

To: Independent review of Victoria's electoral and political donations system

Dear Committee,

I write to you as a former independent candidate to make two recommendations, and to share a submission on behalf of ten independent candidates from across the Victorian political spectrum.

With the 2022 Victorian State Election being the first election the *Electoral Legislation Amendment Act (2018)* had taken full effect, this is an excellent time to review the efficacy and impact of this legislation.

Our submission to the 2022 State Election Inquiry titled "*Making Victorian Elections Safer and Fairer*" has been appended to this letter and speaks to the three tenets of a healthy democratic system.

These tenets are:

1. *Do candidates compete on a level playing field?*
2. *Do the voters have access to the information needed to make an informed choice when they cast their votes?*
3. *Is the physical security of all candidates and party personnel guaranteed?*

In the first instance – *Do candidates compete on a level playing field?* – our submission notes that as a result of the 2018 amendments, Parliament is a less diverse and a less representative place now than prior to the 2022 election.

Following the 2018 Victorian State Election, three independents sat in the Legislative Assembly. After the 2022 Victorian State Election, we saw zero independent candidates either elected or re-elected to Parliament.

By contrast, at the 2022 Federal election, the Federal electoral framework saw several independents elected or re-elected to Parliament in the same regions as state independent candidates.

This provides strong evidence the 2018 amendments have advantaged major parties, and marginalised independents and small party candidates – providing communities with less choice in the way and means they are represented in parliament.

This strikes at the heart of a broad, participatory and representative democracy, benefiting only the entrenched two-party system here in Victoria (and to a lesser extent the Greens).

With response to the specific reference terms:

The Panel are required to examine and make recommendations in relation to:

1. *Whether the Electoral Act should be further amended to provide for a cap on political expenditure and if so –*
 - a. *whether the cap should apply generally or to specific persons or entities;*

AND

2. *the impact of the 2018 Electoral Amendments upon third party campaigners, small community groups and not-for-profit entities;*

The terms of reference of this committee sadly do not define specifically how these issues should be considered.

In a sense they fail to directly speak to the entrenched issues of inequity and healthy democracy, and continue to turn a blind eye to significant issues such those regarding the source and application of funding of political campaigns.

As it stands, the Electoral Legislation Amendment Act (2018) provides new and existing major party candidates a significant funding advantage through the provision of millions of dollars in public funding. By comparison, a new minor party or independent candidate begins with no public funding – providing a barrier to competitive participation in democracy that sees them at a six-figure disadvantage to even a first-time major party candidate before they have even decided to run.

In addition to this, nominated entities provide major parties with a legislatively unlimited source of funding that sits outside of donation caps. By comparison, minor party and independent candidates are funded solely within donation cap which sat at \$4,320 at the 2022 State Election.

These issues are compounded by the ability of major parties to pool funding and direct it to targeted seats, resulting in major parties both receiving more in public funding than they may have spent in political expenditure related to that seat while also enabling major party candidates to massively outspend smaller rivals by pooling funds in “target” seats where those rivals do not have access to vast war chests of both public and nominated entity funding.

Further, regarding this committee’s Supplementary Report terms:

“The Panel must examine appropriate amendments to the Electoral Act to ensure that major political parties fulfil minimum requirements of party administration to qualify for public funding...”

I note that – as it stands – independent and minor party candidates are required to meet effectively all the same administrative requirements as major parties, often having to fund these ongoing disclosure, audit and administrative costs out of personal finances – whereas major parties receive additional public funding that can be used to address these expenses, as well as the costs associated with policy development. This is yet another issue of equality and competitiveness within our democratic system.

The submission I have attached to this letter to the 2022 State Election Inquiry (“Making Victorian Elections Safer and Fairer”) speaks to these and other issues of democratic equity and competitiveness, and the ability of our Parliament to be reflective and representative of the diverse views and values of all Victorians.

In keeping the recommendations in the “*Making Victorian Elections Safer and Fairer*” submission front-of-mind, I encourage the committee to take three steps:

Recommendation 1: Consider Existing Issues of Equity

The Committee must consider the significant and existing issues of democratic inequity introduced by the *Electoral Legislation Amendment Act (2018)* in any recommendations it makes.

Should the Act be further amended to provide for a broad-based cap on political expenditure (i.e. one that applies across the entire political spectrum) there is a significant risk that these existing issues of inequality (which we have raised in our attached submission) will be further compounded.

By way of example:

- An independent candidate running for a Legislative Assembly seat is only likely to spend on political expenditure that relates to the electorate in which they are running.
- By contrast, a major party candidate running for that same Legislative Assembly seat would also benefit from the economies of scale of state-wide TV, radio, newspaper or online advertising that may be funded from outside of that electorate within the political expenditure cap of a candidate within the same party in non-target seats.

