



PARLIAMENT OF TASMANIA

House of Assembly Standing Committee on Government
Administration B

Inquiry into the Electoral Disclosure and Funding Amendment Bill 2024 (No. 9)

MEMBERS OF THE COMMITTEE

Ms White (Chair)
Mr Behrakis (Deputy Chair)
Mr Bayley (Proxy for Ms Rosol)
Ms Haddad (Proxy for Mr Winter)
Ms Johnston
Mrs Pentland
Mr Wood

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CHAIR'S FOREWORD

On behalf of the Committee, I am pleased to present this report to the House.

It is vitally important the Tasmanian community has confidence that state elections can be held without risk of interference from vested interests or those who might seek to manipulate policy outcomes through corrupt practices, whether real or perceived.

The influence of money in Tasmanian state elections has been a point of discussion for many decades and public pressure for reform resulted in the passage of the *Electoral Disclosure and Funding Act 2023*.

However, there remains a prevailing view that the reforms did not go far enough to satisfy community expectation about the level of transparency a modern democracy should uphold.

The Committee was tasked with taking evidence and reporting back to the Parliament on the Electoral Disclosure and Funding Amendment Bill 2024 with the aim of making recommendations that the Parliament might adopt to improve the functions of the Act.

The Committee heard a range of evidence, some outside the scope of our terms of reference, but all of it relevant to the conduct of elections in Tasmania. Fundamentally, the objective of all members of parliament should be to act with integrity at all times and make decisions that are in the best interest of our community. Ensuring we have contemporary legislation to inform how elections are conducted is paramount in our effort to maintain trust in public institutions and the electoral system.

Whilst there were a range of submissions presented to the Committee, there was a clear theme of support for improving the transparency of donations. In the interest of providing a report that will allow the Parliament to take a collective step forward to improve transparency in Tasmanian elections the recommendations focus primarily on those topics that are likely to receive majority support for reform, noting that some other matters require further consideration. It is important to note that this should not be read as a way to diminish the importance of further reform but instead to recognise that additional research and consultation is required to ensure there are no unintended consequences.

Ultimately, we should all aspire to a framework for the conduct of election campaigns that satisfies the objectives of transparency, truthfulness and public service.

I would like to thank all those who took the time to make submissions and provided evidence to the inquiry.

A handwritten signature in blue ink, appearing to read 'Rebecca White', with a stylized flourish at the end.

Rebecca White MP

CHAIR

17 September 2024

RECOMMENDATIONS

1. The Committee recommends either that the Order of the Day for the Bill be discharged and the Bill withdrawn and a new Bill introduced, or that the Bill be amended in the House.
2. The Committee recommends the House agree to amendments to the Principal Act that provide:
 - (a) for a reduction in the threshold for a reportable political donation from one of \$5,000 or more to one of \$1,000 or more;
 - (b) that from the commencement of an election period until seven days from polling day, a reportable political donation is to be disclosed within seven days of the donation being received.
 - (c) that outside of an election period, a reportable political donation is to be disclosed within 28 days of the donation being received.
3. The Committee recommends that the House refer the following issues to the Joint Standing Committee on Electoral Matters for future inquiry and report:
 - (a) expenditure limits and expenditure period;
 - (b) donation caps;
 - (c) fixed terms for House of Assembly elections;
 - (d) truth in political advertising;
 - (e) limitations on eligibility to make political donations;
 - (f) vote savings; and
 - (g) Legislative Council electoral and administrative funding.

1 APPOINTMENT, TERMS OF REFERENCE, AND CONDUCT OF THE INQUIRY

Appointment and terms of reference

- 1.1 On 12 June 2024, the House of Assembly referred the Electoral Disclosure and Funding Amendment Bill 2024 (No. 9) ('the Bill') to the Standing Committee on Government Administration B (the Committee) for inquiry and report thereon, with the Committee to report by 10 September 2024.
- 1.2 The Bill was introduced into the House of Assembly on 15 May 2024 by Dr Rosalie Woodruff MP, Member for Franklin and Leader of the Tasmanian Greens. Dr Woodruff gave the Bill's Second Reading Speech on 12 June 2024.
- 1.3 The minutes of the Committee pertaining to this inquiry are attached as an appendix.

Conduct of the Inquiry

- 1.4 The Committee resolved to invite, by way of advertisement on the Parliament of Tasmania website and in the three major Tasmanian newspapers, interested persons and organisations to make a submission to the Committee in relation to the Terms of Reference.
- 1.5 In addition to this general invitation, the Committee directly invited a number of persons and organisations to provide the Committee with any information they deemed to be relevant to the inquiry.
- 1.6 The Committee received 16 submissions and held 3 public hearings at Parliament House, Hobart.

Structure of this Report

- 1.7 This report consists of an examination of the Bill, including discussion of evidence received and Committee findings (where applicable) regarding the Bill's clauses and overall intended impact.

2 EXAMINATION OF THE BILL

- 2.1 The Committee notes that the Parliament was not supplied with the related documents that are commonly supplied with other bills, including a pre-circulated second reading speech, fact sheet, and clause notes.
- 2.2 This has led to challenges in interpreting some aspects of the Bill and the intention of some of its wording and proposed clauses. This contributed to the House of Assembly's decision to refer the Bill to the Committee for inquiry and report.

Development of the Principal Act

- 2.3 On 3 May 2018 then Premier, the Hon. Will Hodgman, announced that a review would be undertaken of Tasmania's *Electoral Act 2004* and associated election laws to be jointly conducted by the Department of Justice and the Department of Premier and Cabinet (the Review).
- 2.4 The Terms of Reference for the Review were released for public consultation from 12 June to 20 July 2018. An Interim Report was published in December 2018 and informed the first tranche of technical and procedural amendments through the *Electoral Amendment Act 2019*.
- 2.5 The Review's Final Report of the Review was published in February 2021, which informed the *Electoral Disclosure and Funding Act 2023* (the Principal Act) as well as the *Electoral Matters (Miscellaneous Amendments) Act 2023*, which were concurrently progressed through the Parliament.
- 2.6 The Electoral Disclosure and Funding Amendment Bill 2024 seeks to amend the Principal Act. The commencement of the Principal Act was by proclamation by which Her Excellency the Governor proclaimed on 20 June 2024 would commence by two separate times:
 - 1 July 2024 as the day on which Part 1 and sections 5 and 180 of the Act commence; and
 - 1 July 2025 as the day on which the provisions of the Act, other than Part 1 and sections 5 and 180, commence.
- 2.7 Clause 16 of the Bill also seeks to consequentially amend Division 5 of Part 7 of the *Electoral Act 2004* by inserting section 197A Misleading Advertising.

