Electoral Review Expert Panel

Submission from the Victorian Electoral Commission

Part 2 — Issues and recommendations

29 June 2023

VEC 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 June 2023 as Part 2 of the VEC's submission to the Electoral Review Expert Panel appointed under section 222DC of the *Electoral Act 2002* (Vic).

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Contents

Definitions ..... **iii**

1. Introduction **1**

2. Donations **2**

2.1. Gifts 2

2.2. Transparency and traceability 7

2.3. Indexation 12

2.4. Reconciliation 15

2.5. Transactions and intermediaries 16

3. Funding **22**

3.1. Advance payments of funding 22

3.2. Claimable expenditure 25

3.3. Public funding and failed elections 29

4. Enforcement **33**

4.1. Enforcement capability 33

4.2. Statute of limitations 35

4.3. Classification of offences 36

4.4. Coercive notices 38

5. Administration **41**

5.1. Independent auditing of statements 41

5.2. The VEC's ability to audit statements 44

5.3. Registered officers and registered agents 45

5.4. Residual obligations of persons and entities 48

5.5. Registration of associated entities and third party campaigners 52

5.6. State campaign accounts 53

5.7. VEC obligations 56

5.8. Aligning reporting periods 58

6. Legislative improvements **60**

6.1. Uplifting compliance standards 60

6.2. Improving legislative clarity 62

6.3. Amending poor or confusing drafting 67

7. Political expenditure cap 70
7.1. Background 70
7.2. Legislative changes 70
7.3. Cross-jurisdictional comparison 71
7.4. Reporting requirements 72
7.5. Conclusions 73

8. Electronic Assisted Voting 75
8.1. Background 75
8.2. Intention 75
8.3. Classes of electors 76
8.4. Aligning electronic voting and electronic assisted voting 80

9. IBAC Special Report on corruption risks 81
9.1. VEC response to relevant IBAC recommendations 81

Appendix 1 – Summary of recommendations 88

Appendix 2 – Proposed prescribed form of coercive notice 107

Appendix 3 – Funding and annual return timelines 109

Appendix 4 – Sample donation receipt 110

Appendix 5 – Expired temporary regulation 51A 111

Definitions

Key definitions from the *Electoral Act 2002* (Vic) (**Electoral Act**) and other terms commonly used in this submission are summarised below.

Term	Definition
ADI	Authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth).
Administrative expenditure funding (**AEF**)	Funding provided to independent elected members and RPPs with at least one elected member to cover administrative expenses, including expenses incurred in complying with funding and disclosure obligations.
Amendment Act	*Electoral Legislation Amendment Act 2018* (Vic).
Annual return	The Electoral Act uses the term 'annual return' to refer to 2 different types of annual returns, including: • annual returns in relation to AEF, which are provided to the VEC 16 weeks after the end of each calendar year. This type of annual return sets out the amount of claimable expenditure in relation to AEF for the calendar year • annual returns in relation to a person or entity's financial matters (including political donations, funding, other income received and expenditure incurred), which are provided to the VEC 16 weeks after the end of each financial year for the preceding financial year These 2 types of annual returns are given the same broad definition under section 206(1) of the Electoral Act, with more specific requirements contained in subsequent sections. For the purposes of this submission, the term 'AEF annual return' is used to refer to annual returns in relation to AEF, and the term 'financial year annual return' is used to refer to annual returns in relation to political donations.
Associated entity (**AE**)	An 'associated entity' is distinct from a nominated entity. It means an entity that: • is controlled by one or more RPPs; or • operates wholly or to a significant extent, for the benefit of one or more RPPs; or • is a financial member of an RPP; or • on whose behalf another person is a financial member of an RPP; or • has voting rights in an RPP; or • on whose behalf another person has voting rights in an RPP.

Term	Definition
Candidate	A 'candidate' for the purposes of Part 12 of the Electoral Act is either a person who has been selected by an RPP to be a candidate in an election, or someone, other than a member of a political party, who has publicly announced their intention to stand for election (i.e. an independent candidate). Note that a 'candidate' for the purposes of Part 12 differs from a 'candidate' under the rest of the Electoral Act, which is a person who has nominated for an election under section 69 of the Electoral Act.
Capital asset	A 'capital asset' is any asset which is held solely for use and not for conversion into cash, such as vehicles or office equipment.
Charter of Human Rights	*Charter of Human Rights and Responsibilities Act 2006* (Vic)
Coercive notice	A 'coercive notice' is a notice issued to a person or entity by a VEC compliance officer under section 222B requiring them to produce documents or other things specified in the notice, or to appear before the compliance officer to give evidence or produce documents or other things.
Compliance officer	A 'compliance officer' is appointed by the VEC under section 222A of the Electoral Act. Compliance officers are responsible for conducting investigations and compliance activities with respect to possible political donation and disclosure offences under Part 12 of the Electoral Act. Compliance officers have various powers under Part 12 of the Electoral Act, including the power to issue a coercive notice. The powers of compliance officers do not extend beyond Part 12 of the Electoral Act.
Corporations Act	*Corporations Act 2001* (Cth)
Crowdfunding	'Crowdfunding', also known as 'crowd sourced funding', is the collection of donations from a large number of individuals to fund a project or support a cause, primarily through an online fundraising platform.
Cryptocurrency	Any form of digital currency in which transactions are verified and records maintained by a decentralised system using cryptography, rather than by a centralised banking authority.

Term	Definition
Deputy registered officer	A ‘deputy registered officer’ is nominated by an RPP’s registered officer. A registered officer of an RPP can nominate multiple deputy registered officers. Although the term is not defined in the Electoral Act, section 44(2) of the Electoral Act implies that deputy registered officers can exercise the same functions and fulfill the same obligations as the RPP’s registered officer under the Electoral Act. These obligations and functions include responsibilities of the registered officer under Part 12 of the Electoral Act, such as providing both types of annual returns.
Disclosure return	A ‘disclosure return’ is information provided to the VEC that describes the dollar amount of a political donation exchanged between 2 entities and identifies the entities involved. This information must be provided to the VEC by submitting an electronic form via the online VEC Disclosures portal. A disclosure return is required from a donor when a donation (or donations) is equal to or exceeds the disclosure threshold within a financial year. A recipient must provide a disclosure return to the VEC if they receive a political donation during a financial year and the donation is equal to or exceeds the disclosure threshold. A recipient only needs to provide a disclosure return for individual donations which exceed the disclosure threshold.
Disclosure threshold	The Electoral Act requires a donor to provide to the VEC a disclosure return for each political donation made by the donor during a financial year that is equal to or exceeds $1,000 (indexed). A recipient must provide a disclosure return for each political donation that is equal to or exceeds $1,000 (indexed). This amount is referred to as the ‘disclosure threshold’ under the Electoral Act.
Donation recipient	The entities and individuals that receive political donations under the Electoral Act are: • RPPs; • a candidate at a Victorian State election, by-election or supplementary election; • a group of Legislative Council candidates at a Victorian State election; • an elected member of the Victorian Parliament; • an AE operating in Victoria; • an NE of an RPP; and • a TPC operating in Victoria. The entities and individuals that receive donations are described as a ‘donation recipient’ in this submission.
Donor	A ‘donor’ is a person who makes a political donation under the Electoral Act.

Term	Definition
EAV	'Electronic Assisted Voting', as set out in Part 6A of the Electoral Act, to include voting by the use of electronic equipment, telephone or other technology.
Elected member	An 'elected member' is a person who is a member of the Legislative Council or Legislative Assembly.
Election campaigning period	The 'election campaigning period' is the period in a general election year from 1 October to 6 pm on election day.
Election period	For the purposes of Part 12, an 'election period' is the 4-year period commencing on the day after the election day for a general election and ending on the next general election day.
Electoral Act	*Electoral Act 2002* (Vic)
Electoral expenditure	'Electoral expenditure' under the Electoral Act means expenditure incurred in an election period on the production, publication, display, distribution and broadcasting of advertising (and its authorisation) related to the election, including fees and salaries. It also includes the costs of carrying out an opinion poll or other research in relation to the election.
Electoral Regulations	Electoral Regulations 2022 (Vic)
Endorsed candidate	An 'endorsed candidate' is a candidate who is endorsed by an RPP under the Electoral Act.
Entity	Under the Electoral Act, an 'entity' is an incorporated or unincorporated body or the trustee of a trust.
Failed election	Under section 72 of the Electoral Act, an election fails if: • a candidate for an Assembly election dies after noon on the final nomination day and before 6 pm on election day; or • the successful candidate for an Assembly election dies after 6 pm on election day and before being declared elected; or • no candidate is nominated or declared elected.
Financial controller	AEs and TPCs can appoint a person to be an agent to act on their behalf for the purposes of Part 12. If no appointment is made, the financial controller of the AE or TPC is taken to be the agent. Under the Electoral Act, a 'financial controller' of an AE or a TPC can be: • the secretary of the corporation (if the AE or TPC is a corporation); or • the trustee of a trust (if the AE or TPC is a trustee and the trustee is a natural person); or • the person responsible for keeping the financial records of the AE or TPC (if it is neither a corporation or a trustee).

Term	Definition
General cap	The general cap means $4,000 (indexed). A political donation (or aggregated donations) must not exceed the general cap during an election period. A candidate donating to their own campaign is exempt from the general cap
Gift	The Electoral Act defines a 'gift' as any disposition of property (otherwise than by will) made by a person to another person without consideration in money or money's worth (or with inadequate consideration). This includes: • the provision of a service; • the payment of an amount in respect of a guarantee; • the making of a payment or contribution at a fundraising function; and • the disposition of property from an RPP, its branch or an AE. A gift does not include: • a funding payment made by the VEC under Part 12 of the Electoral Act (or any payment under Part 12); • gifts made in a private capacity for personal use; • annual subscriptions or affiliation fees paid to a party; • gifts between an RPP and its NE; or • the provision of volunteer labour.
IBAC	Independent Broad-based Anti-corruption Commission
Independent candidate	An 'independent candidate' is a candidate at an election who is not endorsed by an RPP under the Electoral Act. An independent candidate is not to be confused with an independent elected member, which means an elected member of Parliament who is not a member of an RPP. If an independent candidate is successful in an election, the candidate will become an independent elected member.
LGI	Local Government Inspectorate
Nominated entity (**NE**)	A 'nominated entity' is an entity whose name and address is entered on the Register of Nominated Entities as the nominated entity of an RPP. Gifts between a nominated entity and its RPP are not considered political donations under the Electoral Act.
Organisation	An "organisation" under the Electoral Act includes: • a body corporate; or • an association or other body of persons; or • an association that consists of 2 or more organisations; or • a part (including a branch or division) of an organisation.

Term	Definition
Panel	The Electoral Review Expert Panel, appointed under section 222DC of the Electoral Act.
Policy development funding (**PDF**)	Funding provided to RPPs who are not eligible for AEF or PF, to reimburse expenses in relation to policy development.
Political donation	The Electoral Act defines a 'political donation' as a gift to an RPP, candidate, group, elected member, AE, TPC or NE of an RPP. If the gift is used by an AE or TPC to make a donation or incur political expenditure (or reimburse the recipient to do either), it is also considered a political donation. An annual subscription or levy paid into the SCA of an AE or TPC is a political donation.
Political expenditure	Under the Electoral Act, 'political expenditure' means any expenditure for the dominant purpose of directing how a person should vote at an election by promoting or opposing the election of any candidate, an RPP or an elected member. It does not include expenditure incurred by an AE or TPC on any material that is disseminated outside of the 'election campaigning period' unless the material refers to a candidate or RPP and how a person should vote at an election.
Political party	A 'political party' is an organisation whose object or activity is to promote the election of a member of the party to the Victorian Parliament. A political party is eligible for registration if it is established on the basis of a written constitution that sets out the aims of the political party, and has at least 500 members who are: electors; members in accordance with the rules of the political party; and not members of an RPP or another political party applying for registration.
Public funding (**PF**)	Public funding is provided to eligible RPPs and candidates to reimburse electoral and political expenditure incurred in relation to an election. A candidate is only eligible for public funding if they receive at least 4 per cent of the total number of first preference votes in the election. An RPP or candidate that is eligible to receive public funding may also opt to receive instalment payments of advance public funding for the subsequent State general election.
Reconciliation	The VEC 'reconciles' donation disclosures by comparing disclosure returns provided by donors and recipients and matching them. The purpose of this is to monitor whether a donor or recipient has failed to disclose, or has inaccurately disclosed, a reportable political donation.

Term	Definition
Register of Political Parties	The 'Register of Political Parties' is established and maintained by the VEC under Part 4 of the Electoral Act. It contains a list of the political parties that are registered and their registered particulars.
Registered agent	A 'registered agent' is a person nominated as the agent of a candidate, group, an elected member, an AE or a TPC whose name and address are entered on the Register of Agents under the Electoral Act. The registered officer of an RPP is taken to be the registered agent of any endorsed candidates or elected members of the RPP. If a candidate has not nominated a registered agent, the person who is taken to be the registered agent is the candidate themselves. For AEs or TPCs with no registered agent appointed, the financial controller of the AE or TPC is taken to be the registered agent. If the TPC is an individual, the individual is taken to be the registered agent.
Registered officer	A 'registered officer' is a person shown on the Register of Political Parties as the registered officer of that party under the Electoral Act.
Registered Political Party (**RPP**)	A 'registered political party' is a political party that applied for registration and that the VEC has determined may be registered by entering it in the Register of Political Parties. Under the Electoral Act, an RPP has entitlements and obligations with regard to funding and disclosures.
Scheduled general election period	A 'scheduled general election period' is the period from 1 July until election day (inclusive) in a year that a general election is held.
Sentencing Act	*Sentencing Act 1991* (Vic).
Silent elector	Under the Electoral Act, a 'silent elector' is a person who has been granted silent elector status by the VEC (or by the Australian Electoral Commission on behalf of Victoria) having satisfactorily shown that printing their address on an electoral roll would place their or their family's personal safety at risk. The particulars of silent electors are 'confidential information' under Part 12 and must be excluded from publication by the VEC.
Small contribution amount	The Electoral Act defines a small contribution amount as a political donation that is equal to or less than the value of $50 (indexed).
Special Report	IBAC's Special report on corruption risks associated with donations and lobbying

Term	Definition
State campaign account (**SCA**)	A 'State campaign account' is an account or accounts kept by a registered officer of an RPP or a registered agent of a candidate, group, elected member, NE, AE or TPC for political donations that a donation recipient must hold for the purpose of State elections. It holds any money used for State election political expenditure and therefore, must hold PF and any donations that are intended to be used for political expenditure. The purpose of the account is to separate Commonwealth campaign funds, AEF, PDF and other monies from funding for a State election campaign.
Statement of expenditure	A 'statement of expenditure' is a submission to the VEC that either confirms the claimable expenditure in relation to PF incurred by the RPP, independent elected member or independent candidate during the relevant period is in excess of the maximum entitlement amount, or reports the value of the actual amount spent, whichever is lower.
Supplementary election	Under section 72(2) of the Electoral Act, a supplementary election must be held in the event of a failed election to fill the vacancy that the failed election had intended to fill.
TAV	Telephone Assisted Voting, the mechanism through which the VEC provides EAV to eligible electors.
Third party campaigner (**TPC**)	A 'third party campaigner' is any person or entity other than • an RPP; or • a candidate at an election; or • a group; or • an elected member; or • an AE; or • a NE of an RPP. that receives political donations or incurs political expenditure which exceeds a total of $4,000 (indexed to $4,320 for financial year 2022-23) in a financial year.
Uncharged interest	Uncharged interest on a loan is the amount of expected interest that the maker of a loan waives or discounts (given the prevailing interest rate) when making a loan to a recipient.

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 Amendment Act also expanded the provision of electronic assisted voting (**EAV**), which is administered by the VEC as a telephone voting service at State elections.

Part 1 of this submission provides the Electoral Review Expert Panel (**the Panel**) with a background package explaining the requirements and practical operations that were introduced by and as a result of the Amendment Act in 2018. Through this submission, the VEC makes a number of recommendations and observations for the Panel's consideration. They relate not only to potential legislative amendments but also contemporary issues and trends concerning political funding and donations, as well as EAV. A summary of the VEC's recommendations is provided in Appendix 1 to this submission.

The VEC also includes its responses to relevant recommendations made in the Independent Broad-Based Anti-Corruption Commission (**IBAC**) Special Report on corruption risks associated with donations and lobbying.

There are some general concerns which the VEC encourages the Panel to take into consideration. The political donations and funding scheme established under Part 12 is imperfect and there are significant areas for legislative improvement. The VEC makes some recommendations in this submission for amendments to the wording of the Electoral Act, but would welcome the opportunity as administrator and regulator to provide input and consultation into how any amendments recommended by the Panel are incorporated into the legislation.

Furthermore, as the administrator of the technology and systems involved in Victoria's political donations and funding scheme, the VEC considers that there are opportunities for technological enhancement if the VEC had the resourcing to do so. The VEC acknowledges that some constraints of the scheme are technological rather than legislative, and it must plan any technological changes alongside its broader development pipeline.

2. Donations

2.1. Gifts

2.1.1. Fundraising events

The difference between a gift made as a part of a ticketing cost for a fundraising function as opposed to a gift made at a fundraising function itself is often confusing and complicated for both donors and recipients under the definition of 'gift' in section 206(1) of the Electoral Act. This leads to confusion around donation disclosure and cap requirements.

With regard to fundraising events, the current definition of 'gift' includes 'the making of a payment or contribution at a fundraising function' under section 206(1). However, the value of ticket prices relating to entry of such functions are not clearly defined. Other states (NSW, Queensland and SA) have sought to address this same issue in their most recent legislative reviews by introducing capped event attendance fees. In the case of NSW and SA, event fees are now capped.[1,2] Queensland's legislation provides that any event fees over $200 per person are to be recognised as a gift and must therefore appropriately disclosed and aggregated by both donors and recipients.[3]

Political parties use fundraising events as a considerable source of revenue to generate funds to facilitate their operations, particularly in an election campaign cycle. Fundraising events, where ticket prices often include access to parliamentarians as well as political candidates, can raise considerable sums to fund ongoing political activities, and the VEC is concerned that these amounts may be unaccounted for in the donation disclosure scheme.

However, it can be difficult to discern whether the amounts raised from such events as meet the definition of a gift, or are a fee for service. A $200 ticket to one event may include entrance to a venue, food, drinks and entertainment as well as access to candidates or party officials, whereas a $200 ticket to a separate event may not come with any other benefits. Without detailed cost-benefit analysis for each individual political fundraising event, it is difficult for donors, donation recipients and the VEC to determine what portion of each event should be classified as a gift, and what portion is involved with recovering appropriate costs involved in the hosting of such fundraising events. The VEC encourages the Panel to consider whether there is an appropriate threshold that could be applied consistently to cap the portion of a fundraising ticket not considered a gift, to ensure consistent application of the rules and a uniform set of principles through which the donation can be calculated.

Recommendation 1

The VEC recommends that the definition of ***gift*** in section 206(1) of the Electoral Act is amended to include an amount paid as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fundraising venture or function (being an amount that forms part of the gross proceeds of the venture or function), in alignment with section 5(2) of the *Electoral Funding Act 2018* (**NSW Electoral Funding Act**).

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[1] *Electoral Funding Act 2018* (NSW) (**NSW Electoral Funding Act**) ss 5(2) and 23.
[2] *Electoral Act 1985* (SA) (**SA Electoral Act**) s 130ZL.
[3] *Electoral Act 1992* (Qld) (**Qld Electoral Act**) s 201(2)(d).

2.1.2. RPP membership fees

Registered political party (**RPP**) membership fees are currently excluded from disclosure requirements when considering gifts or donations, as they are viewed as a fee for service. Section 206(1) provides the specific exclusion of *'*an annual subscription paid to a registered political party by a person in respect of the person's membership of the registered political party*'* in the definition of a gift.

However, the level and availability of different membership structures vary among the political parties. This shows that membership fees are being applied in a variety of ways. The VEC is concerned that this undermines the purpose of the requirements around political donations.

Of the political parties registered with the VEC for the 2022 State election, membership fees for individuals are structured in a variety of ways. Some parties offer free membership for all potential members, whereas others offer a single fee option for all members with no discounts available for concession card holders. The VEC is aware of several single-fee memberships that are priced between $10 and $100.

A number of political parties offer 'regular membership' and 'concession membership'. In general terms, regular membership is available to all adults, whereas concession membership applies to minors, students, senior citizens and healthcare card holders. Concession memberships typically range between $20 and $50 and regular memberships in these structures tend to cost between $25 and $400.

Some parties offer 'premium membership' classes that sit above the standard or regular membership options. These options often include additional benefits such as access to events or merchandise, but for some parties there are no additional benefits defined – they are simply a more expensive membership class under a different title. These 'premium membership' offerings range in price between $180 and $1500, with the top-end $1500 fee representing 'life membership'.

The VEC is also aware of prospective members being advised that larger amounts may be paid for membership by private arrangement.

The well-publicised issue relating to the now defunct Victorians Party, where a 'membership fee' of $250,000 was paid by one individual member, highlighted an extreme example of how membership fees could be paid to avoid current disclosure and general cap obligations. The VEC is concerned that the legislative framework is currently insufficient to take into account the use of RPP membership fees to avoid the disclosure and general cap.

Recommendation 2

The VEC recommends that paragraphs (g) and (h) of the definition of ***gift*** in section 206(1) of the Electoral Act are amended to specify that a gift does not include an annual subscription paid to an RPP by a person in respect of the person's membership of the RPP or an annual affiliation fee paid to an RPP by an associated entity (**AE**), if the subscription or affiliation fee is below a certain amount determined by the Panel as an appropriate threshold for a party membership or affiliation fee, and that any amount paid which exceeds that threshold is a gift.

2.1.3. Gifts in kind

Volunteer labour is not comprehensively accounted for in the definition of a gift. This has led to confusion and inconsistency in electoral participants' interpretation of volunteer labour (as opposed to the voluntary provision of a service).

The definition of a 'gift' in section 206(1) provides that any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration is a gift, including 'the provision of a service' (at paragraph (a)). Paragraph (k) further states that the definition of a gift does not include 'the provision of volunteer labour'.

Parties and candidates now procure services and labour in a range of ways (e.g. Airtasker, social media requests) that fall outside previously considered definitions of the provision of services or labour.

RPPs and independent candidates have sought clarity from the VEC regarding this matter, particularly with regard to ensuring that they remain compliant with their reporting obligations. Most infer that the definition of volunteer labour is intended for volunteers who assist candidates or parties in activities such as campaigning at voting centres, scrutineering, doorknocking, handing out electoral material, or supporting candidate or party events.

However, some are now seeking clarification as to whether this definition can be broadened to apply for professional services that would otherwise be paid for out of campaign funds and not be declared as a gift. Examples of 'services' that have been sought to be classified as 'volunteer labour' include legal advice, social media services, advertising and marketing. The VEC seeks improved legislative clarity as to the distinction between the provision of a service and volunteer labour.

Recommendation 3

The VEC recommends that paragraph (k) of the definition of ***gift*** in section 206(1) of the Electoral Act is clarified to specify that volunteer labour does <u>not</u> include the provision of:

- any professional service; or
- any other labour that would otherwise be recognised as electoral or political expenditure if the cost was incurred by the recipient.

2.1.4. Self-contributions

Under section 217D(5), a contribution from a candidate at an election or an elected member to their own election campaign is not subject to the general cap on political donations. This appears to imply that a self-contribution is a political donation, as it is expressly exempt from the general cap but not from the other provisions relating to political donations. The VEC has therefore taken the position that a contribution by a candidate or elected member toward their own campaign is a political donation that should be disclosed if it exceeds the disclosure threshold and should be included in their financial year annual return as an amount received.

In practice, candidates and members often choose to make and disclose contributions to their own campaign as a 'loan', to allow for political expenditure to be paid out of the State campaign account (**SCA**) before they have accrued enough political donations to cover the expenditure in full.

The VEC notes that section 207F(8) provides that, if a candidate is not successful or when an elected member ceases to be a member, the remaining amount in a SCA must be paid to the candidate's or member's RPP (for payment into its SCA), a charity nominated by the candidate or elected member or their registered agent, or the remaining member of the group that the elected member is in (as the case applies) after all debts have been paid. The VEC is concerned that if this money cannot be recovered by the candidate or member, then this may discourage transparency in the SCA and political expenditure scheme. The VEC also considers that if unexpended money of a candidate's own contribution is unable to be recovered if the candidate is unsuccessful, this may be seen as a higher financial risk to independent candidates than desirable and could contribute to disenfranchisement and barriers to participation.

The VEC seeks legislative clarity that if a candidate at an election or an elected member contributes to their own campaign as a 'loan', then this amount can be recovered by the candidate or member as a 'debt' under section 207F(8) upon the closure of their SCA. While the VEC considers this the most appropriate course of action when an SCA is closed, it is currently not expressly provided for in the legislation and requires a loan to oneself to be considered as a 'debt', a term which is used but not defined in section 207F(8). The VEC notes that this interpretation may be subject to challenge, given that in ordinary circumstances the ordinary meaning of a loan would not usually include a loan made to oneself.

The VEC is also concerned about how RPP-endorsed elected members and candidates contribute to their own campaign. There are 2 scenarios that present difficulty in light of the exemption from the general cap:

1. Endorsed candidates and endorsed elected members might assert that their campaign is being funded through a combination of entities, including the RPP and an AE or third party campaigner (**TPC**). This creates the opportunity for the candidate or elected member to justify donations in excess of the general cap to multiple recipients.

2. It should be anticipated that a donation to an RPP by an endorsed candidate or endorsed elected member, which is exempt from the general cap, contributes to the RPP's campaign generally and does not need to relate directly to electoral or political expenditure in the candidate's or elected member's particular election/electorate.

To resolve these difficulties, clarity for endorsed candidates and endorsed elected members donating in excess of the general cap could be provided by specifying that the exemption only applies to their donations made directly to the RPP that has endorsed them. To ensure the transparency of these donations, the VEC believes that disclosure return obligations, where relevant, should continue to apply to these donations, as is currently the case.

In the context of contributions made by RPP-endorsed candidates as a loan to their own campaign, the VEC notes that robust record-keeping standards would be necessary in order for these candidates to recover the amount of their loan. It is beyond the remit of the VEC to regulate the administration of loans between candidates and their RPPs.

Recommendation 4

The VEC recommends that the definition of 'political donation' in section 206(1) of the Electoral Act is amended to expressly include a contribution from a candidate at an election or an elected member to their own election campaign.

The VEC recommends that a provision is inserted into section 207F of the Electoral Act to provide that for the purposes of subsection (8), a debt includes any amount remaining in the SCA which was received as a loan from a candidate at an election or an elected member to their own election campaign.

The VEC also recommends that a new subsection (5A) is inserted into section 217D of the Electoral Act to provide that if a candidate or elected member is endorsed by an RPP, subsection (5) only applies in relation to donations by the candidate or elected member to the RPP which has endorsed them.

2.1.5. Uncharged interest on a loan

The Electoral Act currently has no provisions expressly considering uncharged interest on a loan as a gift. Uncharged interest is interest that otherwise would have been paid by a person who received a loan but was waived, or discounted against the prevailing market interest rate, by the person who is making the loan. This functionally acts as a gift as this amount would otherwise be payable by the person receiving the loan. Since there is no provision considering uncharged interest as a gift, it is not expressly subject to the general cap or disclosure requirements. This means political donations, through uncharged interest, are possibly being made well in excess of the general cap and anonymously.

The definition of a 'gift' under the Electoral Act is the disposition of property (otherwise than by will) made by a person to another person without consideration in money or money's worth or with inadequate consideration. While loans are considered a disposition of property under the Electoral Act, regular loans are made with due consideration as they must be repaid and accrue interest.

Despite needing to be repaid by the recipient, a loan could be made without due consideration if the interest charged on the loan was made without due consideration; in other words, if some portion of the expected interest was uncharged by the maker of the loan. However, this is not expressed within the Electoral Act and there are no consistent principles or mechanisms against which this can be calculated and reported.

For example, Person A gives Candidate B a loan when the prevailing interest rate is 5 per cent. However, the lender, Person A, decides to charge only 2 per cent on the loan to Candidate B. The difference of 3 per cent is the interest that Candidate B would have otherwise paid on the loan; the amount is effectively a gift from Person A to Candidate B.

The VEC considers that not including uncharged interest in the Electoral Act leaves room for electoral participants to contravene the intention of the restrictions on political donations, which undermines the integrity and transparency of the scheme.

Not expressly including uncharged interest as a gift leaves Victoria as an outlier among the jurisdictions with a donation cap. Of the 2 other Australian jurisdictions with a general cap, NSW and Queensland, uncharged interest is expressly considered a gift in both. NSW

operates under express legislative provisions that consider uncharged interest on a loan as a gift to the recipient.[4] By designating uncharged interest on a loan as a gift, NSW effectively requires that any uncharged interest needs to be capped and disclosed to the NSW Electoral Commission (**NSWEC**). Moreover, the NSWEC issues guidelines expressly providing for the calculation of the amount of uncharged interest on a loan which is to be considered a political donation.[5]

Similarly, Queensland expressly considers uncharged interest on a loan as a gift.[6] Since uncharged interest is considered a gift in Queensland, it is subject to both the donation cap and disclosure requirement.

The donations and disclosure scheme would benefit from a provision to capture uncharged interest of a loan as a 'gift'.[7] The VEC proposes that the method of calculating the 'prevailing interest rate' at any point in time should be prescribed in the Electoral Regulations.[8]

Recommendation 5

The VEC recommends that the definition of 'uncharged interest' be inserted into section 206(1) to provide that:

> **Uncharged interest** means a gift to a person or entity that is paid through a loan that is the additional amount, calculated on an annual basis, that would have been payable by a person or entity if—
>
> (a) the loan had been made on terms requiring the payment of interest at the prevailing interest rate prescribed by the regulations for a loan of that kind; or
> (b) the interest on the loan had not been waived; or
> (c) the interest payments had not been capitalised.

The VEC recommends that the Electoral Act be amended by inserting a new section 206(1AA) to provide that the 'prevailing interest rate' may be prescribed in the regulations. The Electoral Regulations may prescribe the 'prevailing interest rate' as the annual rate fixed by Division 7A of Part III of the *Income Tax Assessment Act 1936* (Cth).

2.2. Transparency and traceability

2.2.1. Anonymous loans and loan disclosure

The Electoral Act only requires debts that are outstanding at 30 June to be reported in the financial year annual return for the reporting year. There are no requirements for the disclosure of loans made above the donation disclosure threshold. Loans made over the

[4] NSW Electoral Funding Act s 5(5).
[5] NSWEC Guidelines under the *Electoral Funding Act 2018*, Guideline 15, 'Uncharged interest on a loan'. https://elections.nsw.gov.au/about-us/legislation/funding-legislation/guidelines-under-the-electoral-funding-act-2018
[6] Qld Electoral Act s 201(2c).
[7] The NSW Electoral Funding Act enables the NSWEC to may guidelines on the calculation of uncharged interest rate: NSW Electoral Funding Act s 152.
[8] See, for example, Australian Tax Office, Division 7A – Benchmark interest rate. https://www.ato.gov.au/Rates/Division-7A---benchmark-interest-rate/

disclosure threshold do not need to be disclosed unless they are made with inadequate consideration. This means that political donations are very likely being made well above the general cap and anonymously through loans. The VEC considers this an integrity risk within the donations scheme, for which an amendment would boost confidence and transparency in the scheme. The Panel is encouraged to consider whether the current treatment of loans meets Parliament's intention in implementing disclosure requirements.

