

# Submission: 2022 Victorian state election inquiry

Truth in political advertising, reform  
of the Legislative Council and fair  
political finance laws

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*Truth in political advertising laws are recommended, supported, and overdue in Victoria. Reforms to Victoria's Legislative Council should ensure proportionality and representativeness by adopting a state-wide electorate. Victoria's political finance laws seem to unfairly disadvantage challengers, to the benefit of incumbents.*

Submission

Elizabeth Morison

Bill Browne

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Level 1, Endeavour House, 1 Franklin St  
Canberra, ACT 2601

Tel: (02) 61300530

Email: [mail@australiainstitute.org.au](mailto:mail@australiainstitute.org.au)

Website: [www.australiainstitute.org.au](http://www.australiainstitute.org.au)

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# Summary

Last year, the Victorian Government, opposition and crossbench voiced support for truth in political advertising laws following their recommendation by the Victorian Electoral Matters Committee. Such laws have popular support among Victorians, and alleged misleading advertising in the 2022 Victorian state election demonstrates the need for such laws. Despite this pressing case, there has been no visible progress on implementing truth in political advertising laws in the state over one year on from their endorsement by all sides of politics.

Reform of the Legislative Council has been flagged as a possibility for this term of parliament. Reforms could, if done well, increase the representativeness and proportionality of the chamber, make voting more intuitive, and better reflect the will of the voters. However, care must be taken to ensure that reforms do not reduce proportionality or lead to voters inadvertently “throwing away” their vote. The New South Wales Legislative Council is a good example of a proportionate, effective legislature. The changes to the Western Australian Legislative Council (yet to see an election) could also serve as a guide.

This submission also identifies concerns with the current operation of the Victorian political finance system and potential plans to introduce spending caps, based on what we know about the potential perverse outcomes from donation and spending caps and the enormous benefits of incumbency that give sitting parliamentarians a “head start” on their challengers.

## RECOMMENDATIONS

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The Australia Institute recommends:

1. The Victorian Parliament pass truth in political advertising laws, in line with recommendations from the Electoral Matters Committee.
2. Reforming the Victorian Legislative Council to be elected from a single state-wide electorate.
3. Electing the Victorian Legislative Council using Robson Rotation within party lists.
4. If the eight regions are preserved, do not abolish GVTs or full preferential voting without serious consideration of the ramifications for the representation of minor and micro parties.
5. Reviewing Victoria’s electoral laws with an eye to lowering barriers to entry and addressing incumbency advantages.

# Introduction

The Australia Institute welcomes the opportunity to make a submission to the Electoral Matters Committee (EMC) inquiry into the conduct of the 2022 Victorian state election.

The Australia Institute's Democracy & Accountability Program was founded in 2021 to improve the quality of Australian governance and heighten public trust in politics and democracy. Although the program is new, the Australia Institute has written about democracy and accountability issues since it was founded in 1994.

This submission builds on our submission to the EMC's inquiry into the impacts of social media on elections and electoral administration, where we focused on the case for truth in political advertising laws.

In this submission, we also address upper house reform proposals. The Australia Institute has a special interest in the benefits provided by democratically elected, co-equal and proportional upper houses.<sup>1</sup> Reform would be welcome, if it is done well.

Another area requiring special care is political finance reform, which can – even when well intentioned – entrench incumbents, limit advocacy from civil society and advantage some over others unfairly. This submission is limited to identifying top-level concerns that should be taken into consideration, and the Australia Institute hopes to provide more research on this topic as the year progresses.

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<sup>1</sup> See for example Browne & Oquist (2021) *Representative, still*, <https://australiainstitute.org.au/report/representative-still-the-role-of-the-senate-in-our-democracy/>; Oquist & Browne (2022) *The Senate's new role in protecting our democracy*, <https://australiainstitute.org.au/event/the-senates-new-role-in-protecting-our-democracy/>

# Truth in political advertising

The Australia Institute has made the case for robust truth in political advertising laws for many years. Truth in political advertising laws are already in place in South Australia (since 1985) and the Australian Capital Territory (since 2021).

In our submission to the previous Victorian election inquiry, the Australia Institute stressed the importance of regulating political claims on social media, in efforts to reduce the prevalence of mis- and disinformation during elections.<sup>2</sup>

The 2021 EMC report made several recommendations in line with the Australia Institute's research, including:<sup>3</sup>

- Laws for truth in political advertising
- Laws against impersonating the electoral commission or another party or candidate
- Funding for independent fact-checking during election periods
- Comprehensive libraries for online ads.

In 2022, these recommendations were accepted in principle by the Victorian government, the leader of the opposition at the time, and the Greens,<sup>4</sup> with commitments to investigate the options for the new laws.<sup>5</sup> However, since then the issue does not seem to have progressed.

