

Money and power in Victorian elections

Independent review of Victoria's
electoral and political donations
system

Submission

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Summary

In 2018, the Victorian Parliament made major changes to electoral law in the state, including introducing real-time disclosure of donation, banning foreign donations and limiting anonymous donations. Two of the changes with the most serious ramifications are the imposition of a donation cap (around \$4,000 each four-year electoral cycle) and a dramatic increase in public funding.

This submission focuses on the effects of the 2018 changes on political influence and power.

Donation caps appear to have increased the financial power of a few political players and preserved or even amplified the advantages of incumbency.

Membership fees, levies, payments from “nominated entities” and contributions from candidates are not capped. With the exception of contributions from candidates, these carve outs are limited to registered political parties. The effect is that, as best as can be determined from party disclosures:

- The Victorian Labor Party received more money from its staffers and 70 MPs via levies than it did from the remaining six million Victorians via donations.
- The Victorian Liberal Party received more money in dividends from a subsidiary (Vapold Pty Ltd) than it did from six million Victorians via donations. Journalists report that funding from the party’s nominated entity, the Cormack Foundation, is also substantial but only relatively small sums appear in the party’s annual returns.
- Candidates can donate above the cap to their own campaigns, with one candidate giving \$110,000, 24 times as much as an ordinary Victorian could donate. Overall, 13% of donations by value were from the major parties’ own candidates.
- Ahead of the last election, one minor party received a \$250,000 payment from a single contributor – which was not subject to the donation cap because it was a membership fee.
- Donors who have given as little as \$1,000 to a political party or candidate have their full name and suburb of residence revealed, but the details of corporations who pay membership fees to parties have not consistently been disclosed.

Despite strict rules for political donation disclosure, other sources of party funding remain opaque. What is clear is that thanks to public funding, levies, investments and corporate membership fees, major parties no longer rely on contributions from the public to have electoral success.

The same cannot be said for independents (both new entrants and MPs), who do not benefit from the party-specific carve outs from the donation cap.

Compounding this disadvantage is the largesse granted to incumbents, particularly major party incumbents, which creates significant obstacles for independent challengers and minor parties who already lack the natural advantages that the parties enjoy: brand exposure, large support networks, media exposure and relationships.

Victoria's donation cap is a Pyrrhic victory for integrity. It increases the advantages held by wealthy candidates (whether running for parties or as independents) and strengthens the position of incumbents relative to new entrants. It increases the financial power of MPs, corporations and unions relative to other donors, including members of the public – provided those MPs, corporations and unions fund political parties, not independents.

Introduction

In 2018, the Victorian Parliament passed the Electoral Legislation Amendment Bill 2018, which made major changes to its electoral laws, including introducing donation caps (around \$4,000 per four-year electoral cycle from a single donor to a given party or candidate), real-time disclosure of donations, bans on foreign donations, limits on anonymous donations, extending the laws to third-party campaigners and dramatically increasing public funding (both increasing the dollar per vote payment and introducing funding based on MP numbers). Legislative Council amendments to the bill required, among other things, that an expert panel conduct an independent review of the operation of the bill.¹

The Australia Institute welcomes the opportunity to make a submission to this review.

In our submission to the Joint Standing Committee on Electoral Matters' inquiry into the 2022 federal election, the Australia Institute identified seven potential perverse outcomes from donation and spending caps. Those concerns have been borne out by the 2022 Victorian and 2023 NSW elections, where donation caps (in Victoria) and donation and spending caps (in NSW) have heightened the advantages held by political parties over independents and incumbent MPs over new entrants.

Since then, the Australia Institute's Democracy & Accountability Program has made electoral reform a research priority. We attach our submission to the Victorian Electoral Matters Committee and the nine principles for fair political finance reform (summarised below).

This submission builds on that research by looking at the Victorian experience in more detail. This submission also responds to questions asked of the Australia Institute by the independent review when Executive Director Richard Denniss gave evidence in July 2023.

Submission to the Victorian Electoral Matters Committee

The submission to the Victorian Electoral Matters Committee:

- Outlines the financial advantages of incumbency for Victorian MPs, which amount to over \$2 million each over a four-year cycle. 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.
- Calculates public funding for the major parties at over \$45 million over an electoral cycle.

¹ Victorian Government (n.d.) *Electoral Review Expert Panel - Discussion paper*, pp. 1–2, <http://www.vic.gov.au/electoral-review-expert-panel-discussion-paper>

- Lists potential perverse outcomes from donation and spending caps.
- Describes two alternative public funding models, “democracy dollars” and “multiple matching”, which may be fairer to new entrants while still ensuring that public funding reflects genuine public support.²

Principles for fair political finance reform

Earlier this year, the Australia Institute identified nine principles for fair political finance reform. Any reforms to electoral finance should:

1. Give voters a range of choices about who represents them
2. Not make it harder for new candidates to compete with incumbents
3. Provide a level playing field regardless of whether candidates are members of a political party or independents
4. Factor in the significant taxpayer-funded advantages of incumbency, with an eye to reducing disadvantages already faced by challengers
5. Account for spill over effects and economies of scale.
6. Focus on those who most clearly threaten democracy and accountability
7. Ensure that public funding is fit for purpose
8. Strive for fairness and increased transparency
9. Distinguish between bona fide contributions and “cash for access”.

The full report goes through each principle in turn and explains the reasoning behind it. Examples are given for electoral laws that are compatible with the principle and ones that are not.³

Many of the examples would apply to Victoria, as they do to other jurisdictions – like the ability of parties to harvest public funding from safe seats and unwinnable seats and redirect it to target seats. This option is not open to independent candidates.

Under principle 2 – that political finance reform should not make it harder for new candidates to compete with incumbents – there are also examples that are peculiar to Victoria that may warrant particular attention:

- Providing public funding based on previous election results. This is of limited use to new entrants. Victoria is unusual in providing public funding in advance of the election, but since it is based on results at the last election it does not serve new entrants.

