



PARLIAMENT OF AUSTRALIA

Conduct of the 2022 federal election and other matters

Interim Report

Parliamentary Joint Committee

Joint Standing Committee on Electoral Matters

June 2023

CANBERRA

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Terms of reference

That the Committee inquire into and report on all aspects of the 2022 federal election and related matters, including consideration of:

- a. reforms to political donation laws, particularly the applicability of 'real-time' disclosure and a reduction of the disclosure threshold to a fixed \$1,000;
- b. potential reforms to funding of elections, particularly regarding electoral expenditure caps and public funding of parties and candidates;
- c. the potential for 'truth in political advertising' laws to enhance the integrity and transparency of the electoral system;
- d. encouraging increased electoral participation and lifting enfranchisement of First Nations People;
- e. the potential for the creation of a single national electoral roll capable of being used for all federal, state and territory elections in Australia;
- f. encouraging increased electoral participation and supporting enfranchisement generally, and specifically in relation to:
 - i. accessibility of enrolment and voting for persons with a disability;
 - ii. voting rights of Australians abroad;
 - iii. Australian permanent residents and new Australian citizens; and
 - iv. New Zealand citizens residing in Australia; and
- g. proportional representation of the states and territories in the Parliament, in the context of the democratic principle of 'one vote, one value'.



Members

Chair

Ms Kate Thwaites MP Jagajaga, VIC

Deputy Chair

Senator the Hon James McGrath LNP, QLD

Members

Senator Marielle Smith ALP, SA

Senator the Hon Marise Payne LP, NSW

Senator Karen Grogan ALP, SA

Hon Shayne Neumann MP Blair, QLD

Mr Sam Rae MP Hawke, VIC

Senator Larissa Waters AG, QLD

Mr James Stevens MP Sturt, SA

Ms Kate Chaney MP Curtin, WA

Senator Ross Cadell NATS, NSW

Ms Anne Stanley MP Werriwa, NSW

Ms Tania Lawrence MP Hasluck, WA

Hon Darren Chester MP Gippsland, VIC



Foreword

Australians are rightly proud of our democracy and our electoral system. These systems are, however, only as robust as the institutions and frameworks that support them, and it is vital they remain trusted, relevant and fit for purpose.

Democracy is best when it is conducted in a way that is transparent, and where our community feels confident that our political system and our politicians are accessible to all and not just to those capable of making very large donations. Across the western world we see the potential for a drift from democracy when people feel like their political system isn't working for them and believe that their system has been captured by vested interests. It's a trend that we must work hard to avoid in Australia.

In this interim report, the Committee considers a number of matters pertaining to the 2022 Federal Election, including reforms to donation laws and the funding of elections, truth in political advertising laws, and encouraging increased electoral participation and lifting enfranchisement of First Nations People.

The Committee's inquiry has received nearly 1,500 submissions, illustrating the importance with which Australians hold the electoral system. We have also held nine public hearings to further examine some key questions with a wide range of stakeholders, and have further hearings planned. The Committee is deeply appreciative of the witnesses who have appeared at those hearings to aid us in our work.

The evidence we have heard has allowed the Committee to develop clear goals for reform: to increase transparency in election donations and curb the potentially corrupting influence of big money, to build the public's trust in electoral and political processes, and to encourage participation in our elections.

The Committee in this report recommends significant changes to our federal system. It is important to note that many of these reforms are not untested ideas or approaches. States and territories around Australia have grappled with the same challenges the federal system must now respond to and have provided models from which the Commonwealth can learn.

Noting that the Committee's work is not yet done in considering the conduct of the 2022 Federal election, on behalf of the Committee I thank the many people who have taken the time to engage with this inquiry. I also thank my colleagues for their ongoing engagement with the important work of the Joint Standing Committee on Electoral Matters – this report has been strengthened by the sincere and good-faith involvement of members across the political spectrum, even where we do not agree on all topics.

Ms Kate Thwaites MP
Chair

Recommendations

Recommendation 1

2.242 The Committee recommends that the Australian Government lower the donation disclosure threshold to \$1,000.

Recommendation 2

2.245 The Committee recommends that the Australian Government introduce ‘real time’ disclosure requirements for donations to political parties and candidates.

Recommendation 3

2.247 The Committee recommends that the Australian Government gives consideration to amending the definition of ‘gift’ in the Electoral Act to ensure it meets community expectations of transparency in political donations.

Recommendation 4

2.248 The Committee recommends that the Australian Government introduce donation caps for federal election donations.

Recommendation 5

2.251 The Committee recommends that the Australian Government introduce expenditure (also known as spending) caps for federal elections.

Recommendation 6

2.254 The Committee recommends that donation caps and expenditure caps apply to third parties and associated entities.

Recommendation 7

2.255 The Committee recommends the Australian Government introduce a requirement that all political parties, members of Parliament, candidates, associated entities and third parties be required to establish a Commonwealth Campaign Account for the purpose of federal elections, to better allow for disclosure and monitoring.

Recommendation 8

2.256 The Committee recommends the Australian Government introduces a new system of administrative funding to recognise the increased compliance burden associated with a reformed system.

Recommendation 9

2.257 The Committee recommends the Australian Government introduce a new system of increased public funding for parties and candidates, recognising the impact changes a reformed system will have on private funding in elections.

Recommendation 10

2.258 The Committee recommends the Australian Government provide the Australian Electoral Commission with additional resources to support, implement and enforce these reforms.

Recommendation 11

3.180 The Committee recommends that the Australian Government develop legislation, or seek to amend the Commonwealth Electoral Act 1918, to provide for the introduction of measures to govern truth in political advertising, giving consideration to provisions in the Electoral Act 1985 (SA).

Recommendation 12

3.181 The Committee recommends that the Australian Government consider the establishment of a division within the Australian Electoral Commission, based on the principles currently in place in South Australia, to administer truth in political advertising legislation, with regard to ensuring proper resourcing and the need to preserve the Commission's independence as the electoral administrator.

Recommendation 13

3.184 The Committee recommends that, providing the Committee receives a reference to conduct a review of the next federal election, consideration of the new framework be included in terms of reference to the Committee. Such consideration could include the effectiveness of the revised arrangements, and identification of any further improvements.

Recommendation 14

- 4.44** Consistent with the recommendation made in this Committee's Advisory report on the Referendum (Machinery Provisions) Amendment Bill 2022, the Committee recommends that the Australian Government strengthen the opportunities for electoral enfranchisement and participation to allow the Australian Electoral Commission to support increased enrolment and participation, particularly of Aboriginal and Torres Strait Islander people, including in remote communities.

Recommendation 15

- 4.46** The Committee recommends the Government resource the Australian Electoral Commission to work directly with Aboriginal and Torres Strait Islander community organisations to increase Indigenous enrolment and participation, particularly in remote communities.



1. Introduction

- 1.1 Conducting a review of the most recent Federal election is standard practice for the Joint Standing Committee on Electoral Matters (the Committee), with a review of every election since the 1987 federal election which elected the 33rd Parliament.
- 1.2 On 29 July 2022, the Special Minister of State, Senator the Hon Don Farrell, asked the Committee to inquire into and report on all aspects of the 2022 federal election. The Minister enclosed terms of reference, with several specific areas for the Committee to consider.
- 1.3 Evidence to the inquiry confirmed that Australia's electoral system is strong, but it is clear that around the world democracies are being challenged and there is declining public trust in electoral systems. It is important we make sure our laws are fit for purpose in this evolving environment.
- 1.4 Essentially, the terms of reference invite focus on three main areas:
 - **Money**: how money works in elections and how our elections are funded
 - **Information**: how voters get information in elections and how that is regulated
 - **Participation**: who gets to participate in our elections and how.
- 1.5 This *Interim Report* focusses on terms of reference *a-d*. The final report will revisit these, as well as provide detailed consideration of terms of reference *e-g*.

Clear calls for change

- 1.6 In preparation for this Interim Report, the Committee has focussed immediate attention on evidence and advice on the first two issues. Questions which arise about **money** can be simplified as:
 - how much is involved (in funding elections, parties, individuals)?
 - who gets it (individuals, entities, candidates, incumbents)?
 - from where does it come (donations, fundraising, government ie taxpayers)?
 - how is it received (public or private sources)?
 - who knows about it (disclosure, transparency)?
- 1.7 Questions which arise around **information** can be simplified as:
 - To what extent is trust an issue in elections?
 - How is 'truth' judged?

- What, or who, can the public trust as ‘reliable’, ‘accurate’, or ‘credible’?
 - What happens if ‘information’ is thought to be misleading or wrong?
 - Are there accountability mechanisms?
- 1.8 Discussion and debate on these key questions have expanded over time, and particularly in the context of recent elections in Australia and globally.
- 1.9 In this report, the Committee sets out the case for change. The Committee acknowledges the views of stakeholders who propose improvements which can be made from the outset, to strengthen the democratic principles and processes that are so clearly valued by Australian voters.
- 1.10 In acknowledging the views of stakeholders, including legal and constitutional experts, the Committee has also been focussed on considering examples of reform, or administration, which are currently in place and operating with a degree of success elsewhere, including in Australian state or territory jurisdictions. The Committee has given careful attention to how these models might be adapted as needed, and adopted at the Commonwealth level.
- 1.11 The Committee agrees that there are areas where clear and direct changes can be proposed, and where reforms will address some of the concerns raised, and has made recommendations accordingly.

Conduct of the inquiry to date

- 1.12 At the time of this report’s writing, the Committee is continuing to gather evidence with a particular focus on terms of reference *e-g*, and notes that current and future evidence will inform the final report.

Activities and consultation

- 1.13 A media release announcing the inquiry was issued on 5 August 2022, calling for submissions to be received by 7 October 2022.
- 1.14 The Committee invited submissions from a number of relevant and interested parties, including political parties, government agencies, academics, non-government and civil society organisations, businesses, peak bodies, social media platforms and individuals.

A note on submissions received

- 1.15 At the tabling of this interim report, the inquiry received 1,492 submissions and held nine public hearings which are listed at Appendix A and B respectively.

- 1.16 The committee received a large number of emails generated as a result of campaigns from three sources: #OurDemocracy, Protect the Vote, and Liberal HQ.¹ In the interest of transparency these emails were accepted as submissions and authorised for publication. The Committee notes the strong public interest in Australia’s democracy, including in how elections are conducted.

Report structure

- 1.17 Following the structure and format of previous reports which review federal elections, the Committee presents information received on this latest election and highlights areas where the case has been made for reform to be undertaken. The remainder of this introductory chapter presents facts and figures about the 2022 election.
- 1.18 Chapter Two focusses on issues related to money. This includes political donations and disclosure, transparency, campaign expenditure, and the regulation of political campaigners and associated entities. As noted earlier, these are complex and highly intertwined issues and as such the Committee has tried to consider the system as a whole.
- 1.19 Chapter Three explores trust in the electoral system and options for truth in political advertising.
- 1.20 Chapter Four outlines electoral participation and lifting enfranchisement of Indigenous people, foreshadowing that the Committee is continuing to gather evidence on these matters for more detailed consideration in its final report.

Prior to the 2022 Election

Legislative change in the 46th Parliament

- 1.21 During the 46th Parliament, twelve bills amending electoral legislation were passed.² Amendments included:
- measures to make electoral processes more efficient, supporting an earlier result

¹ #OurDemocracy, viewed on 20 December 2022, <<https://www.ourdemocracy.com.au/jscem-2022/>>; Protect the Vote, viewed on 20 December 2022, <https://www.georgechristensen.com.au/vote>; Correspondence from Liberal HQ, 30 September 2022, Authorised by A. Hirst for the Liberal Party of Australia.

² Electoral Amendment (Territory Representation) 2020; Electoral Legislation Amendment (Miscellaneous Measures) 2020; Electoral Legislation Amendment (Annual Disclosure Equality) 2021; Electoral Legislation Amendment (Assurance of Senate Counting) 2021; Electoral Legislation Amendment (Contingency Measures) 2021; Electoral Legislation Amendment (Counting, Scrutiny and Operational Efficiencies) 2021; Electoral Legislation Amendment (Electoral Offences and Preventing Multiple Voting) 2021; Electoral Legislation Amendment (Party Registration Integrity) 2021; Electoral Legislation Amendment (Political Campaigners) 2021; Electoral Legislation Amendment (Authorisations) 2022; Electoral Legislation Amendment (COVID Enfranchisement) 2022; Electoral Legislation Amendment (Foreign Influences and Offences) 2022.

- assurance of the Senate counting system
- introduction of ‘designated electors’, where suspected multiple voters could only cast a declaration vote
- tightening the financial disclosure scheme
- amendments to authorisation requirements
- a higher bar for parties to be registered
- contingency measures, including allowing voters in COVID-19 isolation to vote by telephone.³

The 2022 Election – in brief

- 1.22 Members of the 47th Parliament of Australia were elected at the 2022 federal election, which took place on Saturday, 21 May 2022.
- 1.23 The Australian Electoral Commission (AEC) highlighted that the ‘2022 federal election was the biggest in our history’ adding:
- It involved 17.2 million citizens, 105,000 temporary election staff and more voting options than ever before. We printed 59.4 million ballot papers, opened 8,479 voting locations and issued 2.7 million postal votes. More Australians voted than ever before, with 15.5 million votes cast.⁴
- 1.24 The estimated enrolment rate for the 2022 federal election was very similar to 2019 federal election with 96.8 per cent of eligible voters enrolled to vote nationally. Turnout was slightly lower than the previous election:
- House of Representatives turnout rate was 89.8 per cent (compared to 91.9 per cent in 2019)
 - Senate turnout rate was 90.5 per cent nationally (compared to 92.5 per cent in 2019).⁵
- 1.25 In comparison with elections held in other countries during the pandemic, which saw markedly lower voter turnout rates, the voter turnout rate in Australia was ‘one of the best turnouts seen for a COVID election around the world.’⁶
- 1.26 The AEC noted that ‘more people than ever cast formal votes in the 2022 federal election, meaning their ballot papers were marked correctly and counted toward the election results.’ In addition:

³ Australian Electoral Commission, *Submission 330*, p. 10.

⁴ Australian Electoral Commission, *Committee Hansard*, 28 September 2022, p. 1.

⁵ Australian Electoral Commission, *Submission 330*, p. 12.

⁶ Australian Electoral Commission, *Submission 330*, p. 12; Australian Electoral Commission, *Committee Hansard*, 28 September 2022, p. 3.

- the national House of Representatives formality rate was 94.8 per cent (compared to 94.5 per cent in 2019)
- the national Senate formality rate was 96.6 per cent (compared to 96.2 per cent in 2019).⁷

1.27 The federal election was not however without its challenges; the ‘ever-changing pandemic environment, extreme weather events, concerns about mis- and disinformation, and substantive legislative changes on the doorstep of the event all combined to create a deeply complex and uncertain operating environment.’⁸

Election timeline

1.28 The path to an election comprises a series of set deadlines. A timeline of election milestones is set out in Table 1.1 below.

Table 1.1 Election timeline

Milestone	Date
Announcement of election	10 April 2022
Postal vote applications opened	
Issue of the writs	11 April 2022
Close of the rolls	18 April 2022
Close of candidate bulk nominations	19 April 2022
Close of candidate nominations	21 April 2022
Declaration of nominations	22 April 2022
Preliminary scrutiny commences ⁹	2 May 2022
Early voting commences	9 May 2022
Mobile voting commences	9 May 2022
Election advertising blackout commences	18 May 2022
Closure of postal vote applications	18 May 2022
Polling day	21 May 2022
Count of votes	21 May 2022
Last day for receipt of declaration votes	3 June 2022

Source: Australian Electoral Commission, ‘2022 Federal Election Timetable’, viewed 14 November 2022, <https://www.aec.gov.au/Elections/federal_elections/2022/timetable.htm>.

⁷ Australian Electoral Commission, *Submission 330*, p. 12.

⁸ Australian Electoral Commission, *Committee Hansard*, 28 September 2022, p. 1.

⁹ Preliminary scrutiny is conducted to ensure that a person lodging a postal vote certificate or declaration envelope is entitled to vote. No ballot paper is opened or scrutinised prior to the close of the poll at 6pm on election day.

2022 Election – funding and disclosure settings

- 1.29 The Parliamentary Library’s quick guide *Election funding and disclosure in Australian jurisdictions* contains a reference table outlining the election funding and disclosure regulatory settings and thresholds for each jurisdiction, which is in Table 1.2 below.¹⁰
- 1.30 Both the gift and loan disclosure thresholds are very comparable across five out of the nine jurisdictions listed. The anonymous donations threshold is also similar across six jurisdictions. During an election period in NSW donations must be disclosed within 21 days, and in Victoria donors and recipients must also disclose donations within 21 days. In comparison, South Australia requires the reporting of large gift (a gift with an amount or value in excess of \$25,000) within 7 days¹¹; and the ACT in the period from 36 days before polling day until 30 days after the election is declared (a gift with an amount or value in excess of \$1,000 in the financial year) the disclosure must be made within seven days and within seven days of the end of the month after that period.¹² The rest of the requirements across Australia’s jurisdictions, particularly with donation and expenditure caps, vary widely.

Table 1.2 Election funding and disclosure settings

	Federal	NSW	VIC	QLD	SA ¹³	WA	TAS ¹⁴	ACT	NT
Gift disclosure threshold	\$15,200	\$1,000	\$1,080	\$1,000	\$5,576	\$2,600	×	\$1,000	\$1,500
Loan disclosure threshold	\$15,200	\$1,000	\$1,080	\$1,000	\$5,576	–	×	\$1,000	\$1,500
Threshold indexation	✓	×	✓	×	✓	✓	–	×	×
Donation cap (to party)	×	\$7,000	\$4,320	\$4,000 ¹⁵	×	×	×	×	×
Donation cap period	–	Yearly	4 years	–	–	–	–	–	–
Donor returns required	✓	✓	✓	✓	✓	×	×	×	✓

¹⁰ Indexed amounts are per the last advice published by the relevant electoral commission.

¹¹ Electoral Commission South Australia, ‘Funding and disclosure - state elections’, viewed 6 April 2023, <<https://www.ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-state-elections>>

¹² Elections ACT, ‘New campaign finance laws in the ACT - from 1 July 2021’, viewed 6 April 2023, <https://www.elections.act.gov.au/funding_and_disclosure/changes-to-electoral-campaign-finance-laws-in-the-act-as-they-will-apply-from-1-july-2021>

¹³ For parties that have opted into the SA public funding scheme.

¹⁴ Tasmanian Legislative Assembly elections only. Different rules apply for Legislative Council elections.

¹⁵ A donation cap of \$4,000 to parties and \$6,000 to candidates during the period of one general election to the next general election.

	Federal	NSW	VIC	QLD	SA ¹³	WA	TAS ¹⁴	ACT	NT
Expenditure cap (max for party)	x	\$12.3m	x	\$8.9m	\$4.4m	x	x	\$1.07m	\$1.04m
Expenditure cap indexed	–	✓	–	✓	✓	–	–	✓	✓
Per seat expenditure cap	x	\$66.4k	x	\$96.k	~\$83k	x	x	x	x
Expenditure caps for third parties	x	\$12.3m	x	\$1m	x	x	x	\$42,750	x
Expenditure caps for associated entities	x	✓	x	x	x	x	x	\$42,750	✓
Third-party campaigner returns	✓	✓	✓	✓	✓	✓	x	✓	✓
Anonymous donations threshold	\$1,000	\$1,000	\$1,080	\$1,000	\$200	\$2,600	x	\$1,000	\$1,000
Banned donor industries	x	✓🚫	x	✓🚫	x	x	x	✓🚫	x
Foreign donation restrictions	✓	✓	✓	✓	x	x	x	x	x
Expenditure reporting	x	✓	✓	✓	✓	✓	x	✓	✓
Campaign account	✓	✓	✓	✓	✓	x	x	x	✓
Per vote public funding	\$2.87	\$4.66 ¹⁹	\$6.49 ²⁰	\$3.36	\$3.35	\$2.1368	x	\$8.85	x

¹⁶ Property developers, gambling, tobacco, liquor industries or persons closely associated.

¹⁷ Property developers.

¹⁸ Property developers.

¹⁹ For votes in the Legislative Assembly; a rate of \$3.50 per vote applies in the Legislative Council.

²⁰ For votes in the Legislative Assembly; a rate of \$3.24 per vote applies in the Legislative Council.

	Federal	NSW	VIC	QLD	SA ¹³	WA	TAS ¹⁴	ACT	NT
Public funding vote threshold	4%	4%	4%	4%	4%	4%	–	4%	–
Public funding capped to expenditure	✓	✓	✓	✓	✓	✓	–	✗	–
Administrative funding (max)	✗	~\$3.6m	~\$1.9m ²¹	\$3m ²²	\$66.109	✗	✗	~\$600k ²³	✗
Other public funding sources	✗	✓	✓	✗	✗	✗	✗	✗	✗
Election donation reporting	✗	21 days	21 days	✓📄	Weekly	✓	✗	Weekly	5 days
Other reporting cycle	Annual	Half-yearly	Annual	Half-yearly ²⁵	Half-yearly	Annual	✗	Annual	Annual ²⁶

Source: Parliamentary Library, Research Paper Series, 2022-23, Election funding and disclosure in Australian jurisdictions: a quick guide, 6 December 2022, pp. 13-14.

2022 Election – current disclosure regime

1.31 The current disclosure scheme requires the following entities to lodge annual or election returns with the AEC and other entities are only required to lodge returns if they meet certain conditions.

Table 1.3 Financial disclosure of annual or election returns

	Annual returns	Election returns
Political parties	✓	
Significant third parties ²⁷	✓	

²¹ An amount of \$216,210 for the first member, \$75,660 for the second and \$37,850 for the third through 45th.

²² Divided between eligible parties.

²³ An amount of \$5,996.99 quarterly per MLA, with a total of 25 MLAs in the Assembly.

²⁴ Gifts over the disclosure threshold at any time must be reported within seven days.

²⁵ Expenditure only.

²⁶ Six monthly reporting in the year prior to the election, quarterly reporting in the first half of the election year and increased reporting frequency into the election period.

²⁷ A significant third party is a person or entity (other than a political entity, a member of the House of Representatives or a Senator) whose electoral expenditure exceeds \$250,000 during that financial year or any one of the previous three financial years; or electoral expenditure is at least equal to the disclosure

Associated entities ²⁸	✓	
Members of the House of Representatives	✓	
Senators	✓	
Third parties ²⁹	✓	
Annual donors ³⁰	✓	
Candidates ³¹		✓
Senate groups ³²		✓
Election donors ³³		✓

Source: Australian Electoral Commission, 'Financial disclosure', viewed 22 December 2022, <https://www.aec.gov.au/parties_and_representatives/financial_disclosure/>

1.32 Annual returns must be lodged by:

- registered political parties and their state and territory branches, significant third parties, and associated entities – 20 October each year
- MPs and senators who receive one or more gifts for federal purposes – 17 November each year.
- third parties that incur electoral expenditure above the disclosure threshold – 17 November each year.³⁴

threshold during that financial year, and electoral expenditure during the previous financial year was at least one-third of the revenue of the person or entity for that year; or during that financial year the person or entity operates for the dominant purpose of fundraising amounts.

²⁸ An entity (other than a political entity) is an associated entity if any of the following apply in a financial year the entity is controlled; operates wholly, or to a significant extent; is a financial member; has voting rights by one or more registered political parties; the entity operates wholly, or to a significant extent, for the benefit of one or more disclosure entities, and the benefit relates to one or more electoral activities (whether or not the electoral activities are undertaken during an election period).

²⁹ A third party is a person or entity (other than a political entity or a member of the House of Representatives or the Senate) incurring electoral expenditure that is: more than the disclosure threshold during a financial year; but is not required to be registered as a significant third party.

³⁰ A donor is a person or entity (other than a political entity or associated entity) that during a financial year makes one or more donations totalling more than the disclosure threshold to: a registered political party or a State branch of a registered political party a significant third party any person or entity with the intention of benefiting a particular registered political party or a State branch of a registered political party or significant third party.

³¹ For the purpose of disclosure, a person is taken to be a candidate in an election commencing from the earlier of the following days: 6 months before the day the person announced their candidacy; or 6 months before the day the person nominated as a candidate in an election; and ceases at the end of 30 days after polling day.

³² A group is taken to be a Senate group in an election commencing from 6 months before the day the members of a group make a request under section 168 of the Electoral Act for their names to be grouped in the ballot papers for an election and ceases 30 days after polling day.

³³ A donor is a person or entity (other than a political entity or associated entity) that makes one or more donations totalling more than the disclosure threshold to: a candidate, or a member of a Senate group.

³⁴ Australian Electoral Commission, 'Annual returns', viewed 22 December 2022, <https://www.aec.gov.au/Parties_and_Representatives/annual-returns.htm>

- 1.33 Annual returns by political parties, significant third parties, associated entities, members of the House of Representatives, senators, third parties, and donors are available to the public before the end of the first business day in February each year after the return is provided. Federal election returns by candidates, Senate groups and donors are available before the end of 24 weeks after polling day.³⁵

2022 Election - funding from AEC

- 1.34 Parties and candidates who received at least 4 per cent of the formal first preference vote at the 2022 federal election received an automatic payment of election funding of \$10,656. This initial payment amount was provided pursuant to the Commonwealth Electoral Act 1918 and is an indexed figure:

To receive election funding greater than the automatic payment, agents of eligible political parties and candidates were required to lodge a claim with the AEC setting out electoral expenditure incurred. For the 2022 federal election, the period for lodging a claim for election funding was 10 June 2022 to 20 November 2022.³⁶

- 1.35 Total election funding paid by the AEC in relation to the 2022 federal election was \$75,876,944.42. Political parties were paid \$73,984,748.25 and \$1,892,196.17 was paid to independent candidates.³⁷
- 1.36 This amount includes \$713,952 in automatic payments and \$75,162,992.42 in claims accepted by the AEC.³⁸

Table 1.4 Election funding payments by the AEC to political parties

Political Party	Total 2022 Election Funding Paid
Australian Labor Party - Federal	\$27,104,944.03
Liberal Party of Australia	\$26,550,112.02
The Australian Greens - Victoria	\$3,023,677.14
Pauline Hanson's One Nation	\$3,003,118.86
The Greens NSW	\$2,961,026.14
National Party of Australia-NSW	\$2,401,012.16
Queensland Greens	\$2,204,033.40

³⁵ Australian Electoral Commission, 'Transparency Register', viewed 22 December 2022, <https://www.aec.gov.au/parties_and_representatives/financial_disclosure/transparency-register/>

³⁶ Australian Electoral Commission, '2022 Federal Election: Election funding payments finalised', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/12-21.htm>>

³⁷ Australian Electoral Commission, '2022 Federal Election: Election funding payments finalised', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/12-21.htm>>

³⁸ Australian Electoral Commission, '2022 Federal Election: Election funding payments finalised', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/12-21.htm>>

United Australia Party	\$1,925,262.31
Australian Greens	\$1,401,351.35
The Greens WA Inc	\$1,170,451.81
National Party of Australia - Victoria	\$1,044,340.71
Liberal Democratic Party	\$227,155.05
Country Liberal Party NT	\$182,154.14
David Pocock	\$176,023.08
Katter's Australian Party (KAP)	\$162,784.78
Jacqui Lambie Network	\$160,074.76
Centre Alliance	\$106,361.00
Kim for Canberra	\$36,780.51
Shooters Fishers and Farmers Party	\$33,857.77
National Party of Australia (WA) Inc	\$26,692.24
Victorian Socialists	\$22,909.87
Legalise Cannabis Australia	\$15,121.09
The Great Australian Party	\$13,325.72
Socialist Alliance	\$10,866.31
Indigenous - Aboriginal Party of Australia	\$10,656.00
The Local Party of Australia	\$10,656.00
TOTAL	\$73,984,748.25

Source: Australian Electoral Commission, '2022 Federal Election: Election funding payments finalised', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/12-21.htm>>

Table 1.5 Election funding payments by the AEC to Independent Candidates

Political Party	Total 2022 Election Funding Paid
Zali Steggall	\$121,898.45
Helen Mary Haines	\$120,403.57
Monique Ryan	\$120,356.91
Sophie Scamps	\$109,927.74
Zoe Daniel	\$98,536.91
Allegra May Spender	\$92,694.34
Katherine Ella Chaney	\$90,164.99
Andrew Wilkie	\$87,434.57
Carolyn Gai Heise	\$85,106.28

Dai Le	\$73,858.24
Kylea Jane Tink	\$71,325.98
Rob Priestly	\$70,772.32
Kathleen Louise Hook	\$63,790.37
Nicolette Boele	\$58,856.97
Alex Dyson	\$56,834.66
Penny Ackery	\$46,755.13
Georgia Steele	\$40,478.37
Hanabeth Luke	\$40,020.88
Jack Dempsey	\$38,569.70
Liz Habermann	\$33,840.28
Deb Leonard	\$30,224.01
Sophie Kate Baldwin	\$29,885.98
Claire Ferres Miles	\$24,206.60
Jamie Christie	\$23,379.02
Suzanne Holt	\$23,113.85
Matthew Sharpham	\$22,318.33
Joanne Elizabeth Dyer	\$21,683.07
Despina O'Connor	\$20,872.98
Kirstie Smolenski	\$19,984.21
Stuart Bonds	\$17,593.85
Steve Atkins	\$16,242.64
Craig Anthony Garland	\$16,137.73
Sarah Joan Russell	\$15,120.75
Timothy Bohm	\$13,905.61
Kelli Jacobi	\$11,964.88
Stewart Brooker	\$10,656.00
James Laurie	\$10,656.00
Nina Digiglio	\$10,656.00
Jarrold James Bingham	\$10,656.00
Duncan Scott	\$10,656.00
George Razay	\$10,656.00

TOTAL	\$1,892,196.17
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Source: Australian Electoral Commission, '2022 Federal Election: Election funding payments finalised', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/12-21.htm>>

2022 Election - financial disclosure returns

- 1.37 The financial disclosure returns for the 2022 federal election cover donations, electoral expenditure, and discretionary benefits by candidates and unendorsed (or jointly endorsed) Senate groups that contested the 2022 federal election.³⁹

Of the 1,624 candidates who contested the federal election, a total of 1,590 have lodged returns. Of these, 1,001 candidates lodged nil returns.

In addition, 14 Senate group returns were lodged, seven of which were nil returns. A further 65 donor returns were also lodged.⁴⁰

³⁹ Australian Electoral Commission, '2022 federal election financial disclosure returns published today', viewed 22 February 2022, <<https://www.aec.gov.au/media/2022/11-07.htm>>

⁴⁰ Australian Electoral Commission, '2022 federal election financial disclosure returns published today', viewed 22 February 2022, <<https://www.aec.gov.au/media/2022/11-07.htm>>



2. Political donations and electoral expenditure

- 2.1 The need for reforms to the Commonwealth system of political donations and electoral expenditure has been apparent over successive inquiries conducted by this Committee and has been a matter of discussion and public debate in Australia and internationally.
- 2.2 Australia's electoral system is strong, however there are areas which are clearly in need of strengthening to improve transparency and integrity, reduce the potentially corrosive influence of big money and level the playing field, while allowing for continued participation in our elections from members of the public, political parties, civil society and business.
- 2.3 It is evident when looking at democracies around the world and within our own electoral system that money has the potential to influence politics. If rules around political donations and electoral expenditure are not effective, political processes and institutions are potentially undermined, and the integrity of our democracy is threatened.
- 2.4 While there has not been substantial reform to the Commonwealth system of political donations and electoral expenditure in recent years, many states and territories have now introduced reformed systems designed to improve transparency, accountability and provide for public trust in the system.
- 2.5 Submitters to this inquiry highlighted key issues around transparency and integrity, calling for donation reform, and suggested that there has been general public acceptance for a number of years that change is needed at the federal level. They also highlighted the influence of big money and an electoral 'arms race', pointing towards the need for expenditure caps.
- 2.6 This chapter will review the key areas of evidence for reforming Commonwealth electoral expenditure and political donation laws and highlight the need for serious reform of Australia's system.

Political donation and expenditure schemes

- 2.7 This section considers the evidence presented relating to the effectiveness of current arrangements and proposals for reform.
- 2.8 The Commonwealth Funding and Disclosure Scheme was established in 1983 under Part XX of the *Commonwealth Electoral Act 1918* (Electoral Act) and deals with the

public funding of federal election campaigns and the disclosure of certain financial information and donations in relation to political actors and entities engaging in electoral activity.¹

2.9 The scheme was introduced to:

- lessen the reliance of candidates and political parties on the receipt of private donations with the provision of public funding, and
- increase overall transparency and inform the public about the financial dealings of political parties, candidates and others involved in the electoral process.²

2.10 The AEC noted that Part XX of the Electoral Act has undergone several significant changes since its introduction in 1983 and highlighted that the Joint Standing Committee on Electoral Matters had conducted five inquiries into political funding and disclosure since 2010.³

The AEC has stated on numerous occasions that the legislative design of funding and disclosure schemes are effectively political in nature and are generally the end result of negotiations between large numbers of stakeholders.⁴

Accordingly, the AEC continues to observe that it is a matter for Parliament to decide on an appropriate scheme... The AEC's role is to then administer the scheme in line with the legislation.⁵

Financial disclosure requirements

2.11 Beyond the current arrangements (as listed in the previous chapter), the AEC Transparency Register hosts the current register of entities, historic annual returns and election returns, and is a searchable database of financial disclosure information. It includes images of the original returns and a data-export function to enable users to undertake additional analysis of the data outside of the Transparency Register.⁶

Candidates and unendorsed Senate groups

2.12 Candidates and unendorsed (or jointly endorsed) Senate groups are required to disclose the total sum of donations received and used to fund their campaign, along with the number of donors and details of donations received where those donations total more than \$14,500 from a single source. Details of electoral expenditure and discretionary benefits are also required.⁷

¹ Australian Electoral Commission, *Submission 330*, p. 15.

² Australian Electoral Commission, *Submission 330*, p. 15.

³ Australian Electoral Commission, *Submission 330*, p. 15.

⁴ Australian Electoral Commission, *Submission 330*, p. 15.

⁵ Australian Electoral Commission, *Submission 330*, p. 16.

⁶ Australian Electoral Commission, '2022 federal election financial disclosure returns published today', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/11-07.htm>>

⁷ Australian Electoral Commission, '2022 federal election financial disclosure returns published today', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/11-07.htm>>

Candidates endorsed by a registered political party may submit a 'nil return' and roll their reporting into the annual return for their party if those financial transactions were the responsibility of a party committee. Political party returns for the 2021-22 financial year will be released in February 2023.⁸

- 2.13 Senate groups endorsed by a single political party are not required to lodge a Senate group return, as their reporting is rolled into the annual return for their party.⁹

Donors

- 2.14 Donors must report donations totalling more than \$14,500 made to an individual candidate or member of a Senate group. Similarly, donors must also report any donations they receive which total more than \$14,500 from a single source that were used to fund donations to an individual candidate or member of a Senate group.¹⁰

Challenges in administration of the current funding and disclosure scheme

- 2.15 Recent legislative changes have given rise to several challenges for the AEC when administering Part XX of Electoral Act. The AEC stated that recent amendments to the Electoral Act introduced expanded definitions for the categories of significant third party and associated entities:

The changing nature of the way campaigns are run has seen new structures emerge to manage and/or fund campaigns. Many entities now meet the definition of both categories. This has caused confusion with stakeholders and results in a lack of clarity and transparency in reporting.¹¹

- 2.16 The AEC noted that one issue that frequently arises 'is who is required to register and who discloses the financial information if funding and/or expenditure is being carried out on behalf of a candidate or party':

In some circumstances a strict interpretation of the Electoral Act could result in duplication of reporting. Duplication of reporting reduces clarity to users of financial disclosure information.¹²

- 2.17 The AEC argued that the creation of new reporting categories such as the Members of the House of Representatives and Senator disclosure categories, combined with existing reporting obligations for both federal election and annual returns, has 'caused confusion with stakeholders':

⁸ Australian Electoral Commission, '2022 federal election financial disclosure returns published today', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/11-07.htm>>

⁹ Australian Electoral Commission, '2022 federal election financial disclosure returns published today', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/11-07.htm>>

¹⁰ Australian Electoral Commission, '2022 federal election financial disclosure returns published today', viewed 22 February 2023, <<https://www.aec.gov.au/media/2022/11-07.htm>>

¹¹ Australian Electoral Commission, *Submission 330*, p. 16.

¹² Australian Electoral Commission, *Submission 330*, p. 16.

Specifically confusion around what financial information they are required to report and through which reporting mechanism.

This issue will exist particularly in the disclosure period directly following an election year due to possible duplication with annual return requirements.¹³

- 2.18 The AEC also outlined where penalties are to be imposed for offences against the disclosure provisions of the Electoral Act, these are ‘currently applied to an individual person occupying a position as opposed to an entity’ such as a political party.¹⁴

For example, a penalty may be applied to a party agent, candidate agent or financial controller instead of a political party or associated entity. This limits the effectiveness of enforcement action (for example where the relevant person no longer holds that position in the entity) and potentially unfairly burdens an individual with responsibility for what may be the collective actions of an entity.¹⁵

Definition of electoral matter and electoral expenditure

- 2.19 An area of complication in definitions and understanding for stakeholders and observers arises when considering ‘electoral matter’ and ‘electoral expenditure’; this has relevance in practical terms to regulations around spending and communication. In some public debate, the specific applications of these terms are not always clearly explained or well understood.

- 2.20 In debates around electoral expenditure, there is often conflation of purposes – whether discussion or consideration relates to expenditure or activities *related to an election campaign*; or whether in more general terms (and in a commonly understood sense, related to *parties*) for administrative operation. Recognising the complexity of these points, the AEC has produced a factsheet to clarify the terms and concepts.¹⁶

- 2.21 The Electoral Act regulates electoral matters that are communicated or intended to be communicated in the following ways:

- certain communications containing electoral matters will require an authorisation to enable voters to know who is communicating the matter; and
- expenditure incurred for the dominant purpose of creating or communicating electoral matter (electoral expenditure) will have to be reported to the AEC.¹⁷

- 2.22 Electoral matter is defined in the Electoral Act as matter communicated or intended to be communicated for the dominant purpose of influencing the way electors vote in

¹³ Australian Electoral Commission, *Submission 330*, p. 16.

¹⁴ Australian Electoral Commission, *Submission 330*, p. 16.

¹⁵ Australian Electoral Commission, *Submission 330*, p. 16.

¹⁶ Australian Electoral Commission, ‘Electoral Matter and Electoral Expenditure’, viewed 31 March 2023, <https://www.aec.gov.au/parties_and_representatives/financial_disclosure/files/electoral-matter-and-electoral-expenditure-fact-sheet.pdf>

¹⁷ Australian Electoral Commission, ‘Electoral Matter and Electoral Expenditure’, viewed 31 March 2023, <https://www.aec.gov.au/parties_and_representatives/financial_disclosure/files/electoral-matter-and-electoral-expenditure-fact-sheet.pdf>

a federal election. Unless the contrary is proved, the dominant purpose of a communication is presumed to be electoral matter, if the matter expressly promotes or opposes:

- a political entity, to the extent that the matter relates to a federal election; or
- a member of the House of Representatives or a Senator, to the extent that the matter relates to a federal election.¹⁸

2.23 The dominant purpose is intended to capture content that includes matter that seeks to influence:

- the order in which a voter indicates their preferences on the ballot paper; and
- a voter's choice of whether to cast a formal ballot paper.¹⁹

2.24 The Centre for Public Integrity (the Centre) has called for a broader definition, noting:

That means essentially the sole purpose of it is to influence the way an elector votes. That was changed, I believe, in 2018 from a definition of 'likely to influence the way an elector votes'. We believe that it should be broadened. Obviously, there is a greater disclosure obligation on electoral expenditure if you broaden the definition. But we believe that in order to capture third parties we do need to broaden that to matters likely to affect an elector in the way that they cast their vote. Obviously, that may cause some complications for the parties.²⁰

2.25 The Centre believed the Canadian definition for election expenditure for third parties also has some merit:

That definition essentially means that it is spending on a position that a party or candidate has taken, which essentially allows parties and candidates to set the tone, and then if large third parties want to contest on that field then they will incur electoral expenditure.²¹

2.26 The Human Rights Law Centre (HRLC), however, expressed reservations about Centre's suggestion to 'broaden the definition of 'electoral matter' to something similar to what it was before':

Just a word of warning that that provision was almost impossible to comply with as a third party. I wrote to the Electoral Commission asking how on earth I was supposed to assess whether or not something might influence voters in an election. There was no time period. When does an issue become an election issue? My experience was that nobody had any sense or any guidance of what

¹⁸ Australian Electoral Commission, 'Electoral Matter and Electoral Expenditure', viewed 31 March 2023, <https://www.aec.gov.au/parties_and_representatives/financial_disclosure/files/electoral-matter-and-electoral-expenditure-fact-sheet.pdf>

¹⁹ Australian Electoral Commission, 'Electoral Matter and Electoral Expenditure', viewed 31 March 2023, <https://www.aec.gov.au/parties_and_representatives/financial_disclosure/files/electoral-matter-and-electoral-expenditure-fact-sheet.pdf>

²⁰ Centre for Public Integrity, *Committee Hansard*, 17 October 2022, p.30.

²¹ Centre for Public Integrity, *Committee Hansard*, 17 October 2022, p.30.

meaning to give to that law. So while the definitions of 'electoral matter' and 'electoral expenditure' are complicated and in some respects fairly narrow, they were agreed on after a long arduous period of consultation. It has taken people a long time to get across them, so we are very reluctant to open that up again.²²

Donations disclosure

- 2.27 Submitters raised concerns about the lack of transparency around the disclosure of political donations at the federal level. Many were concerned about the length of time it takes for any information on donations to be released to the public and the amount of private funding sources for the major parties that are either undisclosed or 'other receipts'.
- 2.28 Submitters put several proposals for reform in this area including advocating for the real-time disclosure of political donations; amending the donation disclosure threshold; banning donor industries; as well as further regulating political fundraising.
- 2.29 This section sets out the current rules regarding political donations, along with suggestions for how they could be improved. Submissions reflected the community's expectation that political donations are transparent, timely and reduce any possible risk of corruption.
- 2.30 The Committee received significant and constructive evidence as to why change is needed, including the need for improved transparency. The Committee has considered the details of some proposals received, including those relating to:
- real time disclosure, and the acknowledgement that there is value in introducing laws in this area
 - lowering the donation disclosure threshold to \$1,000
 - potential capping or banning of donations.

Background on political donation laws

Federal requirements

- 2.31 The Committee does not intend to revisit in detail earlier work on the current disclosure regime, noting that an overview was provided in its December 2019 advisory report on the Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019. That report included coverage of annual disclosure requirements, and the penalties relating to funding and disclosure regulations.²³

²² Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p.30.

²³ Joint Standing Committee on Electoral Matters, *Advisory Report on the Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019*, December 2019, pp. 3-7.

- 2.32 The Committee's reports on the conduct of the 2016 and 2019 Federal elections also provide an overview on political donations – and demonstrate that calls for reforms in these areas are not new.²⁴
- 2.33 As already noted, from 1 July 2022 to 30 June 2023, the 'disclosure threshold, the amount over which donations must be disclosed' is \$15,200. Under the Electoral Act the threshold is indexed to the Consumer Price Index (CPI).²⁵
- 2.34 Annual returns must be lodged with the AEC by political parties, their state and territory branches and associated entities by 20 October each year. The AEC publishes Annual returns 'on the first working day in February each year'.²⁶
- 2.35 The Parliamentary Library's quick guide, *Election funding and disclosure in Australian jurisdictions*, noted that 'as of 1 December 2020, donations must be deposited into a federal campaign account to be covered under the political finance laws (which are generally less prescriptive than state or territory laws)'.²⁷
- 2.36 Additional election funding and disclosure requirements under the Electoral Act include:
- significant third parties²⁸ and associated entities must register with the AEC
 - returns must disclose the full name and address of the donor, the amount received, and whether the receipt is a 'donation' or 'other receipt', for amounts above the threshold
 - people and organisations who make donations to members of parliament or to candidates or parties in excess of the threshold must submit an annual donor return
 - third parties must lodge an annual return if they spend more than the threshold in a financial year²⁹
 - independent candidates, unendorsed Senate groups and Senate groups endorsed by more than one political party must submit an election return outlining the total value of donations received, the number of donors, any individual

²⁴ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2016 Federal election and matters related thereto*, November 2018, pp. 121-124.

²⁵ Parliamentary Library, Research Paper Series, 2022-23, *Election funding and disclosure in Australian jurisdictions: a quick guide*, 6 December 2022, p. 1.

²⁶ Australian Electoral Commission, 'Annual returns', viewed 15 May 2023, <https://www.aec.gov.au/Parties_and_Representatives/annual-returns.htm>

²⁷ Parliamentary Library, Research Paper Series, 2022-23, *Election funding and disclosure in Australian jurisdictions: a quick guide*, 6 December 2022, p. 1.

²⁸ Individuals and organisations who incur substantial amounts of electoral expenditure and who aren't parties or candidates.

²⁹ Returns must list their total political expenditure, total donations used for political expenditure, and details of donors whose donations were used in whole or part for political expenditure and were above the disclosure threshold.

donation that is above the threshold, and electoral expenditure incurred between the issue of the writ and election day.³⁰

- 2.37 Political parties, associated entities, donors, third parties, candidates and Senate groups are able to lodge their annual and election returns through the eReturns portal, sent through the post, faxed or emailed directly to the AEC.³¹
- 2.38 The AEC is required to publish annual returns, election returns, enforceable undertakings and election funding claims on the Transparency Register.³²
- 2.39 The Parliamentary Library pointed out that, while the ‘AEC undertakes a range of compliance reviews to ensure the accuracy of political parties returns [which] occasionally result in amended returns’, it rarely employs ‘the coercive powers it has in relation to compliance or initiates prosecutions in relation to funding and disclosure obligations (a practice which has been criticised by the Australian National Audit Office).’³³
- 2.40 The Electoral Act, as part of the legislative changes made in February 2022 with the *Electoral Legislation Amendment (Foreign Influences and Offences) Act 2022*, also extends the ban on foreign donations.³⁴
- 2.41 Political entities, members of Parliament, Senators, significant third parties and associated entities are restricted from receiving gifts of \$100 or more from a foreign donor and restricted from receiving gifts over \$1,000 without obtaining a written affirmation that the donor is not a foreign donor. They are, however, ‘permitted to receive foreign donations under certain circumstances – for personal use or to be used for purposes that are not related to a federal election’.³⁵
- 2.42 Further, the ‘Electoral Act establishes civil and criminal penalties for receiving prohibited foreign donations and not subsequently taking acceptable action in relation to the donation.’³⁶

State/Territory requirements

- 2.43 Political donation and expenditure schemes in New South Wales, Queensland and South Australia have been successfully enacted and administered for a significant

³⁰ Parliamentary Library, Research Paper Series, 2022-23, *Election funding and disclosure in Australian jurisdictions: a quick guide*, 6 December 2022, p. 1.

³¹ Australian Electoral Commission, *eReturns Fact Sheet*, p. 1.

³² Australian Electoral Commission, ‘Transparency Register’, viewed 3 January 2023, <https://www.aec.gov.au/parties_and_representatives/financial_disclosure/transparency-register/>

³³ Parliamentary Library, Research Paper Series, 2022-23, *Election funding and disclosure in Australian jurisdictions: a quick guide*, 6 December 2022, p. 2. Australian National Audit Office, *Administration of Financial Disclosure Requirements under the Commonwealth Electoral Act*, 17 September 2020.

³⁴ Australian Electoral Commission, ‘Financial disclosure legislative changes’, viewed 22 December 2022, <<https://www.aec.gov.au/news/disclosure-legislative-changes.htm>>

³⁵ Australian Electoral Commission, *Foreign Donations Fact Sheet*, 14 December 2021, p. 3.

³⁶ Australian Electoral Commission, *Foreign Donations Fact Sheet*, 14 December 2021, p. 8. Acceptable action means either returning the gift, or an amount equivalent to the amount or value of the gift, to the donor or transferring the gift or an amount equivalent to the amount or value of the gift, to the Commonwealth.

amount of time and provide a template for how to address political donation issues at a federal level. These are included at Appendix C.

- 2.44 The varied legislative requirements for associated entities in several jurisdictions, Queensland, New South Wales, Victoria, South Australia and Western Australia, can however potentially cause confusion between federal and state/territory requirements.
- 2.45 In Queensland, the spending of an associated entity is counted towards the candidate or political party's electoral expenditure, to 'prevent the proliferation of associated entities and circumvention of the spending cap'³⁷. Associated entities must use the campaign account of the party they are associated with.
- 2.46 In NSW, all donations made must be disclosed by parties, groups, candidates and associated entities. These bodies must also be registered with the NSWEC to accept political donations or incur electoral expenditure. Associated entities are subject to the same reporting requirements as parties, and their electoral expenditure is aggregated with the party that they are associated with.
- 2.47 In Victoria, associated entities, alongside parties, candidates and third parties must maintain a state campaign account from which they can pay for political spending, and donations must go into these accounts. Donations to associated entities and third parties that are not intended to be used for political expenditure and are not paid into the campaign account are not subject to the donation cap. Expenditure of associated entities and third parties is only considered electoral expenditure if incurred during the election campaign period (within approximately two months from election day).
- 2.48 In South Australia, associated entities are not required to maintain a campaign account. Any donation, gift or loan of associated entities, third parties, parties or candidates over the \$5,576 threshold must be declared to the electoral commission, and gifts of \$200 or more must be recorded.
- 2.49 In Western Australia, associated entities, alongside parties, candidates, third parties must submit annual and election returns. These returns for associated entities and parties must include the value of all gifts and income received, and details of gifts over \$2,600.

