

# Electoral Review Expert Panel

## Discussion paper

For definitions relating to key terms in this discussion paper and Part 12 of the [Electoral Act 2022](#) (the Act), please see the Victorian Electoral Commission's (VEC) [funding glossary](#).

## Background and context to the 2018 amendments to the *Electoral Act 2002*

The Electoral Legislation Amendment Bill 2018 was introduced into the Legislative Assembly on 8 May 2018, substantially amending Part 12 of the Act, and introducing a broad political finance scheme including disclosure, funding, reporting and enforcement provisions.

In the Legislative Council, amendments, and new clauses (drafted by the Government, Opposition, and crossbench MPs) meant that the Bill underwent several changes prior to being passed by Parliament.

Notably, the amendments:

- allowed electronic assisted voting for a prescribed eligible class of electors, without requiring them to vote in person at a voting centre
- introduced administrative expenditure funding and policy development funding, and access to advance funding and
- required the Minister to appoint an Expert Panel (Panel) to conduct this Review.

## Summary and key features of Victoria's state government political finance scheme

Victoria's scheme aims to ensure Victoria's electoral integrity by, limiting the influence of private donations in the political process, ensuring appropriate transparency about the nature of private donations, fostering equal participation in the electoral process, and providing enforcement mechanisms to ensure compliance with the scheme.

The key features include:

- a general cap that limits political donations to and from a single source at \$4,000 (now indexed to \$4,320) for each four-year State election cycle (donations to a Registered Political Party (RPP), its endorsed candidates, elected members and nominated entity are all captured under the RPP general cap)
- a ban on foreign donations – political donations can only come from Australian citizens, residents, or businesses
- a ban on anonymous donations of \$1,000 (now indexed to \$1,080) or more
- requiring political donations over the disclosure threshold to be declared to the Victorian Electoral Commission (VEC) within 21 days and published by the VEC within 7 days
- ensuring that all who are involved with political fundraising or campaigning, including third party campaigners (TPCs) are subject to the scheme

- a significant increase in public funding to candidates, with candidates who received four per cent or more of first preference votes, or were elected in an election, receiving \$6 per vote in the Assembly and \$3 in the Council (indexed on an annual basis)
- administrative funding for RPPs with elected members and independent members of Parliament, and policy development funding for eligible RPPs
- threshold amounts, caps and funding units to be indexed annually on 1 July in line with the CPI
- monitoring and compliance functions for the VEC, with significant penalties for breaches of the scheme. For example, failing to disclose a donation is an offence subject to a fine of 200 penalty units (currently \$36,984) and knowingly accepting an unlawful donation is an offence subject to a fine of 300 penalty units (currently \$55,476) and two years' imprisonment.

## Political donations for State elections must be paid into a state campaign account

The state campaign account is intended to separate funding from political donations from funds used for other purposes – such as party administration, operations, or other activities including Commonwealth election campaigns.

RPPs, candidates, groups, elected MPs, nominated entities, associated entities, and TPCs must all keep a state campaign account. Political donations and public funding administered by the VEC must be paid into a state campaign account, and some funding sources (e.g., annual membership fees paid to RPPs) cannot be paid into the state campaign account. All political expenditure must be paid out of the state campaign account, which means that annual membership fees paid to RPPs cannot be used for political campaigns, noting that different obligations apply for associated entities and TPCs as discussed below.

The Act also provides for the separate treatment of funds for Commonwealth and State electoral purposes. In particular:

- money received by a recipient for Commonwealth electoral purposes must not be paid into a state campaign account. This money cannot be used for political expenditure in Victoria
- transfers of funds between Victorian and other branches of an entity are subject to the political donations scheme, such as the general cap (e.g., there is no exemption to facilitate the transfer of funds between the federal and Victorian branches of a RPP).

If membership fees or annual levy payments are deposited by associated entities and TPCs into their state campaign accounts, they will be treated as political donations and the relevant disclosure obligations will apply.

## Eligible RPPs, independent MPs and candidates can receive public funding entitlements and other funding streams

Following the 2018 reforms, the amount of public funding for election campaigns increased significantly. The 2018 reforms to the Act also provide for administrative funding for RPPs with elected members, and policy development funding for eligible new and small RPPs.

