



7 July 2023

Electoral Review Expert Panel Secretariat  
Department of Premier and Cabinet

Via: [electoral.review@dpc.vic.gov.au](mailto:electoral.review@dpc.vic.gov.au)

To the Panel,

**RE: INDEPENDENT REVIEW OF VICTORIA'S ELECTORAL AND POLITICAL DONATIONS SYSTEM**

The Victorian Trades Hall Council (VTHC) welcomes the opportunity to make a submission to the Independent Review of Victoria's electoral and political donations system.

VTHC was founded in 1856 and is the peak body for trade unions in Victoria. VTHC represents over 41 affiliate unions and more than 500,000 workers in the state. These workers are members of unions that reach into every industry across Victoria, many of which are volunteers who participate in their communities during elections.

VTHC is committed to fighting for and defending the rights of all workers in Victoria to participate in democratic elections and to improve the transparency of the political donations system in Victoria. Improvements to Victoria's electoral and political donations system are needed to level the playing field for grassroots community organisations.

VTHC makes recommendations below, drawing from the experiences of affiliated unions and their volunteers, to ensure that the experience of small community groups participating in election campaigning can continue and improve.

This submission represents the broad view of the Victorian trade union movement. This submission does not intend to contradict or override any submission made by an affiliated trade union.

If you have any questions, please do not hesitate to get in touch with Politics and Research Lead, Ted Sussex, at [tsussex@vthc.org.au](mailto:tsussex@vthc.org.au).

Sincerely,

A handwritten signature in blue ink, appearing to read "Luke Hilakari".

Luke Hilakari  
Secretary

Ref: LH:JK/TS 92.26

**LUKE HILAKARI**  
Secretary

**AMANDA THRELFALL**  
Assistant Secretary

**WILHELMINA STRACKE**  
Assistant Secretary

Trades Hall  
54 Victoria Street Carlton 3054  
Phone: 03 9659 3511  
[info@vthc.org.au](mailto:info@vthc.org.au)  
[weareunion.org.au](http://weareunion.org.au)

## **BACKGROUND**

Victorian Trades Hall Council (VTHC) and its affiliated trade unions participate actively in state and federal elections as part of our commitment to uplifting the voices of working people. Trade unionism is deeply linked to participatory democracy, as we strongly hold that working people must have a say about the things that affect their livelihoods and families.

At the 2022 Victorian state election, VTHC was deeply involved in supporting volunteers to campaign on issues they cared about. VTHC facilitated 5,946 recruitment calls, mobilised 700 volunteers from our community, supported 246 actions such as street stalls, phonebanks and doorknocks, and staffed 76 booths with volunteers on election day.

Given VTHC's strong history of election and community campaigning, as well as our use of a decentralised campaigning model to support local activist groups, we are in a strong position to reflect on barriers within Victoria's electoral and political donations system from the perspective of a not-for-profit community group.

Working people in Victoria expect transparency in our electoral and political system. VTHC and affiliated unions work hard every election to ensure compliance with any regulations. However, these efforts have been challenged by the unintended contradiction, national inconsistencies, and ambiguity of the implementation of 2018 reforms. The difficulty of navigating this new system makes it harder for everyday people to participate in and understand what is happening during election campaigns.

VTHC supports open, fair and transparent elections that are accessible to every voter in Victoria. Victoria's thriving democracy depends on the accessibility and transparency of the Victorian electoral system. Every voter, no matter their language or education background, should have easy access to information in plain English about who has donated to whom. This critical information must be provided in a timely fashion so that everyday voters can find out about the flow of political funds in real time. It is this information that empowers working people with the ability to hold current and prospective decision-makers to account.

VTHC also values the capacity of every Victorian to participate in the electoral process through public campaigning. It is vital that electoral laws are easy to understand and comply with to ensure that all Victorians can have their voice heard.

To best support community groups and individuals who want to participate in elections, Victoria also needs a well-funded and effectively resourced Victorian Electoral Commission that can provide clear and definitive advice to voters and volunteers who get involved.