Short title, commencement, Principal Act (Clauses 1, 2 and 3)

- 2.8 The Long Title of the Bill being examined by this Committee is “A Bill for an Act to amend the Electoral Disclosure and Funding Act 2023 to introduce electoral expenditure limits for Assembly Elections, amend the donation disclosure threshold, introduce truth in political advertising provisions, and related matters.”
- 2.9 Clauses 1 to 3 of the Bill provide for the short title of the proposed Act, that the proposed Act commences on Royal Assent, and that the *Electoral Disclosure and Funding Act 2023* is the Principal Act.

Evidence received

- 2.10 In her submission to the Committee, Dr Woodruff provided the rationale for the introduction of the Bill into the Parliament:

To ensure lutruwita/Tasmania has a healthy and robust democracy with representation that works in the public interest, we need transparency and accountability in our electoral laws. In a democracy, all elected members have a responsibility to act to demonstrate ethical conduct, strengthen democratic institutions and to build public trust.

The evidence is clear – Tasmania’s electoral laws are weak and in need of reform. This Parliament has an opportunity to act and we believe Tasmanians want to see us, collectively, clean up politics.

Our Bill improves the legislation passed through parliament in the last term, and puts this island and its people first, ahead of wealthy political donors.¹

- 2.11 The Bill proposes measures that would significantly impact the Tasmanian Electoral Commission (TEC). The TEC made the following comments in its submission in regard to the impact of the Bill’s proposed amendments on the TEC:

- *The reduction in timeframes for the making of declarations and reporting by scheme participants and for publication of those matters by the TEC will increase interaction between participants and the TEC*
- *We would expect the lower reporting thresholds, the introduction of a general cap and an increase in the number of political donations to be published to increase the administrative workload of the TEC*
- *The Amendment Bill’s extended regulation of third-party campaigners will require additional education and information-sharing to avoid confusion and promote compliance*
- *The introduction of expenditure limits for Assembly election participants and associated offences would increase the TEC’s audit and investigation workloads*
- *The increased complexity and reporting requirements and shortened timeframes will impact the TEC in its administration and management of major electoral events.²*

¹ Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p. 6.

² Submission No. 11, Tasmanian Electoral Commission, pp. 2-3.

- 2.12 The TEC noted that, with the proclamation of Part 1 and sections 5 and 180 of the Principal Act on 1 July 2024, the 12 months of preparation for the scheme to fully commence had begun. This preparation includes recruitment of appropriately experienced TEC staff and the establishment of an online environment for reporting information and transparency.³
- 2.13 The Tasmanian Policy Exchange submitted that while all Australian mainland states have implemented significant political finance reforms in response to public demands for greater regulation and transparency relating to political donations and campaign spending, Tasmania has failed to do the same.⁴
- 2.14 The Tasmanian Policy Exchange argued that once the Principal Act comes into force, *‘Tasmania’s regulatory regime will remain relatively weak, with a political donation disclosure limit of \$5,000 – equal highest in Australia.’*⁵
- 2.15 The Exchange suggested that there were areas where the Bill could be improved but advised that it supported the following measures in the Bill:
- *The reduction in the threshold for ‘reportable donations to a candidate, member of parliament (MP), registered party, associated entity, or third-party campaigner’ (referred to hereafter as ‘political donations’) from \$5,000 to \$1,000.*
 - *The introduction of more rapid reporting of political donations, particularly during election periods.*
 - *The introduction of caps on political donations.*
 - *The introduction of campaign expenditure caps for House of Assembly elections.*
 - *The introduction of penalties for misleading advertising during election campaigns*⁶
- 2.16 The Tasmanian Council of Social Service (TasCOSS) indicated broad support for the intent of the Bill, including its *‘establishing a scheme for the fair and transparent disclosure of political donations, caps on donations and restrictions on who can make donations, and the timing of donation disclosures’*.⁷ However TasCOSS also indicated concerns the Bill could impact advocacy work undertaken by charitable organisations in Tasmania.⁸
- 2.17 The Government’s submission to the inquiry indicated several concerns with the Bill. The submission referenced recommendation 4 of the Final Report of

³ Submission No. 11, Tasmanian Electoral Commission, p. 11.

⁴ Submission No. 9, Tasmanian Policy Exchange, p. 2.

⁵ Submission No. 9, Tasmanian Policy Exchange, p. 2.

⁶ Submission No. 9, Tasmanian Policy Exchange, pp. 2-3.

⁷ Submission No. 8, Tasmanian Council of Social Service (TasCOSS), p. 1.

⁸ Submission No. 8, TasCOSS, p. 1.

the Electoral Act Review, that any limits and caps be considered following the collection of robust data under the new disclosure and funding scheme.⁹

Committee Findings

- 2.18 The Committee's view on the Bill is that it provides a welcome opportunity to continue to examine Tasmania's electoral system and the impact that the Principal Act will have when it comes into full effect (and when elections then occur when the Act is fully in force).
- 2.19 The Committee received evidence during the short inquiry (discussed in the examination of other clauses later in this report) that indicated that whilst there was merit in the Bill, some of the Bill's proposed measures would benefit from further consultation due to the complexity of implementation.
- 2.20 The Committee acknowledges the comments of the Tasmanian Government in relation to the benefit of effectively waiting for an election or several elections to occur under the in-force Principal Act. The Government suggested the experiences and data collected during those elections would then be used as evidence to support further system improvements.
- 2.21 The Committee also notes that since this Bill was referred to this Committee by the House of Assembly, the Joint Standing Committee on Electoral Matters has been fully established by both Houses of Parliament, and that that Committee has a broader remit to consider electoral matters in more depth.
- 2.22 On balance, the Committee considers that many of the measures within the Bill would benefit from further consultation and analysis. The Bill does present an immediate opportunity to pursue some widely supported improvements to the Principal Act and the scheme it creates, particularly:
- Decreasing the threshold for reportable political donations to \$1,000 or more; and
 - Increasing the frequency for reporting of political donations.
- 2.23 The Committee notes that the Tasmanian Electoral Commission is currently designing their funding and disclosure administrative scheme for the Principal Act and considers that it would be beneficial to act quickly to progress the above before the Commission's administrative work has concluded.
- 2.24 The Committee is of the view that, despite acknowledged merit of the Bill, considering the complexities and the concerns raised about the other matters covered in the Bill, the Bill could be withdrawn and a new Bill brought to the

⁹ Submission No. 4, Tasmanian Government, p. 3.