The 2022 state election saw reports of allegedly misleading advertising. For example:

- Material from the Liberals included claims that a “Teal vote helps re-elect Daniel Andrews for a second decade; your vote has consequences”.<sup>6</sup> While Daniel Andrews will, if he serves out his term, enter his second decade as premier, he would have to win at least two more elections to serve as premier for 20 years. Whether a vote for

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<sup>2</sup> Browne (2020) *Impact of Social Media on Elections and Electoral Administration: Submission*, <https://australiainstitute.org.au/report/impact-of-social-media-on-elections-and-electoral-administration-submission/>

<sup>3</sup> Parliament of Victoria (2021) *Inquiry into the impact of social media on Victorian elections and victoria's electoral administration*, <https://www.parliament.vic.gov.au/emc/article/4482>

<sup>4</sup> Sakkal (2022) *Labor, Liberals and Greens show support for political 'truth' laws*, <https://www.theage.com.au/politics/victoria/matthew-guy-andrews-government-support-to-political-truth-laws-20220329-p5a8yw.html>

<sup>5</sup> Victorian State Government, Department of Premier and Cabinet (2022) *Government response to social media inquiry*, <https://new.parliament.vic.gov.au/get-involved/inquiries/inquiry-into-the-impact-of-social-media-on-elections-and-electoral-administration/reports>

<sup>6</sup> Lucas (2022) *Flyers from Libs and teals go on the attack as election day looms*, <https://www.theage.com.au/politics/victoria/flyers-from-libs-and-teals-go-on-the-attack-as-election-day-looms-20221121-p5c03c.html>

an independent candidate “helps” one major party or the other depends on a number of factors, including how the voter distributes their preferences (if the independent candidate loses) and which party the independent provides confidence and supply to (if the independent candidate wins and is in the balance of power).

- An image of an armed police officer talking to a civilian on a beach captioned “NEVER FORGET #sackdanandrews” circulating on social media. It alluded to Premier Daniel Andrews’ lockdown response to COVID-19. However, an RMIT ABC Fact Check investigation of the image concluded that it was taken in Brazil in 2021 and was unrelated to Victoria’s lockdowns.<sup>7</sup> While it does not appear to have been shared by any political parties or candidates, the misinformation spread through social media to many Australian voters.
- A claim that the World Economic Forum was running the Victorian election, which originated on a satirical account, was apparently widely circulated.<sup>8</sup>
- Material from Labor included claims that the opposition’s “gas-led recovery” threatened the return of “fracking” (hydraulic fracturing) for gas. Chip Le Grand reports that, in fact, “The opposition voted with the government to write a prohibition against fracking into the state’s constitution.”<sup>9</sup>
- The VEC collected many examples of misinformation relating to the conduct of the election or the casting of votes.<sup>10</sup>

These examples from the most recent election highlight the ongoing importance of preventing mis- and disinformation during election periods.

While the EMC’s report into social media supported truth in political advertising laws, there was disagreement over whether the Victorian Electoral Commission (VEC) should be the regulator responsible. Some committee members unsuccessfully proposed a change to specify the VEC as the regulator responsible. The majority rejected this change,<sup>11</sup> potentially

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<sup>7</sup> RMIT ABC Fact Check (2022) *A heavily armed police officer was pictured talking to a mother on the beach. But was it really in Victoria?*, <https://www.abc.net.au/news/2022-11-04/fact-check-dan-andrews-armed-police-office-beach-pic/101611956>

<sup>8</sup> Atkinson (2022) *Victorian election ‘fix’ claim is one big joke*, <https://www.aap.com.au/factcheck/victorian-election-fix-claim-is-one-big-joke/>

<sup>9</sup> Le Grand (2022) *Frack check: Sorting smear from truth as polls tighten and election mud flies*, <https://www.theage.com.au/politics/victoria/frack-check-sorting-smear-from-truth-as-polls-tighten-and-election-mud-flies-20221121-p5c04a.html>

<sup>10</sup> VEC (n.d.) *Sorting fact from fiction*, <https://www.vec.vic.gov.au/voting/learn-to-vote/sorting-fact-from-fiction>

<sup>11</sup> Electoral Matters Committee (2021) *Inquiry into the impacts of social media on elections and electoral administration*, pp. 275–277, <https://www.parliament.vic.gov.au/emc/article/4482>



a response to the VEC’s concern that it “does not consider its role to be the arbiter of ‘truth’”.<sup>12</sup>

The Australia Institute has addressed the VEC’s reservations,<sup>13</sup> and notes that parliaments in SA and the ACT have chosen their respective electoral commissions to regulate their truth in political advertising laws. However, it is also perfectly feasible for responsibility for administering truth in political advertising laws to be assigned to a different body, perhaps one created for that purpose.

Since the EMC last recommended truth in political advertising laws, the Joint Standing Committee on Electoral Matters (JSCEM) has also considered the issue. The committee recommended federal truth in political advertising laws, administered by the Australian Electoral Commission and based on the South Australian model.<sup>14</sup> Note that Coalition members dissented from the report, including on the recommendation for truth in political advertising laws.<sup>15</sup> Nonetheless, with consensus support for these laws in Victoria, and JSCEM’s recommendation that they be adopted at the federal level, there should be no impediment to legislating these laws well in advance of the next state election.

## RECOMMENDATIONS

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The Australia Institute recommends:

1. The Victorian Parliament pass truth in political advertising laws, in line with recommendations from the Electoral Matters Committee.