## **IMPACTS ON THIRD PARTY CAMPAIGNERS**

*In-kind donations and coordination:*

One of the key difficulties that VTHC, community groups and affiliated unions faced in the 2022 state election was the definition of what constitutes an in-kind donation. The reporting regime is currently too broad and holds third party campaigners (TPCs) to an

unreasonable level of reporting, that is inconsistent with the decisions of the Australian Electoral Commission (AEC).

As an example, should a union have had a long-standing campaign on an issue that is vital to workers' interests, if a political party makes an announcement during the campaign to address the issue a union has raised, it is unclear whether unions are able to attend or publicise that policy announcement to its members or the general public without inadvertently undertaking 'electoral expenditure' or 'donating' to the political parties campaign.

Common sense suggests that, if a community group is passionate about a particular issue, it would be invested in attending activities relating to that issue. It does not make sense to equate community advocacy on a key issue with electioneering or resourcing a specific candidate or party's campaign.

#### *Lack of clarity in compliance:*

In the lead up to the 2022 election, VTHC and affiliated unions spent a significant amount of time and resources interrogating the *Electoral Act 2002* (Vic) (the Act), regulations and accompanying guidance, with both the Victorian Electoral Commission (VEC) and by engaging external experts to ensure compliance with the reforms.

Despite this extensive process it was the common experience that on a wide range of matters, the VEC could not provide adequate advice that could be relied upon. In many instances the VEC went so far as to advise VTHC and affiliated unions that they could not provide definite advice and campaigners would have to wait to see the outcome of any potential court actions to determine how the Act should be interpreted.

This lack of clarity or certainty created by the new reforms and their interpretation has several adverse impacts on Victoria's democratic process. Some affiliated unions felt they had no choice but to not participate in the 2022 election for fear of running afoul of the new regulations. Other unions had staff responsible for managing VEC compliance and have consistently reported the difficulty and anxiety in ensuring compliance was unreasonable. That this is happening in comparatively well-resourced and supported organisations such as unions brings into stark relief the direct and silencing impact the 2018 reforms and their unclear interpretation have had on small community organisations, reducing their capacity to participate in our democracy.

#### *State campaign accounts:*

The 2018 reforms created a new requirement for TPCs to maintain a separate bank account for campaigning. It is the clear view of VTHC and its affiliated unions that this is an additional and unnecessary impost on participation in electoral campaigns. The goal of any reforms to the Act should be to promote transparency and accountability from political actors. Given the 2018 reforms require TPCs to report all political expenditure it is completely unnecessary that this expenditure has to come from a specific account. Once again, the 2018 reforms can be seen to be providing an additional hurdle for TPCs to clear in order to participate in our democracy.

### *Coordination of campaigns:*

Since as far back as 1856, working people and smaller community groups have pooled their economic resources to ensure they can participate in political and electoral processes as persuasively as possible. In fact, VTHC exists specifically to pool and coordinate the actions and resources of affiliated unions. This role exists because Victorian unions have a long and deeply held commitment to working together to improve the lives of all working Victorians. This ethic continues today and there are many important policy issues unions want to jointly campaign on during an election period, as they affect workers from across different sectors.

The 2018 reforms to Victoria's electoral system now prevent organisations with shared policy objectives from either coming together by pooling their resources or even coordinating actions that would advance their shared objectives.

The reforms preventing coordination show either a drastic and frankly staggering lack of understanding of how civil society operates in Victoria or a clear and wilful desire to silence voices from outside of political parties during elections.

**Recommendation 1:** VEC should be resourced appropriately to ensure that it can provide sound advice on the interpretation of the *Electoral Act 2002* (Vic).

**Recommendation 2:** VEC advice should be able to be relied upon as a defence in proceedings.

**Recommendation 3:** The requirement to have a separate state election campaign account should be abolished.

**Recommendation 4:** Sections of The Act preventing coordination between campaigns should be abolished.

### **ALIGNMENT WITH OTHER JURISDICTIONS**

The VEC and the AEC are not aligned. While both the *Electoral Act 2002* (Vic) and the *Commonwealth Electoral Act 1918* (Cth) use similar language to require tracking of dominant purpose spending, differing interpretations by the regulators result in different compliance requirements.

A TPC or community group's responsibility to report to the VEC is similar to that of a political party, even though TPCs and community campaigns do not run candidates. In Victoria, any financial or non-financial resources utilised in the pursuit of a vote are required to be tracked.

