

Submission to the Victorian Parliament Inquiry into the Conduct of the

2022 Victorian State Election

By Moira Deeming

The 2022 Victorian State Election was the second election conducted after the passing into law of the Electoral Legislation Amendment Act (2018) (July 2018). It is the first election for which the legislation has applied in full.

As such, it is a good time to consider changes to improve two fundamental violations of the Human Rights of citizens living in Victoria.

The first violation was the Victorian Electoral Commission's decision to manage the election over several weeks of pre-polling before the actual election day may have seemed convenient for voters, however it increased the cost to taxpayers, disrupted businesses and often resulted in a decrease in voter confidence and satisfaction.

As we saw, the weeks long election period incentivised 'desperate' and 'politicised' media campaigns about real or possible revelations of wrongdoing or corruption by either a government, the opposition, a candidate or a 'preference whisperer' after people had already cast their votes and left many voters feeling as though they had been tricked.

The second violation regards those parts of the Electoral Legislation Amendment Act which gave way to limiting the Victorian Human Rights Charter.

How could it possibly be democratic to increase public funding of elections by 300 per cent, which reportedly includes paying for the administrative expenditure of the political parties and/or candidates. The two major parties are reportedly receiving \$5 million each year without being required to account to the public for how it is spent. How is this different to the 'Red shirt rorts' where voters were told that using taxpayer funds for party political purposes was illegal and for that reason, the Labor Party repaid that money to the public purse?

This egregious misuse of public funds is made all the more outrageous, when considering that the very same legislation severely restricted individuals and businesses- who are the engine room of the economy- from donating much more \$1,000 per annum. Moreover, all Trade Unions and two other named organisations, can spend unlimited amounts of money to support their political parties.

I believe this legislation contradicts several United Nations covenants designed to protect democracy and equality, as well as several Australian High Court decisions which have ruled in favour of the principle of freedom of communication. Every voter should have the same opportunities to partake in the democratic political process. I believe that the VEC and the State Government have turned their backs on political freedom and equality in Victoria.

Below is a timeline of political donations legislation that I believe will be useful for the committee.

VICTORIAN POLITICAL DONATIONS LEGISLATION TIMELINE

- 2006** The Bracks Government established an Equal Opportunity and Human Rights Commission
 - Based on United Nations Covenants
 - Claimed it would strengthen Victoria's democratic system
 - All future legislation would be certified as being compatible with human rights obligations.

2. 2010 and 2014

As required by 2006 legislation the Commission reported to Parliament on its work.

- Both reports criticised the fact there is no mechanism for individuals or other entities to approach the Commission directly on human rights concerns
- Only official entities, such as the Supreme Court, Ombudsman, Police and Attorney-General can do so.

3. 2013

The High Court in *Unions NSW v New South Wales (No. 1)*

- Ruled that an implied freedom of communication existed under the Australian Constitution
- Ruled in favour of “a free flow of communication between all interested persons is necessary to the maintenance of representative government.”
- Struck out the proposition that it did not apply to a State election

4. 2018

A

The Andrews Government introduced what they called “a new era of transparency and accountability” when referring to

- The Electoral Legislation Amendment Act (2018) which
- redefined political donations laws in Victoria
- Over 300 per cent increase in taxpayers funding of election campaigns
- Reportedly, a yearly payment of more than \$5 million directly to political parties for administrative expenses if the party reaches more than four per cent of the primary vote
- A cap of \$4,320 over a four-year period imposed on all individuals and non-exempt entities
- Exempt entities include the Cormack Foundation which gives grants to a few conservative organisations, including the Liberal Party
- The ALP is the main beneficiary of donations from exempt entities because it can tap into the financial resources of its political partners, the Trade Unions
- The LEGISLATION IGNORED the High Court decision in 2013 of *Unions NSW v New South Wales (No. 1)*. See 3. above.