Donations in the 2022 election

- 2.50 In the 2022 election, former MP Clive Palmer's mining company Mineralogy donated \$117 million to his United Australia Party in the 2022 campaign:

This breaks his own previous record of \$84 million in the lead up to 2019 election, and dwarfs all other donations on record.

³⁷ Human Rights Law Centre, *Submission 418*, p. 8.

Anthony Pratt's paper and packaging company Pratt Holdings was the next largest donor in 2022, at \$3.7 million, with the funds more or less evenly split between the Coalition and Labor.³⁸

- 2.51 The Grattan Institute noted most of the major donors to Labor were unions, who collectively contributed more than half of all Labor's declared donations.³⁹

Labour Holdings, an investment arm of the party, was also a major contributor, and Pratt Holdings was the largest individual donor for Labor.⁴⁰

- 2.52 By contrast, the Grattan Institute noted most of the major donors to the Coalition were 'wealthy individuals and corporate donations funnelled through fundraising entities associated with the Liberal or National parties'.⁴¹

The Coalition's top five donors accounted for more than a third of their declared donations and included \$3.9 million from the Cormack Foundation (an investment arm for the Liberal Party). Other big donors to the Coalition included Sugolena Holdings, owned by businessman and investor Isaac Wakil, and Jefferson Investments.⁴²

- 2.53 The 2022 federal election was particularly significant due to the rise of independents who were the recipients of donations from a significant third party – Climate 200, a crowdfunding initiative with over 11,000 Australians who provided donations.⁴³ Climate 200 raised about \$13 million which was donated to selected independent candidates. Wealthy individuals also donated substantial amounts to Climate 200. Of that \$13 million, \$2.5 million was donated by Atlassian founders Scott Farquhar and Mike Cannon-Brookes and \$1.85 million was donated by Mr Rob Keldoulis.⁴⁴

- 2.54 The Parliamentary Library highlighted the challenges of the current political finance laws to effectively capture the political finance activities of independent candidates at the 2022 federal election:

... the current reporting requirements for candidates appears not to have anticipated the campaigns run by some of the independent candidates in the 2022 federal election that involved sophisticated and expensive campaigning infrastructure and large amounts of money raised through donations. The

³⁸ The Grattan Institute, 'Here's who funded the 2022 election', viewed 31 March 2023, <<https://grattan.edu.au/news/heres-who-funded-the-2022-election/>>

³⁹ The Grattan Institute, 'Here's who funded the 2022 election', viewed 31 March 2023, <<https://grattan.edu.au/news/heres-who-funded-the-2022-election/>>

⁴⁰ The Grattan Institute, 'Here's who funded the 2022 election', viewed 31 March 2023, <<https://grattan.edu.au/news/heres-who-funded-the-2022-election/>>

⁴¹ The Grattan Institute, 'Here's who funded the 2022 election', viewed 31 March 2023, <<https://grattan.edu.au/news/heres-who-funded-the-2022-election/>>

⁴² The Grattan Institute, 'Here's who funded the 2022 election', viewed 31 March 2023, <<https://grattan.edu.au/news/heres-who-funded-the-2022-election/>>

⁴³ Climate 200, Submission 419, p. 4.

⁴⁴ Australian Electoral Commission, AEC Transparency Register, 2021-22 Donor Return, Climate 200 Pty Limited.

complexity of the system also makes it difficult for independent candidates to be compliant.⁴⁵

Real-time donation disclosure

- 2.55 A significant number of submitters to this inquiry supported the introduction of a real-time disclosure framework. While not expressing a particular view on a *definition* of what would constitute real time disclosure, overall many participants agreed that real time disclosure laws were worthwhile and should be introduced.⁴⁶
- 2.56 The Centre highlighted that currently there is no agreed definition of what constitutes real-time disclosure across jurisdictions in Australia but that it was important that it be introduced:
- Requiring the disclosure of donations to be as proximate as possible to their making is an important scrutiny measure: it enables interested parties to examine whether there may be, for example, a correlation between the making of a donation by a donor, and the making of a controversial regulatory decision in that donor's favour by the donee.⁴⁷
- 2.57 The Australia Institute called for increasing transparency around the funding of parties and candidates, stating it would enable Australians to make more informed choices:

⁴⁵ Parliamentary Library, Parliamentary Library Briefing Book, *Political finance*, viewed 10 May 2023, <https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/Briefing_Book47p/PoliticalFinance>

⁴⁶ Dr Judy Hyde, *Submission 262*, p. 1; J Moldovan, *Submission 312*, p. 1; Emeritus Professor Mike Daube AO and Professor Rob Moodie AM, *Submission 302*, p. 1; Real Republic Australia, *Submission 401*, p. 10; Transparency International Australia, *Submission 413*, p. 3; Ms Emily Edwards, *Submission 183*, p. 1; Dr Attila Nagy, *Submission 138*, p. 1; Mr Gary Hobson, *Submission 3*, p. 1; Joan Ting, *Submission 74*, p. 1; Democratic Audit of Australia, *Submission 408*, p. 3; Mr Trevor Simmons, *Submission 260*, p. 1; Ms Jane Fernie, *Submission 75*, p. 1; Mr Damien Ahchow, *Submission 51*, p. 1; Mr John Hughes, *Submission 201*, p. 1; Mr Peter Temby, *Submission 115*, p. 1; Ms Ruth McGowan OAM, *Submission 317*, p. 6; Ms Maree Nutt OAM, *Submission 247*, p. 1; Electoral Reform Society of South Australia, *Submission 392*, p. 5; Dr Thomas Wilson, *Submission 182*, p. 1; Mr David Reid, *Submission 320*, p. 1; Mr Thomas Killip, *Submission 406*, p. 1; Name withheld, *Submission 274*, p. 1; #OurDemocracy campaign, *Submission 1485*; Sub 269 - The Hon Jonathan O'Dea MP, Speaker of the NSW Legislative Assembly, *Submission 269*, p. 12; Mr Howard Gwatkin, *Submission 284*, p. 3; Ms Joanne Foreman, *Submission 283*, p. 1; Transparency International Australia, *Supplementary Submission 413.1*, p. 15; Mr Travis Jordan, *Submission 245*, p. 22; Ms Leonie Stubbs, *Submission 205*, p. 1; #OurDemocracy, *Submission 342*, p. 4; Mr David Flint, *Submission 380*, p. 1; Australian Labor Party, *Submission 363*, p. 1; Ms Leeanne Torpey, *Submission 386*, p. 1; Dr Belinda Edwards, *Submission 329*, p. 1; Mr Robert Irvine, *Submission 285*, p. 1; Dr Oliver Raymond OAM, *Submission 104*, p. 1; Ms Brenda Jeans, *Submission 1159*, p. 1; Mr Michael Stacey, *Submission 318*, p. 1; Mr Joe Lenzo, *Submission 251*, p. 1; Mr Edward J Carter, *Submission 272*, p. 4; Mr Klaas Woldring, *Submission 219*, p. 1; Australian Greens, *Submission 432*, p. 4; Canberra Alliance for Participatory Democracy, *Submission 309*, p. 2; Professor Kim Rubenstein, *Submission 375*, p. 1; Professor George Williams AO, *Submission 7*, p. 4; Mr Craig Reucassel (*Submission 391*, p. 3), notes that 'greater transparency, for much lower donations, and in real time, is a must, and has been shown to be achievable in state elections.'

⁴⁷ Centre for Public Integrity, *Submission 351*, p. 3.

Knowing that large donations have taken place and knowing whom they're going to and what patterns there are would help give us a much better idea of what level of support different groups and parties have, any concerning patterns and so on. So starting with better transparency would give us the tools we need to answer those other questions about the prevalence of large donations and the effect they might be having.⁴⁸

- 2.58 The HRLC, Hands off Our Charities Alliance, and GetUp agreed that real-time, or close to real-time, disclosure should apply to all candidates, political parties and associated entities.⁴⁹ The HRLC added:

Voters should know ahead of casting their ballot who is bankrolling the election campaigns of candidates and political parties. Knowing the timing of a donation can also be informative outside of election years: for instance, additional public scrutiny may follow a government tender process if it is known that corporate applicants made large political donations in the days prior.⁵⁰

- 2.59 Professor Anne Twomey stated that real time disclosure would increase:

... transparency concerning political donations and make it more difficult to hide the sources of financial support to parties. But that, in itself, is not enough. Anti-avoidance measures need to be enhanced so that transparency cannot be easily circumvented.⁵¹

Timeframes for disclosure

- 2.60 The AEC acknowledged that the current timeframe in which donations are disclosed is an issue:

... the real issue is the timeliness with which we are legally able to make those donations known. From our perspective, if it's 18 months before citizens get to understand where money came from, based on those principles that would seem to be a bit odd. That's from our perspective, and I'm just feeding back the pub test that citizens tell us. I think there's is a problem with that issue. I know this committee will come up with an actual level of the money that they think represents community standards, which is great. If I just talk about timeliness, I'm not sure that I could sit here and tell you that a system that I'm sitting on top of that takes, in some cases, 18 months for stuff to be declared meets that definition of timeliness.⁵²

⁴⁸ The Australia Institute, *Committee Hansard*, 26 October 2022, p. 5.

⁴⁹ Human Rights Law Centre, *Submission 418*, p. 11; Hands off Our Charities Alliance, *Submission 341*, p. 4; GetUp, *Submission 394*, p. 18.

⁵⁰ Human Rights Law Centre, *Submission 418*, p. 11.

⁵¹ Professor Anne Twomey, *Submission 407*, p. 1.

⁵² Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 14.

- 2.61 The Committee notes the different expectations of how quickly the disclosure should be required under a ‘real time’ disclosure system – whether within a day (24 hours), 5 days, 7 days, or 21 days.⁵³ The Centre recommended that ‘real time disclosure of donations should mean ‘disclosure required within 7 days except in election periods where it should be required within 24 hours.’⁵⁴ The community group ‘Curtin Independent’ suggested ‘real-time disclosure (by both the donor and a recipient) of financial and other donations within a short time of say 7 to 14 days of receipt’ via an online system.⁵⁵
- 2.62 The Accountability Round Table (ART) suggested that further safeguards could include:
- requiring disclosure by both donor and recipient or
 - requiring all donations to go through an independent agency which will only pass on donations pursuant to the relevant electoral rules and from permitted donors.⁵⁶
- 2.63 As noted above, other jurisdictions such as South Australia, Queensland, New South Wales, Victoria, and the Northern Territory have introduced political donation reporting either within 5, 7 or 21 days.⁵⁷ The ACT Government stated that it ‘made a commitment ... to introduce ‘real time’ political donation reporting within seven days of receipt of a large donation.’⁵⁸

Means of lodging – and consistency across jurisdictions

- 2.64 In terms of means of lodging information, the Committee notes the various suggestions for online methods. The Australian Conservation Foundation (ACF) advocated for real time disclosure which ‘should be done via an online portal which is easy to navigate and accessible to the public.’⁵⁹ Mr Ian Millner suggested that current technological advances enabled donations to be disclosed in real time or on a daily basis, and that information should be provided in a more accessible format for detailed analysis.⁶⁰ The Committee also acknowledges the view that donations should not only be disclosed in real time but also published on the respective party and AEC websites.⁶¹

⁵³ Dr Colleen Lewis, *Submission 410*, p. 2, proposed that real time should mean within 24 hours of receipt of a donation; Mr Phil Bryant, *Submission 310*, p. 1, suggested one day; Senator David Pocock, *Submission 416*, p. 2, and Accountability Round Table, *Submission 343*, p. 2 suggested 5 days; Climate 200, *Submission 419*, p. 5 and Ms Nicolette Boele, *Submission 364*, p. 11, advocated for a 21 day period.

⁵⁴ Centre for Public Integrity, *Submission 351*, p. 4.

⁵⁵ Curtin Independent, *Submission 403*, p. 3.

⁵⁶ Accountability Round Table, *Submission 343*, p. 2.

⁵⁷ Parliamentary Library, Research Paper Series, 2022-23, *Election funding and disclosure in Australian jurisdictions: a quick guide*, 6 December 2022, p. 14.

⁵⁸ Act Government, *Submission 422*, p. 3.

⁵⁹ Australian Conservation Foundation, *Submission 411*, p. 10.

⁶⁰ Mr Ian Millner, Private capacity, *Submission 306*, p. 1.

⁶¹ Name withheld, *Submission 328*, p. 1.

- 2.65 Dr Monique Ryan MP, Member for Kooyong, commented that it was important to mandate ‘real time notification of donations wherever possible via an online reporting system which needs to be user-friendly and not too burdensome’, adding:

It is important to remember that, even in 2022, not all donors are able to make online donations. For independent candidates and small parties, notifications of non-online donations would be a significant workload — I’d support giving all parties 21-28 days to register such donations.⁶²

- 2.66 In terms of lodging information, consideration could be given to establishing consistency between the Commonwealth, States and Territories⁶³, for example through the operation of:

... a single, simple online portal for lodgement of all donations information at both levels of government, which data could then be drawn on by regulators at both levels of government to ensure compliance with each jurisdiction’s regime ... if done neatly it will reduce the burden on political party campaign staff (often volunteers) in entering the data needed to comply with all their legal obligations.⁶⁴

Resources needed

- 2.67 The Committee notes advice from the AEC that if a near to real time disclosure regime were to be legislated, it would require a significant investment in the AEC systems.⁶⁵ In terms of additional resources to ensure compliance by parties and candidates, a common theme raised was the need for additional administrative funding to allow parties and candidates to implement the disclosures.⁶⁶

- 2.68 The Australian Labor Party believed that a form of real-time disclosure would increase the regulatory and administrative burden on parties and that:

... in most, if not all, states and territories where real-time disclosure regimes have been introduced, they’ve been complemented by additional administrative support to the parties in the form of additional administrative funding to enable compliance.⁶⁷

- 2.69 The NSW Nationals were ‘not supportive of real-time disclosure without increased funding to accommodate the administrative burden.’⁶⁸ They added that ‘should the administrative burden associated with disclosure be increased there would be a requirement for consideration of administrative funding to enable participants to meet these obligations.’⁶⁹ They posited that a ‘reduction of the disclosure threshold would

⁶² Dr Monique Ryan MP, Member for Kooyong, *Submission 414*, p. 2.

⁶³ Name withheld, *Submission 1*, p. 1; Ms Nicolette Boele, *Submission 364*, p. 11.

⁶⁴ Mr Malcom Baalman, *Submission 348*, p. 4.

⁶⁵ Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 12.

⁶⁶ The Australia Institute, *Submission 412*, p. 7.

⁶⁷ Australian Labor Party, *Committee Hansard*, 3 November 2022, p. 21.

⁶⁸ National Party of Australia, *Submission 399*, p. 2.

⁶⁹ National Party of Australia, *Submission 399*, p. 2.

inevitably result in a reduction in the number of donors, and in the amounts which the donors would be prepared to give⁷⁰, adding:

Reducing the number of political donors would have serious consequences for the ongoing operation of the smaller political parties such as The Nationals. Such a reduction would need to be countered by a serious consideration of the need to supplement this financial loss through increased public funding.⁷¹

- 2.70 The Liberal Party of Australia expressed that they did ‘not support changes to these arrangements that would unreasonably add to the already considerable administrative and compliance burdens placed on political parties, which includes the simultaneous application of Commonwealth and state or territory laws to party divisions.’⁷²
- 2.71 The Liberal Party went on to caution against implementing a real time disclosure regime, commenting that it could potentially ‘lead to greater harassment and bullying of individuals and small businesses that wish to participate in our electoral process by supporting a candidate or political party’ if their details were available online.⁷³ They suggested that careful consideration be given in designing a real time disclosure regime ‘to ensure that the requirements are reasonable and make necessary allowance for public holidays, staff leave, and the time needed for the legally required due diligence associated with the receipt of payments.’⁷⁴
- 2.72 The Liberal Party also ‘noted that where schemes to cap political expenditure and impose ‘real-time’ disclosure have been introduced in other Australian jurisdictions, they have been accompanied with administrative funding being provided to political parties to assist with the significantly increased compliance burden, significant technology upgrades, and additional staff required.’⁷⁵ They added that ‘significant lead-in periods have also been put in place in other jurisdictions to give political parties the time to establish new reporting systems.’⁷⁶
- 2.73 The Democratic Audit of Australia (DAA) supported the need to factor in some administrative funding around donation, spending and funding reforms as quite justifiable, as they noted is done at the state level for elections in New South Wales and Victoria. However, they cautioned that it should be implemented so that incumbency advantage is not increased and provisions are made for parties that have no elected members.⁷⁷
- 2.74 The Australian Charities and Not-for-profits Commission (ACNC) also raised concerns about a possible additional administrative burden:

⁷⁰ The Nationals, *Submission 361*, pp. 1-2.

⁷¹ The Nationals, *Submission 361*, pp. 1-2.

⁷² Liberal Party of Australia, *Submission 382*, p. 3.

⁷³ Liberal Party of Australia, *Submission 382*, p. 4.

⁷⁴ Liberal Party of Australia, *Submission 382*, pp. 3-4.

⁷⁵ Liberal Party of Australia, *Submission 382*, p. 5.

⁷⁶ Liberal Party of Australia, *Submission 382*, p. 5.

⁷⁷ Democratic Audit of Australia, *Committee Hansard*, 17 October 2022, p.35.

... [if] there is movement towards 'real-time disclosure', consideration will need to be given to whether the ACNC is expected to update the Charity Register in real time to reflect a charity's recent electoral expenditure, and whether its current resources and systems allow that. Any required disclosure of this nature will be an impost on charities through additional regulatory burden.⁷⁸

- 2.75 The Australian Council of Trade Unions while supportive of 'sensible and targeted measures to increase transparency in our political system', were 'mindful of the impact that such measures could have on smaller organisations in terms of increased compliance and reporting burdens.'⁷⁹

Lowering the donation disclosure threshold

- 2.76 Submitters were by and large supportive of political donation reform at the federal level. Primarily, submitters who supported the introduction of real time disclosure of political donations also recommended lowering the donation disclosure threshold. Views on the amount a threshold should be set at were varied. Some inquiry participants suggested specific amounts, for example, to \$1,000.⁸⁰ Others suggested a reduction to \$2,500 for third parties and significant third parties.⁸¹ Some inquiry participants proposed that consideration be given to setting caps within a range.
- 2.77 While generally supportive of current levels being lowered, many inquiry participants did not propose a specific amount; instead being supportive of the principle, and the result that any lower threshold would have benefits. Senator Pocock, for example, supported 'significantly lowering the disclosure threshold as a necessary complement to closer to real time disclosure to greatly increase transparency'.⁸² Some participants referred to a 'reasonable' level – and advocated for a mix of public funding and capped donations from the community.⁸³
- 2.78 The Centre was of the view that the current disclosure threshold was high and not commensurate with other Australian jurisdictions:

With Australian political parties declaring \$1.38 billion in income of unexplained origin between 1998/99- 2020/21, it is beyond contestation that the Commonwealth's high disclosure threshold is creating a transparency void. For

⁷⁸ Australian Charities and Not-for-profits Commission, *Submission 278*, p. 2.

⁷⁹ Australian Council of Trade Unions, *Submission 357*, p. 1.

⁸⁰ Australian Labor Party, *Committee Hansard*, 3 November 2022, p. 21; Australian Greens, *Committee Hansard*, 3 November 2022, p. 22; Climate 200, *Committee Hansard*, 3 November 2022, p. 47; Ms Maree Nutt OAM, *Submission 247*, p. 1; Emeritus Professor Mike Daube AO and Professor Rob Moodie AM, *Submission 302*, p. 1; Dr Judy Hyde, *Submission 262*, p. 1; Mr Michael Leeming, *Submission 280*, p. 1; Dr Monique Ryan MP, Member for Kooyong, *Submission 414*, p. 2; Public Health Association Australia, *Submission 388*, p. 4; Accountability Roundtable, *Submission 343*, p. 2; Curtin Independent Pty Ltd, *Submission 403*, p. 3; Canberra Alliance for Participatory Democracy, *Submission 309*, p. 2.

⁸¹ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p. 25; #OurDemocracy, *Submission 342*, p. 4; Mr Davide Rizzo, *Submission 199*, p. 1; Ms Ileana Tooth, *Submission 259*, p. 1; Ms Gemma Mayfield, *Submission 166*, p. 1; Mr Howard Gwatkin, *Submission 284*, p. 1; Mr Martin Borri, *Submission 218*, p. 1.

⁸² Senator David Pocock, *Submission 416*, p. 2.

⁸³ Mr Craig Reucassel, *Submission 391*, p. 3.

the 2020/21 financial year alone, 38.6% of parties' income – or \$68,265,479 – was of unexplained origin.

Not only is the high Commonwealth disclosure threshold flooding Australia's political system with hidden money, it is also significantly out of step with the thresholds for disclosure set by the states and territories.⁸⁴

- 2.79 The Centre recommended reducing the threshold to \$1,000 (indexed) for individuals and 'aggregated donations of \$3,000 over 3 years to political parties, candidates, associated entities, third parties and significant third parties being required to be disclosed.'⁸⁵
- 2.80 Professor Luke Beck believed that the 'threshold for disclosure is extremely high, so a very small proportion of political fundraising is ever disclosed under the federal regime.'⁸⁶ He suggested that the threshold be set at \$1,000, with every amount above that threshold (as a cumulative total) being declared, adding 'that way there's full transparency, full daylight and nobody can make accusations'.⁸⁷
- 2.81 Professor George Williams called for a level playing field with the same rules for parties and third-party campaigners suggesting that a threshold of \$1,000 was too low and that around \$5,000 was a more appropriate level.⁸⁸
- 2.82 Several submitters argued that reduced disclosure thresholds should be combined with limits to donations; or that thresholds should be fixed:
- That disclosure threshold be \$1,000, and that donations be limited to a maximum of \$5,000 '(with no opportunities for additional payments to be made by other means);'⁸⁹ or
- Having a fixed threshold, rather than an inflation indexed threshold does increase the level of transparency over time but does potentially provide future governments wanting a higher threshold with greater argument to increase the threshold by an amount potentially significantly higher than the cumulative inflation since the fixed threshold was set.⁹⁰
- 2.83 Vote Australia Incorporated did not object to a \$1,000 (indexed) threshold but preferred 'that all financial donations and donated professional services to candidates, politicians and political parties, regardless of value, be disclosed.'⁹¹
- 2.84 The National Party of Australia commented that 'lowering the disclosure threshold to \$1000 would have a twofold effect – increasing the administrative burden on political

⁸⁴ Centre for Public Integrity, *Submission 351*, p. 2.

⁸⁵ Centre for Public Integrity, *Submission 351*, p. 3.

⁸⁶ Professor Luke Beck, Private capacity, *Committee Hansard*, 17 October 2022, p. 1.

⁸⁷ Professor Luke Beck, Private capacity, *Committee Hansard*, 17 October 2022, p. 13.

⁸⁸ Professor George Williams, Private capacity, *Committee Hansard*, 17 October 2022, pp. 18-19.

⁸⁹ Ms Leonie Stubbs, *Submission 205*, p. 1.

⁹⁰ Mr Thomas Killip, *Submission 406*, p. 1.

⁹¹ Vote Australia Incorporated, *Submission 305*, p. 2.

participants and deterring possible donors from participating in elections and democracy.⁹²

- 2.85 The NSW Nationals provided some insight into challenges that they have in complying with the New South Wales donation disclosure laws:

Sometimes the noble goal of trying to increase transparency and accountability becomes more challenging when you actually have to administer these things. In the New South Wales system the administrative burden is significant. There is a really, really high bar to jump over in terms of expenditure tracking, in terms of donation tracking. I'm not suggesting that the administrative burden is a reason not to implement changes like this, but what I am suggesting is that if the committee intends to make recommendations on these things that the administrative burden—for example, in my office in New South Wales about 60 per cent of our staffing level is allocated to compliance with the law. We have teams that monitor all of our financial obligations, all of our Electoral Act obligations. Down to the point of running a small event, it all has to be run through here.⁹³

- 2.86 The Hands of Our Charities Alliance were also generally supportive of lowering the disclosure threshold but voiced concerns that a \$1,000 threshold was too low for charities and community groups and would act as a disincentive to donors and place an additional administrative burden on those groups:

Charities and not-for-profits often do not have a relationship with regular small donors who give up to \$1,000 cumulatively across a year such that the electoral law donation disclosure requirements can be clearly explained. In addition, donors of relatively small amounts to charities would reasonably not expect their personal details to be made publicly available. Requiring charities and not-for-profits to contact a vast number of small donors to seek permission to have their details made public on the Australian Electoral Commission's website would not only impose an administrative burden on them, but would discourage many people from donating to their favourite charities.⁹⁴

- 2.87 They contended that a lower threshold would also make compliance harder and risk of accidental breach more likely, suggesting that a threshold of \$2,500 would 'go a significant way to alleviating the administrative burden on charities and not-for-profits without compromising political integrity.'⁹⁵

- 2.88 The ACNC also raised concerns about lowering the threshold and the potential impact that it could place on charities:

⁹² National Party of Australia, *Submission 399*, p. 2.

⁹³ New South Wales Nationals, *Committee Hansard*, 3 November 2022, p. 22.

⁹⁴ Hands of Our Charities Alliance, *Submission 341*, p. 3.

⁹⁵ Hands of Our Charities Alliance, *Submission 341*, p. 3.

The ACNC does not have a view on the correct setting for the disclosure thresholds. The ACNC generally prefers transparency and acknowledges that there may be genuine public interest in charities incurring electoral expenditure below the current disclosure threshold. However, lowering the threshold may create an additional reporting burden for some charities to the AEC. Easing the administrative burden for charities is a key objective of the ACNC, recognising that it is preferable for their time and resources to be directed to charitable endeavours.⁹⁶

2.89 Noting the reliance that charities and not-for-profits have on donations, the HRLC stated that donation caps should not apply to these entities as ‘many would be prevented from doing important advocacy while corporations and industry groups would be able to continue drawing on other income.’⁹⁷

2.90 The Grattan Institute suggested that the current threshold be lowered to \$5,000 to protect the privacy of small donors:

This would protect the privacy of small donors, and keep administration costs manageable, while ensuring that all donations big enough to matter are on the public record.⁹⁸

2.91 FamilyVoice Australia concurred that the privacy of citizens and businesses who make a donation should be protected, supporting a higher donation disclosure threshold. They contended that ‘three criteria for determining an appropriate threshold are: preserving donor privacy, limiting compliance costs, and safeguarding the public interest.’⁹⁹ They proposed that the threshold be determined by reference to a fixed proportion of the total donation income raised, claiming that this would:

- safeguard the public interest by ensuring that a fixed proportion of the donation income raised is subject to public disclosure; and
- adjust the threshold to compensate for changes in donor generosity affected by changing salaries, living costs and other economic factors.¹⁰⁰

2.92 They recommended that the ‘annual threshold for disclosure of political donations should be based on the previous year’s returns so as to ensure that a fixed percentage, between 90 and 95%, of total donations are disclosed.’¹⁰¹

Donation caps or bans

2.93 Several submitters advocated for the banning of donations from certain industries, capping donations, banning donations altogether, or capping an individual’s ability to

⁹⁶ Australian Charities and Not-for-profits Commission, *Submission 278*, p. 2.

⁹⁷ Human Rights Law Centre, *Submission 418*, p. 12.

⁹⁸ Grattan Institute, *Submission 367*, p. 1.

⁹⁹ FamilyVoice Australia, *Submission 396*, p. 7.

¹⁰⁰ FamilyVoice Australia, *Submission 396*, p. 7.

¹⁰¹ FamilyVoice Australia, *Submission 396*, p. 8.

make multiple donations. As a basis for its deliberations, the Committee observes the advice from Professor Twomey, which noted that the High Court had ‘previously acknowledged the validity of caps upon donations and expenditure, as long as the imposition of caps does not unduly burden the implied freedom of political communication.’¹⁰² She elaborated that:

Limits on expenditure and donations can support, rather than burden, the implied freedom of political communication by ensuring that the voices of the well-resourced do not drown out a variety of other voices in the political sphere (see *McCloy and Unions NSW (No 1) and (No 2)*).¹⁰³

2.94 The ART submitted that there ‘is a respectable case for banning corporate donations on the basis that they are either for corporate benefit (which makes them corrupt) or not (which makes them in breach of their duties to shareholders)’ and also suggested prohibiting unions from making donations to political parties.¹⁰⁴

2.95 The Australian Greens called for prohibiting donations from specific industries:

... with a track record of seeking political influence, industries that perhaps subvert decisions made by parliamentarians in the public interest: fossil fuel companies, banking industries, pharmaceuticals, weapons manufacturing, alcohol, tobacco, gambling, property development, industries that have a conflict of interest as far as decisions made by the Parliament of Australia are concerned. We reiterate our long-term call to ban those donations.¹⁰⁵

2.96 Real Republic Australia questioned whether donations from ‘other classes of individuals or commercial interests who may stand to gain from influencing decision-making or decision-makers’¹⁰⁶ should be prohibited, adding:

We would submit that the expectation of donors for either favourable treatment, or at least having their concerns listened to, will exist no matter what donation thresholds or other rules are applied.¹⁰⁷

2.97 The variety of views put to the Committee on this issue include that:

- donations from specific business sectors for which there is clear evidence of association with harmful products, services, or industrial processes’ be banned;¹⁰⁸
- restrictions should be placed on donations or donation caps to third parties acting on behalf of harmful commercial industries.¹⁰⁹

¹⁰² Professor Anne Twomey, *Submission 407*, p. 2.

¹⁰³ Professor Anne Twomey, *Submission 407*, p. 2.

¹⁰⁴ Accountability Roundtable, *Submission 343*, p. 2.

¹⁰⁵ Australian Greens, *Committee Hansard*, 3 November 2022, p. 22.

¹⁰⁶ Real Republic Australia, *Submission 401*, p. 12.

¹⁰⁷ Real Republic Australia, *Submission 401*, p. 12.

¹⁰⁸ Public Health Association of Australia, *Submission 388*, p. 5.

¹⁰⁹ Public Health Association of Australia, *Submission 388*, p. 5.

- donations from corporate entities be either limited or eliminated;¹¹⁰
- donations from the fossil fuel and gambling industries be banned or heavily limited, or that big, corrupting financial contributions to politicians be banned altogether¹¹¹; and
- noting that NSW has banned donations from gambling, tobacco, and property development industries, this be extended to fossil fuel companies and possibly all for-profit entities.¹¹²

2.98 Professor Williams stated that rather than banning industries from donating, his preference would be to 'reduce the amount that can be donated rather than targeting specific industries, unless it's a particularly extreme case.'¹¹³

2.99 The HRLC called for banning large political donations altogether:

While transparency is vitally important, only banning large political donations altogether can effectively stop the influence of money in politics.

Donations to candidates, political parties and associated entities should be capped at between \$15,000 and \$30,000 (indexed, to account for inflation), aggregated across a financial year.¹¹⁴

2.100 The Centre recommended the implementation of donation caps set at \$2,000 per annum per candidate and \$5,000 per party, from a single person or entity (aggregated), and noted that the High Court had upheld the constitutionality of NSW laws imposing caps on political donations:

The High Court has recognised the utility of donations limitations, holding in its 2015 *McCloy v New South Wales* ('McCloy') decision that '[t]he risk to equal participation posed by the uncontrolled use of wealth may warrant legislative action to ensure, or even enhance, the practical enjoyment of popular sovereignty'. This judgment – which upheld the constitutionality of NSW laws imposing caps on political donations, banning donations by property developers and prohibiting indirect campaign contributions – specifically recognised that the donations caps in question did not impede the system of representative government provided for by our Constitution; but preserved and enhanced it.¹¹⁵

2.101 The Centre noted that donation caps are currently in place in QLD, NSW and Victoria, positing that a lack of federal regulation was posing an undue risk:

The absence of donations caps at the federal level means that well-resourced individuals and entities have an opportunity to buy undue influence and access.

¹¹⁰ Mr Brad Darch, *Submission 220*, p. 1; Ms Judith Leslie, *Submission 40*, p. 1; The Hon Peter Malinauskas MP, Premier of South Australia, *Submission 314*, p. 2.

¹¹¹ Mr Martin Borri, *Submission 218*, p. 1; Ms Gemma Mayfield, *Submission 166*, p. 1.

¹¹² Ms Nicolette Boele, *Submission 364*, p. 1.

¹¹³ Professor George Williams, *Private capacity*, *Committee Hansard*, 17 October 2022, p. 19.

¹¹⁴ Human Rights Law Centre, *Submission 418*, p. 12.

¹¹⁵ Centre for Public Integrity, *Submission 351*, p. 6.

The public is aware of this risk, and as a consequence the absence of caps also has a deleterious impact upon fraying public trust: public trust in democracy requires that impartiality in government decision-making not only exist but be seen to exist.¹¹⁶

2.102 When discussing the possibility of introducing a donor cap to limit a donor's ability to make multiple donations to either the parties or candidates, Dr Belinda Edwards and Professor Williams agreed that, providing there is evidence that it is an issue, it might be worthwhile to limit donors from making multiple donations.¹¹⁷ Dr Edwards added that individuals 'should probably only be able to support a certain number' of unincorporated groups.¹¹⁸

2.103 The Grattan Institute also raised concerns about the current ability for 'a single donor to make multiple donations under the threshold, which collectively exceed the threshold, and still not be identified.'¹¹⁹ They added:

Most states and territories prevent donations splitting by requiring political parties to aggregate small donations from the same donor and declare them once the sum is more than the disclosure threshold.¹²⁰

2.104 The Grattan Institute called for the prevention of donation splitting recommending that 'donations from the same donor to the same party, over say \$100, should be aggregated and disclosed by the party once the combined total exceeds the disclosure threshold.'¹²¹

2.105 Climate 200 agreed that there should be measures put in place to avoid donation splitting:

We note that there is some confusion; there are some players in the political system who believe that multiple donations can be made to the same entity under the disclosure limit. ... I think it's a very important principle that donations should be aggregated across all the associated entities that fund a particular organisation and that there be real-time disclosure. That would close that loophole, which we suspect is being used quite extensively.¹²²

2.106 The Australia Institute suggested that the 'threshold should be defined so donors cannot avoid it by splitting donations over time or between branches of a party.'¹²³ The Centre also recommended that any caps on donations relating to companies are aggregated:

¹¹⁶ Centre for Public Integrity, *Submission 351*, p. 5.

¹¹⁷ Dr Belinda Edwards, Private capacity, *Committee Hansard*, 17 October 2022, p. 21; Professor George Williams, Private capacity, *Committee Hansard*, 17 October 2022, p. 21.

¹¹⁸ Dr Belinda Edwards, Private capacity, *Committee Hansard*, 17 October 2022, p. 21.

¹¹⁹ Grattan Institute, *Submission 367*, p. 4.

¹²⁰ Grattan Institute, *Submission 367*, p. 4.

¹²¹ Grattan Institute, *Submission 367*, p. 5.

¹²² Climate 200, *Committee Hansard*, 3 November 2022, p. 47.

¹²³ Australia Institute, *Submission 412*, p. 7.

Any donations cap regime must also ensure that the donations of related companies are aggregated. For example, under s 9(8) of the Electoral Funding Act 2018 (NSW), related companies are treated as a single entity (and whether entities are related is a question to be determined by reference to the federal Corporations Act 2001 (Cth)).¹²⁴

2.107 Some submitters raised concerns around the potential for parties to aggregate or pool donations as it could potentially give ‘them an unfair advantage in target or swing seats at the expense of independent candidates or campaigns in safe or unwinnable seats.’¹²⁵

2.108 The AEC stated that there is no evidence that donation splitting is occurring on a widespread basis and that the current legislation requires donors to disclose when they make multiple donations:

... in terms of pure donations or gifts, if a donor makes multiple donations below the threshold to a single entity the donor does have to disclose that in a return. The entity itself may not.¹²⁶

2.109 The DAA called for a limit on donations:

Freedom of political expression is promoted both by encouraging small donations through, for example, tax deductibility and by preventing some voices drowning out others through placing a limit on donations and campaign expenditure. While Australia has in place tax deductibility for individual donations to registered political parties or Independent candidates of up to \$1500, in line with the goal of encouraging small donations, this is not balanced by a limit on large donations.¹²⁷

2.110 Submitters including the Centre and Professor Williams accepted that there was a case for exempting party memberships from donation caps, with appropriate checks and balances in place. Professor Williams believed that ‘it’s appropriate you allow things like some low-level membership fees.’¹²⁸

Political fundraising

2.111 This inquiry considered the other avenues in which political parties, independents and candidates raise money such as fundraising dinners, gifts¹²⁹, raffles, sponsorships and other events.

¹²⁴ Centre for Public Integrity, *Submission 351*, p. 7.

¹²⁵ Mr Travis Jordan, *Submission 245*, p. 23.

¹²⁶ Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 13.

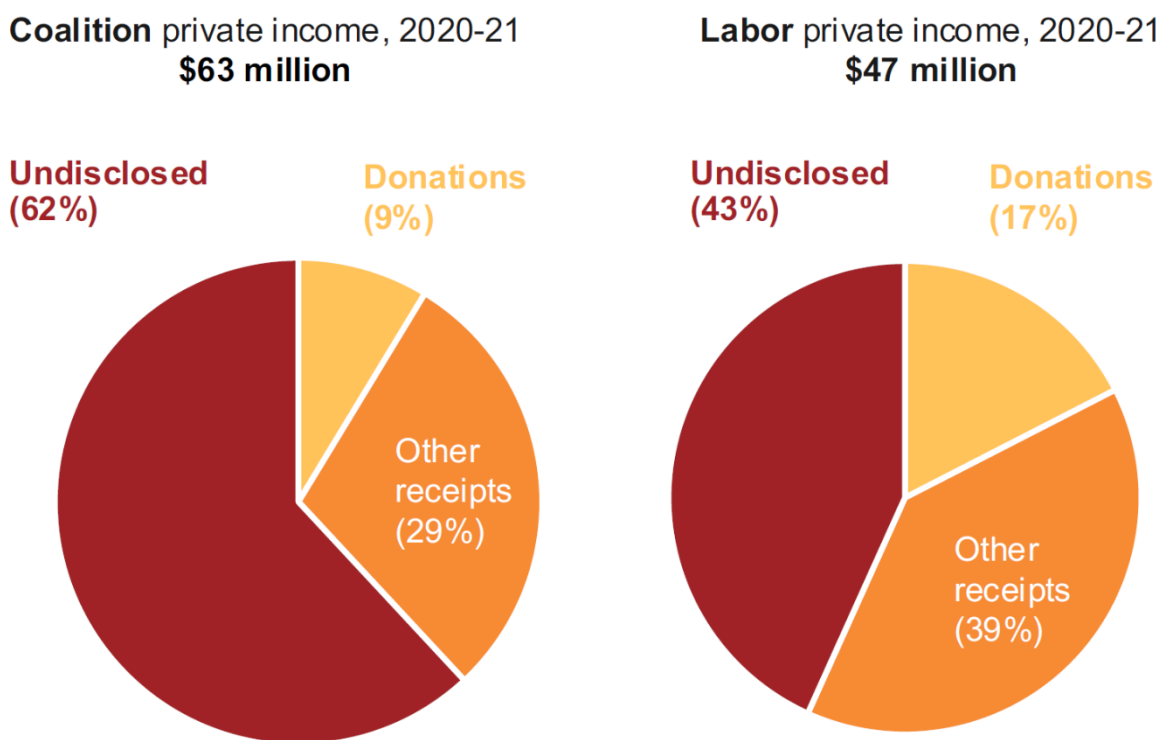
¹²⁷ Democratic Audit of Australia, *Submission 408*, p. 2.

¹²⁸ Professor George Williams, *Committee Hansard*, 17 October 2022, p. 17.

¹²⁹ Section 287 of the Electoral Act defines gift as "gift" means any disposition of property made by a person to another person, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include: payment under Division 3; or an annual subscription paid to a political party, to a State branch of a political party or to a division of a State branch of

2.112 The Grattan Institute highlighted that more than 80 per cent of private funding sources for the major parties are either undisclosed or other receipts, ‘and these categories are ambiguous’ (Figure 2.1).¹³⁰

Figure 2.1 Private funding sources for the major parties



Source: Grattan Institute, Submission 367, p. 3.

2.113 The Grattan Institute added that the current federal donation laws make it difficult to distinguish small donations, donation splitting or income from fundraising dinners and business forums:

While some of the undisclosed funds no doubt came from ‘mum and dad’ donors contributing \$100 to their preferred party, some is almost certainly the result of donations splitting, where people or organisations make multiple donations below the threshold (potentially deliberately to avoid being identified). The ‘other receipts’ bucket is also likely to contain significant income from fundraising dinners and business forums – where attendees pay thousands for an opportunity to ‘bend the ear’ of elected representatives. But again, disclosure laws make this sort of income impossible to distinguish from other benign income sources (such as investment income).¹³¹

a political party by a person in respect of the person's membership of the party, branch or division; or any visit, experience or activity provided for the purposes of a political exchange program.

¹³⁰ Grattan Institute, *Submission 367*, p. 3.

¹³¹ Grattan Institute, *Submission 367*, p. 3.

- 2.114 Transparency International Australia (TIA) posited that there were loopholes in the current disclosure requirements, particularly for fundraising events:

Disclosure is also needed for income beyond clearly identified “donations”, such as expensive tickets to fundraising events. Currently there are no federal requirements to disclose the source of around two-thirds of the income of the major parties, including more than \$100 million in income from hidden sources in the 2019 election. Not only does the federal threshold need to be lowered, and greater consistency across Australia achieved, but these loopholes against disclosure need to be closed.¹³²

- 2.115 Curtin Independent agreed with the TIA’s view that there were loopholes in the federal disclosure laws, and suggested that ‘there should be a prohibition on activities that seek to avoid disclosure such as raising moneys through party memberships and dinner tickets and accepting donations via state level party branches where laws may vary.’¹³³

- 2.116 Professor Williams held the view of taking a holistic approach when disclosing sources of funding adding that as ‘soon as you start exempting significant amounts, you open room for distortion.’¹³⁴

- 2.117 The HRLC called for the regulation of ‘any form of income that could reasonably lead to access or an expectation of access with a politician.’¹³⁵ They suggested that the Electoral Act narrowly defines the term ‘gift’, elaborating:

Currently, the term “gift” in s. 287 of the Electoral Act is narrowly defined and excludes contributions for access to politicians, like: (a) fundraising tickets to events for the purpose of meeting politicians; (b) membership subscriptions to political parties’ business forums. This narrow definition means corporations and powerful industry peaks do not have to disclose their contributions, which can run into the hundreds of thousands. On the political party side, these contributions are labelled “other receipts” instead of “gifts”, meaning they are almost impossible to scrutinise.¹³⁶

- 2.118 Professor Beck highlighted two jurisdictions that have expanded definitions of gift in their political donation laws, Queensland and New South Wales, and submitted both as a possible alternative to the current federal definition:

Queensland provides a model for fixing this problem. Queensland has expanded the definition of ‘gift’ in its political donations law beyond just donations to also include ‘fundraising contributions’ (defined in *Electoral Act 1992 (Qld)* s 200) and ‘sponsorship arrangements’ (defined in *Electoral Act 1992 (Qld)* s 200A).

¹³² Transparency International Australia, *Supplementary Submission 413.1*, p. 8.

¹³³ Curtin Independent Pty Ltd, *Submission 403*, p. 2.

¹³⁴ Professor George Williams, 17 October 2022, p. 18.

¹³⁵ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p. 33.

¹³⁶ Human Rights Law Centre, *Submission 418*, p. 11.

Similarly, New South Wales has defined 'gift' in its political donations law to include 'a contribution, entry fee or other payment to entitle that or any other person to participate in or otherwise obtain any benefit from a fundraising venture or function' (which parallels Queensland's 'fundraising contribution' definition) and any 'annual or other subscription' for affiliation with or membership of a party (see Electoral Funding Act 2018 (NSW) s 5).¹³⁷

2.119 Professor Beck recommended that the Electoral Act should be amended to expand the definition of 'gift' to include: fundraising contributions, sponsorship arrangements, membership or affiliation fees for the party or party-affiliated committees and forums.¹³⁸

2.120 Rather than amending the definition for gift in the Electoral Act, the Grattan Institute suggested establishing meaningful categories for donation information disclosure:

Contributions above the disclosure threshold should also be itemised into meaningful categories. Income from fundraising events should be categorised separately from 'other receipts' – ideally as a 'donation' given that fundraising is often the explicit purpose of these functions. Loans should also be separated from 'other receipts', and the terms and conditions of the loan should be reported.¹³⁹

2.121 The Australian Greens were also supportive of 'ensuring that memberships, in kind gifts, investments, and fundraising dinners are covered by disclosure obligations'.¹⁴⁰

2.122 The ACF were prescriptive in the additional disclosure classifications they believed were required to create greater transparency:

The 'other receipt' category should be broken down into clearly identifiable categories, including loans, investments, rental income, and party transfers. Any additional income not falling into one of the above categories should be classified as 'other' with the nature of the amount required to be disclosed on the return. A model for how this could be done has been previously presented in Senator Jacqui Lambie's Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020.¹⁴¹

2.123 Senator Pocock suggested that the Australian Law Reform Commission be tasked with reviewing the classification of gifts and recommending reforms:

To ensure greater disclosure, and greater transparency, the classification of types of gifts received by political parties must also be reviewed. For example, the current category of 'other receipts' is overly broad, opaque and open to abuse. ... As Anthony Whealy QC, the Chair of the Centre for Public Integrity

¹³⁷ Professor Luke Beck, *Submission 356*, p. 3.

¹³⁸ Professor Luke Beck, *Submission 356*, p. 3.

¹³⁹ Grattan Institute, *Submission 367*, p. 5.

¹⁴⁰ Australian Greens, *Submission 432*, p. 4.

¹⁴¹ Australian Conservation Foundation, *Submission 411*, p. 11.

notes, 'The federal disclosure scheme is misnamed — it is a non-disclosure scheme with more than a third of political funding shrouded in secrecy.' I support all measures that would require the full disclosure of all receipts above the threshold, regardless of how they are classified and strongly support the tasking of a non-partisan body, such as the Australian Law Reform Commission, to develop recommendations for reforming the classification of gifts received by political parties.¹⁴²

- 2.124 The Australia Institute advocated for a balanced approach to disclosure, to only disclose what could be considered as not posing as a conflict of interest or influence political decisions:

... the problem is that we don't know to what extent those undisclosed sums of money represent the benign or the less benign. As a principle we should expect enough disclosure that we know that anything not disclosed is not a problem; we don't need the rest to be disclosed. Some more information about just what other receipts represent would help there, even something like dividends, where the company involved has nothing to do with how that money is distributed versus, as you said, there might even be two different raffles with different qualities in terms of influence. I think if we had a lower threshold, closed some of the loopholes around multiple payments and brought in some of the rules against avoidance then that might go some way to clearing up what the rest of the dark money pool actually represents...¹⁴³

- 2.125 Dr Lewis advocated for limiting the amount of money candidates can spend on their election campaign with the funds they receive from donations:

There also needs to be a ceiling placed on the amount of money individual candidates can spend on their election campaign. The ceiling should cover all forms of donations including in-kind donations and fundraising dinners involving ministers, shadow ministers, and other senior members of a political party (parliamentary and administrative).¹⁴⁴

- 2.126 When questioned on whether a fundraising dinner would be classified as a donation under the current legislation, the AEC noted that while the Electoral Act contains a definition of gift it is difficult to assess whether this activity would be considered a donation.¹⁴⁵

Unintended consequences for third parties

- 2.127 As noted in evidence above, some submitters expressed concerns that amending the electoral laws to improve transparency around money, including donations and

¹⁴² Senator David Pocock, *Submission 416*, p. 3.

¹⁴³ The Australia Institute, *Committee Hansard*, 26 October 2022, p. 7.

¹⁴⁴ Dr Colleen Lewis, *Submission 410*, pp. 2-3.

¹⁴⁵ Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 13.

disclosure, would have unintended consequences, particularly for charities and not-for-profits.

- 2.128 The HRLC considered real-time disclosure as ‘a huge barrier to charities engaging in political advocacy’¹⁴⁶, adding:

The reason is that the definitions of electoral expenditure and electoral matter under the Commonwealth Electoral Act are incredibly complicated, and charities frequently need to go out and get legal advice in terms of whether or not they need to disclose under those provisions. If they have to do that in real-time and if they have to pay for legal advice in real time, the outcome will absolutely be that charities will self-silence. We're already seeing that under this regulation, and in the context where third parties don't pose the same corruption risks as political parties and candidates.¹⁴⁷

- 2.129 The HRLC also suggested donation caps should not apply to third parties:

Donation caps should not apply to third parties or significant third parties. As only charities and not-for-profits rely on donations, many would be prevented from doing important advocacy while corporations and industry groups would be able to continue drawing on other income.¹⁴⁸

- 2.130 The HRLC elaborated that introducing donation caps could potentially overly burden third parties, suggesting:

A reason for this is that third parties that receive donations are community groups, not-for-profits and charities; not big industry associations and corporations. Introducing donation caps entails a big discriminatory impact on some third parties, particularly community voices and a lot of charities—charities are already, by law, prohibited from supporting or opposing political parties.¹⁴⁹

- 2.131 The Centre stated that it did not want to place ‘an undue burden on these small community groups’, and that ‘the health of our democracy depends on their donations and their electoral expenditure.’¹⁵⁰ They recommended that:

... a cap on third-party electoral expenditure, and a requirement to register with the Australian Electoral Commission when a third party intends to exceed, or has already exceeded, such an amount. The registration threshold should be sufficiently high to encourage participation by smaller organisations and civil society without being an undue administrative burden.¹⁵¹

- 2.132 The ACNC stated that while it ‘generally prefers transparency and acknowledges that there may be genuine public interest in charities incurring electoral expenditure below

¹⁴⁶ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p. 25.

