

## **Review of Victoria's electoral finance laws Victorian Greens submission**

The Victorian Greens welcome the opportunity to make a submission to the Review into the operation of the 2018 amendments to the Electoral Act 2002.

The political finance reforms at the heart of the 2018 amendments were introduced to enhance the integrity of the Victorian electoral system on the basis that “voters have a right to know about who makes and receives political donations, and that political donations should not unfairly or improperly influence the political process.”

In large part we believe the reforms meet that aim, with the cap on donations and improved transparency measures. However, there are significant gaps that remain in Victoria's regulation of money in our political system.

The reality is money does matter when it comes to election campaigns and the financing reforms of 2018 also had the consequence of entrenching a significant advantage for the two big parties in comparison to smaller parties and independents which is detrimental to our democracy.

This submission focuses on the following issues:

- The ‘nominated entity’ and candidate loopholes
- Expenditure caps
- Local government donations reform
- Banning political donations from certain industries
- Truth in political advertising laws
- Administration of the donations reporting requirements

### 1. The ‘nominated entity’ loophole

While the Victorian Greens supported the donations reforms in 2018 we were critical of the significant loophole given to the two big parties by way of the ‘nominated entity’ provisions. The ‘nominated entity’ provisions operate to undermine the donation caps and give the ALP and the Liberals a significant advantage over all other parties and independents. These provisions allow unlimited fund transfers from a nominated entity to a party's state campaign fund. While donations into the nominated entity are covered by the donations cap, legacy funds are not. This provides the ALP and Liberals with a significant war chest in addition to the increased public funding they receive under the reforms.

Newer parties and independents have no capacity to match the legacy assets of the two big parties. These provisions were designed to give the two big parties an advantage and undermine other attempts in the legislative reforms to better level the playing field.

At the very least here should be a cap on donations from nominated entities to the State Campaign fund. It could arguably be a higher cap than the donations cap but unlimited transfer of funds is grossly unfair.

Furthermore, retention of the nominated entity exemption from the donation cap strengthens the need for an expenditure cap as discussed further below.

Similarly, under the existing laws a candidate for election has no limit on donations to their own campaign. This leaves open the possibility of wealthy individuals using their wealth to get elected. While Cliver Palmer's spending hasn't led to too much success recently it provides a warning. We propose there should be a cap on donations from individuals to their own campaign. It could be a higher cap but there should be some limit.

## 2. Expenditure caps

The Commonwealth Electoral Matters Committee found in its [interim report](#) that “there is evidence that the significant rise of spending during elections is leading to an arms race, where whoever has the deepest pockets wins.”(para 2.137) Representative democracy is supposed to be about a contest of ideas, not merely a race that can be bought.

Expenditure caps are a key mechanism for addressing concerns about the influence of money on our politics and parliaments. There are already several jurisdictions in Australia and globally, for example the UK, Canada and NZ, that understand the need for expenditure caps to prevent elections becoming an arms race, including where donation caps exist as well.

In fact there are strong arguments that both donations caps and expenditure caps are necessary to level the playing field and the spending gulf between established parties and incumbents, and smaller parties and independents. Furthermore, an expenditure cap is an additional protection against undeclared funding going to campaigns.

As the Centre of Public Integrity points out, the equality of opportunity to participate in the exercise of political sovereignty, as the High Court majority in *McCloy v New South Wales* put it, “is almost certainly impinged by the excessive and unequal electoral expenditure Australia currently experiences.”

In its [recent paper](#) on expenditure caps, the Centre for Public Integrity reviews the existing caps in NSW, Queensland and the ACT and concludes that:

“As the experience of Australia’s States shows, expenditure caps are an important, available and effective remedy in truncating the arms race between the major parties and mitigating undue influence. Applicable amounts for expenditure caps should be sufficiently low to ensure open access to new entrants, yet high enough for a fair rivalry between established players, and to ensure a meaningful campaign in which voters are reached.”

We submit that the following should be taken into account when designing expenditure caps:

- Caps should apply to political parties, candidates, associated entities and third parties;
- There should be caps for individual seats and state-wide;
- The expenditure to be counted towards the cap should be broad;
- The cap should operate at least 12 months from the date of the election; and
- The cap should be set at a limit that allows reasonable engagement by all candidates, taking account of the benefits of incumbency, the cost of advertising in different electorates, and recognises the full range of campaign expenditure and in-kind contributions.