House that focuses on the two matters listed above (lowering of the disclosure threshold to \$1,000 and increasing the frequency of disclosures). The Committee finds that, alternatively, the Bill could be amended in the House.

- 2.25 The Committee considers that, with reportable donations, this may assist over coming elections to increase data collection to inform other possible required changes, including to general donation caps and expenditure limits.
- 2.26 As discussed later in this report, the Committee considers that several issues raised in the Bill should be referred to the Joint Standing Committee on Electoral Matters for future inquiry and report:
- Expenditure limits and expenditure period;
 - Donation caps;
 - Fixed terms for House of Assembly elections;
 - Truth in political advertising;
 - Limitations on eligibility to make political donations; and
 - Legislative Council electoral and administrative funding.

Recommendations

1. **The Committee recommends either that the Order of the Day for the Bill be discharged and the Bill withdrawn and a new Bill introduced, or that the Bill be amended in the House.**
2. **The Committee recommends the House agree to amendments to the Principal Act that provide:**
 - (a) **for a reduction in the threshold for a reportable political donation from one of \$5,000 or more to one of \$1,000 or more;**
 - (b) **that from the commencement of an election period until seven days from polling day, a reportable political donation is to be disclosed within seven days of the donation being received.**
 - (c) **that outside of an election period, a reportable political donation is to be disclosed within 28 days of the donation being received.**
3. **The Committee recommends that the House refer the following issues to the Joint Standing Committee on Electoral Matters for future inquiry and report:**
 - (a) **expenditure limits and expenditure period;**
 - (b) **donation caps;**
 - (c) **fixed terms for House of Assembly elections;**
 - (d) **truth in political advertising;**
 - (e) **limitations on eligibility to make political donations;**

- (f) vote savings; and
- (g) Legislative Council electoral and administrative funding.

Party subscriptions (Clause 4)

- 2.27 The Committee understands that Clause 4 of the Bill provides for the omitting of the party subscription definition with the substitution of another definition which in effect changes what is considered a party subscription from an annual or other subscription of less than \$5,000 paid to a registered party for membership or affiliation to a more limited scope of less than \$1,000 in total during a financial year.

Committee Finding

- 2.28 The Committee received limited evidence regarding this clause and its proposed impact, and makes no finding or recommendation.

Reportable political donations: Change from \$5,000 to \$1,000 (Clause 5)

- 2.29 The Committee understands that Clause 5 of the Bill sets out 25 amendments to section 13 of the Principal Act which provides for the meaning of reportable political donation as one of \$5,000 or more. The amendments reduce the quantum of the threshold for a reportable donation as one of \$1,000 or more.

Evidence received

- 2.30 The Committee received evidence from several stakeholders in support of a decrease in the reportable political donation threshold from the \$5,000 figure in the Principal Act to \$1,000. For example, Dr Paul Turner submitted:

This is a sensible and important amendment to the 2023 Act. This \$1000 threshold aligns well with community expectations as well as proposed changes occurring in other State and Federal jurisdictions.¹⁰

- 2.31 Dr Kevin Bonham submitted to the Committee that he supported the proposed reduction to \$1,000, indicating that ‘it is a fair point at which to infer a line between a donor who is overwhelmingly likely to merely be showing support and

¹⁰ Submission No. 1, Dr Paul Turner, p. 2.

a donor who might realistically be seeking to gain political influence (such that the voters should know about it)'.¹¹

- 2.32 Hon Meg Webb MLC advised the Committee that *'the Principal Act's current aggregated \$5000 threshold is one of the highest donations disclosure thresholds across subnational jurisdictions'*, and that the majority of the publicly available submissions to the 2021 Electoral Act Review Interim Report public consultation process supported a threshold of \$1,000.¹² Ms Webb recommended that the Committee support the Bill's intent to reduce the Principal Act's reportable political disclosure threshold from \$5,000 to an aggregated \$1,000 from one donor threshold.¹³

- 2.33 Ms Webb indicated that the movement to a fixed disclosure threshold of \$1,000 at the federal level has been recommended on several occasions by Federal Parliamentary Committees, and submitted that:

A \$5000 disclosure threshold will clearly mean we have the least transparent or accountable political disclosure regime in the nation.¹⁴

- 2.34 The Integrity Commission Tasmania noted the following in its submission to the Committee:

In accordance with our previous submissions, we agree with aspects of the Bill that require reporting of all donations and in-kind contributions of over \$1,000 in value rather than \$5,000.¹⁵

- 2.35 At the public hearing on 12 August 2024, Ms Julia Hickey, Acting Chief Executive Officer, Integrity Commission Tasmania, discussed the importance of accountability and transparency in relation to political donations:

Mr BAYLEY - ... Your 2018 submission made a very clear statement around - I will read it out -

Political donations can give rise to conflicts of interest, which, if not properly disclosed and managed, can diminish public confidence in government.

As the Integrity Commission, obviously experts in integrity and governance and so forth, can you unpack for the committee your view of what those conflicts of interest could be or what they extend to?

Ms HICKEY - I think, as has been submitted regularly by a number of submitters, the notion of a donation does imply that there is something expected in return. From a public policy perspective,

¹¹ Submission No. 13, Dr Kevin Bonham, p. 1.

¹² Submission No. 15, Hon. Meg Webb MLC, p. 6.

¹³ Submission No. 15, Hon. Meg Webb MLC, p. 7.

¹⁴ Submission No. 15, Hon. Meg Webb MLC, pp. 6, 7.

¹⁵ Submission No. 3, Integrity Commission Tasmania, p. 1.