¹⁴⁷ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, pp. 25-26.

¹⁴⁸ Human Rights Law Centre, *Submission 418*, p. 12.

¹⁴⁹ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p.25.

¹⁵⁰ Centre for Public Integrity, *Committee Hansard*, 17 October 2022, p. 26.

¹⁵¹ Centre for Public Integrity, *Submission 351*, p. 16.

the current disclosure threshold¹⁵² it may 'create an additional reporting burden for some charities'.¹⁵³

- 2.133 The Hands Off Our Charities Alliance commented that not only would it potentially create an administrative burden, it would also 'discourage many people from donating to their favourite charities'.¹⁵⁴ They suggested that a slightly higher threshold would be a better balance between encouraging one-off or casual donations while also promoting transparency:

Charities are far more likely to have a closer relationship with donors of \$2,500 or more, and donors are likely to be more open to having their details published. This modest increase to the threshold would go a significant way to alleviating the administrative burden on charities and not-for-profits without compromising political integrity.¹⁵⁵

- 2.134 The ACF highlighted that changes to the significant third party provisions under the Electoral Act had negatively impacted charitable organisations:

We calculate that, since coming into law, it has cost our organisation over \$50,000 to comply with the changes, and that there will be a substantial continued cost to compliance. This cost has been calculated by adding up the staff time that we have needed to redirect from other services and activities to ensure compliance with the laws.¹⁵⁶

- 2.135 The ACF elaborated that the significant third party provisions added to red tape:

There is no public interest benefit in applying the significant third party provisions to charities. The changes to the significant third party provisions have come at a significant cost to ACF, and it is difficult to see what, if any, public interest benefit the application of these laws on charities brings. Charities are already heavily regulated and must act in furtherance of their charitable purpose. They are explicitly forbidden from a primary purpose of supporting a political party or candidate for office. As a charity, ACF already reports publicly on our income sources. The significant third party provisions do not actually add any additional transparency, however instead, just tie charities like ACF up in red tape.¹⁵⁷

- 2.136 The ACF called for an assurance that 'all electoral law reforms which could impact the charitable sector are the subject of extensive and detailed consultation with the sector prior to introduction'.¹⁵⁸

¹⁵² Australian Charities and Not-for-Profits Commission, *Submission 278*, p. 2.

¹⁵³ Australian Charities and Not-for-Profits Commission, *Submission 278*, p. 2.

¹⁵⁴ Hands Off Our Charities alliance, *Submission 341*, p. 3.

¹⁵⁵ Hands Off Our Charities alliance, *Submission 341*, p. 3.

¹⁵⁶ Australian Conservation Foundation, *Submission 411*, p. 3.

¹⁵⁷ Australian Conservation Foundation, *Submission 411*, p. 7.

¹⁵⁸ Australian Conservation Foundation, *Submission 411*, p. 12.

The case for expenditure caps

2.137 There is evidence that the significant rise during the spending of elections is leading to an arms race, where whoever has the deepest pockets wins. The Centre estimated that between the 1998 and 2019 elections the Labor Party and Coalition increased spending from over \$110 million to \$190 million.¹⁵⁹ The expenditure by a relatively new political party, the United Australia Party, was around \$123 million during the 2021-22 financial year.¹⁶⁰

2.138 Professor Tham outlined that election spending caps and donation reform are both necessary because 'big money in politics basically has that undue influence at two different stages'.¹⁶¹

The spending cap deals with what the High Court has characterised as war chest corruption, whereby huge amounts of money can allow the distortion of electoral outcomes.

Caps on political donations mitigate the influence of big money in terms of the policy process, in terms of paid lobbying et cetera.¹⁶²

2.139 Professor Williams warned there is a twofold risk if 'reform of donations, campaign spending and funding is not pursued'¹⁶³:

- 1 Money will impact upon the integrity of the electoral process by distorting process, and engendering soft corruption, whereby money will be given in return for access, potential policy outcomes and the like.
- 2 Threatening public confidence. If this is not addressed, public trust in the electoral system and in parliament would be eroded.¹⁶⁴

2.140 According to Professor Luke Beck, there are 'two key benefits' to a system which features expenditure caps: it levels the playing field; and acts as an enhancement of those other political fundraising integrity measures.¹⁶⁵

2.141 Apart from restrictions on foreign donors, the Australian Labor Party noted current Australian laws do not regulate, restrict, or cap donations and expenditure on federal elections, to the detriment of fair elections.¹⁶⁶

Over the last decade, this approach has allowed extremely high-net-worth individuals, groups, and networks to distort the political conversation with levels of advertising that were previously inconceivable in Australian elections.

¹⁵⁹ The Centre for Public Integrity, *Submission 351*, p. 8.

¹⁶⁰ Australian Electoral Commission, AEC Transparency Register, 2021-22 Political Party Annual Return, United Australia Party, 14 October 2022.

¹⁶¹ Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 3.

¹⁶² Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 3.

¹⁶³ Professor George Williams AO, *Committee Hansard*, 17 October 2022, p. 16.

¹⁶⁴ Professor George Williams AO, *Committee Hansard*, 17 October 2022, p. 16.

¹⁶⁵ Professor Luke Beck, *Committee Hansard*, 17 October 2022, pp. 1-2.

¹⁶⁶ Australian Labor Party, *Submission 363*, p. 2.

As result our elections are not fought on a level playing field. Expenditure from some actors crowds out all others.¹⁶⁷

Further, the pestilential quality of some of these campaigns is eroding trust and confidence in our elections and in the democratic system.¹⁶⁸

2.142 As a result the Australian Labor Party supports the ‘introduction of caps on electoral expenditure to address this problem’:

JSCEM will need to carefully consider the design of a new system, including whether limits on expenditure should be complemented by caps on donations, expenditure caps for third parties, or expenditure reporting (as they are in electoral law in several States and Territories).¹⁶⁹

2.143 The Nationals were welcoming of discussions that see reforms to the funding of political parties, however, are ‘not supportive of the introduction of spending caps’.¹⁷⁰

2.144 The Liberal Party cautioned against the introduction of caps on electoral expenditure in federal elections:

The Labor Party did not take a detailed proposal to the election on imposing caps on electoral expenditure, and arguably does not have a mandate to implement such a change.¹⁷¹

2.145 The Liberal Party also highlighted that caps on donations in the ‘United States have thus far been unsuccessful at reducing overall election expenditure, with the 2020 U.S. presidential election being the most expensive election in human history’:

The result of limitations on campaign donations has been to encourage the creation of new entities, such as ‘Super PACs’, which are held to lower transparency and integrity standards than political parties, undermining the purpose of campaign finance restrictions.¹⁷²

2.146 The Liberal Party argued that consideration of expenditure caps would raise many questions, including:

- Would caps apply to all expenditure by political parties, or just campaign-related expenditure?
- Would caps apply throughout the term, or just during a campaign period?
- At what level would caps be set?
- Would different caps apply in relation to federal, state, and electorate-level expenditure?

¹⁶⁷ Australian Labor Party, *Submission 363*, p. 2.

¹⁶⁸ Australian Labor Party, *Submission 363*, p. 2.

¹⁶⁹ Australian Labor Party, *Submission 363*, p. 2.

¹⁷⁰ The Nationals, *Submission 361*, p. 2.

¹⁷¹ Liberal Party of Australia, *Submission 382*, p. 4.

¹⁷² Liberal Party of Australia, *Submission 382*, p. 5.

- Would a separate cap apply to House of Representative and Senate campaigns?
- How would arrangements differ between general elections and by-elections?
- How would third party expenditure be regulated and capped?¹⁷³

2.147 The Liberal Party submitted it strongly believes that any changes must ensure that there is a level playing field for political participants:

The experience in other Australian jurisdictions has shown that while expenditure caps may limit campaign spending of the major parties, multiple trade unions will spend to the maximum amount allowed under a cap – delivering a massively unfair outcome in favour of the Labor Party.

Any attempt by the Government to restrict campaign expenditure by parties but not for third party campaigners (including unions affiliated with the ALP) should be seen for what it is – an attempt to rig the system in Labor’s favour.¹⁷⁴

2.148 The Australian Greens highlighted that many European countries, the United Kingdom, Canada and New Zealand all cap election spending.¹⁷⁵

2.149 The Australian Greens stressed spending caps should be designed to:

- apply to political parties, candidates, associated entities, and third parties
- impose electorate, State and national spending limits
- include expenditure on designing, printing, distributing, broadcasting and publishing campaign material (including driving a candidate-branded vehicle), polling and research, T-shirts and campaign merchandise
- operate from 12 months prior to the election date (noting that this would be facilitated by fixed term elections – see below), or two years from the previous election day
- set a limit that allows reasonable engagement by all candidates, taking account of the benefits of incumbency (see below), the cost of advertising in different electorates, and recognises the full range of campaign expenditure and in-kind contributions.¹⁷⁶

2.150 The Australian Greens support placing caps on election spending and increasing public funding to ‘remove the need for candidates to go cap in hand for campaign funds to those who could later expect the favour to be returned’:

¹⁷³ Liberal Party of Australia, *Submission 382*, p. 4.

¹⁷⁴ Liberal Party of Australia, *Submission 382*, p. 4.

¹⁷⁵ The Australian Greens, *Submission 432*, p. 2.

¹⁷⁶ The Australian Greens, *Submission 432*, p. 3.

We need to level the playing field and make elections a contest of big ideas, not big bank balances.¹⁷⁷

- 2.151 The Australian Greens stated their desire to remove the influence of money in elections, explaining that:

I think Australians more generally are pretty sick of the amount of advertising that goes on. I'm sure all of us can speak to our experiences with advertising and what that does as far as getting a message across. We know that there's a conservative estimate of around \$500 million being spent at the last federal election.¹⁷⁸

- 2.152 The Australian Greens also raised concerns about the influence the amount of money (such as that spent by the United Australia Party) has on politics by drowning out messages of policies that would otherwise get through to the public:

... in a sense that people just switch off. That's not healthy for democracy or for the democratic process.

The Greens are supportive of placing election caps, and as far as public funding for administration is concerned, we're fully supportive of further funding being provided to parties for their administration. We know that the executive provides grants for things like systems and system security, so in many ways this could be reflective of that model.¹⁷⁹

- 2.153 Professor Williams highlighted that large amounts of money well deployed through advertising can 'obviously affect how people vote, and, of course, that's the reason that people seek the money in the first place':

But where you have extreme amounts in some areas and not a level playing field, that can lead to distorting outcomes that mean preferences aren't actually a true representation of how people would normally cast their votes. You see it in the US all the time. Money speaks, and if you want a system where, essentially, those who raised the most money are the most likely to be successful, well, that's the system that you could have, but it's problematic.¹⁸⁰

- 2.154 The other distortion of the process Professor Williams raised was the 'temptation or likelihood that people who receive large donations will tailor their policies in running for office in order to favour those people who are giving them large donations...':

... and do so knowing that, even though it's not entirely popular, they might get the money they need nonetheless to convince the community and win the contest.¹⁸¹

¹⁷⁷ The Australian Greens, *Submission 432*, p. 2.

¹⁷⁸ The Australian Greens, *Committee Hansard*, 3 November 2022, p. 29.

¹⁷⁹ The Australian Greens, *Committee Hansard*, 3 November 2022, p. 29.

¹⁸⁰ Professor George Williams AO, *Committee Hansard*, 17 October 2022, p. 22.

¹⁸¹ Professor George Williams AO, *Committee Hansard*, 17 October 2022, p. 22.

2.155 The Centre stressed the associated risk if the Commonwealth maintains no caps on electoral expenditure:

In the absence of caps, public funding may serve to accelerate the ‘arms race’ of electoral expenditure. Public funding does nothing to prevent this, and parties may continue with their previous activities - just with more resources available.¹⁸²

2.156 Professor Joo-Cheong Tham argued that the principles and the processes for determining the level of any expenditure cap was more important than the specific amount.¹⁸³ Professor Tham suggested three principles:

- 1 having the level of the cap apply to parties based on the number of candidates that they’re fielding—this is an aspect found in the QLD, NSW scheme, the UK scheme and so on and so forth.
- 2 the level playing field or the fairness rationale, and
- 3 an anticorruption rationale because the demand for spending drives the supply of funds.¹⁸⁴

2.157 Professor Tham advocates for a process of expanding these principles, and then subject to regular periodic independent review. He believed these independent reviews could be managed by the AEC, testing whether the level that’s been set is suitable in terms of giving effect to these principles.¹⁸⁵

2.158 The HRLC stated ‘the key to regulating corporate influence in politics is through spending caps’.¹⁸⁶

Capped expenditure period

2.159 The Centre would welcome a capped expenditure period but it would need to be monitored.¹⁸⁷

As the Commonwealth doesn’t have statutory election cycles, the applicable cap should happen two years after the previous polling day. That would give, roughly, 12 months of a capped expenditure period. The expenditure should be capped for the two years before. But if, for example, parties seek to start spending outside the capped expenditure period, that is something that may have to be considered.¹⁸⁸

2.160 In relation to what sort of election expenditures should be included in the cap, Professor Luke Beck declared the ramifications of limiting advertising may allow a candidate with an ‘enormous war chest’ to spend ten times more on their market

¹⁸² The Centre for Public Integrity, *Submission 351*, p. 20.

¹⁸³ Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 2.

¹⁸⁴ Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 2.

¹⁸⁵ Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 2.

¹⁸⁶ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p.26.

¹⁸⁷ Centre for Public Integrity, *Committee Hansard*, 17 October 2022, p. 29.

¹⁸⁸ Centre for Public Integrity, *Committee Hansard*, 17 October 2022, p. 29.

research or marketing. Professor Beck claimed it may not be a level playing field whatever cap is set on television advertising for example:

You may want to cap that at particular amounts or at a particular kind of expenditure—a more complete cap on anything to do with the election—but you have to define that.¹⁸⁹

You also need disclosure of what you spend so that all of that can be seen. ... Disclosure of revenue or fundraising and disclosure of political expenditure in those categories ... how much money was spent on television advertising, how much money was spent on consulting firms, how much money was spent on marketing and focus groups et cetera. It's a combination of mechanisms. There's no one silver bullet that improves integrity, that creates a level playing field.¹⁹⁰

Associated entities and third parties

2.161 A number of submissions highlighted that the role of associated entities and third parties will have to be considered as part of any expenditure cap applied in the Australian system. While acknowledging the complexity of this particular issue, there was general agreement amongst a wide range of submitters, including most of the major parties in Australia, that omitting associated entities and third parties from expenditure caps would be to incompletely address the problem.

2.162 The Liberal Party submitted if the Committee wished to investigate caps on expenditure, it 'must also consider how registered associated entities are treated as part of any cap on either candidates or political parties'.¹⁹¹

2.163 The NSW Nationals argued that:

any reforms to campaign finance need to be applied equally to all participants, to all political actors. This includes parties, Independent candidates, unions, significant third parties and even Australia's version of a super PAC—the Climate 200 body, which we saw in the recent election.¹⁹²

2.164 The Australian Greens stressed spending caps should be designed to apply to political parties, candidates, associated entities, and third parties.¹⁹³

2.165 The Centre believed most of the states' models on expenditure caps had suitable protections to deal with parties trying to circumvent expenditure caps by supporting third parties to run an issues campaign that's not captured by the cap:

Most of the comparable expenditure caps regimes around Australia include what we would consider to be an anticircumvention offence in which it is an offence to

¹⁸⁹ Professor Luke Beck, *Committee Hansard*, 17 October 2022, p. 3.

¹⁹⁰ Professor Luke Beck, *Committee Hansard*, 17 October 2022, p. 3.

¹⁹¹ Liberal Party of Australia, *Submission 382*, p. 5.

¹⁹² Mr Joe Lundy, The NSW Nationals, *Committee Hansard*, 3 November 2022, p. 20.

¹⁹³ The Australian Greens, *Submission 432*, pp. 2-3.

act in concert with a political party or someone with an agenda to essentially circumvent your applicable expenditure cap.¹⁹⁴

2.166 The Centre's submission also recommended that associated entities' spending should be added onto a political party's spending and they should 'come, essentially, under the same cap':

... but we believe that the current Commonwealth definition of 'associated entity' should be narrowed to entities that exist solely for the benefit of the relevant political party. But we understand that with caps come potential workarounds. We believe the anticircumvention offence would protect it from that.¹⁹⁵

2.167 The DAA argued that third parties should be covered by caps on donations and campaign expenditure:

... there's evidence now from state jurisdictions, particularly in New South Wales, which could be drawn on in thinking about how to deal with third parties at the federal level.¹⁹⁶

2.168 The HRLC has consulted with a range of stakeholders on whether third parties should be regulated within a reformed system, and argued that:

There are many different types of third parties. Third parties should be captured, as spending caps are the only equitable way of really regulating third parties in the same way.¹⁹⁷

2.169 Professor Williams believed managing the expenditure of registered third parties in Queensland campaigns was a 'really major issue with the Queensland legislation'.¹⁹⁸

There was very large pushback from charities and others for the good reason that they were caught within the net—and I think they were rightly caught within the net. Unless we actually have a holistic regime, people will set up the equals, whether they be charities, third parties or the like. We need to make sure that they are equally covered with appropriate caps, disclosure and the like. Otherwise, we'll just end up with the electoral fundraising and the fight moving from parties to third parties.¹⁹⁹

2.170 Professor Williams considered any advantage that a range of unions may enjoy in Queensland in a so-called 'financial gerrymander' would also apply to other third parties.²⁰⁰

¹⁹⁴ Centre for Public Integrity, *Committee Hansard*, 17 October 2022, p. 28.

¹⁹⁵ Centre for Public Integrity, *Committee Hansard*, 17 October 2022, p. 28.

¹⁹⁶ Democratic Audit of Australia, *Committee Hansard*, 17 October 2022, p. 25.

¹⁹⁷ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p.25.

¹⁹⁸ Professor George Williams AO, *Committee Hansard*, 17 October 2022, p. 22.

¹⁹⁹ Professor George Williams AO, *Committee Hansard*, 17 October 2022, p. 22.

²⁰⁰ Professor George Williams AO, *Committee Hansard*, 17 October 2022, p. 23.

You can make the same point about a variety of other third parties as well. Unions are a good example, and, given their historical connection to one side of politics, they're one area you could rightly focus on. Equally, you can point to some charities, corporations and the like. New South Wales sought to deal with this by reducing the caps, and third parties ran into problems in the High Court as a result. I think this is one of the hardest areas when it comes to design.²⁰¹

Incumbent advantage? Levelling the playing field

2.171 The Australian Greens support reforms that level the playing fields for independent candidates standing against incumbents:

It is simply unaffordable for many independent candidates to be competitive, particularly against a well-known incumbent, without a significant benefactor – benevolent or otherwise. The need for resources also diverts candidates' energies from listening to their communities on policy issues to endless fundraising activities.²⁰²

2.172 Climate 200 advocated for 'funding and support in order to level the playing field in a system that advantages parties and incumbents.'²⁰³ They posited that in 'jurisdictions where electoral expenditure caps have been implemented ... the difference in the cap allows for the parties to spend more on broad-based advertising like TV and radio, while an independent is hindered from engaging electors through these avenues.'²⁰⁴ They recommended that:

... electoral expenditure caps should be made significantly higher for new entrants and independent candidates in line with the identified value of the full suite of advantages enjoyed by major parties and incumbents.²⁰⁵

2.173 The Grattan Institute held the view that amending electoral laws, particularly on electoral expenditure, would reduce the imbalance between established and newer parties:

Expenditure caps would reduce the 'spending gulf' between the major incumbent parties and new and smaller parties, as well as between well and poorly resourced third parties. There will always be substantial differences in the resources and capacity of political parties and interest groups to advertise their message, but a cap set at a reasonable level would place a ceiling on the

²⁰¹ Professor George Williams AO, Committee Hansard, 17 October 2022, p. 23.

²⁰² The Australian Greens, *Submission 432*, p. 2.

²⁰³ Climate 200, *Submission 419*, p. 4.

²⁰⁴ Climate 200, *Submission 419*, p. 7.

²⁰⁵ Climate 200, *Submission 419*, p. 7.

imbalance.²⁰⁶

2.174 Dr Monique Ryan MP outlined a number of potential advantages incumbents have, including:

- party funding received from the AEC for votes received in the previous election
- use of (publicly funded) electorate office communications budgets; tax deductibility status throughout the political cycle — while independents receive this only after the official declaration of nominations, 2-3 weeks before the actual election
- public funding advances received by parties before the election, while independents receive no public funding until after the election.²⁰⁷

2.175 Dr Ryan MP suggested exempting new candidates from ‘donation caps until they reach a certain threshold of fundraising’ and ‘limit on spending for all candidates, with that funding provided by the AEC/state electoral organisation’ with strict enforcement.²⁰⁸

2.176 Charities and community groups that provided the joint submission to the #OurDemocracy campaign suggested a possible way to reduce incumbent advantage:

... the election spending cap needs to be sufficient to allow a non-incumbent candidate to spend enough to achieve broad name recognition in their electorate. For the same reason, the Committee should consider allowing a higher spending cap for independents and small parties, which will typically never benefit from such coverage, nor from the significant levels of public funding given to the established parties.²⁰⁹

2.177 Without reforms, the Australian Greens submitted there was a risk to Australia’s federal electoral system becoming even ‘more skewed towards the wealthy and entrenching the two-party system’.²¹⁰

A healthy democracy is not one in which those with the deepest pockets get to be the loudest voices. It is not one which discourages people without connections to wealthy donors from running.²¹¹

2.178 The HRLC agreed that the current system disproportionately favours wealthy candidates.²¹² The Australia Institute noted that a ‘challenger must spend

²⁰⁶ The Grattan Institute, *Submission 367*, p. 8.

²⁰⁷ Dr Monique Ryan MP, *Submission 414*, p. 2.

²⁰⁸ Dr Monique Ryan MP, *Submission 414*, p. 3.

²⁰⁹ #OurDemocracy, *Submission 342*, p. 3.

²¹⁰ The Australian Greens, *Submission 432*, p. 2.

²¹¹ The Australian Greens, *Submission 432*, p. 2.

²¹² Human Rights Law Centre, *Submission 418*, p. 6.

considerably more than the incumbent just to ‘catch up’ to the incumbent’s publicly-funded benefits.²¹³

2.179 The ACF believed that establishing ‘spending caps should aim to improve current levels of political equality’ and:

Account for the benefits of incumbents and party backed candidates such as the additional staffing, printing, and advertising resources available to these candidates. A higher spending cap for independents and small parties should be considered to counterbalance this inherent advantage.²¹⁴

2.180 The Centre highlighted the potential danger of public funding often rewarding incumbents more than challengers:

All of Australia’s public funding regimes reward previous electoral success, whether in the form of reimbursing electoral expenditure according to first preference votes or providing funds for incumbent members’ administrative expenses. Both measures arguably serve to entrench incumbents and exacerbate their already heightened advantage.²¹⁵

Views on expenditure caps in other jurisdictions

2.181 Expenditure caps already exist in several Australian jurisdictions. Professor Luke Beck suggests that the High Court has found that expenditure caps are constitutionally valid, and noted that the main questions remaining relate to the level of the cap, which would require:

detailed analysis about the actual cost of political campaigns in recent times, comparing that with state levels et cetera to come to a fair and reasonable number. But that is absolutely possible. There are examples at state level that demonstrate mechanisms for how you calculate that initial cap and then questions about raising it in line with inflation, and so on.²¹⁶

2.182 Professor Beck said legislation addressing expenditure caps would have to be ‘nuanced and multilayered’ to capture the expenditure that is spent for a seat-based campaign, as well as a political parties’ global, wider campaigns political party spends:

Further, there is a difference between a seat-based campaign in connection with a major or a minor party and a seat-based campaign for an independent who has no broader network or party. This is addressed a state level.²¹⁷

²¹³ Australia Institute, *Submission 412*, p. 9.

²¹⁴ Australian Conservation Foundation, *Submission 411*, p. 11.

²¹⁵ The Centre for Public Integrity, *Submission 351*, p. 20.

²¹⁶ Professor Luke Beck, *Committee Hansard*, 17 October 2022, pp. 1-2.

²¹⁷ Professor Luke Beck, *Committee Hansard*, 17 October 2022, p. 2.

2.183 The Liberal Party noted that where schemes to cap political expenditure and impose 'real-time' disclosure have been introduced in other Australian jurisdictions, they have been 'accompanied with administrative funding being provided to political parties to assist with the significantly increased compliance burden, significant technology upgrades, and additional staff required'.²¹⁸

Significant lead-in periods have also been put in place in other jurisdictions to give political parties the time to establish new reporting systems.²¹⁹

2.184 While noting some challenges of adding an additional administrative burden, the NSW Nationals were supportive that consideration be given to implementing the New South Wales model at the federal level.²²⁰

2.185 The NSW Nationals hoped the administrative burden on all parties will be considered when looking at making reforms to donation guidelines and electoral expenditure caps.²²¹

In relation to level of support parties would require for the administrative burden of complying with the new obligations and level of public funding parties would be seeking to substitute for the removal of private donors bankrolling elections and campaigns.²²²

2.186 The NSW Nationals stated that this is dependent on the model that is proposed – a more prescriptive model would require more administrative costs. Further, because both federal and state parties are actors in federal election campaign, any funding model that is proposed needs to acknowledge that there are compliance obligations on both entities.²²³

2.187 The Australian Labor Party stressed it did not agree with the premise that 'advocacy around additional administrative support for political parties in order to comply with a lower disclosure threshold or the introduction of real-time disclosure is in fact to offset a decline in revenue from other sources'.²²⁴

2.188 The AEC confirmed that it has received a formal briefing from the Electoral Commission of Queensland, ECQ, about the implementation of the IT system that managed the expenditure cap and the near real-time disclosure regime.

²¹⁸ Liberal Party of Australia, *Submission 382*, p. 5.

²¹⁹ Liberal Party of Australia, *Submission 382*, p. 5.

²²⁰ The NSW Nationals, *Committee Hansard*, 3 November 2022, p. 22.

²²¹ The NSW Nationals, *Committee Hansard*, 3 November 2022, p. 22.

²²² The NSW Nationals, *Committee Hansard*, 3 November 2022, p. 22.

²²³ The NSW Nationals, *Committee Hansard*, 3 November 2022, p. 28.

²²⁴ Australian Labor Party, *Committee Hansard*, 3 November 2022, p. 28.

Public funding of elections

2.189 A number of submitters advocated for an increase in the level of public funding given to political parties and eligible candidates to help reduce the influence of private money in elections.

2.190 Noting that the reforms proposed will increase the compliance burden on political entities, witnesses also called for the introduction of additional administrative funding to support routine party expenses, as occurs in a number of states already.

Table 2.1 What do the states do on public funding?

	Federal	NSW	VIC	QLD	SA ²²⁵	WA	TAS	ACT	NT
Per vote public funding	\$2.87	\$4.66	\$6.33	\$3.36	\$3.35	\$1.99	×	\$8.85	×
Public funding vote threshold	4%	4%	4%	6%	4%	4%	-	4%	-
Public funding capped to expenditure	✓	✓	✓	✓	✓	✓	-	×	-
Administrative funding (max)	×	~\$3.6m	~\$1.7m	\$3m	\$66 109	×	×	~\$600k	×
Other public funding sources	×	✓	✓	×	×	×	×	×	×

Source: Parliamentary Library, Research Paper Series, 2022-23, Election funding and disclosure in Australian jurisdictions: a quick guide, 6 December 2022.

2.191 A key point made by witnesses is that Australia's current system of public financing for election funding of parties and candidates is not fit for purpose.

2.192 The Centre has recommended that specific action be taken with regard to funding, to address these issues with the 'dollar per vote' model, based on principles to improve equality.²²⁶ However, they cautioned that public funding is also fraught with risks:

- it may serve to fuel excessive electoral expenditure, sap the internal vitality of parties, and entrench incumbents

²²⁵ For parties that have opted into the SA public funding scheme

²²⁶ The Centre for Public Integrity, *Submission 351*, p. 33.

- depress the supply and demand of these contributions as parties become more state dependent.²²⁷

2.193 Increasing public funding, as some witnesses noted, makes sense as part of wider changes including those discussed earlier in this chapter:

A higher public funding rate is essentially a trade-off to secure changes elsewhere, a higher public election reimbursement rate is an attractive trade for lower expenditure caps, and a higher public election discretionary funding rate would offset the increased administrative load on parties.²²⁸

2.194 Similarly, Professor Joo-Cheong Tham noted that increasing public funding would allow parties and candidates to ensure proper compliance with electoral laws:

I think when it comes to financial affairs there needs to be a high-level professionalisation, given the money involved and so on and so forth, to free up the volunteers from the compliance activity and to focus, if you like, on the policy and campaigning activity. That's one aspect of public funding to support political parties and key democratic institutions.²²⁹

2.195 While Dr Colleen Lewis acknowledged that the taxpayer is going to have to be 'convinced' of the benefit in giving more of their money to run political campaigns, and that, in the context of the existing trust deficit in politics, 'that's going to be a very difficult argument to win', there are strong arguments to be made in favour of increased public funding:

... there are many experts who support an increase in political funding, with other conditions, and such experts could assist in using their expertise in this area 'to mount the argument to the Australian people on why it could well be in the public interest to have a modest increase to political parties.'²³⁰

2.196 A further benefit was identified by Professor Tham, who argued that public funding might lead to increased public membership of and participation in political parties, and for parties to manage their memberships:

Further, is to use public funding as a lever for encouraging membership; public funding system that is also based on the number of members a political party has. There's an incentive for political parties to get members but also recognising that membership requires costs in terms of maintenance, calling meetings and so on and so forth.²³¹

2.197 Professor Williams made a similar point, recommending:

²²⁷ The Centre for Public Integrity, *Submission 351*, p. 20.

²²⁸ Mr Travis Jordan, *Submission 245*, p. 25.

²²⁹ Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 10.

²³⁰ Dr Colleen Lewis, *Committee Hansard*, 17 October 2022, p. 9.

²³¹ Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 10.

... a modest increase in public funding to political parties, subject to those parties meeting minimum standards of accountability, including by way of incorporation and internal standards as to member participation and independent dispute resolution.²³²

2.198 The Australian Greens recommended introducing a new system of public funding for election campaigns and the administration of political parties.²³³

The public interest in removing the influence of donors in election outcomes justifies an investment of public funds in ensuring campaigns can promote candidates and allow voters to understand their options.²³⁴

... Funding should be set at a level that reduces corporate influence on political decisions, while ensuring political parties and independent candidates are able to participate effectively in the democratic process.²³⁵

2.199 The Nationals argued that the fairest option would be to introduce a system where a 'payment for party administration was paid based on parliamentary representation in the House of Representatives and the Senate, potentially based on an average representation over a three term period which has been previously proposed':

Party administration funding is critical for smaller political parties who still incur the same fixed costs and overheads as larger parties (e.g. rent, salaries, utilities), but do not have the same capacity to generate income flows.²³⁶

2.200 The Nationals suggested other measures which could be considered:

- An administration funding limit for the major political parties.
- A provision should be considered to deal with possibility of separate House of Representatives and Senate elections where say, double the general public funding would be paid for a House of Representatives only election, although at the eventual half Senate election potentially only the normal amount would be paid.
- Any federal public funding model should recognise that both federal and state political parties / branches / divisions are participants in federal elections.
- Strengthening third party compliance and reporting requirements.
- Indexing all payments annually at CPI.²³⁷

²³² Professor George Williams AO, *Submission 7*, p. 4.

²³³ The Australian Greens, *Submission 432*, p. 3.

²³⁴ The Australian Greens, *Submission 432*, p. 3.

²³⁵ The Australian Greens, *Submission 432*, p. 3.

²³⁶ The Nationals, *Submission 361*, p. 2.

²³⁷ The Nationals, *Submission 361*, p. 2.

2.201 The Centre noted that Australia's 'public funding also does little to promote political equality in a meaningful way'²³⁸:

While all parties and candidates can formally access public funds, the ex-post reality of the payments creates a vicious cycle which entrenches incumbents. As funding is calculated based on past electoral support, it is to be expected that 'established parties are very likely to enjoy a financial advantage over newer parties'.²³⁹

2.202 As well as arguing for additional public support, Professor Beck touched on providing appropriate resourcing so the AEC can develop systems to make reporting easier, more seamless and intuitive:

It's important that there's appropriate funding for that kind of resourcing development at the AEC level to make sure that their online reporting and accounting forms are really high quality. ... That probably also goes for disclosure of political donations and, I hope, disclosure of political revenue more broadly, to make it easier to comply. You can have principles and rules and you can make them easier or harder to comply with based on the bureaucratic paperwork that has to go on.²⁴⁰

2.203 Professor Beck noted that integrity carries with it compliance costs: 'that needs to be factored into this decision-making, but those compliance costs should not be seen as a reason to not proceed.'²⁴¹ Submitters noted that administrative support had also been provided in states and territories where real-time disclosure regimes had been introduced.

2.204 The DAA added:

... some administrative funding is quite justifiable, as is done at the state level in New South Wales and Victoria. But you have to be terribly careful that you don't increase incumbency advantage and that you do make provision for parties that don't have elected members. That is being done on a very small scale at the state level, but it has to be thought about quite hard.²⁴²

2.205 The HRLC was a strong advocate for more funding and for people to get the funding they need to comply with the administrative burden and agreed with Professor Marian Sawyer of the DAA that '... it's not at the level that further distorts in favour of incumbency.'²⁴³

2.206 The HRLC called on the Committee to consider any possible administrative burden posed by amending legislation:

²³⁸ Centre for Public Integrity, *Submission 351*, p. 21.

²³⁹ Centre for Public Integrity, *Submission 351*, p. 21.

²⁴⁰ Professor Luke Beck, *Committee Hansard*, 17 October 2022, p. 9.

²⁴¹ Professor Luke Beck, *Private capacity*, *Committee Hansard*, 17 October 2022, p. 9.

²⁴² Democratic Audit of Australia, *Committee Hansard*, 17 October 2022, p. 35.

²⁴³ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p.35.

... that the folks who find it hardest to comply with these laws, and actually have to interpret some of the hardest definitions in the laws, won't get public funding, and they are the third parties. It's another reminder of the committee thinking about the administrative burden of these laws. Again, be very mindful of how we capture third parties.²⁴⁴

2.207 The Public Health Association (PHA) supported an increase in public funding:

The public funding of elections and political parties could be increased, for example, to allow for operational costs, engaging members, promoting policy positions and running election campaigns.

An increase to public funding, paired with electoral expenditure caps would level the playing field in Australian elections and provide adequate resources for all candidates, including new candidates and political parties, to promote their policy platforms.²⁴⁵

2.208 The ART believed one way to handle the issues would be if 'all donations went through a public body':

This would be a way of actually recording all the donations and where they went to. Donations couldn't be made other than through that body. That addresses the administration issues.

The Accountability Round Table haven't gone so far as advocating it but it's something to consider. It might be cheaper than paying for the parties to do the administration, and you might trust it more.²⁴⁶

2.209 Professor Tham agreed there should be greater resourcing for political parties to assist them in operating under a disclosure regime to meet these compliance requirements:

That's clear in terms of the New South Wales reforms, where there were increases in public funding. One of the central reasons for that was to ensure there were enough staffing resources in terms of compliance. ... if there's going to be increased regulation, there's of course going to be increased compliance activity. We should be conscious that this regulation doesn't amount to an informal entry barrier to smaller parties or newcomers. The resourcing of those smaller parties and newcomers, whether directly through public funding or through the Electoral Commission, to basically enable them to comply is an important aspect in terms of putting forward this reform in an effective and equitable way.²⁴⁷

²⁴⁴ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p. 35.

²⁴⁵ Public Health Association of Australia, *Submission 388*, p. 6.

²⁴⁶ Accountability Round Table, *Committee Hansard*, 17 October 2022, p.36.

²⁴⁷ Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 9.

2.210 Professor Luke Beck agreed with Professor Tham that ‘... integrity is important, and integrity carries with it compliance costs’:

That needs to be factored into this decision-making, but those compliance costs should not be seen as a reason to not proceed. Politics at state level—in those states where these regimes exist—functions perfectly healthily. The time for looking for excuses to delay at a federal level really needs to come to an end.²⁴⁸

2.211 The Centre supported the New South Wales New Parties Fund as a potential model federally:

We recognise that there is a requirement and, indeed, a need to be able to support the administrative burden on small parties, particularly ... given they don't have great compliance infrastructure.²⁴⁹

Possible avenues for circumvention need to be addressed

2.212 As noted earlier, any reforms would need to be accompanied by consideration of what anti-circumvention measures might be needed, to ensure compliance and that transparency *is* improved and not avoided.

Campaigns with a corporate financial structure

2.213 The DAA warned of the challenges related to candidates with corporate structures operating their finances, and how a scheme would be created to ensure that those corporate structures provide the same levels of transparency on donations and disclosures. They believed it is important to have regulatory neutrality when it comes to caps, especially on actors:

The definition, generally, in these laws is neutral. It's not just about whether your organisation's a political party; that is, usually, an unincorporated association, traditionally. Those definitions make a difference when it comes to disclosure, sometimes, and we have to be careful about that. But when it comes to expenditure, the question is: would the Electoral Commission or a court decide that this was an electoral matter? That's much easier to do during a limited campaign period. It becomes much harder to operationalise that test, about what advocacy is an electoral matter, when you get further and further away from the silly season, so to speak.²⁵⁰

²⁴⁸ Professor Luke Beck, *Committee Hansard*, 17 October 2022, p. 9.

²⁴⁹ Centre for Public Integrity, *Committee Hansard*, 17 October 2022, p.36.

²⁵⁰ Democratic Audit of Australia, *Committee Hansard*, 17 October 2022, p. 29.

2.214 The DAA raised the example of organisations, like ‘Mr Palmer’s, whether it’s his company or his party, that were starting to campaign last September [2021], to get a march on the other minor parties’:

It didn’t buy him seats in parliament but it certainly bought him attention in the agenda and was unfair competition over the other, what I might call, right-wing minor parties. ... We don’t, in terms of expenditure caps, just focus on parties on candidates; we focus on the expression of organisations and individuals, for that matter. If you think about Mr Palmer, if you have donation limits, he can’t self-inseminate his party but he can spend a lot of money by Mineralogy campaigning. And we don’t want those kinds of waterbed effects by just regulating parties.²⁵¹

2.215 Professor Tham outlined that corporate structures shouldn’t be allowed to avoid disclosures:

... is that we want to have effective disclosure, including of funding to candidates, and that corporate structures shouldn’t be allowed to be used to evade these disclosures. What I’m saying is that I’m not quite sure that this is a problem with the law itself, because the definition of a gift under the Commonwealth Electoral Act captures gifts made directly and indirectly to candidates.²⁵²

2.216 The HRLC believed donation caps would also limit ability of corporate structures to hide.

By corporate structure we’re talking about the pooling, so it goes to another body and then from that body. If we had donation caps that structure would actually be very difficult ... It depends now if Climate 200 ends up being an associated entity, but Climate 200 is not that different to associated entities, and the reason that category was introduced in the first place is that associated entities were being used then to deliberately wash money. The way to do that is to make sure that money coming into Climate 200, or any other donor body of that type, also has to disclose their income.²⁵³

Additional reform proposals put to this inquiry

2.217 The Committee acknowledges that inquiry participants proposed other areas where reforms could be made which they believed would increase transparency around political donation laws, including the regulation of lobbying and the tax deductibility status of donations.

²⁵¹ Democratic Audit of Australia, *Committee Hansard*, 17 October 2022, p. 29.

²⁵² Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 12.

²⁵³ Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p. 35.

Regulation of lobbying

2.218 The Grattan Institute voiced concerns about lobbying, observing that ‘policy making can be distorted if some interests are consistently heard while others are not.’²⁵⁴ They noted that both NSW and Queensland provide information on who meets with ministers, and the purposes of those meetings, but that ‘at the federal level, there is no information on who gets access to policy makers, how much lobbying takes place, or the policy issues involved.’²⁵⁵

2.219 They considered that the ‘checks and balances on lobbying activity in Australia are weak’ adding that:

... existing instruments such as registration of lobbyists and codes of conduct are ineffective because they apply selectively and are not enforced. There is barely any public information about contact between lobbyists and officials at the federal level.²⁵⁶

2.220 The Grattan Institute made two recommendations which they believed would improve transparency including:

- publish ministerial diaries to enable public scrutiny of who ministers are meeting – and not meeting – and encourage them to seek out a wider range of views.
- link the lobbyists register to ‘orange passes’ to identify commercial and in-house lobbyists with privileged behind-the-scenes access to Parliament House, and ensure they comply with the lobbying code of conduct.²⁵⁷

2.221 The PHA agreed that strong legislative regimes were necessary to govern corporate lobbying of elected and public sector officials.²⁵⁸ They agreed with the Grattan Institute’s recommendations noting that:

Lobbying and activities to access and influence public servants are a legitimate form of political activity. However, lobbying may cross bounds of democratic principles if it is done in secret, involves corruption or misconduct or if it involves unfair access or influence. Reforms proposed by the Human Rights Law Centre, such as a requirement for professional lobbyists to register and disclose meetings, the introduction of a cooling off period for ministers and their staff before entering some corporate roles and the introduction of a strong federal integrity commission, would help improve transparency.²⁵⁹

²⁵⁴ Grattan Institute, *Supplementary Submission 367.1*, p. 15.

²⁵⁵ Grattan Institute, *Supplementary Submission 367.1*, p. 18. The submission also notes that ‘the data from these states show that some types of interests get a lot more access to senior ministers than others.’

²⁵⁶ Grattan Institute, *Supplementary Submission 367.1*, p. 26.

²⁵⁷ Grattan Institute, *Supplementary Submission 367.1*, p. 4.

²⁵⁸ Public Health Association of Australia, *Submission 388*, p. 4.

²⁵⁹ Public Health Association of Australia, *Submission 388*, p. 6.

2.222 TIA concurred with the view that the regulation of lobbying activity at the federal level was weak.²⁶⁰ They recommended overhauling the lobbying regime and made several recommendations:

- legislated codes of conduct for all officials and persons seeking to influence public decisions involving financial, personal or political benefit (including but not limited to 'lobbyists'), based on respect for positive principles of integrity.
- registration of all professional lobbyists (including third-party, services firms and in-house) to boost transparency, awareness and compliance.
- confidential, independent advice for all senior office holders on compliance
- administrative, disciplinary and criminal sanctions with independent oversight and enforcement.²⁶¹

2.223 The Committee notes the concerns raised by inquiry participants about lobbyists' access to decision makers.²⁶²

Tax deductibility of donations

2.224 Under the *Tax Laws Amendment (Political Contributions and Gifts) Act 2010*, individuals can claim a tax deduction of up to \$1500 for donations to political parties or candidates. Witnesses suggested a range of reforms to this measure, from increasing the tax deductibility of political donations to further restricting it.

2.225 FamilyVoice Australia recommended amending the legislation to enable businesses to claim tax deductions as well as increasing the amount able to be claimed:

Not only should tax deductibility be retained but given that the threshold has remained unchanged since 2006, the amount able to be claimed should be increased to take account of inflation. An increase to the rounded figure of \$2,000 is sensible.²⁶³

2.226 Climate 200 and Dr Monique Ryan were of the view that major parties and incumbents had an advantage which made them less reliant on donations, including their tax deductibility status, throughout the political cycle.²⁶⁴ They recommended that 'new entrants be given access to the electoral roll and tax deductibility of donations from when the candidate formally announces and meets reasonable eligibility criteria with the AEC.'²⁶⁵

²⁶⁰ Transparency International Australia, *Supplementary Submission 413.1*, p. 15.

²⁶¹ Transparency International Australia, *Supplementary Submission 413.1*, p. 15.

²⁶² Mr Bruce Wild, *Submission 191*, p. 1; Mr Dave Stohr, *Submission 236*, p. 1; Dr Belinda Edwards, *Submission 329*, p. 2; Mr Brian Vernon, *Submission 60*, p. 1; Australian Greens, *Submission 432*, p. 4; submissions from the #OurDemocracy campaign, e.g. *Submission 1485*.

²⁶³ FamilyVoice Australia, *Submission 396*, p. 4.

²⁶⁴ Climate 200, *Submission 419*, p. 6; Dr Monique Ryan, *Submission 414*, p. 2.

²⁶⁵ Climate 200, *Submission 419*, p. 6.

2.227 The Electoral Reform Society of South Australia advocated for removing the tax deductibility status for all political donations, on the basis that it was 'inequitable that the value of donations in terms of tax saved increases for those with higher taxable incomes.'²⁶⁶

Committee comment

2.228 It is time for the Government to reform the Commonwealth system of electoral expenditure and political donations. The Committee has given consideration on how to effectively regulate a political donation and expenditure scheme at the federal level, including donation and spending caps, and capturing third parties. This is based on the significant work already done in this area. These are not new issues, and they need to be addressed as soon as possible, preferably in advance of the next federal election.

2.229 In reforming the system, the Government should take note of evidence that the best way to achieve reform is to consider the system as a whole. That is, reforms to donations, spending and other aspects of electoral finance should be considered and implemented together.

2.230 Commonwealth electoral law reform now lags behind most states and territories. The Government should see this reform as an opportunity to build public trust in the system.

2.231 Evidence from individuals and organisations to this inquiry demonstrates there is significant community support for increasing transparency around electoral donations through lowering the donation disclosure threshold and real time disclosure requirements.

2.232 Likewise, evidence from individuals and organisations to this inquiry demonstrates there is significant community support for tackling the potentially corrupting influence of big money on elections through the introduction of both donation and spending caps.

2.233 The Committee's intention in this report is to provide a framework and objectives for a reformed system:

- to improve transparency;
- to reduce the potentially corrosive influence of big money;
- to level the playing field for new entrants;
- to ensure the integrity of, and compliance with, the system, and
- to allow continued participation in our elections from the public, civil society, business, political parties and others.

²⁶⁶ The Electoral Reform Society of South Australia, *Submission 392*, p. 5.

- 2.234 The Committee notes the concerns raised about how reforms should apply to third parties. These concerns related to the administrative burden that may be placed on third parties, the different nature of the work performed by third parties, and for not-for-profits, their reliance on donations for that work, as well as the importance of third parties being able to continue to play an active role in elections.
- 2.235 The Committee also heard evidence about the importance of including third parties in reforms to the electoral finance system (including to prevent them from being used as a vehicle to circumvent reforms). The Committee will continue to hear evidence regarding the application of proposed electoral reforms to third parties and other entities as part of our ongoing deliberations.
- 2.236 Similarly, the Committee notes complexity around how associated entities are defined and included in an electoral expenditure system. Again, the principle should be that associated entities are included in reforms to the electoral finance system and that there is broadly a consistent approach taken across various forms of entities.
- 2.237 For these reasons, further consultation may be necessary on the application of a reformed system to third parties and associated entities.
- 2.238 The Committee also notes the AEC may, with greater resourcing, be able to play an important role in providing advice and support to third parties to ensure they are compliant with their obligations.
- 2.239 The Committee notes evidence around how much of the current reporting system is opaque and considers reforms are more likely to be successful if reporting regimes are made more robust.
- 2.240 There are likely to be associated costs with making significant changes to the funding and disclosure regime, for both participants in elections and for the AEC in administering elections.
- 2.241 Given the need for legislation, and the time involved in ensuring that any changes can be clearly understood in the community, action should be taken now, including any necessary further consultation, and that any actions be reviewed following the next federal election.

Donation disclosure and coverage

Recommendation 1

- 2.242 The Committee recommends that the Australian Government lower the donation disclosure threshold to \$1,000.**
- 2.243 The weight of evidence supported lowering the disclosure threshold to \$1,000. This amount was broadly reflected in the evidence in order to ensure a robust level of transparency, while not discouraging participation from members of the public in activities such as local raffles.

2.244 It would also broadly align Commonwealth laws with Australia's three most populous states, which should assist with compliance.²⁶⁷

Recommendation 2

2.245 The Committee recommends that the Australian Government introduce 'real time' disclosure requirements for donations to political parties and candidates.

2.246 This will require additional administrative time and resources on the part of parties, candidates and other participants in elections. However, many submitters recognised these additional burdens were not difficult to achieve so long as support is provided, and that reducing the disclosure period represents an important development for improved transparency in this area.

Recommendation 3

2.247 The Committee recommends that the Australian Government gives consideration to amending the definition of 'gift' in the *Electoral Act* to ensure it meets community expectations of transparency in political donations.