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<sup>12</sup> Victorian Electoral Commission (2020) *Inquiry into the impact of social media on elections and electoral administration submission* p.14,  
[https://www.parliament.vic.gov.au/images/stories/committees/emc/Social\\_Media\\_Submissions\\_2020/77\\_Victorian\\_Electoral\\_Commission\\_Submission\\_Redacted.pdf](https://www.parliament.vic.gov.au/images/stories/committees/emc/Social_Media_Submissions_2020/77_Victorian_Electoral_Commission_Submission_Redacted.pdf)

<sup>13</sup> Browne (2020) *Impact of social media on elections and electoral administration: Submission*, pp. 6–7,  
<https://australiainstitute.org.au/report/impact-of-social-media-on-elections-and-electoral-administration-submission/>

<sup>14</sup> JSCEM (2023) *Conduct of the 2022 federal election and other matters: Interim report*, pp. 106–107,  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/2022federalection/Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2022federalection/Interim_Report)

<sup>15</sup> JSCEM (2023) *Conduct of the 2022 federal election and other matters: Interim report*, pp. 204–205

# Reform of the Legislative Council

Victoria is the last jurisdiction in Australia to use Group Voting Tickets (GVT), where those voting above the line have their preferences distributed according to the instructions of the group that they voted for. Since most people vote above the line, the effect is that preferences are distributed mostly according to agreements between political parties.

Particular attention was drawn to the GVT system at last year's election, with the Animal Justice Party revealing that it had broken from its preference-trading bloc after registrations closed. It also leaked video of negotiations with "preference whisperer" Glenn Druery. The Animal Justice Party called for the GVT system to be replaced with "full proportional representation".<sup>16</sup> The Victorian voting system was also criticised by state political editor Annika Smethurst, with *The Age* editorial calling for GVTs to be dumped.<sup>17</sup>

GVTs are rightly criticised for the way they direct voters' preferences according to deals between groups rather than the preference of the voter. However, they do a good job of preventing votes from exhausting prematurely and of coordinating the minor and micro party vote so the number of minor and micro party representatives elected is closer to their vote share.

The Legislative Council should be reformed to make it more proportional and representative and its voting process more intuitive and fair. This is best done by adopting a state-wide electorate, as exists for the upper houses in NSW, SA and (from the 2025 election onwards) WA. This would allow GVTs to be scrapped without losing the benefits GVTs have provided.

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<sup>16</sup> Kolovos (2022) 'It was a charade': preference whisperer Glenn Druery falls for Animal Justice party's Victorian election sting, <https://www.theguardian.com/australia-news/2022/nov/14/preference-whisperer-glenn-druery-falls-for-animal-justice-partys-victorian-election-sting>

<sup>17</sup> Smethurst (2022) *Government inertia on voting reform hands parties total control*, <https://www.theage.com.au/politics/victoria/government-inertia-on-voting-reform-hands-parties-total-control-20221006-p5bnr6.html>; The Age (2022) *A voting system in dire need of reform*, <https://www.theage.com.au/national/victoria/a-voting-system-in-dire-need-of-reform-20221117-p5bz1f.html>

# EXISTING MODEL

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## Group Voting Tickets

Victoria is the last state using group voting tickets (GVTs).<sup>18</sup>

The WA 2021 electoral reform inquiry identifies common criticisms of GVTs:<sup>19</sup>

Candidates and parties with very little support are being elected, which is undemocratic.

Parties are being formed solely for the purpose of directing preferences to other parties.

Preference harvesting, including payments for the election of candidates, needs to stop.

There is little ideological or policy consistency in the ordering of preferences between parties in the GVT submitted by groups.

Following a similar system to the Senate would deliver consistency in voting between state and federal levels.

Voters do not understand where their ATL preferences go.

Voting BTL is too difficult, which unfairly “herds” voters into voting ATL.

The preferences arrangements reflected through GVT ... are largely neither understood nor visible to the vast majority of voters.

On the other hand, GVTs allow for voters to defer to the party that they support to distribute preferences in a way that is strategic and based on the party’s priorities. GVTs allow voters to trust that the party they vote for has done their due diligence, rather than place the onus on the voter to decide between several parties or groups that they may never have heard of. A review of the past few Senate elections suggests that GVTs also

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<sup>18</sup> Kolovos (2022) *‘Preference whisperers’: reforms to group voting unlikely to happen before Victorian election*, <https://www.theguardian.com/australia-news/2022/mar/23/preference-whisperers-reforms-to-group-voting-unlikely-to-happen-before-victorian-election>

<sup>19</sup> Ministerial Expert Committee on Electoral Reform (2021) *Final report*, [https://www.wa.gov.au/system/files/2021-09/Final%20Report%20MEC%20on%20Electoral%20Reform\\_2021\\_web.pdf](https://www.wa.gov.au/system/files/2021-09/Final%20Report%20MEC%20on%20Electoral%20Reform_2021_web.pdf)

served to bring the proportion of minor and micro parties elected closer to the proportion of the vote that they received.<sup>20</sup>

Of course, it is also quite reasonable to ask to what extent a micro party voter has a preference for micro parties in general, versus the particular micro party they have voted for, and to what extent voters trust the party to which they give their first preference.