The VEC recommends that the Electoral Act be amended to require the detailed disclosure of loans that meet or exceed the disclosure threshold. Currently, with the exception of debts that are outstanding at 30 June which must be reported in the financial year annual return, there is no requirement in the Electoral Act for a recipient to disclose a loan or the terms and conditions of a loan, particularly if it is made with adequate consideration. This would create a risk of 2 people entering a scheme whereby a loan is exchanged that is designed to intentionally contravene the limitations and reporting requirements of political donations.

For example, 2 people could decide to draft a loan whereby the lender has no intention of receiving the funds back from the recipient, which the recipient is also aware of. Alternatively, the loan may require the funds to be paid back to the lender in 100 years. The VEC considers it a possibility and a potential risk that people are donating an unlimited amount anonymously to a political party or candidate through loans.[9]

Because there is no requirement to disclose loans made over the disclosure threshold, it is possible that loans are being made in contravention of other requirements of Part 12. For instance, it is possible that loans made by foreign donors are being accepted by Victorian political participants anonymously and for an unlimited amount. Since foreign donations are banned in Part 12, this would provide the ability to contravene the Electoral Act against its intentions.

This could be addressed by expanding the scope of the disclosure threshold to require the disclosure of loans. A disclosure return for a loan should identify the parties to the loan, the terms and conditions of the loan and the funds being exchanged. Implementing such requirements would strengthen the integrity and transparency of the donations scheme.

Adding this provision would also bring Victoria in line with numerous other jurisdictions which require the disclosure of loans. NSW,[10] Queensland,[11] SA,[12] NT,[13] ACT[14] and the Commonwealth[15] all require the disclosure of loans (made equal to or above the disclosure threshold) to their respective electoral commissions. The details of these disclosed loans are made available for public inspection. This leaves Victoria among the 3 jurisdictions in Australia which do not require the disclosure of loans. Implementing a similar provision would align with the transparency approach that other jurisdictions have sought to implement and would improve integrity in the exchange of loans under the scheme.

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[9] This kind of arrangement would very likely be considered a 'scheme' in contravention of the offence in s 218B, however without appropriate reporting obligations for loans, the VEC has limited ability to identify activities such as these.
[10] NSW Electoral Funding Act s 19(6).
[11] Qld Electoral Act s 205B.
[12] SA Electoral Act s 130ZF(3).
[13] *Electoral Act 2004* (NT) s 210(3).
[14] *Electoral Act 1992* (ACT) (**ACT Electoral Act**) s 232(4)(b).
[15] *Commonwealth Electoral Act 1918* (Cth) s 314AC(3)(ba).

It is also uncertain as to how this issue applies to overdraft facilities and the VEC encourages the Panel to consider how any legislative change would incorporate this kind of product.

Recommendation 6

The VEC encourages the Panel to consider whether the current treatment of loans in the Electoral Act aligns with the intention of requiring the disclosure of political donations.

The VEC recommends that section 206(1) be amended to include a definition of ***reportable loan***, meaning a loan that, if it had been a gift, would be a reportable political donation that is required to be disclosed under Part 12 of the Electoral Act.

Given a reportable loan effectively acts as a political donation, the ordinary preclusions in relation to prohibited political donations should apply.

The VEC recommends that section 216 be amended to include a requirement to disclose loans. The requirement may provide that a reportable loan that is equal to or exceeds the disclosure threshold must be reported within 21 days of the making of the loan.

The VEC recommends that section 216 be amended to require loans made over the disclosure threshold to be disclosed and specify that a donor must provide a disclosure return for a loan granted to an RPP, candidate, group, elected member, nominated entity (**NE**), AE or TPC during the financial year that is equal to or exceeds the disclosure threshold and must include the following details:

(a) the amount of the loan;
(b) the name and address of the entity or person making the loan;
(c) the term, interest rate and repayment schedule terms of the loan;
(d) the total loan repayments made under the loan during the relevant disclosure threshold.

The VEC recommends that Division 3A of Part 12 be amended to include a requirement that a loan cannot be accepted unless the details of the loan are recorded by the recipient. The requirement should provide that it is unlawful for an RPP, a candidate at an election, a group, an elected member, an NE, an AE or a TPC to accept a loan equal to or above the value of $1000 from a donor, unless when the loan is made, the recipient makes a record of the following—

(a) The terms and conditions of the loan
(b) The name and address of the entity or other person making the loan.

The VEC recommends that a financial year annual return provided under Division 3C of Part 12 should include the details of any new, active and closed loans from within the reporting period.[16]

[16] Note that throughout this submission, the VEC refers to annual returns provided under Division 3C of Part 12 as “financial year annual returns” to differentiate them from AEF annual returns provided under Division 1C of Part 12, however see Recommendation 49 in this submission in which the VEC recommends that annual returns provided under Division 3C are fixed to a calendar year rather than a financial year. See also *6.3.1. Use of the term ‘annual return’* in this submission.

2.2.2. Cash donations

The Electoral Act currently has no restrictions on the acceptance of cash donations. In practice, the disclosures scheme under Part 12 is centred around assessing electronically transferred funds. Problematically, cash donations are inherently difficult to trace since the making or accepting of a cash donation confers anonymity.

The VEC believes that a cap on cash donations would make the administration of Victoria's donation and disclosure scheme more effective and transparent. A reasonable cap on cash donations would improve integrity and compliance with the scheme, as a shift towards more electronically transferred funds of large amounts would require improved record-keeping and disclosure on the part of donors and recipients.

To address the issue of traceability, NSW implemented a ban on cash donations over $100 in 2018.[17] Under this provision, it is unlawful to make or accept a political donation that exceeds the value of $100. Monetary donations worth more than $100 must be made electronically or by cheque, in a measure to improve traceability.[18] NSW's cap on cash donations has demonstrated success in strengthening its funding and disclosure scheme and implementing a similar rule in Victoria would bring cross-jurisdictional cohesion between Victoria and NSW. The VEC notes that the recent announcement of the Commonwealth Government's intention to phase out cheques by 2030 will have implications on donations made by cheques. It is worth noting that the restrictions on cash donations in NSW was established after a public Independent Commission Against Corruption hearing found that a billionaire gave $100,000 in cash donations to an NSW political party.[19] The ban on cash donations came about in the aftermath of that investigation and aimed to prevent similar corrupt activity in the future. Victoria can anticipate and prevent a similar incident from happening by taking proactive action to ban cash donations above a certain amount.

However, there is a balance to be had between prohibiting wealthy entities making large anonymous donations in cash and allowing engaged citizens to make reasonable contributions at a fundraiser. For instance, there are certain facilities where engaged citizens will make a 'gold coin donation' to purchase a ticket in a raffle at a political function. There are numerous other contexts where an engaged citizen may be unable or unwilling to donate electronically. The VEC recognises that if a cap were to be implemented, it should be reasonable and must allow engaged citizens the capacity to contribute to a political campaign with cash.

A cap meeting these requirements would allow engaged citizens to participate in politics while also ensuring the scheme's integrity and transparency.

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[17] NSW Electoral Funding Act ss 50A(1) and (2).
[18] NSWEC, 'Candidate FAQs'. https://elections.nsw.gov.au/faqs/candidate-faqs/political-donations
[19] NSW Independent Commission Against Corruption, 'Political donations – allegations concerning ALP NSW branch officials, Chinese Friends of Labor and others (Operation Aero)', 2022. https://www.icac.nsw.gov.au/investigations/past-investigations/2022/political-donations-operation-aero

Recommendation 7

The VEC recommends that a reasonable cap on political donations made in cash be considered by the Panel. It is recommended that a new section is inserted into Division 3A of Part 12 of the Electoral Act following section 217A to provide that it is unlawful for a donor to make a political donation, or for an RPP, a candidate at an election, a group, an elected member, an NE, an AE or a TPC to accept a political donation from a donor if the political donation was—

(a) made in cash; and
(b) in excess of a value determined by the Panel as an appropriate cap on cash donations.

An appropriate cap on cash donations could align with the small contribution amount for simplicity of the scheme.

To monitor this requirement, the VEC recommends that the form in which a donation was made is required to be disclosed in the disclosure return.

2.2.3. Currency

Sections 217A and 217B contain various provisions that require appropriate identification of donors, and that the donor must be either an Australian citizen or resident or have a relevant business number[20] where the donation is made in the name of a non-natural person.

However, the increased use and availability of cryptocurrencies that have occurred since the last review of the Electoral Act increases the risk of donations being made or received that are ultimately untraceable, or that would allow for the VEC to satisfactorily identify the donor.

Additionally, donations made in foreign currencies create an extra administrative burden on donors, recipients and the VEC in ensuring that compliance is maintained in terms of both the annual disclosure threshold as well as the donation cap. Both the disclosure threshold as well as the donation cap are administered in Australian dollars and require any donations made in foreign currencies to be converted. It is also unclear what exchange rates should be applied, and at what time for any donations received in foreign currency.

The Queensland Electoral Act[21] and the NSW Electoral Funding Act[22] now contain clear language around not only banning donations from foreign sources, but also specifying that donations must only be made in Australian dollars. An amendment of this nature would assist in bringing Victorian legislation in line with other jurisdictions and would improve the VEC's capacity to ensure compliance with the donation cap and disclosure threshold.

[20] A 'relevant business number' is defined under s 206(1) of the Electoral Act as an Australian Business Number, or any other number allocated or recognised by the Australian Securities and Investments Commission for the purpose of identifying a business.
[21] Qld Electoral Act pt 11, div 8, sub-div 1.
[22] NSW Electoral Funding Act s 46.

Recommendation 8

The VEC recommends that new subsections are inserted into section 217A to provide that it is unlawful for a donor to make a political donation, or for an RPP, a candidate at an election, a group, an elected member, an NE, an AE or a TPC to accept a political donation from a donor if the political donation was—

(a) made in cryptocurrency; and/or
(b) made in a currency other than Australian dollars.

2.3. Indexation

The current conditions under the Electoral Act require the annual indexation of the donation disclosure threshold, the general cap and the small contribution amount to the consumer price index (CPI) every 1 July.[23] The main complication with indexing these amounts annually (or at all for the small contribution amount) is that donors and donation recipients find it difficult to comply with, leading to accidental non-compliance.

Donors and recipients are often unsure of what the current general cap or disclosure threshold is, which creates lack of clarity around the scheme and how it should be adhered to. This adds unnecessary administrative burden and complexity to the enforcement of the scheme as the VEC is required to disseminate information concerning these amounts to donors and donation recipients to promote compliance. Adopting the proposed changes below in relation to indexation would make VEC communications more effective and consistent, improving compliance by providing greater clarity and consistency for donors and donation recipients.

2.3.1. General cap

There is a broad problem with indexing the general cap annually, which creates confusion around the scheme.

For example, the general cap for the 2020-21 financial year was $4160. A donation made during that year of $4200 would have been unlawful at that time as it contravened the cap. However, if the same donation were to be made in the 2021-22 financial year, after indexation increased the cap to $4210, a donation of $4200 would no longer be unlawful.

This means that an unlawful donation made in one financial year would later be lawful due to indexation, despite the general cap applying for the entire 4-year election period. The only thing determining whether the cap had been contravened was a matter of when the donation was made. The donation amount is not retrospectively indexed alongside the general cap, which highlights the confusing nature of the annually changing cap. As indexing previously disclosed donations would only lead to further confusion and difficulty in tracking aggregation, the VEC considers that this problem might be resolved by having a fixed general cap over the 4-year election period to which it applies.

The VEC believes removing annual indexation from the general cap would provide clarity and make it simpler for donors and donation recipients to comply with the scheme. Where there is a donations cap implemented in other jurisdictions, annual indexation is not always applied. For instance, there are only 2 other jurisdictions which apply a cap on donations, being NSW

[23] *Electoral Act 2002* (**Electoral Act**) pt 12 div 3D.

and Queensland. NSW, like Victoria, requires the annual indexation of the donation cap, however the cap only applies to each financial year rather than across the 4-year election period. This means that despite annual indexation, the cap resets when it is varied, which does not result in confusion or inconsistency. The Queensland scheme requires the indexation of the general cap every 4 years when the cap resets, which may be a more transferable approach to take in Victoria given the alignment between Victoria and Queensland's 4-year general caps. Indexing the general cap every 4 years would enhance the cross-jurisdictional consistency between Victoria and Queensland. Aligning indexation of the general cap to the election period, rather than the financial year, would also reduce confusion as to how the general cap should be applied. The Queensland settings for indexation provide certainty to all stakeholders and implementing the same provision would strengthen compliance with the Victorian scheme.

2.3.2. Disclosure threshold

The VEC believes removing the annual indexation of the disclosure threshold would be simpler for donors and donation recipients to comply with. It would also unify Victoria's scheme with most other jurisdictions in Australia. Where there is a disclosure requirement in other jurisdictions, annual indexation is generally not applied. Of the 8 jurisdictions with a disclosure threshold, only 3 jurisdictions require the annual indexation of the disclosure threshold, being Victoria, SA and the Commonwealth. This leaves Victoria, SA and the Commonwealth as the outliers across jurisdictions in indexing the disclosure threshold. To provide clarity to donors or donation recipients for when they must disclose a donation, the disclosure threshold, instead of being indexed annually, should be indexed every 4 years after an election, in alignment with the recommended frequency for indexing the general cap.

2.3.3. Small contribution amount

Donors and donation recipients would find it simpler for the small contribution amount to be a round number, and one tied to a banknote, as it is a low threshold. By indexing the small contribution amount annually, donors and donation recipients need to be consistently aware of the changing value. To mitigate confusion around the small contribution amount, it should remain a static amount that is not subject to indexation.

Administratively, the VEC disseminates information to donors and donation recipients about the varying amounts. Making these changes to indexation would save the VEC, donors and donation recipients significant time and limit confusion, reducing the likelihood for someone to accidentally contravene the Electoral Act. The VEC previously recommended changes to the indexation requirement in its as to limit non-compliance and provide clarity to the scheme.[24] For instance, the Report to Parliament on the 2018 State election recommended the removal of indexation altogether from the general cap and the disclosure threshold.[25] The VEC reaffirms that position by suggesting that the Panel recommend indexing the general cap and disclosure threshold every 4 years and removing the indexation requirement from the small contribution amount. The Panel may also wish to consider alternatives to the current indexation scheme and the requirements as proposed in the Report to Parliament on the 2018 State election.

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[24] VEC Report to Parliament on the 2018 State election, p 110. https://www.vec.vic.gov.au/about-us/publications/state-election-reports-and-plans
[25] Ibid.

2.3.4. Funding amounts

With the exception of advance PF, it is not recommended that indexation be removed for funding streams, as the effectiveness of those funding streams is tied to their ability to meet the changing prices of goods and services.

In relation to advance PF payments, the VEC notes that these are made in relation to the payment received by funding recipients in the immediately preceding general election. While they are not indexed under the Electoral Act, but are instead fixed to the recipient's PF entitlement in the immediately preceding election, the VEC notes that it is beneficial for the Electoral Act to expressly provide that this is the case.

The VEC considers that it is appropriate for advance PF to be treated differently in terms of indexation and remain fixed to the recipient's PF entitlement at the immediately preceding election. This will enable simple, fixed instalments to be provided, and any differences in the recipient's actual PF entitlement can be reconciled at the end of the election period, where a new statement of expenditure is provided by the recipient to ensure that the total amount of PF received in relation to the election is equal to the recipient's actual entitlement.

Recommendation 9

The VEC recommends the Panel consider whether the annual indexation of the general cap, disclosure threshold and small contribution amount align with Parliament's intention in accounting for inflation within the political donations disclosure scheme.

The VEC recommends that the indexation requirement with respect to the small contribution amount be removed from the Electoral Act. The VEC also recommends that the annual indexation requirement of the general cap and disclosure threshold be removed.

If indexation is retained for the general cap and disclosure threshold, the VEC recommends that the donation disclosure threshold and general cap is adjusted for indexation every election period rather than annually. The VEC recommends that a new subsection is added following section 217Q(1) to provide that:

> An amount in dollars in column 2 of an item in the Table to this subsection must be varied at the beginning of each election period in accordance with the formula specified in subsection (1).

TABLE	
Column 1 *Item*	*Column 2* *Amount*
1	Section 206(1), definition of general cap-$4000
2	Section 216(1)-$1000

2.4. Reconciliation

When a donor makes multiple donations to the same recipient in a financial year that, in aggregation, reach the disclosure threshold, they are required under section 216(2) of the Electoral Act to disclose them to the VEC. They are then required to disclose each subsequent donation to that recipient during that financial year under section 216(3).

The VEC notes that donation recipients are compelled to monitor donations in aggregate for the purpose of notifying donors of their disclosure obligations[26] and providing a financial year annual return at the end of each financial year.[27] However, there is no equivalent provision under the Electoral Act which requires recipients of political donations to disclose donations that on their own are less than the disclosure threshold but equal or exceed it in aggregate. Recipients must only disclose a political donation if it alone equals or exceeds the disclosure threshold. This results in a mismatch between the disclosure requirements of donors and recipients, where donors are bound by more onerous obligations. Other Australian jurisdictions including NSW,[28] Queensland[29] and SA[30] impose equal disclosure requirements on donors and recipients of political donations with regard to aggregation. Since recipients already have to monitor donations in aggregate, the additional administration burden of disclosing these would be minimal.

Imposing equal aggregation requirements on donors and recipients would lead to better transparency and accountability. The unequal requirements cause difficulty for members of the public in making sense of the VEC Disclosures website and tracing who is receiving donations from whom. Because of the gap in disclosed information from the recipients, the information doesn't reconcile cleanly across donors and recipients when published.

Alignment of the disclosure requirements between donors and recipients would make Victoria’s funding and disclosure system simpler to administer, and far more likely to be understood by donors, recipients and members of the public. It would also allow donations to be more easily cross-checked and reconciled, as all relevant donations should be disclosed by both the donor and the donation recipient. This would allow the VEC to monitor compliance more effectively and identify inconsistencies in disclosed donations and would improve transparency to the public of the movement of donations.

[26] Electoral Act s 216(7).
[27] Ibid, pt 12, div 3C.
[28] NSW Electoral Funding Act s 12.
[29] Qld Electoral Act pt 11, div 7, sub-div 2.
[30] SA Electoral Act pt 13A, div 7.

Recommendation 10

The VEC recommends that section 216(4) of the Electoral Act is amended to provide that if—

(a) an RPP or a candidate at an election, a group, an elected member, an NE, an AE or a TPC receives political donations during a financial year; and

(b) the political donations are made from the same donor; and

(c) the sum of the political donations made by the donor to that RPP, candidate, group, elected member, NE, AE or TPC is equal to or exceeds the disclosure threshold—

the registered officer of the RPP, or the registered agent of the candidate, group, elected member, NE, AE or TPC, as the case requires, must provide to the VEC a disclosure return for the political donation; and

That a new subsection is inserted into the Electoral Act following section 216(4) to provide that a disclosure return required by subsection (4) for a political donation received by a RPP, candidate, group, elected member, NE, AE or TPC during a financial year from a donor must be provided as follows—

(a) within 21 days of receiving the first political donation during the financial year that has the result that the sum of the political donations received by the RPP, candidate, group, elected member, NE, AE or TPC during that financial year from that donor is equal to or exceeds the disclosure threshold;

(b) within 21 days of receiving each subsequent donation to the RPP, candidate, group, elected member, NE, AE or TPC from that donor during the financial year.

2.5. Transactions and intermediaries

2.5.1. Crowdfunding

Crowdfunding is the practice of sourcing funds from a number of people. The practice itself has been around for many years. In more recent years, it has increased in popularity due to the use of technologies to deploy a mobile device app, internet page or online crowdfunding app or platform to raise funds. The ability to reach a target audience is amplified when this type of technology is embedded into social media platforms.

With regards to political fundraising, an RPP, candidate, group, elected member, NE, AE or TPC can create an online campaign to collect donations or pledged funds or loans. A campaign using an online crowdfunding platform usually sets a fundraising target and a time limit for the campaign. The campaign can then be promoted via direct email, promoted via social media platforms and other media platforms to prospective donors.

Considerations for the use of online crowdfunding platforms for political donations and loans are:

- the release of donor details by the platform provider for disclosure obligations, and whether the donor details are even collected by the platform provider;
- how the funds are collected (charged instantly or pledged, one-off or a subscription) and released and what date is considered the ‘received date’ by the recipient;

- that the donation value and fees of any monies given by the donor are clearly attributed to the donor by the platform provider;
- whether the donation is lawful, and, if not, what happens to the money;
- if the Australian Privacy Principles are applied, and whether the data residency of the platform or those using the platform are located in Australia;
- the data management practices of the platform used (minimum standards, privacy laws); and
- the risks of using online platform and impact on reputation and standing of the political donation process and players

In general, the use of online crowdfunding and donation platforms raises several compliance risks with respect to disclosure, donating above the general cap and potential acceptance of banned donations.

Crowdfunding organisers could mitigate some of these risks, though gaps exist as to the level of control over aspects such as restricting of foreign donations. At present, the mitigation of risk relies heavily on crowdfunding organisers choosing the platforms that are able to put appropriate measures in place.

Obligations of donors and recipients

While a financial institution or fundraising platform would likely not be treated as a TPC, the disclosure obligations and donation caps still apply to the individual donor and the ultimate recipient. This means that donations exceeding the disclosure threshold must be disclosed to the VEC for publication, and ordinary disclosure timelines and the general cap also apply to donations made through a fundraising platform.

It should be noted that some fundraising platforms do not allow the recipient to access the names and addresses of donors. While these platforms may still be used, it is unlawful under for recipients to accept donations above the disclosure threshold unless the donor gives the recipient their name and address, and the recipient has no reason to believe that the name or address is false. The onus is on the recipient to ensure platforms used will allow compliance, as under section 217B the prohibition on anonymous donations falls on the recipient not to accept such a donation. Donations accepted in contravention of the prohibition on anonymous donations are to be forfeited to the State under section 217C.

Collection of funds

Crowdfunding platforms collect payment details from donors to facilitate the transfer of the donation to recipients. Some platforms will charge donors instantly, whereas others will place a hold on the funds against the donors nominated financial account as a pledge. In the event a hold is made, funds are charged at the end of the campaign, or shortly afterwards. Under the ‘hold’ scenario it is not clearly defined in the Electoral Act when the donation is ‘made’ and ‘received’. It is also not clear whether these events happen at the same time, which is not accounted for in the disclosure requirements under section 216 and would make reconciliation of the donation disclosures a significant challenge for the VEC. The dates that a donation is made and received need to be clearly identifiable, as they trigger the 21-day time period for donors and recipients to disclose the donation to the VEC under section 216(3). The

disclosure threshold and general cap are also factors that could affect the obligations and even lawfulness of the donation. It is preferable for the date a donation is 'made' and 'received' to be the same date, so that donation disclosures can be matched and reconciled by donors, donation recipients and the VEC. This would also support transparency in the movement of donations for the public inspecting donation disclosure returns.

An appropriate solution would be to consider the date a donation is 'made' and 'received' under section 216(3) to be the date that the donation amount is debited from the donor. Similarly, for situations where a donor has pledged to make a donation, the pledge would have no monetary value until the transaction is actually made, in which case the date a donation amount is debited would still be appropriate. If it is considered unlawful for the recipient to receive an individual donation collected via the crowdfunding platform, for example if the donation results in a cap or threshold being breached, then under section 217D(3)(c) the donation must be returned or otherwise forfeited to the State.

Recommendation 11

For the purposes of section 216 of the Electoral Act, the VEC recommends that the date on which a donation is made by the donor and received by the donation recipient is prescribed to be the date on which the donation is debited from the donor.

Disclosure of fees charged by fundraising platforms

To ensure the donor clearly understands the donation funds received by the recipient, the platform should be transparent on the fees charged. The donation amount is to be defined as net of fees and charges. The monies for fees and charges are never received by the recipient. For the donor to accurately disclose the amount donated as part of disclosure obligations, they must be aware of the amount that they have paid that constitutes a gift and the amount that is received by the intermediary rather than the intended recipient.

Recommendation 12

The VEC recommends that a provision be inserted into Division 3 of Part 12 of the Electoral Act to provide that if a donation is made through an intermediary, that the recipient needs to ensure the donor receives a receipt specifying:

(a) the donation amount;

(b) any fees charged by the intermediary; and

(c) notification of the donor's obligations (as discussed further in *6.1.2. Recipients notifying donors of obligations*).

The VEC recommends that a definition of ***intermediary*** be inserted into section 206(1) of the Electoral Act, to mean a person or entity who accepts a gift or loan from the source of the gift or loan for the purposes of making the gift or loan to the ultimate recipient.

Data residency used by fundraising platforms

The donor and recipient data captured by the crowdfunding platforms is subject to VEC regulatory action and reporting. As such, RPPs, elected members or candidates must ensure these platforms abide by the Australian Privacy Principles regarding data residency and data sovereignty. These records are also subject to the record-keeping requirements under section 220 of the Electoral Act.

Recommendation 13

The VEC encourages the Panel to consider whether legislative change could be made to expressly boost compliance with the record-keeping requirements outlined in section 220.

2.5.2. Definition of a third party campaigner

Clarity is needed to better define the scope of what is considered to be a TPC for the purposes of Part 12 of the Electoral Act. A TPC is defined in section 206(1) as any person or entity, other than an RPP, candidate, group, elected member, AE or NE, that receives political donations or incurs political expenditure over $4000 (indexed) in a financial year.

While this appears to be intended to capture activist and public interest groups, as indicated in Parliamentary debate,[31] the VEC is concerned that there is not an effective limitation on the definition of a TPC which adequately contains its scope. In part, this is due to subsection (f)(ii) of the definition of a political donation, which specifies that a gift made to a TPC is a political donation if the whole or part of the gift was used, or intended to be used, by the TPC to reimburse the TPC for making, directly or indirectly, a political donation or incurring political expenditure.

The VEC’s view is that this provision unintentionally inflates the definition of a TPC, by including any person or entity (except for another Part 12 entity) who receives a political donation to be able to then make a political donation to another person or entity. There is nothing in the Electoral Act that excludes a transactional go-between such as a bank, payment platform or financial proxy from being included in the definition of a TPC and thus bound to the relevant obligations.

While the VEC does not expect financial institutions and payment platforms, including crowdfunding platforms, to provide disclosure returns and comply with the requirements placed on TPCs, clarity would be significantly beneficial in order to clearly legislate which persons and entities are TPCs, and which aren’t. This would assist the VEC in maintaining comprehensive and appropriate oversight of political donations in Victoria.

In particular, payment and crowdfunding platforms exist in a grey area when it comes to determining whether or not they are a TPC. On a strict reading of the current legislation, it would appear as though they are, however it does not appear to be the intention of the legislation to limit these platforms to the general cap on political donations.

[31] Victoria, *Parliamentary Debates (Hansard)*, Legislative Assembly, 10 May 2018, 1350 (Martin Pakula, Attorney-General).

A strict reading of the Electoral Act would require that a platform could accept multiple donations of up to the general cap from different donors with the same intended recipient but could only then forward up to the general cap to the intended recipient. For example, if 2 donors made political donations of $3000 each to a political party through a payment platform, the platform could only give $4320 of that combined $6000 to the party. The VEC has not enforced this strict interpretation of the Electoral Act but is concerned that it may lead to unfavourable outcomes.

One way in which this clarity could be achieved could be to adopt a similar provision as Queensland has established, specifying who is the *source* of an indirect gift or loan. Section 205A of the *Electoral Act 1992* (Qld) (**Queensland Electoral Act**) provides the following:

> **205A Who is the source of an indirect gift or loan**
>
> (1) An entity is the ***source*** of a gift (the ***ultimate gift***) made to another entity (the ***ultimate recipient***) if—
>
> > (a) the entity makes a gift or loan (the ***first gift or loan***) to a person (the ***first recipient***); and
> >
> > (b) the entity's main purpose in making the first gift or loan is to enable (directly or indirectly) the first recipient, or another person, to make the ultimate gift to the ultimate recipient; and
> >
> > (c) the first recipient, or another person, makes the ultimate gift to the ultimate recipient; and
> >
> > (d) the first gift or loan enabled (directly or indirectly) the first recipient, or another person, to make the ultimate gift to the ultimate recipient.
>
> (2) An entity is the ***source*** of a loan (the ***ultimate loan***) made to another entity (the ***ultimate recipient***) if—
>
> > (a) the entity makes a gift or loan (the ***first gift or loan***) to a person (the ***first recipient***); and
> >
> > (b) the entity's main purpose in making the first gift or loan is to enable (directly or indirectly) the first recipient, or another person, to make the ultimate loan to the ultimate recipient; and
> >
> > (c) the first recipient, or another person, makes the ultimate loan to the ultimate recipient; and
> >
> > (d) the first gift or loan enabled (directly or indirectly) the first recipient, or another person, to make the ultimate loan to the ultimate recipient.
>
> (3) For this part, when the ultimate gift or ultimate loan is made to the ultimate recipient, the gift or loan is taken—
>
> > (a) not to have been made to, or accepted by, the first recipient; and
> >
> > (b) to have been made to, and accepted by, the ultimate recipient.

The effect of this provision is that it is clarified that a person or entity who facilitates the transaction of a political donation but does not themselves make a political donation from their own pocket and of their own volition is not a TPC. If a similar provision were to be introduced in Victoria, it would mean that those persons and entities would categorically not be required to provide disclosure returns or be limited by the general cap in facilitating transactions to the same recipient.

Recommendation 14

The VEC recommends that a provision be inserted into Part 12 of the Electoral Act to provide that a person or entity only makes or receives a gift or loan if they are the source or ultimate recipient of the gift or loan respectively, in the manner of section 205A of the Queensland Electoral Act.

2.5.3. Transfer of money between federal and state party branches

The transfer of funds between federal and State party branches is currently not clearly defined in the Electoral Act.

Whilst it may be assumed that any funds raised or received by either the federal branch or another State's branch of an RPP would have been disclosed under the respective Commonwealth or State legislation, it is unclear, and possibly inconsistent as to how a transfer of funds to a Victorian party branch may be treated.

Many RPPs, in both Victoria and in other jurisdictions are structured as unincorporated associations. As a result, there is potential for transfers of funds between federal and State branches of the same political party meeting the current definition of a gift in the Electoral Act.