Donation and spending caps

Recommendation 4

2.248 The Committee recommends that the Australian Government introduce donation caps for federal election donations.

2.249 These should be based at a level that is consistent with objectives including:

- reducing the potential for big money to have undue influence on elections
- increasing transparency
- recognising the additional hurdles to entry faced by independents or new entrants, and
- maintaining the implied right of freedom of political communication, as well as participation in elections.

2.250 They should also be based on evidence the Committee received, which may include having regard to the below features:

- applying to all parties, candidates, and associated entities (with further evidence to be considered regarding application to third parties)
- being set on a per annum basis

²⁶⁷ Disclosure threshold by state/territory: NSW, QLD, ACT \$1,000, Vic \$1,050 (subject to indexation), NT \$1,500, WA \$2,600, SA \$5,576, TAS none.

- being aggregated across candidates and parties, and
- providing for an appropriate exclusion for party membership fees, subscriptions, levies and affiliation fees.

Recommendation 5

2.251 The Committee recommends that the Australian Government introduce expenditure (also known as spending) caps for federal elections.

2.252 The expenditure caps should be based at a level that is consistent with the objectives set out above for donation caps.

2.253 They should also be based on the evidence the Committee received, which may include having regard to the below features:

- being set per House electorate and Senate state or territory, while also being capped at a national level
- being higher for independent candidates, noting they generally have less existing structural support than candidates endorsed by a national political party
- applying to associated entities and significant third parties in a proportionate way
- being structured in such a way to provide clarity about what constitutes electorate expenditure and support administrative compliance, and
- being set for a defined period of time, noting the uncertainty caused by there being no fixed date for elections.

Recommendation 6

2.254 The Committee recommends that donation caps and expenditure caps apply to third parties and associated entities.

Integrity and compliance

Recommendation 7

2.255 The Committee recommends the Australian Government introduce a requirement that all political parties, members of Parliament, candidates, associated entities and third parties be required to establish a Commonwealth Campaign Account for the purpose of federal elections, to better allow for disclosure and monitoring.

Public funding

Recommendation 8

2.256 The Committee recommends the Australian Government introduces a new system of administrative funding to recognise the increased compliance burden associated with a reformed system.

Recommendation 9

2.257 The Committee recommends the Australian Government introduce a new system of increased public funding for parties and candidates, recognising the impact changes a reformed system will have on private funding in elections.

AEC resourcing

Recommendation 10

2.258 The Committee recommends the Australian Government provide the Australian Electoral Commission with additional resources to support, implement and enforce these reforms.

3. Trust in the electoral system

- 3.1 One of the overarching themes of this interim report is maintaining trust in our electoral system - that our elections are strong but could be stronger.
- 3.2 The terms of reference for this inquiry included the potential for 'truth in political advertising' laws to enhance the integrity and transparency of the electoral system. The Committee received a number of proposals for truth in political advertising laws, which are considered in this chapter.
- 3.3 As determined by the High Court in a series of decisions in the 1990s, an implied freedom of political communication exists in the Constitution of Australia. However, in 1997 the High Court found that a law that restricts that freedom may still be valid if it is 'reasonably appropriate and adapted to achieving that legitimate object or end' that is compatible with the 'maintenance of the constitutionally prescribed system of representative and responsible government.'¹ In particular, in several cases such as *Unions NSW v New South Wales* [2013], the High Court reaffirmed that laws relating to election integrity are legitimate in implied freedom cases providing that they reasonably serve a legitimate end.²
- 3.4 This chapter considers some of the evidence received on these issues, including assessing the challenges involved in balancing the need to inform voters of issues, and principles of freedom of political communication. The Committee is also aware that rising levels of public distrust can serve to further alienate citizens, which might result in their unwillingness to be involved in elections.
- 3.5 This chapter provides an overview of the evidence received to date to the inquiry, including:
- why truth in political advertising laws are needed;
 - some of the issues arising in regulating truth in a political context;
 - legislation regulating political advertising in other jurisdictions; and
 - options for addressing truth in federal political advertising, which could also address the growing lack of trust in democratic processes.

¹ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

² *Unions NSW v New South Wales* (2013) HCA 58.

Why truth in political advertising laws are required

- 3.6 Over the past two decades, parliamentary committees at both the Commonwealth and State level have considered truth in political advertising laws. The Electoral Act was amended in 1983 to prohibit untrue electoral advertising. It was however repealed the following year. The Committee has considered this issue ever since its establishment in 1983.
- 3.7 The Committee's report on the 2019 federal election addressed a broad range of issues which included truth in advertising,³ misinformation and disinformation,⁴ and the authorisation of political campaign material.⁵ Key recommendations from that report included:
- that the ACCC and ACMA adapt regulation and work with the Australian Electoral Commission (AEC) to address electoral and political advertising;⁶ and
 - that the Electoral Integrity Assurance Taskforce be engaged permanently to prevent and combat electoral or foreign interference.⁷
- 3.8 That report also referred to the work of the Senate Select Committee on Foreign Interference Through Social Media in relation to misinformation and disinformation.⁸ The Senate Select Committee tabled an interim report in December 2021 which addressed the spread of disinformation using social media.⁹
- 3.9 As Democracy Matters noted, the public's trust in elected representatives is vital to a functioning democracy:

All parliamentarians should be concerned by the findings of the longitudinal Australian Electoral Study which shows a steady decline over 20 years in voter satisfaction with democracy, trust in government and political efficacy (Trends in Australian Political Opinion 1987 - 2019, pages 98 - 101). Truth and trust are bound together - they are central to the social contract between voters and elected representatives, they are what makes our system of democracy function. The nexus between truth and trust

³ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2019 Federal election and matters related thereto*, December 2020, pp. 75-84.

⁴ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2019 Federal election and matters related thereto*, December 2020, pp. 110-113.

⁵ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2019 Federal election and matters related thereto*, December 2020, pp. 87-90.

⁶ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2019 Federal election and matters related thereto*, December 2020, p. 103.

⁷ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2019 Federal election and matters related thereto*, December 2020, p. 123.

⁸ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2019 Federal election and matters related thereto*, December 2020, pp. 110-113.

⁹ Senate Select Committee on Foreign Interference Through Social Media, *First Interim Report*, December 2021, pp. 1-10.

explains why voters feel so disheartened and frustrated when elected representatives bring any aspect of the democratic system into disrepute.¹⁰

- 3.10 Similarly, the Australian National University Law Reform and Social Justice Research Hub argued that:

False and misleading political advertisements undermine the legitimacy of our democracy and erode public confidence in the electoral process... Exposure to misinformation, particularly misinformation espoused from political office holders undermines voter's confidence in the electoral system and their elected representatives.¹¹

- 3.11 Professor George Williams argued that the absence of truth in political advertising laws is an unhealthy gap in Australia's democracy:

Truth is fundamental to democracy. When citizens cannot tell fact from fiction, and leaders spread falsehoods for political advantage, society as a whole is damaged. The United States readily demonstrates this. Donald Trump's baseless claims about electoral fraud are sowing division and distrust throughout that nation and undermining good governance. This is a wake-up call for Australia. We need to act to limit the damage that can be caused by political lies.

The legal system has a role to play in holding people and organisations to account when they spread harmful lies to their advantage. For example, it is illegal for businesses to mislead or deceive consumers. They cannot make wrongful claims about their product, nor spread falsehoods to undermine a competitor. Another example is the law of defamation that enables people to sue for damages when their reputation has been sullied.

Where the Australian Parliament has fallen short is in regulating misinformation by our politicians. Parliament has regulated all sorts of falsehoods, but has failed to look to its own. The result is that politicians can lie with impunity in the hope of misleading voters to secure electoral advantage. There are many examples of this, including scare campaigns involving Medicare and death taxes.¹²

- 3.12 The Australian Labor Party noted its support for truth in political advertising laws, highlighting that such legislation would:

further enhance transparency and improve the integrity of federal election campaigns. [...] A national framework for truth in political advertising would give voters additional confidence that the arguments put forward by participants in federal elections are not false or misleading.¹³

- 3.13 The Australian Greens also argued for truth in political advertising laws, noting that 'Confidence in Australia's democratic processes has declined dramatically over the

¹⁰ Democracy Matters, *Submission 352*, p. 3.

¹¹ Australian National University Law Reform and Social Justice Research Hub, *Submission 354*, p. 5

¹² Professor George Williams, *Submission 7*, p. 1.

¹³ Australian Labor Party, *Submission 363*, p. 2.

past decade’ and that preventing misleading campaigns would contribute to reversing that trend.¹⁴

- 3.14 The Australia Institute highlighted the significant community support for truth in political advertising in reporting on research conducted after the 2022 election:

... three in four voters (73%) came across political advertisements that they knew to be misleading, with most seeing at least one such advertisement a week during the campaign. Nine in 10 (86%) Australians agree that truth in political advertising laws should be in place by the next election.¹⁵

- 3.15 Truth in political advertising laws also received strong support from independent candidates and Members of Parliament.

- 3.16 Dr Monique Ryan MP argued that Australia ‘desperately need truth in advertising laws’, on the basis that:

Good governance is predicated on voters having faith in the strength of the democratic process. In the business world, it is illegal to mislead or deceive consumers. It seems very strange that we hold our politicians to a lower standard than our businesspeople.¹⁶

- 3.17 Zali Steggall MP, noting her introduction during the 46th Parliament of the Commonwealth Electoral Amendment (Stop the Lies) Bill 2021, also argued that:

... holding politicians and political campaigners accountable to the same standards as business is critical to the very heart of our democracy. Voters throughout the country expect to see a level of regulation against misleading and deceptive advertising. ... Consumer laws safeguard the public against false advertising by businesses. There are strict laws governing financial advice. Pharmaceutical manufacturers cannot claim their product cures something it does not. Lawyers cannot guarantee outcomes or that they will win every personal injury claim. Yet, voters have no protection against deliberately misleading information distributed during an election campaign.¹⁷

- 3.18 Kylea Tink MP described such laws as ‘urgently needed’ in ‘an age of disinformation’, noting that ‘Fake news and deliberate misinformation and misrepresentation continue to erode trust in government, and our democratic institutions by the electorate’.¹⁸

- 3.19 Andrew Wilkie MP argued that ‘We also need laws which require truth in political advertising’, and that parties and candidates ‘making underhand, and often false’

¹⁴ The Australian Greens, *Submission 432*, p. 1.

¹⁵ The Australia Institute, *Submission 412*, p. 20.

¹⁶ Dr Monique Ryan MP, *Submission 414*, p. 3.

¹⁷ Ms Zali Steggall OAM MP, *Submission 1381*, p. 1.

¹⁸ Ms Kylea Tink MP, *Submission 417*, p. 4.

statements about opponents 'inhibits the community's ability to engage constructively and participate genuinely in democracy'.¹⁹

- 3.20 Both the Liberal Party of Australia and The Nationals argued against the introduction of truth in political advertising laws. The Liberal Party argued that since 'No specific proposal has been put forward by the Labor government in this area', 'Labor does not have a mandate to introduce what could be a significant change to our electoral system' and highlighted some questions that they suggested needed to be resolved.²⁰
- 3.21 The Nationals stated that, 'With no detail of any specifics, The Nationals cannot support the introduction of any 'truth in political advertising' law', and also noted that many questions would be raised by the introduction of such legislation.²¹
- 3.22 The NSW Nationals indicated however that they were open to seeing a proposal, but expressed concerns about impacts on the implied freedom of political communication:
- I think that the New South Wales Nationals, and probably the National Party more broadly, could be supportive of some change here, provided the model that the committee comes up with is palatable. I don't have the answer for what the model might be, but it's definitely worthy of consideration.²²
- 3.23 While the impact of mis- or dis-information is a broader topic than this inquiry's focus allows, Professor Luke Beck highlighted that truth in political advertising laws have a widespread impact, influencing the political culture as a whole:
- Perhaps the most important goal of truth in political advertising laws is to improve political practice and promote a better political culture. The South Australian Electoral Commissioner, who enforces SA's truth in political advertising laws, has commented that such laws have a meaningful impact in reducing misleading electoral advertising and does so because of the political culture the existence of the law has helped to create.²³
- 3.24 The Canberra Alliance for Participatory Democracy made a similar point in supporting truth in political advertising laws, arguing that 'The very existence of such legislation will act to curb excesses of mis- and dis- information by making clear the expectation for campaigns to focus on policy and the quality of candidates'.²⁴
- 3.25 Multiple witnesses highlighted that making decisions and settling issues about what constitutes fact or opinion can be challenging. ACMA advised that it was important to

¹⁹ Mr Andrew Wilkie MP, *Submission 387*, p. 1.

²⁰ Liberal Party of Australia, *Submission 382*, p. 5.

²¹ The Nationals, *Submission 361*, p. 3.

²² NSW Nationals, *Committee Hansard*, 3 November 2022, p. 23.

²³ Professor Luke Beck, *Submission 356*, p. 4.

²⁴ The Canberra Alliance for Participatory Democracy, *Submission 309*, p. 3.

distinguish between hyperbole, exaggeration and opinion compared to facts, noting that:

Each of the codes that we administer are in relation to commercial broadcasting, but they also have some role in relation to the ABC and SBS. Each one of them clearly distinguishes between breaches of factual accuracy and questions of distinguishing between opinion and fact.²⁵

3.26 Professor Beck and Professor Williams each held the view that the focus should be on the regulation of purported statements of facts rather than opinions or ideas in contested areas.²⁶ The Australia Institute advocated for the protection of opinion and predictions, and limiting laws to advertising.²⁷

3.27 Real Republic Australia argued that 'parties and individuals are always entitled to hold opinions' but that 'voters are right to have a reasonable expectation that such claims or opinions are anchored in fact.'²⁸ They added that 'laws that govern publication of claims or opinions must be framed carefully to avoid being judged as infringing any implied right to freedom of expression in the Australian Constitution.'²⁹

3.28 The ACCC highlighted the challenges with adjudicating on truth in political advertising, as opposed to commercial advertising, given that political debate is primarily about ideas and opinions:

The engagement between customer and seller in a marketplace does have a much greater definition in terms of what is being offered and what is being presented as available for sale or purchase. It has a greater degree of clarity to it. When dealing not just with political advertising or statements but also with public debate, which our legislation intentionally strays away from, you're often getting into battles of ideas, thoughts and opinions. Yes, they can arise in a commercial context, though not to the same extent or with the same precision. We think the legislation appropriately differentiates and doesn't seek to stifle what otherwise might be public debate on those issues of ideas, opinion, the political world et cetera. I think conflating the two would cause quite considerable challenges.³⁰

3.29 Dr Judy Hyde was one of many submitters who called for clarity in ensuring the public is aware of statements of opinion:

Should opinion be excluded from truth, it needs to be made incumbent on candidates to ensure that the public is clearly aware that statements made are

²⁵ Australian Communications Media Authority, *Committee Hansard*, 18 October 2022, p. 9.

²⁶ Professor Luke Beck, *Committee Hansard*, 17 October 2022, p. 3; Professor George Williams, *Committee Hansard*, 17 October 2022, p. 17.

²⁷ Australia Institute, *Submission 412*, p. 22.

²⁸ Real Republic Australia, *Submission 401*, p. 15.

²⁹ Real Republic Australia, *Submission 401*, p. 16.

³⁰ Australian Competition and Consumer Commission, *Committee Hansard*, 18 October 2022, p.30.

opinion, not objective facts. If this does not occur the public can become lost and driven by 'alternative facts' ...³¹

- 3.30 However, as some witnesses pointed out, there is a distinction between arbitrating what is truth and taking action on what is untrue:

We start by asking the question, what is the problem such laws are trying to solve? We don't believe it is the need for greater truth in political advertising. Rather, it is the prohibition of lies. Truth will inherently have a subjective quality which makes the compulsion of it difficult to monitor and regulate. But lies or misleading conduct can typically be assessed and objectively tested. This occurs regularly in the context of defamation and consumer protection legislation.³²

Legislation in other jurisdictions

- 3.31 Federal and state jurisdictions in Australia attempted to establish truth in political advertising laws in the 1980s. A federal provision was enacted in 1983 but repealed the following year. Most Australian jurisdictions have enacted legislation that contain provisions banning statements seeking to mislead voters on how to fill out a ballot paper.

South Australia

- 3.32 Of Australia's states, only South Australia has enacted legislation regulating misleading advertising. Section 113 of the *Electoral Act 1985 (SA)* states that:

A person who authorises, causes or permits the publication of an electoral advertisement (an advertiser) is guilty of an offence if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.³³

- 3.33 The Electoral Commission South Australia (ECSA) noted that 'misleading advertising provisions can be found in both the *Electoral Act 1985 (SA)* and the *Local Government (Elections) Act 1999* and, therefore, is relevant to both state parliamentary and local government elections.³⁴
- 3.34 Section 113 provides the South Australian Electoral Commissioner with the power to take action if an electoral advertisement is determined to be inaccurate and misleading. Powers include requesting removal of the publication, requesting the advertiser publish a retraction, issuing fines³⁵ and, declaring the election 'void on the ground of misleading advertising but only if the Court of Disputed Returns is satisfied,

³¹ Dr Judy Hyde, *Submission 262*, p. 2.

³² Marque Lawyers, *Submission 337*, p. 1.

³³ Section 113(2), *Electoral Act 1985 (SA)*.

³⁴ Electoral Commission South Australia, *Committee Hansard*, 30 November 2022, p. 1.

³⁵ Section 113(2)(a) and (b). *Electoral Act 1985 (SA)*. If the offender is a natural person—\$5 000. If the offender is a body corporate—\$25 000.

on the balance of probabilities, that the result of the election was affected by that advertising.’³⁶

3.35 The provision only applies to advertisements published by any means (eg. billboards, leaflets, digital advertisements, social media posts, or broadcast advertisements produced by a party, candidate, or other organisation that seeks to affect an election result), and not to other circumstances, such as newspaper articles or statements of opinion.³⁷

3.36 The ECSA acknowledged that administering the legislation had a number of challenges, particularly due to complainants not understanding the legislation, complainants not providing enough information, requesting responses from publishers of material, time delays and an exponential increase in complaints:

Misleading advertising is a particularly challenging piece of legislation to administer coupled with the fact that the number of complaints has dramatically increased from 38 at the 2018 state election to 122 at the recent state election in March this year [2022].³⁸

3.37 When a complaint is made to the ECSA, and all of the information they require from the complainant has been received, they engage the services of the Government of South Australia’s legal service, the Crown Solicitor’s Office, to provide advice on whether any further action is required:

There is a large number of solicitors there who have been working in this area for a long time. They are very familiar with this piece of legislation. They are on standby basically 24 hours during the two-week voting period and on polling day. They provide very quick advice to us in order to provide me with advice. I then consider that and form a view about any further action. Without their assistance, it would be very hard and it would not be done in a timely way ...³⁹

3.38 If the ECSA requires any additional investigative work, they also seek the assistance of the Crown Solicitor’s Office. The ECSA noted that even with additional investigative resources, and providing all the parties involved are able to provide all the information they need for the SA Electoral Commissioner to make a decision, ‘it’s very rare that [the ECSA] can resolve one of these complaints in a very quick period of time.’⁴⁰

3.39 The figure below from the ECSA’s 2018 South Australian State Election report ‘illustrates the time-consuming nature of the investigation process.’⁴¹

³⁶ Section 107(5), *Electoral Act 1985* (SA).

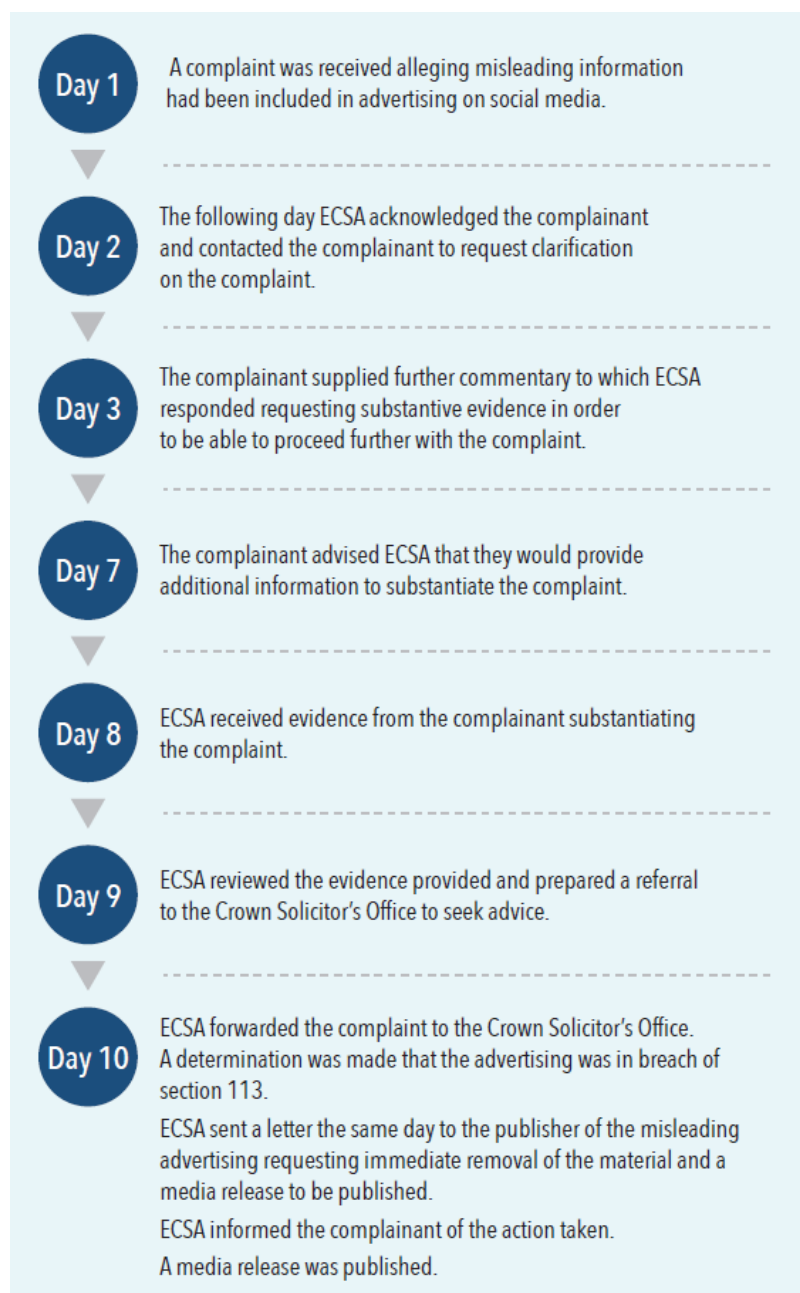
³⁷ Electoral Commission South Australia, *Committee Hansard*, 30 November 2022, p. 2; University College London, The Constitution Unit, *Doing Democracy Better: How Can Information And Discourse In Election And Referendum Campaigns In The UK Be Improved?*, March 2019, p. 22.

³⁸ Electoral Commission South Australia, *Committee Hansard*, 30 November 2022, p. 1.

³⁹ Electoral Commission South Australia, *Committee Hansard*, 30 November 2022, p. 2.

⁴⁰ Electoral Commission South Australia, *Committee Hansard*, 30 November 2022, p. 2.

⁴¹ Electoral Commission South Australia, *Election Report, 2018 South Australian State Election*, p. 80.

Figure 3.1 Investigation process timeline

Source: Electoral Commission South Australia, *Election Report, 2018 South Australian State Election*, p. 80.

3.40 In circumstances where a party, candidate, or other organisation does not comply with the ECSA's request to remove material, a petition can be lodged with the Court of Disputed Returns. As noted above, the 'Court of Disputed Returns can render the election void and as for it to be redone.⁴² No election to date has however been

⁴² Electoral Commission of South Australia, *Committee Hansard*, 30 November 2022, p. 5.

declared void since the legislation was introduced in 1985. All decisions of the Court are final, conclusive and without appeal, and may not be questioned in any way.⁴³

Australian Capital Territory

3.41 In August 2020 the ACT passed truth in political advertising laws largely based on the South Australian legislation. The ACT Electoral Commission defines inaccurate and misleading electoral advertising as when:

... a person disseminates, or authorises for dissemination, an advertisement containing electoral matter; and the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.⁴⁴

3.42 The new Territory laws 'establish an offence for misleading political advertising and empower the ACT Electoral Commissioner to request that the person who placed the advertisement not disseminate it or retract it in stated terms and in a stated way.'⁴⁵

3.43 Similar to the South Australian legislation, the ACT law also enables the Electoral Commissioner to issue a fine for an individual 'up to \$8,000 and a corporation up to \$40,500, if they have been found to have issued untrue political advertising.'⁴⁶

3.44 A complainant must meet a number of criteria which is used to assess whether the political advertisement is inaccurate and misleading:

- the advertisement must contain electoral matter as defined the ACT Electoral Act
- the advertisement must contain a statement purporting to be a fact. That is, the Commissioner cannot apply misleading electoral advertising law against statements of opinion; and
- the relevant statement must be inaccurate and misleading to a material extent.⁴⁷

3.45 The complaint must also 'identify the element of the advertisement that is being disputed as inaccurate and misleading and will require detailed evidence in support of this claim.' If it is determined the complainant has met the above criteria, the ACT

⁴³ Electoral Commission of South Australia, *Committee Hansard*, 30 November 2022, p. 5; Section 108, *Electoral Act 1985* (SA).

⁴⁴ ACT Electoral Commission, 'Frequently asked questions - Inaccurate and misleading electoral advertising', viewed 29 March 2023, <https://www.elections.act.gov.au/frequently_asked_questions/frequently-asked-questions-inaccurate-and-misleading-electoral-advertising>

⁴⁵ ACT Electoral Commission, 'Frequently asked questions - Inaccurate and misleading electoral advertising', viewed 29 March 2023, <https://www.elections.act.gov.au/frequently_asked_questions/frequently-asked-questions-inaccurate-and-misleading-electoral-advertising>

⁴⁶ Australia Institute, *Possible, Practical, and Popular Opportunities for Truth in Political Advertising Laws in Australia*, 25 October 21, p. 7.

⁴⁷ ACT Electoral Commission, 'Frequently asked questions - Inaccurate and misleading electoral advertising', viewed 29 March 2023, <https://www.elections.act.gov.au/frequently_asked_questions/frequently-asked-questions-inaccurate-and-misleading-electoral-advertising>

Electoral Commissioner undertakes an investigation ‘where it may be necessary to seek further information from either or both of the complainant and the alleged offender.’⁴⁸

- 3.46 In certain circumstances it may also be necessary for the ACT Electoral Commissioner to seek external advice before making a determination.⁴⁹
- 3.47 If determined that a breach of the law has occurred, remedial action by the person responsible for the advertising will be required. The ACT Electoral Commissioner ‘may formally write to the person asking them to not disseminate the advertisement again; and/or publish a retraction in stated terms and in a stated way.’⁵⁰
- 3.48 The ACT Electoral Commissioner also has the power to ‘apply directly to the Supreme Court for an order obliging the person to cease disseminating the advertisement further and/or publish a retraction’ and ‘refer the matter to the Director of Public Prosecutions for possible criminal prosecution.’⁵¹

Ireland

- 3.49 Online political advertising is now regulated by legislation in Ireland. On 25 July 2022, Ireland’s National Parliament (Oireachtas) passed the Electoral Reform Act 2022 which established, among other things, Ireland’s Electoral Commission (An Coimisiún Toghcháin).⁵² Under the legislation, the Commission is responsible for the regulation of online political advertising:

... under the provisions of the [Act], Ireland will be among the first countries in Europe to provide for the regulation of online political advertising. These provisions are proposed to ensure that online political advertisements are clearly labelled and are accompanied by transparency notices clearly identifying the sponsor of the advertisements, their associated costs and why the recipients of such advertising are being targeted.

The [Act] applies similar but enhanced requirements to paid online political advertising commissioned during electoral periods to those that apply to traditional poster-type advertising. The Bill will place an obligation on online platforms to determine if advertisements fall under the scope of the legislation

⁴⁸ ACT Electoral Commission, ‘Frequently asked questions - Inaccurate and misleading electoral advertising’, viewed 29 March 2023, <https://www.elections.act.gov.au/frequently_asked_questions/frequently-asked-questions-inaccurate-and-misleading-electoral-advertising>

⁴⁹ ACT Electoral Commission, ‘Frequently asked questions - Inaccurate and misleading electoral advertising’, viewed 29 March 2023, <https://www.elections.act.gov.au/frequently_asked_questions/frequently-asked-questions-inaccurate-and-misleading-electoral-advertising>

⁵⁰ ACT Electoral Commission, ‘Frequently asked questions - Inaccurate and misleading electoral advertising’, viewed 29 March 2023, <https://www.elections.act.gov.au/frequently_asked_questions/frequently-asked-questions-inaccurate-and-misleading-electoral-advertising>

⁵¹ ACT Electoral Commission, ‘Frequently asked questions - Inaccurate and misleading electoral advertising’, viewed 29 March 2023, <https://www.elections.act.gov.au/frequently_asked_questions/frequently-asked-questions-inaccurate-and-misleading-electoral-advertising>

⁵² Houses of the Oireachtas, *Electoral Reform Act 2022*, (Act 30 of 2022), Electoral Reform Bill 2022 (Bill 37 of 2022), viewed on 1 March 2023, <<https://www.oireachtas.ie/en/bills/bill/2022/37/>>

and, for the purposes of transparency, to identify and verify the information and documentation provided by the buyers of the advertisements.⁵³

3.50 Established on 9 February 2023, Ireland's Electoral Commission will have significant role in the monitoring, investigating and combatting misinformation and disinformation. Under Part 5 of the Electoral Reform Act, which has yet to commence, the Electoral Commission can:

- monitor, investigate and combat the dissemination of disinformation and misinformation;
- monitor, investigate, identify and combat manipulative or inauthentic behaviour;
- monitor, investigate and identify trends in respect of disinformation, misinformation and manipulative or inauthentic behaviour.⁵⁴

3.51 Part 4 of the Electoral Reform Act, which has also yet to commence, makes the Electoral Commission 'responsible for ensuring that political advertising on social media and other digital platforms is fully transparent and clearly identified.'⁵⁵

3.52 The Electoral Commission's remit is also to 'promote public awareness of misinformation, disinformation and manipulative or inauthentic behaviour and will establish educational and information programmes to help address this issue.'⁵⁶

3.53 Prior to the passing of the Electoral Reform Bill, Ireland's Joint Committee on Housing, Local Government & Heritage (JCHLGH) undertook an inquiry into the Bill. In their report the JCHLGH noted the challenges in regulating free speech versus misinformation:

The Committee notes there is a challenge in the regulation of such strategic planning as it is a matter of opinion as to what constitutes free speech versus what is a politically driven campaign of misinformation and disinformation intended to motivate particular voter action or inaction. In this regard the Committee strongly wishes to highlight the fact that political advertising is not the only tool deployed in the context of electoral and political influence. While the

⁵³ Department of Housing, Local Government and Heritage, Ireland, *Significant Modernisation of Ireland's Electoral System to be delivered under Electoral Reform Bill*, 30 March 2022, viewed on 1 March 2023, <[⁵⁴ An Coimisiún Toghcháin, 'Electoral Integrity', viewed 29 March 2023, <<https://www.electoralcommission.ie/what-we-do/electoral-integrity/>>](https://www.gov.ie/en/press-release/859a0-significant-modernisation-of-irelands-electoral-system-to-be-delivered-under-electoral-reform-bill/#:~:text=Political%20advertising,-Furthermore%2C%20under%20the&text=The%20Bill%20will%20place%20an,the%20buyers%20of%20the%20advertisements.></p>
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⁵⁵ An Coimisiún Toghcháin, 'Electoral Integrity', viewed 29 March 2023, <<https://www.electoralcommission.ie/what-we-do/electoral-integrity/>>

⁵⁶ An Coimisiún Toghcháin, 'Electoral Integrity', viewed 29 March 2023, <<https://www.electoralcommission.ie/what-we-do/electoral-integrity/>>

issues surrounding the regulation of the misuse of social media platforms aren't easily captured, the Committee believes this should be explored.⁵⁷

- 3.54 In the report the JCHLGH noted that they were 'particularly concerned that data collected by political parties and other political operatives through online surveys, email campaigns, and social media activity can be used to micro target voters without their express permission.'⁵⁸ At that time, the Committee held the view that the 'current sections of the legislation regarding online political advertising do not go far enough to address the concerns of the Committee.'⁵⁹

New Zealand

- 3.55 New Zealand take a different approach to the regulation of political advertising. Rather than being regulated under the auspices of an electoral body, the New Zealand Advertising Standards Authority (NZ ASA) and the NZ Broadcasting Standards Authority (NZ BSA) are empowered to examine all election advertising.
- 3.56 The NZ ASA 'oversees advertising in all media other than party or candidate election programme broadcasts on TV and radio.'⁶⁰ All advertising, including political advertising, must comply with the NZ ASA Advertising Standards Code which states:
- Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.⁶¹
- 3.57 The NZ BSA oversees 'most advertisements for products, services or organisations on TV, radio, the internet, print and billboards' including 'third party programmes about elections or referendums [which] must follow the relevant broadcasting standards for radio, free-to-air TV or pay TV.'⁶²
- 3.58 A 2019 report by a UK university gives an overview of New Zealand's efforts to counter misleading advertising during election and referendum campaigns, noting that:

⁵⁷ An Comhchoiste um Thithíocht, Rialtas Áitiúil agus Oidhreacht, *Report on Pre-Legislative Scrutiny of the General Scheme of the Electoral Reform Bill 2020*, July 2021, p. 43.

⁵⁸ An Comhchoiste um Thithíocht, Rialtas Áitiúil agus Oidhreacht, *Report on Pre-Legislative Scrutiny of the General Scheme of the Electoral Reform Bill 2020*, July 2021, p. 43.

⁵⁹ An Comhchoiste um Thithíocht, Rialtas Áitiúil agus Oidhreacht, *Report on Pre-Legislative Scrutiny of the General Scheme of the Electoral Reform Bill 2020*, July 2021, p. 43.

⁶⁰ Mō Te Kaitiaki Take Kōwhiri, 'Media Handbook for the 2020 General Election', viewed 29 March 2023, <<https://elections.nz/media-and-news/media-handbook-2/complaints-about-election-advertising/>>

⁶¹ Advertising Standards Authority, 'Advertising Standards Code', viewed 29 March 2023, <<https://www.asa.co.nz/codes/codes/advertising-standards-code/#:~:text=Purpose%20of%20the%20Code&text=All%20advertising%20must%20be%20legal,can%20have%20confidence%20in%20advertising.>>

⁶² Te Mana Whanonga Kaipāho, 'Frequently Asked Questions', viewed 29 March 2023, <<https://www.bsa.govt.nz/all-faqs/advertising/#searched-for-%22political+advertising%22>>

Broadcast election advertising in New Zealand is tightly restricted: only parties or their candidates may promote such advertising; parties may pay for such advertising only using money allocated to them from a fixed pot of public funds.⁶³

- 3.59 The report also states that the '[NZ] BSA has several codes of practice, all of which contain accuracy requirements.'⁶⁴ The free-to-air television code requires broadcasters to 'make reasonable efforts to ensure that news, current affairs and factual programming is accurate in relation to all material points of fact and does not mislead.'⁶⁵
- 3.60 The Election Programmes Code of Broadcasting Practice regulates the content of broadcast election programmes. The Code covers election programs that:
- encourages or persuades, or appears to encourage or persuade, voters to vote for a party or the election of a constituency candidate; or
 - encourages or persuades, or appears to encourage or persuade, voters not to vote for a party or the election of a constituency candidate; or
 - advocates support for a constituency candidate or for a party; or
 - opposes a constituency candidate or a political party; or
 - notifies meetings held or to be held in connection with an election.⁶⁶
- 3.61 The Election Programmes Code does not cover print, billboards, pamphlets, cinema and online – including social media, or any media by third-parties.
- 3.62 The Election Programmes Code applies the following standards to all election programmes broadcast in New Zealand:
- election programs are subject to other codes
 - election programs may include debate, advocacy and opinion, but factual information should be clearly distinguishable from opinion or advocacy, and factual information must be able to be substantiated
 - while an election programme may oppose a political party, or candidate, it may not include material which denigrates a political party or candidate
 - an election programme may not imitate an existing programme, format or identifiable personality in a manner which is likely to mislead.⁶⁷

⁶³ University College London, *Doing Democracy Better: How can information and discourse in election and referendum campaigns in the UK be improved?*, March 2019, p.34.

⁶⁴ University College London, *Doing Democracy Better: How can information and discourse in election and referendum campaigns in the UK be improved?*, March 2019, p.34.

⁶⁵ University College London, *Doing Democracy Better: How can information and discourse in election and referendum campaigns in the UK be improved?*, March 2019, p.34.

⁶⁶ Te Mana Whanonga Kaipāho, 'Election Programmes Code of Broadcasting Practice', viewed 29 March 2023, <<https://www.bsa.govt.nz/assets/Uploads/93e1db744d/BSA-Election-Programmes-Code-English-v2.pdf>>

⁶⁷ Te Mana Whanonga Kaipāho, 'Election Programmes Code of Broadcasting Practice', viewed 29 March 2023, <<https://www.bsa.govt.nz/assets/Uploads/93e1db744d/BSA-Election-Programmes-Code-English-v2.pdf>>

- 3.63 The NZ Electoral Act also contains a provision relating to the distribution of false material: a person ‘guilty of a corrupt practice who, with the intention of influencing the vote of any elector, at any time on polling day before the close of the poll, or at any time on any of the 2 days immediately preceding polling day, publishes, distributes, broadcasts, or exhibits, or causes to be published, distributed, broadcast, or exhibited, in or in view of any public place a statement of fact that the person knows is false in a material particular.’⁶⁸

Support for the South Australian model

- 3.64 Inquiry participants were generally supportive of the South Australian model and suggested adopting a similar system nationally.⁶⁹ Many suggested that existing laws at the state/territory level (that is, SA and the ACT), provided a good starting point in developing federal laws.⁷⁰ It was noted that such a model does not aim to prevent or limit the expression of contested opinions, and there are still ‘robust, contested elections.’⁷¹
- 3.65 Several submissions highlighted the South Australian model, which makes it an offence to authorise or publish electoral advertisements that are inaccurate and misleading⁷². Monash University and The Greens both suggested that there could be a federal law modelled on the South Australian provision, detailing that there be no authorisation or permit of electoral matter if the statement is purporting to be of fact and the statement purporting to be a statement of fact is misleading or deceptive, or is likely to.⁷³ DIGI also asked the Committee to consider including a clause that it is an offence of misleading electoral advertising where (a) the person disseminates, or authorises the dissemination of, an advertisement containing electoral matter; and (b) the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.⁷⁴
- 3.66 The University of Canberra’s News and Media Research Centre (NMRC) were supportive of adopting the South Australian model with the view that it would:
- ... send a strong signal and it does put up some guardrails around the extent to which people can lie. I think it could limit some of the more extreme forms of lying. One that I theorised with a colleague in particular is ‘strategic lying’. Lying has become a very disturbing and advanced spin technique, and truth in political

⁶⁸ Section 199A, *Electoral Act 1993* (NZ).

⁶⁹ Supporters included Professor Lisa Hill, *Submission 332*, p. 1; Australian National University Law Reform and Social Justice Research Hub, *Submission 354*, p. 1.

⁷⁰ Rationalist Society of Australia, *Submission 300*, p. 2; Ms Zali Steggall MP, *Submission 1381*, p. 3; Australian Greens, *Submission 432*, p. 5; Canberra Alliance for Participatory Democracy, *Submission 309*, p. 3.

⁷¹ Professor Luke Beck, *Committee Hansard*, 17 October 2022, p. 3.

⁷² The Real Republic Australia, *Submission 401*, p. 16, Human Rights Law Centre, *Submission 418*, p. 14.

⁷³ Professor Luke Beck, *Submission 356*, p. 4, The Australian Greens, *Submission 432*, p. 5.

⁷⁴ Digital Industry Group Inc., *Submission 378*, p. 4.

advertising laws could help bring that back a bit. So I would be very strongly in favour of us introducing that federally.⁷⁵

- 3.67 Professor George Williams highlighted the South Australian model, arguing that the Parliament should enact ‘a narrowly drawn law for truth in political advertising’ which ‘should only target the spread of information that can be proven to be false’:

There is a well tested model for achieving this. South Australia has prohibited electoral advertisements setting out statements of fact that are ‘inaccurate and misleading to a material extent’ since 1985. A person can be fined \$5000 and corporations \$25,000 for doing so. The South Australian Electoral Commission can request the withdrawal of advertisements that breach this standard and the publication of a retraction to correct the public record. Violations can also be taken to court. The South Australia law is an important disincentive to politicians spreading falsehoods during state elections. It has been used to good effect.⁷⁶

- 3.68 The Australia Institute was also supportive of the South Australian regulation but noted the limitations to which the legislation was able to be applied:

The South Australian model is really limited to advertising, which in practice is a bit broader than traditional paid advertising but still really requires a kind of fixing of the material in a published form, as far as I know. I think the beauty of that model is that it covers material that people have time to deliberate on, that’s probably been through formal processes, so it’s easier to justify having penalties for making a mistake or making an error of fact. It gets harder when someone might get caught making an off-the-cuff statement innocently and be covered that way. I think it would be tricky, partly because of the implied constitutional protections, to regulate speech more generally.

- 3.69 They also observed that, as noted by the ECSA, the time it takes to make a determination of whether an individual or organisation had breached the provision can be challenging, especially in the final days of a campaign:

The other side of it too is that South Australia’s model has in effect worked by requiring the withdrawal and retraction of misleading ads, and an ad’s damage is done in the course of an election campaign. If it comes out in the last week, there’s very little time to stop it and address it. But there is also the option for fines, and that can have the deterrent effect, which gives you as long as you need to decide whether there should be a fine and what amount it should be, rather than it all being focused on the rush of an election campaign.⁷⁷

- 3.70 Marque Lawyers highlighted that a legislative model based on the South Australian approach would be an important step in ‘reviving the integrity of Australia’s electoral campaigns’:

⁷⁵ Centre for Public Integrity, *Committee Hansard*, 18 October 2022, p. 19.

⁷⁶ Professor George Williams, *Submission 7*, p. 2.

⁷⁷ Australia Institute, *Committee Hansard*, 26 October 2022, p. 4.

Whilst ideally reform would go further in prohibiting conduct which is misleading or deceptive rather than just prohibiting conduct containing statements of misleading fact, the latter is an excellent starting point. We recognise that by creating a provision which is too broad, it risks not only constitutional invalidity but also creates a potential chilling effect on new political participants and deployment of the law for strategic advantage.⁷⁸

3.71 The Democratic Audit of Australia (DAA), while noting ‘arguments for and against the regulation of truth in political advertising and about remedies and processes’, held that ‘at a minimum the South Australian model offers a model’. Like other witnesses, they suggested that ‘It means at least setting a standard for campaign discourse, in the same way that a parliamentary code of conduct can set a standard, despite the complexities of implementation’.⁷⁹

3.72 While the SA model was broadly supported, some witnesses advocated for amendments which could be made to strengthen the framework for application at the federal level.⁸⁰ Professor Williams, for example, proposed that penalties could be stronger:

There’s too high a risk with the South Australian law that falsehoods will be just seen as a cost of campaigning—pay a fine but win the election. I think we do need to deal with more deliberate and what might even be malicious actions that amount to political lies. It’s possible we should look to criminal sanctions in that case, or at least much, much higher fines.⁸¹

3.73 The AEC also discussed the challenges in introducing similar legislation to South Australia at the federal level and, in particular, the additional burden it would place on their resources:

The model that’s previously been spoken about in this committee, or has been raised with the committee, is the South Australian legislation. I think they’re the only electoral management authority in Australia, or even New Zealand, that has some sort of truth-in-advertising responsibility. I’d point out that the scale of a state election is tiny compared to what we do federally, and the sheer volume of issues that arise federally at election time would require quite a large support team to look at that. There would also be an expectation from all of the candidates and parties that we be very swift with our responses, because something would be said like, ‘We need this ruling right now.’ At the last election, there were over 1,600 candidates, a large number of parties and multiple contests. It’s complex and difficult. I haven’t put an exact figure on how many

⁷⁸ Marque Lawyers, *Submission 337*, p. 6.

⁷⁹ Democratic Audit of Australia, *Submission 408*, p. 5.

⁸⁰ See for example, Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p. 26; Emeritus Professor Marian Sawer, *Committee Hansard*, 17 October 2022, p. 27.

⁸¹ Professor George Williams, *Committee Hansard*, 17 October 2022, p. 17.

people, but there would need to be, particularly at election time, a significant team providing a very swift response. It would be complex, big and not cheap.⁸²

Government's role in truth in political advertising

3.74 It is clear from the discussion above that it is important to protect voters from dishonest electoral communications. A central question to be considered is the role of the Australian Government in addressing truth in political advertising, including whether to strengthen existing rules or introduce new means of oversight. Evidence to the inquiry strongly suggested that the Australian Government should take action, and it is clear that there are successful models which could be employed to address some of the challenges presented.

3.75 The Committee received many proposals for what rules should be introduced, how they should be enforced, and what an oversight framework would look like in practical terms. Submitters to this inquiry were primarily of the view that there are three government agencies which are best placed to oversee safeguards against harms from the spread of dishonest electoral communications:

- the Australian Communications and Media Authority (ACMA);
- the Australian Competition and Consumer Commission (ACCC) and
- the Australian Electoral Commission (AEC).

Current roles of existing agencies

Australian Communications and Media Authority

3.76 The ACMA 'is the independent statutory authority responsible for the regulation of broadcasting, radiocommunications and telecommunications in Australia' which also includes some aspects of online content advertising.⁸³ It 'regulates email spam and telemarketing and oversees the voluntary efforts of the Australian digital platform industry to address harmful online mis- and disinformation.'⁸⁴

3.77 The ACMA currently oversees the Australian Code of Practice on Disinformation and Misinformation which includes:

- assessing signatories' transparency reports
- examining how signatories handle user complaints
- encouraging more platforms to sign up to the code.⁸⁵

⁸² Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 12.

⁸³ Australian Communications and Media Authority, *Submission 325*, p. 1.

⁸⁴ Australian Communications and Media Authority, *Submission 325*, p. 1.

⁸⁵ Australian Communications and Media Authority, 'Online misinformation', viewed 14 March 2023, <<https://www.acma.gov.au/online-misinformation>>

- 3.78 ACMA also regulates the broadcasting sector in Australia, including commercial and community radio, and free-to-air and subscription television to ensure compliance under their obligations set out in broadcasting codes of practice, which are developed by industry and registered by the ACMA under section 123 of the *Broadcasting Services Act 1992*.
- 3.79 The ACMA has the power to investigate in certain circumstances when a complaint about an obligation under a broadcasting code has been made, the broadcaster has either not responded or the response is inadequate, and a complaint is then made to the ACMA.⁸⁶ The ACMA investigates complaints regarding accuracy, fairness, impartiality, viewpoints, decency, classification, and harm and offence.⁸⁷
- 3.80 When assessing whether or not particular content is factual (and in particular, accurate), the ACMA considers a number of factors including:
- distinguishing between factual material and other material, such as opinion, which ACMA notes can be a matter of fine judgement
 - all contextual indicators (including subject, language, tenor and tone, and inferences that may be drawn)
 - the natural and ordinary meaning of the language used
 - the use of language
 - the identity of the person making a statement (whether as interviewer or interviewee) will often be relevant but not determinative of whether a statement is factual material.⁸⁸
- 3.81 The ACMA elaborated on the process they use for analysing content and the challenges in assessing whether content is factual or not:

We have a fairly rigorous process that we go through to determine whether content is factual material or whether it amounts to commentary or opinion ... We look at a number of features ... around whether or not there are assertions that can be tested and actually checked or whether they are subjective or open to interpretation et cetera. Having said that, even when we go through that process, it can be very tricky to unpack when someone is making an assertion of fact. Also, I think it's fair to say that, when you get into areas where there is contestability around particular facts, it is particularly difficult to actually come to a decision in some cases about whether something is in fact accurate or not. It's not a straightforward exercise. We do it and we do it in relation to all of our investigations, but it is complicated.

⁸⁶ Australian Communications and Media Authority, 'Investigation concepts. Accuracy', viewed 15 March 2023, <<https://www.acma.gov.au/sites/default/files/2020-09/Investigation%20concepts%20Accuracy.pdf>>

⁸⁷ Australian Communications and Media Authority, 'Understanding our investigations', viewed 15 March 2023, <<https://www.acma.gov.au/understanding-our-investigations>>

⁸⁸ Australian Communications and Media Authority, 'Investigation concepts. Accuracy', viewed 15 March 2023, <<https://www.acma.gov.au/sites/default/files/2020-09/Investigation%20concepts%20Accuracy.pdf>>

It's also made quite tricky by omission of facts. Yes, you can put some facts on the table and those facts could be accurate but if you are omitting other facts it then becomes misleading. One of the challenges that we then have is, is that inaccurate because it is misleading, or is it partial? We do have a situation where sometimes we say because those facts were omitted then this has been, in colloquial terms, you would call a biased portrayal of the information. It is not straightforward and it is not easy, and making those judgements are hard to do quickly.⁸⁹

- 3.82 The Government recently announced that it would introduce legislation to expand the powers of ACMA to 'hold digital platforms to account and improve efforts to combat harmful misinformation and disinformation in Australia.'⁹⁰ The new powers include:
- information-gathering and record-keeping powers to create transparency around efforts by digital platforms to respond to misinformation and disinformation on their services
 - the capacity to register an enforceable industry code and to make a standard, should industry self-regulation measures prove insufficient in addressing the threat posed by misinformation and disinformation.⁹¹

Australian Competition and Consumer Commission

- 3.83 The ACCC is an independent Commonwealth statutory authority responsible for enforcing the *Competition and Consumer Act 2010*, protecting consumers, promoting competition, fair trading and regulating national infrastructure.⁹²
- 3.84 The ACCC provides general guidance to businesses and consumers on how to avoid false or misleading claims, it accepts reports about any such claims, and if a business misleads, they can investigate and may take some form of compliance or enforcement action.⁹³
- 3.85 The ACCC advised that during the course of a year, after filtering hundreds of thousands of referrals, they may investigate between 60 and 80 matters depending on complexity, and assess:
- ... the seriousness of the conduct, the impact on the economy and also the ability to prove our case in court—ultimately, how well the evidence stacks up. Concern in a political framework would be where we make that assessment and, if we take on one complaint but not another party's complaint or another political

⁸⁹ Australian Communications and Media Authority, *Committee Hansard*, 18 October 2022, p. 10.

