



SUBMISSION TO THE  
INDEPENDENT REVIEW OF THE  
OPERATION OF THE 2018  
AMENDMENTS TO THE  
ELECTORAL ACT 2002

**July 2023**

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## FOREWORD

In making this submission, Victorian Labor first acknowledges the Traditional Custodians of the lands on which we work, including the Wurundjeri people of the Kulin Nation upon whose lands our offices are located. We pay respect to Elders past, present and emerging.

The Australian Labor Party - Victorian Branch (**'Victorian Labor'**) welcomes the opportunity to provide a submission to the *Independent Review of the Operation of the 2018 Amendments to the Electoral Act 2002* (Vic).

Victorian Labor considers the 2018 Amendments to the *Electoral Act 2002* (Vic) (**'the Act'** or **'the Electoral Act'**) to have been implemented successfully between the introduction of the legislation and the finalisation of the 2022 State Election.

Victorian Labor continues to support the intent of these amendments, which have increased transparency, accountability and the public and media's capacity to assess the risk of undue influence in elections. These safeguards are integral to a modern democracy.

We acknowledge the Victorian Electoral Commission's (VEC) work in the administration of Part 12 of the Act and are grateful for the Commission's efforts in assisting all political parties, candidates and members of the public to meet their obligations pursuant to the 2018 amendments.

Victorian Labor has approached the implementation of these reforms with a firm intention of complying with both the technical elements, spirit and overarching intention of the legislation.

As with any new regulatory framework, the initial practical application of its requirements results in the identification of opportunities for improvement and furthering the objectives of the regulatory framework. To this end:

- Part 1 of this submission addresses the legislated terms of reference, and recommendations 1 and 2 of the *'Special Report on Corruption Risks Associated with Donations and Lobbying'*<sup>1</sup> for the purposes of the Inquiries' 'Main Report'.
- Part 2 of this submission addresses the terms of reference for the 'Supplementary Report' concerning major political party administration requirements.

Victorian Labor trusts this submission will be of assistance to the Inquiry and welcomes any further enquiries the Expert Panel may have.

Cameron Petrie



Assistant State Secretary  
Australian Labor Party – Victorian Branch

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<sup>1</sup> Independent Broad-based Anti-Corruption Commission, *Special report on corruption risks associated with donations and lobbying ('Special Report')* (Parliamentary Paper Number 398, Session 2018-22) (October 2022).

## PART 1: MATTERS PERTAINING TO THE MAIN REPORT

### 1. Expenditure caps

#### Relevant Term of Reference

Whether the Electoral Act should be further amended to provide for a cap on political expenditure and if so –

- Whether the cap should apply generally or to specific persons or entities;
- The value of the cap; and
- The consequences of a failure to comply with the cap.

#### Overview

Introducing a cap on political expenditure in Victoria requires careful consideration, particularly in relation to the utility of an expenditure cap in the Victorian context and the availability of practical and effective enforcement mechanisms for non-compliance.

The current caps on political donations in Victoria, and the prohibition on anonymous donations altogether, make the regulatory scheme the strictest in the country.<sup>2</sup> Victorian Labor acknowledges the significant role that these provisions have played in increasing transparency, as well as strengthening electoral and democratic processes in Victoria. We continue to support the intent of these provisions which provide the highest level of transparency, including the general cap on political donations and a disclosure threshold.

The strict requirements underpinning the donation cap effectively act as a de-facto expenditure cap because they necessarily limit the funding available to political parties and candidates in an election. This is supported by the current disclosure regime, which includes the publication of annual returns that detail the total expenditure of political parties.<sup>3</sup> These existing mechanisms provide:

- Significant opportunities for the public to measure the impact of expenditure on the outcome of an election;
- A mechanism for determining whether there is significant community support for a candidate as opposed to a presence obtained by paid advertising; and
- A timely disclosure framework that deters the use of questionable practices.

#### Risks

At this point in time, an increase in regulatory burden, and any additional and necessary investment for the development and enforcement of such an amendment may be a disproportionate revision of a well-functioning regulatory scheme. As such, we recommend the Expert Panel consider whether there are legal barriers to the

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<sup>2</sup> *Electoral Act 2002 (Vic)*, section 217D and section 217B; *Electoral Act 1918 (Cth)*, section 287(1) where there is no cap on political donations; *Electoral Funding Act 2018 (NSW)*, section 23(1) imposes a cap on donations to a political party of \$7,600 and a cap for donations to candidates and third-party campaigners of \$3,600 (as at 1 July 2023); there are no caps on political donations in Western Australia, Tasmania, the Australian Capital Territory, Western Australia and the Northern Territory.