- **Public funding** – This is the only funding scheme that covers costs associated with an electoral campaign (i.e., electoral expenditure and political expenditure). For FY22/23, it is calculated at \$6.49 per first preference vote for an Assembly candidate, and \$3.24 per first preference vote for a Council candidate. Candidates must receive at least four per cent of the first preference vote, or be elected, to receive this funding. In FY21/22 the VEC paid \$5.913 million in public funding. Recipients of public funding may apply for advance payments for the next election based on the number of votes received at the previous election. Necessary adjustments are made after the next election.
- **Administrative expenditure funding** – This is provided to elected members of Parliament to cover administrative expenses including those incurred in complying with obligations relating political finance laws. For FY22/23, it is calculated as \$216,210 for the first elected member of an RPP or an independent, \$70,660 for the second elected member of an RPP, and \$37,850 for the third to 45th elected member of an RPP. In FY21/22 the VEC paid \$6.605 million in administrative expenditure funding.
- **Policy development funding** – This is a payment made to assist in policy development, which cannot be spent on political campaigning. For FY22/23, it is calculated as \$1.08 per vote or \$27,020, whichever is greater. Parties who receive public funding (i.e., receive more than four per cent of the vote or are elected) cannot receive policy development funding. In FY21/22 the VEC paid \$32,152 in policy development funding.

## Summary and key features of Victoria's local government political finance scheme

Laws regulating political donations and disclosure at the local government level are limited in comparison to those at the state level. At the local government level, the *Local Government Act 2020* (LGA) provides that:

- candidates must within 40 days of election day submit a local government disclosure return to their council's CEO for donations above \$500 (the return must include all monetary donations, in-kind support, donations of services and aggregate donations equal to, or over the value of, \$500)
- the council's CEO must publish a summary of it on the council's website and provide a report to the Minister for Local Government within 14 days.

Although each council must publish a summary of gifts to election candidates, there is no consolidated public register of local government political donations and there are no disclosure obligations for donors. The Local Government Inspectorate can investigate and prosecute breaches of requirements relating to the disclosure of donations, such as knowingly providing false or misleading information in a local government disclosure return, and the penalty is up to 60 penalty units.

# Key matters for consideration

## 1. Donation caps

General donation caps limit political donations (gifts) from a single donor to a single recipient. In Victoria, this is currently \$4,320 during a 4-year election cycle. Victoria, NSW, and Queensland are the only Australian jurisdictions with political donations caps (noting that NSW and Queensland also have expenditure caps).

Some sources of funding are not defined as gifts so are not included under the general cap. These include: membership fees, affiliation fees and annual levies paid to political parties; gifts between RPPs and their nominated entities; donations from candidates to their own campaign; and small donations (currently \$54 or less).

There has also been some debate about the application of the general cap in relation to fundraising events. While the Act provides that a political donation includes 'the making of a payment or contribution at a fundraising event', it has been argued that this may not apply to admission tickets paid in advance of the event. Further, it has been argued that the fee to attend a fundraising event 'depends on the commercial value' which is difficult for the donor to objectively determine.

The Panel also note the current bans on anonymous donations over the disclosure threshold and on all foreign donations.

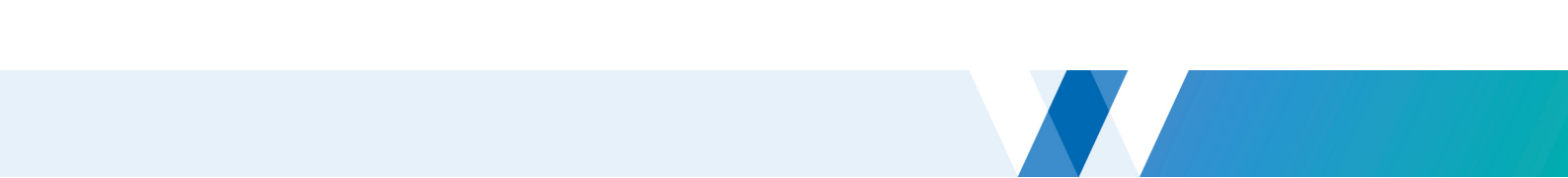
The [Independent Broad-based Anti-corruption Commission's \(IBAC\) October 2022 Special Report on corruption risks associated with donations and lobbying \(IBAC Special Report\)](#) also made recommendations relating to improving the effectiveness of the political donation caps (see recommendations 1 and 2).