## Proportionality

The existing Victorian Legislative Council electoral system has had mixed results in delivering proportional representation.

The 2022 election delivered a fairly proportional division of seats. The Labor Party received 33% of first preference votes, and won 37.5% of the seats in the Legislative Council. The Liberals received 17% of first preference votes, and won 20% of the available seats, and the Liberal/Nationals won 12.5% of first preferences and 15% of the seats. The Greens got 10.3% of Victorians' first preference votes, and won 10% of the seats.<sup>21</sup>

Legalise Cannabis won two seats on a primary vote of 4.1%. Five other non-Greens minor/micro parties won a single seat (2.5% of the seats) on votes of between 1.5% and 3.5%. Two parties did not win a seat despite winning more than 1.5% of the vote. Together, non-Greens minor/micro parties and independents won 17.5% of seats off 27% of the vote.

However, other elections have delivered less proportional results. In 2018, for example, the Greens won 9.3% of votes, and just one seat (2.5%) while Derryn Hinch's Justice Party won 3.8% of votes and three seats (7.5%).<sup>22</sup> In 2014, Shooters and Fishers Party Victoria received only 1.6% of first preferences, and won two seats (5%). Vote 1 Local Jobs received 0.2% of votes, and won a seat (2.5%). The Liberal Democrats received 3% of first preference votes and no seats.<sup>23</sup>

The Victorian 2022 result of non-Greens minor/micro parties and independents winning 17.5% of Legislative Council seats from 27% of the vote at the 2022 state election compares favourably to the Australian Senate. After the 2022 election, non-Greens minor/micro parties and independents held 8% of Senate seats off 23% of the vote. That was an

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<sup>20</sup> For more discussion, see Denniss (2015) *Senate reform: Careful what you wish for*, <https://www.canberratimes.com.au/story/6064710/senate-reform-careful-what-you-wish-for/>

<sup>21</sup> Victorian Electoral Commission (2022) *2022 state election results*, <https://www.vec.vic.gov.au/results/state-election-results/2022-state-election-results>

<sup>22</sup> Victorian Electoral Commission (2018) *2018 state election results*, <https://www.vec.vic.gov.au/results/state-election-results/2018-state-election>

<sup>23</sup> Victorian Electoral Commission (2014) *2014 state election results*, <https://www.vec.vic.gov.au/results/state-election-results/2014-state-election>

improvement on the 2019 election, after which non-Greens minor/micro parties and independents held 5% of Senate seats off 23% of the vote.<sup>24</sup>

## LESSONS FROM OTHER JURISDICTIONS

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### Five-member electorates

If Victoria abolished GVTs while keeping the eight regions electing five MLCs each, what would the likely effect be on representation?

The Tasmanian and ACT lower houses provide some evidence, because their lower houses elect five members per electorate by proportional representation, and do not use GVTs: constituents must distribute their own preferences.

Tasmania and the ACT illustrate that, in the absence of GVTs aggregating and coordinating minor and micro party preferences, the quota of 16.7% is difficult to meet.

At the 2020 ACT Legislative Assembly election, non-Greens minor and micro parties and independents won 14.9% of the vote but no seats. The Greens won 13.5% of the vote and six seats.<sup>25</sup> In the 2021 Tasmanian House of Assembly election, non-Greens minor and micro parties and independents won 10.7% of the vote and 4% of the seats.<sup>26</sup>

The experience in five-member electorates without GVTs suggests that abolishing GVTs in the Legislative Council could further entrench the major parties and the Greens, unless it coincided with larger electorates (and commensurately smaller quotas).

### Robson Rotation

The ACT and Tasmania use Robson Rotation, in which the order of candidates *within* a party list is rotated from one ballot to the next, so each candidate appears in first position on an equal number of ballots. This disrupts the party's preferred order of election and encourages candidates to distinguish themselves from their fellow party members.

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<sup>24</sup> For more details, see Browne & Oquist (2021) *Representative, still*, p. 32

<sup>25</sup> Elections ACT (2020) *2020 results overview*,  
[https://www.elections.act.gov.au/elections\\_and\\_voting/past\\_act\\_legislative\\_assembly\\_elections/2020-election/2020-election-results](https://www.elections.act.gov.au/elections_and_voting/past_act_legislative_assembly_elections/2020-election/2020-election-results)

<sup>26</sup> Tasmanian Electoral Commission (n.d.) *2021 House of Assembly Elections Tasmania*,  
[https://www.tec.tas.gov.au/House\\_of\\_Assembly\\_Elections/StateElection2021/index.html](https://www.tec.tas.gov.au/House_of_Assembly_Elections/StateElection2021/index.html)

The Australia Institute's *Democracy Agenda for the 47<sup>th</sup> Parliament* recommended Robson Rotation for the Australian Senate.<sup>27</sup> This innovation should be adopted in other elections with proportional representation, including the Victorian Legislative Council.

## Optional versus full preferential voting

NSW uses optional preferential voting for lower and upper house elections. In SA and at the federal level, full preferential voting applies to the lower house and (semi-)optional preferential voting applies to the upper house; WA will have a similar split following its reforms.