This issue has specifically been reviewed and redressed under the 2018 updates to NSW electoral legislation under section 5(4) of the NSW Electoral Funding Act. The VEC recommends an equivalent provision to clearly define how these transfers of money should be disclosed and regulated.

Recommendation 15

That paragraph (d) of the definition of ***gift*** in section 206(1) of the Electoral Act is amended to provide that a gift includes the disposition of property from an RPP, a branch of an RPP or an AE, including but not limited to—

(i) a disposition of property to a Victorian branch of an RPP from the federal branch of the party;
(ii) a disposition of property to a Victorian branch of an RPP from another State or Territory branch of the party;
(iii) a disposition of property from a party to another party.

3. Funding

3.1. Advance payments of funding

There are 2 streams of funding which the VEC must pay to eligible recipients in advance and reconcile after the entitlement period, depending on the circumstances.

Firstly, under section 207GA of the Electoral Act, the VEC must make all payments of AEF quarterly in advance (other than for the period after the day of a general election and ending on 31 December in an election year, which must be paid in arrears on a pro-rata basis). After the end of the calendar year, recipients must submit an audited AEF annual return specifying the amount of claimable expenditure they incurred in the calendar year. Any amount that was overpaid in advance must then be recovered either by invoice and repayment or by deducting the amount from the next payment of AEF.

Secondly, under section 212A, an eligible RPP or independent candidate[32] may choose to receive advance instalment payments of PF in relation to the next general election. The amount to be paid in instalments is an amount equal to the amount received in relation to the immediately preceding general election. The instalments must be paid across the election period in 4 instalments, including 40 per cent within 30 days after the VEC is given a statement of expenditure under section 208, and 20 per cent on 30 April in the following 3 years. Relevantly, only the first 40 per cent instalment may be used as security or collateral for a loan.[33] This means a candidate who received PF for SE2022 can opt to receive advance PF ahead of SE2026, paid in 4 instalments over 2023 (40%), 2024 (20%), 2025 (20%) and 2026 (20%).

The amount of advance PF paid is reconciled against the recipient's actual entitlement in relation to the next general election (determined in accordance with section 211 and the statement of expenditure submitted to the VEC under section 208). If the amount payable is greater than the amount paid, the VEC must make a payment of the difference to the recipient in accordance with section 212. If the amount payable is less than the amount paid, the VEC must recover the overpayment either by immediate repayment or deducting the amount from the next instalment payment if the recipient is still eligible.

There is a level of risk in making advance payments of funding. The reasons for these concerns are outlined below, respective to each funding stream.

3.1.1. Advance quarterly payment of AEF

The VEC is particularly concerned about the significance of the consequences for failing to submit an AEF annual return within the given timeframe when compared with other funding and disclosure activities. Disclosure returns and financial year annual returns have timeframes attached to them, and failing to submit within the timeframes prescribed for these activities is an offence that carries a penalty proportionate to the severity of failing to submit.

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[32] Under s 212A(7) of the Electoral Act, for an RPP or independent candidate to be 'eligible' for instalment payments of public funding in relation to a general election, they must have received a payment of public funding under s 212 in relation to the immediately preceding general election. For example, if an RPP received a payment of public funding in relation to the 2022 State election, they may choose to receive instalment payments in advance in relation to the 2026 State election.
[33] Electoral Act s 212A(6).

For AEF annual returns, the VEC is concerned that the legal consequences of failing to submit on time are not proportionate. Section 207GC provides that if an RPP or independent elected member fails to provide the VEC with an AEF annual return within the timeframe, the RPP or independent elected member is taken to have incurred no claimable expenditure in relation to the calendar year, and in accordance with section 207GF must repay the full amount of AEF received in relation to that calendar year.

While this may be an appropriate mechanism for situations where an RPP or independent elected member has not incurred a significant amount or any claimable expenditure, the effect that this has for late submissions where the funding has been spent is of concern. AEF involves the payment of large sums of money to recipients, and if this money has been spent then the personal expense for failing to submit an AEF annual return on time is significant and a disproportionate penalty for making a late submission. In addition, failing to submit an AEF annual return is an offence which carries its own penalty.[34]

This is particularly the case for independent elected members and small parties when they are not re-elected and therefore lose their entitlement to AEF, as they do not receive ongoing payments of AEF from which the outstanding amount can be deducted. The VEC is concerned that such an outcome could result in significant personal and financial impacts for AEF recipients that have lost their entitlement, disproportionate to the seriousness of failure to submit a return on time.

Recommendation 16

The VEC encourages the Panel to consider alternative outcomes for where an RPP or independent elected member fails to submit an AEF annual return in the required period. For example, the VEC could have discretionary powers to grant an extension under limited circumstances (similar to NSWEC[35] and ECQ[36]) and/or the amount of claimable expenditure specified in the return could be reduced by an increment for each day after the due date on which the AEF annual return is not submitted to the VEC, until a final date at which the return is to be taken as not submitted and therefore activating the listed consequences. Namely, the relevant offence provision would apply and the recipient is taken to have incurred no claimable expenditure so any amounts paid must be recovered by the VEC. This would provide an effective and proportionate consequence for late submission and reduce the risk of significant debts and difficulty recovering public money.

3.1.2. Advance instalment payment of public funding

The VEC considers the advance payment across 4 years of a PF recipient's full entitlement from the previous election to be a significant risk. If an overpayment is made and spent by a recipient who expected a similar entitlement at the next election, then the amount must be recovered which may result in significant financial impacts for the recipient and difficulty for the VEC in recovering public money. Similarly, there have been instances where a candidate opted to receive advance PF but subsequently decided not to contest the following election, in which case they had to repay the full amount of advance PF.

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[34] Please note that the VEC is uncertain whether this penalty was intended given the ambiguity of the term 'annual return' as it is used in Part 12. See *6.3.1. Use of the term 'annual return'* in this submission.
[35] NSW Electoral Funding Act s 153
[36] Qld Electoral Act s 313

Under section 212(5), amounts to be recovered may be recovered as debts due to the State by court action against the recipient, though the VEC considers this to be a high-risk and undesirable outcome for both the funding recipient and the VEC on behalf of taxpayers. The VEC considers reimbursement of expenditure after the fact to be far preferable than shouldering the risk that an overpayment cannot be recovered. It would also alleviate some of the VEC's administrative burden in relation to payments, reconciliations and adjustments.

Victoria is one of only 2 Australian jurisdictions which makes payments of PF in advance, the other being NSW.[37] All other jurisdictions which provide PF (Commonwealth, ACT, Queensland, SA and WA) require the amount to be paid as a simple reimbursement of expenditure rather than in advance.

Under section 72 of the NSW Electoral Funding Act, a political party may receive 50 per cent of the total amount to which it was entitled at the previous election in advance, within the capped State expenditure period which begins on 1 October in the year prior to a general election and ends on election day.[38] It may then receive a further 25 per cent of the total amount after the issue of the writs for the general election (noting that NSW State elections are held on the fourth Saturday in March). The balance between the amount received and the amount payable after the actual entitlement is calculated is then either paid to or recovered from the party after the NSWEC has received an audited statement of expenditure.

There are several elements of the NSW scheme which mitigate some of the risks that are present in Victoria:

- **A maximum of 75 per cent of the party's entitlement at the previous election can be paid in advance for the next election.** This provides a buffer that makes it more likely for a recipient to receive an underpayment than an overpayment. This helps to mitigate the risk with overpayment that a recipient is unable to repay an amount to which they had expected to be entitled.

- **The advance payment is only made within the final 6 months of the 4-year election period.** This significantly improves the likelihood that the amount paid in advance is used to incur political or electoral expenditure, rather than other expenses which would not be claimable.

- **Advance payment is only available to RPPs.** While the VEC does not recommend that RPPs and independent candidates should have unequal entitlements or opportunities in relation to PF, the VEC considers the risk of overpayment being unable to be recovered to be significantly higher for independent candidates. This renders the NSW scheme as less risky overall.

Recommendation 17

The VEC recommends that the Panel consider reducing the proportion of a recipient's PF entitlement that is payable in instalments in relation to the next election. The VEC also recommends that the Panel consider reducing the timeframe in which instalment payments are payable to a shorter period that begins closer to the general election.

[37] Many jurisdictions do no refer to their equivalent funding stream as public funding (PF). For consistency in this submission, these like streams are collectively referred to as PF.
[38] NSW Electoral Funding Act s 27(a).

3.1.3. Double entitlement to PF

On the face of the legislation, there does not appear to be an effective limitation to prevent a recipient of advance payments of PF under section 212A(2) from also pursuing a claim for PF in respect to the same election under section 212(3) or (4), and receiving an entitlement in relation to both.

The VEC's view is that this does not align with the intent of advance instalments of PF under section 212A(2). The VEC believes that the intended purpose of section 212A was for an eligible party or candidate to receive their entitlement in relation to a general election over 4 advance instalment payments, and for the difference with their actual entitlement under section 212(3) or (4) to be reconciled and settled after the election.

The VEC seeks a priority amendment to this ambiguity to avoid exploitation by eligible parties and candidates. The requirement under section 212A(3) for the VEC to make a payment equal to the balance does not effectively consider that the VEC must make a payment under section 212(3) or (4) in relation to the recipient's entitlement. This ambiguity could be addressed by rephrasing section 212A(3).

As a point of comparison, NSW, the only other jurisdiction which provides advance payment of PF to some recipients, provides in section 72(4) of the NSW Electoral Funding Act:

> (4) Any amount paid to a party by way of advance payment under this section in respect of a general election is to be deducted from the amount payable under this Part to the party from the Election Campaigns Fund in respect of that general election.

This provision prevents a double entitlement by requiring the difference to be reconciled under a regular payment of PF rather than inserting an additional requirement for the NSWEC to make a payment equal to the difference. If section 212A(3) was amended to have a relationship to the payment made by the VEC under section 212(3) or (4), then the difference would be reconciled under an existing payment. Section 212A(4) would then, as it currently does, provide for the recovery of an overpayment.

Recommendation 18

The VEC recommends that section 212A(3) of the Electoral Act is amended as follows:

> (3) Any amount paid to an eligible RPP or an eligible independent candidate under subsection (2) in relation to a general election must be deducted from the amount payable to the eligible RPP or the eligible independent candidate under section 212(3) or (4).

3.2. Claimable expenditure

3.2.1. Claimable expenditure for PF

Under section 212(2) of the Electoral Act, an RPP or candidate's entitlement to PF in relation to an election is only payable insofar as it reimburses the amount of electoral expenditure and political expenditure that the RPP or candidate has incurred in relation to the election. While electoral expenditure and political expenditure are defined in section 206(1), they are both broad categories of expenditure which are not comprehensively detailed.

The VEC supports this absence of legislative prescriptiveness, as the kinds of expenditure which could be considered electoral and political expenditure are highly prone to change along with changes to the technological, cultural and electoral landscape. It is not desirable that regular legislative change be required to keep up to date with trends in political campaigning. However, the VEC considers that it is important for electoral expenditure and political expenditure to be comprehensively categorised and detailed, in order to ensure that PF is being claimed fairly, consistently, and for expenditure which can actually be considered political or electoral expenditure.

The VEC notes that in relation to AEF and policy development funding (**PDF**), claimable expenditure and policy development expenditures are determined by the VEC under the powers of determination in sections 207G (definition of 'claimable expenditure') and 215A respectively. This allows for certainty around what kinds of expenditure are claimable under AEF and PDF, and ensures that those funding streams are claimed for similar expenditures and do not reimburse costs beyond the intended breadth of their purposes.

Recommendation 19

The VEC recommends that the definitions of 'political expenditure' and 'electoral expenditure' in section 206(1) of the Electoral Act be amended to mean expenditure as determined from time to time by the VEC in accordance with their respective existing definitions.[39]

3.2.2. Audit expenses

The VEC has observed confusion around how, when and if professional fees incurred in relation to fulfilling auditing requirements under the Electoral Act can be claimed under the various funding streams. Clarity around the claiming of audit expenses would significantly benefit the simplicity and consistency of funding applications and provision.

The VEC seeks clarity in the wording of section 207GC(1)(b), which provides that an AEF annual return must specify the amount of claimable expenditure incurred 'in relation to the calendar year'. It is unclear from this wording whether expenses incurred in relation to the AEF annual return itself can be considered to be 'in relation to' the relevant calendar year, given that they are most likely incurred after the calendar year has ended but relate to a return for that calendar year.

The VEC notes that if audit expenses cannot be claimed in relation to the calendar year to which the AEF annual return relates, then once an independent elected member loses their entitlement to AEF – in other words, when they cease to be an elected member – they must pay the auditing costs in relation to the AEF annual return for calendar year when they lost their entitlement out of their own pocket, as they would not have an entitlement in relation to the following calendar year under which the cost could be claimed.

The VEC encourages the Panel to consider whether this is a desirable outcome of the AEF scheme, given that auditing expenses are expressly covered within the definition of claimable

[39] Note Recommendation 51 in this submission, in which the VEC recommends that the Panel consider the utility of having separate and overlapping definitions of both 'political expenditure' and 'electoral expenditure'. If 'electoral expenditure' is absorbed into the definition of 'political expenditure', Recommendation 19 would only relate to political expenditure.

expenditure for AEF.[40] It is the VEC's view that independent elected members and smaller political parties would disproportionately incur personal expense if the audit expenses were not considered to have been incurred 'in relation to' the calendar year to which an AEF annual return related.

Recommendation 20

The VEC recommends that section 207GC(1)(b) of the Electoral Act be amended to provide that an AEF annual return must specify the amount of claimable expenditure incurred in relation to the calendar year, including in relation to the submission of the AEF annual return.

The VEC is concerned that audit expenses incurred in relation to a statement of expenditure under section 208 do not appear to be claimable under PF. The VEC takes this position because audit expenses:

- fall within the definition of 'claimable expenditure' in relation to AEF under section 207G;
- appear not to be considered political or electoral expenditure; and
- are not incurred 'in relation to an election' as required by section 208(3).

In particular, the VEC is concerned that this imposes disproportionate personal expenses upon independent candidates in order for them to submit a statement of expenditure and receive their entitlement of PF. The VEC encourages the Panel to consider whether it is equitable or desirable that RPPs are able to claim audit expenses in relation to a statement of expenditure under AEF, whereas independent candidates do not have a funding stream under which such expenses can be claimed.

The VEC is particularly concerned that this inequity may dissuade independent candidates from engaging an appropriately qualified and reputable independent auditor, particularly given the lack of limitation in section 209(2) on an independent auditor's credentials, qualifications or relationship to the candidate.[41] This may undermine the standard and integrity of the audit requirements in relation to statements of expenditure. A scheme for the reimbursement of audit expenses across all eligible PF recipients would be supported by the VEC.

However, if the above inequity is not considered undesirable, the VEC seeks legislative clarity as to how independent elected members should be treated in relation to audit fees for statements of expenditure. It is unclear on the face of the legislation whether an independent candidate who becomes elected can claim audit expenses under AEF if they were incurred in relation to a statement of expenditure for PF. This is because the statement of expenditure is to be submitted by a 'candidate at the election', whereas under section 207G audit expenses are claimable under AEF in respect of claims for payment of the eligible elected member. It is unclear whether the claim for PF is a claim of the elected member, given it is made in their capacity as a candidate at the election.

[40] Electoral Act s 207G, definition of 'claimable expenditure', para (a)(iii).
[41] Also see Recommendation 35 in this submission.

Recommendation 21

The VEC recommends that legislative amendments are made to Divisions 1C and 2 of Part 12 of the Electoral Act to provide for the reimbursement of audit expenses incurred under section 209 in relation to the submission of a statement of expenditure under section 208. If such an amendment was adopted, the VEC recommends that section 207G is amended to the effect that audit expenses in relation to a statement of expenditure are not claimable expenditure for the purposes of AEF.

If legislative amendments are not made to provide for the reimbursement of audit expenses for all PF recipients, the VEC recommends that the definition of 'claimable expenditure' under section 207G is amended to clarify whether it includes an elected member's claims for payment under the Electoral Act if the claim is made in their capacity as a candidate in an election.

3.2.3. Capital assets as claimable expenditure

The VEC is concerned that it does not have sufficient powers under Part 12 to monitor and ensure the appropriate usage of public money for the purchase of capital assets. There is no provision in the legislation with regard to the purchase of capital assets with funding streams, or the calculation and recovery of their remaining value once the funding recipient loses their entitlement.

The VEC is particularly concerned about the purchase of capital assets using AEF, though the same issue is of concern in relation to PF and PDF. Assets such as computers, office equipment and vehicles are expressly included as claimable expenditure for AEF under section 207G(a)(v). These types of assets depreciate over a longer period of time, so they maintain real value beyond the calendar year within which the funding is acquitted and audited. The VEC has also determined similar expenses as claimable policy development expenditure under section 215A(5), and given the lack of specificity in the definition of political expenditure it is arguable that similar expenses would be claimable under PF if they were incurred for the dominant purpose of directing how a person should vote at an election, such as for the printing of how-to-vote cards or advertisements.

Where funding is used to purchase a capital asset, it is unclear from the legislation whether the full purchase price is considered expenditure in relation to the relevant entitlement period, or if the expenditure is only claimable to the extent that it relates to the entitlement period. Capital assets such as vehicles are purchased with an expected economic life and depreciation rate, and it stands to reason that if these have not been fully expended by the time the funding entitlement ceases, then the full amount of expenditure has not been incurred. The expected economic life and depreciation rate also differs depending on the type of capital asset. For example, electronic devices purchased at the beginning of an election period may retain little to no residual value by the end of the election period, whereas these and other types of assets may still retain significant re-sale value.

This gives rise to the possibility for capital assets to be purchased using public money and retained by the person or entity even once their entitlement has ceased. For example, if a vehicle was purchased by an independent elected member under AEF, and that member lost their entitlement to AEF by ceasing to be an elected member, there is no express provision in the legislation which requires the vehicle to be forfeited and any remaining value recovered. While the VEC considers that there are some available options at its disposal to address this, including the use of determinations to specify in detail when the VEC will treat expenditure on

capital assets as claimable expenditure, legislative amendments to give express effect would be significantly beneficial to ensure the legal validity of these options, as well as providing certainty to participants at an election.

The VEC has an obligation to disburse public money responsibly and ensure that it is not being used for personal gain. The VEC takes this obligation seriously and seeks stronger legislative powers to ensure that it can effectively monitor and ensure that capital assets purchased through public money are reported by funding recipients.

The VEC suggests that the Electoral Act should provide overarching circumstances in which expenditure on capital assets is claimable expenditure, as well as an express power for the VEC to determine specific capital assets-related expenditure that is claimable. Once the principles for determining when expenditure on capital assets is claimable have been clarified, recipients can apply the principles to calculate their entitlements, and auditors and/or the VEC can verify that they have done so through the reporting mechanisms that currently exist in the Electoral Act, such as annual returns.

Recommendation 22

The VEC recommends that provisions be introduced into Divisions 1C, 2 and 2A of Part 12 of the Electoral Act to specify that:

- capital assets above an appropriate value purchased using public money are disclosed in the year of their purchase;
- where a capital asset has been purchased outright, the expenditure will only be treated as claimable to the extent that it is referable to the period during which the asset is used for the purposes of the funding;
- the VEC has an express power to recover asset-related expenditure that has ceased to be claimable by reason that the asset is no longer being used for the purposes of the funding;
- the VEC can make determinations in relation to the economic life of a capital asset for the purposes of calculating the period over which different types of assets is amortised.

3.3. Public funding and failed elections

Under section 72 of the Electoral Act, if an election ‘fails’, a supplementary election must be held to fill the vacancy. Section 72(1) provides that:

> (1) An election fails if—
>
> (a) a candidate for an Assembly election dies after noon on the final nomination day and before 6 p.m. on election day; or
>
> (b) the successful candidate for an Assembly election dies after 6 p.m. on election day and before being declared elected; or
>
> (c) no candidate is nominated or declared elected.

Section 72(2) then requires that after the writ for the failed election is returned, a new writ must be issued for a supplementary election. Under section 72(4)(b), provisions of the Electoral Act may be modified or adapted by an Order in Council issued by the Governor in

Council in order to facilitate the application of electoral provisions to the supplementary election.

At the 2022 State election, the Legislative Assembly election for Narracan District failed on 20 November 2022 under section 72(1)(a) of the Electoral Act. As a result, a new writ was issued for a supplementary election for Narracan District for an election day of 28 January 2023.[42]

On 19 December 2022, the Governor-in-Council issued an Order[43] to modify and adapt certain provisions of the Electoral Act to enable the supplementary election. Relevantly, section 208(3)(b) of the Electoral Act was modified to the effect that 'by-election' in that provision has the same effect as 'supplementary election' with respect to Narracan District. This allowed eligible candidates at the supplementary election to apply for PF through an expenditure statement as if the election is a by-election.

3.3.1. Public funding entitlement for a failed election

An entitlement for PF is determined by whether a candidate for an election received greater than 4 per cent of first preference votes or was elected. The value of the entitlement is then calculated pro rata according to the number of first preference votes the candidate received.

When a contested election fails prior to 6 pm on election day, no candidate can be declared elected and the writ must instead be indorsed that the election has failed. In this circumstance it is inevitable that there is a cohort of voters who have already cast their vote for the failed election and a cohort who have not.[44] For these reasons, the votes in a failed election are set aside and are not counted, and a 'result' will never be determined.

It is therefore impossible to determine the PF entitlement for a party or candidate in a failed election. The number of first preference votes is not counted, and would not be representative of the voting population of the relevant electorate.

It is also not possible for PF entitlement for a failed election to be calculated in relation to the resulting supplementary election. This is because a new writ is issued for a supplementary election, and there is a new nominations period. A candidate for the failed election may choose not to contest the supplementary election, and any other eligible person who was not a candidate at the failed election may choose to nominate for the supplementary election. Indeed, this is a common occurrence as the outcome of the general election is known by the time nominations open for a failed election, and unsuccessful candidates in nearby districts may opt to stand for election in the supplementary election.

Further, the candidate whose death triggered the failed election cannot be a candidate for the failed election.[45] The candidates for each election are therefore not necessarily the same. Only 5 of the 9 candidates in the failed Narracan District election at the 2022 State election also nominated as candidates at the supplementary election, with 6 additional candidates

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[42] The VEC is preparing a report on the Narracan District supplementary election, which will be tabled in Parliament as an appendix to the VEC's statutory report on the 2022 State election. The report on the supplementary election will contain relevant observations and recommendations.
[43] Victoria Government Gazette No. S 715 Monday 19 December 2022, Schedule, Item 6. http://www.gazette.vic.gov.au/gazette/Gazettes2022/GG2022S715.pdf
[44] Except where a candidate dies before early and postal voting opens, as no votes have been cast.
[45] Ordinarily, PF is provided to eligible deceased candidates under section 213 of the Electoral Act, provided they died after the close of voting.

nominating at the supplementary election, 4 of whom had been candidates in other electorates at the 2022 State election and were unsuccessful. There is also additional electoral and political expenditure incurred in relation to a supplementary election, and it is sensible that PF entitlements in relation to that election should be calculated in relation to its results.

The outcome of this is that electoral and political expenditure incurred in relation to a failed election cannot under the current legislation be reimbursed through PF. All RPPs and independent candidates who were contesting the failed election must shoulder their electoral and political expenditure themselves, regardless of their standing or perceived legitimacy. For independent candidates in particular, this may impact upon their personal capacity to incur further electoral and political expenditure for a supplementary election, and therefore dissuade them from re-nominating.

Recommendation 23

The VEC recommends that the Panel consider whether electoral and political expenditure in relation to a failed election should be reimbursable through PF. From the VEC's perspective, it is not conducive to equitable participation in democracy for candidates in a failed election to experience adverse personal impacts that could prevent them from nominating at the supplementary election. It is also not conducive to equitable participation that this would be likely to have a more significant negative impact on independent candidates than RPPs.

A possible amendment to address this matter could be to introduce a maximum fixed entitlement payable to candidates in failed elections who have incurred political or electoral expenditure and submitted an audited statement of expenditure. Any amount payable should be the lesser of the fixed entitlement or incurred expenditure. This would reimburse at least some of the costs for running at the election while overcoming the problem of votes not having been counted. While this would not enable proportionate entitlements based on candidates' perceived legitimacy, the Panel may wish to consider such an amendment and whether it would lead to a more suitable outcome than the current legislation.

The VEC acknowledges that this proposition does not cleanly align with Parliament's intention in providing proportional PF, and encourages the Panel to consider whether there are other legislative solutions that could address this matter despite the above limitations.

3.3.2. Public funding entitlement for a supplementary election

While PF was provided to eligible parties and candidates in the Narracan supplementary election under the modified section 208(3)(b), there is no entrenched entitlement in the Electoral Act for parties and candidates in a supplementary election to receive PF to reimburse electoral and political expenditure in relation to the supplementary election. The Panel may wish to consider whether this is an entitlement that should be established in the legislation rather than given effect as the case may require by an Order in Council under section 72(4)(b).

3.3.3. Advance public funding entitlement following a failed election

Section 212A of the Electoral Act sets out a scheme through which RPPs and candidates who were eligible for PF at a general election can receive their PF for the next general election in advance.

Section 212A(2) provides that an independent candidate or RPP that is eligible for PF in relation to a general election is, if they so choose, entitled to receive an equivalent payment of PF in relation to the next general election in 4 instalments, one each year over the election cycle. Under section 212A(4), an overpayment when compared to the entitlement at the next general election (in respect of first preference votes) can be recovered by the VEC either through a reduction of the balance from the next funding payment, or the amount can be repaid to the VEC.

Eligible candidates and RPPs may apply to receive advance payment of PF if certain conditions are met. These conditions are:

- The candidate or RPP has received a payment of PF in respect of votes given at the immediately preceding general election; and
- The candidate or RPP has provided a written confirmation to the VEC to indicate that they wish to receive advance PF instalments when they submit their expenditure statement under section 208 of the Electoral Act with respect to the immediately preceding general election.

Reference to ‘the immediately preceding general election’ in section 212A(2) of the Electoral Act does not include reference to a supplementary election. As previously discussed, the VEC cannot calculate PF entitlements in the case of a failed election. There is therefore no legislative mechanism available to the VEC to administer advance instalment payments of PF to parties and candidates for the next general election if they were a candidate for the failed election, nor if they were eligible in relation to the supplementary election.

This results in a disadvantage to eligible parties and candidates in a supplementary election, as despite their entitlement they are not equipped with the advance resources to incur electoral and political expenditure at the next general election, while their counterparts who contested other districts are.

The VEC encourages that the Panel consider whether the purpose of enabling advance payments of PF is met under the circumstances of a failed election and subsequent supplementary election. While it is clear that the express reference to ‘the immediately preceding general election’ was intended to exclude by-elections, it does not appear that Parliament expressly intended for supplementary candidates to be prevented from accessing advance PF.

Recommendation 24

The VEC recommends that, subject to any amendments made to address the lack of PF for failed elections, section 212A of the Electoral Act be amended to extend every reference to ‘the immediately preceding general election’ to include a supplementary election, if the supplementary election was held because of a failed election at the immediately preceding general election.

The VEC notes that some candidates in a supplementary election may have unsuccessfully contested a different electorate at the general election. It is therefore possible that a candidate could have a PF entitlement for a general election and supplementary election. It is recommended that any amendment to address the legislative gap outlined in this section should account for this possibility by limiting the entitlement for advance PF to only one PF entitlement from either the preceding general or supplementary election.

4. Enforcement

4.1. Enforcement capability

4.1.1. Enforcement notices

While the funding and disclosure scheme in the Electoral Act establishes significant penalties for serious criminal conduct, the Electoral Act currently does not allow the VEC or compliance officers appointed by the VEC to issue infringement notices, cautions, official warnings or enforceable undertakings for less serious breaches of funding and disclosure rules. The ability to issue infringement notices, as well as cautions, official warnings and enforceable undertakings would significantly strengthen the VEC's capacity to proportionately enforce the legislation and effectively address and deter non-compliance.

The VEC specifically recommends that infringement notices are provided as an available option for enforcing the requirement under section 216(1), which requires a political donor, or of a donation recipient, to provide a disclosure return to the VEC in respect of a donation that is equal to or above the donation threshold. The Electoral Act requires donation disclosures to be provided within 21 days of a donation being made. It is an offence to breach this requirement under section 218A(a) with a significant penalty of 200 penalty units, however this would need to be enforced through legal proceedings instituted by the VEC against the person who failed to disclose in the timeframe.

The requirement to provide a disclosure return within the 21 days' timeframe is one that is regularly broken, more often by donors than donation recipients. If the VEC was able to issue infringement notices to those who fail to meet their disclosure obligations on time, non-compliance with disclosure rules would be likely to be significantly deterred.

While the VEC cannot issue infringement notices for breaches of funding and disclosure rules, it does have the power to issue them in other circumstances. Following the 2020 Victorian local government elections the VEC issued 270,171 infringement notices to people for not voting.[46] For the 2018 State election, the VEC issued 191,452 infringement notices to people for not voting.[47] Considering the potential harm undisclosed political donations may bring to the transparency of Victoria's funding and disclosure scheme, the VEC should be provided with the power to issue infringement notices to effectively regulate disclosures of participants in the political arena for minor breaches of funding and disclosure rules.

The VEC notes that a number of electoral commissions in other Australian jurisdictions have the ability under their legislation to issue infringement notices, cautions, official warnings or enforceable undertakings for minor breaches of funding and disclosure laws, and this ability is utilised effectively. It is recommended that the VEC or its compliance officers have the ability to issue these kinds of enforcement notices for a limited range of breaches of funding and disclosure rules. The absence of infringement notices in this area means that the VEC's only recourse for enforcing minor non-compliance is engaging in significant, costly and time-consuming enforcement actions in court, which is not in the public interest in most cases.

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[46] VEC 2020-21 Annual Report, p 51. https://www.vec.vic.gov.au/-/media/7d1ac60d3fd24ea181936ea5adbc607f.ashx

[47] VEC Report to Parliament on the 2018 State election, p 70. https://www.vec.vic.gov.au/-/media/4b68a71612424c22a28e48a0d9f3d835.ashx?la=en

By way of comparison, the NSWEC's 2020-21 annual report[48] indicates that officers issued 79 penalty notices in 2020-21 for 'failure to submit a disclosure by the due date'. 78 of these penalty notices[49] carried a fine of $1,100, while one carried a fine of $2,750. These were in addition to 869 warnings and 185 cautions issued in 2020-21 for failing to submit appropriate disclosures.

In 2021-22 the Electoral Commission of Queensland (**ECQ**) issued approximately 378 penalty infringement notices[50] to election participants for breaches of funding and disclosure rules, as well as other electoral infringements.[51]

The VEC also notes that many other Victorian regulators including the Department of Energy, Environment and Climate Change Action, Consumer Affairs Victoria, WorkSafe Victoria, Victorian Fisheries Authority, the Department of Transport and the Environment Protection Authority Victoria have powers to issue infringement notices.