**The Panel is seeking feedback on the whether the current provisions in the Act relating to political donations and application of the general cap are fit for purpose, proportionate, and appropriate. You may consider but are not limited to:**

- The value of the cap and indexing arrangements
- If different caps should apply for different recipients
- If the current definition of [political donation \(gift\)](#) and the categories which are not included are appropriate
- If there are additional sources of funds that should be banned or restricted under the scheme – for example: bans on donations from property developers, gambling, tobacco, and liquor industries apply in some jurisdictions.

## 2. Expenditure caps

Election spending is capped in 89 countries worldwide, including Canada, Britain and New Zealand. Expenditure caps also apply in all but four Australian jurisdictions. It is argued that spending caps reduce corruption risks by reducing the pressure on parties to intensively fundraise, thereby reducing their susceptibility to accepting donations from persons or organisations attempting to buy access and influence. Proponents of expenditure caps argue that the existing uncapped system in Victoria enables well-resourced campaigns to dominate public debate.



Most schemes provide for different caps for different political participants (e.g., with independents having a higher cap than party endorsed candidates in NSW and Queensland) to recognise their unequal spending power. The IBAC Special Report noted that “care must be taken to ensure expenditure caps do not unfairly discriminate against challengers, independents or minor parties”.

The Act requires the Review to consider whether the Act should be amended to provide for a cap on political expenditure. The IBAC Special Report similarly recommends consideration of political expenditure caps at the state and local levels of government in Victoria (2(a)) and a specific cap on the amount that can be charged to attend a fundraising event (1(g)(i)).

**The Panel is seeking feedback on whether caps on political expenditure should be introduced for Victorian State elections. You may consider but are not limited to:**

- rationale for introducing expenditure caps
- how the caps would interact with the current provisions (e.g., the state political donations regime), and/or any proposed reforms to political donations caps, public funding, and electoral funding
- the application of expenditure caps on individuals and entities (including RPPs, MPs, candidates, associated entities, nominated entities and TPCs)
- the scope of activities that should be captured (e.g., whether the cap would use the existing definition of ‘political expenditure’ in the Act)
- the time periods for which the expenditure cap should apply (e.g., during an election)
- if political expenditure should be applied across the state or be broken down by electorate
- what disclosure and reporting requirements should apply to any proposed expenditure caps or any additional mechanisms to promote transparency and accountability
- what compliance, monitoring and enforcement mechanisms should exist to support them
- how the value of an expenditure cap should be determined.

### 3. TPCs, small community groups and not-for-profit entities

TPCs, like other entities under Victoria’s political finance scheme, are subject to various requirements under the Act, noting that a relevant entity only qualifies as a TPC if it receives political donations or incurs political expenditure of at least \$4,320 in a financial year. For example, a TPC must have a state campaign account into which political donations must be deposited, political donations made to TPCs are subject to the general cap and to disclosure and reporting requirements, and they must submit an annual return to the VEC.

The number of TPCs a donor may donate to over the 4-year election period is restricted to six in Victoria – the purpose being to mitigate against TPCs being used to circumvent general donation caps.

The Act requires the Review to examine the impact of the 2018 amendments on TPCs, small community groups and not-for-profit entities. The IBAC Special Report also considers the role of TPCs and recommends the registration of TPCs and publication of the register of TPCs at both the state and local government level. It also discusses TPCs in the context of other matters, such as ensuring that they cannot be used to circumvent disclosure and reporting requirements and political donations caps (1(d)).



**The Panel is seeking feedback on the impact of the 2018 amendments to the Act on TPCs, small community groups and not-for-profit entities. You may consider but are not limited to:**

- specific details of the impact of the 2018 provisions on these groups
- if the number of TPCs to whom a donor can donate should be limited and to what number
- if registration of TPCs is required and the rationale for such a step
- how any possible recommendations to change Victoria's political donations and disclosure scheme (e.g., expenditure caps) may affect TPCs, small community groups and not-for-profit entities.

## 4. Disclosure and reporting

In Victoria, political donations over the disclosable threshold (currently \$1,080) are required to be disclosed by both donors and recipients to the Victorian Electoral Commission (VEC) within 21 days and published by the VEC within 7 days.