⁹⁰ The Hon Michelle Rowland MP, Minister for Communications, Media Release, 'New ACMA powers to combat harmful online misinformation and disinformation', 20 January 2023.

⁹¹ The Hon Michelle Rowland MP, Minister for Communications, Media Release, 'New ACMA powers to combat harmful online misinformation and disinformation', 20 January 2023.

⁹² Australian Competition and Consumer Commission, 'About the ACCC', viewed 15 March 2023, <<https://www.accc.gov.au/about-us/australian-competition-and-consumer-commission/about-the-acc>>

⁹³ Australian Competition and Consumer Commission, 'False or misleading claims', viewed 15 March 2023, <<https://www.accc.gov.au/consumers/advertising-and-promotions/false-or-misleading-claims>>

perspective, it will obviously result in calls of bias and the like, which when we are dealing with corporations is a consequence that in this realm would be quite concerning for an organisation that has to be apolitical.⁹⁴

3.86 Other factors they consider include the extent, breadth and nature of harm that is being experienced, whether it involves imminent or continuing harm which would determine the speed or manner in which the ACCC pursue it.⁹⁵

3.87 When investigating allegations of misleading claims, there are a number of stages and timeframes:

We get leads and information through a number of sources. We do get reports from the public and we triage those. We have a further process of setting our priorities each year, which is based on input from a broad range of stakeholders. Through that process we identify areas that we can be responsive to or proactively engage with, and we're also able to pick up matters that are public in their nature, either through media reports or other forums such as references in social media. We have a broad range of matters and ways of getting those matters, but we ultimately don't operate as a complaint-handling agency. We very much seem to be a strategic enforcer to deliver the greatest impact in the marketplace and deterrence.⁹⁶

3.88 The ACCC acknowledged that while they have 'a very clear understanding about what misleading and deceptive conduct or false and misleading representations constitute', it is often about a commercial relationship between consumers and traders rather than assessing information in political debate.⁹⁷

Australian Electoral Commission

3.89 Currently the AEC has established a multi-faceted approach to managing misinformation and disinformation which includes:

- a Reputation Management Strategy - establishing an online footprint for the AEC and focusing on the AEC being considered to be the experts on electoral matters in Australia
- developing an online presence
- working with social media companies to remove misinformation and disinformation
- briefings in every state and territory with media groups and interviews by the AEC
- Electoral Integrity Assurance Taskforce – a multi-agency vehicle
- Stop and Consider campaign – to stop and consider the source of information

⁹⁴ Australian Competition and Consumer Commission, *Committee Hansard*, 18 October 2022, p. 30.

⁹⁵ Australian Competition and Consumer Commission, *Committee Hansard*, 18 October 2022, p. 31.

⁹⁶ Australian Competition and Consumer Commission, *Committee Hansard*, 18 October 2022, pp. 30-31.

⁹⁷ Australian Competition and Consumer Commission, *Committee Hansard*, 18 October 2022, p. 29.

- establishment of an online disinformation register.⁹⁸

3.90 The AEC collaborated with a number of online platforms to reduce the risk of disinformation:

In preparation for the 2022 federal election, the AEC engaged with online platforms to protect and promote electoral integrity online. A written agreement reflecting these efforts was finalised between the AEC, Meta, Twitter, Google, Microsoft and TikTok. This agreement established a framework for detailed operational arrangements allowing the AEC and the Taskforce to refer harmful electoral content to online platforms for consideration and removal, where content was in breach of relevant legislation or the platform's own policies.⁹⁹

'Stop and Consider' campaign

3.91 A campaign aimed at voter education to cut through misinformation, disinformation and spin was launched on 12 April 2022 online via the AEC's social media feeds and through digital displays. This 'Stop and Consider' campaign encouraged voters to consider the information they received on the 2022 federal election, and whether it is:

- Reliable: Is the information from a reliable source?
- Current: When was it published?
- Safe: Could it be a scam?¹⁰⁰

3.92 The campaign 'got 94 million digital and social ads displayed' and '100,000 click-throughs to the AEC website from people looking at that Stop and Consider information.' Research undertaken by the AEC after the election 'showed that one in five Australians recognised that campaign, and a large number of them also acknowledged that it changed their behaviour with how they engage with online material.'¹⁰¹

Disinformation register

3.93 On 7 March 2022 the AEC launched a disinformation register – 'a searchable database of mistruths the AEC has identified about Australian election processes.'¹⁰² The register contains 'each piece of disinformation the AEC has discovered' and 'the factual information regarding the matter and AEC actions taken to correct the record.'¹⁰³ Thirty-one items of disinformation on election timing, voting technology, counting, political neutrality, election validity, indigenous participation, postal voting,

⁹⁸ Australian Electoral Commission, *Committee Hansard*, 28 September 2022, pp. 3-4.

⁹⁹ Australian Electoral Commission, Media release, 'AEC celebrates successful disinformation partnerships', 3 August 2022.

¹⁰⁰ Australian Electoral Commission, Media release, 'AEC launches campaign to combat disinformation', 12 April 2022.

¹⁰¹ Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 4.

¹⁰² Australian Electoral Commission, Media release, 'AEC launches disinformation register ahead of 2022 poll', 7 March 2022.

¹⁰³ Australian Electoral Commission, Media release, 'AEC launches disinformation register ahead of 2022 poll', 7 March 2022.

formality, preferential voting, COVID safety measures, and electoral communication were included on the register during the 2022 federal election.¹⁰⁴

Authorisation of political campaign material

- 3.94 This section focuses on issues around the authorisation of political campaign material and more recent concerns of paid electoral advertisements. As with many of the areas considered in this report, these matters have been well canvassed in earlier reports of the Committee, and in the public arena.
- 3.95 The authorisation of political campaign material was an issue considered in the Committee's report into the 2016 federal election, with consistent themes such as the use of correct factual content, authorisation and distribution of ads, and transparency around these requirements.

Current authorisation rules – progress with 2017 and 2019 legislation

- 3.96 The Committee has previously looked into various matters around the authorisation of political campaign material; as a result in 2017 the Parliament passed the *Electoral and Other Legislation Amendment Act 2017*. This Act amended and broadened the authorisation requirements in the Electoral Act to apply to all forms of electoral communications, and at particular times. In 2019 the Parliament passed the *Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018*, which 'made further amendments to the authorisation requirements to clarify what communications will be electoral matter.'¹⁰⁵
- 3.97 As noted earlier, under the Electoral Act, the AEC does not regulate truth in electoral advertising.¹⁰⁶ The current rules require people and entities who are communicating paid electoral advertising to authorise those communications to enable clarity for electors to determine responsibility¹⁰⁷. There are specific rules in the Electoral Act that must be used in authorised printed communication and also for communications other than printed, and communication broadcasting by television and radio. The Electoral Act includes guidelines around: where the particulars must be notified, formatting and placement and language requirements¹⁰⁸, e.g. for print

¹⁰⁴ Australian Electoral Commission, 'Disinformation register. 2022 Federal Election', viewed 28 March 2023, <<https://www.aec.gov.au/media/disinformation-register-2022.htm>>

¹⁰⁵ Joint Standing Committee on Electoral Matters, *Report on the conduct of the 2019 Federal election and matters related thereto*, December 2020, pp. 87-88.

¹⁰⁶ Australian Electoral Commission, *A reminder issued to all federally registered political parties: Campaign signage and printed material*, March 2022, p. 1.

¹⁰⁷ Australian Electoral Commission, *A reminder issued to all federally registered political parties: Campaign signage and printed material*, March 2022, p. 1.

¹⁰⁸ Federal Register of Legislation, Commonwealth Electoral (Authorisation of Voter Communication) Determination 2021, pp. 5-8.

communications, the authorisation must be a size that is able to be read and must not be obscured¹⁰⁹.

- 3.98 The *Broadcasting Services Act 1992* (BSA) requires a relevant authorisation tag for radio broadcasting in relation to political advertisements. Commercial Radio Australia told the Committee that for radio broadcasters reviewing political advertisements to ensure they include these tags 'is already a fairly onerous process'.¹¹⁰ Commercial Radio Australia argued that no further obligations should be placed on broadcast licensees. The party or candidate authorising the advertisement is expected to ensure that the advertisement complies with all relevant laws.¹¹¹
- 3.99 If a licensee broadcasts political matter at the request of another person, the licensee must ensure that authorisation details (called 'required particulars') are announced (subclause 4(2) of Schedule 2 to the BSA).
- 3.100 The content of the required particulars is specified in the BSA (subclauses 1(2) and 1(3) of Schedule 2) and subsection 321D(7) of the *Commonwealth Electoral Act 1918* (Electoral Act) and must be placed in a broadcast in accordance with the requirements in sections 14 and 15 of the Commonwealth Electoral (Authorisation of Voter Communication) Determination 2021.
- 3.101 The ACMA noted that, both during and outside of election periods, broadcasters have ongoing obligations regarding the identification or 'tagging' of certain political material. Whenever a television or radio licensee broadcasts 'political matter' at the request of another party (such as an election ad paid for by a political party), a tag (known as the 'required particulars') must immediately follow the communication. The required particulars must identify the source of the political matter (such as the political party), the name of the person who authorised it, and be spoken in a manner that is intelligible to the relevant audience.
- 3.102 These requirements, which are enforceable by the ACMA, are designed to allow for reasonably balanced access to differing political opinions during an election campaign, while providing ongoing transparency to audiences about who is trying to persuade them or influence their vote.
- 3.103 Ahead of the 2022 federal election, the ACMA updated the guidelines to reflect recent legislative changes and provide licensees with greater clarity as to the scope of their obligations when broadcasting political and election matter.
- 3.104 During the 2022 federal election campaign, the ACMA received no complaints about tagging and no complaints about broadcasters failing to provide access to political candidates, or evidence of potential breaches of advertising restrictions by commercial TV broadcasters.¹¹²

¹⁰⁹ Australian Electoral Commission, *A reminder issued to all federally registered political parties: Campaign signage and printed material*, March 2022, p. 1.

¹¹⁰ Commercial Radio Australia, *Submission 358*, p. 3.

¹¹¹ Commercial Radio Australia, *Submission 358*, p. 4.

¹¹² Australian Communications and Media Authority, *Submission 325*, pp. 2-3.

Strengthening the authorisation rules

- 3.105 The Committee received evidence with a range of views on strengthening authorisation rules. Some of the concerns that the Committee received were around the authorisation of misleading or deceptive campaign advertising and some solutions around what could be done to regulate these. Other matters related to the AEC with concerns around the regulatory involvement from the AEC, lack of power from the AEC, and some witnesses' frustration over the lack of definitions and guidance.
- 3.106 The Commonwealth law makes it illegal for a person to 'publish, permit or authorise to be published during the relevant period any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote'¹¹³.
- 3.107 The AEC investigated 826 complaints about electoral communications between the issue of the writ and election day.¹¹⁴

Table 3.1 Electoral communication complaints investigated and Electoral Act breaches in the 2022 federal election

Format	Communications investigated	Breach of the Electoral Act no.	Breach of the Electoral Act %
Social media	185	69	37.30
Signs and print	462	98	21.21
SMS/Telephone	43	2	4.65
Website	41	4	7.76
Email	3	2	66.67
Broadcast/other	92	5	5.43
Total	826	180	21.79

Source: Australian Electoral Commission, Submission 330, p. 9.

- 3.108 The AEC advised that most of the complaints were in relation to breaches of the Electoral Act, which sets out electoral communication authorisation rules. They added that a significant number of the complaints were related to section 329 of the Electoral Act, which regulates misleading and deceptive electoral communications. However, the print media comprised the majority of electoral communication types which were subject to complaints (56 per cent).¹¹⁵
- 3.109 A witness told the Committee that they believe there are still gaps in the Commonwealth law.¹¹⁶ Marque Lawyers highlighted the Garbett v Liu case which came to light from the 2019 federal election, where signs were found by the court to

¹¹³ Marque Lawyers, *Submission 337*, p. 2.

¹¹⁴ Australian Electoral Commission, *Submission 330*, p. 8.

¹¹⁵ Australian Electoral Commission, *Submission 330*, p. 9.

¹¹⁶ Marque Lawyers, *Submission 337*, p. 2.

be misleading or deceptive. The Committee notes the claim that while this case restored some of the power of s 329, it has also ‘opened the door for a broader range of conduct to breach the prohibition’.¹¹⁷

Whilst the effect of Garbett has been to edge the dial back to cover a broader range of conduct, there is still a range of conduct which is not simply ‘political hurly burly’ but which actively seeks to mislead voters and is permitted.¹¹⁸

- 3.110 The Committee also heard from several inquiry participants who felt that authorisation rules should be addressed by the AEC, and that the AEC should hold power and authority to do so.¹¹⁹ The Committee notes the mention of the Garbett v Liu case and concern that the AEC were powerless to act on removing signs and ‘had no real authority’,¹²⁰ and further that evidence suggests there is some confusion around the authorities conferred under s329 of the Electoral Act.¹²¹
- 3.111 The AEC told the Committee that electors have expressed frustration around the current scope and purpose of section 329, and the role the AEC plays in regulating truth in electoral advertising. The AEC also said there were complaints that it lacks clarity, making it difficult to enforce.¹²²
- 3.112 Marque Lawyers suggested that a suite of Electoral Commissioner tools be implemented to empower the Commissioner to be able to deal with suspicions on inaccurate material. This would allow the Commissioner to deal with situations where there is a lack of resources to investigate or take immediate action. There was also suggestion that the AEC could publish notices to their website so that the public is aware of any inaccuracies.¹²³
- 3.113 The Human Rights Law Centre (HRLC) recommended that the Committee create a new body that is independent, efficient and expert in making determinations. Alternatively they suggested that if this wasn’t possible they ask the Committee to consider different enforcement mechanisms be made available to the AEC. Some of these could include empowerment to make a ‘show cause notice’ and also be given sufficient funding to assist with addressing the high volume of complaints received¹²⁴.
- 3.114 The AEC informed the Committee of complaints that the AEC were not achieving outcomes and that reforms could be made to enable the AEC ‘necessary powers to investigate complaints and gather sufficient evidence for the ability to enforce the statutory regime in a more timely manner’.¹²⁵

¹¹⁷ Marque Lawyers, *Submission 337*, p. 5.

¹¹⁸ Marque Lawyers, *Submission 337*, p. 6.

¹¹⁹ Mr Howard Gwatkin, *Submission 284*, p. 2, Marque Lawyers, *Submission 337*, p.7.

¹²⁰ Mr Howard Gwatkin, *Submission 284*, p. 2.

¹²¹ See for example Ms Nicolette Boele, *Submission 364*, p. 26.

¹²² Australian Electoral Commission, *Submission 330*, p. 9.

¹²³ Marque Lawyers, *Submission 337*, p. 7.

¹²⁴ The Human Rights Law Centre, *Submission 418*, p. 16.

¹²⁵ Australian Electoral Commission, *Submission 330*, p. 9.

3.115 Numerous witnesses suggested establishing a pre-registration system or database for participants proposing to display signs or communicate material¹²⁶. Marque Lawyers told the Committee this could prevent some of the misconduct and any material that was not registered could be removed by the AEC, without having to engage in a subjective assessment.¹²⁷ Mr Mark Yore suggested all advertising be submitted to the AEC to receive an automatic lodgement number:

... requiring that detail to be part of the ad no matter what the media. This is essentially an extension of the process for authorisation of material such as how-to-vote cards. A copy of this material would then be easily accessible to anyone who wants to look at it. Additionally, all supporting material would form part of the lodgement, allowing for robust discussion. This would also highlight claims that have no substance and are made of nothing but assertions.¹²⁸

3.116 In its submission, the AEC noted concerns from complainants that key concepts relating to authorisations such as 'genuine editorial content' and 'electoral advertisement' lacked definition in the Electoral Act.¹²⁹ The AEC explained that electors claim there is a lack of guidance in relation to promotional materials in polling places.¹³⁰

3.117 The Committee notes discussion about the need for campaign material to be legible, given the distance they might be seen from.¹³¹ Electoral communications should:

... have an authorisation that takes up the entire screen of visual media, spoken at regular conversational pace, at the same volume, at a print size that is readable from a seat in a regular lounge room, and that states emphatically who and/or what party is communicating, who and/or what party is paying, and who they are endorsing or opposing.¹³²

3.118 The issues around the authorisation of campaign material is evolving and becoming more prevalent with the rise of social media platforms, and has caused regulation complexities around the authorisation of online political campaign material. This is further supported by the ACT Government's submission:

... any approach to reform needs to be flexible enough to adapt to a constantly changing social media and technology landscape, and must acknowledge that social media posts can be shared very broadly in short periods of time, at times without links of the original poster.¹³³

¹²⁶ Mr Travis Jordan, *Submission 245*, p. 6, Marque Lawyers, *Submission 337*, p. 7, Mr Mark Yore, *Submission 346*, p. 2.

¹²⁷ Marque Lawyers, *Submission 337*, p. 7.

¹²⁸ Mr Mark Yore, *Submission 346*, p. 2.

¹²⁹ Australian Electoral Commission, *Submission 330*, p. 9.

¹³⁰ Australian Electoral Commission, *Submission 330*, p. 9.

¹³¹ Mr Travis Jordan, *Submission 245*, p. 6, Ms Joanne Foreman, *Submission 283*, p.2.

¹³² Ms Joanne Foreman, *Submission 283*, p. 2.

¹³³ ACT Government, *Submission 422*, p. 6.

3.119 The Liberal Party told the Committee that the AEC should continue to improve the quality of its communications and advice in relation to the authorisation regime that it administers. The ways of improving the application of the regime is through predictability and consistency while also maintaining communication that is clear and understandable.¹³⁴

Paid for by authorisation

3.120 The AEC commented that there were concerns over the rise of paid advertorials, and question around genuine editorial content and proof of paid advertising.¹³⁵

3.121 The Committee received evidence from various witnesses broadly in favour of authorisation statements on electoral advertisements and that they are required to include detail of who paid for them to enable them to be regulated.¹³⁶ The AEC further supported this evidence and said ‘that this is crucial in terms of regulating the statutory scheme’¹³⁷.

3.122 Reset Australia recommended that legislation be introduced to require that authorisation statements on electoral advertisements be expanded to include the person who paid for them, with identity verification of these people undertaken by ‘platforms and publishers.’¹³⁸ Mr Chris Cooper, Executive Director, Reset Australia said that:

... this would help voters better understand not only who has authorised the ad but who is funding it. That’s particularly important as we see the rise of different campaigning organisations on all sides, who often coordinate or are funded by politically affiliated operatives.¹³⁹

3.123 The Committee heard a similar recommendation asking the Committee to consider implementing a requirement for disclosures identifying political advertising, and that it should include all social media and narrowcast platforms, including forms of native advertising or sponsored content (such as influencer content).¹⁴⁰

3.124 Meta told the Committee that they have updated their policies to increase transparency and now require a number of steps from advertisers to confirm their authenticity. Advertisers must not only be authorised by Meta but also must include a ‘paid for by’ disclaimer prior to running an advertisement. Meta told the Committee that they rejected 17,000 ads during the Australian election campaign for not complying with these rules.¹⁴¹

¹³⁴ Liberal Party, *Submission 382*, p. 3.

¹³⁵ Australian Electoral Commission, *Submission 330*, p. 9.

¹³⁶ Reset Australia, *Submission 420*, p. 10, Digital Rights Watch, *Submission 246*, p. 6.

¹³⁷ Australian Electoral Commission, *Submission 330*, p. 9.

¹³⁸ Reset Australia, *Submission 420*, p. 10.

¹³⁹ Reset Australia, *Committee Hansard*, 18 October 2022, pp. 40-41.

¹⁴⁰ Digital Rights Watch, *Submission 246*, p. 6.

¹⁴¹ Meta, *Submission 421*, p. 29.

- 3.125 However the AEC Electoral Commissioner Mr Tom Rogers acknowledged that advertisements on social media platforms are complex, and with
- ... implied freedom of political communication it makes it is very difficult to regulate. And you can go too far here, too, and it can have a chilling effect on the ability of citizens to express themselves at election time.¹⁴²
- 3.126 The AEC said they have looked at many examples of TikTok videos and that social media is more difficult in getting evidence of content that's been paid for.¹⁴³
- 3.127 Climate 200 recommended that the AEC be empowered and resourced to examine and remove unauthorised electoral materials¹⁴⁴.
- 3.128 Mr Travis Jordan suggested an alternative approach that 'If this is too much of a logistical challenge or too much of an imposition on the implied freedom'¹⁴⁵, a searchable database of distributable material could be created before the polling period begins, as suggested by the DAA in their 2019 submission¹⁴⁶.
- 3.129 Professor Luke Beck commented that authorisation statements are required to be put on paid electoral advertising which includes posting to Facebook, TikTok or Twitter accounts:
- My view is that these deceptive and misleading advertising laws should apply to that just as much as a paid ad in the newspaper or a billboard or an ad on radio. There's no reason why these rules should apply differently, whether or not you've paid for the ad or just posted it on your TikTok at no expense to yourself.¹⁴⁷
- 3.130 The AEC highlighted that the Electoral Act currently exempts satirical content, but, if it's paid content, so becomes paid advertising, then it is subject to the Electoral Act and the authorisation requirements.¹⁴⁸
- 3.131 Accountability Round Table expressed their concern of complexities around 'microtargeted political advertising' and the multiple difficulties this would present to the regulator.
- The sheer volume of advertising and its multiple platforms for distribution, including micro-targeted digital advertising that it is effectively hidden from general view, makes it difficult to find all the advertising material on which it might be necessary to arbitrate.¹⁴⁹

¹⁴² Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 8.

¹⁴³ Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 8.

¹⁴⁴ Climate 200, *Submission 419*, p. 9.

¹⁴⁵ Mr Travis Jordan, *Submission 245*, p. 37.

¹⁴⁶ Mr Travis Jordan, *Submission 245*, p. 37.

¹⁴⁷ Professor Luke Beck, *Committee Hansard*, 3 November 2022, p. 18.

¹⁴⁸ Mr Andrew Johnson, Chief Legal Officer, Legal Services Branch, Australian Electoral Commission, p. 8.

¹⁴⁹ Accountability Round Table, *Supplementary to Submission 343*, p. 7.

3.132 The Accountability Round Table also made comment that it was ‘unrealistic to expect a single government agency to take this on and even with a staff of thousands and an unlimited budget, it would be an ongoing headache’.¹⁵⁰

New options for government

3.133 Inquiry participants proposed a variety of options (individually or in combination), which could help protect truth in political advertising and deal with misinformation and disinformation:

- appointing a regulator, or establishing a regulatory framework, including consideration of oversight of advertising;
- imposing sanctions or fines, including on individuals and media companies; and/or
- establishing media literacy programs.

A regulator and/or a regulatory framework

3.134 Several submitters recommended appointing or establishing a regulator or regulatory framework to assess purported statements of fact. There were widely different views as to where this function could or should be performed, and whether by, or within, an existing agency such as the AEC, ACCC or ACMA.

3.135 There were also various views as to the range of powers and actions which could be taken, for example:

- that the AEC be ‘resourced to act immediately on reports of misleading political advertising’ and ‘empowered and resourced to examine and remove unauthorised electoral materials.’¹⁵¹

3.136 The HRLC advocated for creating ‘a new body that is independent, efficient and expert in making determinations.’ However, in lieu of a new agency, they suggested the AEC be granted additional powers:

However if that [a new independent body] cannot be achieved, we believe some careful consideration of different enforcement mechanisms made available to the AEC would assist. For instance, if the AEC were empowered to issue a “show cause notice” to someone who had published material which prima facie appeared inaccurate or misleading, the burden could then shift to the publisher to provide source material or otherwise justify the statement of fact. If the AEC were dissatisfied with the response, it could, like the ECSA, request a retraction or withdrawal, but compulsory orders to do so could only be made by a federal court.¹⁵²

¹⁵⁰ Accountability Round Table, *Supplementary to Submission 343*, p. 11.

¹⁵¹ Climate 200, *Submission 419*, p. 14.

¹⁵² Human Rights Law Centre, *Submission 418*, p. 16.

- 3.137 The Australia Institute pointed out that polling indicated that the Australian community were supportive of having the AEC as regulator. They stated that they believed the AEC was a good candidate¹⁵³, noting:

That's how it's done in South Australia, and it has worked very well. In fact there's an FOI request we received which shows that ECSA, the South Australian commission, says one reason they haven't been able to get someone else to do it is that everyone thinks the commission there does a good job. They have this understandable concern that they want to be seen as independent, but they can do that while still fulfilling this role and ultimately it's parliament's decision to make rather than the commission's. Some alternatives have been suggested, including the ACCC, or in one case an academic proposed that you could have a panel of former politicians, with the idea that they know what's beyond the pale when they see it. Our polling found that was less supported than having the commission do it, but it certainly shows you have options.¹⁵⁴

- 3.138 Professor Beck advocated for 'federal 'truth in political advertising laws' along the same lines as exist currently in South Australia and the Australian Capital Territory.'¹⁵⁵ In line with the state and territory legislation, Professor Beck recommended that the AEC should be the designated regulatory body.¹⁵⁶
- 3.139 A few submitters were not supportive of having the AEC regulate truth in advertising laws. Dr Kevin Bonham commented that general truth in advertising legislation not be administered by the AEC 'in order to preserve the AEC's independence and ensure that the AEC is not distracted by a need to develop broad expertise in the judgement of the truth of political claims.'¹⁵⁷
- 3.140 Dr Colleen Lewis believed that the AEC did not have that existing skill base and capability to regulate truth in political advertising and if they were to be the responsible body they would need proper resourcing¹⁵⁸:
- They're going to need a lot of funding if they are to do it, and I think it's incumbent on the parliament, if it decides the appropriate body is the AEC, to make sure they're adequately funded.¹⁵⁹
- 3.141 The Australian Greens called for the AEC to be provided additional resourcing if it were to be assigned that role.¹⁶⁰
- 3.142 The DAA agreed with Dr Lewis' view that the AEC currently did not have the existing skills base, stating that they did not believe they should be the regulator believing

¹⁵³ Australia Institute, *Committee Hansard*, 26 October 2022, p. 2.

¹⁵⁴ Australia Institute, *Committee Hansard*, 26 October 2022, p. 2.

¹⁵⁵ Professor Luke Beck, *Submission 356*, p. 4.

¹⁵⁶ Professor Luke Beck, *Submission 356*, pp. 5-6.

¹⁵⁷ Dr Kevin Bonham, *Submission 405*, p. 3.

¹⁵⁸ Dr Colleen Lewis, *Committee Hansard*, 17 October 2022, p. 3.

¹⁵⁹ Dr Colleen Lewis, Private capacity, *Committee Hansard*, 17 October 2022, p. 4.

¹⁶⁰ Australian Greens, *Committee Hansard*, 3 November 2022, p. 25.

that administering any laws would erode the public's trust in the AEC's ability to remain impartial:

I would strongly support the view of the AEC that they should not be involved in this exercise. It's not something in which they have a developed skill at the moment, so they are not in that sense the obvious regulator, but I think the more important point is that, as was flagged in the earlier discussion, there's an awful lot hanging on public trust in our election administration bodies. We see in other countries now the consequences of that trust falling away. If the AEC were to be involved, the latent objective of that would be to draw on the reserves of public trust in the AEC to give credibility to the process of administering the truth-in-advertising laws. The risk is that the flow would be the other way and that the challenges of administering the laws would poison the public trust in the AEC.¹⁶¹

3.143 Senator Pocock voiced his concerns about 'putting the Electoral Commissioner in the position of determining truth in advertising [as it] has potential to undermine their credibility as an impartial actor.'¹⁶²

3.144 Professor Tham suggested the issue be looked at differently, noting that the AEC would only be making determinations on political advertising retrospectively:

You make a statement that is purportedly false, and then there's basically enforcement proceedings and so forth. I would encourage the committee to think about ex ante measures. By this I mean political parties and candidates having a certain code to ensure the veracity of the statements they make. For example, before a political ad goes up, you might have the party secretary sign it off and say, 'I'm satisfied to the best of my endeavours that this statement is true.' Then there would be a process to back that up, and, if they deviate from that process, you could have a certain set of consequences, including the reduction of public funding. I think the Australian Electoral Commission could quite easily police that, because you are not policing whether the statement is true or false but whether the parties or candidates have followed very specified procedures.¹⁶³

3.145 While supportive of establishing truth in advertising laws, the AEC stated that they wished to remain non-partisan and therefore should not be the arbiter of truth:

In terms of truth in advertising, any involvement of any electoral administration body, I think, runs counter to the principles of neutrality and non-partisanship. The moment the commissioner makes a ruling about a fact, that someone said, you're alienating a large proportion of the population, because at election time, in particular, it's a contest of ideas. One's person's fact is another person's falsehood. I think there is a role for some form of truth in advertising, and I wish

¹⁶¹ Mr Michael Maley, *Committee Hansard*, 17 October 2022, p. 27.

¹⁶² Senator David Pocock, *Submission 416*, pp. 5-6.

¹⁶³ Professor Joo-Cheong Tham, *Committee Hansard*, 17 October 2022, p. 4.

every success to whoever is doing that, but I prefer not the AEC to be the organisation involved in that process.¹⁶⁴

- 3.146 The AEC also highlighted the significant additional administrative burden that would be placed on them if they were to have responsibility over truth in advertising laws.¹⁶⁵ They were however cognisant of electors' frustrations over the AEC's current ability to investigate complaints:

However, a significant number of complaints [during the 2022 Federal election] also related to section 329 of the Electoral Act, which regulates misleading and deceptive electoral communications. ... The current formulation of section 329 of the Electoral Act (misleading and deceptive publications) lacks clarity, making it difficult to enforce. Electors expressed frustration at the current scope and purpose of section 329, and the Electoral Act's role in regulating truth in electoral advertising.

Electors frequently appeared to want more regulatory involvement from the AEC to achieve outcomes. Reforms could be made so the AEC has the necessary powers to investigate complaints and gather sufficient evidence for the ability to enforce the statutory regime in a more timely manner.¹⁶⁶

- 3.147 The ACCC was also put forward as a possible regulator as they already have experience in regulating under other federal deceptive and misleading conduct laws. Professor Beck stated that if the ACCC 'were to take this on then it's really just a very modest expansion of their existing remit for deceptive and misleading advertising laws. I think that would also be a workable regulator.'¹⁶⁷ Professor Beck elaborated on the reasons why the ACCC would be an appropriate regulator:

It has a mandate to deal with other deceptive and misleading advertising laws in the commercial advertising context et cetera, so they're possibly the ones with the existing skill base to take this on. You wouldn't have to create a new capability and capacity. In fairness, the AEC does not have that existing skill base and capability to do that. So there are questions about perceptions of being partisan and political, but there's also a more practical consideration that they don't have the experience and skillset and people yet to deal with it, whereas if the ACCC were to take this on then it's really just a very modest expansion of their existing remit for deceptive and misleading advertising laws. I think that would also be a workable regulator.¹⁶⁸

- 3.148 The ACCC did not however believe that they were the appropriate agency to regulate political advertising laws, stating that it would impact on their effectiveness as regulator of competition and consumer issues:

¹⁶⁴ Australian Electoral Commission, *Committee Hansard*, 28 September 2022, p. 4.

¹⁶⁵ Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 12.

¹⁶⁶ Australian Electoral Commission, *Submission 330*, p. 9.

¹⁶⁷ Professor Luke Beck, *Committee Hansard*, 17 October 2022, p. 4.

¹⁶⁸ Professor Luke Beck, *Committee Hansard*, 17 October 2022, p. 4.

We are not really focused on political debate. There is a long line of precedents that assist with determining the line between the two. We're happy to talk about those as questions arise. We pick up the submissions and the areas of topics, as we have in the past, suggestions that the ACCC or our legislation might seek to deal with those issues. It would, with respect, have a significant impact on the clarity of our role and draw the independent champion of competition and consumer issues into political matters, which we think would impact our effectiveness.¹⁶⁹

- 3.149 The ACCC added that they currently operate in the judicial system and are not the arbiter of what is misleading or deceptive, noting that there was 'quite a difference in terms of roles, mandates and missions between regulating the marketplace and becoming involved in matters of political discussion, and we think that it's not a good transition or role for an agency such as the ACCC.'¹⁷⁰
- 3.150 The HRLC suggested the AAT as another alternative for enforcing a prohibition on inaccurate and misleading electoral matter. They did note some concerns that 'any decisions regarding electoral matter [made by the AAT] would risk worsening trust in elections rather than improving it.'¹⁷¹
- 3.151 The AEC proposed ACMA as the repository of any new truth-in-advertising powers.¹⁷²
- 3.152 Several submitters recommended establishing an independent regulator or external review process. The Australian Greens suggested establishing laws to address misleading political advertising through an 'independent, external review process to evaluate complaints, with rapid adjudication and a clear appeals process.'¹⁷³
- 3.153 Reset Australia suggested establishing a Key Performance Indicator (KPI) reporting regime:
- That the government work with ACMA, DIGI and the signatories to "The Australian Code of Practice on Disinformation and Misinformation" to establish a standard KPI reporting regime that would provide comparison and a broad overview of the mis- and disinformation environment in Australia. This should be informed by, and comparable to the European Union's Disinformation Code.¹⁷⁴
- 3.154 Senator Pocock endorsed the 'joint statement released by 16 civil society organisations, including the HRLC, Transparency International Australia and the Australian Council of Social Services, in the lead up to the 2022 election that any laws should be enforced by a well-resourced independent regulator.'¹⁷⁵

¹⁶⁹ Australian Competition and Consumer Commission, *Committee Hansard*, 18 October 2022, p. 29.

¹⁷⁰ Australian Competition and Consumer Commission, *Committee Hansard*, 18 October 2022, p. 29.

¹⁷¹ Human Rights Law Centre, *Submission 418*, pp. 16-17.

¹⁷² Australian Electoral Commission, *Committee Hansard*, 3 November 2022, p. 7.

¹⁷³ Australian Greens, *Submission 432*, p. 5.

¹⁷⁴ Reset Australia, *Submission 420*, p. 12; see also pp. 10-12.

¹⁷⁵ Senator David Pocock, *Submission 416*, p. 5.

- 3.155 DIGI expressed the view that while truth-in-political-advertising laws would fill a gap, ‘truthfulness of a political advertisement is best determined by an independent regulator or a court rather than by advertising services providers, who rarely have that sufficient information to assess the accuracy of statements and questions.’¹⁷⁶

Fines or other sanctions

- 3.156 A few submitters suggested that the current penalties or fines at the state level would not act as a deterrent if established at the federal level.¹⁷⁷ As noted above, Professor Williams suggested looking at much higher fines or criminal sanctions.¹⁷⁸

- 3.157 The Australia Institute suggested that fines could have a deterrent effect adding:

One option would be to have fines that are at some level proportionate to the level of the advertising campaign, and that way you’d capture, firstly, an ad that’s done more harm than another ad, but also roughly the resources available to one party or candidate versus another.¹⁷⁹

Improving media literacy

- 3.158 Evidence received as part of this inquiry showed a need to improve the public’s media literacy as one mechanism to combat misinformation and disinformation. The AEC’s Stop and Consider campaign, outlined above, is an example of this.

- 3.159 The Australian Media Literacy Alliance (AMLA) noted that overall levels of civic participation are low, with four out of ten Australians (39%) having not undertaken any of the seven activities including keeping up to date on politics, following a party or politician and commented on policy issues online in the past 12 months.¹⁸⁰ They added:

Most Australians have had access to very few sources of media literacy support in their lifetime ... Almost half of adult Australians have had access to no source of support (30%) or access to only one source of support (17%) to help them to access, use, understand and create media across their lifetime based on the list of eight sources of support we provided [including ‘family’, ‘online resources’ and ‘friends’].¹⁸¹

¹⁷⁶ Digital Industry Group Inc., *Committee Hansard*, 18 October 2022, p. 3.

¹⁷⁷ The Australia Institute, *Submission 412*, p. 11; Professor George Williams, *Committee Hansard*, 17 October 2022, p.17; Human Rights Law Centre, *Submission 418*, p. 15.

¹⁷⁸ Professor George Williams, *Committee Hansard*, 17 October 2022, p.17.

¹⁷⁹ Democracy and Accountability Program, The Australia Institute, *Committee Hansard*, 26 October 2022, p. 5.

¹⁸⁰ Notley T, Chambers S, Park S and Dezuanni M, Australian Media Literacy Alliance, *Adult Media Literacy in Australia: Attitudes, Experiences and Needs*, p. 72.

¹⁸¹ Notley T, Chambers S, Park S and Dezuanni M, Australian Media Literacy Alliance, *Adult Media Literacy in Australia: Attitudes, Experiences and Needs*, p. 12.

- 3.160 The ABC noted it was important to direct users to authoritative sources of information such as RMIT ABC Fact Check.¹⁸² Meta advised that they have taken steps to increase transparency through their publicly available Ad Library and both Meta and Google provide databases which can be searched by members of the public.¹⁸³
- 3.161 The Australian Greens commented that the ‘question of truth in political advertising needs to be balanced with increasing civic literacy and critical thinking.’¹⁸⁴ DIGI also argued that improving digital media literacy is an effective way to combat misinformation and disinformation.¹⁸⁵

Public archive of advertisements

- 3.162 Multiple witnesses suggested that publicly available archive of all political advertisements would be an important step for transparency.
- 3.163 Reset Australia called for an ‘enforced, comprehensive library of the political ads being run on the platforms’:
- That means having detailed information about how each is being targeted. It’s really understanding that, if there is a candidate who is running ads in different parts of their electorate or in different parts of the country, we should be able to see how that’s being targeted. That sort of access should be provided in ways that are useful to analysts. Rather than having a clunky, manual platform, providing things like an API access to the ad library would help to speed up that analysis. It could be done in real time by those analysts. Of course, this should apply to all platforms.¹⁸⁶
- 3.164 Senator Pocock stated that ‘digital ad libraries which allow people to see what ads political parties are running and where are part of the solution.’¹⁸⁷
- 3.165 The Australia Institute expanded on the benefits of an ad library in which electoral advertisements would be required to be submitted to a publicly accessible archive:
- Then you’d immediately have information about the kinds of ads that parties and candidates are running, you’d have all the information there about what’s in the ad and you’d have that broader public scrutiny where journalists and members of the public could look at everything that’s being put out. So that’s worth considering as well.¹⁸⁸

¹⁸² ABC News Online, ‘Fact Check’, viewed on 21 December 2022, www.abc.net.au/news/factcheck/. Australian Broadcasting Corporation, *Committee Hansard*, 18 October 2022, p. 36.

¹⁸³ Meta, *Submission 421*, p. 30; Digital Industry Group Inc., *Committee Hansard*, 18 October 2022, p. 3.

¹⁸⁴ Australian Greens, *Committee Hansard*, 3 November 2022, p. 23.

¹⁸⁵ Digital Industry Group Inc., *Committee Hansard*, 18 October 2022, p. 5.

¹⁸⁶ Reset Australia, *Committee Hansard*, 18 October 2022, p. 40.

¹⁸⁷ Senator David Pocock, *Submission 416*, p. 6.

¹⁸⁸ The Australia Institute, *Committee Hansard*, 26 October 2022, p. 4.

- 3.166 They added that there was an additional benefit in ‘requiring electoral advertisements to be submitted to a publicly accessible archive could help complainants or the commission locate an advertisement more quickly.’¹⁸⁹
- 3.167 Some submitters have proposed a public archive of other election materials, such as how-to-vote cards, in addition to electoral advertising. Mr Jordan suggested ‘that any material intended to be distributed or displayed at a polling place — including placards, posters, “how-to-vote” instructions and third party campaign “scorecards” — be lodged in a publicly accessible database at least a week before the start of the polling period.’¹⁹⁰
- 3.168 Mr Jordan noted that ‘most political parties have their how to vote instructions available online before the polling period starts already, so this would not be an administrative burden for most.’¹⁹¹
- 3.169 The HRLC was of the view that providing how-to-vote cards to a regulator in advance of an election would provide time to assess their factual accuracy ahead of the election, ‘so you can’t weaponise these laws against opponents by asking for an injunction to stop people from handing out how-to-vote cards on election day, which we know is quite a common practice.’¹⁹²

Committee comment

- 3.170 Australia has some of the most secure and democratic elections in the world. However, democracy is under increased threat from rising public mistrust, including resulting from the proliferation of misinformation and disinformation. Digital platforms around the world enable the spread of mis-truths and half-truths online. Advances in technology are making it harder and harder for members of the public to determine what material is factual. Lies, misinformation and disinformation are spreading at an exponential rate.
- 3.171 Elections in some of the world’s most established democracies have been severely impacted by this ongoing threat. The inability to establish whether information is reputable and reliable is steadily eroding trust in our democratic institutions.
- 3.172 As noted at the beginning of this chapter, the High Court of Australia has held that the Commonwealth Constitution gives rise to an implied freedom of political communication. It also affirmed that laws relating to election integrity are legitimate in implied freedom cases providing that they reasonably serve a legitimate end.
- 3.173 Action must be taken to combat the effects of misinformation and disinformation, but any action must be balanced, so that freedom of political communication is not inhibited or placed at risk. Legislative change must be for a legitimate purpose,

¹⁸⁹ The Australia Institute, *Submission 412*, p. 25.

¹⁹⁰ Mr Travis Jordan, *Submission 245*, p. 6.

¹⁹¹ Mr Travis Jordan, *Submission 245*, p. 37.

¹⁹² Human Rights Law Centre, *Committee Hansard*, 17 October 2022, p. 17.

proportional, valid and appropriate. Any changes to existing structures, institutions or legislative or regulatory frameworks must therefore be carefully considered.

- 3.174 The Committee acknowledges that the Australian community has an expectation that the political communication that they receive is credible and factual. The majority of submitters who provided evidence to this inquiry on these issues recommended applying truth in political advertising laws to statements of fact as well as to authorised advertisements.
- 3.175 While additional consultation may be needed on specific aspects at the Commonwealth level, it is clear that there are models, such as the South Australian legislation, that prove that additional regulation can be successful over time.
- 3.176 The Committee notes the complexity of introducing truth in political advertising laws and the need to ensure any system still allows for freedom of political communication. Noting that some participants in this inquiry argued that too many questions would arise from the introduction of legislation regulating truth in political advertising, the Committee encourages the Government to ensure any legislation in this area to take into consideration all such concerns.
- 3.177 It will take time to put an appropriate system in place and that any new system will need a substantial education and communication effort to ensure participants are aware of their responsibilities.
- 3.178 Perhaps one of the most contentious aspects to consideration of truth in political advertising is who would be responsible for administering it. With this question having been put to many witnesses who have provided evidence to the Committee, on balance it appears that the AEC is the organisation that is best placed to do this.
- 3.179 The Committee recognises the AEC's hesitation in taking on responsibility for administering truth in political advertising. However, the experience of the South Australian Electoral Commission demonstrates that, while on a substantially smaller scale, an electoral commission can administer a system like this without compromising the respect in which it is held by political actors and the wider voting public.

Recommendation 11

- 3.180 The Committee recommends that the Australian Government develop legislation, or seek to amend the *Commonwealth Electoral Act 1918*, to provide for the introduction of measures to govern truth in political advertising, giving consideration to provisions in the *Electoral Act 1985 (SA)*.**

Recommendation 12

- 3.181 The Committee recommends that the Australian Government consider the establishment of a division within the Australian Electoral Commission, based on the principles currently in place in South Australia, to administer truth in**

political advertising legislation, with regard to ensuring proper resourcing and the need to preserve the Commission's independence as the electoral administrator.

- 3.182 The Committee acknowledges the complexities faced by possible administration of truth in advertising laws, and notes that a range of options have been proposed to establish a mechanism by which this legislation could be implemented and enforced. The Committee is impressed by the work being undertaken in South Australia.
- 3.183 The Committee acknowledges the range of views presented in evidence as how such a body could be established, including whether a new institution should be created, or whether the duties could be undertaken following the expansion of the scope of an existing agency, such as the ACMA, the ACCC, or the Australian Electoral Commission. The Committee believes the appropriate body to administer this is the Australian Electoral Commission given its central role in administering elections. The Government should work with the Electoral Commissioner to develop the most suitable model and ensure it is appropriately resourced.

Recommendation 13

- 3.184 The Committee recommends that, providing the Committee receives a reference to conduct a review of the next federal election, consideration of the new framework be included in terms of reference to the Committee. Such consideration could include the effectiveness of the revised arrangements, and identification of any further improvements.**



4. Aboriginal and Torres Strait Islander participation in elections

- 4.1 Introduced in the House on 30 March 2023, the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023, if passed, would amend the ‘Australian Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice.’¹ It is important that avenues are explored to encourage increased electoral participation and lift enfranchisement prior to the proposed referendum, to ensure that all Australians, including Aboriginal and Torres Strait Islander people, vote in the referendum.
- 4.2 This chapter provides a high-level overview of the evidence received to date in relation to electoral participation and lifting enfranchisement of Aboriginal and Torres Strait Islander people.

Participation and enfranchisement

- 4.3 As noted, these issues are still being considered by the Committee, and at the time of this Interim Report’s consideration, hearings are being planned to further explore themes in evidence received to date.
- 4.4 Significantly, the Committee has considered some of these issues in the context of its February 2023 advisory report on the Referendum (Machinery Provisions) Amendment Bill 2022. As noted during that inquiry, the changes proposed by the Australian Government in that legislation were to update the framework for the conduct of a referendum specifically relating to the potential establishment of the Aboriginal and Torres Strait Islander Voice to Parliament.
- 4.5 Some of the most consistent themes in evidence received so far relate to electoral participation in general, and this section will consider how this relates to Aboriginal and Torres Strait Islander people in particular. Other participation issues, particularly relating to terms of reference *f* will be canvassed in the final report.

Findings in Referendum (Machinery Provisions) inquiry

- 4.6 The first recommendation of the inquiry held over summer 2022/23 was that the Government:

¹ The Hon. Mark Dreyfus MP, Attorney-General, Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023, Second Reading speech, 30 March 2023.

... strengthen the opportunities for enfranchisement and participation in the referendum, including considering possible amendments to the Referendum (Machinery Provisions) Amendment Bill 2022, to allow the Australian Electoral Commission to support increased enrolment and participation, particularly of Aboriginal and Torres Strait Islander people, including in remote communities.²

- 4.7 While this recommendation was specific to the completed inquiry, the Committee believes it remains relevant in the context of this broader inquiry into the 2022 election.
- 4.8 The Committee considers that there is still evidence to gather in relation to electoral participation and accessibility of voting, and intends to hold more hearings, including with Indigenous communities in the Northern Territory, to further explore the issues raised in submissions.

Voter engagement

- 4.9 Aboriginal and Torres Strait Islander people have historically been underrepresented in federal electoral participation, both in enrolment and in voter turnout at elections.
- 4.10 The Australian Electoral Commission (AEC) estimated that prior to the 2022 Federal Election, around 79.3 per cent of the Indigenous voting-age population was enrolled to vote, significantly lower than the national population enrolment rate of 96.3 per cent.³ The national Indigenous enrolment rate has continued to grow in a steady positive trend over recent years, outpacing the growth of the overall enrolment rate, and at last estimation is now up to 84.5 per cent as at the end of December 2022.⁴
- 4.11 The rate of enrolment is only part of the picture. Although the AEC does not estimate Indigenous turnout rates, many submitters have noted that turnout of Aboriginal and Torres Strait Islander people is likely to be significantly lower than the enrolment rate, particularly where a seat encompasses remote areas. For example, the Northern Territory seat of Lingiari, which accounts for most of the territory and where over 40 per cent of residents are Indigenous, voter turnout at the 2022 Federal Election was just under 67 per cent, compared with nearly 80 per cent in the Darwin-based seat of Solomon and 90 per cent nationally.⁵

² Joint Standing Committee on Electoral Matters, *Advisory report on the Referendum (Machinery Provisions) Amendment Bill 2022*, 13 February 2023, p. ix.

³ Statistics as at 31 December 2021. See Australian Electoral Commission, 'Indigenous enrolment rate', viewed 6 February 2023, <https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/performance/indigenous-enrolment-rate.htm>; Australian Electoral Commission, 'Size of the electoral roll and enrolment rate 2021', viewed 7 February 2023, <https://www.aec.gov.au/Enrolling_to_vote/Enrolment_stats/national/2021.htm>

⁴ Australian Electoral Commission, *Submission 330*, p. 24; Australian Electoral Commission, 'Record increase in estimated Indigenous enrolment ahead of Referendum', *Media Release*, 7 February 2023.