Historically, the VEC has been the regulator for compulsory voting in State and local government elections in Victoria, which requires the organisation to manage large-scale operations with respect to infringement notices. As a result, the VEC has existing procedures and systems in place to manage the issuing of infringement notices that positions the organisation well to assume additional enforcement powers, including infringement notices, cautions, official warnings and enforceable undertakings in relation to minor breaches of funding and disclosure rules.

Recommendation 25

The VEC recommends that the VEC or its compliance officers should have the power to issue infringement notices, cautions, official warnings and enforceable undertakings in relation to breaches of the offence in section 218A(1), i.e. for failure to provide an annual return or disclosure return within the given timeframe.

The VEC also recommends that the issuing and payment of an infringement notice for an offence under section 212A(1) should not absolve the requirement to also provide the annual return or disclosure return as soon as practicable.

4.1.2. Lack of offence provisions tied to requirements

Sections 218, 218A and 218B of the Electoral Act provide for a range of offences under Part 12 of the Electoral Act for a range of serious non-compliance matters. Penalties for offences relating to false representations by candidates, registered officers of RPPs or other required persons are set at up to 300 penalty units, 2 years imprisonment or both. Similar penalties are also set for anyone who knowingly makes or receives a political donation that is unlawful as defined under Division 3A or 3B of Part 12 of the Electoral Act.

[48] NSW Annual Report 2020-21, p 163. https://elections.nsw.gov.au/NSWEC/media/NSWEC/Reports/Annual%20reports/NSW-Electoral-Commission-2020-21-Annual-Report.pdf
[49] Penalty notices in NSW are functionally the same as infringement notices in Victoria.
[50] Penalty infringement notices in Queensland are functionally the same as infringement notices in Victoria.
[51] ECQ Annual Report 2021-22, p 20. https://www.ecq.qld.gov.au/__data/assets/pdf_file/0025/57553/2021-22-ECQ-Annual-report.pdf

A person who fails to fulfil their obligations in submitting a disclosure return or annual return as required under Part 12 may also be penalised 200 penalty units. A person who submits a disclosure return or annual return as required under Part 12 that is knowingly false or misleading may also be found to have committed an offence with a penalty of 300 penalty units or 2 years imprisonment or both. Anyone else who knowingly provides false information to someone who is submitting an annual return or disclosure return can too be found guilty of an offence worthy of 300 penalty units or 2 years imprisonment or both.

There are, however, other sections of Part 12 that are not adequately covered by offence provisions. This has the potential to allow for non-compliance in some areas, whether intentional or not, and leave the VEC without a regulatory response.

One example relates to section 207F of the Electoral Act. Section 207F details the administrative and compliance requirements relating to the management of an SCA by the registered officer of a political party, candidate, third party entity or AE. This section covers a range of matters that must be adhered to in the administration of such SCAs relating to receipt of funds, political donations, payments made from the account and account closures. No details are included in section 207F, or any other sections of Part 12, of the consequences of non-compliance of these various obligations by electoral participants. The VEC's view is therefore that it does not have the necessary powers to ensure these requirements are being met, which undermines the integrity of the scheme.

Recommendation 26

The VEC recommends that all sections of Part 12 of the Electoral Act that have compliance obligations for donors, recipients or other entities should be aligned with enforcement powers and offence provisions to allow for requirements to be enforced by the VEC.

The VEC encourages the Panel to consider whether any new offences relating to existing compliance requirements could be enforced through an infringement notice issued by the VEC, in alignment with Recommendation 25.

4.2. Statute of limitations

The current 3-year statute of limitations for a range of offences against Victorian funding and disclosure rules, as well as for providing false or misleading information to the VEC, presents difficulties for the VEC to effectively enforce the law and respond to non-compliance.

For example, under section 218A(6) of the Electoral Act, the VEC has only a 3-year window to commence prosecutions for the alleged offence of failing to provide a disclosure return or an annual return to the VEC. Failing to provide a disclosure return is an offence that in some cases may only emerge years after the event occurred, so an extension of the statute of limitations would enhance the VEC's enforcement capabilities.

Similarly, the VEC has only 3 years to commence a prosecution under section 218 of the Electoral Act for the offence of knowingly making or accepting 'a political donation that is unlawful'. This is a serious offence and one that in some circumstances might only emerge a long time after the event. A longer prosecution window for this offence would enhance the VEC's ability to perform its regulatory role.

A further example is the 3-year window which the VEC has under s218(6) during which to commence a prosecution against a registered officer of a RPP, or a candidate, for the alleged offence of knowingly giving a statement to the VEC that contains material that is false or misleading.

Extending the statute of limitations would bring Victoria more closely into line with the legislation in other jurisdictions such as Queensland and NSW. In NSW the statute of limitations for offences under the Electoral Funding Act is at least 10 years.[52] In Queensland the statute of limitations for offences against funding and disclosure rules is 4 years.[53]

Recommendation 27

The VEC recommends that the statute of limitations for offences committed under Part 12 be increased from 3 years to a longer timeframe.

4.3. Classification of offences

The classification of offences informs the relevant limitation period, as well as a range of matters relevant to the investigation and enforcement of offences, including:

- investigatory methods and powers of the VEC, such as whether formal compliance with a search warrant under section 464 of the *Crimes Act 1958* (Vic) is required;
- whether a committal hearing may be sought when issuing a charge in the Magistrates' Court and the procedure to be adopted by the Magistrates' Court on any charge and prosecution;
- the maximum sentences available as set out the *Sentencing Act 1991* (Vic) (**Sentencing Act**).

Section 112 of the Sentencing Act sets out the classification of offences. Unless the contrary intention appears, offences punishable by level 1 to 6 imprisonment or fine is an indictable offence, and any other offence is a summary offence.

Sections 109(1) and 109(2) of the Sentencing Act set maximum term of imprisonment and maximum fines with refence to levels:

Level	Maximum Term of Imprisonment	Maximum Fine
1	Life	N/A
2	25 Years	3000 penalty units
3	20 years	2400 penalty units
4	15 years	1800 penalty units

[52] NSW Electoral Funding Act s 147(3).
[53] Qld Electoral Act s 307AA.

Level	Maximum Term of Imprisonment	Maximum Fine
5	10 years	1200 penalty units
6	5 years	600 penalty units
7	2 years	240 penalty units
8	1 year	120 penalty units
9	6 months	60 penalty units
10	N/A	10 penalty units
11	N/A	5 penalty units
12	N/A	1 penalty units

The VEC notes that offence provisions outside of Part 12 in the Electoral Act refer to levels of imprisonment or levels of maximum fine that correspond to section 112 of the Sentencing Act. Where appropriate, the provisions also specify whether the offence is indictable, whereas the offence provisions in Part 12 do not. For example, section 148 of the Electoral Act expressly provides that the offence is an indictable offence and has a penalty of level 6 imprisonment or level 6 fine.

The absence in Part 12 of an express specification that some offences are indictable may support an interpretation that all offences in Part 12 are summary offences. The VEC notes that case law supports the view that when an offence provision does not refer to the levels of punishment specified in section 112(1) of the Sentencing Act and specify that the offence is indictable, the offence would be considered as a summary offence instead of an indictable offence unless contrary intention appears.[54]

In particular, the VEC notes that an offence against section 218B(1) has a maximum penalty of 10 years imprisonment (as opposed to a Level 5 term of imprisonment). Whilst neither the second reading speech nor the explanatory memorandum for the Amendment Act expressly state whether section 218B(1) is a summary or indictable offence, the seriousness of the offence suggests that the offence is more appropriately suited for consideration by a Judge and jury in the higher courts as an indictable offence.

[54] *DPP v Magistrates' Court of Victoria* [1999] VSC 455, [18].

Recommendation 28

The VEC recommends that:

- the offence provisions in Part 12 be revised to refer to the maximum terms of imprisonment and/or maximum fine set out in section 109 of the Sentencing Act; and
- the offence provisions in section 218B(1) expressly provide that the offence is an indictable offence.

4.4. Coercive notices

4.4.1. Effectiveness of notices

The VEC encourages the Panel to consider how transparency and compliance can be enhanced by amending the information-seeking and investigative powers of the VEC under Part 12. This can be achieved through amendments to section 222B of the Electoral Act, which determines the VEC's investigative space and the extent to which it can investigate possible breaches.

The VEC considers that the effectiveness of coercive notices could be improved by requiring 'reasonable assistance' from the recipient of the notice. The Local Government Inspectorate (**LGI**) is an example of a statutory agency that can require 'reasonable assistance' from those to whom it issues coercive notices.[55] The LGI has similarities to the VEC in that it regulates political donations at a local government level (as the VEC does for State elections), has investigative officers and investigates electoral offences.

Requiring 'reasonable assistance' would:

- compel those who are being investigated to cooperate with investigations into potential contraventions of Part 12;
- help the VEC verify the information within annual returns and expenditure statements; and
- aid in administering and ensuring transparency for a political expenditure cap should one be established (see *Chapter 7. Political expenditure cap*). For example, it would be difficult to issue a coercive notice under section 222B based only on 'reasonable grounds' to procure receipts or bank account information from people who could be contravening the cap.

To clarify, 'reasonable grounds' should not be removed as the standard the VEC must meet in order to issue a coercive notice under section 222B(2). The VEC's recommendation is for the power to require 'reasonable assistance' to be added to sections 222B(1) and (2), and operate with the requirement for reasonable grounds to exist for notices under section 222B(2).

However, if these new provisions were to be established, the VEC recommends that people served with coercive notices should be excused from providing information requested by the VEC if the information is protected by a privilege in Part 3.10 of the *Evidence Act 2008* (Vic). This aligns with the *Local Government Act 2020* (Vic), which allows a person to refuse a

[55] *Local Government Act 2020* s 183(3)(b).

'reasonable assistance' notice by having a 'reasonable excuse'.[56] The *Local Government Act 2020* (Vic) does not provide a definition of a 'reasonable excuse', though it is generally accepted to be one that an ordinary member of the community would accept as reasonable in the circumstances. Similarly, the NSW Electoral Funding Act also allows for a person to refuse a notice that the NSWEC 'reasonably requires' to conduct an investigation if they have a 'reasonable excuse' to do so.[57]

Allowing for a person not to comply with a notice because of protection under a privilege improves the standard and fairness of coercive notices and the information ascertained by using them. It accounts for the principles of evidence, including the privilege against self-incrimination and client legal privilege. The VEC's prospects of bringing information ascertained through a coercive notice before a court may be hampered if the information would have ordinarily been protected by a privilege. Case law[58, 59] shows that self-incrimination and client legal privilege are valid reasonable excuses not to provide documents or other things requested in a production notice.

Recommendation 29

The VEC encourages the Panel to consider changing the information acquisition powers in the Electoral Act to grant the VEC more ability to gain the information it requires to ensure transparency and compliance with Part 12. Making the following changes would balance accountability, transparency and administrative flexibility as the VEC would be able to better investigate possible contraventions of Part 12.

The VEC recommends that sections 222B(1) and (2) be amended to allow a compliance officer to require 'reasonable assistance' in issuing a coercive notice to a person. A paragraph should be added to both subsections allowing for a compliance officer to require a person to give all reasonable assistance in connection with an examination or investigation.

The VEC recommends allowing a person being issued a coercive notice requiring the production of information to refuse to comply with the notice on the grounds of the information being protected by a privilege under Part 3.10 of the *Evidence Act 2008* (Vic).

4.4.2. Form of notice

As it is an offence to refuse to comply with a coercive notice issued under section 222B, and a person served with a notice has a right to request a review of the decision to issue the notice, it is crucial for the VEC that the notices issued by compliance officers are appropriate and lawful instruments. From the VEC's perspective, the legal standard and defensibility of notices issued under section 222B would be boosted if there was a prescribed form through which notice must be given. The VEC considers that this could be managed through the Electoral Regulations.

[56] Ibid, s 198(1).
[57] NSW Electoral Funding Act s 138(6).
[58] *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328.
[59] *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543.

Recommendation 30

The VEC recommends that a subsection is inserted into section 222B of the Electoral Act to specify that a notice issued by a compliance officer under this section must be in the form prescribed by the regulations.

The VEC then recommends that a prescribed form for a notice issued under section 222B of the Electoral Act is provided in the Electoral Regulations. A sample prescribed form is provided in Appendix 2 to this submission.

5. Administration

5.1. Independent auditing of statements

5.1.1. Compliance of audit certificates

The Electoral Act, in most cases, requires audit certificates to accompany annual returns and statements from political entities to meet their reporting obligations and access funding. Audit certificates are currently not required to accompany financial year annual returns by candidates, groups, and elected members under section 217M, though the VEC's view is that there may be some circumstances in which they are warranted.

The VEC is cognisant that imposing audit requirements on these entities may disenfranchise them from participating in electoral processes. However, circumstances in the future might arise where high profile candidates attract a significant number of donations, with accompanying complexity, that warrant an audit of their financial year annual returns.

The VEC encourages the Panel to consider an audit requirement for the cohort of electoral participants who receive funding from the VEC. Requiring electoral participants who already receive funding from the VEC to provide audit assurance can ensure the audit cost does not discourage participation, while maintaining sufficient auditing of annual returns where warranted.

When they are required, audit certificates must be provided by a registered company auditor for RPPs and an independent auditor for other political entities.[60]

The VEC provides an audit certificate template to assist entities to meet their reporting obligations, though entities are not compelled to use the template. The VEC's experience has been that when the audit certificate template is not used, the audit certificate submitted rarely meets the requirements set out in legislation. This causes additional time and effort for the VEC to engage with participants to ensure compliance with legislative requirements.

The VEC recommends the Electoral Act be amended to require the use of a VEC audit certificate template to increase efficiency gains when reviewing annual returns and statements, along with ensuring that audit certificates are compliant with the Electoral Act.

Recommendation 31

The VEC recommends that the Panel consider an audit requirement for financial year annual returns by candidates, groups, and elected members if the candidate, group or elected member receives funding from the VEC.

The VEC also recommends that where an audit certificate is required to be provided, the certificate must be provided in a form determined by the VEC.

The VEC is also significantly concerned about the provision of audit certificates containing qualified opinions in accordance with Auditing Standard ASA 705 – Modifications to the

[60] Electoral Act ss 207GD, 209 and 215B, and pt 12, div 3C.

Opinion in the Independent Auditor's Report.[61] Qualified opinions sometimes arise because of the condition that an audit certificate must state that the auditor 'has no reason to believe that any matter stated in the statement is not correct',[62] or because of a perceived lack of controls over the collection and standard of information for political donations.

A qualified opinion from an auditor may not meet the strict requirements set out in the legislation.

The VEC sees value in the provision of qualified opinions, as it is a risk indicator. To that end, the VEC considers that an express power to request additional information where a qualified opinion is provided may be appropriate.

Recommendation 32

The VEC recommends that the acceptance of an audit certificate with a qualified opinion is expressly provided for in the legislation.

The VEC also recommends that, where a qualified opinion is provided by an auditor, the legislation provides an express power for the VEC to request additional information from the auditor and the entity being audited.

5.1.2. Accounting and auditing standards

Section 209(2) of the Electoral Act provides the following:

209 Audit of statement

(2) A statement under section 208(2) or an annual return given under section 217J, 217K or 217L must be given to the Commission with the certificate of an independent auditor advising that the statement has been audited in accordance with Australian Accounting Standards as specified in section 334(1) of the Corporations Act.

Section 207GD(2) uses equivalent language in relation to AEF annual returns given under section 207GC.

The intention of this provision is unclear, and the VEC suggests that better clarity would boost the standard and compliance of audit certificates. The lack of clarity arises because the Australian Accounting Standards do not apply to auditing, so a statement or return cannot have been audited in accordance with them. Rather, the auditing process is covered by the Standard on Assurance Engagements ASAE 3100 – Compliance Engagements,[63] which are administered by the AUASB[64] rather than the AASB[65]. This Standard is made by the AUASB under section 336(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) rather than by the AASB under section 334(1).

[61] Auditing Standard ASA 705 *Modifications to the Opinion in the Independent Auditor's Report.* https://auasb.gov.au/media/ulnavf0z/asa705_03-23.pdf
[62] See, for example, s 209(3)(d).
[63] Standard on Assurance Engagements ASAE 3100 *Compliance Engagements*. https://auasb.gov.au/media/403byu03/asae_3100_12-22.pdf
[64] Auditing and Assurance Standards Board
[65] Australian Accounting Standards Board

Recommendation 33

The VEC recommends that sections 207GD(2) and 209(2) of the Electoral Act be amended to provide that an independent auditor must state to the VEC that a statement of expenditure or annual return has been audited in accordance with Australian Auditing Standards as specified in section 336(1) of the Corporations Act or another recognised auditing standard.

Alternatively, if the intention of sections 207GD(2) and 209(2) was for the auditor to confirm that the statement of expenditure or annual return had been compiled in accordance with the Australian Accounting Standards, rather than having been audited, the VEC recommends that the provision be amended to better clarify this intention.

5.1.3. Audit requirements in relevant divisions

While financial year annual returns given under sections 217I, 217J, 217K and 217L are provided for in Division 3C of Part 12, their audit requirements are contained in section 209 within Division 2, and the audit requirements for statements of expenditure in section 208. The VEC considers that greater clarity would be achieved by limiting the audit requirements under section 209(2) to relate only to statements of expenditure given under section 208. This is particularly the case as sections 217J, 217K and 217L relate to AEs, TPCs and NEs respectively, who do not receive PF and are not otherwise dealt with under Division 2.

Audit requirements for financial year annual returns under sections 217I, 217J, 217K and 217L should be provided for within Division 3C of Part 12, alongside the provisions requiring the provision of those returns. This would ensure that the audit requirements in relation to financial year annual returns can be clearly and easily located within the Electoral Act by an ordinary person.

Recommendation 34

The VEC recommends that the audit requirements in section 209(2) of the Electoral Act be limited to relate only to statements of expenditure given under section 208, and that audit requirements for financial year annual returns given under sections 217I, 217J, 217K and 217L be inserted into Division 3C of Part 12 of the Electoral Act.[66]

5.1.4. Definition of independent auditor

Returns and statements provided by RPPs must be accompanied by an audit certificate of a ‘registered company auditor within the meaning of the Corporations Act’.[67] An AEF annual return of an independent elected member, a statement of expenditure by an independent

[66] Note Recommendation 31 in this submission, in which the VEC recommends that candidates, groups and elected members should be required to submit an audit certificate with their financial year annual return given under section 217M in certain circumstances. If this recommendation is adopted, the audit requirements for financial year annual returns given under section 217M should also be inserted into Division 3C of Part 12.

[67] See, for example, s 209(1) of the Electoral Act.

candidate or a financial year annual return by an AE, TPC or NE must be accompanied by an audit certificate of an 'independent auditor'.[68]

The VEC seeks clarity on how this requirement should be applied. It is unclear on the face of the legislation from whom the auditor must be 'independent'. There is also no minimum standard or qualification set for an auditor of annual returns and statements pertinent to all funding and disclosure matters.

The Electoral Act could be amended to remove references to 'independent auditor' and updated to 'registered company auditor'. All registered company auditors with ASIC are required to maintain auditor independence, ensure audit quality by applying recognised audit standards and comply with the requirements of the Corporations Act.[69] This would improve the independence of auditors and ensure that a minimum standard or qualification is set.

Recommendation 35

The VEC recommends that the term 'independent auditor' in Part 12 is replaced in all instances by the term 'registered company auditor'.[70]

5.2. The VEC's ability to audit statements

The VEC's ability to audit information it receives within statements and returns is limited by a lack of sufficient powers under the Electoral Act. Specifically, the VEC's current administration of Part 12 is directly impacted by its ability to audit statements of expenditure, annual returns and audit certificates. Other than coercive notices issued by compliance officers under section 222B requiring the production of information in relation to suspected contraventions of Part 12, the VEC has limited capacity to request further information to determine the accuracy and completeness of statements, returns and certificates.

The powers of the VEC under sections 207GE, 210 and 215C of the Electoral Act allow it to request the provision of information by an RPP, elected member or candidate or their auditor if, and only if, the VEC is satisfied on reasonable grounds that information provided in a statement, return or certificate in relation to a funding application is materially incorrect. The consequence for failing to provide the requested information is that the VEC may withhold payment of the requested funding or recover the payment from the recipient.[71]

The test of 'materially incorrect' requires a high degree of satisfaction that the information provided is 'materially incorrect' prior to requesting further in relation to annual returns or

[68] See, for example, s 209(2) of the Electoral Act.
[69] Australian Securities & Investments Commission, 'Your ongoing obligations as a registered company auditor'. https://asic.gov.au/for-finance-professionals/company-auditors/your-ongoing-obligations-as-a-registered-company-auditor/
[70] Note that this recommendation is made in conjunction with Recommendation 21, which would offset the personal financial impact of engaging a registered company auditor.
[71] It should be noted that even though the VEC has the power to withhold funding, the VEC is also bound by a strict timeframe to provide funding, which means that the power may not be available in some cases. For instance, the VEC is required to provide AEF payments quarterly in advance under section 207GA(2). The process of requesting information from the auditor has a legislative timeframe of 14 days. If the auditor fails to provide the information, the funding recipient has a further 14 days to provide the information. The power to withhold AEF is only activated when the 2-step process is exhausted. The VEC's experience is that in some cases the VEC is required to provide funding before it has the necessary information from the auditor or the recipient to conduct a review.

funding applications. The current limitations on the information the VEC can seek significantly constrains the VEC's ability to request sufficient information to thoroughly assess the validity of an expenditure return or claim in the first place. The VEC considers that, where necessary, access to profit/loss statements, bank statements, transaction details and other relevant documents would enhance its ability to properly review annual returns and statements of expenditure related to funding applications and ensure the compliance and quality of statements and returns provided by entities.

As a point of comparison, section 74 of the NSW Electoral Funding Act enables the NSWEC to audit funding claims, including requiring party agents, parties and candidates to assist the NSWEC by providing full and free access to accounts and records as well as information and explanations reasonably requested by the NSWEC.

The VEC seeks greater legislative capability to request this information (in relevant circumstances), without requiring the high threshold of being satisfied that the information provided is 'materially incorrect'. The VEC also suggests that an equivalent information-seeking power in relation to financial year annual returns would help to ensure the completeness and compliance of annual returns, which must be published by the VEC and should be held to a high standard of accuracy and completeness. A further power to probe returns, statements and certificates would also contribute to the VEC's intelligence-gathering capability and facilitate compliance and risk reviews targeting relevant issues and trends.

Recommendation 36

The VEC recommends that its information-gathering powers under sections 207GE, 210 and 215C of the Electoral Act are amended to allow the VEC to request information it considers necessary to ensure the material accuracy and completeness of a return, statement or certificate provided under the relevant division.

The VEC recommends that its information-gathering powers are aided by the capability to inquire about issues and trends within returns, statements and certificates without a material non-compliance issue being identified.

The VEC also recommends that an equivalent information gathering power of the VEC be established under Division 3C of Part 12 of the Electoral Act in relation to a financial year annual return submitted under that division.

5.3. Registered officers and registered agents

A person or entity's registered agent is the person who manages and is legally responsible for a funding or donation recipient's funding and disclosure obligations. The table below sets out the agent for each class of recipient under the Electoral Act.

Recipient	Agent
Registered political party	RPPs do not have an agent under Division 1A of Part 12. RPPs have a registered officer under section 44.
Candidate, group, elected member (endorsed by an RPP) or **nominated entity** of an RPP	The registered officer of the RPP under section 44 is taken to be the registered agent. A person or entity endorsed by an RPP cannot register someone else as its agent.
Independent candidate or **independent elected member**	The candidate or elected member is the default agent, or someone else can be appointed as the person's agent.
Group of independent candidates in a Legislative Council election	The candidate whose name is first on the ballot paper for the group is taken to be the agent, or someone else can be appointed as the group's agent.
Associated entity or **third party campaigner** (organisation)	The financial controller of the AE or TPC is taken to be the agent, or someone else can be appointed as the AE or TPC's agent.
Third party campaigner (individual)	The TPC is taken to be the agent, or someone else can be appointed as the TPC's agent.

5.3.1. Deputy registered officers and deputy registered agents

As a result of the *Electoral Legislation (Further Amendment) Act 2005* (Vic), registered officers of RPPs were permitted to appoint deputy registered officers.[72] When implementing the Amendment Act, the VEC adopted a split approach in response to the internal structures of various RPPs and offered a facility in VEC Disclosures for registered officers to appoint deputies specifically for funding and disclosure activities, and not the party administration matters contemplated by the rest of the Electoral Act. This policy decision led to significant confusion with the term 'deputy registered officer', and individuals have routinely been appointed for one purpose and not the other.

Following recent business process changes, the split approach is being phased out and the VEC will require deputy registered officers to be appointed for the purposes of the whole of the Electoral Act. It is an internal matter for RPPs to manage delegations accordingly.

In contrast, while Part 12 of the Electoral Act generally aligns registered officer and registered agent responsibilities, there is no express provision allowing registered agents to appoint one or more deputy registered agents. Again during the implementation of the Amendment Act, the VEC extended the facility in VEC Disclosures to also allow for this scenario consistent with the delegation provisions of the *Interpretation of Legislation Act 1984* (Vic).[73]

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[72] Electoral Act s 44(2).
[73] *Interpretation of Legislation Act 1984* (Vic) ss 40–42A.

The preferred situation would be for Part 12 of the Electoral Act to expressly provide for deputy registered agents in the same way that deputy registered officers are recognised. Separately, stronger protections should be inserted to maintain the legal responsibility sitting with the registered officer or registered agent when their funding and disclosure obligations are being discharged through an appointed deputy.

Recommendation 37

The VEC recommends that a new provision is inserted into Division 1A of Part 12 of the Electoral Act allowing for registered agents to appoint deputy registered agents similar to the process for deputy registered officers of RPPs under section 44(2) of the Electoral Act.

5.3.2. When is appointment of agent in effect?

Section 207E(2) of the Electoral Act provides that a person ceases to be a registered agent if the VEC removes the name and address of the person from the Register of Agents. Section 207E(3) provides an exhaustive list of circumstances in which the VEC may remove the name and address of a person from the Register of Agents, being if:

- the person has provided the VEC with a written notice stating they have resigned as an agent;
- the person or entity who appointed the agent provides the VEC with a written notice stating that they have revoked the appointment;
- the person is convicted of an offence against Part 12 of the Electoral Act or Part XX of the *Commonwealth Electoral Act 1918* (Cth); or
- the VEC is notified of the death of the person appointed as an agent.

It is not clear if the VEC may also remove the name and address of a person from the Register of Agents if the person or entity for whom they are an agent ceases to be a relevant person or entity. There is not sufficient clarity for the VEC to determine whether it may remove from the Register of Agents the names and addresses of agents of former elected members and candidates, de-registered political parties, or dissolved AEs or TPCs. It is also not clear how long from the point at which the person or entity ceases to be a relevant person or entity that they are required to continue to have an agent to acquit obligations and functions under the Electoral Act.

Recommendation 38

The VEC seeks a clarifying provision setting out when a person or entity ceases to have an agent under the Electoral Act.

The VEC also suggests an amendment to section 207E(2) allowing for the VEC to remove the name and address of a person from the Register of Agents when the person or entity who appointed the agent ceases to have an agent under the Electoral Act.

5.3.3. Role and remit of registered officers and agents

Clarity is needed around the remit of a registered agent, and in particular whether their powers and functions are all-encompassing to the point of excluding the person who would otherwise be taken as the agent from exercising those powers and functions. On the face of the

legislation, when the default agent of a recipient appoints a registered agent, they are no longer taken to be their own registered agent.[74] It would follow, then, that they no longer have the authority to discharge their own obligations and functions under the Electoral Act, and that only their registered agent could do so on their behalf.

The VEC also encourages the Panel to consider whether there is a drafting error or intentional inconsistency in section 208(2), which requires an independent candidate to submit their own statement of expenditure and does not on the face of the legislation allow their registered agent to do so. The VEC is unsure whether it is the intention of the legislation to require that the candidate themselves submit a statement of expenditure, as this is the only instance in Part 12 where a person or entity is required to acquit a function on their own behalf without providing for their registered agent to do so.

Recommendation 39

The VEC encourages the Panel to consider whether it is desirable for default agents to be prevented from performing their own obligations due to the appointment of a registered agent. If this is desirable, the VEC seeks legislative clarity that this is the case so that the remit of registered agents can be appropriately limited and administered in practice.

If it is not, the VEC recommends that a provision be inserted into Division 1A of Part 12 of the Electoral Act to provide that despite the appointment of a registered agent under section 207B or 207C, the default agent of a person or entity may discharge any of the powers or functions of a registered agent under Part 12.

The VEC also recommends that section 208(2) be amended to provide that the registered agent of an independent candidate must submit the statement of expenditure. If the above proposed amendments are made to Division 1A of Part 12, the effect of any amendment to section 208(2) should be that either the registered agent or the independent candidate themselves could be the person who submits the statement of expenditure.

5.4. Residual obligations of persons and entities

The VEC seeks clarity as to how the obligations of various persons or entities under the Electoral Act can continue to be acquitted once those persons or entities have ceased to exist, either through de-registration or no longer meeting the definition of a class of person or entity.

[74] Electoral Act ss 207B(5), (6) and (7); ss 207C(2) and (4).

The following table summarises how various persons or entities under the Electoral Act can cease to have ongoing duties or functions:

Person or entity	How they cease to exist
Registered political party	Voluntary de-registration or de-registration by the VEC
Nominated entity of an RPP	Resignation as the NE or revocation of appointment by the RPP, or de-registration of the RPP
Associated entities or third party campaigners	Dissolution of an organisation that was an AE or TPC, or ceasing to meet the definition under section 206(1)
Elected members	Ceasing to be a member of Parliament

There are several obligations which the VEC considers to be in the public interest for persons and entities to acquit despite that person or entity ceasing to exist. These obligations are:

(a) the submission of an AEF annual return under section 207GC;

(b) the repayment of any overpayment of AEF under section 207GF or of PF which the recipient had chosen to receive in advance instalments under section 212A(4)(b);

(c) the maintenance of the SCA under section 207F;

(d) the disclosure of political donations received within 21 days prior to the person or entity ceasing to be a relevant person or entity under section 216 or changing their categorisation according to the definitions under section 206 or Part 4 of the Electoral Act;

(e) the submission of a financial year annual return under Division 3C of Part 12;

(f) the provision of information to the VEC under sections 207GE(2), 210(2) or 215C(2);

(g) the forfeiture of political donations accepted in contravention of Division 3B of Part 12 under section 217G; and

(h) the production of documents or other things to a compliance officer of the VEC under section 222B.

RPPs and elected members may also submit a statement of expenditure under section 208 or a PDF statement under section 215A(4)[75] to the VEC and receive an entitlement of PF or PDF in relation to an election or a calendar year, respectively.

