

**Submission
No 24**

**PROPOSALS TO INCREASE VOTER ENGAGEMENT, PARTICIPATION AND
CONFIDENCE**

Organisation: Institute of Public Affairs

Date Received: 16 August 2024

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Committee Secretary
Joint Committee on Electoral Matters
Parliament of New South Wales
Sydney NSW 2000

Dear Committee Secretary,

Institute of Public Affairs submission on proposals to increase voter engagement and participation

This submission has been prepared to share IPA analysis with the committee as it conducts its inquiry into proposals to increase voter engagement, participation and confidence.

A functional democracy hinges on the freedom of citizens to engage in open public debate and participate in the electoral process. Central to these interrelated ideas is freedom of speech.

Freedom of speech is the value that recognises people have autonomy over their conscience, and that it is in recognition of the fundamental human dignity of every person that governments do not restrict the expression of opinions.

In order to have a representative democracy, citizens who are expected to select who their political representatives are must be entitled to engage in open debate about their political preferences. Participation and engagement in the democratic process therefore means allowing all people to express a diversity of views without censorship.

This submission addresses the following three issues relating to voter engagement and participation:

1. Democratic engagement is unlikely to be improved by government-led initiatives.
2. Donation caps curtail indirect democratic participation and risk entrenching bias in electoral politics.
3. This inquiry must not be a Trojan horse for government censorship to regulate 'misinformation'.

Democratic engagement is unlikely to be improved by government-led initiatives

The inquiry is in part based on the flawed premise that it is the parliament's role to increase voter participation and engagement. Democratic engagement and participation should solely be the responsibility of political candidates and political parties.

If electors are less engaged, this is less an institutional failure and more a failure of political parties and candidates to convince electors to become engaged. This is reflected in the current New South Wales laws by the optional preferential voting system. Under optional preferential voting, a ballot paper that is only partially filled out (from one to all candidates) will be counted as valid. This is an important corrective to the key flaw of preferential voting that compels an elector, in order to participate in the democratic process with a valid vote, to give an electoral preference to candidates they may not support.

Optional preferential voting supports democratic participation and engagement because it gives an elector control over their own vote. For similar reasons, the committee should also reconsider the appropriateness of compulsory voting, whereby electors are penalised for failing to attend an election voting booth during an election period. Compulsory voting tends to favour established major parties, further entrenching a two-party system. This is because it reduces the size of electoral swings and decreases uncertainty about the number of seats won by each party by infringing on the democratic right of voters who are dissatisfied with the established parties to withhold their vote.¹

Donation caps curtail indirect democratic participation and risk entrenching bias in the political system

People can exercise their right to participate in a democracy either directly or indirectly. Indirect participation refers to activities which assist others in promoting or advancing a particular policy or political perspective. This includes financial donations to political candidates, parties, or organisations that share one's values.

Indirect participation is no less deserving of recognition or protection than direct participation.² As recognised by the High Court, indirect participation is 'political communication' that is fundamental to Australia's system of representative government.³

Attempts to reform electoral laws are commonly justified with reference to protecting democracy. A New South Wales state parliamentary inquiry in 2010 proposed sweeping restrictions on political donations by third parties in order to 'promote fairness and equality', and the premier at the time asserted that 'those with the most money have the loudest voice and can simply drown out the voices of all others.' But as then research fellow at the Institute of Public Affairs, Chris Berg, noted in 2012, this conception is flawed:

Free debate is at the heart of democracy. So, what right does a government have to manipulate that debate? How can it legitimately suppress and restrain participants that

¹ William Coleman, 'Australia's Electoral Idiosyncrasies' in William Coleman (ed), *Only in Australia: The History, Politics, and Economics of Australian Exceptionalism* (Oxford University Press, 2016) 153.

² Gideon Rozner, *Freedom of Speech and Political Communication in Australia* (Institute of Public Affairs Research Report, January 2018).

³ *Unions NSW v New South Wales* (2013) 252 CLR 530 at [30].

it has determined are excessively loud, or decide what constitutes a genuine—rather than political—campaign?⁴

This exposes the flaw of electoral law reform: namely, that the government is claiming not only the authority but the ability to know how to discern legitimate political activity from illegitimate political activity, and that it can do this without error or conflict of interest. It is not unreasonable for those in a political community to be sceptical that a government should ever exercise these kinds of powers.

Proposals to increase voter engagement, participation and confidence should seek to minimise substantial legislative restrictions on the right to participate freely in political discourse. For instance, donation caps serve as a barrier to political participation by curbing the ability of individuals to financially support candidates or causes they believe in.⁵ Such restrictions are akin to limiting other forms of political engagement, such as the distribution of how-to-vote cards, door-to-door campaigning, or the signing of petitions.

Donation limit rules also entrench structural biases towards powers or organisations, such as trade unions, that are able to circumvent such laws through exemptions for ‘affiliation fees’ and their provision of in-kind support for political parties, such as the volunteer labour that union organisations are able to mobilise during election periods.

The inquiry must not be a Trojan horse for government censorship to eliminate ‘misinformation’

The chairman of the committee stated in the media release that a justification for conducting this inquiry was that ‘public confidence in elections can be eroded by perceived weaknesses in the electoral system, and by misinformation and disinformation campaigns’.

This sends a concerning signal that the committee views the censorship of public debate as necessary to achieve a better democracy.

Democracy depends on the free and open exchange of ideas and opinions, and on people being able to participate in that debate in order to make fully informed decisions on public policy matters and about whom they choose to represent them in democratic institutions. As the IPA noted in 2023 in relation to federal misinformation laws:

If democracy is a mechanism by which the preferences of members of the body politic are aggregated, it follows that individuals must have the ability to not only express their preferences, but also to access the ideas of others so as to form their preferences. Misinformation laws require restricting the boundaries of public debate, which comes

⁴ Chris Berg, ‘O’Farrell’s campaign finance reforms are abominable’, *ABS News* (15 February 2012).

⁵ Currently, political donations are capped for a financial year and the cap is adjusted annually for inflation. Multiple donations from the same donor to the same recipient are aggregated for the purpose of the caps. The caps vary for different recipients, and, for 1 July 2021 to 30 June 2022, range from \$6,700 for a political party to \$3,100 for candidates and third-party campaigners.

at a cost to all who participate in it. The costs of restricting freedom of speech are therefore high because it harms the practice of democracy itself.⁶

Moreover, the concept of misinformation is notoriously broad and subjective, and as recent history has shown, does not merely apply to verifiably false statements but also to opinions about contentious issues, such as public health issues, elections,⁷ and the 2023 Voice referendum. The IPA noted in 2022 that the

suggestion that government officials could be employed as reliable arbiters of truth is idealistic but unrealistic. More realistic is that the “official” truth would be determined not by reference to its accuracy, but according to whether it is politically uncomfortable or unacceptable for certain opinions to be expressed.⁸

Public officials would be required to make determinations about what types of speech meet the definition of misinformation and disinformation. It would therefore be open to regulators to pick and choose which perspectives qualify as legitimate and which perspectives are illegitimate misinformation. Such a power is antithetical to democratic electoral systems.

I would like to thank the committee for the opportunity to make this submission. If you would like to discuss the IPA’s research further, please do not hesitate to contact me at

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Kind regards

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⁶ Morgan Begg and John Storey, Canberra’s Digital Ministry of Truth,

⁷ Morgan Begg, *Federal government must abandon plan for internet censorship* (Institute of Public Affairs, 12 May 2022) 4-5.

⁸ Morgan Begg, *Federal government must abandon plan for internet censorship* (Institute of Public Affairs, 12 May 2022) 3-4.