² Morison & Browne (2023) *Submission 77*, pp. 14–19, <https://new.parliament.vic.gov.au/get-involved/inquiries/2022-victorian-state-election/submissions/>

³ Browne (2023) *Principles for fair political finance reform*, <https://australiainstitute.org.au/report/principles-for-fair-political-finance-reform/>

- Allowing for unlimited contributions from “nominated entities”, without counting against the donation cap. The major parties’ nominated entities were founded and received their assets at a time when donations were unlimited.
- Donation caps that make an exception for levies on elected MPs and their staff. The “levy” or “tithe” is a payment (sometimes compulsory) that an MP or staffer makes to their party, calculated as a portion of their publicly-funded salary.⁴

⁴ Browne (2023) *Principles for fair political finance reform*, pp. 3–4

Victorian political party funding sources

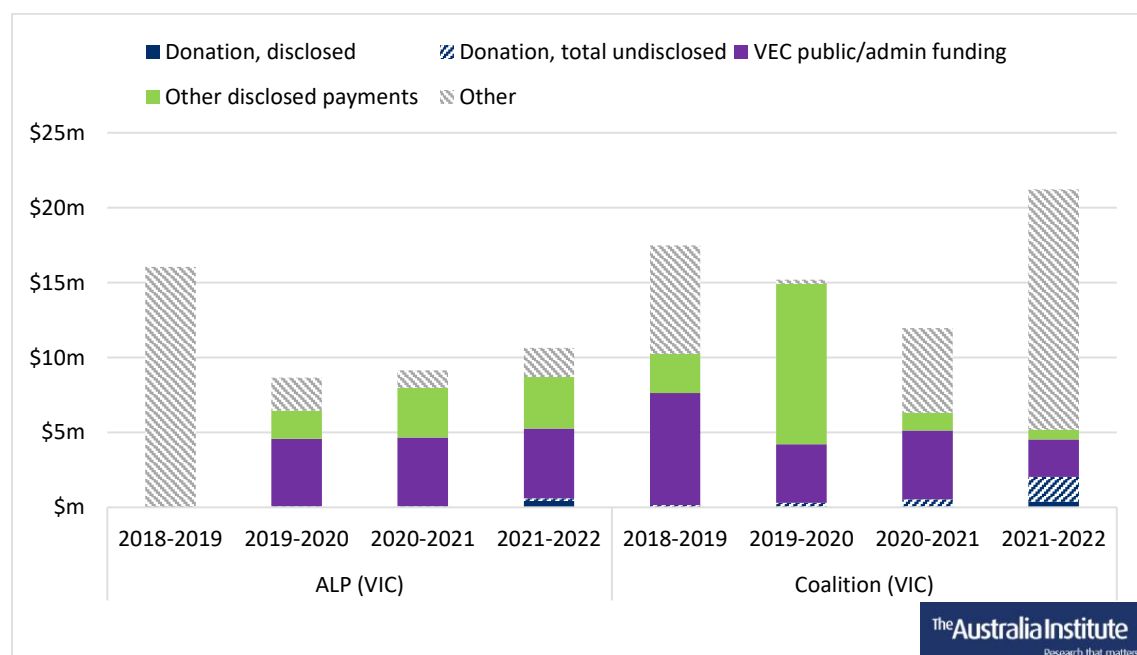
Political donations make up a small portion of the overall funding of Victoria’s political parties. In the four financial years 2018-2019 to 2021-22, the Labor Party reported total revenue of \$23 million, the Liberal Party \$32 million and the Nationals \$4 million.

Figure 1 below shows the revenue sources for the Labor, Liberal and National parties since 2018-19, based on the public annual return for each party’s Victorian branch. As shown in the chart in grey, large portions of party revenue remain undisclosed – between 40% and 50% for Labor, the Liberal Party and the Nationals. This presumably includes revenue for federal election purposes, and is not counted in the party revenue figures above.

The next largest category in most years is public and administration funding from the VEC to each party (in purple). These are a legislated entitlement accruing to each party based on votes received and number of MPs in Parliament.

Shown in green are disclosed payments, other than donations and public/administration funding. These represent a great variety of payments – including levies on MPs and staffers, payments from business forums and financial revenue like dividends – and are discussed further below. The smallest categories are undisclosed donations (blue stripes) and disclosed donations (solid blue).

Figure 1: Labor and Coalition Victorian branch funding, 2018–2022



Source: VEC (2022) *Public annual returns*, <https://disclosures.vec.vic.gov.au/public-annual-returns/>

Note: The authors identified apparent discrepancies in the VEC data, but none that would materially affect the findings.

Setting aside “other” revenue, public funding provides over half (54%) of the remaining revenue of the major parties. Donations are a small revenue stream (6% across the three major parties) relative to other discretionary contributions.

It is unclear to the authors precisely why these categories fluctuate. The presence or absence of other revenue may reflect how parties are set up administratively (for example parties may have different policies on whether revenue for federal purposes bypasses the state accounts or is placed in the state accounts and then transferred elsewhere) and the three-year federal election cycle.

CONTRIBUTIONS THAT ARE NOT “DONATIONS”

As shown in Figure 1 above, the major parties in Victoria do not receive much of their revenue in donations. Other disclosed payments are a more substantial source of revenue.

The distinction between donations and other forms of voluntary contribution arises in the *Electoral Act 2002*, which excludes from the definition of “gift” (read, “donation”) a number of payments *only* when they are made to a registered political party.⁵

The distinction matters for reporting purposes, including real-time disclosure, but the most perverse ramification is that the strict donation cap applies to gifts, not to these other payments.

Payments to registered political parties that are not subject to the donation cap are:

- **Membership fees** paid by a person in the form of an annual subscription.
- **Affiliation fees** paid by associated entities, like payments from trade unions to the Labor Party.
- **Annual levies** paid by an elected member or their staff or an employee or elected official of the party, such as the share of their salary that Labor MPs and staffers “tithe” to the Labor Party.
- **Gifts from a nominated entity**, which in the case of the major parties are Labor Services & Holdings (Labor), the Cormack Foundation (Liberal) and Pilliwinks (National). Nominated entities are incorporated entities that operate for the benefit of a party; for example, the Cormack Foundation was established in 1988 with the

⁵ *Electoral Act 2002* (Vic), sec.206, <https://www.legislation.vic.gov.au/in-force/acts/electoral-act-2002/063>

proceeds of the sale of a radio station.⁶ Each party can only nominate one such entity, which is intended to limit the proliferation of fundraising entities and the risk that such entities are used to evade or obfuscate disclosure requirements.

- **The provision of labour** between one branch of a party and another.⁷

Unsurprisingly, given that they are uncapped, exceptions to the donation cap that only political parties are eligible for are more substantial sources of party revenue than donations from the public.

It should be noted that some of these contributions, such as levies, affiliation fees and corporate membership fees, cannot be used for election campaigning. Nonetheless, they give the parties a strong institutional and administrative base for fighting any election campaign – one that independent candidates and MPs must replicate, presumably through their election account supported by capped donations.