<sup>3</sup> *Electoral Act 2002 (Vic)*, section 217I.

imposition of expenditure caps in the Victorian context which differs to that of other jurisdictions.<sup>4</sup>

Victorian Labor holds concerns that the imposition of expenditure caps could increase reliance on donations in kind, create an incentive for improper use of public resources, and negatively impact the capacity of service providers and campaign staff to obtain fair payment for their work during elections. In essence, an expenditure cap in the current context creates the risk of unintended consequences.

From an enforcement perspective, the imposition of financial sanctions would appear to be of little deterrent for those with the funds to breach any such cap. However, it also creates the risk of complications whereby expenditure allocated for, by way of example, communications and awareness-raising towards a matter of public importance that arises during a campaign (e.g., natural disaster) could be contested with election campaigning and messaging, becoming a messy cause of dispute to the detriment of good public outcomes.

Victorian Labor considers the 2018 amendments to the Act relating to caps on political donations as a functional and proportionate safeguard against the risk of undue influence over candidates in an election, political parties and members of Parliament. The amendments have worked well and should be given the opportunity to be further embedded ahead of further imposition of regulation.

However, Victorian Labor holds concerns as to whether the spirit and intention of the disclosure scheme could be undermined by a loophole allowing the purchase of power and influence. It may be possible for a wealthy individual to make excessive financial contributions to 'their own campaign' pursuant to section 217D(5) of the Act, and utilising said funds to bankroll a disproportionate amount of a political party's campaign.<sup>5</sup> Victorian Labor therefore recommends the Expert Panel consider whether section 217D(5) of the Act could be improved.

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<sup>4</sup> *Unions NSW & Ors v State of New South Wales* (2019) 264 CLR 595, [32] [35] where the court held that the justification and necessity of an expenditure cap in question must be considered in the context as a whole.

<sup>5</sup> The drafting of section 217D(5) is discussed further at page 8 of this submission.

## 2. Third-party campaigners, community groups and not for profit entities

### Relevant Term of Reference

1. The impact of the 2018 Electoral Amendments upon third-party campaigners, small community groups and not-for-profit entities.
2. Recommendation 1(d) of the Independent Broad-based Anti-Corruption Commission, Special Report on corruption risks associated with donations and lobbying:

'IBAC recommends that the government review the existing regulatory regime for political donations to improve transparency and accountability at both the state and local levels of government through legislative reforms that... deter donors and candidates from attempting to use third-party campaigners to circumvent the declaration requirements and donation cap at the state and local level, using measures that include, but are not limited to:

- (i) requiring the registration of third-party campaigners
- (ii) requiring publication of the register of third-party campaigners
- (iii) limiting the number of third-party campaigners to whom a person can donate to three, to mitigate the risk of the general donation cap being circumvented (with reference to the NSW approach)' <sup>6</sup>

The terms of reference relate to third-party campaigners and community groups, Victorian Labor therefore considers that they are best placed to advise the Inquiry on the proposals put forward by the IBAC.

However, we do consider further regulation should be considered with mind to the fact that:

- Third-party campaigners that receive sums in excess of the general cap are required to lodge a disclosure return with the VEC. As such, there is a de-facto registration process in place.<sup>7</sup>
- A blanket registration process may be disproportionate and ill-suited to the purported issue the IBAC proposes be resolved, being a need to 'deter **donors and candidates** from attempting to use third-party campaigners to **circumvent** the declaration requirements and donation cap at the state and local level' (emphasis added) and could stifle both community engagement and discourage public participation in the democratic processes. We note that the Act already makes it an offence to enter into, or carry out, a scheme with the intention of circumventing a prohibition or requirement under Part 12 (including the donation requirements pertaining to the general cap)<sup>8</sup> and that the making

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<sup>6</sup> Above n. 1.

<sup>7</sup> Above n. 3, section 217K.