The VEC considers that obligations (a) – (e) of the above list could be acquitted by a person or entity within a given period of time after they would ordinarily cease to exist. For example, if an RPP chose to de-register following an election, they could be considered to continue to be an RPP for the purposes of Part 12 until any outstanding obligations had been acquitted, such as providing a final financial year annual return and AEF annual return, repaying any

[75] Only RPPs may submit a PDF statement.

overpayment of AEF or advance PF, and disclosing any political donations received within 21 days before the deregistration of the party. Similarly, an elected member could be considered to continue to be an elected member for the purposes of Part 12 despite no longer being a member of Parliament and the same principle could apply to all persons and entities regulated by Part 12.

The VEC considers that these duties and functions could be acquitted within 16 weeks after the time that the person or entity would cease to be classed as such, including outside of the regular timeline for the exercise of duties and functions such as providing annual returns and repaying AEF.

Recommendation 40

The VEC recommends that a provision is inserted into Division 1 of Part 12 of the Electoral Act to provide that an RPP, NE, AE, TPC, candidate, group or elected member that ceases to be classed as such is considered to be an RPP, NE, AE, TPC, candidate, group or elected member respectively until such time as any obligations under sections 207GC, 207GF, 212A(4)(b), 207F, 216 and/or Division 3C of Part 12 have been properly acquitted.

The VEC further recommends that a provision is inserted into Division 1 of Part 12 of the Electoral Act to provide that the registered officer or agent of an RPP, NE, AE, TPC, candidate, group or elected member that ceases to be classed as such, within 16 weeks of cessation:

- must provide all outstanding disclosure returns within the ordinary 21-day period;
- must submit an annual return or a part-year return (if the reporting year has not ended at the time of cessation) under Division 1C and/or 3C of Part 12;
- may submit a statement of expenditure under section 208 or 215A(4) to the VEC;
- must repay any overpayment of AEF under section 207GF and/or PF under section 212A(4)(b), where applicable; and
- must acquit any other residual obligations.

It is recommended that the proposed 16-week period applies regardless of the ordinary timeframe in which a person or entity would ordinarily be required to.

While implementing Recommendation 40 would support the acquittal of key obligations when a person or entity changes their status under the Electoral Act, the obligations in items (f) – (h) arise in prescribed circumstances, for example if the VEC identifies a potential breach of Part 12.

It is therefore necessary for a person to be responsible for the person or entity following their ceasing to be such, in order to ensure that the VEC can acquire necessary information to properly investigate and take enforcement action against potential breaches of Part 12.

The VEC does not consider that the person who was the registered officer of an RPP or the registered agent of another person or entity under Part 12 should necessarily be taken to have ongoing responsibility for the former person or entity when they cease to be classed as such. This is because in many cases, a person or entity's registered officer or registered agent is a person who is employed to act in that capacity, rather than a founder, financial controller or owner of the entity. It may not be fair or justifiable for persons appointed as registered officers or agents to retain responsibility once their employment has ceased. However, there needs to be clarity about who has this ongoing responsibility.

Recommendation 41

The VEC recommends that a provision is inserted into Division 1B of Part 12 of the Electoral Act to provide that when an RPP, NE, AE, TPC, candidate, group or elected member ceases to be classed as such, they must appoint a person to acquit any remaining or future obligations under Part 12.

The final concern around persons and entities changing their classification under the Electoral Act relates to what happens to their SCA and the funds within. Section 207F(8)(a) provides for the closure of the SCA of an unsuccessful candidate or an elected member who ceases to be a member, and section 207F(8)(b) provides for the closure or reallocation of funds of the SCA of a group when one or more members of the group is not successful or ceases to be an elected member.

Of note are the requirements for the closure of the SCA of an unsuccessful candidate, elected member or group that was *not* endorsed by or a member of an RPP. In these circumstances, after debts have been paid, any amount remaining in the SCA is to be paid to a charity nominated by the candidate, elected member or registered agent.

There is no provision regarding the closure of the SCA of an RPP, AE, NE or TPC that de-registers, dissolves, has its appointment revoked or ceases to meet its definition. At present, that leaves the question of how remaining funds should be distributed. The VEC considers that the same approach could be taken for these entities as is taken for independent candidates, elected members and groups.

Recommendation 42

The VEC recommends that provisions are inserted into subsection (8) of section 207F of the Electoral Act to require that after debts have been paid, any amount remaining in a SCA of an RPP that is de-registered under Part 4, or an NE, AE or TPC that is no longer such an entity, is to be paid to a charity nominated by the registered officer or agent of the entity (or the person nominated to acquit its obligations, if applicable).

If implemented, there may be circumstances where an RPP would need to be exempted from surrendering its remaining funds, such as when an RPP is de-registered and begins operating as a TPC.

5.5. Registration of associated entities and third party campaigners

Through its other functions, the VEC maintains or accesses registers or records of various Part 12 entities:

Entity	Register or record
Political parties and their registered officers	Register of Political Parties maintained under section 43 of the Electoral Act
Candidates for an election	Official nomination process under section 69 of the Electoral Act and ad hoc advice provided to the VEC by parties and candidates of their intention to nominate for an upcoming election
Groups	Requests made to the VEC under section 69A of the Electoral Act to form a group
Elected members and any party membership	Parliamentary information and news media
Nominated entities	Register of Nominated Entities maintained under section 222E of the Electoral Act

While section 206(1) of the Electoral Act provides a definition of what constitutes an AE and what constitutes a TPC, there is no register or other record of these entities.

While both kinds of entity have compliance obligations under the Electoral Act, the VEC has had to adopt its own processes to identify and monitor entities and their compliance. The VEC would benefit from the registration of AEs and TPCs, to assist it to monitor compliance and educate those entities on the fulfilment of obligations. The obligations to be met by entities are quite broad, and the nature of an entity may not be apparent to the VEC through the course of donation disclosure activities.

A point of comparison is the NSW funding and disclosure scheme which requires under the NSWEC to maintain a Register of Associated Entities[76] and a Register of Third Party Campaigners.[77] AEs and TPCs are prohibited from incurring political or electoral expenditure or accepting political donations unless they are registered.[78] Contravention of these provisions is an offence under section 145 of the NSW Electoral Funding Act.

Queensland also requires the registration of TPCs.[79] While registration of AEs is not a legislative requirement in Queensland, the agent of an RPP or candidate has an obligation to take all reasonable steps to inform the AE of its obligations and establish and maintain appropriate systems to support the AE to comply with those obligations.[80] It is also worth noting that the definition of an AE in Queensland is narrower than in Victoria, and more closely aligns with the Victorian definition of an NE.

[76] NSW Electoral Funding Act s 111.
[77] Ibid, s 116.
[78] Ibid, ss 42 and 43.
[79] Qld Electoral Act s 297.
[80] Ibid, s 306B(2); this is an offence provision of 100 penalty units.

Recommendation 43

The VEC recommends that new subdivisions be inserted into Division 4A of Part 12 of the Electoral Act to establish a 'Register of Associated Entities' and 'Register of Third Party Campaigners', respectively, and that AEs and TPCs be required to register with the VEC in order to incur political or electoral expenditure, accept political donations or, for AEs, pay affiliation fees to an RPP.

This would allow the VEC to have effective oversight of compliance by AEs and TPCs with disclosure requirements and would provide better clarity for when those requirements begin and cease to apply.

5.6. State campaign accounts

5.6.1. Payments into and out of a State campaign account

While section 207F(1) of the Electoral Act requires entities to keep an SCA 'for the purpose of State elections', the use of the account(s) by the account holders is largely unregulated.

There are some restrictions on what must and must not be paid into an SCA. Political donations[81] and payments received by an RPP or candidate as PF[82] must be paid into the SCA. The following amounts must not be paid into the SCA:

- funds held for Commonwealth electoral purposes;[83]
- funds received by RPPs as an annual subscription, affiliation fee or levy;[84]
- payments received by an RPP or independent elected member as AEF under Division 1C of Part 12;[85] and
- payments received by an RPP as PDF under Division 2A of Part 12.[86]

Except for these express requirements, the Electoral Act is silent on what may or must not be paid into the SCA. Section 207F(7) provides that the regulations may prescribe what other amounts may or must not be paid into an SCA, though this has not been prescribed in the Electoral Regulations.

The only express requirement relating to amounts paid out of the SCA is the requirement in section 207F(6) that all amounts of political expenditure must be paid out of the SCA. There is no other express prohibition on amounts that may, must or must not be paid out of the SCA.

The VEC is concerned that if SCAs are not held exclusively for State electoral purposes, scrutiny of political donations and political expenditure may be undermined. Financial year annual returns under Division 3C of Part 12 and statements of expenditure under section 208 benefit from clear separation between relevant and irrelevant funds, to distinguish non-electoral funds and allow for transparent auditing.

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[81] Electoral Act s 207F(2).
[82] Ibid, s 212(4A).
[83] Ibid, s 207F(3).
[84] Ibid, 207F(4).
[85] Ibid, s 207GG(1).
[86] Ibid, s 215A(6).

The VEC is also concerned that unchecked usage of SCAs for non-electoral purposes may lead to improper usage of PF (intended or unintended) and obfuscation of any improper activity. The VEC is concerned of the risk that the holder of an SCA could use instalment payments of PF for non-electoral purposes, which may not be apparent to an auditor in circumstances where there is regular non-electoral use of the SCA.

The VEC notes the Explanatory Memorandum for the Electoral Legislation Amendment Bill 2018, which provides the following:

> *The purpose of a State campaign account is to separate political donations from the funds used for administration, operations, Federal elections, or other activities, particularly the non-political campaigns of third party campaigners.*[87]

Recommendation 44

The VEC encourages the Panel to consider the purpose of an SCA, and whether it should be permissible for the account to be used for non-electoral purposes. In particular, the VEC encourages the Panel to consider whether the purpose of an SCA as indicated by the Explanatory Memorandum of separating political donations from the funds used for the non-political campaigns of TPCs is currently met.

If non-electoral uses of the SCA are not undesirable, the VEC encourages the Panel to consider whether any restrictions can be placed on the usage of the SCA to better reflect its express purpose under section 207F(1). These may include requiring that only political donations and payments received by recipients from the VEC can be paid into SCAs, and that only electoral expenditure or political expenditure can be paid out of SCAs.

5.6.2. When is an amount paid 'from' a State campaign account?

The VEC seeks clarity around the language in section 207F(6) which specifies that a person or entity's registered officer or registered agent must ensure that no amount of money for political expenditure is paid for by that person or entity 'unless the amount is paid from the State campaign account'. From the VEC's perspective, it is not clear from the language of the provision when an amount is paid 'from' the SCA.

For example, if a person or entity pays for political expenditure on a credit card and then uses funds from the SCA to make repayments for the credit card, it is unclear whether that amount has been paid 'from' the SCA.

Recommendation 45

In order to effectively administer the political funding and donations scheme and monitor compliance, the VEC seeks legislative clarity around whether political expenditure must be paid directly from the SCA at the time of the transaction, or whether the SCA can be used to reimburse political expenditure paid directly from other sources.

The VEC recommends that if an SCA may be used to reimburse political expenditure paid directly from other sources, robust record-keeping requirements also be put in place to ensure that the use of the funds can be clearly identified.

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[87] Electoral Legislation Amendment Bill 2018 (Introduction Print) – Explanatory Memorandum, p 26.

5.6.3. Control of a State campaign account

There is no express requirement in the Electoral Act for each person or entity to keep an SCA which is separate to that of another person or entity. The outcome of this is that under the current legislation, multiple persons or entities may share an SCA. The VEC is concerned about the sharing of SCAs as it obfuscates the allocation of funds for scrutiny, reporting and auditing purposes and blurs which funds belong to which person or entity.

The VEC is particularly concerned about the sharing of SCAs between TPCs and independent candidates. The VEC encourages the Panel to consider whether it is in the interest of transparency and compliance to allow funds received by TPCs and independent candidates to be held in the same account, and for their political expenditure to be paid from the same account. The VEC is concerned that such use blurs the lines between the TPC and the candidate in terms of who is receiving political donations and incurring political expenditure.

When TPCs and independent candidates share an SCA, the distinction between which entity has incurred the political expenditure is lost. The VEC is concerned that this amounts to an unintended but lawful circumvention of the donation cap by which TPCs would ordinarily be bound in availing their funds to independent candidates for incurring political expenditure. A political expenditure incurred by the candidate could be claimed by and paid for using donations made to the TPC as there is no effective differentiation or separation of funds and transactions within the SCA. This effectively allows an independent candidate to incur political expenditure ‘through’ a TPC. The same issue exists in the sharing of SCAs between RPPs and AEs.

The VEC notes that it is preferable that an SCA is solely controlled by the person or entity that incurs political expenditure in relation to that person or entity, for example the registered officer of an RPP or the registered agent of a candidate. This would enable reporting obligations to fall on a single entity instead of multiple persons, and expenditure paid from a SCA would not be separated from multiple users. It would also improve the ability of the VEC to monitor and ensure compliance.

The VEC encourages the Panel to consider whether these undermine the integrity of the donation, disclosure and expenditure scheme, particularly if a cap on political expenditure is introduced.

The VEC does not currently consider this to comprise a ‘scheme’ in contravention of section 218B, as there is nothing in the definition of a TPC in section 206(1) which limits its interaction with a candidate or clarifies its role in relation to campaigning at an election. The VEC believes that this activity could be mitigated by requiring persons and entities under Part 12 to maintain separate SCAs, but the Panel may also wish to consider whether the role of TPCs, including their interaction with candidates and/or parties and their receipt of political donations for federal or Victorian purposes, should be more clearly defined and regulated.

Payments of funding into shared State campaign accounts

Another concern is that a candidate could have a TPC’s SCA registered with the VEC as their own SCA, meaning PF is essentially being paid to a TPC. This potentially undermines the intent of PF in the Electoral Act, which is to be paid to an RPP or candidate who receives at least 4 per cent of first preference votes. Both practices undermine transparency as the movement of money (donations, expenditure and PF) is obfuscated among SCAs.

As a point of comparison, the provisions under the NSW Electoral Funding Act operate as a middle ground that give the NSWEC discretion to direct PF to a particular SCA specified by the recipient, if it is necessary. The NSW Electoral Funding Act requires that only agents or authorised people that are registered with NSWEC can operate an SCA to incur electoral expenditure.[88] The only way to remove this requirement is if a party agent or authorised person appoints somebody else in writing to operate an SCA to make payments of electoral expenditure.[89]

NSW also has provisions particular to PF. For instance, payments of PF under the NSW legislation are normally paid to a party or party agent.[90] However, NSWEC can, if it thinks it is proper to do so in the circumstances, make PF payments to a specified account with a financial institution established in trust for a party.[91] This may allow an independent candidate (who for example employs a campaign manager) to receive and use PF under an SCA separate to the one they register. The VEC recommends that the Panel consider the transparency of the current SCA system.

Multiple State campaign accounts used by a single person or entity

The VEC also considers it preferable to have a sole SCA for each person or entity, into which PF and donations are paid. Currently, there is nothing preventing a single person or entity from using multiple SCAs to receive money and incur expenditure. This impacts upon the simplicity and effectiveness of the audit requirements for statements of expenditure, which benefit where they can trace donations, funding and expenditure going into and out of a single SCA.

Recommendation 46

The VEC recommends that section 207F(1) of the Electoral Act be amended to provide that the registered officer of a RPP and the registered agent of a candidate at an election, group, elected member, NE, AE or TPC must keep a SCA consisting of a separate account with an authorised deposit-taking institution for the purpose of Victorian State elections, unique from the SCA of any other RPP, candidate at an election (unless they are endorsed by the same RPP), group, elected member, NE, AE or TPC. A ‘separate account’ may include sub-accounts.

The VEC recommends that that account must be registered with the VEC, and any changes reported within 30 days.

5.7. VEC obligations

5.7.1. Confidential information of silent electors

Under the Electoral Act, a silent elector is an elector whose address does not appear on the electoral roll (at their request) because doing so would place the personal safety of them or

[88] NSW Electoral Funding Act s 38(6).
[89] Ibid, s 39(7)(b).
[90] Ibid, s 76(1).
[91] Ibid, s 76(2).

their family at risk. The VEC takes its obligations to silent electors seriously and is strongly committed to protecting their privacy and safety.

Section 221A specifies that for the purposes of Part 12, certain information is confidential information and must not be disclosed by the VEC either directly or indirectly unless expressly required or permitted by law. A donor's street address (not including the suburb and state) and a silent elector's full address (including the suburb and state) is confidential information. The Electoral Regulations also prescribe in regulation 57 that any natural person's street address (not including the suburb and state) is confidential information. The effect of these provisions is that for disclosure returns and financial year annual returns, the VEC publishes an applicable person's suburb and state and does not publish any address information for silent electors.

While the provisions clearly include redacting confidential information before publishing financial year annual returns, the VEC has concerns around retrospective redaction when a person becomes a silent elector. The VEC has taken the position that 'disclosure' under section 221A is ongoing and the removal of newly confidential information (by redaction) is necessary if a person becomes a silent elector. However, this position is not enshrined in the legislation and is not an expressly permitted reason for which the VEC can amend a statement, donation return or financial year annual return under section 221(1) (which is limited to if the VEC is satisfied that the document contains a formal error or is subject to a formal defect).

The VEC would prefer that the implied duty to redact newly confidential information in documents that have already been published be an expressly legislated requirement. This could be accomplished by a technical amendment to section 221.

Recommendation 47

The VEC recommends that a subsection is inserted into section 221 of the Electoral Act following subsection (1) to provide that if information in a published donation return or financial year annual return becomes confidential information under section 221A, the VEC must, as soon as practicable, amend the donation return or financial year annual return to remove the confidential information.

To support the administration of its obligations around the confidential information of silent electors, the VEC requires additional donor information (being the date of the birth of a donor who is a natural person) to allow the VEC to match the donor to the electoral register to confirm if they are a silent elector.

Recommendation 48

To ensure silent donors are protected and do not have their name, suburb and state published on the VEC website, the VEC recommends an amendment to section 216(5) of the Electoral Act to include date of birth in the list of details that must be provided in a disclosure return by donors who are natural persons

In addition, the VEC notes that 'silent elector' is defined by the Electoral Act as only including those people enrolled on the Victorian register of electors who have requested, and been granted, silent elector status by the VEC, or the Australian Electoral Commission on behalf of

Victoria.[92] Silent elector statuses also exist on the Commonwealth electoral roll, and in other States and Territories through their respective enrolment systems, but are not readily or routinely identifiable by the VEC. Given a donor may be any Australian resident, there are circumstances when the details of silent electors enrolled outside Victoria will not have their particulars protected from publication as confidential information. While this is ultimately unavoidable, the obligation on the VEC under section 221A(3) must be limited to only those who are granted silent elector status under Victorian law.

5.8. Aligning reporting periods

Reporting on the 3 funding streams and financial year annual return submissions have different milestones across the election period,[93] which:

- diminishes effective education for entities about their reporting obligations;
- increases effort required by the VEC to assist entities to complete required forms;
- corresponds to peak periods of VEC activity for major election events, exacerbating the significant operational impacts of those periods;
- increases costs for funding recipients required to engage auditors more than once within the various reporting periods; and
- duplicates effort required by the VEC to check for compliance before publishing financial year annual returns.

Financial year annual returns must be submitted with their accompanying audit certificate (where required) within 16 weeks of the end of each financial year.[94] Submission periods for financial year annual returns open on 1 July and close on 20 October each year. Once received, financial year annual returns must be reviewed by the VEC and published before the end of the calendar year.[95]

AEF annual returns, with their accompanying audit certificates, must be submitted within 16 weeks of the end of each calendar year (by 20 April each year).

In an election year, the reporting schedule is particularly problematic. Financial year annual returns are required to be lodged by 20 October, about 5 weeks before election day — an already busy period for political participants to also have reporting obligations. VEC staff are required to assist entities with the submission process in advance of the October deadline and then undertake submission reviews throughout the election month of November, which diverts resources from key election operations. The 2022 State election experience also showed that the volume of donation transactions increases substantially in the months before the election, which also places a significant burden on VEC staff to assist donors and recipients to meet their obligations and monitor the transaction activity.[96] The impact on election participants and

[92] Electoral Act ss 3 (definition of 'silent elector') and 31.
[93] A map of the various reporting timelines for submissions and returns in relation to funding and disclosure is provided in Appendix 3 to this submission.
[94] Electoral Act pt 12, div 3C.
[95] While s 217P of the Electoral Act requires the VEC to publish financial year annual returns by 31 December each year, staff leave arrangements for the Christmas-New Year period reduces the period for preparing the returns for publication by at least 2 weeks in practice.
[96] The VEC delivers a major election event every 2 years, alternating between State elections (November) and local government elections (October). Similar pressures on VEC resources apply for local government elections.

VEC operations would be reduced by changing financial year annual returns to a calendar year instead.

In 2022-23, individuals and entities were required to submit funding documentation or substantiate expenditure claims for as many as 6 separate reporting occasions, depending on their individual obligations and eligibility.[97]

Consolidating all relevant annual reporting requirements to one submission deadline 16 weeks after the end of each calendar year would streamline reporting requirements and optimise administrative resources. This would also allow for more timely and transparent reporting of funding and donation activities following State elections.

To provide adequate time to receive, reconcile and review submissions, the VEC would request a publication deadline for applicable annual returns of 31 August each year.

Recommendation 49

The VEC recommends that the reporting period for financial year annual returns is changed to a calendar year. The VEC recommends that all required annual returns, audit certificates and other supporting material should be required to be submitted within 16 weeks of the end of each calendar year, with publication of applicable annual returns by the VEC due by 31 August each year. The VEC also recommends that the same deadline apply for funding applications after State elections.

If the reporting periods for financial year annual returns are not changed to calendar years and remain fixed to financial years, the VEC recommends that section 217P of the Electoral Act is amended to allow 8 months for publication from the end of the relevant financial year.

[97] These occasions include: AEF application for the scheduled general election period (1 July 2022), financial year annual return (20 October 2022), AEF application (post-26 November 2022), State general election PF statement of expenditure (14 April 2023), AEF calendar year return (22 April 2023) and Narracan supplementary election PF statement of expenditure (16 June 2023).

6. Legislative improvements

6.1. Uplifting compliance standards

6.1.1. Completeness of disclosures

While penalties apply for failing to disclose a political donation, as well as for giving false or misleading information in a disclosure return, the VEC has identified the addition of a declaration that the information provided in the disclosure is true and correct as a measure which would likely strengthen compliance in Victoria.

Section 18(4) of the NSW Electoral Funding Act provides that in making a disclosure of a political donation to the NSWEC, donors and recipients must make a declaration that the information provided in the disclosure is true and correct. This declaration is a mandatory section of the disclosure forms provided by the NSWEC.

This measure bolsters confidence that disclosure returns are complete and accurate and reduces instances of incomplete disclosure. A similar requirement in Victoria would promote complete and true donation disclosures.

The VEC recommends a legislated requirement for such a declaration to accompany disclosure returns in Victoria, to enforce a higher level of accuracy and completeness in disclosure returns than the current requirements enforce in practice. Declarations are similarly required on other forms prescribed under the Electoral Act.

6.1.2. Recipients notifying donors of obligations

If a donation recipient receives a donation that must be disclosed to the VEC by the donor, section 216(7) of the Electoral Act requires that the recipient 'must notify' the donor of this disclosure requirement. Currently the Electoral Act does not specify a method by which the recipient must notify the donor. Notification can currently be satisfied verbally, which may be ineffective and the occurrence of which could be disputed.

Between 1 December 2018 and 15 June 2023, there were 2221 political donations published in VEC Disclosures. A considerable proportion of donations are disclosed after the 21-day deadline. Given a failure to meet disclosure obligations may carry a penalty of 200 penalty units (currently $36,984), and places an additional administrative burden on the VEC, it seems appropriate that donation recipients should play a greater role in educating donors of their obligations under the Electoral Act. This would align with the VEC's constructive compliance approach.[98]

Donation disclosure compliance by donors would be enhanced if they were better educated on their obligations. Donation recipients should play a key role in this education process. If notifications from the recipient are to be part of this education process, then there would be significant benefit to the allowed notification methods being defined in the legislation. A formal method of notifying donors in writing (via the issuance of a receipt which contains a statement advising the donor of their obligations) would be a substantial improvement on the current requirements under the Electoral Act.

[98] VEC, 'Our regulatory approach'. https://www.vec.vic.gov.au/about-us/our-regulatory-approach

Formal notification in writing would improve record-keeping, audit activity, administration of the system and compliance. The VEC believes that notification in writing would better alert donors to the importance of disclosing donations, and lead to a donor disclosure behavioural change of more timely and higher quality disclosure returns.

Furthermore, whilst the Electoral Act states that a donation recipient 'must notify' the donor about their mandatory disclosure obligation, there is no penalty if the recipient does not. This prevents the VEC from enforcing this requirement and it is therefore recommended that the VEC be able to issue an infringement notice when this requirement is contravened.

In NSW, when a donor makes a reportable donation the donation recipient must issue a receipt to the donor that specifies that the donation is reportable and must be reported to the NSWEC.[99] NSW also requires the use, maintenance and disclosure of a receipt and acknowledgement book to contain prescribed information.[100]

Queensland's electoral laws also require donation recipients to inform donors in writing when they receive a political donation that must be disclosed to the ECQ. The maximum penalty for failing to inform donors of their obligation is 20 penalty units (equivalent to $2875 in 2022-23).[101]

Recommendation 50

The VEC recommends that for each and every donation, the recipient be required to:

(1) outline the recipient and donor's respective obligations as part of the process of soliciting donations; and
(2) notify donors individually and in writing of the need to disclose the donation when the donation is made; and
(3) identify and advise donors of the individual donation amount and any aggregated amounts from the donor within the relevant financial year and election period.

Examples of acquitting the disclosure obligations could be:

- including as part of any advertising collateral;
- including in any terms and conditions that may be listed on recipient websites or social media;
- appending written notice to a receipt provided by the recipient to the donor; or
- providing information on accessing VEC Disclosures via a link or QR code.

A proposed format for a receipt to be issued by a donation recipient to a donor is provided in Appendix 4 to this submission.

The VEC also recommends that the Electoral Act be amended to require donation recipients to provide to the VEC a copy of the receipt issued to the donor, in a form determined by the VEC.

[99] NSW Electoral Funding Act s 45(1)(b).
[100] *Electoral Funding Regulation 2018* (NSW) regs 15 and 16.
[101] Qld Electoral Act s 258.

6.2. Improving legislative clarity

6.2.1. Electoral and political expenditure

Section 206(1) provides definitions for 'electoral expenditure' and 'political expenditure'.

> ***electoral expenditure***, in relation to an election, means expenditure incurred within the election period on—
>
> (a) the broadcasting of an advertisement relating to the election; or
>
> (b) the publishing in a journal of an advertisement relating to the election; or
>
> (c) the display at a theatre or other place of entertainment, of an advertisement relating to the election; or
>
> (d) the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c); or
>
> (e) the production of any material in relation to the election (not being material referred to in paragraph (a), (b) or (c)) that is required under section 83 to include the name and address of the author of the material or of the person authorising the material; or
>
> (f) the production and distribution of electoral matter that is addressed to particular persons or organisations; or
>
> (g) fees or salaries paid to consultants or advertising agents for—
>
> (i) services provided, being services relating to the election; or
>
> (ii) material relating to the election; or
>
> (h) the carrying out of an opinion poll, or other research, relating to the election;
>
> ***political expenditure*** means any expenditure for the dominant purpose of directing how a person should vote at an election, by promoting or opposing—
>
> (a) the election of any candidate at the election; or
>
> (b) a registered political party; or
>
> (c) an elected member—
>
> but does not include expenditure incurred by an associated entity or third party campaigner on any material that is published, aired or otherwise disseminated outside of the election campaigning period unless the material refers to—
>
> (d) a candidate or a registered political party; and
>
> (e) how a person should vote at an election;

The VEC seeks clarity as the distinction between the 2 types of expenditure. It appears that 'electoral expenditure' is a subset of 'political expenditure', though the overlapping definitions with differing criteria make it difficult to ascertain whether there could be a circumstance in which an incurrence of electoral expenditure would *not* be considered an incurrence of political expenditure.

For example, it is not readily apparent whether expenditure under paragraph (g) of the definition of 'electoral expenditure' – being fees or salaries paid to consultants or advertising

agents for services provided or material relating to the election – would also be considered expenditure 'for the dominant purpose of directing how a person should vote at an election'. The VEC takes the position that electoral expenditure is a subset of political expenditure (as shown in Figure 1), but would be assisted by greater clarity in these definitions and their overlap.

This distinction is inconsequential in 8 provisions throughout Part 12, which expressly apply to both 'political expenditure' and 'electoral expenditure' and therefore require no distinction:

- section 207G definition of *claimable expenditure;*
- section 207GB(2)(e)(ii) and (4)(c)(ii);
- section 207GG(2);
- section 208(1), (2) and (3); and
- section 215A(5).

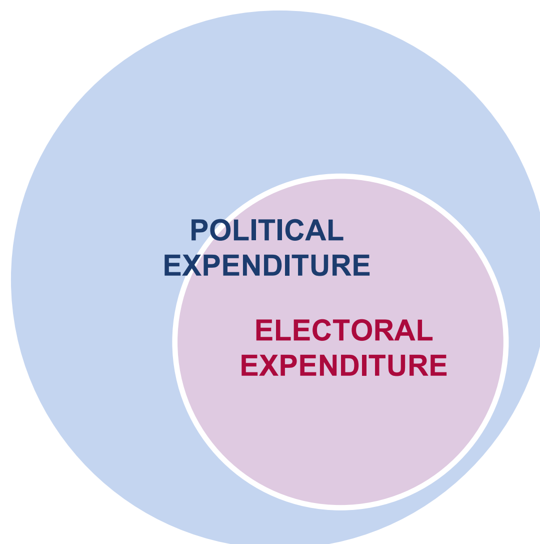

Figure 1: The VEC considers electoral expenditure to be a subset of political expenditure

There are 5 provisions which apply only to 'political expenditure', though as indicated above, the VEC's position has been to consider electoral expenditure to be a subset of political expenditure and therefore apply these provisions to the following:

- section 206(1) definition of *political donation*, subsections (e) and (f);
- section 207F(6);
- section 217D(8); and
- section 222DB.

Clarity around the definitions of both types of expenditure is needed to better define the scope of the above provisions. If there are kinds of electoral expenditure that are not intended to fall within the definition of political expenditure, the above provisions should not be applied.

Section 215A(6)(b) is the only provision in Part 12 which makes express reference to 'electoral expenditure' only and *not* to 'political expenditure'. Section 215A(6)(b) states that the registered officer of an RPP must ensure that PDF is not used for electoral expenditure. However, section 215A(5) expressly states that policy development expenditure does not include electoral or political expenditure, so in practice the provision does not have the effect of applying only to electoral expenditure, particularly as there is no offence tied to section 215A(6)(b).[102]

Given that there are effectively no provisions that apply only to electoral expenditure and not to political expenditure, the VEC encourages the Panel to consider whether it remains suitable to have 2 overlapping definitions. It may be more appropriate for the kinds of electoral expenditure outlined in its definition to be absorbed into the definition of political expenditure. If electoral expenditure is not intended to be a subset of political expenditure, the VEC

[102] See Recommendation 26 in this submission.

recommends that a distinction is made in the legislation to clearly define the parameters of each definition and the scope of their overlap.