FUNDING SOURCES FOR POLITICAL PARTIES

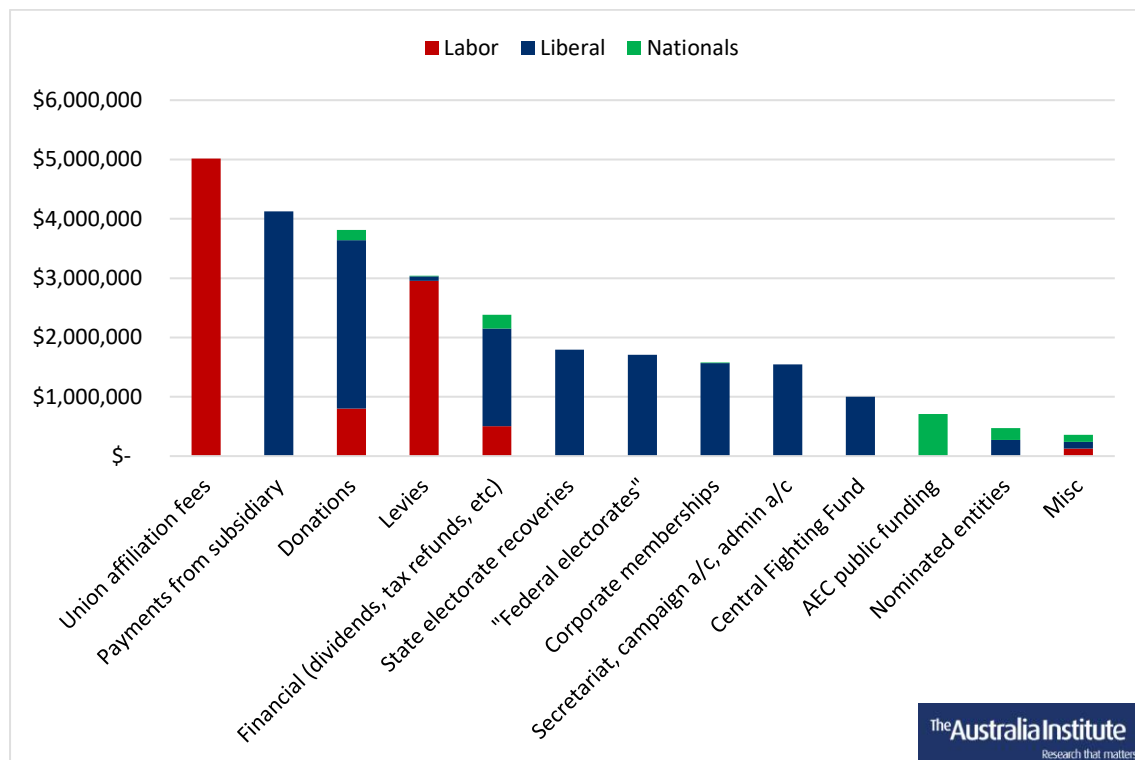
For the major parties, other payments substantially exceed donations from the public in the 2018–2022 period, as shown in Figure 2 below.

A striking feature of the data is that few funding categories are common to all three parties. For some of these categories, like union affiliation fees, this is not surprising. For other categories, it is not clear if this is a genuine difference between parties or if it is an artefact of how the funding is classified in the party returns.

⁶ Preiss (2018) *Liberals fall short in bid for control of \$70 million war chest*, <https://www.theage.com.au/politics/victoria/liberals-fall-short-in-bid-for-control-of-70-million-war-chest-20180613-p4zlb7.html>

⁷ *Electoral Act 2002* (Vic), sec.206, <https://www.legislation.vic.gov.au/in-force/acts/electoral-act-2002/063>

Figure 2: Funding 2018–2022, other than undisclosed revenue and public/admin funding



Source: VEC (2022) *Public annual returns*

Note: Donations and other payments classified by the best efforts of the authors based on the limited information provided in party disclosures.

Labor

Victorian Labor received \$801,000 in donations over the four years (3% of disclosed revenue), compared to \$5.0 million from union affiliation fees and \$3.0 million from mandatory levies on MPs and their staff.

Coalition

The Victorian Liberals received \$2.8 million in donations (9%), compared to \$4.1 million from Vapold Pty Ltd (a subsidiary), \$1.6 million from corporate memberships (“packageholders and function income”) via Enterprise Victoria and \$4.5 million from sources described as “state electorate recoveries”, “federal electorates” and “Central Fighting Fund” (what types of contribution these represent is unclear to the authors).

In one year, the Parliamentary Liberal Party (an associated entity of the Liberal Party proper) collected \$74,000 in levies (not included in other figures, as this analysis does not extend to associated entities).

The Victorian Liberals only reported \$272,000 from the Cormack Foundation, although that does not accord with reports that the nominated entity was contributing \$2.5 million to the 2018 state election campaign and \$3 million to the 2022 campaign.⁸

The Victorian Nationals received \$172,000 in donations (4%), compared to \$200,000 from their nominated entity, \$10,000 from corporate memberships and \$10,000 from levies.

Victorians Party

The Victorians Party was a minor party formed in 2021 and motivated, in part, by frustration with Victoria’s COVID lockdowns.⁹

In the end, the party withdrew from the 2022 election. Ahead of the election, journalists report that the Victorians Party received \$250,000 from billionaire Jonathan Munz, which was not subject to the donation cap because it was a “membership fee”.¹⁰ Disclosures for the period including this payment are yet to be released.

LACK OF TRANSPARENCY

Which corporations have paid corporate membership fees, and how much they have paid, do not seem to have been disclosed by the parties – meaning that even Victorians who make relatively small donations (like \$1,100) have their name and suburb of residence published while corporate members of parties or their fundraising wings remain secret.

CONTRIBUTIONS FROM CANDIDATES

Candidates can donate to their own campaigns, above the donation cap.¹¹

The largest donor in the 2018–2022 period was Liberal candidate Jason McClintock, who gave \$110,000. This is 24 times larger than the maximum donation any other Victorian could

⁸ Preiss (2018) *Cormack Foundation to give Liberals \$8.5m under pre-poll peace deal*, <https://www.theage.com.au/politics/victoria/liberals-to-secure-8-5-million-election-donation-from-cormack-foundation-20181026-p50c4c.html>

⁹ Kolovos (2022) *The challenge for the Victorians party, born from lockdown anger*, <https://www.theguardian.com/australia-news/2022/jun/11/the-challenge-for-the-victorians-party-born-from-lockdown-anger>

¹⁰ Note that the VEC investigated “but was unable to make any findings”; the matter was referred to the Independent Broad-based Anti-corruption Commission. 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>

¹¹ *Electoral Act 2002* (Vic), sec.217D(5), <https://www.legislation.vic.gov.au/in-force/acts/electoral-act-2002/063>

make, and represents 4% of the total value of donations received by the Victorian Liberals over that period (6% during the year they were received, 2021-22).¹²

Eight candidates gave over \$4,500 during the four-year period 2018-19 to 2021-22. In total, 31 donors were identified as candidates for the 2018 or 2022 elections (or both). They collectively gave \$268,000, or 13% of all donations to the three major parties.¹³

Separate to the party disclosures, the VEC lists all disclosed donations since 30 June 2020.¹⁴ Because of Victoria's real-time disclosure laws, this provides more recent donation data than the party disclosures (up to 16 August 2023 at the time of writing). According to these disclosures, there are 29 people who donated \$10,000 or more over the period: \$939,000 of the \$5.3 million in donations, or 18% of all disclosed donations. These are presumably all candidates, though not necessarily major party candidates.