⁵ Australian Electoral Commission, 'Tally Room: Lingiari, NT', viewed 20 April 2023, <<https://results.aec.gov.au/27966/Website/HouseDivisionPage-27966-306.htm>>; Australian Electoral Commission, 'Tally Room: Solomon, NT', viewed 20 April 2023, <<https://results.aec.gov.au/27966/Website/HouseDivisionPage-27966-307.htm>>; Australian Electoral

- 4.12 However, the accuracy of the AEC's Indigenous participation statistics has been called into question.⁶ Dr Morgan Harrington and Dr Francis Markham from the Australian National University's Centre for Aboriginal Economic Policy Research suggested that the methods used by the AEC to estimate the numbers of Indigenous voters may not be accurate because the figure used by the Australian Bureau of Statistics is outdated. They argued that it is possible that Indigenous enrolment rates are not increasing:

Once the information recently released by the ABS from the 2021 Census and post-enumeration survey are taken into account and extrapolated forward to 2022 ... the Indigenous enrolment rate in 2022 would be around 72.4%, showing a decline on the AEC's estimate of 74.7% in 2017, not an increase to 81.7%.⁷

- 4.13 Analysis by Dr Harrington and Dr Markham also suggests that turnout was as low as 50.1 per cent in predominately Indigenous small statistical areas across the country at the 2022 election (that is, at least 80 per cent of the population), representing a 9.3 per cent decline from the turnout rate of 60.3 per cent in the same areas at the 2019 election. They found that 'low turnout rates are a feature of areas with predominantly Indigenous populations across the remoteness gradient, but that the issue is most acute in the remotest areas'.⁸
- 4.14 The Law Council of Australia suggested that consideration should be given as to whether current initiatives by the Australian Bureau of Statistics to improve its data on Aboriginal and Torres Strait Islander people can be leveraged to improve the data available relating to electoral participation.⁹

Barriers faced during the 2022 election

- 4.15 Aboriginal and Torres Strait Islander people, particularly in remote communities, face higher barriers to enrolment and voting than the general population, such as language and cultural barriers, and difficulty accessing polling places or other voting opportunities.
- 4.16 Evidence received to date has raised a broad range of limitations and difficulties faced by Indigenous people at the 2022 Federal Election. Some notable examples include:

Commission, 'Voter turnout – previous events', viewed 20 April 2023, <https://www.aec.gov.au/Elections/federal_elections/voter-turnout.htm>; Community and Public Sector Union, *Submission 389*, [p. 3]; Northern Land Council, *Submission 423*, p. 2; Dr Brendan Long, *Submission 404*, [p. 3].

⁶ Law Council of Australia, *Submission 1379*, pp. 8, 10, 11.

⁷ Dr Morgan Harrington & Dr Francis Markham, *Submission 430*, p. 6.

⁸ Dr Morgan Harrington & Dr Francis Markham, *Submission 430*, p. 7.

⁹ Law Council of Australia, *Submission 1379*, p. 11.

- A severe shortage of language interpreters, especially in the seat of Lingiari;¹⁰ and a lack of materials, such as iPads with explanatory videos, being available in language on polling day to assist voters.¹¹
 - People being unable to vote due to:
 - being unable to travel to voting booths available on election day;
 - limited time for voting under the Remote Area Mobile Polling program, as little as one hour in some locations;
 - scheduled mobile polling times not being adequately communicated to community members beforehand;
 - scheduled mobile polling times being changed or booths missed altogether due to last-minute logistical problems, including helicopter problems.¹²
 - Unenrolled adults being turned away from polling places, particularly newly eligible 18-year-olds who did not understand the process for enrolment ahead of election day.¹³
- 4.17 There is a view among submitters that many of these issues stemmed directly from a lack of adequate funding and resourcing to the AEC to deliver appropriate electoral services to Indigenous and remote communities, in particular cuts to the AEC Darwin office’s staffing and underfunding of the Indigenous Electoral Participation Program.¹⁴
- 4.18 Submitters have also noted the particular importance of addressing barriers to enrolment and participation ahead of the referendum on a First Nations Voice to Parliament, due in the later half of 2023.¹⁵ The Northern Land Council (NLC) submitted that:
- With the Prime Minister committing to hold a referendum on the Voice to Parliament within the current term of government, the need to address Aboriginal disadvantage in electoral participation – in terms of both enrolment and voting – has taken on a new urgency. It is imperative that all eligible Aboriginal people have the opportunity to have their say.¹⁶

¹⁰ The Australia Institute, *Submission 412*, pp. 34-35; Human Rights Law Centre, *Submission 418*, p. 22.

¹¹ Ms Theresa Roe, Secretariat Coordinator, Aboriginal Peak Organisation of the Northern Territory (APONT), *Committee Hansard*, 23 November 2022, p. 4; Northern Land Council, *Submission 423*, p. 8; Australian Greens, *Submission 432*.

¹² Ms Theresa Roe, Secretariat Coordinator, APONT, *Committee Hansard*, 23 November 2022, pp. 4-5; Australia Institute, *Submission 412*, p. 34; Law Council of Australia, *Submission 1379*, pp. 6, 10; Dr Morgan Harrington & Dr Francis Markham, *Submission 430*, pp. 12-13.

¹³ Mr Matthew Ryan, private capacity, *Committee Hansard*, 23 November 2022, p. 10; Ms Theresa Roe, Secretariat Coordinator, APONT, *Committee Hansard*, 23 November 2022, p.10.

¹⁴ Human Rights Law Centre, *Submission 418*, p. 21; Northern Land Council, *Submission 423*, p. 4;

¹⁵ See, for example, Dr Morgan Harrington & Dr Francis Markham, *Submission 430*, p. 1; Law Council of Australia, *Submission 1379*, p. 10.

¹⁶ Northern Land Council, *Submission 423*, p. 2.

Current initiatives for enrolment and participation

- 4.19 A range of programs and initiatives are currently underway to improve Indigenous enrolment and participation in federal elections.¹⁷
- 4.20 A key initiative the AEC uses to support Indigenous electoral participation is through the provision of Remote Area Mobile Polling (RAMP). Under this program AEC staff visit remote communities in the two weeks before election day to conduct polling. During the 2022 election period, 38 remote polling teams visited 348 remote locations to deliver polling services.¹⁸
- 4.21 In evidence to the Committee, the Aboriginal Peak Organisation of the Northern Territory (APO NT) noted that the AEC did not reach all remote locations it had planned to:
- ... in East Arnhem, the polling centres didn't turn up to some communities, even though the communities were advised that the polling centre was coming for certain hours of the day, an hour or two. There were quite a few homelands where they didn't turn up. People are very busy out there and they have their own business to sort out. A lot of our people do want to vote; they wait around for the teams and they didn't turn up. Apparently one of the helicopters ran out of fuel, so they couldn't turn up. There was no contact with the communities. No-one from the AEC or the team contacted the communities to say they couldn't turn up. Then they were looking at rescheduling. This is a big problem about how the AEC engages with these communities to make sure these polls are set up, that people know what is going on.¹⁹
- 4.22 The AEC has indicated it understands these concerns and plans to improve in future elections, highlighting the complexity and resources needed in delivering RAMP:
- At the last election, one of our teams had a serious road accident and was therefore delayed. One team got stuck in a remote airfield because of fog and issues with the aircraft. That starts to complicate the schedule. I would point out that we do a large amount of work with Indigenous communities before we arrive in those communities. We advertise the service delivery. We have a team of people who work with those communities beforehand to make sure that they're aware of the requirements and the opportunities for them to vote. ... Our aim is to try to provide as much opportunity for people to vote as is possible, given that this is a difficult logistical area for us. We are trying to expand on what we are already doing. We are well aware of the challenges that these remote communities face.²⁰

¹⁷ Australian Electoral Commission, *Submission 330*, pp. 24, 32-33. Australian Electoral Commission, *Supplementary submission 330.2*, pp. 1-3.

¹⁸ Australian Electoral Commission, *Submission 330*, p. 28.

¹⁹ Aboriginal Peak Organisation of the Northern Territory, *Committee Hansard*, 23 November 2022, p. 4.

²⁰ Australian Electoral Commission, *Committee Hansard*, 8 March 2023, p. 10.

4.23 The Indigenous Electoral Participation Program (IEPP) represents a broader approach to participation and enrolment. In the IEPP, the AEC partners with local communities, Indigenous-led organisations and other local service providers to support electoral participation. During the 2022 election period, the AEC managed partnerships with 82 groups across the country delivering ‘localised, culturally appropriate engagement’ including: voter education workshops; in-language materials education materials; community events focused on enrolment, formality, and temporary election workforce employment opportunities; digital engagement; and targeted youth engagement activities.²¹

4.24 Local bodies in the Northern Territory, including the NLC and Central Land Council (CLC) highlighted the need for partnerships, with the CLC noting:

It is important that all efforts to increase the electoral participation of Aboriginal people in remote communities are sustained, designed with communities, informed by local expertise and enhanced by the trust engendered through local staff and relationships. We note that there is substantial opportunity to create both short and long-term job opportunities for local people to support ongoing electoral participation efforts and staffing during election periods.²²

4.25 Partnerships with the Northern Territory Electoral Commission (NTEC) for territory and local government elections were suggested as a starting point for work at a federal level, with the Central Desert Regional Council stating:

In the 2021 Northern Territory (NT) Government local Government election held in August, local government entered into an agreement with the NT Electoral Commission. This agreement include regional council’s acting on behalf of the returning officer as the polling agent with our service delivery centres operating as voting centres. For our central desert region, this meant we had 9 voting centres with over 20 polling officers covering the 282,093km². Our polling officers also travelled to surrounding outstations and homelands to enable a wider reach for the majority of our residents registered on the roll. This initiative resulted in an increase in resident participation across the NT in the 2021 local government elections.²³

4.26 As mentioned earlier, the lack of interpreters at polling booths was also of concern. Mr Matthew Ryan, appearing in a private capacity before the Committee said that he ended up stepping in to help explain the voting process to local residents at one booth in his community.²⁴

4.27 This concern was shared by Minister the Hon. Selena Uibo, representing the Northern Territory Government, who compared the deployment of interpreters in the last territory election with the situation in the 2022 federal election:

²¹ Australian Electoral Commission, *Submission 330*, p. 24.

²² Central Land Council, *Submission 478*, p. 10.

²³ Central Desert Regional Council, *Submission 333*, pp. 2-3.

²⁴ Mr Matthew Ryan, Private capacity, *Committee Hansard*, 3 November 2022, p. 4.

I often saw—and the NTEC did this really well in previous elections—people who were employed previously, or who worked in and around the region, knew family names and groups. It was: 'Oh, yes. Your name's Nundhirribala'—bang, off they went, typing it in. There was that smooth process of people getting their names ticked off when they were voting, whereas the AEC were basically looking around on the day [in 2022] trying to find community members in some of the polling places that I was at and signing people up on the spot.²⁵

Federal Direct Enrolment and Update

- 4.28 Electoral enrolment confers entitlement to vote. The enrolment processes for federal elections is set out in section 155 of the *Commonwealth Electoral Act 1918* (the Electoral Act) which:

... provides for the close of rolls for a federal election seven days after the issue of the writ. The close of rolls period has traditionally allowed the AEC to complete last-minute enrolment processing and the printing of the certified list of electors.²⁶

- 4.29 The Parliamentary Library, in its Research Paper *Election day enrolment: a quick guide*, elaborated on the impetus behind closing the electoral roll:

The requirement for a close of rolls period largely comes from a time when most enrolment processing was paper-based. The AEC regularly faced a pre-election torrent of enrolment forms being submitted by people who had turned 18 or moved and had neglected to update their enrolment until an election was announced.²⁷

- 4.30 Advancements in technology and processes using online enrolment and Federal Direct Enrolment and Update (FDEU) have streamlined this process and the electoral roll is continuously updated. The Parliamentary Library noted:

The FDEU program continually and proactively updates electors' details with an existing enrolment and enrolls new electors using trusted data from other government agencies, such as drivers licence data and Centrelink data. Electors are notified of the action and only need to respond if something is wrong. As a result, the electoral roll is continuously updated, reducing the need for large-scale last-minute changes.²⁸

- 4.31 Previously, the FDEU program required a street address, which effectively excluded many Indigenous communities relying on a mailbag or PO Box for residents.

²⁵ Ms Selena Uibo, Minister for Aboriginal Affairs, Northern Territory Government, *Committee Hansard*, 3 November 2022, p. 7.

²⁶ Parliamentary Library, Research Paper Series 2022-23, *Election day enrolment: a quick guide*, 21 February 2023, pp. 1-2.

²⁷ Parliamentary Library, Research Paper Series 2022-23, *Election day enrolment: a quick guide*, 21 February 2023, p. 2.

²⁸ Parliamentary Library, Research Paper Series 2022-23, *Election day enrolment: a quick guide*, 21 February 2023, p. 2.

4.32 In September 2022, the AEC announced a pilot program to expand the FDEU to remote parts of the Northern Territory, Queensland and Western Australia, notifying people about direct enrolment via email and community mailboxes where no street address is available, in an effort to increase Indigenous enrolment rates.²⁹ With promising success from these initiatives to date, in April the AEC announced that it would be expanded:

The use of community mailbags and email as methods of notification for people without mail delivery to their residence has proven to be effective in many cases with appropriate rules and processes built into when it can be applied.

These processes are now part of the AEC's ongoing direct enrolment program for the next application to be processed soon across the country and will assist in further raising enrolment in remote communities.³⁰

4.33 At the tabling of this report, the Electoral Act contains specific provisions that enable a voter to place a provisional (declaration) vote in circumstances where they attend a polling place and their name is not on the certified list for the division (section 235 of the Electoral Act):

If a voter attends a polling place and their name is not on the certified list of electors, the voter may cast a provisional vote. The elector's ballot is placed in an envelope with a signed declaration of eligibility, and certain other details used to establish the elector's identity.³¹

4.34 Subsequent to the polling day, the AEC undertakes a number of checks to identify the elector before they allow the provisional vote to be used as a claim for enrolment:

After the polling, the details on the envelope are checked against the roll and if the elector is identified, the ballot paper is admitted to the count. If the elector is not found to be correctly enrolled their vote cannot be counted. However, the Electoral Act allows for the provisional vote envelope to be used as a claim for enrolment (essentially, the Electoral Commissioner declares the provisional vote envelope as an approved form for a claim for enrolment). While the elector would not be able to have their vote counted at that election, their provisional vote envelope will allow the AEC to enrol them for the next election.³²

²⁹ Australian Electoral Commission, 'Direct Enrolment and Update', viewed 20 April 2023, <https://www.aec.gov.au/Enrolling_to_vote/About_Electoral_Roll/direct.htm>; Australian Electoral Commission, 'Significant boost to First Nations enrolment announced', *Media Release*, 1 September 2022. See also, Human Rights Law Centre, *Submission 418*, pp. 21-22; Dr Morgan Harrington & Dr Francis Markham, *Submission 430*, p. 11.

³⁰ Australian Electoral Commission, 'Direct enrolment program expanded for Australians in remote communities', *Media Release*, 14 April 2023.

³¹ Parliamentary Library, Research Paper Series 2022-23, *Election day enrolment: a quick guide*, 21 February 2023, p. 2.

³² Parliamentary Library, Research Paper Series 2022-23, *Election day enrolment: a quick guide*, 21 February 2023, p. 2.

On the day enrolment

- 4.35 In submissions to both this inquiry and the inquiry into the Referendum (Machinery Provisions) Amendment Bill 2022, several witnesses and submitters referenced an on-the-day enrolment initiative in the Northern Territory and recommended that a similar program be considered at a federal level, particularly in the lead up to the referendum.
- 4.36 Currently, the NTEC allows provisional voting for unenrolled voters in territory elections, where unenrolled voters who attend a mobile polling service cast a declaration vote and have their enrolment assessed and processed as part of the scrutiny process.³³
- 4.37 The NTEC noted that ‘this will be particularly beneficial at remote locations where mobile voting is to occur, with the more challenging conditions for NTEC staff to conduct enrolment and education programs.’³⁴
- 4.38 The Parliamentary Library posited that amending the Electoral Act to allow for on-the-day enrolment could potentially expedite the enrolment process:

The provisional vote envelope would still be used as a claim for enrolment. The AEC could then undertake the usual enrolment checks and if the voter is entitled to be enrolled, they will then be added to the roll and their vote included in the count for that election.³⁵

- 4.39 They added that this method was not without its challenges as not all electors could meet the criteria and have their vote counted, particularly if they were located in remote areas or were Indigenous voters:

The main complication is that the elector must be able to provide sufficient details to process a claim for enrolment on their provisional vote envelope. In general, this means that the elector would be required to provide a driver’s license, passport number, Medicare number or citizenship certificate number, or have a person who is already on the roll confirm the elector’s identity. Conceivably, some proportion of electors whose vote would be otherwise allowed under this system would not be able to fulfil these criteria, including those who are already underrepresented on the roll (such as remote and Indigenous voters).³⁶

³³ Joint Standing Committee on Electoral Matters, *Advisory report on the Referendum (Machinery Provisions) Amendment Bill 2022*, pp. 15-17; Northern Territory Electoral Commission, *Submission 369*, p. 3; Northern Land Council, *Submission 423*, p. 7; Dr Morgan Harrington & Dr Francis Markham, *Submission 430*, p. 12.

³⁴ Northern Territory Electoral Commission, *2020 Territory Election COVID-19 Management Plan*, p. 5.

³⁵ Parliamentary Library, Research Paper Series 2022-23, *Election day enrolment: a quick guide*, 21 February 2023, p. 2.

³⁶ Parliamentary Library, Research Paper Series 2022-23, *Election day enrolment: a quick guide*, 21 February 2023, p. 2.

- 4.40 The NSW and Victorian Electoral Commissions both support election day enrolment for state elections. The NSW Electoral Commission provides information on its website about this:

... and notes that to enrol on election day voters will need to bring a drivers license and in some cases a passport. The Victorian Electoral Commission, in contrast, does not advertise election day enrolment on its website. However, section 108 of the Electoral Act 2002 (Vic.), established election day enrolment as part of the provisional voting requirements.³⁷

Next steps

- 4.41 The Committee has received a range of evidence about ways that participation of Aboriginal and Torres Strait Islander people can be improved through additional funding to the AEC, increased culturally appropriate and accessible communication, civics education programs, partnership with Indigenous representative bodies and community members, and enrolment initiatives.³⁸ The Committee looks forward to hearing more on these topics during its visit to the Northern Territory in June.
- 4.42 Additionally, the Committee is continuing to receive updates from the AEC on progress in these areas in advance of the upcoming referendum, and in setting the framework for further improvement ahead of the next Federal Election.
- 4.43 It is important to inquire into Indigenous participation generally, but especially considering the referendum to be held this year. The Committee believes that the Australian Electoral Commission should be appropriately resourced to ensure that Indigenous people are not being disenfranchised. The Committee looks forward into considering this significant issue further and will make further comments in its final report.

Recommendation 14

- 4.44 Consistent with the recommendation made in this Committee's *Advisory report on the Referendum (Machinery Provisions) Amendment Bill 2022*, the Committee recommends that the Australian Government strengthen the opportunities for electoral enfranchisement and participation to allow the Australian Electoral Commission to support increased enrolment and participation, particularly of Aboriginal and Torres Strait Islander people, including in remote communities.**
- 4.45 For both this year's referendum, and for future elections and referendums, the Committee believes there is important work to do to maximise electoral enfranchisement and participation. The Government should support the AEC to

³⁷ Parliamentary Library, Research Paper Series 2022-23, *Election day enrolment: a quick guide*, 21 February 2023, p. 3.

³⁸ See, for example, Northern Land Council, *Submission 423*, pp. 3–9; Mr Edward J Carter, *Submission 272*, p. 6; Fusion, *Submission 304*, p. 4; Politics in Colour, *Submission 344*, pp. 5–6.

continue to strive for higher rates of enrolment, particularly of Aboriginal and Torres Strait Islander people, whose levels of enrolment continue to lag behind that of the general population. The Committee in particular wishes to highlight initiatives for 'on the day' enrolment, and trialling further use of Secure Telephone Voting.

Recommendation 15

- 4.46 The Committee recommends the Government resource the Australian Electoral Commission to work directly with Aboriginal and Torres Strait Islander community organisations to increase Indigenous enrolment and participation, particularly in remote communities.**

Ms Kate Thwaites MP
Chair



A. Submissions

- 1 *Name Withheld*
- 2 Mr Thomas Maxwell
- 3 Mr Gary Hobson
- 4 Jo Goodman
- 5 Malcolm Mackerras AO
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- 6 Laura Phillips
- 7 Prof George Williams AO
- 8 *Name Withheld*
- 9 *Name Withheld*
- 10 *Name Withheld*
- 11 Nancy Sommerfield
- 13 *Name Withheld*
- 14 Dr Brett Biddington
- 15 Mr Damian McCrohan
- 16 Chris Curry
- 17 Shane Sullivan
- 18 Ray Cowling
- 19 Angela Munro
- 20 Rod Teale
- 21 Peter Christen
- 22 Stephen Sprada

- 23** Kathleen Robieson
- 24** Lyndon DeVantier
- 25** James Koussas
- 26** Stephen Spencer
- 27** Rosalind Butler
- 28** Graeme Tychsen
- 29** Gregory Middleton
- 30** Geoffrey Bricknell
- 31** David Leifer
- 32** Meryl & Hartley Tobin
- 33** Brynn Mathews
- 34** Suzanne Draper
- 35** Marion Hoad
- 36** Christopher Barclay
- 37** John Thompson
- 38** Warwick Sawyer
- 39** Lucy Leeming
- 40** Judith Leslie
- 41** Wayne Rogers
- 42** Tom Tabart
- 43** L Dellit
- 44** Bruce Young
- 45** Cilia O'Hagan
- 46** Anthony Mantella
- 47** Anura Sooriyabandara
- 48** Graham Wand

- 49** Marie-Louise Drew
- 50** Tony Tucker
- 51** Damien Ahchow
- 52** Andrew Heard
- 53** Cameron Muir
- 54** Bridget Payton
- 55** Merrindal Routley
- 56** Geoff Simpson
- 57** Katherine Grocott
- 58** Anne Matheson
- 59** Paul Duggan
- 60** Brian Vernon
- 61** Linda Black
- 62** Paul Foot
- 63** George Carrard
- 64** Ken Preece
- 65** Peter Franklin
- 66** Eileen Whitehead
- 67** Roger Gavshon
- 68** Simone Booth
- 69** Gary Norman
- 70** Bob Cloherty
- 71** Harry Millward
- 72** Felicity Crombach
- 73** Peter St Clair-Baker
- 74** Joan Ting

75	Jane Fernie
77	Ingrid Loewy
78	Gary Saunders
79	Steve Spangaro
80	Richard Stanford
81	Jim Edwards
82	Elizabeth Connor
83	Zoran Shelev
84	Roberta Atherton
85	Liz Kloosterman
86	Martha Knox-Haly
87	Brian Bartlett
88	Carolyn Goodall
89	Robert Simons
90	Marco Setiawan
91	Peter Lawrence
92	Helga Saunders
93	Christopher Magarey
94	Griffey Saunders
95	Robin Gardner
96	Grisel Carreira
97	Kevin Grose
98	Stephen Atkinson
99	Ken Wilkinson
100	Philip Scheul
101	Mhano Harkness

- 102** Gwen Brown
- 103** Monica O'Leary
- 104** Dr Oliver Raymond OAM
- 105** Tim Davidson
- 106** Markus Egli
- 107** Irene Small
- 108** Regina Eberle Riedl
- 109** Robert Rutkowski
- 110** Glen Philpott
- 111** Trevor Hoare
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- 113** A R Polack
- 114** Laurence Comerford
- 115** Peter Temby
- 116** Jon Peck
- 117** Darryl Nelson
- 118** Robert Marston
- 119** Vic Lorena
- 120** David Lilja
- 121** Martin Scurrah
- 122** Michael Constable
- 123** Paul Desmond
- 124** Arthur Alchin
- 125** Martine Porret
- 126** Katharine Clarke
- 127** Peter Brown

- 128** Andrew Troedel
- 129** Abigail Hodge McAvaney
- 130** Haley Lambert
- 131** Michael Kellett
- 132** Leonard Sparkes
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- 134** Kay Deaves
- 135** Tim Greenish
- 136** David Williams
- 137** Marc F
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- 139** Mark H
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- 141** Jo Whitehead
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- 143** Christy Kelly
- 144** Des Mills
- 145** Janice Hume
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- 147** John Mester
- 148** Anastasia Corsie
- 149** Denice Finnegan
- 150** Don Ingram
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- 156** Don Matthews
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- 175** Paul Pearson
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- 177** Cheryl Cooper
- 178** Brett Mason
- 179** Douglas Francis

- 180** Alexander Hood
- 181** Gregory Olsen
- 182** Dr Thomas Wilson
- 183** Emily Edwards
- 184** Luise Pearson-Bernoth
- 185** Victorian Aboriginal Legal Service
- 186** Mr John Photakis
- 187** Ms Sue Strodl
- 188** John Larin
- 189** Les Johnston
- 190** Mike Cohen
- 191** Bruce Wild
- 192** Greg Forster
- 193** Louise Beasley
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- 203** Chris Pearson
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- 205** Leonie Stubbs

- 206** Charles Cornwell
- 207** Sue Ganz
- 208** Alex Maguire
- 209** Gay Curtis
- 210** George Mercier
- 211** Mr John Steley
- 212** Kieran Howard
- 213** Nigel Carroll
- 214** Quentin Dresser
- 215** Dr Elisa Arcioni
- 216** Asphyxia .
- 217** David Owen
- 218** Martin Borri
- 219** A/Prof Klaas Woldring
- 220** Brad Darch
- 221** Mark Cramond
- 222** Dan Endicott
- 223** Sonia Powell
- 224** Ms Marilyn Rushby
- 225** Lorraine Chyne
- 226** Kerry Avenell
- 227** Brian Douglass
- 228** Michael Haines
- 229** Catherine Blunt
- 230** Jennifer Medway
- 231** Elizabeth Thurbon

- 232** Bernard Terry
- 233** Damien Hills
- 234** Michael Murphy
- 235** Mark Nelson
- 236** Dale Stohr
- 237** Gwillim Roberts
- 238** James Priest
- 239** Janaka Hirimuthugoda
- 240** Robyn Kitching
- 241** Jacquie Hilmer
- 242** Gary Barnes
- 243** Fran Dybdahl
- 244** Julie Campbell
- 245** Mr Travis Jordan
- 246** Digital Rights Watch
- 247** Maree Nutt OAM
- 248** Marie Woolnough
- 249** Bradley Durnin
- 250** Badih Anthony Roupael
- 251** Joe Lenzo
- 252** Estelle Ross
- 253** Philip White
- 254** Patrick Sergio
- 255** Margaret Hartley
- 256** Jenny Donnelly
- 257** Fabio Scalia

- 258** Mr Oscar Delaney
- 259** Ifeanna Tooth
- 260** Trevor Simmons
- 261** Angelique Van Schie
- 262** Dr Judy Hyde
- 263** Janice Haviland
- 264** Shirley Videion
- 265** Mr Ben Raue
- 266** Jeannette Douglass
- 267** Selwyn McFaul
- 268** Lynette Ryan
- 269** Hon Jonathan O'Dea
- 270** Mr James Bushell
- 271** Sietse Pos
- 272** Edward J Carter
- 273** John Chalmers
- 274** *Name Withheld*
- 275** Dr Apostolos Mavroudis
- 276** *Name Withheld*
- 277** *Name Withheld*
- 278** Australian Charities and Not-for-profits Commission
- 279** Mr Steve Dickson
- 280** Mr Michael Leeming
- 281** Mr Andrew Donnellan
- 282** A/Prof Vanessa Teague
- 283** Mrs Joanne Foreman

- 284** Mr Howard Gwatkin
- 285** Mr Robert Irvine
- 286** *Name Withheld*
- 287** The Chaser
- 288** Mr Greg & Eileen Dunstone
- 289** Mr Patrick Corr
- 290** *Name Withheld*
- 291** Voices of Hinkler
- 292** Mr Keith Pond
- 293** Mr Martin Gordon
- 294** Mr Ian Brightwell
- 295** *Name Withheld*
- 296** Mr Chris Ansted and Ms Angelika Dunker
- 297** Mr Jeffrey Waddell
- 298** Mr Russell White
- 299** Ms Jeanene Williams
- 300** Rationalist Society of Australia Inc
- 301** Mr Stuart McRae
- 302** Emeritus Professor Mike Daube
- 303** Mr Chek Ling
- 304** FUSION: Science, Pirate, Secular, Climate Emergency
- 305** Vote Australia Incorporated
- 306** Mr Ian Millner
- 307** Mr Prabha Kutty
- 308** Anthony Battaglia
- 309** Canberra Alliance for Participatory Democracy

- 310** Phil Bryant
- 312** J Moldovan
- 313** *Name Withheld*
- 314** The Hon Peter Malinauskas MP
- 315** Jeremy Buxton
- 316** Steve Chamarette
- 317** Ruth McGowan OAM
- 318** Michael Stacey
- 319** Andrea Rankin
- 320** David Reid
- 321** John Pyke
- 322** Terrence L Johnston
- 323** Proportional Representation Society of Australia
- 324** Dr Rayner Thwaites
- 325** Australian Communications and Media Authority
- 326** Andrew Pike
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- 332** Professor Lisa Hill

- 333** Central Desert Regional Council
- 334** *Name Withheld*
- 335** *Name Withheld*
- 336** Community Broadcasting Association of Australia
- 337** Marque Lawyers
- 338** ALP Abroad
- 339** *Name Withheld*
- 340** Inclusion Australia
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- 348** Mr Malcolm Baalman
- 349** Ms Allegra Spender
- 350** Carers NSW
- 351** The Centre for Public Integrity
- 352** Democracy Matters
- 353** *Name Withheld*
- 354** ANU LRSJ Research Hub
- 355** *Name Withheld*
- 356** Professor Luke Beck
- 357** Australian Council of Trade Unions (ACTU)
- 358** Commercial Radio Australia

- 359** NSW Council for Civil Liberties
- 360** Professor James Allan
- 361** The Nationals
- 362** Free TV Australia
- 363** Australian Labor Party
- 364** Ms Nicolette Boele
- 365** *Confidential*
- 366** The Samuel Griffith Society
- 367** Grattan Institute
- 368** Mr Stephen Bates
- 369** Northern Territory Electoral Commission
- 370** *Confidential*
- 371** Senator Nita Green
- 372** Mr Murray Shinkfield
- 373** Women for Election
- 374** NSW Young Liberals
- 375** Prof Kim Rubenstein
- 376** Lex Stewart
- 377** Professor Joo-Cheong Tham
- 378** Digital Industry Group Inc (DIGI)
- 379** Michael Maley PSM
- 380** David Flint
- 381** *Name Withheld*
- 382** Andrew Hirst, Liberal Party of Australia
- 383** Chris Curtis
- 384** Efstathia Sioras

- 385 Jason Burrows, Jungle Entertainment
- 386 Leeanne Torpey, Jungle Entertainment
- 387 Mr Andrew Wilkie MP
- 388 Public Health Association of Australia
- 389 Community and Public Sector Union
- 390 ABC
- 391 Craig Reucassel
- 392 The Electoral Reform Society of South Australia
- 393 Senator Gerard Rennick
- 394 GetUp
- 395 Open Politics
- 396 FamilyVoice Australia
- 397 Climate Convo, Northern Illawarra
- 398 *Name Withheld*
- 399 The National Party of Australia - NSW
- 400 Remedy Australia
- 401 Real Republic Australia
- 402 Twitter
- 403 Curtin Independent Pty Ltd
- 404 Dr Brendan Long
- 405 Dr Kevin Bonham
- 406 Thomas Killip
- 407 Professor Anne Twomey
- 408 Democratic Audit of Australia
- 409 Blind Citizens Australia
- 410 Dr Colleen Lewis

- 411** Australian Conservation Foundation
- 412** The Australia Institute
- 413** Transparency International Australia
- 414** Dr Monique Ryan MP
- 415** Vision Australia
- 416** Senator David Pocock
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- 433** Hon Natasha Fyles MLA, Chief Minister of the Northern Territory
- 434** SBS
- 435** Raelene Hurley

- 436** Paul Hyam
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- 438** Yosi Tal
- 439** Kristen Richards
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- 441** Joe Haberfield
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- 461** Timothy Fisher
- 462** Annette McDonald
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- 466** Jim Russell
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- 470** Yaakov Super
- 471** Anthony Kurtz
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- 478** Central Land Council
- 479** Josh Brewer
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- 485** June Smith
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- 488** Maureen Lancaster
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- 491** David Park
- 492** Stephen Ellis
- 493** Arthur Stansfield
- 494** Robert Lavers
- 495** John Sharpe
- 496** Ruth Lutman
- 497** Sherry Hatfield
- 498** Graeme Hancock
- 499** Robyne d'Ombrille
- 500** Kerri Sookun
- 501** Pete Howarth
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- 504** Donald Edmunds
- 505** Suzanne Norris
- 506** Roger Skipsey
- 507** Kendall Robinson
- 508** Carol Bennett
- 509** John Ripp
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- 511** Robert and Michelle Pawson
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- 573** Robert Parry
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- 576** Ken Carr
- 577** Peter Smith
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- 582** Robert Richmond

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- 591** Colin Searl
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- 597** Christine Kershaw
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- 602** Keith Carmody
- 603** David Parker
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- 605** Rod Salmon
- 606** Milton Hampe
- 607** Maria Llave
- 608** Raymond Marendaz

- 609** Judith Hughes
- 610** Nancy McGrath
- 611** Wendy Nairn
- 612** Robin Fraser
- 613** Cathy Park
- 614** Sandy Walker
- 615** William Dunn
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- 632** Melvena Hallam OAM
- 633** Grace Pomakis
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- 635** James Thorogood
- 636** Murray and Rhonda Stevens
- 637** Kenneth Pavy
- 638** Ted Morgan
- 639** Barrie Hinton
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- 656** Nanette Black
- 657** Robert Hayward
- 658** John and Debbie Van De Vorst
- 659** Charles Hadfield

- 660** Karen Quinn
- 661** Faye Rowntree
- 662** Elizabeth Anne O'Brien
- 663** Peter Kibble
- 664** John Schrieber
- 665** Margaret Beck
- 666** Rosalie Kirwin
- 667** Susan Beilby
- 668** Sara Muir
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- 670** Sebastian Ferrando
- 671** Margaret Bishop
- 672** Graham and Lynne Darcy
- 673** Nerine Pryce
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- 683** Sandy Richards
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- 686** Colin Hardiman
- 687** Bruce Jarvis
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- 689** Hugh Evans
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- 691** Gillian Wieringa
- 692** Myrl Allison
- 693** Maree Coombes-Pearce
- 694** Elizabeth Harris
- 695** Ken and Flora Coulson
- 696** Elisabeth Rosentreter
- 697** Peter Price
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- 699** Michael Watts
- 700** Emad Baroud
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- 706** Ross Jackson
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- 708** Bruce Greening
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- 710** David Tulloch
- 711** Yvonne Limpus

- 712** Loretta Brock
- 713** Rondi Carne
- 714** Mark Bunker
- 715** David and Judy Kucera
- 716** Irene and David Southern
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- 718** Lesley Tandy
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- 737** Barry Fisher
- 738** Jeff Harman
- 739** David Rees
- 740** Brian Minnett
- 741** Wendy Thompson
- 742** Witomir Vivic
- 743** Elena Chung
- 744** Ronald Bright
- 745** Carolyn Plint
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- 747** John and Judith Burrows
- 748** Lynda Hall
- 749** Christopher Moralee
- 750** Christine Watts
- 751** Philip Edmonds
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- 763** John Crane
- 764** Christina Meyers
- 765** Judith Kelly
- 766** Dr Zahirul Islam Khan
- 767** Sean Butcher
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- 776** Sheila Warren
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- 779** Lance Cowan
- 780** Anthony Limpus
- 781** Peter Keating
- 782** Benito Calefato
- 783** Angelo Rossetti
- 784** Simi Vaiotu
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- 786** Leon Ernst
- 787** Darrel Taylor

- 788** Jackie Wood
- 789** Burton Frank and Irene Webber
- 790** Valerie Lawson
- 791** Gary Richards
- 792** Frank McElroy
- 793** Dianne Nancarrow
- 794** Dianne Julian
- 795** Susan Sullivan
- 796** Michael Chigwidden
- 797** Davina Hannaford
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- 800** William Timmins
- 801** Ian Canham
- 802** Rodney Barlow
- 803** Kathy Gough
- 804** David Guralnyk
- 805** Michael Fearnley
- 806** Dr Martin Cass MRA PhD.I
- 807** Greg Smith
- 808** Harry Jarman
- 809** Jet Fabio
- 810** Sandra Robinson
- 811** Michelle Collins
- 812** Laurence Douglas
- 813** David Anderson

- 814** Bryan Meehan
- 815** Yvonne Maher
- 816** Julie Reed
- 817** Rod Riddle
- 818** Donald Crittenden
- 819** Brenton Slape
- 820** Elizabeth Murray
- 821** Craig Clark
- 822** Kerry Randell
- 823** Christopher O'Mara
- 824** Jean Baker
- 824.1 Supplementary to submission 824
- 825** Joseph Darmania
- 826** Jeremy Clarke
- 827** Peter Adams
- 828** Michael Hollier
- 829** John Malissa
- 830** Jill Cavanagh
- 831** Lesley Smith
- 832** Josie Davidson
- 833** Mark Hentschke
- 834** Marion Williams
- 835** Lee Hanson
- 836** Andrew Mills
- 837** Margaret Rogers
- 838** Mary Fengels

- 839** Yvonne Barrett
- 840** Graeme Birchall
- 841** Graeme Howard
- 842** David Mudd
- 843** Fiona Gould
- 844** Len Willson
- 845** Lillian Noonan
- 846** Joan Colman
- 846.1 Supplementary to submission 846
- 847** Gary Byrne
- 848** Peter Kent
- 849** Brad Mumford
- 850** Andrew Dyer
- 851** Ian Maurice
- 852** Ross Lee
- 853** James Donald
- 854** John Jordan
- 855** Lorraine van Droffelaar
- 856** Gwenda Hammond
- 857** Bob Blackie
- 858** Eric and May Russell
- 859** Ann Barnes
- 860** Virginia Wenzel
- 861** Robert and Lynette Murray
- 862** Diane Gregory
- 863** John Strange

- 864** Rob Wylie
- 865** Janice Cook
- 866** John Dishon
- 867** Neil Trapp
- 868** Karen Bettinotti
- 869** Lukie Lee
- 870** Lyn Jarick
- 871** Judith Patterson
- 872** Anthony Langley
- 873** Keith Durman
- 874** Bernard Muldoon
- 874.1 Supplementary to submission 874
- 875** David Ralph
- 876** Wendy Gilson
- 877** Elizabeth Finlen
- 878** Lesleigh Lanham
- 879** Kris Smith
- 880** Kay Wolfe
- 881** Brian Gibson
- 882** David Skegg
- 883** Mike Maher
- 884** Val Gordon
- 885** Joan Ebzery
- 886** Deborah Bell
- 887** Lindsay Johnston
- 888** Judith Wilson

- 889** Philip Heagney
- 890** Tony Burnell
- 891** Margaret Ryan
- 892** George Gray
- 893** Ernst Riest
- 894** Valerie Davey
- 895** Brian McDonald
- 896** Roger Ellul
- 897** Anna Boyd-Boland
- 898** Eva Rose Marie-Aimee Larue
- 899** Helen Scott
- 900** Maureen Kennedy
- 901** Barry Lowe
- 902** Howard Freeman
- 903** Tony Barnett
- 904** Carole Meyer
- 905** J Kay Mason
- 906** Lynda Parker
- 907** Carmel Powell
- 908** Renato De Martin
- 909** Andrew Bleeze
- 910** Graham and Caralyn Dobbs
- 911** Brett Gray
- 912** Ray Garrow
- 913** John Bryant
- 914** Eleanor MacLeod

- 915** Desley Marks
- 916** David Yeung
- 917** Gunter Pfitzer
- 918** Michael Taylor
- 919** Graham Chubb
- 920** Rona Hurley
- 921** Ann Hunter
- 922** Herman Nyhuis
- 923** Matt Smith
- 924** Janet Taylor
- 924.1 Supplementary to submission 924
- 925** Rod Aleckson
- 926** Lea Freeman
- 927** Sharon Munro
- 928** Noreen Mardell
- 928.1 Supplementary to submission 928
- 929** David Black
- 930** Donald Cox
- 931** Robert Saniga
- 932** Angela Kennedy
- 933** Dale Lennox
- 934** Jean Sheridan
- 935** William Fulton
- 936** Burnie van Hilst
- 937** John Sturdy
- 938** Beryl Smith

- 939** Heather Hall
- 939.1 Supplementary to submission 939
- 940** Steve Bartlett
- 941** Gregory Black
- 942** Ross Popplewell
- 943** Peta Bendell
- 944** Bill Bryden OAM
- 945** Peter Wormald
- 946** Dudley Lister
- 947** Mary Svolos
- 948** Julie McPhail
- 949** Anne Dormer
- 950** Gay Christensen
- 951** Helen Rothenberg
- 952** Mick Omodei
- 953** Domenico Romeo
- 954** Peter Mirtschin
- 955** Eric Russell
- 956** Les Hunt
- 957** Dennis Johnson
- 958** Kostadin Chterevev
- 959** Olga Pringle
- 960** Arthur and Donna Crummer
- 961** Brendon Gibson
- 962** Max Whiteland
- 963** Suzanne Lombardo

- 964** Lisa Brown
- 965** Barry Watson
- 966** Mrs Christine Donovan
- 967** Valerie Bush
- 968** Max Arvidson
- 969** Gloria White
- 970** Craig Peace
- 971** Wilfred Parmar
- 972** Chris Pratt
- 973** Gerald Hilderson
- 974** David Nash
- 975** Barbara Maidment
- 976** Dr Nathan Hoffman
- 977** Rob Elwell
- 978** Allen Trevena
- 979** Larry Price
- 980** Bev Norton
- 981** Alan Duncan
- 982** Ian Dimmock
- 983** Kathy Medbury
- 984** Trevor Turner
- 985** Michael Farrelly
- 986** Warren Graham
- 987** Peter Brandon
- 988** Helen Jorgensen
- 989** Brenda Bowie

- 990** Russell Mallett
- 991** James and Robyn Babineau
- 992** Harvey Mills
- 993** Daniel Andrejevich
- 994** W. J. Farquhar-Reid
- 995** Kim Larsen
- 996** Neil Dobson
- 997** Ian Schupelius
- 998** Alan Burnett
- 999** Louise Nicholson
- 1000** Terry Sloggett
- 1001** Paul Askins
- 1002** Dennis Naylor
- 1003** Lois Moffat
- 1004** Gwen Manteit
- 1004.1 Supplementary to submission 1004
- 1005** Jane Chen
- 1006** Tom Turns
- 1007** Francois-Louis Charles Geist
- 1008** Elizabeth Fletcher
- 1009** Leslie Lane
- 1010** Bill Eather
- 1011** Miria Cummins
- 1012** Vernon Durling
- 1013** Wendy Slade
- 1014** Alf Abdullah

- 1015** David Metrikas
- 1016** Thomas Whiting
- 1017** Ross Kessler
- 1018** Steve Isles
- 1019** Carole Hall
- 1020** Len Bolding
- 1021** Bruce Harvey
- 1022** Ruth White
- 1023** Mary Carolan
- 1024** Brian Webb
- 1025** Peter Kline
- 1026** Chris Hanson
- 1027** Denis Bowden
- 1028** Alan Arnell
- 1029** Scott Rossetti
- 1030** Lorelie Tacoma
- 1031** Kathie Garnham
- 1032** Sherry Hope
- 1033** Amr Marzouk
- 1034** Ayub Nasir
- 1035** Norm Latham
- 1036** Rienk Trevor van der Linden
- 1037** Mike Koffel
- 1038** Mark See
- 1039** Capt Owen J C Bradbury JP
- 1040** Nick Jamons

- 1041** Matthew Young
- 1042** Belinda Hanshaw
- 1043** Frank Holmes
- 1044** Keith Marning
- 1045** Jayton Joseph
- 1046** Marg Fisher
- 1047** Don and Shirley Fry
- 1048** Jeff Wheat
- 1049** Tania Fernihough
- 1050** Shane Stegemann
- 1051** Graham Marning
- 1052** Frank Pitts
- 1053** Joe Macri
- 1054** Vanessa Winship
- 1055** Courtney Castle
- 1056** Anne Greenleaf
- 1057** John Leach
- 1058** Dr Arash Nikgoo
- 1059** Robin and Jill Sharp
- 1060** Francesco Russo
- 1061** Melva Shoppee
- 1062** Anthoni Zapala
- 1063** Una Roberts
- 1064** Richard Harrison
- 1065** James Millea
- 1066** Vivian McKenzie

- 1067** Edward McInnes
- 1068** Ted Gray
- 1069** Di Bourke
- 1070** Anne Frost
- 1071** John Haug
- 1072** Trevor Ridgway
- 1073** Christopher Castles
- 1074** Robin Valentine
- 1075** Deanne Bailey
- 1076** Geoff Allen
- 1077** Kay Kelly
- 1078** Nancy Camac
- 1079** Rita Johnson
- 1080** Tom Wallace
- 1081** Glen Murray
- 1082** Barbara and Denis Brumby
- 1083** Chris and Rosy Hewitt
- 1084** Henk and Marlene Van Zetten
- 1085** Phil Midson
- 1086** Mr and Mrs A Edwards
- 1087** Michael Kennedy
- 1088** Neil McGregor
- 1089** Teresa Samanes
- 1090** Barrie Jack
- 1091** Martin and Deborah Quintano
- 1092** John Shaw

- 1093** Glen Ryan
- 1094** Paula and Ed Ford
- 1095** Brian Eaton
- 1096** Ibolya Madarasz
- 1097** Lawrence Molachino
- 1098** Athena Kellis
- 1099** Michael Cretikos
- 1100** Margaret Silva
- 1101** Gale Reed
- 1102** Sue Sergeant
- 1103** Berilyn Cottier
- 1104** James Brennan
- 1105** Colin Owers
- 1106** Noelene Iremonger
- 1107** Irena Morgan
- 1108** Barry Lennon
- 1109** Brian Raffa
- 1110** Terence Thompson
- 1111** John Fitzhardinge
- 1112** Denise Offenbergl
- 1113** Tony Lynch
- 1114** Deb Fitzgibbon
- 1115** Dorothy Cochrane
- 1116** Phillip Wolfenden
- 1117** Christopher Forsyth
- 1118** Shane Morrison

- 1119 Mary Mills
- 1120 Robert Butterfield
- 1121 Robert Douglass
- 1122 Stephen Hood
- 1123 Wendy Mullett
- 1124 Nimish Dhurandhar
- 1125 Neil Craig
- 1126 Joylene Seppelt
- 1127 Christopher England
- 1128 Malcolm Ebel
- 1129 Robert Webb
- 1130 Lila Fitzgeralds
- 1131 Kerry Stinson
- 1132 Craig Hickman
- 1133 Gary Drew
- 1134 Judith Wood
- 1135 Colleen McLean
- 1136 Ronald McClelland
- 1137 Patrick O'Neill
- 1138 Gary Timms
- 1139 Martin Jones
- 1140 Robyn Sage
- 1141 Valerie Jolley
- 1142 Lewis Fuller
- 1143 Roberta Smith
- 1144 Jacklyn Nailon

- 1145 James Rose
- 1146 Barry George
- 1147 David Peel AM
- 1148 June Court
- 1149 Marianne Kuiper-Linley
- 1150 Mark Haley
- 1151 Gregory Bright
- 1152 Steve Lowe
- 1153 Doug Croker
- 1154 Geoff and Hilary Harley
- 1155 Don Singh
- 1156 Toni Robinson
- 1157 Lesley Smith
- 1158 Debra Brown
- 1159 Brenda Jeanes
- 1160 Richard Thomson
- 1161 Bruce White
- 1162 Roger Hood
- 1163 Valerie O'Brien
- 1164 Hosni Jacob
- 1165 Susan McGuire
- 1166 Magdy Zakhary
- 1167 Helen Dickinson
- 1168 Joan Nielsen
- 1169 Deborah Hannam
- 1170 Joan Colman

- 1171** Cameron Duncan
- 1172** Philip and Vicki Minge
- 1173** Milada and Henderson Kinnon
- 1174** Veronica Hodder
- 1175** Robert Garner
- 1176** Darren Rossall
- 1177** Robert McKennie
- 1178** Peter Wilkinson
- 1179** Jim and Desley Rawle
- 1180** Sue Stephens
- 1181** Marjorie Vorsa
- 1182** Jannette Powter
- 1183** Patricia Vaughan
- 1184** Craig Vaughan
- 1185** Gary and Raylene Nye
- 1186** Betty Russell
- 1187** John Lloyd
- 1188** Ian and Rosmond Lewis
- 1189** James Vane
- 1190** William Larkin
- 1191** Charles Mollison
- 1192** Peter Moore
- 1193** Wayne Rose
- 1194** Alan Dormer
- 1195** Joyce Wills
- 1196** Andy Buttfield

