be noted that at two Benambra booths Jacqui Hawkins Campaign volunteers erected too many signs, directly due to the differences between AEC and VEC rules. These mistakes were met with unpleasantness by the Liberal Party volunteers, angry words, formal complaints and raising the incidents with the media.*

*A more significant and disturbing incident occurred outside the Benambra pre-poll booth location between Ms Hawkins and the Liberal candidate. All information and first-person documents were lodged with the VEC via a formal complaint. In summary the Liberal candidate approached Ms Hawkins and used intimidatory behaviour and offensive and harassing language toward Ms Hawkins including “shut your filthy mouth”. There were a number of witnesses to the incident. The link provided below provides a story by the local ABC. It should be noted that this was not an argument between candidates, the Liberal candidate bullied Ms Hawkins.”*

Please see the media link to one incident.

<https://www.abc.net.au/news/2022-11-24/jacqui-hawkins-accuses-bill-tilley-intimidating-language/101694314>

#### **Brighton:**

*“Without exception every time I campaigned I was constantly filmed, yelled at and threatened by the Liberal candidate who was the incumbent. At each of these events, the Liberal candidate harassed me by filming me, ensuring his phone camera captured every move I made. This behaviour was reinforced by aggressive and loud yelling at mainly myself, but also my volunteers.*

*Unauthorised posters, billboards and adhesive labels were erected around the Northern area of the electorate (Elwood foreshore, Ormond Road, Glenhuntly Road, Elsternwick Park and St Kilda St) informing voters to visit the website [putfelicitylast.com](http://putfelicitylast.com). On a daily basis for around a week my team collected around 200 - 400 signs. In addition the City of Port Philip and Bayside City Councils used existing and/or employed additional resources to assist in the sign removal. Many of the signs were not able to be removed without physical damage to Council assets. This campaign was reported to the VEC (head office) and the St Kilda Police and actual*

*proof of physical signage was provided to both organisations. Neither had the resources, capacity or capabilities to do anything.”*

- Felicity Frederico, Candidate

### **Hawthorn**

*“I first noticed initial bad behaviour when campaigning on a busy shopping strip. A tall older man came up to me, stood over me and was yelling at me that I had destroyed the Liberal party.*

*At a candidate forum for a local U3A, I was backed into a corner by another large older man who was shoving an article in my face and yelling at me that I was corrupt. At a train station in the morning, a liberal party volunteer came up to me yelling at me, her attack was heard by local people walking their dog, who intervened and begged her to calm down.*

*People would routinely drop threatening and violent mail at our office or come in and abuse our volunteers.*

*Another older man at a train station in the morning would come along to simply yell at myself and our volunteers. It was decided that I should not be anywhere on my own for safety.”*

*During the pre poll my son was told that his mother was corrupt by a two peol handing out information ofr the Liberal Party.*

- Melissa Lowe, Candidate

*“Several times in the campaign while I was handing out flyers in public places I was accosted by members of the public supporting the Liberal Party. I recall three such instances where I was yelled at, and my personal space was invaded. I laughed it off later, but at the time it was very disconcerting. I doubt that these people were Party Members, but having a Code of Conduct would set a better tone for our Elections.”*

- Tim Wade, volunteer for Melissa Lowe

### **Melton;**

*“In general, the number of volunteers trucked in from outside the District by both the Labor & Liberal parties made discussion of the issues with individual voters quite challenging. Each morning “ALP volunteers’ mainly from outside the District, would front up and stake out the areas considered most conducive to meeting and greeting voters. In many instances I witnessed intimidating tactics from ALP volunteers, ACTU members, and other more vocal candidates directed at myself and my volunteers concerning perceived irregularities with our campaign material. They would often*

*interrupt conversations and encroach on our designated spaces in the pre-polling queues. The VEC response to poor behaviour and intimidating tactics was less than ideal. This usually involved the reprimand of all candidates and volunteers instead of targeting the offending individuals or groups.*