With the federal government seemingly moving towards both donations reform and an expenditure cap, it is even more important Victoria is not left behind in ensuring fairer electoral processes.

### 3. Local govt donation reform

The most significant gap in the current system is the lack of any regulations of political donations in respect of local government elections, apart from a weak post-election disclosure requirement. The current government promised reform in 2019 but four years later have utterly failed to introduce any reform of political donations in respect of local government.

Local government makes very significant decisions and the potential for corruption in local government is high. The rationale of “voters have a right to know about who makes and receives political donations, and that political donations should not unfairly or improperly influence the political process” applies equally to local government.

Local councils are responsible for making decisions that can deliver huge profits to corporations and individuals, such as granting planning permits, rezoning land and managing poker machines. This means the local government sector is a perfect ground for corruption and exploitation where big business, property developers and the gambling industry can use their significant wealth to influence councilors, manipulate decision-making and distort outcomes to benefit themselves over our communities.

These corruption risks have been made all too clear through IBAC's investigation into Casey council. For property developers in particular, councillors who have the power to make lucrative planning decisions that could hand them millions in profits are the perfect target for dodgy donations. The gambling industry is also a prolific donor, giving over a million dollars to the major parties ahead of the 2018 state election before the donation cap came into effect to help entrench their profitable, yet hugely damaging, poker machines throughout the community.

Similar donations caps and transparency measures should exist for local government elections as for state elections. Consideration can be given to streamlining how the administration of donations caps for local government can work given that candidates are less likely to be part of a political party, but at the very least there needs to be a cap on donations to parties and/or candidates for local government elections, and disclosure rules no less than exist at the state level to enable voters to know who has donated to candidates.

#### 4. Bans of donations from certain industries

On top of donations expenditure caps, New South Wales and Queensland have also banned property developer and gambling industry donations from all levels of government. The new NSW Labor government has also pledged to ban political donations from clubs that have poker machines or engage in other forms of gambling.

With their bans the NSW and Queensland governments have recognised the power of the gambling and property industries within politics. The Victorian Greens have long argued similar restrictions should be in place in Victoria.

After the almost \$1 million the Hotels Association gave the Labor and Liberal parties before the last 2018 election, on top of the millions donated by Crown Casino over the years, it is no surprise Victorian governments have been so reluctant to address the scourge of poker machines in the community or predatory behaviour of Crown Casino.

Similarly the millions of dollars that can be made by property developers just by the stroke of the Planning Minister's pen, justifies a ban on any political donations from property developers and associated entities.

The ban should extend to all forms of political donations from property developer and gambling entities, including fundraising dinners and other events that sell access to government Ministers or Opposition spokespeople.

#### 5. Truth in advertising laws

There is no doubt that false and misleading information distributed during an election campaign undermines the capacity for an informed electorate to debate and vote on key

policy issues. Every election the community is faced with a slew of misinformation published across a wide variety of communications channels. It is a global problem that all democracies are struggling to address.

In a democracy there is the need to balance robust debate and the freedom of political communication with how to develop a system to arbitrate on 'truth'. It is not an easy problem to grapple with, but we must find a way. Otherwise we risk the integrity of election campaigns and the trust of the community in our political system.

The Victorian Greens support efforts to address misleading political advertising, and believe Victoria should follow the lead taken by South Australia and the ACT. We need to consider laws that will:

- make it an offence to authorise or publish material purporting to be a statement of fact when the statement is inaccurate and misleading
- establish an independent, external review process to evaluate complaints, with rapid adjudication and a clear appeals process
- provide for penalties that are a genuine deterrent and can be enacted quickly to reduce strategic breaches
- be operational in advance of the next Victorian state election, and supported by adequate resourcing.

#### 6. Improving the process for donors to report donations

While we support the improved transparency measures from the 2018 reforms including the requirement to disclose political donations within 21 days, improvements could be made to the process for donors disclosing their donations. The vast majority in number of donations received by political parties are from individuals. The reconciliation that occurs between party disclosure and donor disclosure is an important check and balance in the system. However, given the laws encourage smaller donations from individuals it is incumbent upon us to make the process of disclosure as easy as possible. For example, where a donation has been disclosed by the recipient and a donor is simply being asked by the VEC to verify the disclosure, it is unclear what purpose is served by requiring the donor to create an online account (a process that some donors find difficult and confusing).