*the transparency of donations is the most important aspect and, for the public to have confidence in the integrity of the electoral process, the visibility over those donations is paramount.*¹⁶

- 2.36 Ms Hickey further commented on the need for disclosures of conflicts of interest:

Ms HICKEY - ... Our position is always that conflicts of interest are not bad in and of themselves, but they must be disclosed and properly managed. That applies across the board; it's an underlying principle with everything we do. Every training session we run centres on questions of conflicts of interest. They are unavoidable to some extent but they must be disclosed and properly managed and transparency assists in that.

Mr BAYLEY - And the threshold - currently \$5000, hopefully one day being \$1000 - just increases the visibility and the spectrum of those potential conflicts of interest.

*Ms HICKEY - Yes, precisely.*¹⁷

- 2.37 The Committee did hear evidence from some stakeholders in support of the \$5,000 disclosure threshold, notably the Tasmanian Government:

The Government regards the current \$5000 disclosure threshold in the Act as measured and appropriate.

It is the Government's view that the \$5000 threshold in the Act provides for transparency of electoral donations, while also ensuring that the Act does not undermine the ability for people to engage with the electoral process.

*This threshold is similar to South Australia and considerably lower than the current Commonwealth threshold of \$15,200.*¹⁸

- 2.38 At the 12 August public hearing, Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, similarly commented on the \$5,000 threshold:

*I would put to you also the \$5000 limit is consistent with the other small states. It is consistent with South Australia and it is consistent with WA, with smaller populations. The reason why New South Wales, Victoria and Queensland have lower limits is because they have much larger populations, where you're less likely to have particular communities and knowing exactly who is donating to or supporting a particular political party, and so therefore the risk of reprisal and harm within a particular community is reduced.*¹⁹

- 2.39 In its submission the Liberal Party of Australia, Tasmanian Division, suggested that there is no evidence as to why the disclosure threshold should be lower, and that the Committee should reject lowering the threshold. The submission

¹⁶ Ms Julia Hickey, A/CEO, Integrity Commission Tasmania, Transcript of Evidence, 12 August 2024, p. 4.

¹⁷ Ms Julia Hickey, A/CEO, Integrity Commission Tasmania, Transcript of Evidence, 12 August 2024, p. 5.

¹⁸ Submission No. 4, Tasmanian Government, p. 1.

¹⁹ Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 3.

indicated concerns about publishing the details of donation makers and the risk of reprisals, and submitted:

*Tasmanians have the right to donate in support of policies of their choice and should not be exposed to a serious risk of criminal reprisal for doing so.*²⁰

2.40 When appearing before the Committee on 12 August, Mr Coulson submitted that in his view there are three factors to consider when determining the threshold for donation disclosures:

1. *The public interest in transparency, and yes, I acknowledge that that's an important part of this.*
2. *The right of privacy of supporters of political parties.*
3. *The practicality of political parties in actually being able to meet this regime and do so in a way that doesn't harm democracy.*²¹

2.41 Mr Coulson noted concerns with the 'cumulative model', particularly the difficulty of tracking and calculating 'whether or not any new transactions that might have occurred in the last 24 hours should or shouldn't be added to the cumulative list'.²² Mr Coulson further highlighted his view of the administrative impact of a reduction in the threshold from \$5,000 to \$1,000:

*And I'd put to you that the biggest problem with going from \$5000 to \$1000 from the perspective of someone who has to meet it, is that that's not really affecting your big donors. It mostly affects your mums and dads. Mums and dads who are involved in political parties, have been for a long time. They go to functions, they buy tickets to various events, they donate maybe a couple of times during a year, they get involved, stand on polling booths, et cetera, and so on and so forth, because it's their constant ongoing transactions that are going to be more likely to be picked up by this cumulative model. And so, you're not really picking up a lot of the higher-end corporates by going from five to one. You're really picking up more of your people who are engaged on a party basis. And look, I would say that as a result of that, there's not a great deal of additional transparency that's going to be gained in that for that reason.*²³

2.42 Mr Coulson suggested that the main reason to support the \$5,000 figure is that it is 'less of an administrative burden than \$1000 is because you're going to be tracking less people who go over the \$1000 limit if you're at \$5000'.²⁴ Mr Coulson went on to say:

²⁰ Submission No. 16, Liberal Party of Australia, Tasmanian Division, p. 3.

²¹ Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 2.

²² Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 3.

²³ Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 4.

²⁴ Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 4.

*The difficulty, and my point coming back to why that means more for the lower threshold limit, the difficulty for that is with so many different transactions coming through so many different points across an organisation, because of the nature of Hare-Clark, where we don't run one central unit as we do in single member electorates, every campaign is effectively a little offshoot that just means that there's so many different points along the way where donations can become, can be coming in and would trigger a requirement for disclosure and reporting. And so that's why it just becomes significantly and dare I say exponentially more difficult and expensive as the threshold goes from \$5000 down to \$1000.*²⁵

- 2.43 At the 26 July hearing, Mr Jarryd Moore, Acting State Secretary, Tasmanian Labor, confirmed the Labor Party supported the proposed move to \$1,000, and provided his view on the administrative impact of that change:

Mr BAYLEY - Which brings us to disclosure limits. Your submission discusses time frames and so forth, but, unless I missed it, I don't think you countenance limits. The bill currently has a proposition around \$1000. What's the Labor Party's view on that?

*Mr MOORE - It supports the \$1000 limits. From an administrative perspective, it's really no difference. You have a proper record keeping system. You simply set an amount in a report and pull it out, and I think \$1000 is an appropriate limit.*²⁶

Committee Findings

- 2.44 The Committee acknowledges that the Principal Act provides for reportable political donations to be \$5,000 or more, and the comments made by stakeholders including Mr Coulson in relation to the increased administration required should the threshold for donation reporting be reduced to \$1,000.
- 2.45 However, on balance, the Committee supports a decrease in the \$5,000 figure to \$1,000. The Committee is of the view that this decrease would be appropriate to be acted on in the near future, without further consultation or analysis.
- 2.46 The Committee considers that a reduction to \$1,000 provides for an increase in transparency, and moves Tasmania forward in terms of public awareness of the source of political donations within the state.
- 2.47 The Committee is also comfortable that the stage at which the TEC is at in terms of implementing its functions under the Principal Act would allow for it to adequately adjust from managing disclosures of \$5,000 and above to \$1,000 and above.
- 2.48 The Committee supports an amendment to the *Electoral Disclosure and Funding Act 2023* regarding the reduction to a \$1,000 figure for reportable donations.