<sup>8</sup> Above n. 3, section 218B.

of regulations elaborating on what constitutes a ‘scheme’ could be one of the many available proportionate responses to the purported risk.<sup>9</sup>

### 3. The application of the disclosure scheme to local government elections

#### Relevant Term of Reference

The operation of the disclosure scheme given effect to by the 2018 Electoral Amendments including, but not limited to, the operation of disclosure returns.<sup>10</sup>

Recommendation 2 of the IBAC’s Special Report provides that: ‘the Department of Premier and Cabinet, together with the Department for Jobs, Precincts and Regions, examine and make recommendations that identify:

- (a) best practice model for campaign expenditure at the state and local levels of government, including:
  - (i) expenditure declaration requirements that provide sufficient transparency and accountability
  - (ii) expenditure caps that can be applied in a way that helps to address the corruption risks that result from:
    - pressure to raise funds
    - avoidance of donation caps and disclosure thresholds by providing in-kind support that is not declared.
  - (iii) a best practice model for monitoring and enforcement of donations at the state and local levels of government, including:
    - the structural arrangements, namely which agency or agencies would be responsible for investigating breaches and the resources required
    - the mechanisms required to monitor compliance effectively, such as more detailed audit reporting and/or requirements to produce documents or information
    - options for public reporting of breaches to deter improper conduct, and educate donors and candidates.<sup>11</sup>
- (b) whether a broader range of penalties (including fines) would increase the effectiveness of penalties as a deterrent and facilitate timely enforcement
- (c) a best practice model to deter donors and candidates from attempting to make in-kind contributions to circumvent the declaration requirements and donation caps at the state and local levels of government, after:
  - reviewing donation returns that involve in-kind contributions from the 2020 local government elections and 2022 Victorian state election to assess compliance with existing requirements

<sup>9</sup> Above n. 3, section 184.

<sup>10</sup> Above n. 3, section 222DB(c).

<sup>11</sup> Above n. 1, recommendation 2, page 10.

- assessing how training can be improved to ensure awareness of obligations
- assessing the adequacy of existing penalties and how they apply to in-kind contributions that are not declared steps that can be taken to ensure donations from political parties and associated entities registered in other jurisdictions that are received by political parties registered in Victoria comply with the Electoral Act 2002.

### Overview

This section will consider the matter of the application of the disclosure scheme to local government elections. This necessarily involves some commentary as to the operation of the disclosure scheme.

The subsequent section discusses the operation of the disclosure scheme in greater detail including the relevant provisions of the legislation where consideration of the legislative drafting would be of assistance.

Overall, Victorian Labor is satisfied with the operation of the disclosure scheme given effect to by the 2018 Electoral Act amendments.

We have taken a cautious approach to discharging our obligations, and a consultative and co-operative approach to working with the VEC. As with any new regulatory scheme, practical operational matters arise in the early cycles, and we are committed to working with the VEC to address these in the appropriate forum.

### Discussion

In relation to recommendation 2 of the Independent Broad-based Anti-Corruption Commission ('IBAC'), Special Report on corruption risks associated with donations and lobbying,<sup>12</sup> Victorian Labor continues to be supportive of a 'best practice' model for regulating political donations and expenditure at both the state and local government level.

Expenditure caps and anti-avoidance measures are discussed in detail elsewhere in this submission.<sup>13</sup> In this Part, we address the establishment of legislation similar to Part 12 of the Act for local government elections.

Victorian Labor is in-principle supportive of the implementation of a donation and expenditure disclosure scheme for local government elections. It is critical however, that any such reforms both recognise and accommodate the differences between the level of involvement, control and influence that registered political parties have over candidates in local government elections.

The implementation of the 2018 amendments to the Electoral Act have justifiably caused a shift in the administrative practices of all major political parties, their candidates and members. With 79 municipal councils across Victoria, the establishment of additional obligations will require comprehensive consultation, a period of transition and commensurate funding.

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<sup>12</sup> Above n. 1.

<sup>13</sup> See the discussion entitled *Expenditure caps* at page 4 of this submission.



Victorian Labor does not formally endorse all Labor members that run as candidates in a local government election. For many political parties, endorsement for internal purposes takes place pursuant to their rules or constitution, however the structure in legislation for formal endorsement by registered political parties at state elections simply does not exist in the same way for local government elections.

Victorian Labor queries whether the regulatory scheme applied to state elections would be suited to local government elections. We recommend a nuanced approach be applied that is targeted and proportionate, including ensuring obligations to make disclosures, attend to any administrative requirements and comply with expenditure procedures fall to the candidates themselves.