The donation cap exception makes wealthy independent candidates more viable than other independent candidates, and makes wealthy candidates more attractive to party pre-selectors. In a system without caps, a candidate who is not wealthy themselves can appeal to those who are for donations. However, in the Victorian system this option is not open to candidates of modest means.

¹² Australia Institute calculations based on VEC (2022) *Public annual returns*, <https://disclosures.vec.vic.gov.au/public-annual-returns/>

¹³ Australia Institute calculations based on VEC (2022) *Public annual returns*

¹⁴ VEC (2023) *Disclosed donations*, <https://disclosures.vec.vic.gov.au/public-donations/>

Public funding thresholds and values

Candidates for Victorian elections must pay a deposit of \$350. If they receive 4% or more of the vote in their electorate (a single seat for a Legislative Assembly candidate or a region for a Legislative Council group), they receive their deposit back and also receive public funding. At the time of writing, public funding is worth about \$7 per Legislative Assembly vote and \$3.5 per Legislative Council vote – although as these figures are indexed to account for inflation, the value of a vote was less in nominal terms in earlier years.

The independent review asked for input on:

- the 4% vote threshold before a candidate gets their deposit back and receives public funding and
- the disparity between funding per vote in the Legislative Assembly and in the Legislative Council.

Both theoretically and based on empirical observation, these elements favour major parties over minor parties and independents.

In theory, public funding skews towards major parties

A minor party is more likely to fall below the 4% threshold in some electorates than a major party is, even if the minor party's statewide vote is above 4%. This means that minor parties would be expected to miss out on public funding relative to their share of the vote.

Making Legislative Council votes worth half as much as Legislative Assembly votes reflects that major parties tend to spend more on lower house campaigns. However, because minor parties usually focus on upper house races, the effect would in practice be to reduce their funding relative to their share of the sum of Legislative Assembly and Legislative Council votes.

Parties that run in both houses campaign for both types of vote at the same time (in practice, it appears they campaign mostly for lower house votes, and can rely on a portion of upper house votes following). Winning over a voter is “worth” \$10.50 to a political party because most vote the same way on both ballots. Independents only run in one house so they receive less funding – but must reach the same number of voters.

In practice, public funding skews towards major parties

The Victorian Electoral Commission publishes the amount of public funding that it pays to each party and candidate and (separately) the number of votes each party and candidate received. Comparing public funding payments to parties and candidates for the last term of parliament (November 2018 to September 2022) to the votes received by parties shows that public funding favours the major parties (including, in this context, the Victorian Greens).

As shown in Table 1, Labor, the Coalition and the Greens receive about the same amount of public funding per vote: about \$4.60. This is close to the average of about \$3.07 per Legislative Council vote and about \$6.14 per Legislative Assembly vote, skewing slightly higher to reflect that each major party won more votes in the lower house than the upper house.

The next largest share of votes was for those parties and independent candidates who received no public funding. Presumably, most of these candidates and parties were ineligible for public funding because they fell below the 4% vote threshold; some may not have contested the 2022 election, and have been ineligible for that reason.

The remaining parties all received well under \$3.07 per vote, which shows that their financial disadvantage is not *just* that they receive more votes in the Legislative Council than in the Legislative Assembly (though that was true for all of them), but also that they miss out on some funding altogether due to falling below the 4% threshold in some or all seats and regions contested.

Those independent candidates that received 4% of the vote or more all received about \$6.12 per vote (in line with the \$6.14 per vote expected for a Legislative Assembly candidate eligible for public funding). However, these candidates are only a fraction of all independent candidates: those not eligible for funding appear instead in the “parties and candidates without funding” line item.

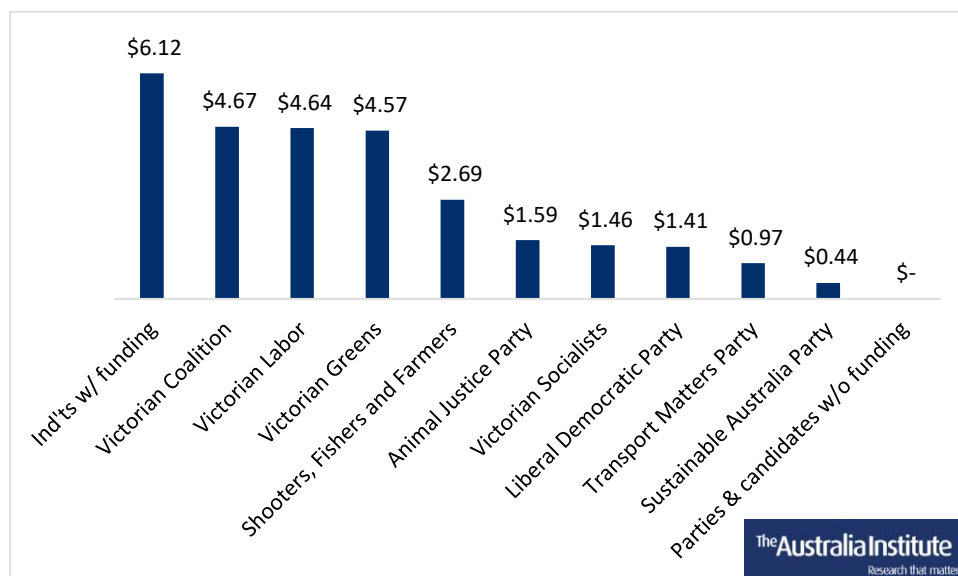
Table 1: Public funding and performance at 2018 election

Recipient name	2018–2022 funding	LA and LC votes	\$ per vote
Labor	\$13,508,174	2,912,582	\$4.64
Coalition	\$10,707,118	2,291,892	\$4.67
Greens	\$3,233,117	707,949	\$4.57
Parties and candidates w/o funding		626,573	\$ -
Animal Justice Party	\$243,217	152,490	\$1.59
Shooters, Fishers and Farmers	\$356,558	132,537	\$2.69
Liberal Democratic Party	\$132,195	93,458	\$1.41
Victorian Socialists	\$70,003	48,045	\$1.46
Independent candidates w/ funding	\$380,002	62,048	\$6.12
Sustainable Australia Party	\$16,579	38,014	\$0.44
Transport Matters Party	\$31,487	32,364	\$0.97

Source: VEC (2018) *2018 State election results*, <https://www.vec.vic.gov.au/results/state-election-results/2018-state-election>; (2022) *Public funding payments November 2018–September 2022*, <https://www.vec.vic.gov.au/candidates-and-parties/funding/funding-register>

Note: These are estimates only. They assume that parties and candidates claimed the full amount of advance public funding that they are entitled to.

