

Electoral Review Expert Panel
**Supplementary Submission from the
Victorian Electoral Commission**



Acknowledgement of Country

The VEC pays respect to Victoria's traditional owners and their elders past and present who have been custodians of this country for many thousands of years. Their living culture and their role in the life of Victoria is acknowledged by the VEC.

Version history

This document was finalised in December 2023 as the VEC's supplementary submission to the Electoral Review Expert Panel appointed under section 222DC of the *Electoral Act 2002* (Vic).

Version	Version notes
1.0	Finalised for distribution.

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1. Introduction

The Victorian Electoral Commission (VEC) is an independent statutory authority that administers the *Electoral Act 2002* (Vic) (Electoral Act). The VEC is the administrator and regulator of Victoria's political donation and funding laws that were established in 2018 through the *Electoral Legislation Amendment Act 2018* (Vic) (Amendment Act).

The Electoral Review Expert Panel (Panel) was established by the Victorian Government in May 2023 and is required by its Terms of Reference to produce two reports.

The Panel's first report, regarding the operation of 2018 amendments to the Electoral Act 2002 (Vic), was due to be delivered to the Premier by 24 November 2023. The VEC provided a two-part submission in June 2023 (**the June submissions**), attached.

The Panel is drafting a supplementary report examining appropriate legislative amendments to ensure that major political parties fulfil minimum requirements of party administration to qualify for public funding. The Panel must advise on a minimum threshold to determine the major political parties to which the requirements would apply. The supplementary report will be delivered to the Premier by 24 February 2024.

This submission is the VEC's response to the Panel's invitation to provide a written submission on:

- what minimum party administration requirements should apply to major political parties to qualify for public funding
- what minimum threshold should be used to determine the major political parties to which the requirements would apply.

2. Clarification and definitions

To ensure clarity, the VEC's interpretation of the Panel's words are as follows:

- **Public funding**

Public funding is one of the 3 types of funding administered by the VEC under Part 12 of the Electoral Act, the others being administrative expenditure funding (**AEF**) and policy development funding (**PDF**). The VEC collectively refers to these 3 types of funding as "political funding". The VEC has confirmed with the Panel that the terms of reference should be taken to apply to the broader definition of political funding.

- **Major versus minor political parties**

While the questions are framed in terms of "major" political parties, the VEC observes there is no such concept within the Electoral Act. The VEC applies the provisions of the Electoral Act equally to all relevant registered political parties (**RPPs**) and, as relevant, to independent candidates.

Uniform, baseline requirements to register as an RPP are contained in Part 4 of the Electoral Act. In addition, Part 12 of the Electoral Act contains thresholds that must be satisfied to receive political funding and obligations regarding receiving and making political donations.

Funding streams

	Administrative Expenditure Funding	Public Funding	Policy Development Funding
Eligibility	Elected independent members and RPPs with elected members	Candidates who receive at least 4% of first preference votes (FPV) or are elected	RPPs that have been registered for a full calendar year and were not eligible for AEF and did not receive PF
Purpose	Administrative expenses, office accommodation, staff, utilities, audit costs	Election campaign costs, travel, advertising, election campaign staff	Costs associated with policy development
Administration	Paid quarterly in advance Calendar year return	Paid after election on application, advance public funding also available (year 1 40%, years 2-4 20% each)	Paid annually in arrears
Amount (FY2023-24)	Tiered: 1 st MP \$233,490 2 nd MP \$81,710 3 rd -4 ⁵ th MP \$40,870 per MP Recoup underspend if subsequent statement of expenditure is lower	Lower of: \$7.01 per FPV for Legislative Assembly/\$3.50 per FPV for Legislative Council or Audited statement of expenditure	Greater of: \$1.17 per FPV or \$29,180 per annum
	\$6 million per annum	\$31 million per State general election	\$100k per annum

The level of political funding received is directly linked to the level of parliamentary representation and could be a suitable lens for determining associated governance and compliance obligations. A sense of the scale of funding to RPPs and independent candidates can be found on the [funding register](#) on the VEC's website.