- 1197** Jay Bluejay
- 1198** Donna Challinor
- 1199** Theola Mason
- 1200** Nahida Herro
- 1201** Ken Chapman
- 1202** Star Markezic
- 1203** Mark Raison
- 1204** Annemarie Nolan
- 1205** Stephen Hofferts
- 1206** Lee Foxall
- 1207** Mick Kelly
- 1208** Graham Henniker
- 1209** Frances Harris
- 1210** John Tate
- 1211** Catherine Garner
- 1212** Beverley Morrison
- 1213** Lorraine Lindsay
- 1214** Sandra Jasienski
- 1215** Robyn Campbell
- 1216** Patricia Powell
- 1217** Mark Lambert
- 1218** Hernan Yema
- 1219** Gail Baker
- 1220** Rose Campbell
- 1221** Cristian Crisan
- 1222** Mr Martin Campbell

- 1223** Rosemary Orr
- 1223.1 Supplementary to submission 1223
- 1224** Richard Orr
- 1224.1 Supplementary to submission 1224
- 1225** Tony Ward
- 1226** Bert Eagle
- 1227** Alison Elliott
- 1228** Bienne Tam
- 1229** Thomas Derum
- 1230** P Taylor
- 1231** Francesco Grimaldi
- 1232** Laudie Sneddon
- 1233** Adrian Bruce Jeanes
- 1234** Carmel Powell
- 1235** Dale Clayton
- 1236** Narelle Ryan
- 1237** Peter Williamson
- 1238** Karen Scrivener
- 1239** Peter Ede
- 1240** Jan Hughes
- 1241** Fiona Taylor
- 1242** Alison Baggott
- 1243** Janet Williamson
- 1244** David Bishop
- 1245** Joan Starcevich
- 1246** Gwen Jones

- 1247** Helen Boman
- 1248** Lorraine Young
- 1249** Phil Howell
- 1250** Peter Hibbert
- 1251** Joe Terlato
- 1252** John and Toni Rodie
- 1253** Jamie Freger
- 1254** Kevin and Lorraine Booth
- 1255** Margaret Houston
- 1256** Stewart Palmer
- 1257** Luke Shelton
- 1258** Tony Minchin
- 1259** Stephen Bates
- 1260** Diane Gigliotti
- 1261** Ian Taber
- 1262** Margaret Lowder
- 1263** Lee Ann Connor
- 1264** Iris Preston, OAM
- 1265** Edgar Heidrich
- 1266** Beverly and Darryl Walker
- 1267** Heather Ward
- 1268** Dale Ward
- 1269** Kerrie Brain
- 1270** Virginia Wilson
- 1271** Greg Cornwell AM
- 1272** Estelle Laming

- 1273** Greg Smith
- 1274** Wayne Ford
- 1275** Rod Saunders
- 1276** Valerie Marcus
- 1277** Katie Bartholomeusz
- 1278** James and Joyleen Rump
- 1279** Deirdre Lyra
- 1280** Ian McKay
- 1281** Alan McCullough
- 1282** John Holland
- 1283** Beth Norris
- 1284** Judith Moresi
- 1285** Pamela Avery
- 1286** Brian Doney
- 1287** Thomas Brough
- 1288** Nancy Edwards
- 1289** John and Margaret Kostowski
- 1290** Mike Evans
- 1291** Robyn Smith
- 1292** Christopher Wright
- 1293** Stuart Milne
- 1294** Sara Wordsworth
- 1295** Cecily Wilson
- 1296** Ian McEachern
- 1297** Kathy Newbery
- 1298** David Thomas

- 1299** Beverly Mayer
- 1300** Barry Matulick
- 1301** Jenny Hodby
- 1302** David Guest
- 1303** Joan Gee
- 1304** Bevan and Cathy Glover
- 1305** Marlene Donovan
- 1306** Rick Andersen
- 1307** Corey Robinson
- 1308** Asim Nawaz
- 1309** Dave Cole
- 1310** Garry Donnelly
- 1311** Pamela Arrigoni
- 1312** Mrs Barbara Irving
- 1313** Dr Martin Cole
- 1314** Don and Daph Thornton
- 1315** Andrew Phillips
- 1316** John Henson
- 1317** Keith Black
- 1318** Ian and Denice Beattie
- 1319** Carolyn Barker
- 1320** Tyrran Kirkpatrick
- 1321** Richard Gould
- 1322** Peter Eckett
- 1323** Lois and Keith Bedggood
- 1324** Carolyn Chant

- 1325** Claire Wium
- 1326** Mal Baker
- 1327** Joseph Battaglia
- 1328** Kylie Lewis
- 1329** Bill Macdonald
- 1330** Ray Evans
- 1331** Nawal Singh
- 1332** Lloyd Morey
- 1333** Steven Baum
- 1334** Noel Brown
- 1335** Errol Olliffe
- 1336** Anita Fyffe
- 1337** Vicki Lillico
- 1338** Luise Cottis
- 1339** Pam Metcalf
- 1340** Janet Finlay
- 1341** Michael Oudicho
- 1342** Robin Dent
- 1343** Doug Gibson
- 1344** Felix Chau
- 1345** Robyn Taylor
- 1346** Hussein Tahiri
- 1347** Peter and Louise Hailes
- 1348** Andrew Crompton
- 1349** Stephen Nixon
- 1350** Graeme Sullivan

- 1351** Robyn Pattison
- 1352** Christopher Coombe
- 1353** Richard Cooper
- 1354** Glenda Cooper
- 1355** Pauline Sharrock
- 1356** Derrick Austin
- 1357** Phillip and Judith Considine
- 1358** Charles Probin
- 1359** John Davis
- 1360** David Bird
- 1361** Roger Hilton
- 1362** David Campbell
- 1363** Stuart Marcus
- 1364** Zak Collins
- 1365** Ashleigh Clarke
- 1366** Emma Silverster
- 1367** Hamish Munro
- 1368** Colene Taylor
- 1369** Richelle Courtney
- 1370** Ed Halse
- 1371** Simon Veltjens
- 1372** Gary Russell
- 1373** Sarah Pascall
- 1374** Robyn Guy
- 1375** Mick and Shelley Mitchell
- 1376** Keith Barton

- 1377** Stuart Miln
- 1378** Sivori Tanascev
- 1379** Law Council of Australia
- 1380** Adrian McMahon
- 1381** Ms Zali Steggall OAM MP
- 1382** Council on the Ageing (COTA)
- 1383** Heike Lange
- 1384** Patrick Lindsay
- 1385** Peter Bolt
- 1386** Noel Uebergang
- 1387** Andrew and Laura Steers
- 1388** Rosemary Pead
- 1389** Libby Allen
- 1390** Bruce Beaumont
- 1391** Phil Jackson
- 1392** John Douglass
- 1393** Andrew Carlsen
- 1394** Jim Walter
- 1395** Josephine Caltagirone
- 1396** Janice Bateman
- 1397** Marie Gracey
- 1398** Maurice Kurtz
- 1399** Robert Bucknell
- 1400** Charles Ryman
- 1401** Gabriella Ramsauer
- 1402** Rona Hurley

- 1403 John Stynes
- 1404 Patrick Casey
- 1405 Clyde Lee
- 1406 Mrs V Clisdell and Mrs H Bayliss
- 1407 Samuel Todhunter
- 1408 Olga van Gaffron
- 1409 Peter Ford
- 1410 *Name Withheld*
- 1411 Michelle Green
- 1412 Robert and Anna Jarvis
- 1413 Catherine Moffatt
- 1414 Gary Gillies
- 1415 Stephen English
- 1416 G.W. McMinn
- 1417 Robyn Shuttleworth
- 1418 Dennis Hansford
- 1419 Iain Mark Neich
- 1420 Jennifer Byrne
- 1421 Heath Fayad
- 1422 John Jones
- 1423 Michael Stow
- 1424 Cathy Liebich
- 1425 Robert Smith
- 1426 Gary Hoare
- 1427 David Sewell
- 1428 Greg Hajek

- 1429** Neil and Helen Hayes
- 1430** Peter Smith
- 1431** Ian Short
- 1432** John Denne
- 1433** Tom Cleland
- 1434** Donald Thomson
- 1435** June Lawrence
- 1436** J A Hungerford
- 1437** Sreenivas Pasula
- 1438** Rodney Hall
- 1439** Margaret Wadley
- 1440** Bev Margetts
- 1441** Debra Battersby
- 1442** Teresa and Niels Kroyer
- 1443** Nithiananthan Ariaratnam
- 1444** Paul Mewhor
- 1445** Dr Timothy Cooper
- 1446** Kuma Subedi
- 1447** Michael and Wendy Feeney
- 1448** Cynthia Phillips
- 1449** Kathryn Gould
- 1450** Rosemary Miller
- 1451** Barbara Belmonte
- 1452** Darcy Sanders
- 1453** Allan Green
- 1454** Lorna Antoniadis

- 1455 Kevin Doyle
- 1456 Aranka Kovacs
- 1457 Pauline Gray
- 1458 Barbara Burns
- 1459 Kym Farnik
- 1460 Heather Morris
- 1461 Eliza Hemphill
- 1462 Glenn Rosman
- 1463 Colin Parnell
- 1464 Lydia Excell
- 1465 Bent Finn Hansen
- 1466 William and Chris Tarbuck
- 1467 Roelf Alma
- 1468 Dr James Cameron
- 1469 Irena Zagaldov
- 1470 Maria Petry
- 1471 Jill Cluff
- 1472 Andrew Angeli
- 1473 Mervyn Rule
- 1474 C A Flaherty
- 1475 Joan Brennan
- 1476 John Burger
- 1477 Michael Cornish
- 1478 Geoffrey Woodgate
- 1479 *Name Withheld*
- 1480 Ian Sanders

- 1481 *Name Withheld*
- 1482 Stephen Brown
- 1484 Jim Riley
- 1485 #OurDemocracy combined campaign submissions
- 1486 Mr Jeremy Eccles
- 1487 Ian Sanders
- 1488 Barbara Gargaro
- 1489 Mr Diem Hoang
- 1490 Beric Foote
- 1491 *Name Withheld*
- 1492 Mr Matthew Ryan



B. Public hearings

Wednesday, 28 September 2022

Committee Room 1R2

Parliament House

Canberra

Australian Electoral Commission

Monday, 17 October 2022

Committee Room 2S1

Parliament House

Canberra

Professor Luke Beck, Private capacity

Professor Colleen Lewis, Honorary Professor, Australian Studies Institute, Australian National University

Professor Joo-Cheong Tham, Private capacity

Professor George Williams, Private capacity

Dr Belinda Edwards, Private capacity

Human Rights Law Centre

- Ms Alice Drury, Acting Legal Director

Accountability Round Table

- Professor Spencer Zifcak, Chair
- Adjunct Professor the Hon. Dr Ken Coghill, Director
- Professor Charles Sampford, Director

Centre for Public Integrity

- Mr Anthony Whealy KC, Chair
- Mr Max Douglass, Research Officer

Democratic Audit of Australia

- Emeritus Professor Marian Sawer, Member
- Mr Michael Maley, Member
- Professor Graeme Orr, Member

Remedy Australia

- Ms Fiona Given

Tuesday, 18 October 2022

Committee Room 2R1

Parliament House

Canberra

Digital Industry Group Inc. (DIGI)

- Ms Sunita Bose, Managing Director
- Dr Jennifer Duxbury, Director Policy, Regulatory Affairs and Research

Australian Communications and Media Authority (ACMA)

- Ms Creina Chapman, Deputy Chair and CEO
- Mr Jeremy Fenton, Executive Manager
- Ms Rochelle Zurnamer, Executive Manager

News and Media Research Centre, University of Canberra

- Dr Kerry McCallum
- Dr Caroline Fisher

Free TV

- Ms Bridget Fair, Chief Executive Officer
- Ms Natasha Eves, Regulatory Affairs Manager

Australian Competition and Consumer Commission (ACCC)

- Mr Scott Gregson, Chief Executive Officer
- Mr Rami Greiss, Executive General Manager, Consumer and Fair Trading Division

Australian Broadcasting Corporation (ABC)

- Mr Craig McMurtrie, Editorial Director

Reset Australia

- Mr Chris Cooper, Executive Director

Wednesday, 26 October 2022

Committee Room 1R2

Parliament House

Canberra

The Australia Institute

- Mr Bill Browne, Director, Democracy and Accountability Program

Thursday, 3 November 2022

Committee Room 2R1

Parliament House

Canberra

Australian Electoral Commission [including Electoral Integrity Assurance Taskforce]

Australian Labor Party

- Mr Paul Erickson, National Secretary

Australian Greens

- Mr Jonathan Parry, National Secretary

NSW Nationals

- Mr Joe Lundy, State Director

Victorian Aboriginal Legal Service

- Nerita Waight, Chief Executive Officer

Centre for Aboriginal Economic Policy Research, Australian National University

- Dr Morgan Harrington, Research Fellow

Dr Francis Markham, Private capacity

Climate 200

- Mr Byron Fay, Executive Director
- Mr Simon Holmes à Court, Convenor

Associate Professor Vanessa Teague, Private capacity

Wednesday, 23 November 2022

Committee Room 1R1

Parliament House

Canberra

Northern Land Council

- Ms Diane Brodie, Policy Team Leader
- Mr Robert Gosford, Manager Media and Communications

Aboriginal Peak Organisation of the Northern Territory

- Ms Theresa Roe, Secretariat Coordinator
- Ms Seranie Gamble, Manager

Central Desert Regional Council

- Mr Leslie Manda, CEO
- Ms Theresa Roe, Secretariat Co-ordinator

Mr Matthew Ryan, Private capacity

Mr Ron Levy, Barrister, Selby Street Chambers

Northern Territory Electoral Commission

- Mr Iain Loganathan, Northern Territory Electoral Commissioner
- Hon Chansey Paech, Attorney-General and Minister for Justice

Northern Territory Government

- Hon Selena Uiibo, Minister for Aboriginal Affairs

Wednesday, 30 November 2022

Committee Room 1R1

Parliament House

Canberra

Electoral Commission South Australia

Wednesday, 8 March 2023

Committee Room 1R1

Parliament House

Canberra

Australian Electoral Commission

Thursday, 27 April 2023

Committee Room 2S3

Parliament House

Canberra

Inclusion Australia

- Ms Brooke Canham, Policy Officer
- Ms Maeve Kennedy, Senior Manager, Policy and Projects

Blind Citizens Australia

- Ms Sally Aurisch, Chief Executive Officer
- Mr Jackson Reynolds-Ryan, Manager, Policy and Advocacy

Vision Australia

- Mr Bruce Maguire, Lead Policy Adviser

Australian Federation of Disability Organisations

- Mr Ross Joyce, Chief Executive Officer

Council on the Ageing

- Mr Corey, Irlam, Deputy Chief Executive Officer

Professor Catherine Renshaw, Private capacity



C. Electoral donations laws in other jurisdictions

- 1.1 Each jurisdiction around Australia has enacted some form of regulation around political donations and expenditure. This appendix provides a brief outline of the key political donation and expenditure schemes in other jurisdictions where comprehensive legislative funding and disclosure regimes have been enacted: New South Wales, Queensland, and South Australia.

New South Wales

- 1.2 Under the *Electoral Funding Act 2018* (NSW), the following individuals, organisations and entities are able to make a political donation:
- individuals enrolled to vote in federal, state or government elections
 - entities with an Australian Business Number (ABN), Australian Company Number (CAN) or other registered business number
 - a person or entity that has been approved to make a political donation by the NSW electoral commission.¹
- 1.3 The NSW Electoral Commission defines a reportable political donation as:
- ...a single donation of one thousand dollars or more; or multiple small donations to the same person or political organisation in a financial year; that, when added together, total one thousand dollars or more.²
- 1.4 Political donations can only be accepted if candidates or third-party campaigners³ are registered with the NSW Electoral Commission.
- 1.5 In order to be registered, third-party campaigners must make payments of more than \$2,000 for electoral expenditure incurred during the capped state expenditure period for a state election.⁴

¹ NSW Electoral Commission, 'Accepting and using political donations', viewed 3 January 2023, <<https://elections.nsw.gov.au/funding-and-disclosure/political-donations/accepting-and-using-political-donations>>

² NSW Electoral Commission, 'What is a political donation', viewed 4 January 2023, <<https://elections.nsw.gov.au/funding-and-disclosure/political-donations/what-is-a-political-donation>>

³ A third-party campaigner is an individual or entity that incurs more than \$2,000 in electoral expenditure for a State or local government election in New South Wales during the capped expenditure period for an election, but does not stand as a candidate, and is not a political party, associated entity or an elected member.

⁴ For general elections the capped expenditure period is between 1 October in the year before an election and ending on election day. For by-elections it commences on the day the writ is issued and ending on election

- 1.6 While there is no requirement for political parties to be registered, they must comply with political finance laws.⁵
- 1.7 All political donations must be made to or by an authorised person or official agent responsible for the party, group, candidate or entity and paid into or from the campaign account.⁶
- 1.8 In NSW, political donations made to political parties, elected members, candidates, groups of candidates, associated entities, and third-party campaigners are capped for a financial year and the cap is adjusted annually for inflation.⁷
- 1.9 For the 2022-23 financial year, caps on political donations, donation cap exemption amounts, and indirect campaign contribution threshold amounts were:
- \$7,000 – registered party or group of candidates
 - \$3,300 – An unregistered party (or party registered for less than 12 months), elected member or candidate
 - \$3,300 – Political donation cap for an associated entity or third-party campaigner.⁸
- 1.10 Donations from property developers, tobacco industry business entities, liquor or gambling industry business entities, any industry representative organisation if the majority of its members are such prohibited donors, or a close associate of a prohibited donor are banned.⁹
- 1.11 The provisions of the *Election Funding, Expenditure and Disclosures Act 1981* (NSW) that imposes restrictions on private funding of political candidates and parties in State and local government elections was challenged in 2015 in the High Court.
- 1.12 As outlined in the reported decision of the High Court, the ‘plaintiffs contended that the provisions in the NSW Act were invalid for impermissibly infringing the freedom of political communication on governmental and political matters, which is an implication from the Australian Constitution.’¹⁰ The High Court upheld the constitutional validity of the challenged provisions.¹¹

day. NSW Electoral Commission, ‘Register as a third-party campaigner’, viewed 4 January 2023, <<https://elections.nsw.gov.au/political-participants/third-party-campaigners/register-as-a-third-party-campaigner>>

⁵ NSW Electoral Commission, ‘What is a political donation’, viewed 3 January 2023, <<https://elections.nsw.gov.au/funding-and-disclosure/political-donations/what-is-a-political-donation>>

⁶ NSW Electoral Commission, ‘What is a political donation’, viewed 3 January 2023, <<https://elections.nsw.gov.au/funding-and-disclosure/political-donations/what-is-a-political-donation>>

⁷ NSW Electoral Commission, ‘Caps on political donations’, viewed 3 January 2023, <<https://elections.nsw.gov.au/funding-and-disclosure/political-donations/caps-on-political-donations>>

⁸ NSW Electoral Commission, ‘Caps on political donations’, viewed 3 January 2023, <<https://elections.nsw.gov.au/funding-and-disclosure/political-donations/caps-on-political-donations>>

⁹ NSW Electoral Commission, ‘Prohibited donors’, viewed 3 January 2023, <<https://elections.nsw.gov.au/funding-and-disclosure/political-donations/unlawful-political-donations/prohibited-donors>>

¹⁰ *McCloy v New South Wales* [2015] HCA 34 (7 October 2015).

¹¹ *McCloy v New South Wales* [2015] HCA 34 (7 October 2015).

1.13 There is a range of political donations, loans or indirect campaign contributions that are considered unlawful under the NSW Act including:

- Political donations in the form of cash over \$100
- Failure to record details of a reportable political donation
- Anonymous reportable political donations
- Identity of donors
- Indirect campaign contributions valued at more than the allowable amount
- Political donations to more than three third-party campaigners
- Political donations by a party etc to independent candidates
- Failure to record details of reportable loans
- Prohibited donors
- Donations exceeding the caps.¹²

1.14 In 2021, the 'NSW Electoral Commission implemented an online system that allows the electronic lodgement and management of: disclosures of electoral expenditure and political donations and funding claims.'¹³ In July 2021, 'disclosures were able to be lodged by stakeholders online for the first time.'¹⁴

Queensland

1.15 Under the *Electoral Act 1992* (Qld) and the *Local Government Electoral Act 2011* (Qld) all donations, loans, and expenditure incurred for an election campaign must be reported to the Electoral Commission Queensland.¹⁵

1.16 Candidates (or their agent), groups of candidates (or their agent), agents of registered political parties, financial controllers of associated entities, third party campaigners, and political donors are required to make a disclosure.¹⁶

1.17 The threshold for gifts and loans in the Queensland Act for 'political parties and State candidates is \$1,000 (cumulative between January – June, and July – December each year), and \$500 (cumulative) for local government elections.'¹⁷ Prior to the 2015

¹² NSW Electoral Commission, 'Unlawful political donations', viewed 3 January 2023, <<https://elections.nsw.gov.au/funding-and-disclosure/political-donations/unlawful-political-donations>>

¹³ NSW Electoral Commission, *Report to the NSW Parliament 2020-2021*, p. 15.

¹⁴ NSW Electoral Commission, *Report to the NSW Parliament 2020-2021*, p. 15.

¹⁵ Electoral Commission Queensland, 'Disclosure of political donations and electoral expenditure', viewed 3 January 2023, <<https://www.ecq.qld.gov.au/donations-and-expenditure-disclosure/disclosure-of-political-donations-and-electoral-expenditure>>

¹⁶ Electoral Commission Queensland, 'Disclosure of political donations and electoral expenditure', viewed 3 January 2023, <<https://www.ecq.qld.gov.au/donations-and-expenditure-disclosure/disclosure-of-political-donations-and-electoral-expenditure>>

¹⁷ Electoral Commission Queensland, 'Disclosure of political donations and electoral expenditure', viewed 3 January 2023, <<https://www.ecq.qld.gov.au/donations-and-expenditure-disclosure/disclosure-of-political-donations-and-electoral-expenditure>>

state election the disclosure cap was \$13,000; 'changes to the Queensland Act in February 2017 set the disclosure threshold for gifts and loans at \$1,000.'¹⁸

- 1.18 In Queensland, registered political parties and third parties must disclose a gift¹⁹ or loan²⁰ within seven business days of receipt. Registered political parties have an additional requirement to disclose a gift or a loan within 24 hours of receipt during the seven days prior to election day.²¹
- 1.19 The disclosure period for independent candidates commences:
- 30 days after the election day for the last general election or by-election
 - if the candidate has not contested an election in the past four years – the day they announce or otherwise publicly indicate their intention to be a candidate, or the day they nominate as a candidate in the election, or the day they otherwise indicate their intention to be a candidate in the election (for example, by accepting a donation towards their campaign).²²
- 1.20 For registered third parties²³ and other third party campaigners, the disclosure period 'ends 30 days after election day for a State election or by-election.'²⁴
- 1.21 It is unlawful for a candidate to receive anonymous gifts totalling \$200 or more and a registered political party to receive \$1,000 or more. If a candidate or registered political party is found to have accepted an anonymous gift 'an amount equal to the amount, or value, of the gift/s is payable to the State.'²⁵
- 1.22 Political donations in Queensland are capped and donors must not make political donations of more than \$6,000 to an independent candidate or party endorsed candidate or \$4,000 to a registered political party, including either a single donation or aggregate donations made by the same donor between 1 July 2022 and 25 November 2024. The cap amount adjusted after each general election in line with the Consumer Price Index, 30 days after the polling day for a State general election.²⁶

¹⁸ Parliamentary Library, Research Paper Series, 2022-23, *Election funding and disclosure in Australian jurisdictions: a quick guide*, 6 December 2022, p. 4.

¹⁹ A gift is the disposition of property, or provision of a service, by a person to another person, for no consideration or inadequate consideration. A non-monetary gift (or gift-in-kind) is a gift of any goods or services other than money.

²⁰ A loan is the advance of money, provision of credit, payment on behalf of an entity with an obligation to repay the amount or any other loan of money that is provided by a person or entity, other than a financial institution or by use of a credit card.

²¹ Electoral Commission Queensland, *Fact Sheet 5 – State elections, Disclosure of Gifts, Loans, & Political Donations Received by Registered Political Parties*, p. 1; Electoral Commission Queensland, *Fact Sheet 7 – State elections, Disclosure of Gifts Received by Third Parties*, p. 1.

²² Electoral Commission Queensland, *Fact Sheet 6 – State elections, Disclosure of Gifts, Loans, & Political Donations Received by Candidates*, p. 1.

²³ A third party is an individual or an entity, based in or outside Queensland, which makes donations or incurs electoral expenditure in support of candidates or registered political parties.

²⁴ Electoral Commission Queensland, *Fact Sheet 6 – State elections, Disclosure of Gifts Received by Third Parties*, p. 3.

²⁵ Electoral Commission Queensland, *Fact Sheet 4 – Definition of Gifts, Loans, & Political Donations*, p. 3.

²⁶ Electoral Commission Queensland, *Fact Sheet 22 – Commencement of New Provisions in 2022*, p. 3.

- 1.23 Third parties are not subject to a cap on donations but are subject to expenditure caps – ‘the amount of electoral expenditure that can be incurred during the capped expenditure period for a State election.’²⁷
- 1.24 Expenditure caps apply to registered political parties, their endorsed candidates, independent candidates and, as noted above, third parties. The expenditure cap for the 2024 State Election is:
- registered political parties – \$95,964.09 multiplied by the number of electoral districts for which the party endorses a candidate (but must not spend more than that amount in one district)
 - endorsed candidate – \$90,748.65 for a by-election
 - independent candidate – \$90,748.65
 - third parties – \$90,748.65 per electoral district, a total of \$1,043,087.97 across Queensland, and \$90,748.65 for a by-election.²⁸
- 1.25 Significant penalties apply for non-compliance with electoral expenditure caps including financial and potential prosecution.
- 1.26 Before paying for any electoral expenditure, all registered political parties and candidates must:
- establish a dedicated State campaign bank account with a financial institution,
 - use the account to pay for all electoral expenditure, and
 - use the account to receive all political donations.²⁹
- 1.27 The Electoral Commission Queensland must be notified of the details of the state campaign account within five business days of registering, only permitted amounts can be deposited into the account and all electoral expenditure must be paid from that account.³⁰
- 1.28 In 2016-17 Queensland engaged the services of an external provider to create and maintain an Electronic Disclosure System that enables donors, registered political

²⁷ Electoral Commission Queensland, *Fact Sheet 22 – Commencement of New Provisions in 2022*, p. 3; Electoral Commission Queensland, *Fact Sheet 10 – Expenditure caps for Registered Political Parties and Endorsed Candidates*, p. 1.

²⁸ Electoral Commission Queensland, *Fact Sheet 10 – Expenditure caps for Registered Political Parties and Endorsed Candidates*, p. 1; Electoral Commission Queensland, *Fact Sheet 11 – Expenditure caps for Independent Candidates*, p. 1; Electoral Commission Queensland, *Fact Sheet 12 – Expenditure caps for Third Parties*, p. 1.

²⁹ Electoral Commission Queensland, *Fact Sheet 1 – State Campaign Bank Accounts – Registered Political Parties*, p. 1; Electoral Commission Queensland, *Fact Sheet 2 – State Campaign Bank Accounts – Candidates*, p. 1.

³⁰ Electoral Commission Queensland, *Fact Sheet 1 – State Campaign Bank Accounts – Registered Political Parties*, pp. 1-2; Electoral Commission Queensland, *Fact Sheet 2 – State Campaign Bank Accounts – Candidates*, pp. 1-2.

parties, candidates, and other electoral participants to lodge disclosures.³¹ The system went live in February 2017 replacing the former paper-based reporting. The Disclosure System was purchased by the Electoral Commission Queensland in April 2022 and is now maintained through internal staff and external contractors. Disclosure information is made available to the public in near real time.³²

- 1.29 In 2018 the Queensland Act's provisions relating to the disclosure of gifts received by a party registered under the Commonwealth Electoral Act was challenged in the Supreme Court of Queensland; in particular whether Queensland law could impose a lower declaration limit on donations intended for federal elections. The Supreme Court found that the State Act's disclosure law was valid and did not conflict with Commonwealth law.³³
- 1.30 The provisions of the Queensland Act that prohibits specified political donations of property developers was also challenged in the High Court in 2019. The High Court of Australia upheld Queensland's ban on political donations by property developers.³⁴

South Australia

- 1.31 South Australia introduced a regulatory disclosure scheme in 2013 with the passing of the *Electoral (Funding, Expenditure and Disclosure) Amendment Act 2013 (SA)*. The amendments to the *Electoral Act 1985 (SA)* placed a requirement on 'political parties, their associated entities, candidates, groups and third party campaigners to disclose certain financial information on a regular basis.'³⁵
- 1.32 Registered political parties, unendorsed candidates, associated entities and third parties have different obligations under the South Australian Act.
- 1.33 Registered political parties must appoint an agent that is 'responsible for ensuring that the party meets its funding and disclosure obligations.'³⁶ The responsible agent must:
 - Maintain a State campaign account and ensure all gifts are deposited into that account and all political expenditure is paid from that account (sections 130K, 130L and 130N).
 - Ensure that a special assistance funding payment is not deposited into the State campaign account or used for political expenditure (section 130W).

³¹ Electoral Commission Queensland, *2021-2022 Annual Report*, p. 24.

³² Electoral Commission Queensland, *2021-2022 Annual Report*, p. 24; Electoral Commission Queensland, *2016-2017 Annual Report*, p. 22.

³³ *Awabdy v Electoral Commission of Queensland* [2019] QCA 187 (26 October 2018).

³⁴ *Spence v Queensland* [2019] HCA 15 (15 May 2019).

³⁵ Electoral Regulation Research Network, *Regulating Money in Democracy: Australia's Political Finance Laws Across The Federation*, January 2021, p. 25.

³⁶ Electoral Commission South Australia, 'Obligations of a registered political party', viewed 13 January 2023, <<https://www.ecsa.sa.gov.au/enrolment?view=article&id=237&catid=13>>

- Record information about gifts of \$200 or more and loans of \$1,000 or more (sections 130ZJ and 130ZK). For more information, see our Records and evidence page.
- Lodge an annual political expenditure³⁷ return, if the party's political expenditure during a financial year is more than [\$5,838]³⁸ (indexed) (section 130ZR).
- Lodge half-yearly political party returns within 30 days of the end of each half-yearly period (section 130ZN).
- In the year of a general election, lodge additional political party returns (section 130ZN). For more information, visit our Political party and third party returns page.
- Lodge a capped expenditure period return within 60 days of polling day if the party's total amount of political expenditure during the capped expenditure period exceeded [\$5,838] (indexed) (section 130ZQ).
- Provide audit certificates for all returns lodged (section 130ZV).
- Ensure that the party does not receive an amount of more than \$500 for entry to an event, where the event is intended to raise money for the benefit of the party and it is advertised or promoted as an event where attendees will be given access to a Minister of the Crown or a Member of the Parliament of South Australia or a member of staff of the Minister or Member (section 130ZL).³⁹

1.34 Unendorsed candidates may also appoint an agent to manage their funding and disclosure obligations. Irrespective of whether they have appointed an agent or not, candidates must:

- Operate a State campaign account.
- Record information about your gifts of \$200 or more and loans of \$1,000 or more.
- Lodge campaign donation returns to disclose gifts and loans greater than [\$5,838] (indexed).
- Lodge expenditure returns to report your political expenditure if you have spent more than [\$5,838] (indexed).
- Provide audit certificates with all returns lodged.⁴⁰

³⁷ Political expenditure includes the public expression of views on a political party, a Member of Parliament, a candidate, or an issue in an election.

³⁸ 2022-23 financial year indexed amounts (effective 1 July 2022).

³⁹ Electoral Commission South Australia, 'Obligations of a registered political party', viewed 13 January 2023, <<https://www.ecsa.sa.gov.au/enrolment?view=article&id=237&catid=13>>

⁴⁰ Electoral Commission South Australia, 'Obligations of a candidate', viewed 13 January 2023, <<https://www.ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-state-elections/candidates?view=article&id=261&catid=9>>

1.35 Associated entities are not required to maintain a state campaign account unless they receive a gift⁴¹ which must be paid into a campaign account.⁴² Associated entities and third parties have additional obligations under the South Australian Electoral Act which include:

- Record gifts of \$200 or more and loans of \$1,000 or more (sections 130ZJ and 130ZK).
- Lodge half-yearly returns within 30 days of the end of each half-yearly period (sections 130ZO and 130ZP).
- In the year of a general election, lodge additional returns (sections 130ZO and 130ZP).
- Lodge an annual political expenditure return (section 130ZR) if the entity's political expenditure during a financial year is more than:
 - [\$5,838] (indexed) - for associated entities
 - \$10,000 (indexed) - for third parties
- Provide audit certificates for all returns lodged (section 130ZV)
- Lodge a donor return if they have made a gift or loan with an amount or value totalling more than [\$5,838] (indexed) to a candidate or member of a group during a disclosure period. For more information, visit our Donations to candidates or groups page.
- Lodge a capped expenditure period return within 60 days of polling day if the third party's total amount of political expenditure during the capped expenditure period exceeded [\$5,838] (indexed) (section 130ZQ).⁴³

1.36 Donors must also lodge a return with the South Australian Electoral Commission for donations of more than \$5,838 (indexed) to a candidate or relevant entity (a registered political party, associated entity or third party).⁴⁴ Donors must also declare if they have received any foreign donations.

1.37 Donation disclosure reports are required half-yearly outside an election period (January and July). In an election year, returns are required by period commencing from the start of the disclosure period for the election until the start of the designated period for the election 'and thereafter on a weekly basis until 30 days after election

⁴¹ Gift, under the Electoral Act 1985 (SA) means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, but does not include an annual subscription or compulsory levy paid to a political party by a person in respect of the person's membership of the party; or a payment under Division 4 or Division 5; or a disposition of a prescribed kind.

⁴² Electoral Commission South Australia, 'Obligations of associated entities and third parties', viewed 13 January 2023, <https://www.ecsa.sa.gov.au/index.php?option=com_content&view=article&id=254&catid=13>

⁴³ Electoral Commission South Australia, 'Obligations of associated entities and third parties', viewed 13 January 2023, <https://www.ecsa.sa.gov.au/index.php?option=com_content&view=article&id=254&catid=13>

⁴⁴ Electoral Commission South Australia, 'Donors', viewed 13 January 2023, <<https://www.ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-state-elections/donors>>

day. Returns must be accompanied by an audit certificate. Donors must also submit half-yearly returns.⁴⁵

- 1.38 As part of the legislative change made in 2013, South Australia also introduced a voluntary public funding scheme designed to 'partially reimburse political parties, candidates and groups for political expenditure incurred during the campaign period.'⁴⁶ Registered political parties, candidates and unendorsed groups or candidates who have opted into the scheme are subjected to political expenditure caps.⁴⁷
- 1.39 The funding entitlement for the 2022-23 financial year (indexed amounts effective 1 July 2022) are:
- \$4.09 (indexed) for each eligible vote received that falls within the first 10% of the total primary vote; and
 - \$3.51 (indexed) for each eligible vote received in excess of 10% of the total primary vote.⁴⁸
- 1.40 Election funding, expenditure and disclosure returns are submitted through an electronic funding and disclosure portal. The portal allows stakeholders to complete and lodge returns online, manage lodged returns, drafts, and audit processes; and allows members of the public to view returns and generate various types of reports. Once loaded onto the portal, returns are published at the end of 3 business days after the return due date.⁴⁹

⁴⁵ Parliamentary Library, Research Paper Series, 2022-23, *Election funding and disclosure in Australian jurisdictions: a quick guide*, 6 December 2022, p. 1.

⁴⁶ The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers), Second Reading, Electoral (Funding, Expenditure and Disclosure) Amendment Bill 2013 (SA), 11 September 2013.

⁴⁷ Electoral Commission South Australia, 'Applying for public funding', viewed 13 January 2023, <<https://www.ecsa.sa.gov.au/?view=article&id=243:applying-for-public-funding&catid=13&highlight=WyJwdWJsaWMiLCJwdWJsaWMncylslmZ1bmRpbmciLCJwdWJsaWMgZnVuZGluZyJd>>

⁴⁸ Electoral Commission South Australia, 'Indexed amounts', viewed 13 January 2023, <<https://www.ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-state-elections/indexed-amounts>>

⁴⁹ Electoral Commission South Australia, 'FAQs. When are returns published?', viewed 13 January 2023, <<https://ecsupport.zendesk.com/hc/en-us/articles/360000706011-When-are-returns-published->>>; Electoral Commission South Australia, 'Funding and disclosure portal', viewed 13 January 2023, <<https://www.ecsa.sa.gov.au/parties-and-candidates/funding-and-disclosure-state-elections/funding-and-disclosure-portal?highlight=WyJkaXNjbG9zdXJlliwjJ2Rpc2Nsb3N1cmUiLCJyZXBvcnRzII0=>>>



Dissenting report by Coalition members of the Committee

1. Introduction

- 1.1 Australia's position as a successful democracy is reliant on a robust electoral system.
- 1.2 Australia's successful electoral system and related institutions have been developed over many years. They are trusted by Australians, who understand that they are independent, impartial, and non-partisan. The electoral system and related institutions protect the democratic rights and freedoms of all Australians.
- 1.3 It is critical that any changes made to Australia's existing electoral system are made to improve our democracy for all. They must not be motivated by partisanship. The Coalition will not support any changes that favour a particular political party or cause.
- 1.4 The Coalition believes that any proposed electoral changes should be assessed on the following principles:
 - Equal treatment of all political participants;
 - Fair, open and transparent elections;
 - Encouragement of political participation without fear of retribution; and
 - Recognising freedom of thought, belief, association and speech as fundamental to free elections.
- 1.5 The Coalition believes that those who join or actively support political parties, like those who support civil society movements or not-for-profit organisations, do so on the basis of sincerely held beliefs and a genuine desire to participate in their democratic society. Members of established political parties are not 'less worthy' than those who support other forms of political campaigning 'movements' or civil society causes.
- 1.6 In addition, changes to regulations at Federal and State levels of government have increased the regulatory burden on political parties, making it harder for active grassroots participation. This is not a good outcome for democratic participation in Australia.
- 1.7 Financially stable political parties with active membership, representing the broad political spectrum are important foundations for a healthy democracy.
- 1.8 The governing legislative and regulatory framework for political parties should ultimately encourage grassroots participation, not make it harder.

- 1.9 The recommendations of the Coalition members of the Committee are about improving Australia's democracy and making it easier for everyday Australians to be actively involved in politics.

2. Recommendations from the Coalition

Proposed Recommendation 1

- 1.10 The Coalition members of the Committee recommend that the Electoral Act be amended to allow for the obligations of Registered Political Parties to be applied to independent candidates where the Australian Electoral Commissioner believes those candidates are conducting their activities in a manner consistent with a Registered Political Party.**
- 1.11 The Australian Electoral Commission should be empowered to require independent candidates to provide transparency on the activities of independent candidates or independent parliamentarians where those activities involve coordination, support, resourcing or assistance with other independent candidates or parliamentarians.
- 1.12 It has been recognised through the course of the Committee's inquiry that the 2022 Election saw a series of successful independent candidates, now known as the Teal Party, contest a number of seats.
- 1.13 There has been evidence presented to the Parliament, and through this inquiry, that suggests that this was done, in part, as a coordinated effort and that this coordination was either not presented in a transparent manner, or was unable to be categorised under the current electoral law.
- 1.14 It is concerning that allegations of this activity were made, while the candidates in question claimed to be unaffiliated independent candidates.
- 1.15 The statement from Teal members of parliament and candidates that they are not a political party is as offensive as it is wrong. Creating a level playing field between established political parties and the Teal Party will ensure equal treatment and limit the ability of 'political players' to game the system.

Proposed Recommendation 2

- 1.16 The Coalition members of the Committee recommend that the Government give consideration to the adequacy of the current electoral regulatory framework to nominate as a candidate at a Commonwealth election, and in particular any measures that could be implemented to strengthen the integrity of the system.**
- 1.17 It is important that the regulatory framework to support the nomination of candidates in Commonwealth elections reflects community expectations and is consistent with the strong integrity of electoral outcomes expected under the Commonwealth Electoral Act.

- 1.18 The Committee, and the Parliament more broadly, has heard evidence in relation to the ability for the nomination of large numbers of candidates for election that create burdens on electors, barriers to entry for some candidates or parties, and the potential for candidates to be utilised purely for preference distribution.
- 1.19 It is imperative that electors are provided a choice of candidates that is reflective of the community support and that the system of nomination is transparent and effective.

Proposed Recommendation 3

- 1.20 The Coalition members of the Committee recommend the pre-poll period be statutorily limited to be a maximum of one week prior to election day and that the Australian Electoral Commission provide parties and candidates with the earliest possible advice about prepoll locations.**
- 1.21 The Coalition members of the Committee support reducing the length of the pre-polling period from two weeks (12 days) to one week (five days).
- 1.22 The reason for the proposed reduction is twofold. Firstly, a reduction in the length of the pre-poll period would sizeably reduce the administrative burden on both the AEC and election candidates. Secondly, reducing the length of the pre-poll period would also allow for voters to make their voting decisions with the most current information.
- 1.23 Voters who need to vote prior to polling day are also able to apply for a postal vote. The limitation of pre-poll to five days would therefore not impact the ability of a voter to cast their vote upon receipt of that form.
- 1.24 This proposed change could also be made without diminishing the pre-poll arrangements for remote communities, in order to provide a greater access to enfranchisement to these electors. In limiting pre-poll in this way, it will allow a greater focus of resources to this important task.

Proposed Recommendation 4

- 1.25 The Coalition members of the Committee recommend that a new offence of 'electoral violence or intimidation' be added to the Electoral Act. This amendment is fundamental to address behaviour arising in an election such as violent, obscene or discriminatory abuse, property damage, and stalking candidates or their supporters to intimidate them or make them feel unsafe.**
- 1.26 No one should feel unsafe while participating in our democratic process.
- 1.27 Over an extended period, the Committee and the Parliament has been presented evidence that political volunteers and supporters have been subject to politically motivated abuse, violence or harassment. The strength of our electoral system rests on the contestability of ideas and the presentation of that contest to electors. But this contest must be safe for the participants engaging in it. There is no greater

importance than securing this contest in the electoral system for the ensuring of free and fair elections.

- 1.28 Any behaviour that results in the withdrawal of participants from our democratic process, whether it be the intimidation of electors from supporting the candidate or party of choice or for standing for election, should be treated with the same severity and urgency as foreign interference in our electoral system or the impact of other electoral-specific offences.
- 1.29 To that end, threats that stop, influence or hinder someone's participation in an election are a threat to all of us and should be dealt with through a standalone offence, with specific sanctions that relate to the removal of the threat from preventing further electoral interference.

Proposed Recommendation 5

1.30 The Coalition members of the Committee recommend that the AEC return all electoral practises to pre-COVID standards.

- 1.31 Following the removal of any restrictions that were placed upon electors who are participating in Commonwealth elections relating to the COVID-19 pandemic, the Coalition members of the Committee believe there is no justification for any measures that were put in place to ensure the conduct of pandemic-elections to continue.
- 1.32 The Government should commit to not continuing these measures until the Parliament determines otherwise as a result of physical restrictions placed on electors.

Proposed Recommendation 6

1.33 The Coalition members of the Committee recommend that vote counts after polling day for each electorate should be carried out in the electorate itself, not transported considerable distances.

- 1.34 The Coalition members of the Committee strongly support the counting of votes in locations within local electorates as far as possible. The Commission made extensive comment about their support for local campaign workers in the electoral process, including the scrutiny of the vote.
- 1.35 By removing votes for counting at other and distant locations, campaign workers who are unable to travel for those counts do not have the ability to participate in the scrutiny of their local electorate. This is an important part of the democratic process, and the Australian Electoral Commission should recognise and support that participation, particularly at the point of scrutiny of the vote after polling day.

3. Coalition Reply to the Draft Report's Recommendations

Recommendation 1

1.36 The Committee recommends that the Australian Government lower the donation disclosure threshold to \$1,000.

1.37 The Coalition members of the Committee believe that it is essential to balance the disclosure threshold with the potential risks to the privacy of contributors.

1.38 Similarly, the disclosure threshold must not discourage participation in the electoral system by members of the community, civil society groups and businesses who could fear intimidation or retribution of supporting political parties or candidates.

1.39 In the 2022 Federal Election, there were numerous incidents of small businesses endorsing political candidates and/or political parties and facing threats and boycotts by left-wing activist groups.

1.40 Businesses and private citizens ought to be able to contribute funds to political parties across the political spectrum without malevolent political players making threats based on information sourced from the AEC's disclosure reports.

1.41 In addition to this, the Coalition members of the Committee note that while State and Territory Governments have lower, if varied, rates of disclosure, the system as it applies at a Commonwealth level should account for potential expenditure in each jurisdiction. The Coalition suggests reducing the national annual disclosure threshold to the sum of each of these jurisdictions' respective disclosure thresholds, \$8,000 per financial year, would be a more appropriate figure.

Recommendation 2

1.42 The Committee recommends that the Australian Government introduce 'real time' disclosure requirements for donations to political parties and candidates.

1.43 The Coalition members of the Committee support the implementation of a reduced disclosure timeframe for political parties and candidates.

1.44 A monthly disclosure period strikes the balance between ensuring electoral transparency and allowing political parties and candidates to undertake appropriate due diligence without unduly inhibiting their ability to execute their proper function in Australian democracy – to represent the Australian people.

1.45 For example, if a donation was received by a political party or a candidate, then the party or candidate requires enough time to determine the origin of the funds, determine whether the receipt of the funds is consistent with the Electoral Act, and to return the funds if the funds were found to be from a prohibited donor.

1.46 Disclosure requirements shorter than a month would be extremely administratively burdensome, particularly given many political parties rely on volunteers to manage local party units.

1.47 The Coalition believes that reporting monthly is a satisfactory period to achieve realistic 'real time' disclosure.

Recommendation 3

1.48 The Committee recommends that the Australian Government gives consideration to amending the definition of 'gift' in the Electoral Act to ensure it meets community expectations of transparency in political donations.

1.49 The Coalition members of the Committee are open to considering amendments to the Electoral Act's definition of a 'gift'. However, these should be considered in the context of the impact that any changes to the definition of a 'gift' would have on bequests and gifts-in-kind, particularly in conjunction with any amendments resulting from Recommendation 4.

Recommendation 4

1.50 The Committee recommends that the Australian Government introduce donation caps for federal election donations.

1.51 The Coalition members of the Committee do not support the implementation of a donation cap as it is proposed.

1.52 Donation caps can only be fair when political parties and candidates are treated fairly and equally, and therefore any donation caps must include party membership fees, subscriptions, levies, affiliation fees, and union affiliation fees.

1.53 Such a cap would create an uneven regulatory playing field, particularly as it is proposed, and creates a partisan approach to electoral reform.

Recommendation 5

1.54 The Committee recommends that the Australian Government introduce expenditure (also known as spending) caps for federal elections.

1.55 The Coalition members of the Committee do not support expenditure caps for federal elections as they are proposed.

1.56 The Coalition members of the Committee strongly reject a system of expenditure caps where independent candidates are treated differently to a candidate from a political party.

1.57 In addition, it is particularly egregious that the Government members propose a system that would rig an expenditure system in their favour. A spending cap that fails to take into account Labor's union-funded campaign machine is nothing short of a financial gerrymander.

- 1.58 All candidates should be treated equally by legislation in a democracy. To do otherwise is to undermine the democratic process.

Recommendation 6

- 1.59 The Committee recommends that donation caps and expenditure caps apply to third parties and associated entities.**

1.60 While the Coalition members of the Committee will not support electoral expenditure caps, should they be introduced, any caps on electoral donations or expenditure should apply to third parties and associated entities.

1.61 In addition, expenditure caps should be lower for third parties and related entities. This is appropriate as they are not participating as candidates or as political parties.

Recommendation 7

- 1.62 The Committee recommends the Australian Government introduce a requirement that all political parties, members of Parliament, candidates, associated entities and third parties be required to establish a Commonwealth Campaign Account for the purpose of federal elections, to better allow for disclosure and monitoring.**

1.63 The Coalition members of the Committee support this recommendation, subject to further detailed legislation being presented by Government.

Recommendation 8

- 1.64 The Committee recommends the Australian Government introduces a new system of administrative funding to recognise the increased compliance burden associated with a reformed system.**

1.65 The Coalition members of the Committee note this recommendation. This recommendation is dependent on the administrative burdens resulting from the outcomes of the other recommendations.

1.66 Should the administrative burden increase on political parties and candidates, a detailed proposal of the new system of administration funding should be considered by this Committee.

Recommendation 9

- 1.67 The Committee recommends the Australian Government introduce a new system of increased public funding for parties and candidates, recognising the impact changes a reformed system will have on private funding in elections.**

1.68 The Coalition members of the Committee note this recommendation. An increase in public funding for political parties is reliant on the outcomes of other recommendations.

- 1.69 Australia is experiencing a cost-of-living crisis and there has not been sufficient evidence provided to the Committee that demonstrates that increasing public funding for parties and candidates is the best use of taxpayer funds, particularly over continuing to allow business and private citizens to contribute to the democratic process in a fair and transparent way.