At a federal level only staff that are employed with the dominant purpose of electoral campaigning are required to be reported as either in-kind donations or political expenditure. On the other hand, the VEC's interpretation of dominant purpose expenditure requires reporting of all staff time as an in-kind donation even if the staff member's work is usually unrelated to elections. This is a particularly peculiar regulation for organisations such as unions and other advocacy bodies whose core business is campaigning and advocating for policy and legislative changes.

In order to ensure compliance with this aspect of the *Electoral Act 2002 (Vic)*, VTHC sought advice from the VEC. VEC advised that all tasks would fall into either 'dominant purpose' or 'incidental to' electioneering. This advice created difficulties for VTHC, affiliated unions and other TPCs whose purpose for existing is at least in part to promote industrial, legal and other policy changes and as a result naturally participate in the political process. For such organisations there is clearly a world in between dominant purpose, i.e. employed to work solely on election campaigns, and incidental, i.e. an official being asked a question at the end of a meeting of members to discuss an enterprise bargaining negotiation. The resulting ambiguity and unreasonable bureaucratic burden to participation for TPCs as well as the inclusion of incidental staff time in the donation cap and a resultant fear of exceeding the donation cap has resulted in some unions and other TPCs choosing not to participate in the electoral process.

TPCs and community campaigns are required to track every hour and every dollar spent during an election campaign even when not directly related to the election itself, resulting in overreporting for fear of being accused of failing to comply with a very loosely defined Act. It is a more onerous requirement placed on grassroots community campaigns and non-profit organisations such as unions. This disincentivises community groups from participating in elections because the time and energy required to comply with current regulations is so extreme.

In many cases, VTHC spent more time assessing the reporting requirements and seeking advice from the VEC and lawyers regarding a particular piece of work than was spent in doing the work. This is clearly a barrier to the participation of TPCs in Victorian elections.

**Recommendation 5:** Interpretation of the *Electoral Act 2002 (Vic)* regarding staff time should be brought into line with the *Commonwealth Electoral Act 1918 (Cth)*.

## **EXPENDITURE CAPS**

The focus of political expenditure and donations should be on transparency, rather than capping the amount of spending.

A cap on expenditure is a direct attack on workers in unions participating in democratic elections. Expenditure caps that limit the financial and non-financial contributions of working people to the political debate during elections silences working people.

Governments have the capacity to drastically alter the working lives of Victorians through their legislative and policy agendas. In addition, the Victorian Government is the largest employer in the State. Government decisions also impact on a whole range of matters that affect workers lives including access to education and healthcare, access to housing, the environment we live and work in and the roads we drive or public transport we take to and from work. Unions participate actively in the electoral process, so we can improve the lives of our members and their families.

Unions exist to bring together workers to use their voice collectively and thus improve the lives of working people. Working people have always pooled their economic resources to enable them to participate in the political and electoral processes. Third-party campaigners, particularly those organisations representing a broad membership base, are a central tenant of the democratic electoral process.

VTHC and affiliated unions are strongly opposed to any introduction of expenditure caps on Victorian elections.

**Recommendation 6:** A cap on expenditure is not introduced.

## **BANS OR LIMITATIONS OF POLITICAL DONATIONS FROM SPECIFIC INDUSTRIES**

As with limits on political expenditure the focus of political expenditure and donations should be on transparency rather than limitation of participation.

Instead of banning or limiting how specific industries can participate in the democratic electoral process, a more appropriate reform would be to create a requirement for real time declarations of donations.

VTHC has long advocated for reforms that would prevent political parties and TPCs from accepting direct donations. Rather, donations should be made through the VEC and then distributed as directed by the donor from there. The VEC establishing a central hub for political donations would ensure that any donation to any political party or TPC would be visible to the regulator in real time and therefore in compliance with electoral laws.

This reform would provide certainty to all Victorians on the flow of funds during electoral campaigns and greatly enhance confidence in our democratic process while at the same time removing bad actors from the system.

**Recommendation 7:** Create a central clearing house for all political donations, administered by the VEC including real time reporting.

## **RECOMMENDATIONS**

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