As the regulator of the Electoral Act, the VEC's view is that it is appropriate that the entitlement to political funding should be linked to minimum governance and compliance requirements that seek to ensure such funds are used as intended.

The existing requirements in Parts 4 and 12 of the Electoral Act could be seen as the current minimum party administration requirements in relation to RPPs' registration, funding, and disclosure obligations.

While it would not be unreasonable that higher levels of funding support by Government carry greater obligations due to the greater risk to public funds where non-compliance occurs, this is a matter of policy for government.

The VEC also notes there may be other lenses to consider the need for minimum party administration requirements outside of the Electoral Act. Accordingly, the VEC has by necessity confined its recommendations to strengthening the existing governance and compliance requirements under the Electoral Act, which through their incorporation add to the existing minimum party administration requirements, and thereby enhance public trust.

3. Existing administrative requirements

The Electoral Act details administrative requirements for a range of activities that affect RPPs' operations, entitlements and obligations, including:

- Registration: new applications, renewals, change of details
- Enrolment data: entitlements, access, and management
- Funding: applications, calendar year returns, payments
- Disclosures: donation returns and financial year annual returns
- Election events: nominations, how-to-vote cards

The Electoral Act has the same eligibility criteria for all RPPs. RPPs that meet these criteria must satisfy the same administrative requirements.

The VEC does not support the removal of any existing administrative requirements, and supports changes that will strengthen electoral integrity, provide the public with more transparency and confidence, and promote greater rigour and accountability in relation to parties' obligations.

4. Party registration

Eligible political parties must comply with minimum eligibility requirements (**eligibility requirements**) to register as an RPP under Part 4 of the Electoral Act.

At present, an eligible political party¹ must apply to the VEC to begin the registration process.² This application must be in written form, signed by the political party's secretary and contain certain information. This information includes:³

- the name of the political party
- the name and address of the person who is to be the RO of the political party⁴

¹ *Electoral Act 2002 (Vic)* s 3, definition of 'eligible political party' means "a political party that is established on the basis of a written constitution (however described) that sets out the aims of the party and has at least 500 members who are electors, are members in accordance with the rules of the party and not members of another RPP or of a political party applying for registration".

² *Electoral Act 2002 (Vic)* s 45.

³ *Electoral Act 2002 (Vic)* s 45(2).

⁴ *Electoral Act 2002 (Vic)* s 45(2)(c) which states an RPP must name the person who is to be the party's RO when registering. Also see: *Electoral Act 2002 (Vic)* s 44(2) which implies that the process of appointing a deputy registered officer (DRO) is optional and therefore not a minimum administrative requirement for an RPP. An RPP must have a RO but can choose to have a DRO.

- a copy of the party constitution (however described)
- a statutory declaration made by the secretary stating that at least 500 members of the party are electors, members in accordance with the rules of the party and not members of another party or members of a party applying for registration
- a members' list, in a form determined by the VEC, containing the names and addresses of at least 500 members of the political party who meet the above requirements (are electors, members according to the rules and are only members of that party)
- an attached fee of 50 fee units.

The application may also include a request to the VEC to enter the party's logo in the Register of Political Parties so it can be printed on ballot-papers.⁵ While it is optional, it is common for parties to submit a logo when registering.

Recommendation 1 Associated entities

The VEC recommends that a party must provide details of their associated entities:

- when the party seeks initial registration, as a requirement to be eligible to be a registered political party;
- annually via their Annual Return provide details if there is a change to those entities; and
- upon request.

This information would improve the VEC's ability to administer compliance with the Electoral Act through the availability of current information when undertaking compliance activities.

Recommendation 2 RPP name and logo

This recommendation relates to technical recommendation 6 of the VEC's *Report to Parliament on the 2022 Victorian State election and 2023 Narracan District supplementary election (Report to Parliament)*. The recommendation proposes to amend section 47 and 47A of the Electoral Act.⁶ The proposed amendments will compel the VEC to refuse registration or an application to change an RPP's name, abbreviation, or logo if they contain specific representation or phrases that may be misleading to an elector.