Separately, political expenditure is currently limited for AEs and TPCs to just the election campaigning period except for when the expenditure refers to a candidate or an RPP and is directing someone on how to vote.[103] The VEC notes that AEs and TPCs often incur expenditure at other times that would otherwise be captured without this limitation. There is no obvious reason as to why this limitation was included in the definition of political expenditure.

Recommendation 51

The VEC recommends that the Panel considers opportunities to clarify any distinction, ambiguity and overlap between the terms 'electoral expenditure' and 'political expenditure' in Part 12 of the Electoral Act and how they apply to various reporting entities.

6.2.2. Purpose of donations

There are several provisions in Part 12 which refer to the purpose of a political donation. The VEC's view is that there is insufficient clarity and no suitable framework for determining the purpose of a political donation. This complicates both the meeting of obligations by recipients of political donations, as well as the VEC's oversight of compliance.

Firstly, section 207F(3) requires that the registered officer or agent of a person or entity with an SCA must ensure that no amount for Commonwealth electoral purposes is paid into the SCA. From the VEC's perspective, there is insufficient clarity in the Electoral Act to determine whether a political donation made to an entity is for a State or Commonwealth electoral purpose. This is particularly the case for entities who engage in both State and Commonwealth electoral activities, such as TPCs and political parties with both State and federal branches.

It is also unclear whether it is the intention of the donation or the way it is used by the recipient that determines whether the amount is 'for' Commonwealth electoral purposes or not, or whether that intention or use can legitimately change. This has implications for the disclosure and prohibition of certain donations, as there is no clear mechanism through which a donor and recipient can agree upon the purpose of a donation and monitor their compliance with donation and disclosure requirements accordingly. The same applies for the VEC's oversight of these donations and disclosures.

Secondly, the definition of 'political donation' includes a gift to an AE or a TPC, only if 'the whole or part of the gift was used or intended to be used' to make a political donation or incur political expenditure (or to reimburse them for doing so). There is no mechanism for this purpose to be determined or recorded by a donor or relevant recipient, and there is therefore no clear way for donors, recipients or the VEC to be certain of the amount of a political donation.

As there is no restriction on the type of expenses that may be paid out of an SCA, the VEC does not see how the amounts that an AE or TPC uses for political expenditure[104] is able to be determined in the calculation and disclosure of political donations they receive. The VEC's

[103] Electoral Act s 206(1) (definition of 'political expenditure').
[104] As opposed to other purposes such as administrative costs and non-electoral campaigns.

view is that the transparency and accountability of the political donations scheme would be greatly improved if these purposes could be clearly articulated and therefore able to be measured.

Recommendation 52

The VEC recommends that an obligation be placed on donors and recipients to specify if the donation given or received is:

- for State or Commonwealth purposes; and
- to be used for political expenditure.

6.2.3. Goods and services tax

Part 12 of the Electoral Act provides some guidance on how AEF, PF and PDF are to be spent by funding recipients. For instance, section 207G of the Electoral Act sets out 'claimable expenditure' under AEF; Division 2 of Part 12 of the Electoral Act provides that PF is to be spent of electoral and political expenditure; and section 215A(5) of the Electoral Act enables the VEC to determine policy development expenditure for the purposes of PDF from time to time.

At present, under the scheme established by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), entities that are registered for GST purposes are able to claim 'input tax credits' in some circumstances. Depending on the circumstances of the acquisition of the good or service by the entity, the input tax credit may cover some or all of the entity's GST expense on that particular good or service.

The VEC notes that some entities that receive AEF, PF, or PDF may be entitled to input tax credits. For example, an RPP may be registered for GST purposes and carrying on an enterprise for the purposes of the GST if the RPP undertakes an activity or series of activities in the form of a business. Other funding recipients, for example an independent elected member, may not be registered for GST purposes and therefore not entitled to input tax credits.

Despite some guidance from the Electoral Act with respect to the types of expenditure that are covered by each of the funding streams, the VEC notes the Electoral Act does not have any express provision that operates to expressly reduce 'expenditure' by reference to the amount of any input tax credits to which a recipient of funding might be entitled. This means that 'expenditure' may include the actual amount incurred by the funding recipient, irrespective of whether or not an input tax credit can be claimed at a later stage by the funding recipient.

In some cases, where funding recipients are entitled to input tax credit, the net economic cost to those recipients of acquiring the relevant goods and services is decreased. This is because funding recipients that are entitled to claim an input tax credit can reimburse the GST component of expenditure at the Commonwealth level, therefore potentially being reimbursed twice with public funds. The VEC notes that the NSWEC has issued guidelines under the NSW Electoral Funding Act, which states that:

> *'The Electoral Commission will only reimburse the GST component of expenditure where the claimant is not entitled to a (input) tax credit. Where a tax credit is received from the ATO for*

> *expenditure that was paid out of the State Campaign Account of a party, the tax credit may be deposited into that account.' (Guideline 18)*

The VEC notes that the NSW Electoral Funding Act provides the NSWEC the express power to determine whether any expenditure is or is not administrative expenditure or policy development expenditure in accordance with the NSW Electoral Funding Act and that determination is final. To ensure clarity to all stakeholders, the VEC's preference is that the implications of input tax credits and GST on funding entitlement are expressly set out in the Electoral Act.

Recommendation 53

The VEC recommends that a legislative amendment be introduced to specify whether expenditure, as used in Part 12 of the Electoral Act, is a GST inclusive or exclusive item and whether entitlement to input tax credits would have an impact on a recipient's funding entitlement.

6.2.4. Extraterritorial jurisdiction

Participation in Victorian elections is not limited to people and entities operating solely within the State of Victoria. As a result, a number of entities currently known to the VEC have service addresses outside of Victoria and the extent to which the VEC's powers and functions, and the offences prescribed in the Electoral Act, extend to those locations is currently not explicitly provided in the Electoral Act. The VEC notes that banks, while often headquartered in other States, submit to Victorian laws and Victorian courts, but the Electoral Act does not clearly articulate the VEC's jurisdiction outside of Victoria.

The VEC notes that other Australians jurisdictions often provide clear guidance in their legislation to articulate extraterritorial effects of certain provisions. For example, the NSW Electoral Funding Act provides that the power of the NSWEC to request documents and information applies to a person even though the person is (or the document or information is held) outside of the State or the matter occurred or is located outside of the State, so long as the matter affects a matter to which the NSW Electoral Funding Act applies.[105] Similarly, the Queensland Electoral Act provides that disclosure obligations in relation to political donation applies even if the donation was made outside of Queensland.[106]

Recommendation 54

The VEC recommends that the Electoral Act make explicit the extraterritorial application of the powers and functions of the VEC and its compliance officers, as well as the reporting obligations of electoral participants.

6.2.5. Definition of a scheme

It is an offence under section 218B for a person to 'enter into, or carry out, a scheme' with the intention of circumventing a prohibition or requirement under Part 12. The indictable offence carries a maximum penalty of 10 years imprisonment. Except a specific example set out in

[105] NSW Electoral Funding Act s 138(9).
[106] Qld Electoral Act ss 264(7) and 265(5).

section 218B(2), the Electoral Act does not otherwise provide guidance on what constitutes a 'scheme', nor does it outline the specific elements of the offence.

For comparison, the NSW Electoral Funding Act provides that a 'scheme' includes an arrangement, an understanding or a course of conduct.[107] The Queensland Electoral Act adopts a similar definition for a 'scheme'.[108] Both Acts provide that it does not matter that the person also participates in the scheme for other purposes.[109] The Queensland Electoral Act further provides that a person participates in a scheme if the person organises or controls the scheme and enables, aids, facilitates the entering into or the carrying out of the scheme.[110]

Similarly, the *Income Tax Assessment Act 1997* (Cth) provides that a 'scheme' means any arrangement, scheme, plan, proposal, action or course of action or course of conduct, whether unliteral or otherwise. It further clarifies that an 'arrangement' means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings.[111]

The VEC notes that greater legislative clarity of the definition of a 'scheme' and elements of the offence is needed to assess prospects of conviction and avoid the extensive testing of statutory interpretation in court.

Recommendation 55

The VEC recommends the Electoral Act is amended to clearly define the elements of the offence in section 218B, including what is a 'scheme'.

6.3. Amending poor or confusing drafting

6.3.1. Use of the term 'annual return'

There are 2 documents referred to as an 'annual return' under Part 12 of the Electoral Act.

A financial year annual return (as defined for the purpose of this submission) under Division 3C of Part 12 must be submitted by an RPP, AE, TPC, NE, independent candidate, group or independent elected member within 16 weeks of the end of a *financial* year, and summarise money received (including donations and funding provided by the VEC), expenditure and outstanding debts within the financial year. A financial year annual return submitted under Division 3C of Part 12 must be published by the VEC.

An AEF annual return (as defined for the purpose of this submission) under Division 1C of Part 12 must be submitted by an RPP or independent elected member within 16 weeks of the end of a *calendar* year and specify the amount of claimable expenditure as it relates to AEF that was incurred within the calendar year. If the amount of claimable expenditure specified in the AEF annual return is less than the amount that the RPP or member was entitled to and

[107] NSW Electoral Funding Act s 144(3).
[108] Qld Electoral Act s 307B(4).
[109] NSW Electoral Act s 144(2); *Electoral Act 1992* (Qld) s 307B(2).
[110] Qld Electoral Act s 307B(4).
[111] *Income Tax Assessment Act 1997* (Cth) s 995.1.

paid for that calendar year, then the RPP or member must repay the difference to the VEC. An AEF annual return submitted under Division 1C of Part 12 is not published by the VEC.

There are several problems with referring to both documents as an annual return. The first is that 'annual' has a different meaning for each of the documents. A financial year annual return relates to a financial year, and an AEF annual return relates to a calendar year. This leads to inconsistency and confusion.[112]

The second problem is that these 2 documents have very different purposes. A financial year annual return is a public record of amounts received and costs incurred within the financial year and must be submitted by each class of entity under Part 12 of the Electoral Act. An AEF annual return is a reconciliation of the amount of AEF paid to an RPP or elected member and the amount that was spent.

It is unclear whether the offence in section 218A of the Electoral Act of failing to provide an annual return is intended to apply to AEF annual returns. There is an express consequence in the Electoral Act for failing to provide an AEF annual return – under section 207GC(3) the RPP or member is taken to have incurred no claimable expenditure and must repay the full amount to the VEC in accordance with section 207GF. On the face of the legislation, failing to provide the annual return would also constitute an offence under section 218A, however the VEC notes that this offence was included in the introduction print of the Electoral Legislation Amendment Bill 2018 before the passing of amendments requiring an AEF annual return under Division 1C of Part 12.[113]

It is possible that Parliament did not intend for there to be a twofold consequence for failing to provide an AEF annual return, being that it is an offence and also that the recipient must repay the full amount received. The VEC encourages the Panel to consider whether this is a desired outcome of the legislation. It may also be necessary for these consequences to be expressly considered against the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter of Human Rights**). It does not appear that the provisions were expressly considered in the Statement of Compatibility for the Electoral Legislation Amendment Bill 2018 due to the late inclusion of the amendments.[114]

Recommendation 56

The VEC recommends that an AEF annual return under Division 1C of Part 12 is renamed throughout Part 12 of the Electoral Act as an 'AEF statement of expenditure'. This aligns with the similarity that an AEF annual return under Division 1C of Part 12 has with a statement of expenditure in relation to PF under section 208 of the Electoral Act.[115]

[112] Note Recommendation 49 in this submission, in which the VEC recommends that financial year annual returns be realigned to relate to calendar years. This would, at least, align the meaning of 'annual', though the VEC still considers it preferable that only one class of document be referred to as an annual return.

[113] Electoral Legislation Amendment Bill 2018 (Introduction print).

[114] Electoral Legislation Amendment Bill 2018 – Statement of Compatibility.

[115] If the Panel considers that such a change would cause excessive similarity between a statement of expenditure and statement of administrative expenditure, the VEC suggests that a statement of expenditure under s 208 could be renamed to a 'PF statement of expenditure'.

6.3.2. Use of the term ‘election’

The VEC is concerned about the use of the term ‘election’ in section 212A(7) of the Electoral Act to seemingly refer to the act of a person or entity making a choice. The definition of ‘eligible independent candidate’ under section 212A(7) provides that:

> ***eligible independent candidate*** means an independent candidate who—
>
> > (a) has received a payment under section 212(4) in respect of votes given at the immediately preceding general election to the independent candidate; and
> >
> > (b) *makes an election* in writing to the Commission, at the time that the independent candidate gives the Commission the statement under section 208 in relation to the immediately preceding general election, that they wish to receive payments under this section [emphasis added]

The definition of ‘eligible registered political party’ under section 212A(7) uses equivalent language. The apparent purpose of this language is to have the effect that for an independent candidate or RPP to be eligible for instalment payments of PF under section 212A, they have made ‘an election in writing’ to receive payments of this kind. The VEC interprets ‘election’ as it is used here to mean a person's choice or determination in favour of a course of action.

‘Election’ is narrowly defined in section 3 of the Electoral Act:

> ***election*** means—
>
> > (a) a general election; or
> >
> > (b) a by-election; or
> >
> > (c) a supplementary election; or
> >
> > (d) a re-election

The narrowness of this definition is a necessary limitation in order for the scope of the Electoral Act to be appropriately confined. It provides clarity that the provisions of the Electoral Act do not apply to Commonwealth or local government elections, nor do they relate to other fee-for-service elections conducted by the VEC under section 8(2)(d).

It is preferable, then, that the term ‘election’ only be used in the Electoral Act as it relates to the classes of election set out in its definition in section 3. It is apparent that the intention of Parliament in drafting section 212A(7) of the Electoral Act was to give effect to the choice of an independent candidate or RPP to receive instalment payments of PF.

Recommendation 57

The VEC recommends that the term ‘election’ as it appears in section 212A(7) of the Electoral act is substituted by ‘choice’ or a word with a similar meaning.

7. Political expenditure cap

7.1. Background

The VEC acknowledges that it is an objective of the Panel to determine whether a cap on political expenditure should be implemented in Victoria. The VEC does not take a position regarding whether a political expenditure cap should or should not be established.

This section identifies certain legislative changes to the Electoral Act and comments for the Panel's consideration that would increase the VEC's capacity and effectiveness in administering and regulating a political expenditure cap if it were to be established. The VEC notes that fixed political expenditure caps are already in place in NSW, Queensland, the ACT, the NT and Tasmania. An opt-in system is also in place in South Australia. The VEC also notes the recent developments at a Commonwealth level, with the interim report from the Joint Standing Committee on Electoral Matters recommending the introduction of an expenditure cap for Commonwealth elections.

7.2. Legislative changes

There would need to be a new division in Part 12 to establish a political expenditure cap. The division would include sections that clearly describe the rules of the cap and the powers of the VEC. For instance, the division would need to describe what penalties apply when the Electoral Act is contravened and how those sanctions are delivered.

The disclosure of expenditure (what is disclosed and how) would need to be clearly defined in the Electoral Act. This large amount of information would have a significant operational impact on the VEC's disclosures oversight and administration as all the expenditure data that would need to be collected from political participants would also need to be published online.

Generally, the VEC would require greater resourcing in order to administer and regulate a political expenditure cap. There would be an increased need to train and retain staff in order to ensure compliance, and the current technological capability and potential investment in new functionality required of the VEC Disclosures system would need to be considered. The VEC would welcome the opportunity to expand on these matters of resourcing if a cap were to be implemented.

The VEC would need new powers in the Electoral Act to obtain information from political participants in order to successfully administer a political expenditure cap. The VEC would require sufficient legislative ability to effectively and thoroughly audit statements and accounts with regard to the expenditure cap.[116] The VEC would also require the ability to conduct risk reviews on compliance issues that need a more in-depth investigation and response. This would help the VEC understand how payments are made to prove that they were made accordingly and not in contravention of the cap. The VEC believes that ensuring compliance with the expenditure cap would be dependent on whether coercive notices can be issued and other information requested for the sake of transparency.[117]

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[116] See also Recommendation 36 in this submission. The VEC notes the powers of the NSWEC under s 59 of the NSW Electoral Funding Act are sufficiently broad and would recommend similar powers for the VEC if an expenditure cap was introduced.
[117] See also Recommendation 29 in this submission.

Additionally, the Electoral Act would need to clarify that both electoral expenditure and political expenditure are included in the expenditure cap. If one but not the other is included, time and resources would need to be dedicated to determining whether an expenditure return contains either political or electoral expenditure.[118]

The Panel should also consider the submission deadline for an expenditure return and how it would align with other PF application and annual return milestones (such as the deadline for annual returns). For efficiency on the part of both the VEC and the reporting entities, it may be most practical to include reporting on political expenditure as part of existing annual reporting requirements.[119] Any provisions would need to be sufficiently flexible to accommodate political expenditure in relation to all types of elections administered by the VEC.

Another way to ensure the VEC has sufficient time and resources to effectively administer a cap on political expenditure would be to require applicants for PF to provide a more detailed statement to support their application and require all entities to report their detailed political expenditure as part of their annual return. Aligning these processes would allow the VEC to streamline and combine time and resources to effectively administer the cap.

The VEC recommends that a consequence similar to the one established in section 212(2A) should also be applied to a political expenditure cap. Section 212(2A) requires that the amount of PF entitlement for an eligible recipient is reduced by twice the amount of a donation that is accepted in contravention of Part 12. To provide consistency across the Electoral Act, a political expenditure cap should include an equivalent safeguard whereby a political participant's PF entitlement is reduced by twice the amount of unlawful expenditure incurred. As with political donations, this requirement would act as a deterrent to spending more than the cap, therefore ensuring high levels of compliance with the expenditure cap.

7.3. Cross-jurisdictional comparison

The implementation of a political expenditure cap has been explored by most other jurisdictions in Australia. SA's political expenditure scheme includes a similar safeguard but with a more significant consequence. Under the *Electoral Act 1985* (SA), a person who incurs political expenditure over the cap will have their PF reduced by an amount equal to 20 times the excess amount, or simply not paid at all if the excess expenditure is greater than the PF entitlement.[120]

The capped expenditure period, which is the timeframe for which the expenditure cap is in place, varies between jurisdictions. Generally, the timeframe for a capped expenditure period ranges from half a year to a year in length. In NSW, the capped expenditure period is from 1 October in the year before the election until election day,[121] whereas the ACT's capped period starts at the beginning of an election year and ends on election day.[122] The difference may be partly explained by when elections are usually held in these jurisdictions, as NSW usually holds State elections in March (resulting in a capped period of 6 months), whereas ACT elections usually occur around October (resulting in a capped period of 10 months).

[118] See also *6.2.1. Electoral and political expenditure* in this submission.
[119] See also Recommendation 49 in this submission. The VEC's preference is that submission and publication timelines are offset from peak periods of election activity, in order to prevent the exacerbation of the intense operational impacts experienced by the VEC during those periods.
[120] SA Electoral Act s 130Q(4).
[121] NSW Electoral Funding Act s 27.
[122] ACT Electoral Act s 198 definition of 'capped expenditure period'.

As Victorian State elections occur in November, adopting the ACT capped expenditure period model, which starts at the beginning of the calendar election year, would be clearer for political participants to adhere to. A capped expenditure period that begins at the start of the calendar year is straightforward information for the VEC to communicate to political participants and would therefore aid compliance and clarity in the scheme.

There are other expenditure cap period timeframes in Australia, such as in SA where political expenditure is capped from the beginning of the financial year until 30 days after the election occurs.[123] Since elections in SA occur in March, this means that the capped period is longer (around 9 months) than it would be if the same model were to be adopted in Victoria, where elections are held in November. Adopting a similar model in Victoria would mean that there would be a shorter capped expenditure period (around 5 months). While a shorter capped expenditure period would be more difficult to convey to political participants, and would mean less expenditure to be capped, there may be benefits to a shorter capped expenditure period, such as clearly delineating the State or Commonwealth purpose of expenditure when a State election occurs in a close proximity to a Commonwealth election.

An example of a capped expenditure period that lacks clarity is the one enforced in Queensland, where the capped expenditure period begins ‘on the first business day after the last Saturday in the preceding March’.[124] Adopting a capped period that is worded in a similar way would make it more difficult for the VEC to clearly convey to political participants when exactly the capped expenditure period begins or ends and may lead to accidental non-compliance with the scheme.

Ultimately, if an expenditure cap is recommended by the Panel, the VEC encourages the Panel to consider an expenditure cap period that has clarity for political participants to avoid the possibility of accidental contravention of the cap and to increase the cap’s effectiveness.

Indexation of the political expenditure cap is also a matter that varies between jurisdictions. The expenditure caps in NSW[125] and Queensland[126] are adjusted after the end of an election, whereas the cap is adjusted yearly in the ACT,[127] SA[128] and Tasmania.[129] In alignment with the recommendation made by the VEC concerning the general cap,[130] if indexation was to apply to an expenditure cap, it would be preferable to vary it after every election as to provide consistency and clarity around the changing value.

7.4. Reporting requirements

The VEC encourages the Panel to consider what reporting requirements there would need to be for a political expenditure cap to be transparent. For instance, the Panel should consider what information would need to be disclosed to the VEC in an expenditure return. A political expenditure cap would need to consider all relevant expenditure so it can be included in an annual return. Types of expenditure that need to be disclosed could pertain to gifts in kind,

[123] SA Electoral Act s 130A see definition for ‘capped expenditure period’.
[124] Qld Electoral Act s 280(1)(a).
[125] NSW Electoral Funding Act s 29(14).
[126] Qld Electoral Act s 281F.
[127] ACT Electoral Act s 205E.
[128] SA Electoral Act s 130Z.
[129] *Electoral Act 2004* (Tas) s 160(2).
[130] See also Recommendation 9 in this submission.

signage, printing or advertising. This would require appropriate record and document-keeping of receipts and bank statements for those who incur political expenditure.

Having clear expenditure item categories that need to be reported would allow the VEC to administer the cap to a high standard, as expenditure could be traced and accounted for. This would also allow the VEC to conduct trend analysis and establish benchmarks, which would assist in identifying emerging issues to be risk reviewed and for out-of-trend items to be specifically reviewed. This would be consistent with the reporting requirements elsewhere in the Electoral Act and would set a high standard of transparency within the expenditure cap, were it to be established.

Reporting requirements for political expenditure vary across Australian jurisdictions. For instance, SA requires a political participant to submit a disclosure return for incurring over $5,000 of political expenditure during the capped expenditure period.[131] This disclosure return must be submitted within 60 days after the end of the election.[132] Annual returns must also be submitted after the end of the financial year for incurring expenditure over $5,000.[133] Alternatively, the ACT legislation requires an expenditure return if any expenditure has been incurred during the capped expenditure period.[134]

The Queensland legislation details extensively what needs to be included in an expenditure return. For example, a return must include details for each item of electoral expenditure incurred for the election.[135] Bank statements must also be submitted in relation to the political participant's SCA for the capped expenditure period, ending on the day before the return is given to the ECQ.[136] Adopting this approach in relation to a Victorian expenditure cap would allow for a high standard of administration and monitoring by the VEC to ensure compliance with the scheme, as it would be clear to those who need to lodge an expenditure return what needs to be disclosed.

Some jurisdictions such as Queensland,[137] WA[138] (which has expenditure reporting requirements despite not having an expenditure cap) and the ACT[139] also require expenditure returns from publishers and broadcasters. Overall, a political expenditure cap would need clearly defined disclosure requirements that clearly itemise and detail what needs to be submitted to the VEC and how.

7.5. Conclusions

The VEC notes that clear requirements for a cap on political expenditure would also need to be established in relation to by-elections and supplementary elections, to ensure that political participants are aware of their obligations. This would include the amount of the cap on political expenditure for the period relating to the by-election or supplementary election, and the period for which expenditure is capped.

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[131] SA Electoral Act s 130ZQ.
[132] Ibid.
[133] Ibid.
[134] ACT Electoral Act s 224.
[135] Qld Electoral Act s 283(2).
[136] Ibid, s 283(3).
[137] Ibid, s 285.
[138] Electoral Act 1907 (WA) s 175ZE.
[139] ACT Electoral Act s 226.

The VEC makes no recommendation as to whether the expenditure cap for a political participant should apply across the state or should be broken down by electorate. Most jurisdictions such as NSW,[140] Queensland,[141] SA,[142] NT[143] and the ACT[144] apply the expenditure cap by electoral district. If a similar system were applied to Victoria, consideration would need to be given to how expenditure on state-wide expenditure (for example, a TV broadcast advertisement) could contribute to a per district expenditure cap.

Recommendation 58

The VEC encourages the Panel to consider the numerous legislative changes that are required in order to effectively monitor and regulate a political expenditure cap if it were to be introduced to the Electoral Act. The VEC's administration of the cap would be greatly impacted by the legislation establishing a cap, including significant investment in systems functionality.

Further, the way that the capped expenditure period is worded in the legislation would directly impact the VEC's communications and education efforts. The VEC encourages the Panel to consider the administration of political expenditure caps in other Australian jurisdictions.

If the Panel recommends the introduction of a political expenditure cap, the VEC proposes a subsequent recommendation to ensure an appropriate budget uplift for the VEC to ensure the successful implementation, operation and regulation of this requirement.

[140] NSW Electoral Funding Act s 29.
[141] Qld Electoral Act s 281C.
[142] SA Electoral Act s 130Z.
[143] *Electoral Act 2004* (NT) s 203B.
[144] ACT Electoral Act s 205F.

8. Electronic Assisted Voting

8.1. Background

Part 6A of the Electoral Act was updated prior to the 2018 State election to allow for the provision of EAV for electors who cannot otherwise vote without assistance. Section 110G of the Electoral Act allows classes of electors to be prescribed by the Electoral Regulations to access electronic assisted voting.

Currently, regulation 50 of the Electoral Regulations provides that the classes of electors who can access EAV include electors who otherwise cannot vote without assistance because of blindness or low vision, or because of motor impairment. It also includes electors who belong to a class specified in a determination under regulation 52, which allows the VEC to make a determination specifying a class of electors who are affected by an emergency declaration and may be unable to travel to a voting centre. A temporary regulation was made in 2022 expressly providing access to EAV to flood affected electors, though this regulation expired in May 2023 and related specifically to the Victorian floods in October 2022.

Regulation 51 also provides that EAV is available to electors subject to a lawful stay-at-home requirement due to COVID-19, however this is due to expire in August 2023 and did not apply at the 2022 State election because there were no stay-at-home orders in place.

At the 2018 and 2022 State elections, the VEC implemented electronic assisted voting for the prescribed classes of electors through a Telephone Assisted Voting (**TAV**) service. The service has been well received by electors who used it, with a substantial increase in the number of electors voting by this method compared to the in-person electronic voting service offered in elections prior to 2018.

The Electoral Act and Electoral Regulations currently only allow narrow classes of electors to access electronic assisted voting. The VEC notes that TAV is an effective and cost efficient voting method to provide electoral participation for vulnerable electors who may otherwise experience obstacles to participate in the democratic process. Examples of vulnerable electors include Victoria's aging population and people with a disability. The VEC notes that the definition of 'motor impairment' is not sufficiently broad enough to include other electors who also face barriers accessing voting services.

8.2. Intention

The VEC has a number of primary objectives relating to the successful delivery of elections in Victoria, which include driving election engagement, maximising voter turnout and providing accessible voting opportunities for all Victorian electors.

Section 163(3) of the Electoral Act provides a range of reasons that allow for voters to be excused from meeting their compulsory voting requirement for State elections and represent the vast majority of reasons provided to the VEC following the distribution of failure to vote notices. It is noted and stressed that the correlation between the reasons for Victorian electors not voting and the recommendations to improve access to EAV services is high.

Section 163(3) provides the following reasons for which the VEC is not required to send a notice to an elector notifying them that they have failed to vote at an election:

(3) Subsection (1) does not apply if the Commission is satisfied that an elector—

(a) is dead; or
(b) was absent from Victoria on election day; or
(c) was ineligible to vote at the election; or
(d) was issued with a ballot-paper for the purpose of voting; or
(e) was an itinerant elector, eligible overseas elector or Antarctic elector; or
(f) was notified under section 104(2); or
(g) had a valid and sufficient excuse for not voting.

While the VEC acknowledges that many of the electors identified in this chapter may be experiencing circumstances that would relegate voting to a lower priority, providing an accessible channel to those that would otherwise be potentially disenfranchised is foundational to the principles of democracy. The VEC notes that expanding the classes of electors eligible to access electronic assisted voting is in line with the Victorian Government's (including independent statutory bodies, like the VEC) ongoing obligations under section 18(2)(a) of the Charter of Human Rights, which provides that 'every eligible person has the right, and is to have the opportunity, without discrimination, to vote and be elected at periodic State and municipal elections that guarantee the free expression of the will of the electors.

With these objectives in mind and in attempting to ensure that Victorian electoral legislation best reflects adherence to the principles stated in the Charter of Human Rights, the VEC is proposing a review of the following elector classes and seeking their inclusion as eligible for access to the EAV service for future elections.

The VEC is confident that it has the capacity to deliver TAV to a broader cohort of electors, as proposed below, than are currently eligible. It is noted that the VEC initially planned to offer TAV to a significant number of COVID-19 electors at the 2022 State election that became ineligible due to the ceasing of stay-at-home orders prior to the election. The VEC considers TAV an effective, secure and accessible means of voting that could be comfortably extended to the classes of electors listed in this chapter.

8.3. Classes of electors

8.3.1. Overseas and interstate electors

For the 2022 State election, early attendance voting was available at the head office of every State and Territory electoral commission in Australia. Due to the changed security requirements for Australia's diplomatic post, no overseas in-person voting locations were able to be operated, however 27 consulate locations across 25 countries were available for overseas electors to drop off their postal votes. This required overseas voters to apply online to receive ballot material by email, print their ballot papers, complete them and post them back to the VEC.

A total of 3,360 votes were returned from interstate voting and a further 1,576 were received from overseas locations during the 2022 State election. Of the 1,576 votes cast in overseas locations, 338 (or 21.4%) were received past the cut-off date of 2 December 2022 and were therefore too late to be included in the count for the 2022 State election. Only 4% of Victorians overseas engaged with the email voting system. This continued the decline of votes received from these voting channels as seen in previous elections, as shown in Figure 2.