Annual returns must be lodged by political participants with the VEC annually. These are required to be published by the VEC. An annual return is a summary of money received, spent and owed by a political participant in a financial year and is used to check that political parties and other entities are complying with funding and disclosure laws. RPPs must include all money received, spent and owed and have their return audited by a registered company auditor. The annual returns for other political participants need to relate to the state campaign account and be audited by an independent auditor. It is not mandatory for independent candidates and elected independent members to have their annual return audited.

The majority of the IBAC Special Report recommendations relating to disclosure and reporting obligations are directed, in part, at ensuring that campaign donations and expenditure' are reported in a manner that provides sufficient information to monitor compliance with donation caps' (1(c)(i)).

**The Panel is seeking feedback on the operation of the disclosure and reporting elements of Victoria's political finance scheme. Matters for consideration could include but are not limited to:**

- the effectiveness of the disclosure and reporting scheme for providing transparency and supporting compliance and enforcement
- the timeliness of disclosures
- suggestions for improvements to enhance transparency, compliance and enforcement.



## 5. Monitoring and enforcement

Appropriate compliance and enforcement mechanisms are necessary to ensure the integrity of political donations schemes, and to allow breaches to be investigated and enforced.

The Act provides the VEC with tailored monitoring and enforcement mechanisms to oversee the state political donations scheme. Significant penalties apply for breaches of these provisions.

The VEC has stated that it adopts a [‘constructive compliance’ approach to enforcement](#), which involves providing “electoral participants with resources to understand and comply with their obligations”, and taking proportionate enforcement actions when there is non-compliance. Media reports have indicated that the VEC has undertaken, or is undertaking, enforcement actions in relation to alleged breaches of Victoria’s political finance scheme. The VEC website includes information on relevant breaches and an online portal to allow people to submit complaints and information about potential or alleged breaches. The VEC annual report provides details on the VEC’s monitoring and enforcement actions.

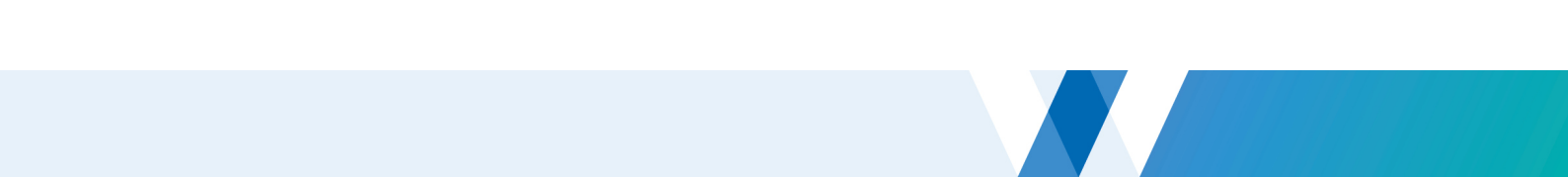
**The Panel is seeking feedback on how well the 2018 amendments allow for effective monitoring and enforcement. Matters for consideration could include but are not limited to:**

- whether the current monitoring and enforcement mechanisms are appropriate and fit-for-purpose, or whether any additional mechanisms are required
- if additional provisions could better support the constructive compliance approach (e.g., mandatory training for political participants)
- any barriers that currently impact on effective monitoring and enforcement
- additional monitoring and enforcement mechanisms that may be needed to support any proposed reforms (such as expenditure caps).
- if in-kind contributions are adequately monitored for compliance
- the adequacy of existing penalties.

## 6. Interaction with other jurisdictions and the Commonwealth regime

Victorian and Commonwealth legislation include mechanisms to ensure appropriate separation between the Victorian and Commonwealth political donations schemes, however inconsistencies in political finance laws across jurisdictions complicate the regulation of political donations, expenditure and funding.

The absence of a nationally consistent framework creates potential ambiguities about the interaction between the schemes. While Victoria’s scheme regulates funding from other jurisdictions and separates out money for Commonwealth electoral purposes, the IBAC Special Report noted that these measures may need to be improved to address the risk that jurisdictions with less stringent political donations schemes than Victoria may be used to undermine Victoria’s political donations scheme (e.g., in relation to money raised by associated entities, see 3.2.3.1 of the Special Report).