Recommendation 10

- 1.70 The Committee recommends the Australian Government provide the Australian Electoral Commission with additional resources to support, implement and enforce these reforms.**

- 1.71 The Coalition members of the Committee note this recommendation. The Coalition members of the Committee note that an appropriately funded Australian Electoral Commission is essential to a functioning electoral system.

Recommendation 11

- 1.72 The Committee recommends that the Australian Government develop legislation, or seek to amend the Commonwealth Electoral Act 1918, to provide for the introduction of measures to govern truth in political advertising, giving consideration to provisions in the Electoral Act 1985 (SA).**

- 1.73 The Coalition members of the Committee oppose the introduction of measures that purport to adjudicate truth in political advertising. Freedom of speech and the contestability of ideas are necessary for a healthy liberal democracy.

- 1.74 Distinguishing between truth, opinion, and falseness in the context of an election is an inherently subjective process, and one that is appropriately left to voters. The Federal Government and its bureaucracy, no matter how independent and qualified, has neither the scope nor the ability to adjudicate truth in election campaigns.

- 1.75 It would be inappropriate for any government body to censor political parties and candidates in their communications. Elections and election campaigns are and should remain a marketplace of ideas. If candidates or political parties make statements or release inaccurate policy positions, it is the role of the media, civil society and other political actors to hold their statements to account.

- 1.76 That this proposition has been put forward by the party of Government who are responsible for the inaccurate and misleading 'Medicare' campaign in the 2016 election is the height of hypocrisy.

Recommendation 12

- 1.77 The Committee recommends that the Australian Government consider the establishment of a division within the Australian Electoral Commission, based on the principles currently in place in South Australia, to administer truth in political advertising legislation, with regard to ensuring proper resourcing and**

the need to preserve the Commission’s independence as the electoral administrator.

- 1.78 The Coalition members of the Committee believe the role of the Australian Electoral Commission is to deliver electoral events and not to determine what is truth. Introducing such as function would substantially increase the size and the role of the AEC, but it would also politicise an institution that can only successfully exercise its core function due to its independence.
- 1.79 The AEC Commissioner, Mr Tom Rogers, has stated that “any involvement of any electoral administration body...runs counter to the principles of neutrality and non-partisanship.”¹ The Coalition members of the Committee support the Commissioner’s comments and reiterate that arbitration of truth is not the role of the AEC.

Recommendation 13

- 1.80 The Committee recommends that, providing the Committee receives a reference to conduct a review of the next federal election, consideration of the new framework be included in terms of reference to the Committee. Such consideration could include the effectiveness of the revised arrangements, and identification of any further improvements.**
- 1.81 The Coalition members of the Committee consider that any amendments to the terms of reference is a decision for the relevant Minister in the next Parliament.

Recommendation 14

- 1.82 Consistent with the recommendation made in this Committee’s Advisory report on the Referendum (Machinery Provisions) Amendment Bill 2022, the Committee recommends that the Australian Government strengthen the opportunities for electoral enfranchisement and participation to allow the Australian Electoral Commission to support increased enrolment and participation, particularly of Aboriginal and Torres Strait Islander people, including in remote communities.**
- 1.83 The Coalition members of the Committee support mechanisms to increase electoral enfranchisement and participation, including among Aboriginal and Torres Strait Islander peoples.

Recommendation 15

- 1.84 The Committee recommends the Government resource the Australian Electoral Commission to work directly with Aboriginal and Torres Strait Islander**

¹ Australian Electoral Commission, *Committee Hansard*, 28 September 2022, p. 4.

community organisations to increase Indigenous enrolment and participation, particularly in remote communities.

1.85 The Coalition members of the Committee support this recommendation.

Senator the Hon James McGrath

Senator Ross Cadell

The Hon Darren Chester MP

Senator the Hon Marise Payne

Mr James Stevens MP



Additional comments by Kate Chaney MP

Restoring trust

- 1.1 The election of more community independents on the crossbench in the 2022 Federal Election sent a signal that communities want to see meaningful electoral reform to move away from enshrining or hiding vested interests.
- 1.2 I agree with the majority report commentary that there are areas of our electoral system clearly in need of strengthening.¹
- 1.3 Electoral matters have traditionally been seen through a political party lens that further enshrines incumbency and party advantage. **Appendix A** contains a list of identified party and incumbency advantages that are built into our existing regulatory framework.
- 1.4 Additional reforms are required to neutralise some of these advantages to ensure our political process connects to community and meets its expectations and not those of vested commercial and political interests. These additional reforms are based on three pillars:
 - 1 Improving transparency;
 - 2 Reducing financial influence; and
 - 3 Levelling the playing field.
- 1.5 My additional comments and recommendations are provided under these three pillars below.

Improving transparency

- 1.6 Transparency reforms to the Federal political donations framework are long overdue. Federal reform has lagged behind reform in many states and territories.
- 1.7 Recommendations 1, 2, 3, 7, 8, 11 and 12 are transparency reforms.

¹ Paragraph 2.2 of majority report.

- 1.8 I support **recommendations 1 (lower donation disclosure threshold to \$1,000) and 2 ('real time' disclosure requirements for donations to political parties and candidates)**. Donations should be lodged by recipients through an effective, easy to use, transparent and searchable online system.
- 1.9 I support **recommendation 3 (amend the definition of 'gift' in the Electoral Act to ensure it meets community expectations of transparency in political donations)**. There is overwhelming community support for transparency on who is funding election campaigns.² This includes capturing what is currently 'dark money' (hidden money). A system of 'pay to play' or 'cash for access' has been allowed to thrive where political fundraising dinners and 'business forums' have raised often significant funds with no disclosure. The definition of 'gift' needs to be amended to include all monetary and in-kind payments including fundraising dinners, cash for access 'business forums' and other events as well as membership fees above a reasonable threshold (e.g. \$600) that benefit a political party or candidate. Recent examples have shown that the existing definition is confusing and provides opportunities to avoid transparency³.

Meaningful Transparency Register Disclosure

Recommendation 1

- 1.10 I propose a further recommendation in terms that – the Australian Government introduces a system of more meaningful funding disclosure that will be readily available on the AEC Transparency Register by:
- removing the opaque 'other receipts' category and replacing it with categories to separately identify event income, investment income, membership fees, political party transfers and public funding reimbursement;
 - requiring the disclosure of the terms of the loans; and
 - making the AEC Transparency Register easy to use and searchable.
- 1.11 The majority report correctly notes that a number of civil society organisations, including the Grattan Institute, have raised the issue of meaningful categories of donation disclosure. Currently more than 80% of private funding sources for major parties are categorised as either 'undisclosed' or 'other receipts'.⁴
- 1.12 The Accountability Round Table comments:

The donation transparency register is maintained through the AEC, and leaves something to be desired in terms of transparency. Transparency demands that

² Susan McKinnon Foundation, "Understanding attitudes towards electoral reform in Australia", February 2023, page 130.

³ ABC News, "Deal sees payment flow from Gina Rinehart's company Hancock Prospecting to Liberal Party", 10 February 2023.

⁴ Paragraphs 2.112 to 2.115 and 2.120 to 2.123 of majority report and Grattan Institute; Submission 367, pages 3, 4 and 5 and Grattan Institute; "Who's in the room? Access and influence in Australian politics", September 2018 pages 33, 34, 44 and 45.

not only can information be seen but that it should also be able to be interrogated and analysed.

There is not enough breakdown of the components of the donations or of electoral spending. Nor are the bodies behind them particularly transparent....

The transparency register desperately needs a clean-up of the categories of information to be reported. Additional means of searching data on the transparency register would be of assistance.⁵

- 1.13 I support recommendation 7 (political actors and entities be required to establish a Campaign Account for federal elections) as a positive compliance measure for disclosure and monitoring.
- 1.14 I acknowledge recommendation 8 (a new system of administrative funding to be introduced to recognise the increased compliance burden of a reformed system) and note that any such administrative funding must be subject to reasonable limitations and fairly applied to parties and independent candidates.
- 1.15 I support recommendation 11 (legislate truth in political advertising) and 12 (establish a new division within the AEC to administer truth in political advertising) provided that the truth in political advertising regime has regard to the matters raised by Zali Steggall OAM MP in her *Commonwealth Electoral Amendment (Stop the Lies) Bill 2022*.

Legislated Lobbying Reform

Recommendation 2

- 1.16 In relation to transparency reforms, I propose a further recommendation in terms that – the Australian Government develops legislation, or seeks to amend the Electoral Act 1918, to regulate lobbying including expanding the lobbyist register and requiring the publishing of ministerial diaries.**
- 1.17 The majority report acknowledges a number of inquiry participants raised the need for lobbying reform as a transparency measure.⁶
- 1.18 Currently, at the federal level, there is an administrative system governed by the Lobbying Code of Conduct and overseen by the Attorney-General's Department. In-house lobbyists are outside the Code of Conduct and the Lobbyist Register and are able to conduct '*invisible*' lobbying activity. There are currently more than 1,900 such in-house lobbyists with sponsored security passes.

⁵ Accountability Round Table, Submission 343, page 4.

⁶ Paragraphs 2.217 to 2.223 of majority report.

- 1.19 The UK and Canadian parliaments and the US Congress have arrangements in place to allow scrutiny of passes granted by parliamentarians (in-house lobbyists) and each jurisdiction has a legislated lobbying regime.⁷
- 1.20 A legislated lobbying regime should require the publishing of ministerial diaries so we know who our most senior policy makers are meeting. The publishing of ministerial diaries is consistent with the accountability principle at paragraph 1.3(iii) of the Code of Conduct for Ministers, which states:

Ministers must accept they are accountable for the exercise of the powers and functions of their office – that is, to ensure that their conduct, representations and decisions as Ministers, and the conduct, representations and decisions of those who act as their delegates or on their behalf – are open to public scrutiny and explanation.

Reducing financial influence

- 1.21 There is strong community and expert support for reducing financial influence in the Federal electoral system. Witnesses referred to the need for a level playing field, to ensure that big money cannot buy election or policy outcomes.
- 1.22 I agree with this principle, which is acknowledged in the majority report⁸.
- 1.23 Another important principle, which also has broad community support, is that our democracy should remain competitive and open to new entrants. This ensures that it continues to reflect the electorate and is a fundamental requirement for a healthy democracy.
- 1.24 Recommendations 4, 5 and 6 of the majority report propose to address the issue of financial influence and levelling the playing field through the imposition of caps on donations and spending.
- 1.25 These recommendations risk making it significantly more difficult, or even impossible, for new entrants to participate in our political system, by enshrining party and incumbency advantages. Whether this occurs will depend on how they are implemented, at what level caps are set and whether other complementary reforms to level the playing field are undertaken at the same time.
- 1.26 For these reasons, my support for **recommendations 4 (donation caps), 5 (spending caps) and 6 (application of donation and spending caps to third parties and associated entities)** is conditional upon:
- a. donation and spending caps being structured to recognise the additional barriers to entry faced by independents or new entrants; and

⁷ Grattan Institute, "Who's in the room? Access and influence in Australian politics", September 2018, page 29.

⁸ Paragraphs 2.137 to 2.141 of majority report.

- b. these reforms occurring together with the 'levelling the playing field' reforms that I address in these Additional Comments.

1.27 Donation caps, spending caps and public funding are inextricably linked. Changes in all three areas need to be considered together.

Recommendation 3

1.28 In relation to reducing financial influence reforms, I propose a further recommendation in terms that – the Australian Government implements any donation or spending caps informed by the principle of creating a level playing field for new entrants.

Donation Caps

1.29 Donation caps must not be set too low, as this creates another barrier to entry for independents or new entrants. This is because new entrants are dependent on 'seed capital' to reach critical mass in campaign viability.⁹ Unlike established parties, new entrants cannot rely on expected public funding based on a reliable estimate of expected votes.

1.30 I acknowledge that there are different models for donation caps ranging from dollar limits to donor concentration limits. These different models should be considered to ensure fair application across different political actors and structures.

1.31 The principles on which I support donation caps are:

- a. Donation caps are set at a level significantly higher than current State caps, given the difference in size of electorates;
- b. Donations from related companies and individuals must be aggregated under caps;
- c. Donations to all candidates, their party (if applicable) and their associated entities should be aggregated;
- d. Donations to third party campaigners should not be aggregated with donations to candidates; and
- e. Contrary to the majority report comments, party membership fees, subscriptions, levies and affiliation fees must be included in caps if these fees exceed a reasonable level (e.g. \$600)¹⁰.

⁹ Grattan Institute, "Who's in the room? Access and influence in Australian politics", September 2018, page 66.

¹⁰ The Centre for Public Integrity, Submission 351, page 7, suggests \$600.

Prohibited Donations – social harm, government contractors and member approval requirements

Recommendation 4

- 1.32 In addition to donation reforms, I propose a further recommendation in terms that – *the Australian Government seeks to amend the Electoral Act 1918 to:***
- a. prohibit political donations from government contractors;**
 - b. prohibit political donations from social harm industries; and**
 - c. require corporate entities and unions to obtain member approval before making political donations.**
- 1.33 Probity dictates that donations should be prohibited from substantial government contractors and government contract bidders. This would include the big four consulting firms (PWC, KPMG, EY and Deloitte). These parties should not be able to influence policy through political donations.
- 1.34 ‘*Substantial government contractors*’ could be defined as a party that has received payments from the Commonwealth government of more than \$200,000 in the last 24 months. A majority of OECD countries ban political donations from corporations with government contracts and those bidding for government contracts.¹¹
- 1.35 The concern that the federal government has outsourced its public service and functions to consultants is heightened where these same consultants donate back to the government creating a ‘co-dependency’ culture. Part of the same co-dependency that has led to a ‘revolving door’ of former MP’s and staff into employment or lucrative paid roles with these consultancies.
- 1.36 The tobacco, gambling and liquor industries inflict social harm for profit. The justification for these industries giving away shareholder funds to political parties or candidates appears to be to buy influence and obtain a more favourable policy position from government.
- 1.37 These industries should not be able to influence policy through political donations where the outcome sought is more social harm.
- 1.38 NSW bans political donations from these industries.¹²
- 1.39 Large corporate entities and registered unions (together ‘member approval entities’) should be prohibited from making political donations without member approval. The organisational benefit being sought through political donations should be justified to members or shareholders of these entities.

¹¹ Democratic Audit of Australia, Submission 408, page 3 (as to corporations bidding for government contracts) and International IDEA Political Financial Database.

¹² Division 7 of *Electoral Funding Act 2018 (NSW)*

- 1.40 This requirement for member approval should apply to all Australian registered corporations under the *Corporations Act 2001 (Cth)* other than a small proprietary company. Generally the board and shareholder/s of a small proprietary company are closely related and this would be consistent with reduced financial reporting requirements.
- 1.41 Member approval requirements should be developed in line with the United Kingdom equivalent.

Spending caps

- 1.42 The intention of applying spending caps is to create a level playing field and remove big money from our political system.
- 1.43 But applying spending caps without considering and addressing incumbency and party advantage is likely to create further barriers to new entrants in our political system. It is likely to embed major parties even when they no longer reflect the values of the country. A political system that is open to new entrants is able to adapt and reflect evolving values. It is ultimately a more resilient form of democracy.
- 1.44 There are various models for spending caps ranging from limits on advertising expenditure only to limits on all expenditure and applying caps on parties at a national level as well as to that party and its endorsed candidate in each electorate.
- 1.45 A '*one-size-fits-all*' spending cap unfairly favours major parties as spending cap models usually provide parties with a budget based on all electorates they are contesting.
- 1.46 This creates the following advantages for major parties:
- a. Major parties can shift costs from unwinnable/unlosable seats to battleground seats. The result is that major party's effective expenditure will exceed expenditure by independents and micro-parties in these seats.¹³
 - b. Major parties have economies of scale in national advertising to reinforce brand and messages. Independents do not obtain the benefit of national advertising.
 - c. Major parties have existing infrastructure that may not be included in spending caps, such as office space and equipment.
- 1.47 For these reasons, a number of civil society organisations recognise the case for independents to have a higher electorate spending cap than any equivalent party and endorsed candidate electorate spending caps.¹⁴

¹³ The Australia Institute, Submission 412, page 10.

¹⁴ The Centre for Public Integrity, Submission 351, page 15, Transparency International Australia, Submission 413, page 4, #Our Democracy, Submission 412, page 3, Human Rights Law Centre, Submission 418, page 3.

- 1.48 The difference between spending caps for independents/minor parties and spending caps for major parties must be significant enough to address these advantages.
- 1.49 This principle should hold, whether caps are based on the combination of a party electorate cap and an endorsed candidate electorate cap (as occurs in New South Wales) or a single pot cap (as in South Australia).¹⁵
- 1.50 As to **recommendation 6 (donation caps and expenditure caps applying to third parties and associated entities)**, I propose that associated entities should be aggregated with their primary political actor for the caps. In recognition of the capturing of associated entities' activities with their primary political actor, the definition of '*associated entities*' should be narrowed.¹⁶ The New South Wales definition could be adopted where an associated entity is one operating '*solely for the benefit of one or more registered political parties [or candidates]*'.¹⁷
- 1.51 Third parties should be subject to donation caps and a lower spending cap with a national spending cap and an electorate cap.

Public funding

- 1.52 Recommendation 9 recognises increasing public funding for parties and candidates in recognition of the reform of private funding. I agree with The Centre for Public Integrity when it says "*Public funding is also fraught with risks. It may serve to fuel excessive electoral expenditure, sap the internal vitality of parties and entrench incumbents.*"¹⁸
- 1.53 The Accountability Round Table does "*not see any increase in real public funding as justifiable*" as public funding results in the major parties starting each election campaign with a large treasure chest.¹⁹ The Democratic Audit of Australia notes that public funding should not overly advantage incumbent political parties.²⁰
- 1.54 If big money is taken out of the system through private funding reforms, it is unhelpful to replace it with state dependency/taxpayer funding. State dependency is the opposite of community funding and engagement which should be promoted by changes to our system.
- 1.55 The public funding regime operates so that after each federal election the AEC distributes public funding to parties and candidates based on the number of first preference votes they received. To qualify, a candidate or party must receive 4% or more of the formal first preference vote. While the funding is intended to reimburse parties and candidates for their electoral expenditure, it can be spent for other purposes, including future election campaigns.

¹⁵ The Centre for Public Integrity, Submission 351, page 14.

¹⁶ The Centre for Public Integrity, Submission 351, page 14.

¹⁷ *Electoral Funding Act 2018 (NSW)* section 4 (definition of '*associated entity*').

¹⁸ The Centre for Public Integrity, Submission 351, page 20.

¹⁹ Accountability Round Table, Submission 343, page 4.

²⁰ Democratic Audit of Australia, Submission 408, page 2.

- 1.56 A consequence of the reimbursement funding model is that it acts as a resource guarantee maintaining the status quo of established parties and candidates. A headstart is given to rollover funding from election to election.
- 1.57 Public funding is less useful to new entrants, as they have a less predictable number of votes and are therefore less able to rely upon, or borrow against, the promise of future reimbursement.
- 1.58 I am open to a review of public funding but not so that incumbency is further entrenched.
- 1.59 One alternative to consider is 'multiple matching'. This would involve public funding being provided to candidates based on a multiple (e.g. 6x) the funding raised through individual donations. This is used in New York City and could 'promote constituent participation, decrease corruption, strengthen constituent-official relations and level the playing field without offending the implied freedom of political communication.'²¹

Levelling the playing field

- 1.60 Incumbent parliamentarians rarely lose their seats to challengers. Over the last three federal elections, an average of 90% of incumbent Members of Parliament have retained their seats. Of the 398 incumbents who contested their seats, 40 were unseated, and just 11 lost to challengers who were independents or from minor parties. This is partly because incumbency comes with significant financial advantages.
- 1.61 The financial barriers to entry for new participants are already significant. The advantages of incumbency need to be accounted for in electoral law reform.
- 1.62 I propose a number of reforms to address the benefits of incumbency. These are addressed below and include:
- a. Establishing an Independent Campaign Entity
 - b. Limiting pre-election government advertising
 - c. Ensuring the independence of the postal vote process
 - d. Ensuring that political parties comply with data protection and spamming laws
- 1.63 There are various other incumbency advantages that are difficult to resolve. These include better enforcement of current rules governing both the public funding of pre-election electorate communications and the limits on the ability of parliamentary and electoral staff to work on the election of Members of Parliament. Simple solutions for these advantages are hard to find and some incumbent advantage will remain even with these recommended reforms.

²¹ The Centre for Public Integrity, Submission 351, page 27.

Establish an Independent Campaign Entity to be treated as a political party

Recommendation 5

- 1.64 I propose a further recommendation in terms that – the Australian Government seeks to amend the Electoral Act 1918 to enable an independent candidate to register an Independent Candidate Entity, to be treated the same way as a political party.**
- 1.65 A registered political party has a number of advantages under the Electoral Act and related legislation that are not available to an independent candidate.
- 1.66 The establishment of an Independent Campaign Entity would enable Independents to be treated the same way as a registered political party for a number of matters including:
- a. access to the electoral roll (where an independent candidate currently can only obtain a hard copy list of voters after the close of the rolls);
 - b. financial disclosure deadlines (so an Independent Campaign Entity could lodge an annual return on the same basis as a party);
 - c. the time from when donations are tax deductible is from registration of an Independent Campaign Entity (rather than currently from the declaration of candidates approximately only one month before an election)²²; and
 - d. the time from when an independent candidate is treated as a ‘candidate’ for the purposes of an exemption from the Do Not Call Register Act 2006 (Cth) so it is the same as a registered political party (so as to enable an independent candidate to conduct relevant fundraising for electoral purposes from an earlier time and align with registered political parties).²³
- 1.67 Requirements could be put in place for the registration of an Independent Campaign Entity, such as a statutory declaration attesting as to the candidate’s intention to stand as a candidate at the next federal election and the written nomination of at least 100 electors in the relevant electoral district or state (for senators).

Limit pre-election government advertising

Recommendation 6

- 1.68 I propose a further recommendation in terms that – the Australian Government develops legislation, or seeks to amend the Electoral Act 1918, to prohibit government advertising from 2 years after an election until the next election except in the case of a national emergency or other compelling reason as determined by an independently constituted body.**

²² Sections 30.242 and 30.244 of *Income Tax Assessment Act 1997 (Cth)*.

²³ Section 4 of *Do Not Call Register Act 2006 (Cth)*

- 1.69 Expenditure of public moneys on government advertising is regulated by the *Public Governance Performance and Accountability Act 2013* (Cth). Section 71 of this Act requires that Ministers satisfy themselves that any expenditure they approve is for a proper purpose – that is, a purpose that is efficient, effective, economical and ethical. Advertising that is of a party-political nature cannot meet this threshold.
- 1.70 However, government advertising is open to abuse by enabling party political messages to be paid for by public funds. Before the 2022 Federal Election, the Coalition Government spent \$31 million on its 'Positive Energy' advertising campaign. This attracted significant criticism as it was seen as 'greenwashing' in advance of the election.²⁴
- 1.71 A number of inquiry participants have raised concerns as to pre-election government advertising.²⁵

Ensure the independence of the postal vote process

Recommendation 7

- 1.72 I propose a further recommendation in terms that – the Australian Government seeks to amend the Electoral Act 1918 to ensure the independence of the postal vote process by preventing parties or candidates from achieving an advantage through the process (e.g. by restricting the use and delivery of the AEC postal vote application form).**
- 1.73 The postal vote process involves making a written application in approved form to the Electoral Commissioner. If the application for a postal vote received by the AEC is compliant, the AEC sends postal vote papers to the applicant.
- 1.74 The postal vote process has become both unfair and confusing to a number of voters as political parties and candidates with sufficient resources have implemented application form programs aimed to gain an advantage by seeking to influence a voter and harvest that voter's data.²⁶ The programs usually involve sending voters a postal vote application form and a how to vote card at the same time. The application form invites voters to return their postal vote application to the party or candidate for processing. The voter's data is then recorded by the party before the application is sent by the party or candidate to the AEC, which will then send the postal vote papers to the applicant.
- 1.75 The application form sent by the party or candidate is often not the AEC form but a reproduced version. The personal information on the application form received by the

²⁴ Canberra Times "Positive energy campaign to cost \$31 million, run until federal election" 14 February 2022 and The Guardian "Coalition spends \$31m on ads spruiking efforts to cut greenhouse gas emissions" 14 February 2022.

²⁵ Accountability Round Table, Submission 343, pages 6 and 7, Grattan Institute, Submission 367, pages 1 and 8, The Centre for Public Integrity, "How to Level the Playing Field" Briefing Paper, April 2022, Page 4, Climate 200 Submission 419, Simon Holmes à Court, Committee Hansard, 3 November 2022, page 40.

²⁶ See generally Climate 200, Submissions 419.

party or candidate can be harvested, to be used by that party or candidate for timely communications when the applicant receives the voting forms, or at any time in the future.

- 1.76 The independence and integrity of the postal vote process needs to be protected. Parties and candidates should not seek to use the process by creating their own application form and imposing an interim step of receiving and recording a completed application form before passing it to the AEC.
- 1.77 In April 2022 the AEC wrote to political parties warning against distributing '*potentially misleading*' postal vote applications to residents. There were reports of incorrect forms being distributed to voters and the AEC's purple colour being used on some forms. Tom Rogers, the AEC Commissioner, was quoted as saying in respect of reports of misleading postal vote applications – "... *the use of colour and wording means someone who doesn't examine the material in detail could mistake it for a piece of AEC communication*". Further there was no need for the mass distribution of postal ballots.²⁷
- 1.78 I welcome any further opportunity the Committee may have to take evidence from the AEC Commissioner on concerns around the postal vote process.

Political parties comply with data protection and spamming laws

Privacy Act

Recommendation 8

- 1.79 **I propose a further recommendation in terms that – the Australian Government amends the Privacy Act 1988 (Cth) to remove the exemption of a registered political party from the operation of the Privacy Act.**
- 1.80 The *Privacy Act 1988 (Cth)* is the principal piece of legislation governing data protection. It was introduced to promote and protect the privacy of individuals and regulate how Australian government agencies and 'organisations' handle personal information. The *Australian Privacy Principles* are the cornerstone of the privacy protection framework in the Privacy Act and govern standards, rights and obligations around a number of matters including the collection, use and disclosure of personal information and an organisation's governance and accountability. Currently, an organisation with a turnover of more than \$3,000,000 in a financial year is subject to the laws.
- 1.81 The major political parties have exempted themselves from the data protection laws in the Privacy Act by a registered political party being excluded from the definition of 'organisation' under section 6C of the Privacy Act. The legislated protections for an individual's personal information (such as use and disclosure of such information) therefore do not apply.

²⁷ The Guardian "AEC warns Australian political parties over misleading postal vote applications", 16 April 2022.

- 1.82 The exemption of a registered political party from the operation of the Privacy Act should be removed.²⁸ Political parties or candidates should be subject to data protection laws if they otherwise qualify as a relevant organisation.

Spam Act

Recommendation 9

- 1.83 I propose a further recommendation in terms that – the Australian Government amends the Spam Act 2003 (Cth) to remove the exemption from the Spam Act of registered political parties to send unsolicited electronic messages.**

- 1.84 The *Spam Act 2003 (Cth)* restricts spam (specifically commercial electronic messages) with the aim to protect individuals from aggressive marketing strategies. It covers all commercial electronic messages that are not otherwise exempt.

- 1.85 The major political parties have exempted themselves from the key operation of the Spam Act by permitting registered political parties to send '*designated commercial electronic messages*' along with government bodies, registered charities and educational institutions (see the definition of '*designated commercial electronic message*' in section 4 and Schedule 1 and see sections 16, 17 and 18 of the Spam Act). The exemption has not been extended to other independent members or political candidates.

- 1.86 Individuals should be protected from unsolicited electronic messages from political parties (such as election day text messages) and, where the Spam Act allows electronic messages to be sent, the requirements of the Spam Act should apply. This includes a functional unsubscribe facility which allows the recipient to easily unsubscribe from receiving further electronic messages.

- 1.87 The Spam Act should apply to political parties as it does to independent candidates.²⁹

Other majority report recommendations

- 1.88 I support recommendation 10 (providing the AEC with additional resources to support, implement and enforce the new reforms).

- 1.89 I support recommendation 13 (consideration of the new framework in any future terms of reference to review the next federal election).

- 1.90 I support recommendations 14 (strengthen opportunity for electoral enfranchisement and participation particularly of Aboriginal and Torres Strait Islander people in remote communities) and 15 (resource the AEC to work directly with Aboriginal and Torres Strait Islander community organisations).

²⁸ Climate 200, Submission 419.

²⁹ Climate 200, Submissions 419.

APPENDIX A

List of party and incumbency advantages creating barriers to entry for new participants

Party advantages include:

- 1 Public awareness/brand reinforced by national advertising.
- 2 Public funding reimbursement model acts as a resource guarantee and enables the rollover of funding from election to election.
- 3 Existing infrastructure such as office space and equipment.
- 4 In any spending cap, the ability to shift costs from unwinnable/unlosable seats to battleground seats.
- 5 Donor access to ministers/shadow ministers.
- 6 Tax deductibility of donations at any time.
- 7 Exemptions from data protection and spamming laws.
- 8 Party endorsed Senators using their communications/office budget in non-election cycles to support the re-election of their House of Representative party colleagues.
- 9 Assets built over time in associated entities formed specifically to support the party.
- 10 When in government, the use of pre-election government advertising.
- 11 When in government, control over the election date with the opportunity to book advertising space and use funding more strategically.
- 12 When in government, the opportunity to 'pork barrel' strategic seats by funding projects in those electorates.
- 13 Public funding reimbursement to parties is not liable to tax, whereas this reimbursement to independents may be taxable.

Incumbent politician advantages include:

- 1 Access to the electoral roll.

- 2 The use of resources for a parliamentarian to perform their role, including the parliamentarian's salary, office, use of communications/office budget, printing and travel allowances, and electorate and personal staff. Subject to certain limitations, these resources may be used during an election campaign whilst also providing financial security and mobility.
- 3 Public funding reimbursement model potentially enables the rollover of funding from election to election.
- 4 Tax deductibility of donations at any time.
- 5 Intervening in the postal vote process and data harvesting from requiring postal voting applications to be sent to the incumbent.

Ms Kate Chaney MP
Independent Member for Curtin



Additional comments by the Australian Greens

- 1.1 For many years, the Greens have championed reforms to clean up our democracy, including getting big money out of politics, exposing hidden money that is never declared, preventing misleading campaigns, removing barriers to running for election, and addressing the 'incumbency advantages' that stack outcomes in favour of the two-party system.
- 1.2 Any legislation to deliver electoral reforms must ensure it strengthens democracy, not just the political fortunes of the big parties. History has shown reforms, or lack thereof, that bolster the re-election chances of the big parties at the expense of smaller parties or new entrants. The Greens cannot support such an approach.
- 1.3 Critically, campaign finance reforms must be delivered as a whole, not piecemeal. The Greens will not accept partial reforms that leave loopholes and backdoors for hidden and dirty money to continue and further entrench major party advantages over third parties and independents
- 1.4 1 in 3 voters chose to vote for someone other than a major party at the last election. They deserve to see their vote result in representation in our Parliament and this will be our measuring stick for what makes a good reform.
- 1.5 Confidence in democracy has declined dramatically around the world over the past decade. While Australia's democratic processes remain robust, we can see worrying trends where big money has impacted the outcome. We need to act quickly to reverse the race to the bottom and deliver the integrity, choice, and representation that the community is demanding.
- 1.6 The majority recommendations of this interim report reflect the broad appetite for reform and the compelling evidence from witnesses to the inquiry about what is needed, but the test will be whether a full package of reforms is ultimately brought forward, or just cherry-picked reforms aimed at propping up two major parties whose votes continue to decline. We will continue to push the government to implement recommendations that improve democracy before the next election.
- 1.7 These brief additional comments highlight issues to be addressed in implementing the recommendations, and further matters to be considered by the Committee before the inquiry is finalised.

Campaign finance

Donations

- 1.8 The community is sick of political parties acting in the interests of their donors, not the public interest. They make the link between fossil fuel donations and subsidies to open coal and gas projects in a climate crisis. They see donations from the financial and gambling sectors put a handbrake on regulation of those sectors. And they've watched as donations from consultants are rewarded with millions in contracts at the expense of the public service.
- 1.9 We therefore welcome the Committee recommendations to lower the disclosure threshold for donations, introduce real time disclosure, cap donations and review the definition of 'gift'. These are important measures to close loopholes that have led to millions in hidden money being gifted to political parties each year. They will give people a clearer understanding of who is influencing the decisions of the candidates they are voting for. They will also help to level the playing field and avoid those with money gaining greater access to government. Any legislative reform in this area needs to have all forms of income to political parties captured before it would be acceptable to the Greens.
- 1.10 In addition to supporting caps on donations, the Greens maintain our long-term call to go further and ban donations from industries with a track record of seeking political influence (fossil fuels, banking, pharmaceutical, defence, alcohol, tobacco, gambling and property development). We also continue to support stronger regulation of lobbyists, closing the revolving door of post-parliamentary jobs for mates, strengthening the Register of Interests, and requiring publication of Ministerial diaries.
- 1.11 Critically, the benefits of donations caps and lowering the disclosure threshold will be undermined if donors can continue to contribute hundreds of thousands of dollars as "subscription fees", "memberships" of party-affiliated business forums and expensive dinners and not report that as a donation.
- 1.12 PwC's \$82,500 subscription fee to the Labor Business Forum was not recorded as a donation, but in exchange the consultants got extraordinary access to, and influence over, government - with devastating consequences for the public good.
- 1.13 Donors can currently spend thousands on a dinner with a politician, and not treat it as a donation if they believe that they got "value for money" from attending. Sportsbet spent \$8960 on a dinner with the then Shadow Minister responsible for regulating gambling. Time will tell whether they consider they got value for money.
- 1.14 And funding vehicles like Kooyong 200 or the Sydney Mining Club continue to obscure transparency by allowing donations to be funneled through their accounts to avoid disclosure of the original donor.
- 1.15 Clearly, the current rules are farcical and we're pleased to see some commitment to closing the most egregious of loopholes. However, the proposal to provide

“appropriate” exclusions for subscriptions, membership and affiliation fees is worrying and must not be used as a way to maintain the disclosure gaps.

- 1.16 Election campaigns, particularly those of new candidates and minor parties, regularly rely on volunteer labour from dedicated individuals, compared with professional staff engaged by incumbents. The value of this volunteer labour should be excluded from donation caps, provided it is done in an individual capacity, not an ‘in-kind’ corporate donation.
- 1.17 Beyond reasonable party membership fees and individual volunteering, all other contributions should be disclosed. For the Greens, partial reform in this area will only facilitate more of the same influence of politics that the Government is proposing to end and will not be accepted.
- 1.18 The majority report recommends that donation and spending caps apply to third parties. We note the concerns raised by charities and not for profits that, while targeted spending caps are appropriate, capping donations to third parties would disproportionately impact their work and effectively silence their advocacy around elections. Third party witnesses are yet to appear before this inquiry, and we urge the Committee to further consider that recommendation following their evidence and ensure that caps do not limit the voices in political debate.

Spending caps

- 1.19 A healthy democracy is not one in which those with the deepest pockets get to be the loudest voices. Without reforms, we risk our electoral system becoming even more skewed towards the wealthy and entrenching the two-party system.
- 1.20 The Greens support Committee recommendations to cap election spending and increase public funding so candidates don’t need to beg for campaign funds from those who could later expect their generosity to be rewarded. The changes are also needed to stop candidates pouring millions into campaigns that flood the public space and drown out their opponents.
- 1.21 However, as with political donations, the risk with spending caps is that reforms lock in advantages to the major parties and exclude others by including some types of activities and excluding others.
- 1.22 In addition to the features outlined in the majority report, spending caps should be designed to:
 - capture expenditure on advertising, campaign materials, polling and research, and in kind gifts; and exclude salaries and office rental costs to address the imbalance where incumbents have these costs paid with public funds.

A mechanism should be developed to split the cost of national or statewide advertising costs between all electorates for the purposes of spending caps, to prevent major parties using national campaigns to exceed caps in targeted and marginal electorates.

- include anti-avoidance provisions that would prevent parties circumventing caps by using third party conduits or entering contracts outside the spending cap period
- include strong monitoring and enforcement provisions, and mechanisms to recover amounts spent in excess of the spending cap
- provide for regular, independent review of the cap limit following each election.

Incumbency advantages

- 1.23 The majority report recognises that there are a number of inherent advantages enjoyed by incumbent candidates and those backed by large parties, including access to party resources, government advertising budgets and grants programs, corporate donors, administrative officers, and media profile.
- 1.24 Spending caps will go some way to leveling the playing field for independent and small party candidates, but must be complemented by other reforms to remove the incumbency advantages. Unless those issues are addressed, spending caps could disproportionately impact on new entrants.
- 1.25 In addition to designing spending caps to account for the incumbency advantage, reforms are needed to ensure these advantages are not weaponised to entrench the major parties. In particular, we recommend that the Committee in its final report consider ways to:
- strengthen the regulatory rules for government advertising and use of electorate office resources
 - prevent pork-barrelling, including by ensuring the independence and rigour of grant allocations, continuing to resource the Australian National Audit Office to undertake performance audits of all grant programs, and empowering the National Anti-Corruption Commission to investigate allegations of pork-barrelling
 - increase access to public funding reimbursements for new candidates

First Nations engagement

- 1.26 This Committee has previously recommended that the government strengthen enrolment and engagement in elections, particularly for First Nations voters. A robust democracy ensures that all voters are given the opportunity to exercise their vote and have the information they need to make an informed choice.
- 1.27 Measures to increase enrolment and participation include on the day enrolment, phone voting, extending remote polling, removing restrictions on voting rights for prisoners and Australians living overseas, increased use of interpreters, and producing electoral materials in language.

1.28 We were disappointed to see many of those measures rejected or ignored by the government in its Referendum (Machinery Provisions) Amendment Act 2023. We strongly support the Committee's reiteration of the need for action and urge the government to make those changes before the Voice referendum, and any future federal election.

Other issues

1.29 Politics cannot work for communities if it isn't genuinely listening to their voices. There is a strong public sentiment that diverse voices are not being heard in parliament, that politicians do not look like, or share the experiences of, the communities they represent.

1.30 While the 2022 election saw some progress on this, the Greens urge the Committee to consider other ways to remove barriers to achieving a more diverse and representative parliament, including:

- removing Constitutional restrictions that disqualify dual citizens and public servants from becoming a member of parliament
- introducing proportional representation in the House of Representatives so that elected members more closely reflect the Australian population and the voting intentions of the public
- reducing candidate nomination fees
- ensuring the leaders' debate and media election programs include the Australian Greens and other smaller parties offering genuine alternatives to the major parties.

1.31 Thank you to all the submitters who have engaged with this inquiry to date. After years of pushing for donations and spending reforms, we are delighted to see the weight of public pressure force a commitment to progress. We will work to ensure that those reforms strengthen our democracy for everyone, not just the major parties and will stand firm against proposals that sound good in principle but, in practice, further entrench the two party system.

Senator Larissa Waters
Greens Senator for Queensland



Additional comments by Senator David Pocock

- 1.1 I thank the Committee for their work on this report, and the efforts of the community in making their voices heard through the submission process. I would like to take the opportunity to again commend the Australian Electoral Commission for the professional way in which the 2022 elections were conducted despite the challenging context. We are fortunate to have a respected, independent electoral commission to run our elections and ensure a peaceful transfer of governance in this country.
- 1.2 While I support the Committee Report, I believe that the committee did not go far enough in ensuring that all Australians have an equal voice in our democracy. To this end, my additional comments make a number of recommendations designed to improve representation, transparency and integrity in our political system.

Territory representation

- 1.3 I am disappointed that the report did not consider the issue of Territory representation, which I raised in my submission, and was also raised by the ACT Government, Professor Kim Rubenstein and The Australia Institute among others in their submissions. I believe that in neglecting to address Territory Senate representation, the Committee has missed a vital opportunity to examine an issue which goes to the heart of our democracy; the opportunity for all Australians to be heard and fairly represented
- 1.4 In 1975, a deal was struck to grant two Senators to each Territory. This was a political decision which all but guaranteed two more representatives for the major parties. This calculation did not address the core question of what baseline level of democracy is appropriate for small (non-Original State) jurisdictions? What is the appropriate balance between federalism and representative democracy?
- 1.5 The issue was addressed in the Constitution with the smallest State granted the same level of Senate representation as the largest State. This equality of Senate representation between States exists today. No considerations of equality of representation were part of the decision-making process when the ACT and NT were granted Senators in 1975.
- 1.6 In my submission to the Committee, I proposed a logical and balanced basis for determining the number of Senators that should represent the ACT and NT.
- 1.7 The base level of representation should be as close as possible to half the number of Senators from each state, resulting in six (6) for each Territory at current State levels.

I note the recommendations from Professor Kim Rubenstein and The Australia Institute that each Territory be represented by four Senators.

- 1.8 The Committee has missed an opportunity to recommend guidelines for the long overdue reform of Territory representation in the Senate. Such guidelines could ensure that Territory representation would grow proportionally with the electorate as it will for the States, thus providing a permanent structural solution aligned with the values of representative democracy. In my submission I suggested that the number of Senators from each Territory remain at more than one third, but less than two thirds of the States' Senate allocation.
- 1.9 I am disappointed that no consideration was given to establishing a rational basis for the number of Senators from each Territory. The Committee has chosen not to recommend a durable solution that can be used into the future should the level of representation from the States change. Territories should not have to continually fight to ensure that they are fairly represented in the Federal Parliament.

Recommendation

- 1.10 Increase the baseline level of representation for the ACT and NT in the Senate to as close to half the representation of States as possible. Given the current number of Senators in each State, this would see the ACT and the NT each have 6 Senators. Terms should increase to six years and commence on 1 July following the election in line with the states.**

Transparency

- 1.11 The ACT community is frustrated with the lack of transparency in the federal electoral system. As noted in my submission, knowing who is donating money to candidates, political parties and other political actors is critical in gaining an understanding of who might be influencing decision-making in government.
- 1.12 I welcome and support recommendations 1, 2 and 3 of the Committee Report.
- 1.13 Australians have been calling on federal governments to lower the donation threshold, and to mandate a requirement that donations to political candidates and parties be disclosed in real time. The Committee received numerous submissions from experts and community members about the corrosive effect of secrecy, deceit, and lack of transparency regarding donations on our democracy. This undermines Australians' faith that their elected representatives are working for them. The Committee Report provides important examples of these.
- 1.14 'Dark money' remains a huge problem in Australian politics. The concerns of submitters and witnesses in relation to transparency around gifts and 'other receipts' is accurately summarised in the Committee Report. However, Recommendation 3 of the Committee Report does not recognise the highly political nature of changing the definition of 'gift'. It also does not properly unpack issues highlighted by numerous submitters and witnesses around 'other receipts.'

Recommendation

- 1.15 The government should commission an independent body, such as the Australian Law Reform Commission, to develop recommendations to require full disclosure of all receipts above the threshold. Consideration should be given to removing the ‘other receipts’ category, disclosure of loans and the creation of an AEC Transparency Register, in accordance with Recommendation 1 made by the Member for Curtin, Kate Chaney MP in her Additional Comments.**

Recommendation

- 1.16 I support Recommendation 2 made by the Member for Curtin, Kate Chaney MP in her Additional Comments that the government should expand the lobbyist register to include in-house lobbyists. I further recommend that, if a lobbyist holds a sponsored pass that gives access to the Australian Parliament House, the details of the pass including the sponsoring MP or Senator are captured on the lobbyist register. Details of sponsored passes should also be listed on Parliamentarians profiles on the Australian Parliament House website.**

Political donations from certain entities

- 1.17 I support Recommendations 4(a) and (b) made by the Member for Curtin, Kate Chaney MP in her Additional Comments in relation to prohibited donations and for some entities.
- 1.18 There will always be a risk that donations will influence policy. Where the influence of an industry is at odds with broader community values, the barrier to donations and access by lobbyists should be impenetrable. The tobacco, gambling and liquor industries are all contributors to significant social harm and so should be unequivocally barred from such influence.
- 1.19 As Ms Chaney MP sets out in paragraphs 1.30 to 1.32 of her Additional Comments, there are serious probity concerns where substantial government contractors are able to make political donations. The only effective way to address this is through the prohibition Ms Chaney MP proposes.

Truth in political advertising

- 1.20 I support and welcome recommendations 11 and 12 of the Committee Report.
- 1.21 As I said in my submission, I believe that politics should be about ideas and about people. Our democracy relies on a well-informed public to elect their best representatives and hold those representatives accountable. That’s why I am in favour of attempting to stop lies and misinformation being part of our political system. Campaigning against someone’s voting record or things they have publicly said is part of holding people to account; smearing political opponents with lies is not.

- 1.22 However, I remain concerned about risks of regulation to the freedom of political communication which is fundamental to the democratic process. I believe any regulation must be alive to these risks and strike a careful balance between securing the integrity of our elections and continuing to uphold these freedoms. I also believe that determining truth in advertising has the potential to be a highly politicised issue. As such, I would urge the government to consider establishing an independent review body outside the AEC to safeguard the commission's neutrality. While I am supportive of developing an effective framework with reference to the South Australian model, regulations should keep these concerns in mind.

Recommendation

- 1.23 The government should establish an independent body to manage and rule on truth in political advertising complaints. This body should be completely separate from the AEC, whose neutrality is a critical feature of our electoral architecture and must be maintained.**

Encouraging increased electoral participation

- 1.24 I welcome and support recommendations 14 and 15 of the Committee Report. In particular, I am pleased to see the focus on engagement with Aboriginal and Torres Strait Islander community organisations. As I stated in my submission, durable solutions to increasing First Nations' electoral participation can only be found through working with the communities with lived experience.
- 1.25 It is clear that the AEC will require additional resources to continue to encourage enfranchisement and participation from remote Aboriginal and Torres Strait Islander communities.

Recommendation

- 1.26 The government should consider providing additional resources to the AEC to deliver elections to remote communities.**

The impact of finance on elections

- 1.27 I support Recommendation 3 made by the Member for Curtin, Kate Chaney MP in her Additional Comments. Any change to donation or spending caps should be informed by the principle of creating a level playing field including for new entrant parties and candidates.
- 1.28 Caps on political donations provide an opportunity to safeguard our democracy by limiting the influence an individual, company or other entity can have over a candidate or political party. However, careful consideration must be given to the design of any system to ensure that it does not unduly limit the ability of Independent candidates and micro parties to compete with larger political parties.

- 1.29 My support for donation caps in accordance with Recommendation 4 of the Committee Report is contingent on any design being in accordance with the principles set out at paragraph 1.29 of the Additional Comments provided by the Member for Curtin, Kate Chaney MP.
- 1.30 Regulation of donation caps must be developed in conjunction with any changes to the public election funding system developed under Recommendation 9 of the Committee's Report to ensure that they are complementary and neither act as a barrier to entry for new participants.
- 1.31 Caps on spending on political campaigns provide an opportunity to remove the damaging effect that big money can have on our political system. However, badly designed spending caps will entrench advantages of incumbency and the existence of party machinery. This would be a bad outcome for our democracy, which has been recently enlivened through the community-based independents' movement.
- 1.32 Any system to regulate the level of spending in elections must also be carefully considered, again independently of government. My support for spending caps in Recommendation 4 of the Committee Report is contingent on their careful calibration to ensure that the full value of incumbency and party machinery is reflected, and higher spending caps for new entrants are considered to allow them to compete on an equal footing. The risks associated with failing to do this are eloquently articulated in paragraph 1.43 of the Additional Comments to this report made by the Member for Curtin, Kate Chaney MP.
- 1.33 There is a strong incentive for governments and major parties to design spending and donation caps in a way that will entrench the electoral status-quo. The design of donation caps should be undertaken independently of the government of the day and should consider all sources of income for political parties, consistent with the Recommendation above that an independent body such as the ALRC develop a system that ensures all receipts above the donation threshold are disclosed.

Recommendation

- 1.34 Any system developed to regulate political donations and election spending must be developed by a non-partisan, independent body. The introduction of donation and spending caps has the potential to have a significant impact on the ability of independent candidates and micro parties to be elected to Parliament and as such the development of any system must be free of the undue political influence of incumbents.**
- 1.35 I also support the comments made by the Member for Curtin, Kate Chaney MP at paragraph 1.25 of her Additional Comments.

Addressing incumbency advantage

- 1.36 The deleterious impact that incumbency advantage has on our democratic system is well documented. New entrants and challengers inject energy, dynamism and more

effective representation into politics. Yet the barriers to entry are high, and the interest in addressing the issue is low amongst the major parties.

- 1.37 I support the recommendations made by the Member for Curtin, Kate Chaney MP in her Additional Comments that go to levelling the playing field and addressing the advantages of incumbency and major party structure. In particular:
- Recommendation 5 that the government amend the Electoral Act 1918 to enable an independent candidate to register an Independent Candidate Entity to be treated in the same way as a political party.
 - Recommendation 6 that the government takes the necessary steps to prohibit government advertising from two years after an election until the next election except in the case of a national emergency or other compelling reason as determined by an independently constituted body.
 - Recommendation 7 that the government amend the Electoral Act 1918 to ensure the independence of the postal vote process by preventing parties or candidates from achieving an advantage through the process.

Senator David Pocock

Independent Senator for the Australian Capital Territory