Figure 3: Dollars per vote, 2018–2022 funding



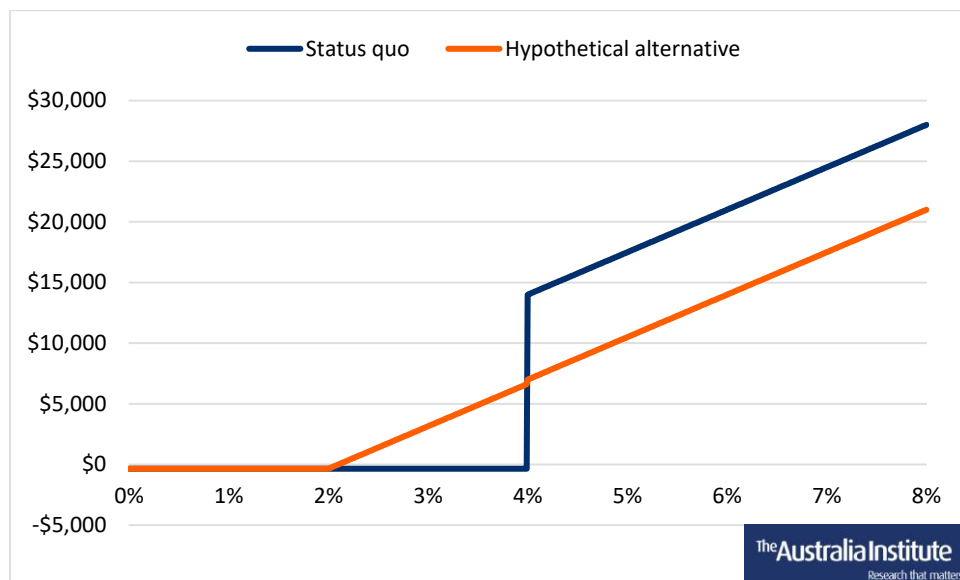
Alternative thresholds and alternatives to the threshold

While it makes sense to limit public funding based on vote share to (a) discourage people from running if they do not have a base of popular support, (b) limit administration costs for the VEC and (c) discourage people from running for office just to raise money, the use of a threshold means that a few votes can make the difference between a candidate receiving almost \$15,000 versus receiving nothing (and losing their deposit).

One solution could be to use a tapered system. For example, setting the threshold for receiving public funding to 2% but only funding candidates based on every vote received *after* the 2% threshold creates a more steady progression, shown in Figure 4 below.

This still leaves legislators to figure out the desirable threshold for receiving public funding, but it reduces the impact of whichever threshold legislators choose.

Figure 4: Effect of a “tapered” public funding model



Source: Authors' calculations

This hypothetical model would result in significantly less public funding for some parties and candidates (\$7,000 less for each candidate who passed the threshold). Given Victoria's public funding scheme is generous, this is not necessarily a flaw. However, it would be easy to tweak the hypothetical model to narrow this gap or remove it altogether while keeping the calculation simple and tapered – for example, by using an accelerated rate between 2% and 6%.

Spending caps

Independent performance in states where caps apply

At the 2022 Victorian state election, all three independent MPs in the Legislative Assembly lost their seats and no new independents were elected. Community independent candidate Kate Lardner identified Victoria’s “unfair” donation laws as contributing to an uneven playing field.¹⁵

NSW electoral laws that entrench incumbency were identified as an impediment to independent candidates in the 2023 state election.¹⁶ The NSW Legislative Assembly has a historically large crossbench of 12, including nine independents. However, a review of the backgrounds of the independents shows that most were not new entrants: they were sitting or former mayors, ran for a party and later defected or, in one case, were the nominated successor of an established independent MP. The exception, Joe McGirr, won in his third tilt at the seat in a by-election created by the departure of a “disgraced” major party MP.

Table 2: Current independent crossbenchers in the NSW Legislative Assembly

Independent	Background
Alex Greenwich	First elected in 2015 as the nominated successor of Clover Moore.
Greg Piper	First elected in 2007 while a sitting mayor.
Judy Hannan	First elected in 2023 while a sitting councillor, after an unsuccessful run in 2019. Hannan is a former mayor.
Michael Regan	First elected in 2023 while a sitting mayor.
Joe McGirr	First elected in 2018, after unsuccessful runs in 2015 and 2011. Elected at a by-election created by the departure of a “disgraced” major party MP. ¹⁷
Roy Butler	First elected in 2019 as a Shooters, Fishers and Farmers Party MP.
Helen Dalton	First elected in 2019 as a Shooters, Fishers and Farmers Party MP.
Philip Donato	First elected in 2016 as a Shooters, Fishers and Farmers Party MP.
Gareth Ward	First elected in 2011 as a Liberal MP.

Sources: 9News (2012) *O’Farrell accused of bullying Sydney mayor*, <https://www.9news.com.au/national/o-farrell-accused-of-bullying-sydney-mayor/b2545ac0-94f1->

¹⁵ Ore (2022) *‘Teal wave’ turns out to be barely a ripple as number of Victorian independents goes backwards*, <https://www.theguardian.com/australia-news/2022/nov/28/teal-wave-turns-out-to-be-barely-a-ripple-as-number-of-victorian-independents-goes-backwards>

¹⁶ For example, see Saville (2023) *Why NSW electoral rules don’t help teals in ‘Kmart election,’* <https://www.smh.com.au/politics/nsw/why-nsw-electoral-rules-don-t-help-teals-in-kmart-election-20230130-p5cgc.html>

¹⁷ For completeness, Joe McGirr is the grandson of a deputy premier and great-nephew of a premier, although he did not know them personally: McGirr (2018) *Inaugural speech*, <https://www.parliament.nsw.gov.au/members/Pages/member-details.aspx?pk=2237>

486d-92a8-77fa2fc2e145; Parkes-Hupton (2023) *The crossbench could play a crucial role in the next NSW parliament — here's who they are*, <https://www.abc.net.au/news/2023-03-29/nsw-election-who-is-sitting-on-the-crossbench/102154828>; Patty (2015) *Clover Moore delighted with Alex Greenwich's success in seat of Sydney*, <https://www.smh.com.au/national/nsw/clover-moore-delighted-with--alex-greenwichs-success-in-seat-of-sydney-20150329-1ma9jz.html>; Sas & Khalik (2018) *Wagga Wagga by-election: Antony Green calls it for Dr Joe McGirr*, <https://www.abc.net.au/news/2018-09-09/antony-green-calls-by-election-for-joe-mcgirr/10219584>

Queensland capped donations and spending ahead of the 2020 election, at which no new independents were elected. The Parliament's one independent MP was originally elected in 2017. Queensland's public funding system appears to be set up so that parties and their candidates can together claim three times as much per first preference vote as an independent candidate can.¹⁸ More time is needed to assess the potential effects on new entrants of the Queensland caps and public funding model, although on the face of it the public funding model is unfair.