We also recommend that any such scheme ensure that it does not have the unintended consequences of deterring democratic participation by diverse groups within the community.

## 4. The operation of the Disclosure Scheme

### Relevant Terms of Reference

The operation of the disclosure scheme given effect to by the 2018 Electoral Amendments including, but not limited to, the operation of disclosure returns.<sup>14</sup>

The following are operational matters that would be assisted by consideration of the corresponding provisions of the legislation.

- A. The definition of 'gift' as it pertains to labour
- B. Gifts made in a private capacity
- C. The general cap as it applies to candidates
- D. The publication of silent elector details
- E. Interaction with other jurisdictions
- F. Deputy Registered Officers
- G. Bans or limitations on political donations from specific industries
- H. Reset of disclosure threshold

Each of these are addressed in turn below.

### A. The definition of 'gift' as it pertains to labour

The definition of 'gift' is integral to the determination of whether the provision of goods, services and labour are considered donations for the purposes of the donation and disclosure scheme.

The definition of 'gift' distinguishes between the 'provision of a service' and the provision of 'volunteer labour' with the consequence that the provision of a service is a donation in kind, and the use of volunteer labour is not. Determining the difference between the provision of a service and volunteer labour is difficult. The lack of clarity creates a risk of unintentional non-compliance with Part 12. For example:

- If a person volunteers their time to be the Master of Ceremonies at a fundraising event for a candidate, does this constitute the provision of a service or the provision of volunteer labour?
- If, in the course of doorknocking, a volunteer replaces a tyre or repairs the transmission on a campaign vehicle, does this constitute volunteer labour or the provision of a service?
- Does the answer to the above change if the volunteer is:
  - A professional speaker;
  - A mechanic;
  - Is on leave from their paid employment; or
  - is volunteering out of their working hours?
- Does it amount to a provision of a service for a third-party campaigner to incur political expenditure running a campaign on a policy issue that benefits a particular political party?

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<sup>14</sup> Above n. 3, section 222DB(c).

Having regard to the consequences of non-compliance with Part 12, clarification as to the difference between volunteer labour and the provision of a service would be of assistance for those who are regulated by Part 12.

There are a range of mechanisms through which this guidance can be provided, including legislative amendments, the making of regulations, or the publication of guidance by the VEC that:<sup>15</sup>

- Clarify that where a person would ordinarily charge a fee for their labour is ‘the provision of a service’.
- Clarify that volunteer labour provided outside the hours of employment, including where a person is on leave, is not ‘the provision of a service’.
- Include examples of volunteer labour contemplated by the Act, for example, doorknocking, phone banking and speaking at campaign events.
- Provide guidance to the proper method of valuing of a service that constitute a donation in kind.

## B. Gifts made in a private capacity

The Act states that a political donation excludes ‘a gift to an individual that was made in a private capacity to the individual for their personal use, and that the individual has not used, and does not intend to use, solely or substantially for an election’.<sup>16</sup>

The drafting of this exception presents challenges in its practical application. For example, a person gifts another person a used car valued at \$6000.00. Is the recipient prohibited from using that car as a campaign vehicle because the value exceeds the general cap?

The provision of examples via the publication of determinations by the VEC would assist in understanding the application of this provision in a practical sense.<sup>17</sup>

## C. The general cap as it applies to candidates

Victorian Labor has concerns that the current regulatory regime provides a loophole allowing the purchase of power and influence by the misuse of the exception outlined by section 217D(5).

It is noted that a ‘contribution’ of a candidate to their ‘own campaign’ is not included in the general cap on donations in respect of that candidate or member.<sup>18</sup> As such, section 217D(5) is a source of some confusion because:

- It is not clear why “contribution” and not “political donation” is used, and we query whether the difference in language is intentional; and
- The phrase “own election campaign” is a term upon which reasonable minds may differ.

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<sup>15</sup> Above n. 3, section 184, section 9(3).

<sup>16</sup> Above n. 3, section 206 definition of ‘gift’ (f).

<sup>17</sup> Above n. 3, section 9(3).

<sup>18</sup> Above n. 3, section 217D(5).

#### D. The publication of silent elector details

Victorian Labor has experienced instances where the personal details of silent electors have been inappropriately disclosed through published financial year annual returns required under the Act.