*The District boundaries were redrawn for the election making Melton more condensed. For the first time, and for unknown reasons, the VEC decided to have two pre-polling stations in Melton. This made it more difficult for Independents and smaller parties to staff both centres. This didn't appear to impact the Major parties who would truck their, often inner city volunteers, around both polling stations.*

*Both parties ran a couple "dud" candidates whose only function was to dilute the Independent vote and funnel preferences back to the Majors. All were from outside the District. Six weeks before the polling period there were 5 candidates, on polling day there were 14 and only two were local residents.*

*Many of my advertising signs, although on private property, disappeared during the campaign. Both major parties spent big on advertising signage and I suspect that both, in particular the ALP, ran an undercover campaign to limit opposition advertising."*

- Dr. Ian Birchall, Candidate

**Kew:**

*"During the course of the election a man purporting to be an anti-abortion activist attempted on two separate occasions to burn down the office of Sophie Torney and repeatedly sought to intimidate volunteers. During his second arson attempt I caught him and attempted to chase him away. At which point he drew a knife on me and chased me around the local area whilst threatening to kill me. Police seemed unaware of the significance of political violence in the context of an election and seemed unconcerned by the repeat incidents and their increasingly violent nature. We refrained from talking about the extent of the incident as we were worried it would dissuade volunteers from contributing further out of fear for their own safety."*

- Rob Baillieu, Chief of Staff to Sophie Torney

**Mornington:**

*"I had a volunteer who was verbally assaulted at a pre-poll booth by another candidate's volunteer. My volunteer was extremely upset and had to leave the pre-poll booth and did not partake in the campaign further. This behaviour was witnessed by many at pre-poll, and action was not taken by the VEC over this incident.*

*A false accusation was made about one of my volunteers by an independent candidate who was running purely against 'teal' candidates. During my campaign they falsely accused my volunteer of wrongdoing, and escalated it through the VEC, copying me into all emails. Only to withdraw it after the election. This caused some*

*stress during the campaign for all involved. This candidate's partner (also the person who verbally assaulted my volunteer at pre-poll) was caught defacing my signs by two community members.*

*I was warned by previous candidates to expect this appalling behaviour from competitors and their volunteers. But this should not be the case for people who are entering positions of leadership. A code of conduct is important as is the ability of the VEC to enforce consequences for breaching it, such as disqualification from the election."*

- Kate Lardner, Candidate

### **South West Coast**

*"Our main conflict, although on a much lesser scale than that outlined by other independent candidates, was during the lengthy pre-poll period and the canvassing-free zone. [Under Section 158 of the Electoral Act, candidates and volunteers must not actively engage with voters within 6m of the doorway to the polling booth.]*

*We were all duly instructed to stand behind the "line" which, in the case of the main pre-poll booth, was literally a line of chalk on the pavement. Of course there were candidates and volunteers who consistently breached this line, jostling to be the last to get their message and their How to Vote cards into the hands of voters as they entered to vote.*

*With no VEC staff to enforce this 'line', any attempt to call out those who were deliberately breaching the rule was met with jeers and derision by the offenders. One can only question the necessity and effectiveness of a minimum "non-canvassing" distance when it's not enforced and only causes conflict over a long period of pre-polling."*

- Carol Altmann, Candidate

## **Instances of Online Intimidation**

### **Brighton**

*“Prior to my public announcement of running as an Independent candidate, the Liberal candidate and his team (through Edward J Bourke who is employed in the Member for Brighton electoral office) registered the following domain names:*

- *Felicityfrederico.com*
- *Felicityfrederico.com.au*

*These names were registered in August. My candidacy was announced publicly in September. Initially these domain names were diverted to jamesnewbury.com.au. This diversion only stopped when The Age reported the diversion. After I had publicly declared my intention to run and registered felicity4brighton.com.au, the Liberal candidate and his team (through Edward J Bourke) then registered felicity4brighton.com*