Reflecting party and incumbency advantages

The independent review discussed whether and in what form spending caps could be implemented. If spending caps are to be fair, they must reflect the benefits incumbents receive over new entrants and parties that run across the state and in both houses receive over independent and minor party candidates.

In New South Wales, parties with more than 10 endorsed lower house candidates can spend \$150,700 per district in which they have endorsed candidate – or \$14.0 million for a party running in every district. Each party-endorsed Legislative Assembly candidate can spend a further \$150,700.¹⁹ Independent candidates are subject to a slightly higher spending cap than party-endorsed candidates (\$225,800), but they are behind in aggregate terms when the party spending cap is included. NSW does stop parties from double-dipping in one aspect: the Legislative Assembly cap also applies to Legislative Council spending.²⁰

The “electoral district cap” for a party is \$75,500 within the party's overall expenditure cap, but this applies only to expenditure that mentions the candidate or district and that is mainly communicated to electors in that district. Party political advertising does not need to

¹⁸ *Electoral Act 1992* (Qld), secs.223, 224, 227,

<https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-1992-028>

¹⁹ See note in *Electoral Funding Act 2018* (NSW), sec.29(9),

<https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2018-020>

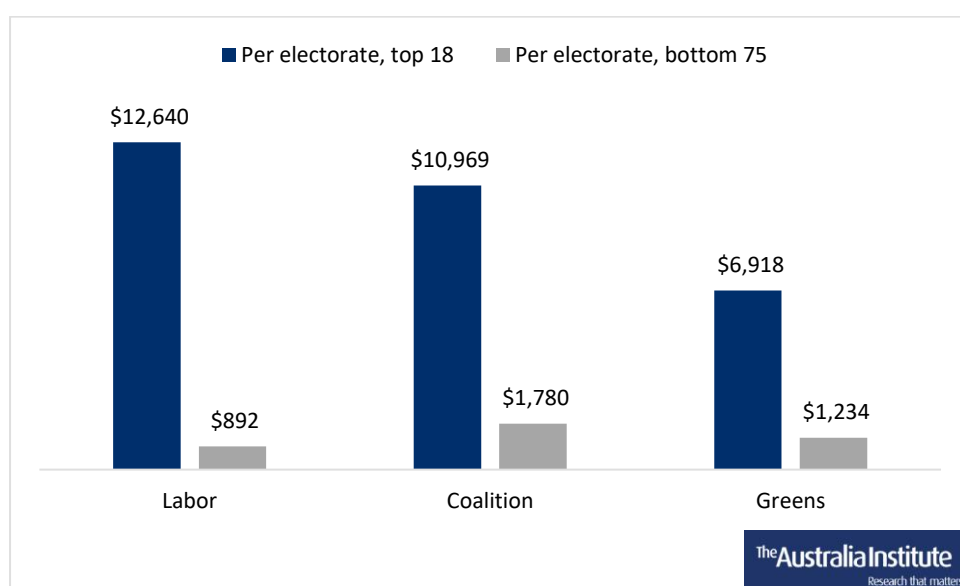
²⁰ NSW Electoral Commission (2023) *What are the expenditure caps for state elections?*,

<https://elections.nsw.gov.au/funding-and-disclosure/electoral-expenditure/caps-on-electoral-expenditure/what-are-the-expenditure-caps-for-state-elections>; (2023) *Aggregation of electoral expenditure for state elections*, <https://elections.nsw.gov.au/funding-and-disclosure/electoral-expenditure/caps-on-electoral-expenditure/aggregation-of-electoral-expenditure-for-state-elections>

name individual candidates to be effective, and in urban areas even targeted advertising is likely to cross several districts.

Parties concentrate their expenditure on target seats. Political strategy company Populares published the Meta (Facebook/Instagram) advertising spend per electorate for the 2023 NSW election. Using this data, the authors identified the top 18 seats (20% of all seats) by Meta spending per party. As shown in Figure 5 below, each party spent far more in each of these seats than it did in each of the remaining 75 seats (80% of all seats): the average for a top 20% electorate was 14 times as much as the average for a bottom 80% electorate for Labor, 6 times as much for the Coalition and 6 times as much for the Greens.²¹

Figure 5: Meta ad spend per NSW electorate by the top 20%/bottom 80% of electorates



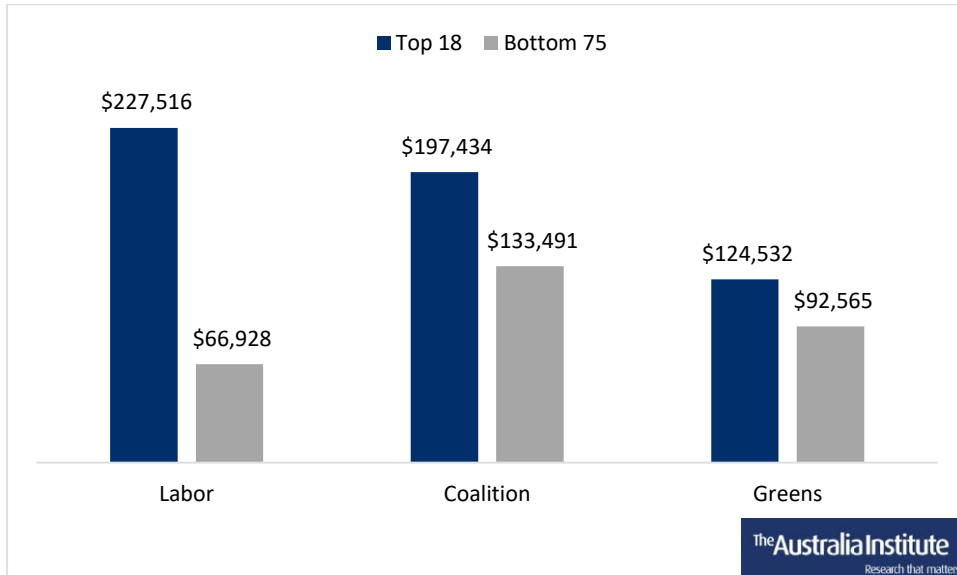
Source: Authors' calculations from Populares (2023) *NSW Election AdTracker*, <https://populares.co/nswadtracker>

Note: The top 18 electorates are the top electorates for each party; a top electorate for one party was not necessarily a top electorate for another.