Currently there are persons that make financial contributions to Victorian Labor via the payment of a levy, who are also silent electors. While it is accepted that Victorian Labor needs to provide an address to the VEC when an annual return is submitted to confirm that they are an eligible citizen, to avoid the publication of the private addresses of silent electors we request that the Act be amended.

Victorian Labor recommends section 221A of the Act be amended to explicitly refer to levy payers and ensure better protection for this cohort.

#### E. Interaction with other jurisdictions

With respect to the regulation of campaign donations and expenditure by the Commonwealth, we note that the Federal Parliament's Joint Standing Committee on Electoral Matters is conducting an Inquiry into the 2022 federal election. The Interim Report provides recommendations for reforming the Commonwealth regulatory framework, many of which reflect the 2018 reforms of the Electoral Act.<sup>19</sup>

Victorian Labor considers that greater consistency between the State and Federal regulatory regimes will make administration easier for political parties, candidates and the general public.

There is also a need to clarify the operation of the donation cap and aggregation provisions within the Act to ensure that the regulator can take an approach that is consistent with the Commonwealth's laws for the regulation of Registered Organisations. This is discussed in greater detail elsewhere in this submission.<sup>20</sup>

#### F. Deputy Registered Officers

Victorian Labor requests that the position of Deputy Registered Officer ('**DRO**') is added to the definitions under section 206 of the Electoral Act as it relates to duties undertaken for Part 12 of the Act. The definition of DRO should reflect the fact that the DRO helps manage the funding and disclosure obligations, acknowledging that Registered Officers are still ultimately responsible for all funding and disclosure obligations of the recipient, and any actions of the DRO.

#### G. Bans or limitations on political donations from specific industries

In relation to the suggestion that there may be additional sources of funds that should be banned or restricted under the regulatory scheme outlined in the Expert Panels Discussion Paper, Victorian Labor does not support targeting specific

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<sup>19</sup> Parliament of Australia, 'Conduct of the 2022 federal election and other matters' [Report] Joint Standing Committee on Electoral Matters (Commonwealth of Australia, 202), p. xiii.

<sup>20</sup> Please see the discussion entitled *Donations by federally Registered Organisations* at page 12 of this submission.

industries for bans or limitations on political donations. We draw the Expert Panels attention to the IBACs discussion regarding the legal barriers that may prevent the imposition of such a ban.<sup>21</sup>

We consider that risks relating to undue influence by specific industries is appropriately and proportionally managed by the transparent and strict donation and disclosure regime and the prohibition on anonymous donations provided by the 2018 reforms to the Electoral Act, as well as sufficient resourcing of the VEC's compliance divisions.

#### H. Reset of disclosure threshold

Currently the General Cap resets after a general election but the disclosure threshold does not.

This situation adds a layer of complexity and administrative burden to monitor until the end of a financial year after an election.

It appears that, for instance, if a donor makes two donations prior to the state election in the 2022/2023 FY which in aggregate is under the threshold for disclosure but then six months after the election in May 2023 makes a third donation that takes them over the disclosure threshold, the donor must then disclose all three donations. In comparison the cap for this donor would have reset after the November 2022 election but the threshold needs to be monitored until 30 June 2023.

In addition to the administrative burden to monitor this, the inconsistent approach causes confusion for the donor who assumes both the threshold and cap reset after an election and struggle to understand the complexities of the requirements.

### 5. Electronic Assisted Voting

#### Relevant Term of Reference

The effectiveness of the 2018 Electoral Amendments so far as they relate to electronic assisted voting.

Victorian Labor considers that the amendments pertaining to electronic assisted voting give the VEC sufficient flexibility to roll out this solution to classes of electors who require it, whilst still maintaining appropriate limitations to the use of this kind of technology. The number of electors who utilised the telephone assisted voting ('TAV') during the election is a credit to the VEC's work to appropriately enfranchise those with low vision or with motor impairments.