*Despite emailing the Liberal Executive Director and President every couple of days throughout the campaign, there was no response or acknowledgement. The only response was after a personal plea via a text to the Leader of the Opposition in December 2022. The response from the Liberal Party secretariat was one of denial. Fortunately, AuDA (the peak body responsible for the registration of com.au names in Australia) were able to return the com.au domain name. This process took over 90 days - the election was over by then. The recourse for the return of the .com names is convoluted and expensive and the .com names are still registered to the Liberal campaign team under the name Edward J Bourke.*

*The Liberal candidate for Brighton referred to me as a “fake independent” in social media and this was then printed in the Herald Sun. This was reported to the VEC both during and after the campaign, and a retraction was requested from the Herald Sun. Nothing was done - either during or after the election. It appears that anything can be said by political candidates without any ramifications.”*

- Felicity Frederico, Candidate

### **Melton**

*“During the pre-polling period, the ALP, through their ACTU affiliates, ran a misinformation video (YouTube) alleging my affiliation with the Liberal party.*

*This included footage, secretly obtained, when my campaign manager and I attended a liberal party event to meet some of our opponents prior to the campaign beginning.”*

- Dr. Ian Birchall, Candidate

## **Instances of Polling Place Intimidation**

### **Brighton**

*“At the pre-polling booth at St Stephen’s Church my team and I were subjected to filming, yelling and threats every day. These were reported on a regular basis to the VEC Supervisor, who duly came out and advised the Liberal incumbent to refrain from this type of behaviour. This advice went unheeded until the VEC Compliance Team physically addressed the issues. After this the filming ceased. The daily abuse of yelling and threats did not. Both myself and my team felt threatened on a daily basis and did not feel safe.”*

- Felicity Frederico, Candidate



## Appendix 5

### HTV Card Approval Process

#### Rowville

*“I met with the Rowville VEC Manager at 10am on the first day of pre-poll at the early voting centre to discuss registering my HTV card. We went through the checklist and the manager was happy. Our HTV was compliant from her perspective. She emailed it to the head office team. Late in the afternoon (around 4ish), the manager came out and said the Head Office has rejected my card. Needs very minor tweaks (eg: I had abbreviated Victorian Labor Party to VIC Labor Party due to space limitations - they rejected and said I had to print the full word "Victorian") There were three small insignificant "typos". I had to then rebrief my graphic designer, organise printed copies of the revised HTV card.*

*I had to book another meeting with the VEC Manager and resubmit my design as if it was a whole new card. Then the process started again - check against checklist, okayed by Rowville Manager, submitted electronically. The next day, someone new at the VEC was allocated my HTV card. They advised my HTV card could not be approved with no explanation. I made an appointment with the local Rowville Manager, but she was none the wiser. She called the Head Office. Eventually someone calls her back. Again, two very insignificant and subjective changes were required. I asked her. “Are you sure that if I submit this it will be approved?” I was told it would be approved.*

*I went through the process again - re-briefed my graphic designer, made the required changes, printed proofs, and met with the local voting centre manager. Again, it was treated as a new application, with a new person assessing etc. Every time the VEC did this I lost 24 - 36 hours. One time the changes requested one day and made had to be reversed back to how I had it in the first place when I first submitted my card. The whole process was a joke and got so bad that it felt like it was a deliberate attempt to disrupt my campaign. I lost the first week of pre-poll not having my proper HTV card because of this incompetence and this decentralised process.*

*The registration process needs a massive shake up and it should have a centralised process. When registering your HTV you should be allocated a case number and a VEC representative to manage the entire amendment process in order to prevent receiving conflicting information from VEC staff. In the end I had to threaten legal action for electoral obstruction to get my HTV card signed off.”*

- Nicole Seymour, Candidate

1 <https://www.theage.com.au/national/victoria/labor-s-campaign-funding-laws-build-100m-wall-to-keep-independents-out-20220908-p5bgim.html>

2 Calculated by combining disclosed and undisclosed political donations as a percentage of total income as declared in the relevant VEC annual return

3 <https://www.vec.vic.gov.au/candidates-and-parties/political-donations/registered-nominated-entities>