Optional preferential voting risks that voters waste their vote by stopping numbering the ballot prematurely, well before they truly are indifferent about the choice they face.

When GVTs were abandoned for the Australian Senate, full preferential voting was dropped at the same time for a semi-optional system. As mentioned above, the result has been a Senate that fails to fully represent the large share of Australians who did not vote for the Labor Party, Coalition or Greens.

Australia Institute research in 2016 found that Australians were confused about the Senate's new voting system, with only 29% correctly identifying that voters must fill out a minimum of six boxes above the line.<sup>28</sup>

The Senate reforms have had a modest effect on above the line voting. In 2013, before GVTs were abolished, 4% voted below the line. This increased to 7% in 2016 and 8% in 2019 before falling to 6% in 2022.<sup>29</sup> More dramatic is the increase in exhausted votes, from 0.05% to 7.5% between 2013 and 2016.<sup>30</sup>

## THE CASE FOR A SINGLE STATE-WIDE ELECTORATE

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A simple, fair way to abolish GVTs while improving proportionality – including for minor and micro parties and independents – is to elect the upper house from a single state-wide electorate. In addition, the lower the quota, the less difference compulsory versus optional preferential voting makes and the lower the risk that a person's vote exhausts.

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<sup>27</sup> Browne (2022) *Democracy Agenda for the 47th Parliament of Australia*, p. 31,

<https://australiainstitute.org.au/report/democracy-agenda-for-the-47th-parliament-of-australia/>

<sup>28</sup> Oquist (2016) *Polling and Senate voting analysis*, <https://australiainstitute.org.au/report/polling-and-senate-voting-analysis/>

<sup>29</sup> AEC (2016) *Top line findings*, p. 2, [https://www.aec.gov.au/about\\_aec/research/files/sbps-topline.pdf](https://www.aec.gov.au/about_aec/research/files/sbps-topline.pdf);

Green (2022) *2022 Senate election and ballot paper completion types*, <https://antonygreen.com.au/2022-senate-election-and-ballot-paper-completion/>

<sup>30</sup> AEC (2016) *Top line findings*, p. 2

There are 40 seats available in Victoria's upper house. If all seats were up for contest in the same election, the quota would be 2.4%.<sup>31</sup> This small number is quite attainable for minor and micro parties and independents. Victoria's current division into eight regions means the quota for election is 16.7%, a much more difficult threshold to cross. Parties with support across the state can still go unrepresented or under-represented because they just fail to meet the threshold.

There is a small concern with state-wide electorates that the low quota encourages speculative micro parties with little individual hope of being elected, leading to unwieldy ballot papers.<sup>32</sup> This is a minor concern, and one that exists with GVTs as well, and could be addressed in other ways.

## Examples from other jurisdictions

With Western Australia moving to a state-wide electorate for its next Legislative Council election, there are now three states that elect their upper houses from state-wide electorates: WA, New South Wales and South Australia. Queensland does not have an upper house and Tasmania's upper house is unique in using single-member electorates and a system that favours independents over party candidates.

The Ministerial Expert Committee on Electoral Reform in their 2021 final report on proposed reforms to the Western Australian Legislative Council stated:

The Committee has recommended that for Legislative Council elections the whole of the state of Western Australia be one electorate instead of the present system, where there are 6 members elected for each of the 6 "regions". This will achieve electoral equality. "Whole of State" electorates have been in use for some time in New South Wales and South Australia.

Any Whole of State electorate should be established in conjunction with the abolition of Group Voting Tickets and the introduction of Optional Preferential Voting, which will give voters greater control over their preferences.<sup>33</sup>

## Preferential voting

The risk of votes exhausting prematurely under an optional or semi-optional preferential voting system is reduced for electorates that elect many parliamentarians. The lower the quota, the more seats are decided on first or early preferences – and therefore the less risk

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<sup>31</sup> Quota is calculated as  $1/(\text{seats available} + 1)$

<sup>32</sup> Ministerial Expert Committee on Electoral Reform (2021) *Final report*

<sup>33</sup> Ministerial Expert Committee on Electoral Reform (2021) *Final report*

there is that optional preferential voting leads to a voter's vote exhausting before their true views are expressed.

## Quotas

With all members of the WA Legislative Council elected from the one electorate, the quota will drop from 14.3% to 2.6%. In Victoria, this shift would be even more pronounced, from 16.7% to 2.4%. Smaller quotas lower the barrier to entry and would ensure a more representative Legislative Council. This supports the Legislative Council as a balanced and impartial house of review, one that can hold the government of the day to account.

WA's Expert Committee also looked at the option of staggered elections, with half of the MLCs elected at each election for eight-year terms. This would increase the quota to 4.8% for Victoria, still well below Victoria's current quota of 16.7%.<sup>34</sup>

## Discouraging groups with low chances of success

One concern with state-wide electorates is that the low quota for election encourages many micro parties and other groups to run even if their prospects of success are low and they may have no real base of public support.