²¹ Authors' calculations from Populares (2023) *NSW Election AdTracker*, <https://populares.co/nswadtracker>

Another way of looking at this is that for each party, more than half of Meta spending went to just 18 seats: 57% for the Greens, 60% for the Coalition and 77% for Labor. Figure 6 shows this pattern for each party, including the absolute spending figures.

Figure 6: Most NSW election spending on Meta ads went to the top 20% of electorates



Source: Authors' calculations from Populares (2023) *NSW Election AdTracker*

Note: The top 18 electorates are the top electorates for each party; a top electorate for one party was not necessarily a top electorate for another.

Social media spending is only a fraction of overall spending. More data is needed to see whether Meta ad spend is representative. However, it is strong evidence for the theory that parties target spending on a handful of “key seats” or “seats to watch”, about 10 to 30 for the 2023 NSW election.²²

Assuming that parties concentrate 60% of their \$14.0 million capped spending (\$8.4 million) on 20% of the seats (18 seats), parties could spend \$452,000 per target seat on top of the \$150,700 spent by their endorsed candidate – outspending an independent candidate almost three to one (\$602,800 vs \$225,800).

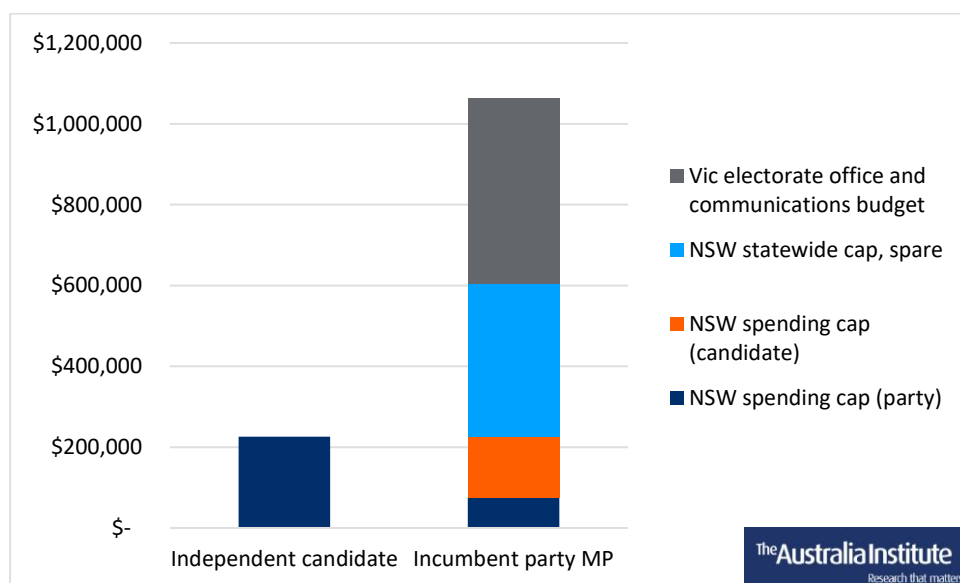
In addition, sitting MPs (independent and party-affiliated) receive incumbency advantages. In Victoria, the Australia Institute calculates the financial advantages at starting from

²² Between 12 and 30 “key seats” or “seats to watch” were identified, based on the media outlet: Green (2023) *Key seats - NSW election 2023*, <https://abc.net.au/news/elections/nsw/2023/guide/key-seats>; McGowan & Rose (2023) *Seats to watch: the NSW election is likely to come down to these key electorates*, <https://www.theguardian.com/australia-news/2023/mar/24/seats-to-watch-the-nsw-election-is-likely-to-come-down-to-these-key-electories>; Smith, Cormack, & Rabe (2023) *The seats that will decide the outcome of this election*, <https://www.smh.com.au/politics/nsw/the-seats-that-will-decide-the-outcome-of-this-election-20230220-p5clvt.html>

\$556,000 per MP per year, or over \$2 million over an election cycle. The electorate office and communications budget alone is worth \$460,000 per election cycle.

Figure 7 below shows the spending position of an independent new entrant compared to a sitting, party-affiliated MP in a key seat. The figure likely over-estimates the value of the electorate office and communications budget (not all of which is directly beneficial to the sitting MP, and some of which will be spent well before the election), but it does not include the other substantial financial and non-financial advantages of incumbency. It also does not account for the fixed costs of running an election campaign, which are lower per-candidate for parties running many candidates than they are for each independent candidate.

Figure 7: Potential spending caps, independent vs party-affiliated candidate in a key seat



Taken together, this suggests that a fair spending cap for an independent new entrant might need to be over \$1,000,000 if the cap for political party candidates were \$151,000 per district as it is in NSW.

This apparent unequal treatment of independent candidates compared to party-affiliated candidates would probably be politically unpalatable, but it follows logically from enumerating just one of the advantages of incumbency and the likely way political parties would react to state-wide spending caps.

Wasteful election spending and the fundraising “arms race”

Election spending is not entirely a zero-sum game, since it educates the public on policies, draws attention to social issues, can hold politicians to account for their words and deeds and underscores the significance of the choice voters face. However, the effect of additional election spending by major political parties is mostly to cancel each other out. Election advertising may have negative externalities too, when misleading advertising leads to a less informed populace or when attack ads induce cynicism and weariness in voters.

Neither major party can opt out of this “arms race” without forfeiting an advantage to its rival. Parties are also tempted to compromise their integrity, for example by selling access to parliamentarians and ministers.

This situation may be an argument for spending caps (although not one that mitigates the risks), but it is an argument against donation caps. Under donation caps, more donations are needed to fund a campaign of the same cost. Independent candidates are likely to have more of their time wasted seeking donations than party-affiliated candidates, since parties have the other funding sources identified here, and party officials who can court donors.

What are appropriate benefits of party formation?

At the Australia Institute's appearance before the independent review, the panel asked whether political parties should be discouraged and independent candidates encouraged and whether it is unfair that political parties reap the benefits of party formation.

Electoral system should not favour independents or parties

Crossbench parliamentarians serve functions that government and opposition parliamentarians typically do not (especially in Australia, where party discipline is unusually strict). The Australia Institute has written extensively about the role of the crossbench, particularly in the Australian Senate.²³

Sometimes the opposition is reluctant to question government policy or behaviour because there is a tacit agreement between the parties of government that neither benefits in the long term from such scrutiny. Other times, the opposition was partly responsible (when in government) for ongoing failures of government policy, and so resists probes even when they would expose wrongdoing by the current government as well. Crossbenchers have no such limitations.

Crossbenchers can also represent distinct interests or fresh perspectives, including those of civil society. Upcoming research by the Australia Institute's Democracy & Accountability Program catalogues the extensive policy contribution of the federal crossbench on issues as diverse as human rights, government accountability, the environment, health and economics.