5. 2018

B

Prior to the passing of the Amendment Bill redefining Victoria’s political donations laws

- The Scrutiny of Acts and Regulations Committee wrote to the Special Minister of State to ask about the potential of the new legislation breaching the Human Rights Charter
- A useful Alert Digest (No. 7 of 2018) had been prepared by the Parliament to brief members of the Committee. It draws attention to a Statement of Compatibility which noted some limitations, or potential limitations of the implied freedom of political communications in the Constitution
- The Committee decided to seek clarification from the responsible Minister
- NO REFERENCE to the 2013 High Court judgement (see 3. Above) was made in this report to the Committee

6. 2018

C

Special Minister of State duly replied to the Committee (See Alert Digest 8, 2018)

- In his opinion the draft legislation was compatible with Victoria’s Human Rights Charter as well as the Constitution’s implied freedoms of political communication and of expression
- He argued that a law that restricts this communication is valid if it is reasonably appropriate and adapted to serve a legitimate end
- That end was said to be a reduction of the risk of corruption and to create a level playing field to equalise participation in the electoral process
- The Minister quoted judges in a High Court case of McCloy and others v New South Wales and another (2015) who said a cap on political donations was necessary to “restrict the voices which dominate the political discourse so that others may be heard as well.”
- The McCoy decision was that a restriction on the (communication) freedom was more balanced by the benefits and the public interest in removing the perception of corruption
- The Minister’s letter said, unbelievably, that the caps proposed would equalise participation in the electoral process, and that purpose was “plainly a legitimate end.”
- Under the heading of the right to freedom of expression, he **said the new legislation was a reasonable limitation of the Charter** “taking into account the purpose of the reform to promote the equality of voices in the public sphere and to prevent corruption and undue influences over the political processes.”
- ***This is admitting the special rights given to the Trade Unions in the new 2018 legislation was “a limitation of the Charter”. However, in the view of the Minister, a former Trade Unionist, it was “reasonable” (!) in the quest for equality and prevention of corruption.***

7. 2019

A High Court decision in the case of Unions NSW v the NSW State Government (No. 2) confirmed that there is an implied freedom of communication in the Australian Constitution which forbids anybody or any groups having a greater communication freedom than another.

- ***In other words, the special rights given to the Trade Unions in 2018 in Victoria was confirmed as unconstitutional by the High Court in this 2019 decision.***

8. 2022

The Independent Broadbased Anti-Corruption Commission (IBAC) releases a Special Report on corruption risks associated with political donations and lobbying.

9. 2023

IBAC report into procurement and awarding of a contract by the Department of Health (DoH) to the Health Education Federation (HEF) for the training of health workers

- An Ombudsman investigation identified evidence of pressure exerted on DoH staff by ministerial staff
- IBAC found evidence of misconduct and improper influence
- ***How will we ever know if the project money was exaggerated to allow a surplus to 1be returned to the ALP for election funding?***

NOTES

- a) The essence of the political donations laws in Victoria is that the ALP used its numbers in the Parliament to raid the cookie jar. The public gave Labor a mandate to govern in 2018. In the same year it drafted and passed legislation which reportedly resulted in that party receiving more than \$5 million every year to pay for its administration. If these reports are accurate, then what is the justification for the ALP to pay itself using public funds? If these figures are accurate, then in the five years since that election, it is reasonable to assume that ALP has paid itself at least \$25 million.
Furthermore Daniel Andrews, who says he is responsible for everything, reportedly also gave a similar amount of money to the Liberal Party. If these figures are accurate, that means that around \$50 million of taxpayer funds have been taken from the public and paid to two political parties whose membership is declining and whose primary votes are less than 40 per cent on average around the State.
- b) What of the role of the VEC, the Human Rights Commission and the Attorney-General's Department to notify the Government after the 2019 High Court decision (See 7. above) which forbade any group in the community from having a greater freedom of communication than another?
- c) Several ALP leaning commentators have written about the new laws as a great achievement ridding the political system of large corporate donors. NONE of them comment on the bias introduced to favour the Trade Unions.
- d) After the 2022 Victorian election, Populares, a company that worked with the Teals, calculated that the advertising cost of the ALP social media was double that of the Liberal Party. It has been estimated that the ratio leapt to 6:1 when television and other advertising costs were factored in.

Finally, I urge the committee to investigate all these matters fully so that our constituents will be able to understand how their money is being spent regarding the cost of elections and the way in which this Government legislated for public funding to benefit political parties and candidates that ran in the 2022 election

Kind regards,

Moira Deeming MP