WA's Expert Committee argued that "there will be a need to introduce additional regulation of parties and candidates, so that the ballot is reserved for groups and candidates who can demonstrate popular support",<sup>35</sup> including:

- Registration of political parties at least six months prior to a general election, with a registration fee and at least 500 declared members for each party, who have not been declared as members in the registration of another political party.
- Increase the nomination fees per candidate.
- At least 3 independent candidates be required to form an Above the Line group.
- That a significant number of electors be required to nominate an independent candidate. These electors must not have nominated another candidate.

## RECOMMENDATIONS

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The Australia Institute recommends:

1. Reforming the Victorian Legislative Council to be elected from a single state-wide electorate.

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<sup>34</sup> Ministerial Expert Committee on Electoral Reform (2021) *Final report*

<sup>35</sup> Ministerial Expert Committee on Electoral Reform (2021) *Final report*



If this occurs, it would be appropriate to abolish GVTs. Full preferential voting is preferable, but if some form of optional preferential voting is implemented then voters should be encouraged to number enough boxes that their vote is unlikely to exhaust prematurely.

2. Electing the Victorian Legislative Council using Robson Rotation within party lists.
3. If the eight regions are preserved, do not abolish GVTs or full preferential voting without serious consideration of the ramifications for the representation of minor and micro parties.

# Victoria's political finance reforms

The Australia Institute is yet to conduct a full analysis of Victoria's political finance reforms, but we wanted to identify some initial concerns.

## FAILURE TO ACCOUNT FOR ADVANTAGES OF INCUMBENCY

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The Australia Institute has recently released research finding that federal MPs and senators receive at least \$3.0 million and \$2.7 million respectively in incumbency advantages, including entitlements, staff and salary, over the three-year electoral cycle. This gives them a head start in any election that can be almost insurmountable – with 90% of incumbent MPs holding their seat across the last three elections.<sup>36</sup>

The provision of these resources is necessary and appropriate to facilitate the parliamentarian's duty to represent their constituents. However, most of these resources are also available to parliamentarians during election campaigns. This provides incumbents with an advantage over challengers, who have no such resources available to them.

The Australia Institute has conducted a preliminary analysis of the incumbency advantages of Victoria's MPs (MLAs and MLCs). MLAs receive at least \$555,000 in incumbency advantages, including salary, staff and entitlements, and MLCs receive at least \$560,000. Over a four-year electoral cycle, this is well over \$2 million.

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<sup>36</sup> Morison & Browne (2023) *Advantages of incumbency*, <https://australiainstitute.org.au/report/advantages-of-incumbency/>

**Table 1: Annual entitlements for an incumbent Victorian MP**

Entitlements	Incumbency benefit	
Salary	\$198,839 15.5% superannuation <i>MPs with additional responsibilities receive higher salaries</i>	
Electorate allowance	\$45,022–\$53,933 (depending on size of electorate)	
Motor vehicle allowance	Vehicle or \$22,353–\$33,680	
Travel allowance	Based on Commonwealth travel allowance	
Commercial travel allowance	\$5,195–\$17,898	
Electorate Office and Communications Budget	<b>MLA:</b> \$114,981–\$127,312 <b>MLC:</b> \$120,511	
Electorate officers	Two on \$70,914 to \$101,788 each	
Parliamentary advisers	Allocation details not found	
Parliamentary accommodation sitting allowance	\$26,609	
	<b>MLA</b>	<b>MLC</b>
<b>Minimum total</b>	<b>\$555,699</b>	<b>\$561,229</b>
<b>Maximum total</b>	<b>\$663,161</b>	<b>\$656,360</b>

Note: Minimum and maximum totals are calculated for parliamentarians with no additional responsibilities or discretionary allowances. International travel allowance not included.

Source: *Electorate Officers (Victoria) Single Enterprise Agreement 2021* (Vic), sec.30.5, <https://cpsu.vic.org/help/article?id=53>; *Members of Parliament (Victoria) Determination 01/2019*, varied by [2022] DMPA 01, <http://www.vic.gov.au/members-parliament-2019-determination-annual-adjustments>; Victorian Government (2022) *Members of Parliament salaries and allowances*, <http://www.vic.gov.au/members-parliament-salaries-allowances>

The figures are based on two electorate officers and no parliamentary advisers for each MP. It is worth noting that electorate officers are not permitted to perform “party-specific activity” (activity for the dominant purpose of directing how a person should vote at an election).<sup>37</sup> In addition, in the financial year in which a state election is held, the Electorate and Communications Budget is split (presumably so that MPs cannot concentrate the entire year’s budget on the election period).<sup>38</sup>

Challengers require money to overcome the benefits of incumbency. Donation and expenditure caps can stop challengers from raising or spending that money, leaving incumbents entrenched.

<sup>37</sup> Parliament of Victoria (n.d.) *The role of an electorate officer*, <https://new.parliament.vic.gov.au/about/careers/electorate-officers/>

<sup>38</sup> *Members of Parliament (Victoria) Determination 01/2019*, varied by [2022] DMPA 01 (Vic), sec.16, <http://www.vic.gov.au/members-parliament-2019-determination-annual-adjustments>

## PUBLIC FUNDING

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Victoria makes significant public funding available for political parties and candidates via two payments:

- Administrative expenditure funding: Awarded to political parties based on the number of MPs they have and to independent MPs as a flat sum. The amount tapers so the second, third and subsequent MPs of a party add less than the first MP.
- Public funding: Awarded to candidates according to the votes they received.