²⁵ Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 5.

²⁶ Mr Jarryd Moore, Acting State Secretary, Tasmanian Labor, Transcript of Evidence, 2 August 2024, p. 11.

Limitation on eligibility to make donations to only natural persons (Clause 6)

- 2.49 The Committee understands that Clause 6 of the Bill inserts Division 2A Corporate political donations and Division 2B General cap of political donation into Part 3 – Prohibited Political Donations. Division 2A provides for a prohibition on political donations from persons or entities other than natural persons who are citizens or permanent residents of Australia. Penalty provisions of a fine not exceeding 200 penalty units and/or a term of imprisonment not exceeding 12 months are included. Division 2B provides for a general cap on a political donation of \$3,000 or more or any number of political donations from the same donor within a 4-year period that cumulatively amount to \$3,000 or more, made to the same recipient.

Evidence received

- 2.50 The Bill states that the object of the new Division 2A to be inserted into the Principal Act is to ‘*secure and promote the actual and perceived integrity of elections by reducing the risk of corporate or organisational interests exerting (or being perceived to exert) undue or improper influence on the outcomes of elections*’, and that the Division ‘*aims to achieve this object by restricting the receipt and use of political donations made by anyone other than a natural person*’.²⁷
- 2.51 The Tasmanian Policy Exchange summarised the impact of banning of donations from entities other than ‘natural persons’ as stopping ‘*corporations and other organisations – such [as] trade unions and non-government organisations – from making political donations, with the goal of preventing “corporate or organisational interests exerting (or being perceived to exert) undue or improper influence on the outcomes of elections”*’.²⁸
- 2.52 Some stakeholders welcomed the proposal to limit the types of entities able to make political donations. Mr Holderness-Roddam indicated support for a total ban on donations from businesses and organisations supporting gambling interests, alcohol and tobacco.²⁹
- 2.53 Mr Roland Browne argued that the proposed 28B in the Bill ‘*is to be welcomed*’ and that ‘*there is nothing new in the creation of classes of prohibited donors*’.³⁰ Mr Browne referred to prohibitions in New South Wales on some donors

²⁷ Clause 6, proposed Division 2A, new 28A (p. 7 of the Bill).

²⁸ Submission No. 9, Tasmanian Policy Exchange, UTAS, p. 4.

²⁹ Submission No. 2, Mr Bob Holderness-Roddam, p. 1.

³⁰ Submission No. 5, Mr Roland Browne, p. 1.

including property developers, tobacco industry business entities, liquor or gambling industry entities and industry representative organisations.³¹

- 2.54 Mr Roland Browne went on to submit the following:

*Corporate entities, by their very nature, exist to accumulate capital. In contrast to most individuals, their electoral donations are not small. But most significantly, corporate entities, in whatever guise, do not vote. They have no role in the social contract that is the basis for the constitutional system of government in Australia. These entities ought to be prohibited from making gifts to political parties or candidates.*³²

- 2.55 The Tasmanian Policy Exchange submitted that, while the risk of political corruption via donations from corporate and organisational interests cannot be discounted, it believes these can have legitimate political interests and should be free to exercise these via donations, and ‘a ban on all political donations from corporate and organisational interests would likely be subject to a challenge in the High Court.’³³

- 2.56 The Exchange argued that if political donations from corporate and organisational interests are permitted, all such donations should be disclosed to the public, regardless of amount. Consequentially, the Exchange suggested that the Bill should:

*... permit corporate and organisational donations (subject to all other rules applying to natural persons) but with a disclosure threshold of \$0 (i.e., corporate donations cannot be anonymous). This preserves the ability of corporate and organisational interests to freely exercise legitimate political interests while maintaining public transparency and accountability.*³⁴

- 2.57 At the 2 August hearing, Dr Robert Hortle, Deputy Director and Senior Research Fellow, Tasmanian Policy Exchange, University of Tasmania, indicated that there are not many similar western jurisdictions that have a full ban on donations from non-natural persons, with the possible exception of Canada.³⁵ Dr Hortle continued:

When we talked about it from a theoretical point of view in our team, what we wanted to balance was that right to have legitimate political expression. We came to the view that non-natural persons, corporations, NGOs and so on, do have a right to have that sort of political expression. But we were of the view that they don't necessarily have the same right to secret expression of their political views, of confidential expression, as has been shown for individuals in the Australian system. So, we thought that this could be a potentially interesting and useful compromise in the way that things work.

³¹ Submission No. 5, Mr Roland Browne, p. 1.

³² Submission No. 5, Mr Roland Browne, p. 2.

³³ Submission No. 9, Tasmanian Policy Exchange, UTAS, p. 4.

³⁴ Submission No. 9, Tasmanian Policy Exchange, UTAS, p. 4.

³⁵ Dr Robert Hortle, Deputy Director and Senior Research Fellow, Tasmanian Policy Exchange, University of Tasmania, Transcript of Evidence, 2 August 2024, p. 8.

In terms of specific industries or sectors being banned, we looked at the provisions in Queensland and New South Wales, which, as I'm sure you know, ban donations from specific sectors. We thought this was kind of tricky because in those instances, the selection of those sectors was based on specific instances of corruption in the past. So, it was kind of a reaction for the most part, as I understand it. So, without having established that precedent in Tassie, it might be a bit difficult.

*We thought that there's a lot of potential for the specific sectors that are, you know, kind of being put up for this ban for it to be perceived as quite a political move of people trying to cut out donations to one party or another. So, we're a bit concerned about that...*³⁶

- 2.58 Dr Lachlan Johnson, also of the Tasmanian Policy Exchange, indicated at the 2 August hearing that, while there are good reasons for individuals to want to make anonymous donations, the logic for anonymity does not apply to non-natural persons (including corporations and non-government organisations) even though they can have legitimate political interests.³⁷

- 2.59 In terms of bans on specific industries making donations, Dr Johnson reflected:

With regard to bans on specific industries, I think in some cases those have been responses to quite specific findings of corrupt behaviour. I know they're investigating this in Victoria at the moment, and that's been the case there with property development, I think.