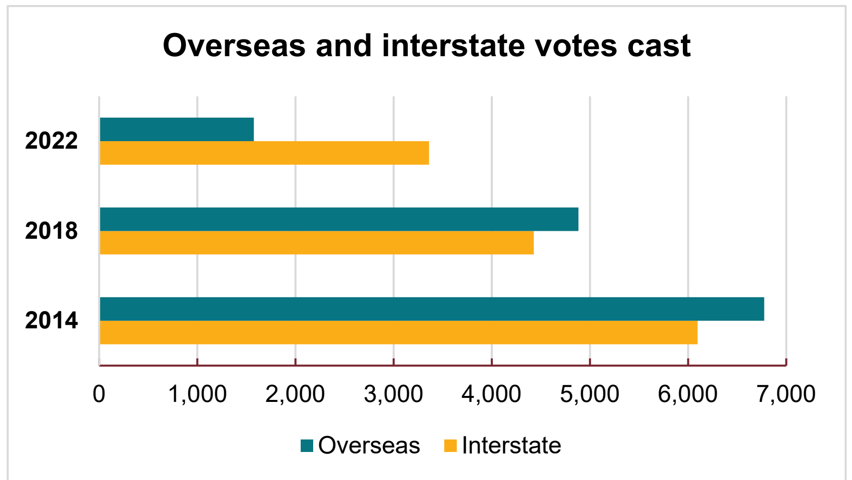

Figure 2: Overseas and interstate votes cast at the 2022, 2018 and 2014 State elections

For interstate voters, other than voting in person at the limited locations in other States and Territories, the only option available for such voters is to cast their vote by post, which has its own logistical challenges. Postal voting is also the only option available to overseas voters. The timeframe for both overseas and interstate postal voting is tight, even for those voters who receive their ballot material by email, because the Electoral Act requires them to be returned through the post. In 2022, postal votes dropped off at overseas locations were forwarded back to the VEC using the diplomatic mail service. Despite the superiority of this mail service compared with the ordinary postal network, 338 votes from overseas drop-off locations were still received too late to be included for counting, approximately 20% of all votes returned from overseas drop-off locations.

An estimated 250,000 Victorians returned to Victoria from short-term overseas trips in the month of both previous State elections. At the 2018 State election, some 5,600 Victorians applied to vote by post because they were absent from Victoria. This is a small proportion of Victorians who were overseas during the election period, and indicates that many overseas Victorians did not participate in the 2018 State election by postal voting or in-person voting at overseas locations.

Analysis of voters who failed to vote in the 2022 State election is ongoing, but early indications are that a similar volume of Victorian electors will not have voted due to being overseas or interstate on election day in 2022. The VEC's research indicates that electors travelling overseas are typically more electorally engaged and would be more likely to vote if there was an easy, accessible EAV option. Figure 3 illustrates the voting experience for Victorians overseas during the 2022 State election.

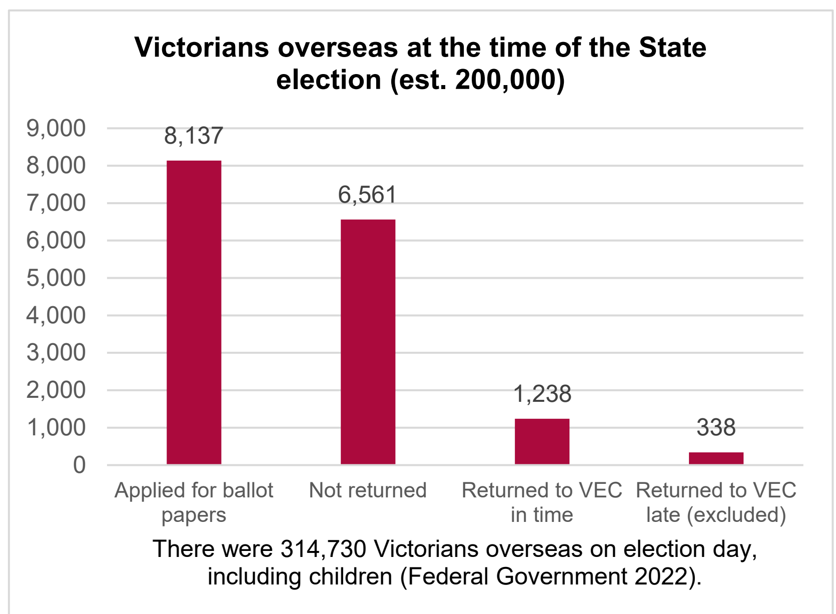

Figure 3: Breakdown of how overseas Victorians engaged with the postal vote system during the 2022 State election.

8.3.2. Australian Antarctic Territory electors

Section 3 of the Electoral Act has a specific definition for Antarctic electors, meaning *'an elector who is, in the course of the elector's employment, in Antarctica on election day'.* At the 2022 State election, 9 such electors cast votes compared with 11 in 2018.

Antarctic electors can also benefit from access to electronic assisted

voting. While internet access is very limited in the Australian Antarctic Territory, satellite phones are more accessible and would allow Antarctic electors to access the electronic assisted voting service as a more secure way of casting their vote when compared to the logistical challenges of any alternatives. The logistics and costs of facilitating in-person voting for Antarctic voters across multiple research bases for such a small number of votes is also a complex process and involves extensive planning and coordination with the Commonwealth Department of Climate Change, Energy, the Environment and Water. Allowing Antarctic electors to access TAV would provide a much more efficient process and voting experience for this small group of electors.

8.3.3. Ill or infirm electors, or those caring for someone who is ill or infirm

Although ill or infirm electors do not meet a specific requirement of a reason to have not voted, it is utilised as the most common application of section 163(3)(g) – a valid and sufficient excuse for not voting. Similarly, electors who are required to care for someone who is ill or infirm may have the same challenge in voting.

Victorians who are elderly or have long-standing medical issues may take advantage of registering for a postal vote to ensure that they can meet their compulsory voting requirement without having to vote in person either during early voting or on election day, but this is only suitable if the elector is aware of this situation prior to the close of application for a postal vote.

Should a voter fall ill, or become infirm, or require a form of medical assistance that commences after the closing date for postal applications (i.e. at 6 pm on the Wednesday immediately preceding election day), the elector has no means to access voting other than attendance voting in either the last few days of early voting or on election day. For electors who fall sick, or are hospitalised, or suffer some form of injury in these few days, voting may well prove to be impossible. The same burden can apply to those electors who are caring for someone in this circumstance.

The VEC sees extending EAV to be accessible in these scenarios as a step that would boost equitable participation in democracy and keep the Electoral Act in alignment with the principles stated in the Charter of Human Rights, which provides that ‘every eligible person has the right, and is to have the opportunity, without discrimination, to vote’.

8.3.4. Electors who are neurodivergent

A cohort of electors identified by the VEC who would also benefit from access to TAV are electors who are neurodivergent, particularly those who are hypersensitive to the types of stimuli that occur in and around in-person voting centres.

Neurodivergent is a non-medical umbrella term that describes people with variation in their mental functions, and can include conditions such as autism spectrum disorder (ASD) or other neurological or developmental conditions such as attention-deficit/hyperactivity disorder (ADHD). [145]

[145] Forbes, ‘What Does It Mean To Be Neurodivergent?’. https://www.forbes.com/health/mind/what-is-neurodivergent/

As per other recommendations within this chapter, the inclusion of this class of electors to eligibility for EAV, would improve alignment between the Electoral Act and the principles stated in the Charter of Human Rights.

8.3.5. Electors experiencing homelessness or family or domestic violence

Another cohort of electors identified by the VEC who would benefit from access to TAV are electors experiencing homelessness. Research and stakeholder feedback have consistently highlighted that this cohort faces significant barriers to safely access voting services because of limited access to transport to a voting centre on election day. Other obstacles reported for this cohort include lower literacy skills, a lack of awareness about where they can access a voting centre, and personal safety concerns. These factors may prevent electors from attending voting centres.[146]

Similarly, people experiencing family or domestic violence may face obstacles to access transport to a voting centre, or have safety concerns if they personally attend a voting centre, particularly in remote communities. These factors may deter them from voting at an election.

As per previous recommendations that refer to the principles stated in the Charter of Human Rights*,* the VEC proposes a review of this class of electors and recommends their inclusion as an eligible class with access to EAV services for future elections.

8.3.6. Electors impacted by an emergency or natural disaster situation

Under regulation 52, the VEC has the power to make a determination specifying that a class of electors is eligible to access TAV if they may be unable to travel to a voting centre to vote because of a declared emergency, for which the emergency declaration is in force. The VEC's view is that the threshold for making such a determination should be lowered to any class of electors (as determined by the VEC in consultation with the Emergency Management Commissioner) who are impacted by an emergency or disaster. This would allow TAV to be accessible by electors impacted by an emergency or disaster that has not met the high threshold of being a declared emergency.

In 2022, a temporary regulation (regulation 51A, now revoked) was required for the VEC to have the ability to offer TAV services to electors impacted by the October 2022 Victorian floods.[147] This successfully allowed nearly 500 electors in flood affected areas to access TAV and cast a vote which they may not have been able to cast otherwise. The temporary regulation was required because the flooding was not a declared emergency and therefore the VEC could not exercise its existing determination power under regulation 52.

Temporary regulation 51A required the VEC to consult with the Emergency Management Commissioner about the Victorian floods, and the effects those floods had and were anticipated to have on various places in Victoria, and was required to have regard to that consultation in considering whether to make a determination. The VEC supports a similar caveat going forward to support a lower threshold of emergency or disaster.

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[146] University of South Australia, 'An Exploration of Homelessness and Electoral Participation – A Report Prepared for the Australian Electoral Commission', 2019, p 43.
[147] For reference, the now-expired reg 51A is provided in Appendix 5 to this submission.

Recommendation 59

The VEC recommends that the eligible class of electors entitled to access electronic voting as provided in section 110G be expanded to include:

- electors located interstate or overseas at the time of an election;
- electors located in the Australian Antarctic Territory at the time of an election;
- electors who are unwell, infirm, or caring for someone who is unwell or infirm at the time of an election;
- electors who are neurodivergent, including those who are hypersensitive to the types of stimuli that occur in and around in-person voting centres; and
- electors who are experiencing homelessness, family or domestic violence at the time of an election.

The VEC also recommends that regulation 52 of the Electoral Regulations is amended to lower the threshold of 'declared emergency' to ensure it captures events such as the widespread flooding across large parts of Victoria in October 2022.

8.4. Aligning electronic voting and electronic assisted voting

The Electoral Act allows for 'electronic voting' (distinct from electronic assisted voting) to be made available in-person at voting centres in limited circumstances. The VEC historically provided this service as a device-based voting system with a range of functions to improve accessibility, however this service facilitated very low numbers of votes and was phased out in favour of TAV at the 2018 State election.

Under section 110D(2) of the Electoral Act, electronic voting is available to limited eligible classes of electors, being electors who otherwise cannot vote without assistance because of blindness or low vision, a motor impairment, or insufficient literacy skills (whether in the English language or in their primary spoken language).

The VEC notes that the introduction of EAV carried across the eligibility for electors with blindness or low vision and electors with a motor impairment, however electors with lower literacy skills were not carried across as an eligible class of electors. Given the potential for significant overlap between the 2 schemes should in-person technology eventually allow, the classes of electors eligible for electronic voting and EAV should be maintained consistently.

This means that the additional classes of eligibility electors recommended for EAV at Recommendation 59 of this submission should be carried across to electronic voting, and while not expressly pursued by the VEC for the purpose of this submission, electors with lower literacy skills would benefit from the eligibility to access EAV.

Recommendation 60

The VEC recommends that the eligible classes of electors for electronic voting under section 110D(2) of the Electoral Act and EAV under section 110G of the Electoral Act are maintained consistently with each other.

9. IBAC Special Report on corruption risks

The VEC notes that the Panel is required to consider recommendations from IBAC's Special Report on corruption risks associated with donations and lobbying (**Special Report**).

Recommendations 1 and 2 of the Special Report are relevant to the VEC's role as an administrator and regulator. The VEC provided information consistent with the responses made in this chapter to IBAC in response to draft recommendations prior to the publication of the Special Report in October 2022.

With regard to these recommendations, the VEC is conscious of its ability to sufficiently manage and enforce an expanded legislative scheme, particularly in respect to local government elections. Any legislative reform to expand the VEC's administrative and regulatory responsibility for funding and disclosure laws at the local government level will need to be carefully considered and properly resourced.

Similarly, the administrative burden on certain people and organisations required to regularly report on their funding and disclosure activities related to parliamentary elections was recognised, in part, through the creation of the AEF stream. When considering IBAC's recommendations relating to reporting obligations for local government candidates, it is necessary to acknowledge the administrative burden that would be placed on these candidates, many of whom sit at the grassroots level of Victoria's democracy and lack access to the machinery of political parties.

As IBAC's recommendations 3 and 4 are not relevant to the VEC, no response is given.

9.1. VEC response to relevant IBAC recommendations

9.1.1. IBAC recommendation 1

IBAC recommends that the government review the existing regulatory regime for political donations to improve transparency and accountability at both the state and local levels of government through legislative reforms that:

(a) promote consistent donation regulations at the local and state levels of government so that:
- *i) the specified donation declaration threshold is only indexed once at the beginning of each state and local election cycle*
- *ii) donors and candidates at the local government level are required to declare donations over $500 to a central authority, namely the Victorian Electoral Commission*
- *iii) the $4000 general cap applies to donations made by a donor at the local government level*

VEC response to recommendation 1(a)

The VEC supports recommendation (i) in relation to indexation. See also Recommendation 9 in this submission. Indexation of donation thresholds was also raised in the VEC's Report to Parliament on the 2018 State election, and noted by Parliament's Electoral Matters Committee in its report following its inquiry into the 2018 State election.

The VEC does not oppose recommendation (ii) at the State government level. Some of the same candidates stand at both State and local government elections. It would be beneficial in terms of transparency, efficiency and consistency to operate similar legislative obligations, administrative responsibilities and oversight arrangements for both jurisdictions. However, significantly greater resourcing will be required if the VEC is required to expand its functions to include donation disclosures at the local government level.

Currently, donations in relation to local government elections are managed by the LGI. LGI also has oversight on the enforcement and compliance of donation rules at the local government level. It is necessary to consider the impact on enforcement activities of the LGI if intelligence and information of disclosures at the local government level are being disclosed to the VEC, while enforcement activities are conducted by the LGI. At a minimum, appropriate information access to the VEC's database by LGI would be necessary.

There are administration costs and efficiency considerations involved if intelligence is held by one agency and enforcement activities are carried out by another agency.

(b) deter donors from attempting to split donations, and detect schemes designed to circumvent the general cap at the state and local level, using measures that include, but are not limited to, requiring that:

i) donor entities declare:
- *the entity's Australian Business Number (ABN)*
- *the entity's registered address*
- *the names and addresses of executive committee members*
- *whether any donations have been made by other associated or related entities*

ii) individual donors declare if the funds or resources being donated have been provided to the donor by a third-party for the purpose of making a donation (with reference to the Queensland provisions)

VEC response to recommendation 1(b)

The VEC supports the recommendation at the State government level. At the local government level, where there are significantly more grassroot activities and independent candidates, donation requirements on individuals should be considered carefully to ensure the ease of participation by the general public in electoral campaigning and democracy.

The VEC notes that candidates at local council elections do not receive PF to help cover the administrative costs of complying with their donation obligations, which may be significant to individuals.

(c) ensure that campaign donations and expenditure are reported in a manner that provides sufficient information to monitor compliance with donation caps at the state and local level, including, but not limited to, requiring that:

i) all candidates register details of their dedicated campaign bank accounts with the Victorian Electoral Commission, and/or submit relevant statements for those accounts to the Victorian Electoral Commission as part of their annual returns (with reference to the Queensland provisions)

ii) all candidates submit a statement of campaign expenditure after an election, to be accompanied by an audit certificate, consistent with the expenditure declaration requirements for parties

VEC response to recommendation 1(c)

The VEC supports the recommendation at the State government level. At the local government level where there are significantly more grassroot activities and independent candidates, donation requirements on individuals should be considered carefully to ensure the ease of participation by the general public in electoral campaigning and democracy.

The VEC notes that at the local government level, donation recipients and donors do not receive PF to help cover the administrative costs of complying with their donation obligations, which may be significant to individuals.

(d) deter donors and candidates from attempting to use third-party campaigners to circumvent the declaration requirements and donation cap at the state and local level, using measures that include, but are not limited to:

i) requiring the registration of third-party campaigners

ii) requiring publication of the register of third-party campaigners

iii) limiting the number of third-party campaigners to whom a person can donate to three, to mitigate the risk of the general donation cap being circumvented (with reference to the NSW approach)

VEC response to recommendation 1(d)

The VEC supports recommendations (i) and (ii) at the State government level and notes recommendation (iii). See Recommendation 43 in this submission. The VEC also notes that at the local government level, it may be challenging to identify TPCs.

(e) ***provide a disclosure scheme that more closely resembles 'real-time' reporting for state and local donors and candidates (with reference to the Queensland approach)***

VEC response to recommendation 1(e)

The VEC does not oppose the recommendation at the State government level, though greater resourcing would be required to facilitate real-time publication and reconciliation of donation disclosures. The VEC notes that in Queensland, the timeframe for disclosing donations shortens during the election period.

(f) ensure appropriate measures are in place to facilitate effective monitoring at the state and local level, including, but not limited to, requiring that:

i) local government candidates make a declaration within an appropriate period:

- *after nomination in relation to donations received prior to nomination*
- *after an election if no donations are received by a candidate*

ii) donors to local government candidates make a declaration that indicates:

- *the industry they work in if the donor is an individual, or the type of business the corporation carries on if the donor is a company*
- *any interest they have in a local government matter that is greater than that of other persons in the local government area, as well as the nature of their interest (with reference to the Queensland approach)*

VEC response to recommendation 1(f)

The VEC does not oppose the recommendation at the State government level. At the local government level where there are significantly more grassroot activities and independent candidates, donation requirements on individuals should be considered carefully to ensure the ease of participation by the general public in electoral campaigning and democracy. The VEC notes that at the local government level, donation recipients and donors do not receive PF to help cover the administrative costs of complying with their donation obligations, which may be significant to individuals.

(g) deter donors and candidates from attempting to use 'fundraising' events to circumvent the declaration requirements and donation cap at the state and local level, using measures that include, but are not limited to:

i) capping the amount that can be charged to enter a relevant event

ii) expressly stating that the entry fee to attend a fundraising event constitutes a political donation (with reference to the NSW approach)

iii) requiring that registered parties:

- *publish information about the fundraising event in real time, including details of:*
  - *the candidates and/or party for whom funds are being raised*
  - *ministers, members of parliament or their staff who are promoted as attending the event*
  - *funds raised as a result of the event*
- *submit an audited return to the Victorian Electoral Commission for each event that includes details of:*
  - *expenses incurred in relation to the event*
  - *items donated to raise funds though raffles and the like, their market value and who donated those items*
  - *tickets purchased, including details of each individual who purchased a ticket and how many tickets were purchased*
  - *funds raised as a result of the event*

iv) requiring that all payments and expenses relating to a fundraising event be transacted through a dedicated campaign account that has been registered with the Victorian Electoral Commission.

VEC response to recommendation 1(g)

The VEC supports recommendations (i) and (ii). See Recommendation 1 in this submission.

The VEC supports recommendations (iii) and (iv) in principle. Significant additional resources would be required in an election year to analyse such events.

9.1.2. IBAC Recommendation 2

IBAC recommends that the Department of Premier and Cabinet, together with the Department for Jobs, Precincts and Regions, examine and make recommendations that identify:

(a) a best practice model for campaign expenditure at the state and local levels of government, including:

i) expenditure declaration requirements that provide sufficient transparency and accountability

ii) expenditure caps that can be applied in a way that helps to address the corruption risks that result from:

- *pressure to raise funds*
- *avoidance of donation caps and disclosure thresholds by providing in-kind support that is not declared.*

VEC response to recommendation 2(a)
The VEC notes the recommendation to implement a political expenditure cap. See *Chapter 7. Political Expenditure Cap* in this submission.

(b) a best practice model for monitoring and enforcement of donations at the state and local levels of government, including:

i) the structural arrangements, namely which agency or agencies would be responsible for investigating breaches and the resources required

ii) the mechanisms required to monitor compliance effectively, such as more detailed audit reporting and/or requirements to produce documents or information

iii) options for public reporting of breaches to deter improper conduct, and educate donors and candidates

iv) whether a broader range of penalties (including fines) would increase the effectiveness of penalties as a deterrent and facilitate timely enforcement

VEC response to recommendation 2(b)

The VEC notes that significant additional resources would be required if the VEC expanded its functions to include donations at the local government level.

The VEC notes that, at the local government level, candidates do not receive PF to cover the costs of administrating their disclosure obligations. Donation requirements on individuals should be considered carefully to ensure the ease of participation by the general public in electoral campaigning and democracy.

The VEC supports the public reporting of breaches as an effective deterrent measure and notes this would require significant legislative protection for the agency responsible for publishing the information. If the responsibility was to sit with the VEC, it needs to be balanced with the VEC's strong commitment to electoral integrity. This includes maintaining and protecting its independence and impartiality as critical factors to its successful delivery of electoral events. During the 2022 State election the VEC was the subject of significant media commentary in respect to its referral of a funding and disclosure-related matter to another enforcement agency.[148] Any specific public reporting responsibility placed on the VEC in this regard would need to have a strong foundation in law to reinforce the VEC's independence and ensure the public do not confuse the VEC's publication responsibility with political favour.

The VEC supports the recommendation to introduce the ability to issue penalty notices for minor breaches of the scheme to improve the effectiveness of penalties as a deterrent and administrative efficiency of the scheme. See Recommendation 25 in this submission.

(c) a best practice model to deter donors and candidates from attempting to make in-kind contributions to circumvent the declaration requirements and donation caps at the state and local levels of government, after:

- *i) reviewing donation returns that involve in-kind contributions from the 2020 local government elections and 2022 Victorian state election to assess compliance with existing requirements*
- *ii) assessing how training can be improved to ensure awareness of obligations*
- *iii) assessing the adequacy of existing penalties and how they apply to in-kind contributions that are not declared*

VEC response to recommendation 2(c)

The VEC notes that 'in-kind' contributions should be clearly defined and consistent across local and State levels of government. See Recommendation 3 in this submission.

The VEC notes that clear structural arrangements should be in place that set out responsibilities in order to provide improved training.

[148] See also the VEC's media release from 18 November 2022 responding to media commentary, 'Regulation is part of the VEC's job'. https://www.vec.vic.gov.au/about-us/media/regulation-is-part-of-the-vecs-job

(d) steps that can be taken to ensure donations from political parties and associated entities registered in other jurisdictions that are received by political parties registered in Victoria comply with the Electoral Act 2002.

VEC response to recommendation 2(d)
The VEC notes the recommendation.

Appendix 1 – Summary of recommendations

Rec.	Description	Page
1	The VEC recommends that the definition of ***gift*** in section 206(1) of the Electoral Act is amended to include an amount paid as a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fundraising venture or function (being an amount that forms part of the gross proceeds of the venture or function), in alignment with section 5(2) of the NSW Electoral Funding Act.	2
2	The VEC recommends that paragraphs (g) and (h) of the definition of ***gift*** in section 206(1) of the Electoral Act are amended to specify that a gift does not include an annual subscription paid to an RPP by a person in respect of the person's membership of the RPP or an annual affiliation fee paid to an RPP by an AE, if the subscription or affiliation fee is below a certain amount determined by the Panel as an appropriate threshold for a party membership or affiliation fee, and that any amount paid which exceeds that threshold is a gift.	3
3	The VEC recommends that paragraph (k) of the definition of ***gift*** in section 206(1) of the Electoral Act is clarified to specify that volunteer labour does <u>not</u> include the provision of: • any professional service; or • any other labour that would otherwise be recognised as electoral or political expenditure if the cost was incurred by the recipient.	4
4	The VEC recommends that the definition of 'political donation' in section 206(1) of the Electoral Act is amended to expressly include a contribution from a candidate at an election or an elected member to their own election campaign. The VEC recommends that a provision is inserted into section 207F of the Electoral Act to provide that for the purposes of subsection (8), a debt includes any amount remaining in the SCA which was received as a loan from a candidate at an election or an elected member to their own election campaign. The VEC also recommends that a new subsection (5A) is inserted into section 217D of the Electoral Act to provide that if a candidate or elected member is endorsed by an RPP, subsection (5) only applies in relation to donations by the candidate or elected member to the RPP which has endorsed them.	6

<table>
<tr><th>Rec.</th><th>Description</th><th>Page</th></tr>
<tr><td>5</td><td>The VEC recommends that the definition of ‘uncharged interest’ be inserted into section 206(1) to provide that:

Uncharged interest means a gift to a person or entity that is paid through a loan that is the additional amount, calculated on an annual basis, that would have been payable by a person or entity if—

(a) the loan had been made on terms requiring the payment of interest at the prevailing interest rate prescribed by the regulations for a loan of that kind; or
(b) the interest on the loan had not been waived; or
(c) the interest payments had not been capitalised.

The VEC recommends that the Electoral Act be amended by inserting a new section 206(1AA) to provide that the ‘prevailing interest rate’ may be prescribed in the regulations. The Electoral Regulations may prescribe the ‘prevailing interest rate’ as the annual rate fixed by Division 7A of Part III of the Income Tax Assessment Act 1936 (Cth).</td><td>7</td></tr>
</table>

Rec.	Description	Page
6	The VEC encourages the Panel to consider whether the current treatment of loans in the Electoral Act aligns with the intention of requiring the disclosure of political donations. The VEC recommends that section 206(1) be amended to include a definition of ***reportable loan***, meaning a loan that, if it had been a gift, would be a reportable political donation that is required to be disclosed under Part 12 of the Electoral Act. Given a reportable loan effectively acts as a political donation, the ordinary preclusions in relation to prohibited political donations should apply. The VEC recommends that section 216 be amended to include a requirement to disclose loans. The requirement may provide that a reportable loan that is equal to or exceeds the disclosure threshold must be reported within 21 days of the making of the loan. The VEC recommends that section 216 be amended to require loans made over the disclosure threshold to be disclosed and specify that a donor must provide a disclosure return for a loan granted to an RPP, candidate, group, elected member, NE, AE or TPC during the financial year that is equal to or exceeds the disclosure threshold and must include the following details: (e) the amount of the loan; (f) the name and address of the entity or person making the loan; (g) the term, interest rate and repayment schedule terms of the loan; (h) the total loan repayments made under the loan during the relevant disclosure threshold. The VEC recommends that Division 3A of Part 12 be amended to include a requirement that a loan cannot be accepted unless the details of the loan are recorded by the recipient. The requirement should provide that it is unlawful for an RPP, a candidate at an election, a group, an elected member, an NE, an AE or a TPC to accept a loan equal to or above the value of $1000 from a donor, unless when the loan is made, the recipient makes a record of the following— (c) The terms and conditions of the loan (d) The name and address of the entity or other person making the loan. The VEC recommends that a financial year annual return provided under Division 3C of Part 12 should include the details of any new, active and closed loans from within the reporting period.	9

Rec.	Description	Page
7	The VEC recommends that a reasonable cap on political donations made in cash be considered by the Panel. It is recommended that a new section is inserted into Division 3A of Part 12 of the Electoral Act following section 217A to provide that it is unlawful for a donor to make a political donation, or for an RPP, a candidate at an election, a group, an elected member, an NE, an AE or a TPC to accept a political donation from a donor if the political donation was— (a) made in cash; and (b) in excess of a value determined by the Panel as an appropriate cap on cash donations. An appropriate cap on cash donations could align with the small contribution amount for simplicity of the scheme. To monitor this requirement, the VEC recommends that the form in which a donation was made is required to be disclosed in the disclosure return.	11
8	The VEC recommends that new subsections are inserted into section 217A to provide that it is unlawful for a donor to make a political donation, or for an RPP, a candidate at an election, a group, an elected member, an NE, an AE or a TPC to accept a political donation from a donor if the political donation was— (a) made in cryptocurrency; and/or (b) made in a currency other than Australian dollars.	12

<table>
<tr><th>Rec.</th><th>Description</th><th>Page</th></tr>
<tr><td>9</td><td>The VEC recommends the Panel consider whether the annual indexation of the general cap, disclosure threshold and small contribution amount align with Parliament's intention in accounting for inflation within the political donations disclosure scheme.

The VEC recommends that the indexation requirement with respect to the small contribution amount be removed from the Electoral Act. The VEC also recommends that the annual indexation requirement of the general cap and disclosure threshold be removed.

If indexation is retained for the general cap and disclosure threshold, the VEC recommends that the donation disclosure threshold and general cap is adjusted for indexation every election period rather than annually. The VEC recommends that a new subsection is added following section 217Q(1) to provide that:

An amount in dollars in column 2 of an item in the Table to this subsection must be varied at the beginning of each election period in accordance with the formula specified in subsection (1).