⁵ *Electoral Act 2002* (Vic) s 45(3).

⁶ Victorian Electoral Commission, *Report to Parliament 2022 Victorian State election and 2023 Narracan District supplementary election*, (October 2023) 110. Available under 'General election reports': [State election reports and plans | Victorian Electoral Commission \(vec.vic.gov.au\)](https://www.vec.vic.gov.au/state-election-reports-and-plans). See: Technical recommendation 6.

Recommendation 2 RPP name and logo

The VEC recommends that technical recommendation 6 of the Report to Parliament be supported, so that the VEC can refuse registration or an application if the name, abbreviation, or logo may be misleading to an elector, as a requirement to be eligible to be a registered political party.

This would improve the governance surrounding the registration process for RPPs by reducing voter confusion and thereby enhance public trust.

Recommendation 3 Party registration deadline

This recommendation is contained in recommendation 1 of the VEC's Report to Parliament. The recommendation proposes amending sections 45(2) and 46 of the Electoral Act to set the deadline for the VEC to decide an application to register a political party before a general election to be 120 days before the general election.⁷

The VEC's experience in the 2022 State election was that the process for registration includes public notification and membership checks that can often take 3-4 months. As there is no fixed timeframe for deciding an application for registration, decisions for some applications were made days before the writs were issued for the election. This meant that there was no realistic opportunity for some applicants to meaningfully dispute the VEC's decision.

Recommendation 3 Party registration deadline

The VEC recommends amending the election timeline to bring forward the deadline for political party registration as contained in Recommendation 1 of the Report to Parliament, as a requirement to be eligible to be a registered political party.

This would improve the governance of the registration process for RPPs by providing a more realistic opportunity for applicants to dispute the VEC's decision.

Recommendation 4 Party Member Verification

This recommendation relates to technical recommendation 5 of the VEC's Report to Parliament.⁸

Technical recommendation 5 of the Report to Parliament proposes including contact details (phone number or email address) and dates of birth of members for party membership verification purposes under sections 46(2)(f) and 58B(f) of the Electoral Act.

⁷ Ibid, p.13.

⁸ Above note 6. See: Technical recommendations 4 and 5.

Recommendation 4 Technical amendments in relation to party registration

The VEC recommends that technical recommendation 5 of the Report to Parliament be supported, as a requirement to be eligible to be a registered political party.

This will improve the VEC's ability to administer compliance with the Electoral Act by providing a more efficient and reliable method to verify the identity of the party's members on the register of electors.

5. Use of enrolment information

The Electoral Act places certain conditions on the use of enrolment information. An RPP, person or organisation who has been given enrolment information by the VEC cannot use it unless it is for a permitted purpose related to the provision of the information.⁹ The Electoral Act states that the permitted purpose for an RPP is any purpose in connection with an election and to monitor the accuracy of information contained on an electoral roll or the register of electors.¹⁰

As part of recommendation 11 in the VEC's Report to Parliament,¹¹ the VEC observed that RPPs are exempt from complying with the *Privacy and Data Protection Act 2014* (Vic) (**PDP Act**), and therefore do not need to adhere to the requirements regulating the use and disclosure of personal information. ***Incorporating these changes into the Electoral Act would inherently add to the existing minimum administrative requirements contained in the Electoral Act.***

Currently, the VEC can give electoral roll information to other recipients for non-election purposes (e.g., under section 34 of the Electoral Act). For recipients who are not a party, MP or candidate, the Electoral Act requires the VEC to receive an undertaking from the recipient that the electoral roll information will only be used for the appropriate purpose and then destroyed or returned after use.¹² This undertaking is not required of parties, candidates and members who receive electoral roll information under section 33 Electoral Act. In addition, the Electoral Act allows for postal vote information to be provided to registered political parties and candidates.¹³ There is no undertaking required from information recipients under section 33 to destroy or return it after use.