*Our view, again, is that to sort of tar all of these players with the one brush is probably not necessarily fair and not representative of conduct across a whole industry or sector. If any, you know, any business other than ones in these particular industries can have legitimate political interests, we don't see why people in any of the industries that are often banned can't have legitimate political interests and exercise those in a way that doesn't exert undue influence. So we're not sure it's probably fair to have these sort of blanket bans, I guess, would be our view.*³⁸

- 2.60 The Tasmanian Government submitted that applying a limitation to donations only from natural persons would be setting an Australian precedent:

*There is no precedent in Australia for a ban on all donations from non-natural persons. No other Australian jurisdiction has chosen the non-targeted banning of all donations from nonnatural persons.*³⁹

- 2.61 Several submitters raised concerns about whether a ban on entities other than natural persons would be 'constitutionally sound', including the Tasmanian Government:

³⁶ Dr Robert Hortle, Deputy Director and Senior Research Fellow, Tasmanian Policy Exchange, University of Tasmania, Transcript of Evidence, 2 August 2024, p. 8.

³⁷ Dr Lachlan Johnson, Research Fellow, Tasmanian Policy Exchange, University of Tasmania, Transcript of Evidence, 2 August 2024, p. 8.

³⁸ Dr Lachlan Johnson, Research Fellow, Tasmanian Policy Exchange, University of Tasmania, Transcript of Evidence, 2 August 2024, p. 9.

³⁹ Submission No. 4, Tasmanian Government, p. 1.

Beyond foreign donations, the Government has significant concerns about bans on donations in general without a firm evidence base. The High Court has been very critical of limitations on the ability of individuals and groups to contribute to political debate without firm evidence that any limitation is appropriate and adapted.

Consequently, there is a live question as to whether a ban of this extent is constitutionally sound.⁴⁰

- 2.62 The Liberal Party of Australia, Tasmanian Division also held concerns about the potential burden this clause would create on the implied right of freedom of political communication, and that *'banning anyone from participating in our democracy is a dangerous and unwise precedent to set'*.⁴¹ In relation to the involvement of corporate bodies in the political system, the submission further noted:

There is no reason business should not be able to support policies that are relevant to their interests. These businesses employ hundreds of thousands of Tasmanians and pay the taxes that support our vital services. There is considerable merit in letting them have a say on the policies which could significantly affect their operations. The heavy handed and authoritarian approach of banning companies has no basis in evidence and is entirely politically motivated.

... Businesses employ hundreds of thousands of Tasmanians and should be able to take part in the political process and support political parties or candidates with policies that are supportive of their industry.⁴²

- 2.63 Mr Coulson submitted to the Committee that banning corporate donations is anti-democratic and likely unconstitutional, and suggested that banning corporate donations would set a terrible precedent:

... I think in our democracy, we shouldn't allow any move to ban any Australians from taking part.

Now, I can see that straightaway people are going to say, 'Well, you don't support a ban on companies, but you do support a ban on foreign donations.' I think it's consistent with the fact that only Australian citizens can vote that we would want to exclude any donations from overseas as well. But I don't see any logical consistency and I don't see any reason for why you'd want to ban all corporations in total from having their donations being received by political parties.⁴³

- 2.64 On the constitutionality point, and in relation to the implied freedom of communication on governmental and political matters, Mr Roland Browne in correspondence to the Committee argued that recent cases before the High Court in *Unions New South Wales v. The State of New South Wales* did not speak to whether or not a ban on corporate donations is invalid as being in conflict with the implied freedom. Mr Browne put to the Committee:

⁴⁰ Submission No. 4, Tasmanian Government, p. 1.

⁴¹ Submission No. 16, Liberal Party of Australia, Tasmanian Division, p. 4.

⁴² Submission No. 16, Liberal Party of Tasmania, Tasmanian Division, p. 4.

⁴³ Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 9.

*Rather, these decisions show that where a state makes a law with regard to electoral funding it needs to be able to justify how a limitation on funding or a prohibition on donations burdens the implied freedom.*⁴⁴

- 2.65 Ms Webb recommended that if the complete prohibition on any donations not from natural persons was seen by the Committee to be too prohibitive, then the Bill at least should be amended to explicitly prohibit donations from particular corporate interests – specifically tobacco, property development, and gambling businesses.⁴⁵
- 2.66 The Committee heard that some political parties have an existing practice of not accepting donations from particular interests. For example, Mr Coulson gave evidence that the Liberal Party’s current practice is to not accept donations from the tobacco industry on a philosophical basis.⁴⁶ It is also publicly known that the Labor Party takes the same approach.
- 2.67 In her submission to the Committee, Dr Woodruff indicated that the Greens’ preferred approach is the donation regime in Canada, which allows ‘only *‘natural persons’ who are citizens or permanent residents to donate to political parties.*’ Dr Woodruff also noted that the Greens would be ‘*comfortable considering amendments containing alternative measures such as banning donations from tobacco, liquor, gaming and property interests.*’⁴⁷
- 2.68 At the 12 August hearing, Dr Woodruff advised the Committee that the position of the Greens on the limitation to natural persons had not changed. Dr Woodruff advised:

The legislation that we passed last year will ban foreign donations in Tasmania, but it still fails to ban other known and potentially highly corrupting donations from property organisations, from tobacco and gambling industries, and it's long been established that those industries in particular have an absolutely corrosive effect on democracy and they pour often huge sums of money into governments to influence decisions.

*They're certainly not the only ones, and we've listened to the comments that have been made during the hearings and will be informed by the Committee's view to determine what sort of donations limitations we would support, but fundamentally we are working from the point of view of having a fair playing field and an opportunity to remove the very damaging influence of big, vested interests on politicians and governments making decisions in the public interest.*⁴⁸

⁴⁴ Mr Roland Browne, Correspondence to the Committee, 13 August 2024, p. 2.

⁴⁵ Submission No. 15, Hon. Meg Webb MLC, p. 13.

⁴⁶ Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 10.

⁴⁷ Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p. 3.

⁴⁸ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, pp. 2-3.