<table><tr><th colspan="2">TABLE</th></tr><tr><td>Column 1

Item</td><td>Column 2

Amount</td></tr><tr><td>1</td><td>Section 206(1), definition of general cap-$4000</td></tr><tr><td>2</td><td>Section 216(1)-$1000</td></tr></table></td><td>14</td></tr>
</table>

Rec.	Description	Page
10	The VEC recommends that section 216(4) of the Electoral Act is amended to provide that if— (d) an RPP or a candidate at an election, a group, an elected member, an NE, an AE or a TPC receives political donations during a financial year; and (e) the political donations are made from the same donor; and (f) the sum of the political donations made by the donor to that RPP, candidate, group, elected member, NE, AE or TPC is equal to or exceeds the disclosure threshold— the registered officer of the RPP, or the registered agent of the candidate, group, elected member, NE, AE or TPC, as the case requires, must provide to the VEC a disclosure return for the political donation; and That a new subsection is inserted into the Electoral Act following section 216(4) to provide that a disclosure return required by subsection (4) for a political donation received by a RPP, candidate, group, elected member, NE, AE or TPC during a financial year from a donor must be provided as follows— (c) within 21 days of receiving the first political donation during the financial year that has the result that the sum of the political donations received by the RPP, candidate, group, elected member, NE, AE or TPC during that financial year from that donor is equal to or exceeds the disclosure threshold; within 21 days of receiving each subsequent donation to the RPP, candidate, group, elected member, NE, AE or TPC from that donor during the financial year.	16
11	For the purposes of section 216 of the Electoral Act, the VEC recommends that the date on which a donation is made by the donor and received by the donation recipient is prescribed to be the date on which the donation is debited from the donor.	18

Rec.	Description	Page
12	The VEC recommends that a provision be inserted into Division 3 of Part 12 of the Electoral Act to provide that if a donation is made through an intermediary, that the recipient needs to ensure the donor receives a receipt specifying: (a) the donation amount; (b) any fees charged by the intermediary; and (c) notification of the donor's obligations (as discussed further in *6.1.2. Recipients notifying donors of obligations*). The VEC recommends that a definition of ***intermediary*** be inserted into section 206(1) of the Electoral Act, to mean a person or entity who accepts a gift or loan from the source of the gift or loan for the purposes of making the gift or loan to the ultimate recipient.	18
13	The VEC encourages the Panel to consider whether legislative change could be made to expressly boost compliance with the record-keeping requirements outlined in section 220.	19
14	The VEC recommends that a provision be inserted into Part 12 of the Electoral Act to provide that a person or entity only makes or receives a gift or loan if they are the source or ultimate recipient of the gift or loan respectively, in the manner of section 205A of the Queensland Electoral Act.	21
15	That paragraph (d) of the definition of ***gift*** in section 206(1) of the Electoral Act is amended to provide that a gift includes the disposition of property from an RPP, a branch of an RPP or an AE, including but not limited to— (i) a disposition of property to a Victorian branch of an RPP from the federal branch of the party; (ii) a disposition of property to a Victorian branch of an RPP from another State or Territory branch of the party; (iii) a disposition of property from a party to another party.	21

Rec.	Description	Page
16	The VEC encourages the Panel to consider alternative outcomes for where an RPP or independent elected member fails to submit an AEF annual return in the required period. For example, the VEC could have discretionary powers to grant an extension under limited circumstances (similar to NSWEC and ECQ) and/or the amount of claimable expenditure specified in the return could be reduced by an increment for each day after the due date on which the AEF annual return is not submitted to the VEC, until a final date at which the return is to be taken as not submitted and therefore activating the listed consequences. Namely, the relevant offence provision would apply and the recipient is taken to have incurred no claimable expenditure so any amounts paid must be recovered by the VEC. This would provide an effective and proportionate consequence for late submission and reduce the risk of significant debts and difficulty recovering public money.	23
17	The VEC recommends that the Panel consider reducing the proportion of a recipient's PF entitlement that is payable in instalments in relation to the next election. The VEC also recommends that the Panel consider reducing the timeframe in which instalment payments are payable to a shorter period that begins closer to the general election.	24
18	The VEC recommends that section 212A(3) of the Electoral Act is amended as follows: (2) Any amount paid to an eligible RPP or an eligible independent candidate under subsection (2) in relation to a general election must be deducted from the amount payable to the eligible RPP or the eligible independent candidate under section 212(3) or (4).	25
19	The VEC recommends that the definitions of 'political expenditure' and 'electoral expenditure' in section 206(1) of the Electoral Act be amended to mean expenditure as determined from time to time by the VEC in accordance with their respective existing definitions.	26
20	The VEC recommends that section 207GC(1)(b) of the Electoral Act be amended to provide that an AEF annual return must specify the amount of claimable expenditure incurred in relation to the calendar year, including in relation to the submission of the AEF annual return.	27

<table>
<tr><th>Rec.</th><th>Description</th><th>Page</th></tr>
<tr><td>21</td><td>The VEC recommends that legislative amendments are made to Divisions 1C and 2 of Part 12 of the Electoral Act to provide for the reimbursement of audit expenses incurred under section 209 in relation to the submission of a statement of expenditure under section 208. If such an amendment was adopted, the VEC recommends that section 207G is amended to the effect that audit expenses in relation to a statement of expenditure are not claimable expenditure for the purposes of AEF.

If legislative amendments are not made to provide for the reimbursement of audit expenses for all PF recipients, the VEC recommends that the definition of ‘claimable expenditure’ under section 207G is amended to clarify whether it includes an elected member’s claims for payment under the Electoral Act if the claim is made in their capacity as a candidate in an election.</td><td>28</td></tr>
<tr><td>22</td><td>The VEC recommends that provisions be introduced into Divisions 1C, 2 and 2A of Part 12 of the Electoral Act to specify that:
capital assets above an appropriate value purchased using public money are disclosed in the year of their purchase;
where a capital asset has been purchased outright, the expenditure will only be treated as claimable to the extent that it is referable to the period during which the asset is used for the purposes of the funding;
the VEC has an express power to recover asset-related expenditure that has ceased to be claimable by reason that the asset is no longer being used for the purposes of the funding;
the VEC can make determinations in relation to the economic life of a capital asset for the purposes of calculating the period over which different types of assets is amortised.</td><td>29</td></tr>
</table>

Rec.	Description	Page
23	The VEC recommends that the Panel consider whether electoral and political expenditure in relation to a failed election should be reimbursable through PF. From the VEC's perspective, it is not conducive to equitable participation in democracy for candidates in a failed election to experience adverse personal impacts that could prevent them from nominating at the supplementary election. It is also not conducive to equitable participation that this would be likely to have a more significant negative impact on independent candidates than RPPs. A possible amendment to address this matter could be to introduce a maximum fixed entitlement payable to candidates in failed elections who have incurred political or electoral expenditure and submitted an audited statement of expenditure. Any amount payable should be the lesser of the fixed entitlement or incurred expenditure. This would reimburse at least some of the costs for running at the election while overcoming the problem of votes not having been counted. While this would not enable proportionate entitlements based on candidates' perceived legitimacy, the Panel may wish to consider such an amendment and whether it would lead to a more suitable outcome than the current legislation. The VEC acknowledges that this proposition does not cleanly align with Parliament's intention in providing proportional PF, and encourages the Panel to consider whether there are other legislative solutions that could address this matter despite the above limitations.	31
24	The VEC recommends that, subject to any amendments made to address the lack of PF for failed elections, section 212A of the Electoral Act be amended to extend every reference to ‘the immediately preceding general election’ to include a supplementary election, if the supplementary election was held because of a failed election at the immediately preceding general election. The VEC notes that some candidates in a supplementary election may have unsuccessfully contested a different electorate at the general election. It is therefore possible that a candidate could have a PF entitlement for a general election and supplementary election. It is recommended that any amendment to address the legislative gap outlined in this section should account for this possibility by limiting the entitlement for advance PF to only one PF entitlement from either the preceding general or supplementary election.	32

Rec.	Description	Page
25	The VEC recommends that the VEC or its compliance officers should have the power to issue infringement notices, cautions, official warnings and enforceable undertakings in relation to breaches of the offence in section 218A(1), i.e. for failure to provide an annual return or disclosure return within the given timeframe. The VEC also recommends that the issuing and payment of an infringement notice for an offence under section 212A(1) should not absolve the requirement to also provide the annual return or disclosure return as soon as practicable.	34
26	The VEC recommends that all sections of Part 12 of the Electoral Act that have compliance obligations for donors, recipients or other entities should be aligned with enforcement powers and offence provisions to allow for requirements to be enforced by the VEC. The VEC encourages the Panel to consider whether any new offences relating to existing compliance requirements could be enforced through an infringement notice issued by the VEC, in alignment with Recommendation 25.	35
27	The VEC recommends that the statute of limitations for offences committed under Part 12 be increased from 3 years to a longer timeframe.	36
28	The VEC recommends that: • the offence provisions in Part 12 be revised to refer to the maximum terms of imprisonment and/or maximum fine set out in section 109 of the Sentencing Act; and • the offence provisions in section 218B(1) expressly provide that the offence is an indictable offence.	38

Rec.	Description	Page
29	The VEC encourages the Panel to consider changing the information acquisition powers in the Electoral Act to grant the VEC more ability to gain the information it requires to ensure transparency and compliance with Part 12. Making the following changes would balance accountability, transparency and administrative flexibility as the VEC would be able to better investigate possible contraventions of Part 12. The VEC recommends that sections 222B(1) and (2) be amended to allow a compliance officer to require 'reasonable assistance' in issuing a coercive notice to a person. A paragraph should be added to both subsections allowing for a compliance officer to require a person to give all reasonable assistance in connection with an examination or investigation. The VEC recommends allowing a person being issued a coercive notice requiring the production of information to refuse to comply with the notice on the grounds of the information being protected by a privilege under Part 3.10 of the *Evidence Act 2008* (Vic).	39
30	The VEC recommends that a subsection is inserted into section 222B of the Electoral Act to specify that a notice issued by a compliance officer under this section must be in the form prescribed by the regulations. The VEC then recommends that a prescribed form for a notice issued under section 222B of the Electoral Act is provided in the Electoral Regulations. A sample prescribed form is provided in Appendix 2 to this submission.	40
31	The VEC recommends that the Panel consider an audit requirement for financial year annual returns by candidates, groups, and elected members if the candidate, group or elected member receives funding from the VEC. The VEC also recommends that where an audit certificate is required to be provided, the certificate must be provided in a form determined by the VEC.	41
32	The VEC recommends that the acceptance of an audit certificate with a qualified opinion is expressly provided for in the legislation. The VEC also recommends that, where a qualified opinion is provided by an auditor, the legislation provides an express power for the VEC to request additional information from the auditor and the entity being audited.	42

Rec.	Description	Page
33	The VEC recommends that sections 207GD(2) and 209(2) of the Electoral Act be amended to provide that an independent auditor must state to the VEC that a statement of expenditure or annual return has been audited in accordance with Australian Auditing Standards as specified in section 336(1) of the Corporations Act or another recognised auditing standard. Alternatively, if the intention of sections 207GD(2) and 209(2) was for the auditor to confirm that the statement of expenditure or annual return had been compiled in accordance with the Australian Accounting Standards, rather than having been audited, the VEC recommends that the provision be amended to better clarify this intention.	43
34	The VEC recommends that the audit requirements in section 209(2) of the Electoral Act be limited to relate only to statements of expenditure given under section 208, and that audit requirements for financial year annual returns given under sections 217I, 217J, 217K and 217L be inserted into Division 3C of Part 12 of the Electoral Act.	43
35	The VEC recommends that the term 'independent auditor' in Part 12 is replaced in all instances by the term 'registered company auditor'.	44
36	The VEC recommends that its information-gathering powers under sections 207GE, 210 and 215C of the Electoral Act are amended to allow the VEC to request information it considers necessary to ensure the material accuracy and completeness of a return, statement or certificate provided under the relevant division. The VEC recommends that its information-gathering powers are aided by the capability to inquire about issues and trends within returns, statements and certificates without a material non-compliance issue being identified. The VEC also recommends that an equivalent information gathering power of the VEC be established under Division 3C of Part 12 of the Electoral Act in relation to a financial year annual return submitted under that division.	45
37	The VEC recommends that a new provision is inserted into Division 1A of Part 12 of the Electoral Act allowing for registered agents to appoint deputy registered agents similar to the process for deputy registered officers of RPPs under section 44(2) of the Electoral Act.	47
38	The VEC seeks a clarifying provision setting out when a person or entity ceases to have an agent under the Electoral Act. The VEC also suggests an amendment to section 207E(2) allowing for the VEC to remove the name and address of a person from the Register of Agents when the person or entity who appointed the agent ceases to have an agent under the Electoral Act.	47

Rec.	Description	Page
39	The VEC encourages the Panel to consider whether it is desirable for default agents to be prevented from performing their own obligations due to the appointment of a registered agent. If this is desirable, the VEC seeks legislative clarity that this is the case so that the remit of registered agents can be appropriately limited and administered in practice. If it is not, the VEC recommends that a provision be inserted into Division 1A of Part 12 of the Electoral Act to provide that despite the appointment of a registered agent under section 207B or 207C, the default agent of a person or entity may discharge any of the powers or functions of a registered agent under Part 12. The VEC also recommends that section 208(2) be amended to provide that the registered agent of an independent candidate must submit the statement of expenditure. If the above proposed amendments are made to Division 1A of Part 12, the effect of any amendment to section 208(2) should be that either the registered agent or the independent candidate themselves could be the person who submits the statement of expenditure.	48
40	The VEC recommends that a provision is inserted into Division 1 of Part 12 of the Electoral Act to provide that an RPP, NE, AE, TPC, candidate, group or elected member that ceases to be classed as such is considered to be an RPP, NE, AE, TPC, candidate, group or elected member respectively until such time as any obligations under sections 207GC, 207GF, 212A(4)(b), 207F, 216 and/or Division 3C of Part 12 have been properly acquitted. The VEC further recommends that a provision is inserted into Division 1 of Part 12 of the Electoral Act to provide that the registered officer or agent of an RPP, NE, AE, TPC, candidate, group or elected member that ceases to be classed as such, within 16 weeks of cessation: • must provide all outstanding disclosure returns within the ordinary 21-day period; • must submit an annual return or a part-year return (if the reporting year has not ended at the time of cessation) under Division 1C and/or 3C of Part 12; • may submit a statement of expenditure under section 208 or 215A(4) to the VEC; • must repay any overpayment of AEF under section 207GF and/or PF under section 212A(4)(b), where applicable; and • must acquit any other residual obligations. It is recommended that the proposed 16-week period applies regardless of the ordinary timeframe in which a person or entity would ordinarily be required to.	50

Rec.	Description	Page
41	The VEC recommends that a provision is inserted into Division 1B of Part 12 of the Electoral Act to provide that when an RPP, NE, AE, TPC, candidate, group or elected member ceases to be classed as such, they must appoint a person to acquit any remaining or future obligations under Part 12.	51
42	The VEC recommends that provisions are inserted into subsection (8) of section 207F of the Electoral Act to require that after debts have been paid, any amount remaining in a SCA of an RPP that is de-registered under Part 4, or an NE, AE or TPC that is no longer such an entity, is to be paid to a charity nominated by the registered officer or agent of the entity (or the person nominated to acquit its obligations, if applicable). If implemented, there may be circumstances where an RPP would need to be exempted from surrendering its remaining funds, such as when an RPP is de-registered and begins operating as a TPC.	51
43	The VEC recommends that new subdivisions be inserted into Division 4A of Part 12 of the Electoral Act to establish a 'Register of Associated Entities' and 'Register of Third Party Campaigners', respectively, and that AEs and TPCs be required to register with the VEC in order to incur political or electoral expenditure, accept political donations or, for AEs, pay affiliation fees to an RPP. This would allow the VEC to have effective oversight of compliance by AEs and TPCs with disclosure requirements and would provide better clarity for when those requirements begin and cease to apply.	53
44	The VEC encourages the Panel to consider the purpose of an SCA, and whether it should be permissible for the account to be used for non-electoral purposes. In particular, the VEC encourages the Panel to consider whether the purpose of an SCA as indicated by the Explanatory Memorandum of separating political donations from the funds used for the non-political campaigns of TPCs is currently met. If non-electoral uses of the SCA are not undesirable, the VEC encourages the Panel to consider whether any restrictions can be placed on the usage of the SCA to better reflect its express purpose under section 207F(1). These may include requiring that only political donations and payments received by recipients from the VEC can be paid into SCAs, and that only electoral expenditure or political expenditure can be paid out of SCAs.	54

Rec.	Description	Page
45	In order to effectively administer the political funding and donations scheme and monitor compliance, the VEC seeks legislative clarity around whether political expenditure must be paid directly from the SCA at the time of the transaction, or whether the SCA can be used to reimburse political expenditure paid directly from other sources. The VEC recommends that if an SCA may be used to reimburse political expenditure paid directly from other sources, robust record-keeping requirements also be put in place to ensure that the use of the funds can be clearly identified.	54
46	The VEC recommends that section 207F(1) of the Electoral Act be amended to provide that the registered officer of a RPP and the registered agent of a candidate at an election, group, elected member, NE, AE or TPC must keep a SCA consisting of a separate account with an authorised deposit-taking institution for the purpose of Victorian State elections, unique from the SCA of any other RPP, candidate at an election (unless they are endorsed by the same RPP), group, elected member, NE, AE or TPC. A 'separate account' may include sub-accounts. The VEC recommends that that account must be registered with the VEC, and any changes reported within 30 days.	56
47	The VEC recommends that a subsection is inserted into section 221 of the Electoral Act following subsection (1) to provide that if information in a published donation return or financial year annual return becomes confidential information under section 221A, the VEC must, as soon as practicable, amend the donation return or financial year annual return to remove the confidential information.	57
48	To ensure silent donors are protected and do not have their name, suburb and state published on the VEC website, the VEC recommends an amendment to section 216(5) of the Electoral Act to include date of birth in the list of details that must be provided in a disclosure return by donors who are natural persons	57

Rec.	Description	Page
49	The VEC recommends that the reporting period for financial year annual returns is changed to a calendar year. The VEC recommends that all required annual returns, audit certificates and other supporting material should be required to be submitted within 16 weeks of the end of each calendar year, with publication of applicable annual returns by the VEC due by 31 August each year. The VEC also recommends that the same deadline apply for funding applications after State elections. If the reporting periods for financial year annual returns are not changed to calendar years and remain fixed to financial years, the VEC recommends that section 217P of the Electoral Act is amended to allow 8 months for publication from the end of the relevant financial year.	59
50	The VEC recommends that for each and every donation, the recipient be required to: (4) outline the recipient and donor's respective obligations as part of the process of soliciting donations; and (5) notify donors individually and in writing of the need to disclose the donation when the donation is made; and (6) identify and advise donors of the individual donation amount and any aggregated amounts from the donor within the relevant financial year and election period. Examples of acquitting the disclosure obligations could be: • including as part of any advertising collateral; • including in any terms and conditions that may be listed on recipient websites or social media; • appending written notice to a receipt provided by the recipient to the donor; or • providing information on accessing VEC Disclosures via a link or QR code. A proposed format for a receipt to be issued by a donation recipient to a donor is provided in Appendix 4 to this submission. The VEC also recommends that the Electoral Act be amended to require donation recipients to provide to the VEC a copy of the receipt issued to the donor, in a form determined by the VEC.	61
51	The VEC recommends that the Panel considers opportunities to clarify any distinction, ambiguity and overlap between the terms 'electoral expenditure' and 'political expenditure' in Part 12 of the Electoral Act and how they apply to various reporting entities.	64

Rec.	Description	Page
52	The VEC recommends that an obligation be placed on donors and recipients to specify if the donation given or received is: • for State or Commonwealth purposes; and • to be used for political expenditure.	65
53	The VEC recommends that a legislative amendment be introduced to specify whether expenditure, as used in Part 12 of the Electoral Act, is a GST inclusive or exclusive item and whether entitlement to input tax credits would have an impact on a recipient's funding entitlement.	66
54	The VEC recommends that the Electoral Act make explicit the extraterritorial application of the powers and functions of the VEC and its compliance officers, as well as the reporting obligations of electoral participants.	66
55	The VEC recommends the Electoral Act is amended to clearly define the elements of the offence in section 218B, including what is a 'scheme'.	67
56	The VEC recommends that an AEF annual return under Division 1C of Part 12 is renamed throughout Part 12 of the Electoral Act as an 'AEF statement of expenditure'. This aligns with the similarity that an AEF annual return under Division 1C of Part 12 has with a statement of expenditure in relation to PF under section 208 of the Electoral Act.	68
57	The VEC recommends that the term 'election' as it appears in section 212A(7) of the Electoral Act is substituted by 'choice' or a word with a similar meaning.	69
58	The VEC encourages the Panel to consider the numerous legislative changes that are required in order to effectively monitor and regulate a political expenditure cap if it were to be introduced to the Electoral Act. The VEC's administration of the cap would be greatly impacted by the legislation establishing a cap, including significant investment in systems functionality. Further, the way that the capped expenditure period is worded in the legislation would directly impact the VEC's communications and education efforts. The VEC encourages the Panel to consider the administration of political expenditure caps in other Australian jurisdictions. If the Panel recommends the introduction of a political expenditure cap, the VEC proposes a subsequent recommendation to ensure an appropriate budget uplift for the VEC to ensure the successful implementation, operation and regulation of this requirement.	74

<table>
<tr><th>Rec.</th><th>Description</th><th>Page</th></tr>
<tr><td>59</td><td>The VEC recommends that the eligible class of electors entitled to access electronic voting as provided in section 110G be expanded to include:

• electors located interstate or overseas at the time of an election;
• electors located in the Australian Antarctic Territory at the time of an election;
• electors who are unwell, infirm, or caring for someone who is unwell or infirm at the time of an election;
• electors who are neurodivergent, including those who are hypersensitive to the types of stimuli that occur in and around in-person voting centres; and
• electors who are experiencing homelessness, family or domestic violence at the time of an election.

The VEC also recommends that regulation 52 of the Electoral Regulations is amended to lower the threshold of ‘declared emergency’ to ensure it captures events such as the widespread flooding across large parts of Victoria in October 2022.</td><td>80</td></tr>
<tr><td>60</td><td>The VEC recommends that the eligible classes of electors for electronic voting under section 110D(2) of the Electoral Act and EAV under section 110G of the Electoral Act are maintained consistently with each other.</td><td>80</td></tr>
</table>

Appendix 2 – Proposed prescribed form of coercive notice

Note that this proposed prescribed form incorporates a power for compliance officers to request reasonable assistance, and an ability for recipients of a coercive notice to reasonably refuse to comply if the information is protected by a privilege in accordance with Part 3.10 of the *Evidence Act 2008* (Vic), as recommended by the VEC in Recommendation 29 of this submission.

WRITTEN NOTICE PURSUANT TO
SECTION [222B(1)/222B(2)] OF THE *ELECTORAL ACT 2002*

Issue date:

Full name of the person this written notice is being issued to:

Entity name (if applicable):

Address for service:

Name of compliance officer:

Authorisation number of compliance officer:

You are required pursuant to section [222B(1)/222B(2)] of the *Electoral Act 2002*:

To produce a copy of the documents or other things as follows:

- [Specify documents and/or other things]

to:

[Name and address of compliance officer]

by [specify delivery method, e.g. by email, post or hand delivery].

Due date:

AND/OR

To appear before the compliance officer to give evidence and/or produce documents or other things as follows:

- [Specify evidence, documents and/or other things]

Date:

Time:

Location:

AND/OR

To provide reasonable assistance to the compliance officer as follows: • [Insert assistance required] Due date:

REASONABLE REFUSAL

You are not required to comply with this written notice if a prescribed privilege applies in accordance with Part 3.10 of the *Evidence Act 2008*, however you must inform the compliance officer of the reason for refusal before the due date or date of appearance.

RIGHT OF REVIEW

In accordance with section 222C of the *Electoral Act 2002*, you have a right to request a review of the decision to issue this written notice. To exercise this right, you are required to:

a) Request a review, in writing, addressed to the Electoral Commissioner, and

b) Ensure the Victorian Electoral Commission receives any such written request for review within 14 days of your receipt of this written notice.

OFFENCES

Pursuant to section 222D(1) of the *Electoral Act 2002*, it is an offence for you to refuse to comply with this notice to the extent that you are capable of compliance (200 penalty units).

Pursuant to section 222D(2) of the *Electoral Act 2002*, it is an offence for you to give evidence in purported compliance with this notice that contains particulars that are, to your knowledge, false or misleading in a material particular (200 penalty units).

DECLARATION OF SERVICE (COMPLIANCE OFFICER COPY ONLY)

I, [name of compliance officer], as an employee of the Victorian Electoral Commission appointed as a compliance officer under section 222A of the *Electoral Act 2002*, of [business address of compliance officer] declare that, on [date], I served a written notice pursuant to section [222B(1)/222B(2)] of the *Electoral Act 2002* on [name of the person this written notice is being issued to] by [service method, personally or by post].

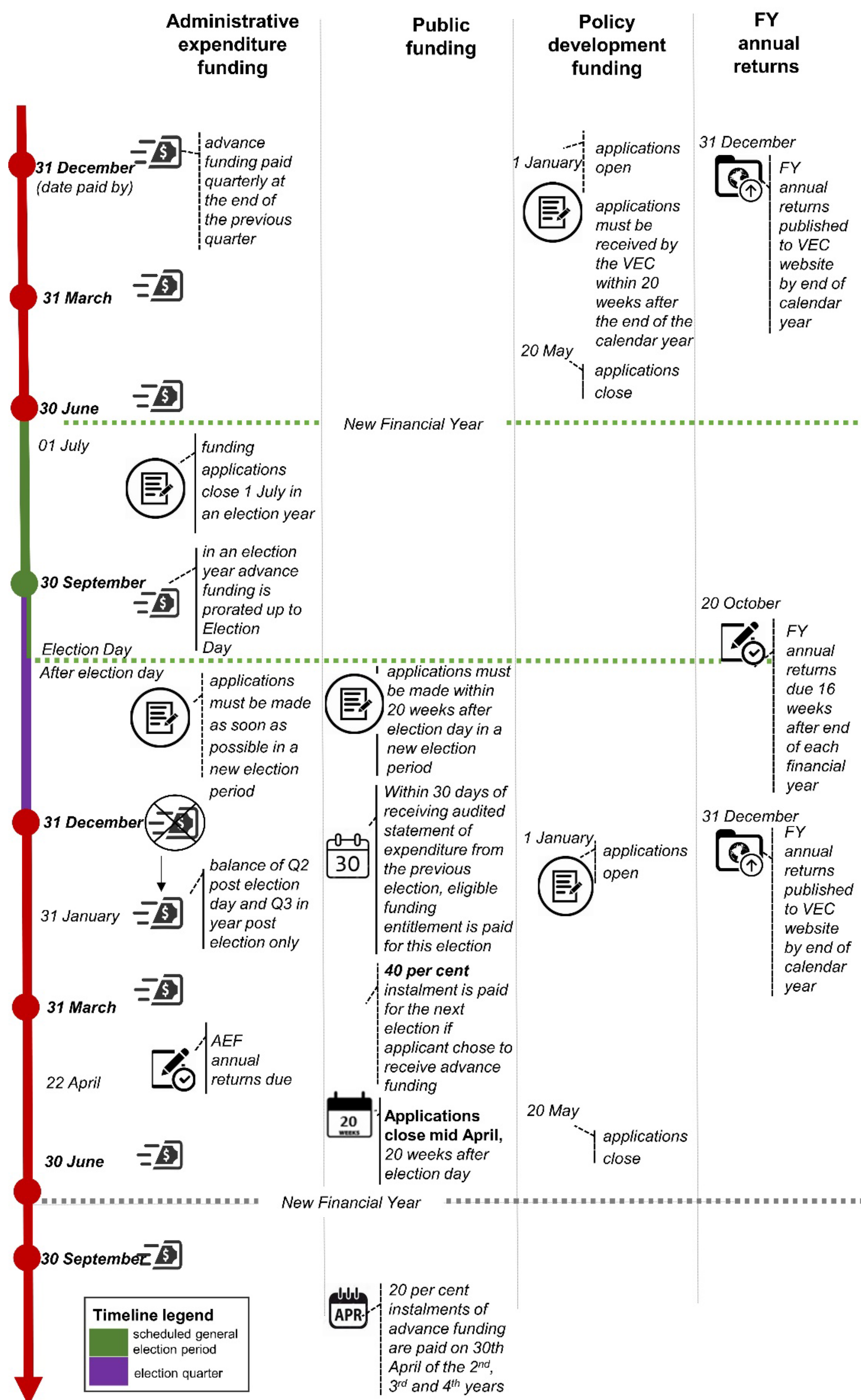
Signature of compliance officer:

Declared at [address] on [date]

Before me: [name of witness]

Signature of witness:

Appendix 3 – Funding and annual return timelines



Appendix 4 – Proposed donation receipt format

Donor
Donor's Name
Donor's Address Line 1
Donor's Address Line 2
ABN (if applicable) XX XXX XXX XXX

Recipient
Recipient's Name
Recipient's Address Line 1
Recipient's Address Line 2
ABN (if applicable) XX XXX XXX XXX

Donation information

Date made	Description	Gross payment /value	Costs associated with donation	Net donation value	Donation method
DD/MM/YYYY	Insert description here (e.g. entry fee for ticketed fundraising event which includes a disclosable donation component)	A	B	A-B=C	Insert donation method (e.g. credit card, bank transfer)
DD/MM/YYYY	Insert description here (e.g. donation)	D	E	D-E=F	Insert donation method (e.g. crowdfunding, cash)

Summary of donation activity	Amount
Aggregated donations made this financial year to date *(subject to disclosure threshold)*	C+F+… (cumulative total for financial year)
Aggregated donations made this election period to date *(subject to general cap)*	C+F+… (cumulative total for election period)

Donor requirement

As your donation(s) exceeds the disclosure threshold, it and any previous donations this financial year must be disclosed to the Victorian Electoral Commission (VEC) through a donation disclosure return. Any further donations made to this recipient during the current financial year must also be disclosed. You may not donate in excess of the general cap across the 4-year period between general elections.

See below a message from the VEC that we are required to share with you in writing so that you are aware of your donation disclosure obligations:

Be aware of your political donation disclosure obligations.

Most Victorians require minimal support to comply with their obligations under the *Electoral Act 2002*.

The VEC's priority is to educate and support electoral participants to meet their obligations. The law requires donors to disclose their political donations at disclosures.vec.vic.gov.au under these circumstances:

- donations equal to or more than the donation threshold within 21 days of making or receiving that donation
- multiple donations given in the same financial year (FY), ending 30 June each year, to a single recipient which, when aggregated, are equal to or more than the donation threshold
- all subsequent donations made in the same FY after the threshold has been reached

Visit vec.vic.gov.au/disclosures to find out more information about your obligations and how to make a disclosure.

Appendix 5 – Expired temporary regulation 51A

51A Temporary access to electronic assisted voting—flood affected electors

(1) In this regulation—

applicable period for an election means the period that—

(a) begins on and includes the Saturday immediately before the election day for that election; and

(b) ends on and includes that election day;

applicable residence of a person means, for the purposes of a particular election, each of the following—

(a) the person's principal place of residence;

(b) any other place at which the person is temporarily living on one or more days during the applicable period for that election.

(2) In addition to the eligible classes of electors prescribed in regulations 50 and 51, electors who—

(a) have an applicable residence for the purposes of a particular election in a place specified in a determination that is made under subregulation (3) in respect of that election; and

(b) are either—

(i) unable to attend or travel to an early voting centre to vote on one or more days during the applicable period for that election; or

(ii) unable to attend or travel to a voting centre to vote on election day—

are, during the applicable period for that election, a prescribed class of electors who can access electronic assisted voting for the purposes of section 110G of the Act.

(3) Subject to this regulation, the Commission may make a determination that—

(a) specifies one or more places for the purposes of subregulation (2); and

(b) specifies the election in respect of which the determination is made.

(4) The Commission must not make a determination under subregulation (3) that specifies a particular place in respect of a particular election unless—

(a) the Commission considers that the place will be affected, or has already been affected, by a flood that has occurred in Victoria at any time on or after 13 October 2022; and

(b) the Commission considers that, because of the effects of that flood (including effects that the Commission considers will occur, and those that the Commission considers have already occurred), electors in the place may be—

(i) unable to attend or travel to an early voting centre to vote on one or more days during the applicable period for that election; or

(ii) unable to attend or travel to a voting centre to vote on the election day for that election.

(5) Before making a determination under subregulation (3), the Commission must consult with the Emergency Management Commissioner within the meaning of the **Emergency Management Act 2013** about—

(a) floods that have occurred in Victoria at any time on or after 13 October 2022; and

(b) the effects that those floods have had, and are anticipated to have, on various places in Victoria.

(6) In considering the matters set out in subregulation (4)(a) and (b), the Commission must have regard to the consultation provided for by subregulation (5).

(7) The earliest day on which the Commission may make a determination under subregulation (3) in respect of a particular election is the Saturday 2 weeks before the election day for that election.

(8) A determination under subregulation (3) must set out the Commission's reasons for making it.

(9) As soon as practicable after making a determination under subregulation (3), the Commission must arrange for a notice of that determination (including the reasons for making it) to be published—

(a) on an Internet site maintained by the Commission; and

(b) in the Government Gazette.

(10) This regulation is **revoked** on 1 May 2023.

VEC

Victorian
Electoral
Commission