A rough calculation suggests that the Australian Labor Party will receive about \$20 million in administrative expenditure funding and public funding over this election cycle, the Liberal Party \$15 million, the National Party \$5 million and the Greens \$6 million.<sup>39</sup>

There is a separate payment, the policy development funding, for registered parties without MPs. Between 2018 and 2022, two parties claimed this funding: the Democratic Labour Party (\$139,500) and Pauline Hanson's One Nation (\$10,700).<sup>40</sup>

With donations capped at \$4,320 per cycle, the ALP's administrative expenditure funding and public funding is worth over 4,000 donations of the maximum size. As such, it is unsurprising that public funding dwarfs the value of political donations during the last election cycle, \$2 million for the ALP and \$3 million for the Liberal Party.<sup>41</sup>

## POTENTIAL PERVERSE OUTCOMES FROM CAPS

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Victoria has donation caps and is considering spending caps.

In the Australia Institute's submission to the Joint Standing Committee on Electoral Matters' inquiry into the 2022 election, *Fortifying Australian democracy*, we identify seven potential perverse outcomes from donation and expenditure caps.<sup>42</sup>

Victoria's existing political finance law risks contributing to one perverse outcome in particular: that it is difficult for emerging parties and candidates to establish themselves.

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<sup>39</sup> The public funding for all Liberal/National Legislative Council votes has been allocated to the National Party for simplicity of calculation; calculations based on VEC (n.d.) *Indexation*, <https://www.vec.vic.gov.au/candidates-and-parties/political-donations/indexation>

<sup>40</sup> VEC (n.d.) *Policy development funding payments November 2018-September 2022*, <https://www.vec.vic.gov.au/candidates-and-parties/funding/funding-register>

<sup>41</sup> Eddie (2023) *Major parties fundraise \$5.5 million despite Victorian donation reforms*, <https://www.theage.com.au/politics/victoria/major-parties-fundraise-5-5-million-despite-victorian-donation-reforms-20230207-p5cinz.html>

<sup>42</sup> Browne & Shields (2022) *Fortifying Australian democracy*, pp. 9–10, <https://australiainstitute.org.au/report/fortifying-australian-democracy/>

- The low donation cap of \$4,320 means it is difficult for emerging parties and candidates to raise enough money to overcome the publicly-funded incumbency advantages of sitting MPs and the fixed costs of running for office for the first time.
- Public funding for incumbents based on past performance entrenches existing parties over new entrants, since new entrants are limited in how much money they can raise while existing political parties have a large publicly-funded pool of money to draw on. The Victorian model of advance public funding exacerbates this problem.<sup>43</sup>
- Registered nominated entities, whose contributions to political parties do not count as donations for the purpose of the donation cap, mean that existing parties can spend the millions of dollars that their affiliates have accumulated while looser donation laws were in operation. New entrants do not have that option. In the year before the 2018 election, the Cormack Foundation donated \$2.5 million to the Liberal Party and Labor Services and Holdings donated \$3.1 million to Labor.<sup>44</sup>
- Excluding party membership, affiliation fees and annual levies from donation cap limits, which favours the parties of government. These are worth about \$1.5 million per year to the Liberal and Labor parties.<sup>45</sup> These can be spent on party administration but not paid into the party's campaign account.<sup>46</sup>

## ALTERNATIVE MODELS OF PUBLIC FUNDING

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Australia's model of providing public funding to parties and candidates based on the share of vote that they receive is one way of reflecting the public support such parties and candidates enjoy. However, it is retrospective, and does nothing to assist new entrants who sometimes enjoy considerable public support.

There are alternative forms of public funding that cater to new entrants while still reflecting genuine public support. In the "democracy voucher" or "democracy dollar" model, eligible voters are sent vouchers with a certain amount of public funding that they can send to the candidate or party of their choice. For example, a voter may get four \$25 vouchers to distribute.

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<sup>43</sup> For more details see VEC (n.d.) *Public funding for registered political parties*, <https://www.vec.vic.gov.au/candidates-and-parties/funding/funding-registered-political-parties/rpp-public-funding>

<sup>44</sup> Le Grand (2022) *Labor's campaign funding laws build \$100m wall to keep independents out*, <https://www.theage.com.au/national/victoria/labor-s-campaign-funding-laws-build-100m-wall-to-keep-independents-out-20220908-p5bgim.html>

<sup>45</sup> Le Grand (2022) *Labor's campaign funding laws build \$100m wall to keep independents out*

<sup>46</sup> Eddie (2023) *'Obvious loophole': Billionaire's \$250,000 membership fee to failed political party*, <https://www.theage.com.au/politics/victoria/obvious-loophole-billionaire-s-250-000-membership-fee-to-failed-political-party-20230224-p5cnad.html>