The VEC notes that political parties, candidates, and members of parliament can hold personal information beyond its required use, which poses a significant integrity risk over the handling of personal information.

⁹ *Electoral Act 2002* (Vic) s 36(1).

¹⁰ *Electoral Act 2002* (Vic) s 36(2).

¹¹ Victorian Electoral Commission, *Report to Parliament 2022 Victorian State election and 2023 Narracan District supplementary election*, (October 2023) 92. Available under 'General election reports': [State election reports and plans | Victorian Electoral Commission \(vec.vic.gov.au\)](https://vec.vic.gov.au/state-election-reports-and-plans).

¹² *Electoral Act 2002* (Vic) s 34(3).

¹³ *Electoral Act 2002* (Vic) s 104A.

Recommendation 5 Use of enrolment information

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To protect elector data, the VEC recommends that sections 33 and 104A of the Electoral Act should be amended to require recipients of enrolment information, including RPPs:

1. provide an undertaking to the VEC that they **will** use the information in accordance with the PDP Act and will return or destroy the information within a given timeframe (contained in recommendation 11 of the Report to Parliament); and
2. provide an annual attestation that they **have** used the information in accordance with the PDP Act and have returned or destroyed the information and all copies.

This would strengthen the governance surrounding the sharing this information with RPPs and thereby improve public trust in relation to the protection of electors' data.

6. Funding and disclosure requirements

The VEC's previous submissions to the Panel outline recommendations that can enhance integrity and accountability of Victoria's political funding and disclosure scheme contained in Part 12 of the Electoral Act.¹⁴ The VEC has identified several recommendations in previous submissions that the VEC encourages the Panel to consider. ***Incorporating these changes into the Electoral Act would inherently add to the existing minimum administrative requirements contained in the Electoral Act in order to receive political funding.***

Recommendation 6 Data residency used by fundraising platforms

This recommendation relates to recommendation 13 of the June Submissions.

The data and information collected by political fundraising platforms include information about donors and donation recipients.

The VEC recommended that the Electoral Act be changed so that RPPs (and elected members or candidates) have a responsibility to use fundraising platforms that abide by the Victorian Privacy Principles regarding data residency, data sovereignty, record-keeping, and data sharing.

The VEC also recommended that the records collected are subject to record-keeping requirements under section 220 of the Electoral Act.

¹⁴ Victorian Electoral Commission, *Submission from the Victorian Electoral Commission Part 1 – Background and Submission from the Victorian Electoral Commission Part 2 – Issues and Recommendations*, (June 2023): [Submissions received by the Electoral Review Expert Panel | vic.gov.au \(www.vic.gov.au\)](http://www.vic.gov.au).

Recommendation 6 Data residency used by funding platforms

The VEC recommends that recommendation 13 of the June Submissions be supported, as a minimum administrative requirement to qualify for political funding.

This would strengthen the governance surrounding the use this information by RPPs (and candidates or elected members) and improve public trust in relation to the protection of personal data.

Recommendation 7 Responsible person for residual obligations

This recommendation relates to recommendation 41 of the June Submissions.

The VEC notes that an RPP can cease to be registered if the RPP voluntarily deregisters or is deregistered by the VEC. The VEC considers it is in the public interest to ensure several obligations of RPPs are acquitted despite the RPP deregistering, in particular the ability to recover unrecovered debts.

In the June Submissions, the VEC recommended a provision be inserted into Division 1B of Part 12 of the Electoral Act to provide that when an RPP ceases to be registered, it must appoint a person to acquit remaining obligations of the RPP under Part 12 of the Electoral Act.

Recommendation 7 Responsible person for residual obligations

The VEC recommends that recommendation 41 of the June Submissions be supported, and the requirement to appoint a responsible person when an RPP deregisters be designated as a minimum administrative requirement as part of political funding process.

This will improve the VEC's ability to administer compliance with the Electoral Act by providing the VEC with a designated contact who is responsible for acquitting the outstanding compliance requirements of the RPP under the Electoral Act.