During the Federal Election, TAV was utilised as a means of ensuring persons with COVID-19, then under a legal direction to isolate, were able to vote. We consider that it would be appropriate to incorporate a surge capacity into the service in the event of future pandemics or natural disasters that prevent electors from exercising their right, and obligation, to vote, particularly given the existing provisions of the Act that allow

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<sup>21</sup> Above n. 1, page 14 – 15 which states: 'Putting aside the possibility that banning donations may be unconstitutional, Associate Professor Yee-Fui Ng, the Acting Director of the Australian Centre for Justice Innovation at Monash University, whose research centres on strengthening political institutions and enhancing executive accountability, has observed that it would be unlikely to address the issue of improper influence...'

the VEC to extend TAV to those affected by natural disasters. The application of TAV to electors affected by flooding was a beneficial first use of the new powers relating to TAV.

With this in mind, we support the maintenance of the provisions related to TAV. There has been discussion of rolling out TAV to more classes of electors, including those who do not fall into the category of being affected by natural disasters. We think the limitations on TAV to the cohorts in legislation is appropriate. There has also been discussion of the use of TAV to accommodate voters who are overseas. We hold concerns about the security and appropriateness of this, particularly in the context of Australia's diplomatic network returning to full functioning following the pandemic.

## 6. Other Suggestions

### Donations by federally Registered Organisations

Victorian Labor's platform recognises the trade union movement as a necessary voice for advancing the interests of the working class. Trade unions registered under to the *Fair Work (Registered Organisations Act) 2009* (Cth) (**'the RO Act'**) are often comprised of multiple divisions and state branches.

The Electoral Act defines a 'donor' as person who makes a 'political donation'<sup>22</sup> and an 'associated entity' as including an entity that is a 'financial member of a registered political party'<sup>23</sup> and has 'voting rights in a registered political party'.<sup>24</sup>

Pursuant to the Electoral Act different divisions and/or the state branches of federally registered trade unions may be deemed 'associated entities' of Victorian Labor. However, the federally registered trade union to which those divisions or branches belong is itself unlikely to be an associated entity of Victorian Labor. An organisation can be registered federally, with the status of a body corporate, and have a distinct self-governing reporting unit with individual responsibilities in respect of donations under federal law.<sup>25</sup>

There is some misunderstanding as to how the general cap, including the provisions relating to aggregation, apply to both federally registered unions and subbranches of these unions that are distinct self-governing reporting units.<sup>26</sup>

We understand the VEC considers that the donations of legally distinct self-governing subbranches, and federal branches are to be aggregated under the Electoral Act for the purpose of calculating donations. This approach:

1. Deems all sub-branches of one federally registered union to be one entity; and
2. Does not recognise that the Act regulates and permits donations from natural persons, entities with legal personality and entities or groups without legal personality.

It is, in our view, unlikely that Parliament intended that political donations from the subbranches of federally registered organisations, which typically operate autonomously, were to be treated as being made by a single person (the federally registered union). We recommend the Expert Panel consider amending the Electoral Act to clarify its operation in this respect.

It is Victorian Labor's submission that the general cap on political donations should apply to each individual state branch or division, and that the donations of each Branch should not be aggregated.<sup>27</sup> This is because the Act contemplates that subbranches

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<sup>22</sup> Above n. 3, section 206(1) definition of 'donor'.

<sup>23</sup> Above n. 3, section 206(1) definition of 'associated entity' (c).

<sup>24</sup> Above n. 3, section 206(1) definition of 'associated entity' (f).

<sup>25</sup> *Fair Work (Registered Organisations) Act 2009* (Cth), sections 27, 237(7)-(8).

<sup>26</sup> Above n. 3, section 217D(1).

<sup>27</sup> Above n. 3, section 217D(2).

of unions may be considered as separate legal 'persons' that make political donations.<sup>28</sup>

Moreover, there is significant textual support within the Act that suggests the word 'person' within the definition of 'donor'<sup>29</sup> should not be read as limited to natural persons or incorporated bodies because:

- a) The primary function of Part 12 of the Act is to regulate political donations to and between a range of bodies that may, or may not have a distinct legal personality, including registered political parties, candidates in an election, groups, associated entities and third-party campaigners.<sup>30</sup>
- b) Within Part 12 of the Electoral Act, the term 'person' is used elsewhere in circumstances that clearly apply to potentially unincorporated bodies.<sup>31</sup>
- c) The definition of 'gift' expressly includes the disposition of property from 'a branch' of a registered political party, or an associated entity.<sup>32</sup> There is no suggestion that 'a branch' of a registered political party would have to have separate legal personality to engage the definition of 'gift'.
- d) An 'entity', and therefore an 'associated entity', is expressly defined to include unincorporated bodies,<sup>33</sup> and subbranches of unions are often unincorporated bodies.
- e) The Electoral Act operates on the necessary presumption that unincorporated bodies may themselves make 'gifts' for the purposes of Part 12.