This would provide a barrier to communities seeking to be represented in line with their values by candidates who are from outside the major parties – effectively reducing participation by individuals and groups outside of the two-party system.

If political expenditure caps are introduced, they should seek to “re-level the playing field” in response to issues of inequity created by the *Electoral Legislation Amendment Act (2018)* on minor party and independents as groups.

The ability to consider separately the impact on smaller groups sits within the Committee’s terms of reference, which states:

“...the impact of the 2018 Electoral Amendments upon third party campaigners, small community groups and not-for-profit entities;”

(These small community groups could reasonably include groups such as “Voices of” community groups, small independent campaigns, etc.)

To this end, should the Committee make recommendations for a political expenditure cap, then these recommendations should be targeted to the major party groups who have fuelled the blowout in political expenditure. The committee could recognise the significant disparity between the major parties and independents and be reflective of the current set of inequitable circumstances.

Considerations around the size of the entity (i.e. political party), the entity's relative advantage including; the value of funding available to it, economies of scale from state-wide advertising and communications spending (e.g. TV, radio, online, newspaper, etc), and relative power in an electoral contest should be taken into account in relation to any political expenditure cap so as to not further disadvantage *“third party campaigners, small community groups and not-for-profit entities”* participating in the democratic process and the independent and minor party candidates that these groups elevate.

Just as we means-test supports that go to individuals and families to ensure policy addresses the specific issues it is attempting to address; the Committee could use the same rationale to improve the level of participation in the democratic process in any recommendations it seeks to make.

If the Committee is seeking to address the blow-out in political expenditure to increase the participation in – and competitiveness of – democracy, then measures that it recommends should be appropriately targeted to ensure that they do not inadvertently reduce participation in – and competitiveness of – democracy by further disadvantaging smaller players.

Recommendation 2: Ensure the Participation of Independent Candidates, Small Community Groups, and Small Parties in the Development of Recommendations

Finally, the lived experience of the 10 independents who have submitted the appended review – and have experienced the impact of the administrative, funding, regulatory and donation changes

implemented following the 2018 amendments – are a potentially invaluable source of insight on how to improve the competitiveness and representation of Victoria’s electoral system.

I note that this experience is not represented on the Committee itself, and it may not be naturally understood by the Committee.

This is because the Committee is constituted by two major party representatives (one from each side of the two party system) and a former VEC official.

While the Independent review panel may indeed be independent, it has taken a shape that less reflects a broad cross-section of the Victorian community and more-or-less reflects a bipartisan committee of the two major parties with a non-partisan chair.

The risk here is that it has the potential to further entrench major party advantages through myopia and unconscious bias.

Returning to the Committee’s terms of reference:

“...the impact of the 2018 Electoral Amendments upon third party campaigners, small community groups and not-for-profit entities;”

I encourage the Committee to actively draw independents, minor parties, small community groups, and not-for-profit entities into the discussion and consult directly on the practical implications of any recommendations the Committee makes and its effect on minor party and independent candidates.

I am assured that all ten independent candidates who have signed the attached submission would be delighted to assist the Committee.

This will help to ensure that the findings of the Committee both align with community expectations for transparent, participatory and strong active democracy while also ensuring that they are well-targeted to the specific issues of political expenditure spending, issues raised by the 2018 reforms, and their impact on competitiveness in our democracy.

It is my humble and sincere belief that the 2018 reforms deterred broad democratic participation and have reduced the competitiveness of Victoria’s state electoral system – as evidenced by the reduction in the number of independent and minor party candidates successfully elected to the Legislative Assembly.

As with most policy, the 2018 reforms may have been well-intentioned, but they have created significant issues of electoral competitiveness (and therefore an issue of electoral integrity) that needs to be reviewed – and it’s timely that this review is being undertaken right now.

Speaking personally as a former independent candidate there are costly, time-consuming administrative burdens created by an electoral commission that simply does not understand independent and minor party candidates as they have been trained and legislated to see the electoral system through the lens of a two-party system.

Further, at the pointy end, it is clear that the reforms introduced in 2018 were not fully understood by staff implementing them, as evidenced by *Torney vs VEC* which found the VEC had fundamentally misunderstood and misinterpreted its own underlying legislation.

Meanwhile, the VEC itself provides independent candidates with conflicting advice on a wide range of issues (as noted in the appended submission).

And all of this is in addition to a legislative framework that is in place around disclosures, donations and funding that significantly disadvantages minor party and independent candidates (plus non-candidate community groups) over their major party rivals.

While I do not envy the Committee's monumental task in reviewing so many glaring issues that relate to their terms of reference, I am hopeful that the outcome of the Committee's work will lead to an even stronger and more participatory democracy that all Victorians feel belongs to them and their values.

Sincerely,

Melissa Lowe