Recommendation 8 Oversight of State Campaign Accounts (SCAs)

This recommendation relates to recommendation 46 of the June Submissions.

The VEC recommends that section 207F(1) of the Electoral Act be amended so that registered officers and registered agents must keep a unique SCA into which public funding and donations are paid. Currently, there is nothing preventing a person or entity from having multiple SCAs, which impacts on the simplicity and effectiveness of audit requirements under Part 12.

Recommendation 8 Oversight of SCA

The VEC recommends that recommendation 46 of the June Submissions be supported so that registered officers and registered agents must keep a unique SCA into which public funding and donations are paid as a minimum requirement to qualify for political funding.

This will improve the VEC's ability to administer compliance with the Electoral Act by providing the VEC with a single source of truth for the auditing process and strengthen the governance of party administration surrounding the use of public funding and receipt of donations.

Recommendation 9 Provision of donation receipts

This recommendation relates to recommendation 50 of the June Submissions.

The integrity around donation administration would be improved by requiring donation recipients, including RPPs, to provide a receipt to donors after making a donation. This receipt should be uploaded as supporting documentation when a donation is disclosed in VEC Disclosures.

The VEC recommends the Electoral Act be amended to include as a minimum administrative requirement that a receipt should:

- clearly identify the single entity or individual that is the recipient of the donation
- outline the recipient and donor's respective obligations under the Electoral Act
- specifically notify the donor in written form of the need to disclose a donation when the donation is made
- identify and advise donors of the individual donation amount and any aggregated amounts from the donor for the purposes of determining whether the disclosure threshold or general cap has been met or exceeded.

The VEC suggests the structure and form of the receipt in Appendix 4 of the June Submissions.

Recommendation 9 Provision of donation receipts

The VEC recommends that recommendation 50 of the June Submissions be supported, and the requirements be included as a minimum requirement to qualify for political funding.

This will improve the VEC's ability to administer compliance with the Electoral Act by providing the VEC with a mechanism to efficiently match and verify donations from donors to recipients.

Recommendation 10 Clarifying the purpose of donations

This recommendation relates to recommendation 52 of the June Submissions.

The VEC recommends the Electoral Act be amended to include as a minimum administrative requirement to qualify for political funding that donors and recipients, including RPPs, should have the obligation to specify if a donation given or received is for State or Commonwealth purposes and is to be used for political expenditure. The proposed changes would clarify the intention of the donor and recipient at the time of donation. This is because there is no mechanism to determine whether a donation is for either a State or Commonwealth purpose or intended for use as political expenditure. Under s 207F(3), the registered officer or agent must ensure that no amount for Commonwealth electoral purposes is to be paid into the SCA.¹⁵

Recommendation 10 Clarifying the purpose of donations

The VEC recommends that recommendation 52 of the June Submissions be supported, and the requirements be included as a minimum requirement to qualify for political funding.

This will improve the VEC's ability to administer compliance with the Electoral Act by providing the VEC with a mechanism to efficiently determine if donations have been correctly made to the SCA and strengthen the governance of party administration surrounding the use of political funding and receipt of donations.

7. Additional considerations

The existing administrative arrangements, coupled with the additional measures discussed in this submission may bring about greater rigour, transparency, and trust in political transactions. The VEC urges the Panel to reflect on 3 key considerations raised in the June Submissions that are also relevant in these circumstances:

Timing: any additional reporting requirements (e.g., information attestations) should be aligned where possible with annual returns to streamline the process for RPPs and the VEC.

Enforceability: the VEC needs a regulatory lever, such as the ability to issue fines and/or reduce funding payments to drive compliance with obligations.

Information: the VEC needs access to information it deems necessary to satisfy itself that obligations have been met.

Furthermore, the administrative and cost burden of additional requirements needs to be reflected in statutory time frames and the VEC's resource allocation.

¹⁵ *Electoral Act 2002 (Vic)* s 207F(3).