The annual affiliation fees paid to a registered political party by an associated entity (which may not necessarily have legal personality) are excluded from the definition of 'gift'. Absent this exclusion, affiliation fees would be deemed political donations.

The Act explicitly recognises that a 'branch' of an 'associated entity' may share resources with another 'branch' of an associated entity.<sup>34</sup> Moreover, the Electoral Act seeks to operate in concert with the laws of the Commonwealth by way of imposing an obligation on 'associated entities' and 'nominated entities' to provide the VEC with a copy of financial reports and statements as soon as practicable after they have been prepared.<sup>35</sup>

The Electoral Act bans donations from certain sources, with the relevant provision distinguishing between 'donors that are natural persons' and 'donors that are **not**

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<sup>28</sup> Above n. 3, section 217E which operates by reference to whether the combined total of political donations made by a 'donor' exceeds the general cap; see, also, *Papastergou v Hitchman* (1974) 9 SASR 470 (where 'person', for the purposes of the statute in question, was held by the Full Court of the South Australian Supreme Court to include a business name).

<sup>29</sup> Above n. 3, section 206(1) definition of 'donor'.

<sup>30</sup> Above n. 3, section 217D.

<sup>31</sup> See for example, above n. 3, section 22C(1), and the list of 'persons' who may be served with a notice under section 222B.

<sup>32</sup> Above n. 3, section 206(1) definition of 'donation', definition of 'gift'.

<sup>33</sup> Above n. 3, section 206(1) definition of 'entity', definition of 'associated entity'.

<sup>34</sup> Above n. 3, section 206(1) definition of 'donation', definition of 'gift'(l) which provides that '*the provision of labour shared between — (i) a registered political party and any other branch of the registered political party; or (ii) an associated entity and any other branch of the associated entity; or (iii) a third-party campaigner and any other branch of the third-party campaigner*' is excluded from the definition of a gift.

<sup>35</sup> Above n. 3, section 217O.



natural persons'.<sup>36</sup> In the case of 'donors that are **not** natural persons', if the donor has an ABN, they will be permitted to donate to a registered political party, candidate at an election, group et cetera. Moreover, the Act allows donations to be received from a wide range of bodies and does not exhaustively identify natural persons and corporations as the only eligible donors.

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<sup>36</sup> Above n. 3, section 217A (emphasis added).

## **PART 2: MATTERS PERTAINING TO THE SUPPLEMENTARY REPORT**

### **Minimum party administration requirements for major political parties**

#### **Relevant Terms of Reference**

1. Recommendation 1: 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, which could include requiring:
  - (a) payment of party memberships is via traceable means
  - (b) mandatory photo ID checks to be undertaken for new members joining a party
  - (c) proof of eligibility is provided to hold a concessional membership
  - (d) measures that parties must comply with to ensure the appropriate use of the electoral roll and enrolment information.
2. Recommendation 2: The Panel must advise on a minimum threshold in the Electoral Act to determine the major political parties to which the requirements would apply. The threshold could be based on:
  - (e) the number of Members of Parliament in a party
  - (f) the number of members in a party
  - (g) the number of votes that a party has received
  - (h) the amount of public funding that a party is otherwise entitled to under section 211 of the Electoral Act.
  - (i) The Panel may examine and make recommendations in relation to any other relevant matters.

At the outset, Victorian Labor notes that we have in place practices and processes that meet the minimum standards being contemplated by the panel. In some cases these are recent additions following the period of oversight by the ALP National Executive, and in some cases they are more long standing. Either way, these standards promote transparency and fairness. These are standards that we have chosen to apply to ourselves as a registered political party because it is the right thing to do, and because these decisions are ones that as a general proposition should be made by registered political parties themselves. Equally, Victorian Labor takes its obligations to comply with the Electoral Act seriously, and will continue to do so in respect of any amendments that are made to the Electoral Act. As to the final dot point, Victorian Labor notes that the Electoral Act already contains obligations in relation to appropriate use of the electoral roll, along with possible consequences for those who fall short of those obligations.