2.69 Dr Woodruff further commented:

People who are in corporations can advance the views that they hold in that corporation when they register their vote as an individual. We do not need to give a special step up for organisations when they donate to a party. These corporations have so much power and capacity to provide their views in the public marketplace by virtue of the money they have to put into promotional material, far more than an individual person or a community has to do that, so they already have a special advantage by virtue of their extra wealth of influencing candidates in election.⁴⁹

Committee Findings

- 2.70 The Committee notes evidence received that indicates a move towards banning all non-natural persons from making political donations would be an Australian first.
- 2.71 The Committee also notes concerns raised by some stakeholders about the constitutionality of limiting firstly all non-natural persons from making donations, and secondly even distinct categories of non-natural persons without specific evidence or supporting rationale for that limitation.
- 2.72 The Committee in principle supports consideration of limiting donations from certain categories of non-natural person, consistent with anti-corruption steps taken by other jurisdictions.
- 2.73 The Committee observes that some political parties voluntarily impose some restrictions on categories of donors.
- 2.74 The Committee supports further detailed investigation of the categories of non-natural person that perhaps should be limited from making political donations in Tasmania, as is the case in some other Australian jurisdictions.
- 2.75 The Committee recommends that the House refer the matter of limitations on eligibility to make political donations to the Joint Standing Committee on Electoral Matters for inquiry and report.

General caps on political donations (Clause 6)

Evidence received

- 2.76 Dr Woodruff advised that the Senate Select Committee into the Political Influence of Donations recommended in 2018 (at the Federal level) that donors have a donation cap of ‘\$3,000 per term per donor’.⁵⁰ Dr Woodruff continued:

⁴⁹ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 7.

⁵⁰ Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p. 2.

Regulations to cap donations should have two broad objectives; to decrease the potential influence of a donor by limiting the size of donations, and to reduce the imbalance of a person or corporation's ability to support political preferences based on wealth.

A \$3,000 cap on donations in Tasmania would curtail the potential influence of any given donor, particularly as no cap currently exists. It also represents 0.375% of an \$800,000 expenditure cap. A \$3,000 cap would mean that risking the loss of revenue from a single donor would be more palatable for political parties.⁵¹

The average amount Australians donated to charity in 2017-18 was \$764.5 This equates to \$3,056 over a four-year term – close to the \$3,000 donations cap proposed by the Senate Committee. While this does not perfectly level the playing field, it is a strong step towards limiting the unfair influence that comes with having higher income.

One of the issues with large political donations is that it disproportionately gives influence to those with more wealth.

This data shows that the \$1,000 per year cap would bring maximum allowable donations down to the same level that is spent on average by people on issues that matter to them.⁵²

- 2.77 Dr Woodruff also noted that the Bill ‘provides an exemption for candidates and incumbent representatives making a contribution to their own campaign’, and that the Greens’ position is:

...that expenditure limits are the appropriate tool to limit the influence of disproportionate wealth, whereas donation caps are principally a tool to limit the influence of donors.⁵³

- 2.78 Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute advised the Committee of concerns that the Bill does not address Tasmania’s public funding scheme while proposing to introduce donation caps:

The bill does not address the state's legislated public funding scheme. By itself, this is just a regrettable absence, but what makes this absence dangerous is that the bill does intend to introduce donation caps, which work together with generous public funding to lock out new entrants. In the absence of donation caps, new entrants can overcome an incumbent's taxpayer-funded advantages through private contributions from members of the public. When a donation cap is in place, serving to limit the amount of money candidates can raise, the taxpayer-funded advantages of incumbents are more likely to be insurmountable.

Two other weaknesses of the donation-cap model described serve to further concentrate financial power: the absence of a cap for candidates and the absence of a cap for parliamentarians and councillors.⁵⁴

⁵¹ Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p. 2.

⁵² Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p. 2.

⁵³ Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p. 3.

⁵⁴ Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, Transcript of Evidence, 2 August 2024, p. 1.

2.79 Dr Bonham indicated that he was unconvinced that a donation cap anywhere near as low as \$3,000 per term is necessary, and that in his view the most important aspect of donations reform is *‘that voters know promptly who is making significant donations, not that these are necessarily prevented to such a degree.’*⁵⁵ Dr Bonham suggested that if there was to be such a low limit, then \$4,000, being four times the disclosable amount, would be more intuitive.

2.80 Dr Bonham advised that his view was that spending and donation caps should not be proceeded with at this time, and that it *‘it is better to see how the changes passed, with any amendments that might be made in other areas, function at an actual election.’*⁵⁶

2.81 The Government, in its submission, referred to the following comments of the Final Report of the Electoral Act Review regarding donations and expenditure caps:

*The High Court has found that caps on political expenditure can limit the implied constitutional freedom of political communication and require evidence as to their justification. This would suggest that if the Tasmanian Government decided to introduce caps, then a clear evidence base as to the need for caps and the level of caps would have to be established. Currently, there is no data on electoral spending by candidates, parties or third parties in House of Assembly elections. In the absence of this information it would be very difficult to calculate an appropriate cap for participants and campaigners and to demonstrate that the level of the cap was appropriate.*⁵⁷

2.82 The Government argued that the commencement of the majority of the Principal Act’s provisions on 1 July 2025 will enable the TEC and the public to *‘see the size, frequency and source of donations in the State’*, and that the data collected following 1 July 2025 will provide an evidence base as to the need for a cap and at what level a cap should be applied.⁵⁸ Consequentially, the Government stated that:

*It would be undemocratic and likely challengeable in the High Court if arbitrary caps were placed on donations from a single source with no evidence to back this cap up. A cap set too low would inhibit the dissemination of ideas and policies by all involved in the electoral process. A cap set too high would achieve nothing.*⁵⁹

2.83 Mr Roland Browne submitted in further information provided to the Committee on 13 August 2024 that the constitutionality issues raised before the High Court in cases involving Unions NSW and the State of NSW held that the application

⁵⁵ Submission No. 13, Dr Kevin Bonham, p. 2.

⁵⁶ Submission No. 13, Dr Kevin Bonham, p. 2.

⁵⁷ Final Report of the Electoral Act Review p. 69, as quoted in Submission No. 4, Tasmanian Government, p. 2.

⁵⁸ Submission No. 4, Tasmanian Government, p. 3.