Independent MPs also serve, in the words of Labor minister John Della Bosca, as "a filter" on government legislation that disciplined party rooms might otherwise "keep on churning through".²⁴

²³ 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/>

²⁴ Clune (2019) *At cross-purposes? Governments and the crossbench in the NSW Legislative Council, 1988-2011*, <https://www.parliament.nsw.gov.au/lc/roleandhistory/Pages/Legislative-Council-Oral-History-Project.aspx>

However, there are also significant benefits to political parties (and by extension party-affiliated parliamentarians):²⁵

- Parties facilitate compromise by limiting and formalising the number of representatives involved in negotiation. They do this both within the party room (the party room nominates a spokesperson to represent them for each portfolio) and across the nation (with the interests of each area represented by a single MP).²⁶
- The organised, “responsible opposition” holds the government to account without obstructing the legitimate performance of its duties. The opposition is also prepared to take office should the government lose the confidence of the Parliament. This allows for orderly handover of power and legitimises the government of the day and the electoral process.²⁷
- Political parties have the resources to assess and form comprehensive policies, and enduring parties can embody a coherent, distinct philosophy. It is harder for independent candidates and parliamentarians to cover every issue. Frances McCall Rosenbluth and Ian Shapiro write that: “Political parties are the core institution of democratic accountability because parties, not the individuals who support or comprise them, can offer competing visions of the public good”²⁸ – although it is worth noting that they are academics based in the United States, where independents and minor parties are rarer.
- Parties bring discipline and stability to legislative democracy, making it easier for the government of the day to deliver its election platform.²⁹ US historian Richard Hofstadter writes: “It is the need to legislate regularly that imposes a constant discipline within a parliamentary body”.³⁰
- Parties conduct due diligence on candidates, and their endorsement is a reliable guide for voters to distinguish between candidates.³¹

²⁵ This list owes a great deal to an earlier internal research brief prepared by Robyn Seth-Purdie for the Australia Institute.

²⁶ Russell Muirhead quoted in Ellison (2021) *Can we have democracy without political parties?*, <https://www.bbc.com/future/article/20210607-can-we-have-democracy-without-political-parties>; Vanstone (2022) *More independents in Parliament is not the answer*, <https://www.canberratimes.com.au/story/7587198/more-independents-in-parliament-is-not-the-answer/>

²⁷ Rosenblum & Muirhead (2019) *A lot of people are saying: The new conspiracism and the assault on democracy*, Princeton, cited in Ellison (2021) *Can we have democracy without political parties?*; Webber (2016) *Loyal opposition and the political constitution*, <https://core.ac.uk/download/pdf/35439086.pdf>

²⁸ Rosenbluth & Shapiro (2018) *Empower political parties to revive democratic accountability*, <https://www.the-american-interest.com/2018/10/02/empower-political-parties-to-revive-democratic-accountability/>

²⁹ Rosenbluth & Shapiro (2018) *Empower political parties to revive democratic accountability*; Stokes (1999) *Political parties and democracy*, p. 245, <https://www.annualreviews.org/doi/pdf/10.1146/annurev.polisci.2.1.243>

³⁰ Hofstadter (1969) *A constitution against parties: Madisonian pluralism and the anti-party tradition*, pp. 345–346, <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1477-7053.1969.tb00805.x>

³¹ Cohen (2020) *The two-party system is here to stay*, <http://theconversation.com/the-two-party-system-is-here-to-stay-132423>

- Parties facilitate communication between legislators and electorates.³²
- Parties represent the concerns of issues-based constituencies, and can unite separate constituencies behind overlapping interests.

Neither party-affiliated nor independent candidates are naturally preferable to the other. Principle 3 of the principles of fair political finance reform is that the playing field should be level regardless of whether candidates are members of a political party or independents.

Should political parties reap the benefits of organisation?

Political parties benefit from economies of scale, institutional knowledge, brand recognition, goodwill from members and volunteers, accumulated assets and established networks. These organic benefits accrue to parties not by design or law, but as a consequence of having been organised in a particular way for an extended period.

Reformers may wish to account for these incumbency benefits. In other areas, it is standard to make allowances for new entrants even when incumbents have taken no active steps to exclude them. For example, new teams entering the Australian Football League (AFL) receive significant concessions to make them competitive against established teams³³ – even though the established teams did nothing wrong and it is good for the sport that established teams make use of the organic benefits that they have.

Similarly, competition law limits business behaviour that has the effect of substantially lessening competition even when it is not the purpose of the behaviour.³⁴

That said, most important is that electoral laws should not amplify the organic benefits political parties may have. The law should not make the playing field *more* uneven.

³² Hofstadter (1969) *A constitution against parties: Madisonian pluralism and the anti-party tradition*, pp. 345–346; Römmele (2003) *Political parties, party communication and new information and communication technologies*, <https://library.fes.de/libalt/journals/swetsfulltext/15994891.pdf>

³³ As discussed in Browne (2023) *Principles for fair political finance reform*, pp. 5–6

³⁴ Australian Competition and Consumer Commission (2023) *Competition and anti-competitive behaviour*, <https://www.accc.gov.au/business/competition-and-exemptions/competition-and-anti-competitive-behaviour>; *Competition and Consumer Act 2010* (Cth), sec.45, <https://www.legislation.gov.au/Details/C2019C00264>

Conclusion

Victoria's 2018 electoral changes were ambitious, introducing high public funding and strict donation caps, accompanied by real-time disclosure of donations. Some elements of the changes were intended to fill a void, since at the time the state did not have a comprehensive disclosure regime.

The stated intention of the laws is to create a level playing field and reduce the influence of those with "deep pockets", with Attorney-General Martin Pakula saying in his second reading speech:

The Bill will introduce a cap of \$4,000 for each four-year election period on political donations made from the same source. The cap will ensure a level playing field and provide equal participation in the electoral process, reducing the potential for those with 'deep pockets' to try and exert greater influence.³⁵

Assessed against its stated objectives, the donation cap cannot be said to have succeeded. It has made the playing field more uneven, particularly for independents and new entrants, because it fails to account for the additional costs that new entrants face and needlessly privileges parties over independents.

There is strict transparency for political donors, but the same is not true for corporate members of political party "business forums".

The expansion of public funding (including admin funding) has primarily benefited incumbents, particularly major parties, and dramatically reduced their dependence on donations from the Victorian public. However, because of how public funding is allocated, new entrants do not have access to the same resources.

And while the influence of some wealthy and influential people and companies may have been reduced, the exceptions to the donation cap mean that outsized payments from certain privileged political players now cannot be countered by large political donations from others. The result is a two-tiered system where donations – gifts freely given – are capped while corporate cash for access, the dividends from financial investments and the mandatory tithes parties levy on their own staff and MPs are not.

³⁵ Pakula (2018) *Electoral Legislation Amendment Bill 2018 second reading*, <https://new.parliament.vic.gov.au/>