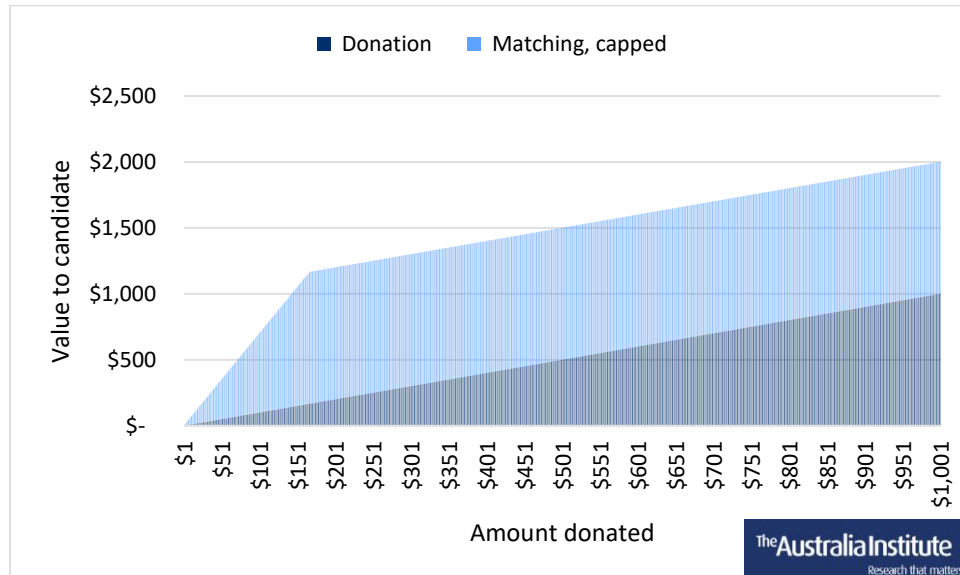
If every voter distributed every voucher, total public funding would dramatically exceed the current levels of public funding. However, experience from overseas shows that most voters do not distribute their vouchers. If that changed, the value of each voucher could be reduced to preserve the overall magnitude of public funding.

Another option is matched funding, where small donations are matched by public funding. This rewards candidates with genuine public support by making small donations relatively more powerful. Law academic Spencer Overton describes a “multiple matching” model where the first \$200 of a contribution is matched six-to-one, so a \$200 donation is worth \$1,400 to the recipient.<sup>47</sup> Figure 1 below illustrates the model in action.

Multiple matching strengthens small donors relative to large ones; whereas a \$200 donation is worth \$1,400 (600% more), a \$2,000 donation is worth \$3,200 (60% more). Without matched funding, one person with \$2,000 to give has the same power as ten people with \$200 to give. Under the multiple matching model, three people with \$200 to give are more powerful than one \$2,000 donor.

In the United States, jurisdictions with multiple matching see more participation than jurisdictions without multiple matching and see small donors make up a relatively larger share of all donations.<sup>48</sup>

**Figure 1: Illustration of a six-to-one matched finance model**



Source: Prepared by the author

As an illustration of how other public funding models are possible, Victoria could adopt a democracy voucher system allocating each voter one voucher of \$25 per quarter in the year

<sup>47</sup> Overton (2012) *Matching political contributions*, pp. 1696–1697, [https://scholarship.law.gwu.edu/faculty\\_publications/166](https://scholarship.law.gwu.edu/faculty_publications/166)

<sup>48</sup> Overton (2012) *Matching political contributions*, pp. 1696–1697

before an election (total value \$100). Very conservatively assuming 10% of Victorian voters used all their vouchers (or 20% used half of their vouchers, etc),<sup>49</sup> this would distribute about as much money as the current administrative expenditure funding and public funding payments – but in a manner that placed the power in the hands of voters and allowed for new entrants to be funded.

## RECOMMENDATIONS

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The Australia Institute recommends:

1. Reviewing Victoria's electoral laws with an eye to lowering barriers to entry and addressing incumbency advantages.

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<sup>49</sup> Uptake of vouchers in Seattle is between 2% and 5%: Kirschman (2022) *Seattle democracy vouchers increase donations, number of candidates in city elections*, <https://www.washington.edu/news/2022/05/26/seattle-democracy-vouchers-increase-donations-number-of-candidates-in-city-elections/>

# Conclusion

Truth in political advertising laws are unfinished business for Victoria. With multi-party support, there should be no impediment to passing these laws so they are operational before the next election. The alternative is to risk more misinformation circulating during election campaigns, as occurred at last year's election.

The Legislative Council is in need of reform. A single state-wide electorate, with proportional representation, would be a fair, simple and effective system for choosing an upper house that represents the popular will and can hold the government of the day to account. Robson Rotation would encourage party candidates to diversify and give voters a real choice within party lists as well as between party lists.

In 2018, Victoria engaged in significant political finance reforms. Victoria now has an electoral system in which donations are rare. The major parties appear to receive as much or more money in subscriptions, levies and affiliation fees and from their own foundations as they do in donations from members of the public. If the intention was to reduce corporate influence on politics, this seems like a Pyrrhic victory at best – even before the effects of these changes on new entrants are considered.

Because of the publicly funded entitlements and payments available to incumbents, the Victorian reforms appear to have entrenched incumbents at the expense of new entrants. Alternative political finance models should be considered with an eye to ensuring healthy competition.