**The Panel is seeking feedback on the impact that differing laws in other jurisdictions may have on the effectiveness of the Victorian political finance scheme. Matters for consideration could include but are not limited to:**

- the effectiveness of existing mechanisms in Victoria's political donations regime that govern the interaction between the state regime and regimes in other Australian jurisdictions
- any additional requirements needed to govern political donations from political parties, associated entities in other jurisdictions that are received by Victorian political participants to ensure that they are subject to an appropriate level of oversight and transparency
- models in other Australian jurisdictions that may appropriately regulate the relationship between the Commonwealth's political donations regime, and state and territory political donations regimes.

## 7. Electoral funding

Funding schemes are designed to reduce reliance on donations to fund campaigns, thereby reducing the risk of inappropriate or disproportionate influence from private donors. Victoria has the second highest public funding rate of all Australian jurisdictions.

Administrative expenditure funding is available to RPPs with elected members and independent MPs to support administration expenses and compliance with political finance laws. Policy development funding aims to assist new and/or small RPPs and is available to eligible RPPs who do not receive public funding or administrative expenditure funding.

**The Panel is seeking feedback on whether the current arrangements for electoral funding for parties and candidates at the state government level (including amounts, how they are calculated, and the types of funding) are fit for purpose, proportionate, and appropriate. Matters for consideration could include but are not limited to:**

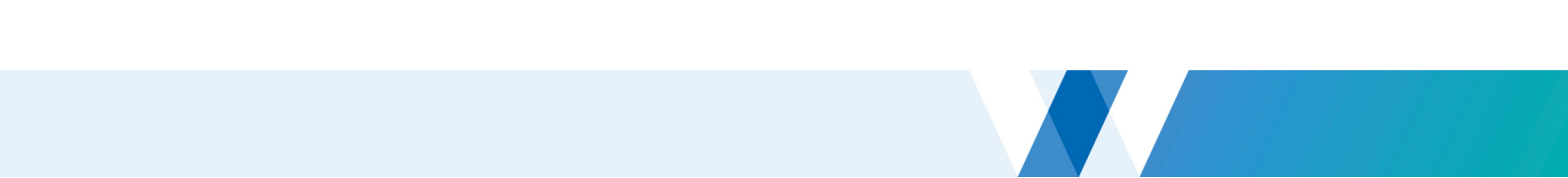
- the level of funding and eligibility criteria applied to different political participants in Victoria
- the operation of funding payments
- whether any consequential changes would be required to the electoral funding provisions if changes to the current Victorian political finance scheme occurred (e.g., expenditure caps).

## 8. Electronic assisted voting

The 2018 reforms enabled access for some electors to electronic assisted voting. Electors who are a prescribed eligible class of electors under the Electoral Regulations 2022 can access electronic assisted voting – meaning they do not need to vote in person at a voting centre on election day. The current prescribed classes are electors who:

- otherwise cannot vote without assistance because of blindness, low vision, or a motor impairment.
- are impacted by a declared emergency in respect of which the VEC has made a relevant determination.
- were prevented from leaving home because they have tested positive to COVID-19 or are otherwise required to isolate due to a public health order (this is a temporary provision to be revoked on 20 August 2023).





The VEC implemented a telephone voting service for eligible electors at the 2022 State election. The service was designed so the identity of the voter was not available to the operator while the elector was casting their vote.

**The Panel is seeking feedback on the effectiveness of the 2018 reforms as they relate to electronic assisted voting. Matters for consideration could include but are not limited to:**

- quality of the voting experience for electors who utilised electronic assisted voting at the 2022 State election
- further amendments to the Act that may improve the VEC's ability to effectively deliver electronic assisted voting
- further categories of electors who would benefit from access to electronic assisted voting.

## 9. Local government

IBAC's recommendations in the Special Report aim to align the regulation of state and local government political finance schemes (1(a-g)).

Any amendments would possibly require a step change to meet the far stricter obligations that already apply at a state government level, together with any further amendments arising from this review.

**The Panel is seeking feedback on the proposed alignment of state and local government political finance schemes. Matters for consideration could include but are not limited to:**

- the effectiveness of the current local government disclosure, reporting and enforcement scheme for political donations
- the merits and drawbacks of aligning the two schemes
- elements of the state political finance scheme that should apply to local government
- the different contextual factors between state and local government political environments that should be considered if attempting to align political finance schemes
- if caps and thresholds are recommended for local government, whether these should operate at different levels to the state scheme
- how regulation of TPCs should apply to local government donations and disclosures.
- whether the monitoring and enforcement functions for the state and local government political donations regimes be consolidated and overseen by a single entity.