⁵⁹ Submission No. 4, Tasmanian Government, p. 3.

of a donation cap was invalid, due to the unjust burden on the implied freedom of political communication.⁶⁰

2.84 The Government also indicated a concern about the reference within the Bill to a ‘four year period’,⁶¹ stating that ‘*this aligns with neither the parliamentary term (which is not fixed) nor with the “electoral campaign period” as defined in the Electoral Disclosure and Funding Act 2024.*’ The Government submitted that a four-year period could possibly span over two different parliamentary terms, and that compliance and enforcement of such a model would be difficult and burdensome.⁶²

2.85 The four-year period was also discussed by Dr Woodruff at the 12 August hearing:

CHAIR - ... the bill that came to the parliament spoke about an expenditure period and we discussed how you might define that because we do not have fixed terms. That was also a question in relation to the general cap being \$3000 over a period of four years. When, as you have just pointed out, we have had two elections where the term of government hasn't lasted four years.

A provision like that makes it quite difficult to enforce or implement because it is going over a couple of election cycles. How do you deal with that?

Dr WOODRUFF - I think that we do need to have some more thought about the way elections are occurring in Tasmania. They aren't good for democracy because there isn't an opportunity to progress progressive legislative reforms in the parliament for people outside the parliament. We cannot plan functioning and getting good electoral outcomes as members of parliament when elections just keep happening and it's very destructive being in a state of constant electioneering. We're not quite there, but it feels like we're not very far away either and I think having, you know, having some sort of fixed term or some sort of sliding scale of term helps us to get outside of a state of constant electioneering, which is really destructive because it means governments aren't focusing on the issues that are most important; the issues of the day.

*As to your question, we'll give it more thought. I think it's important to think about that issue about when governments don't have a fixed term. Yes, we'll take that on board and think about that and look forward to the committee's views on it.*⁶³

2.86 The Australia Institute recommended that third parties should be exempt from provisions relating to donations caps and real-time disclosure (proposed sections 28C and 43), or at the very least that charities registered by the Australian Charities and Not-for-profits Commission should be exempted.⁶⁴

⁶⁰ Mr Roland Browne, Correspondence to the Committee, 13 August 2024, p. 2.

⁶¹ ‘(b) any number of political donations from the same donor within a 4-year period that cumulatively amount to \$3 000 or more, made to the same recipient;’

⁶² Submission No. 4, Tasmanian Government, p. 3.

⁶³ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 12.

⁶⁴ Submission No. 10, The Australia Institute, p. 1.

2.87 TasCOSS raised concerns about unfair impacts on charities in relation to donation caps, as ‘many charities rely more heavily on donations than other third parties such as industry groups or unions who may have access to other sources of income such as membership levies, subscriptions and investment income’.⁶⁵

2.88 TasCOSS reflected that charities are already heavily regulated to ensure they are not engaging in partisan political activity.⁶⁶ TasCOSS indicated that it endorses a recommendation of the Stronger Charities Alliance that third party involvement in elections campaigns be regulated via expenditure caps because this would apply equally to all kinds of third parties regardless of their income source.⁶⁷

2.89 Ms Adrienne Picone, CEO of TasCOSS, elaborated on this at the 2 August hearing:

... the provision for donations caps for third parties: we are concerned about the disproportionate impact on charities because they rely more heavily on donations than third parties, particularly trade unions, industry groups who have other sources of income. And for this reason, in its report to the 2022 federal election, the Commonwealth Joint Standing Committee on Electoral Matters recommended that charities registered with the ACNC (the Australian Charities and Not-for-profits Commission) be exempt from donations caps....

So a donation cap that applies to third parties would mainly impact the only type of third-party already restricted from expressly supporting or opposing political candidates or parties. Donation caps would also adversely affect not-for-profits who aren't registered charities and who rely on donations⁶⁸

2.90 In relation to charities, Mr Coulson discussed the risk of unintended consequences that could arise, at the 12 August public hearing:

Frankly speaking, I think if you're going to have a rule, you should try to make it as fair and as equitable for everyone to comply with it because, otherwise, I think even for the best of reasons, to try and exclude charities from their operation, you create unintended consequences. The clearest unintended consequence to me is that I think that some unscrupulous people might very well try and set up a charity of their own and seek to influence, where I'm sure many well-meaning charities would, of course, entertain no such thought. And that would be not too dissimilar to the Super PACs of the United States. I think we can all agree that the less our electoral system reflects the American electoral system, I think we do better, so I would discourage the committee from carving out charities, whether they are ACNC or otherwise. I think that that just creates an unnecessary loophole that could well be exploited by people who might want to do so.⁶⁹

⁶⁵ Submission No. 8, TasCOSS, p. 2.

⁶⁶ Submission No. 8, TasCOSS, p. 2.

⁶⁷ Submission No. 8, TasCOSS, p. 2.

⁶⁸ Ms Adrienne Picone, CEO, TasCOSS, Transcript of Evidence, 2 August 2024, p.2.

⁶⁹ Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 13.

- 2.91 On the matter of the impact of the Bill on charities, Dr Woodruff gave the following evidence:

We're open to some changes in the electoral finance framework that recognise the specific concerns of charities, but we're really cautious about an outright exclusion of charities from the application of some of these rules.

For example, we're concerned about the impact that it might have on fair discourse. If a registered charity is on one side of an issue and a lobby or advocacy group that's not a registered charity is on the other side of the issue, then one side would be subject to more lenient financial rules and we think that's a problem that needs serious consideration.⁷⁰

- 2.92 The Tasmanian Policy Exchange recommended that the Bill should identify how caps and thresholds will be indexed, ensuring they keep pace with changing costs; the Exchange referred to the NSW Electoral Funding Act 2018 which allows for caps to be adjusted for inflation each financial year.⁷¹

- 2.93 At the public hearing on 12 August, Dr Woodruff noted that the Greens would be open to applying an indexation formula to donation and expenditure caps.⁷² Dr Woodruff said:

Regarding that, in relation to expenditure caps, the bill currently applies a flat dollar increase each year, but we're not particularly attached to that approach to annual variations, so we're open to views about other positions.

In relation to donation caps, there's not currently a method proposed in our bill for increasing the level of the cap each year. We'd want to make sure if that was proposed that any formula didn't lead to an increase in the cap in real terms, but we're receptive to finding a place for reasonable indexation. We'd want to keep the principle of the amount, the amount that was the cap, reflected in whatever level of indexation was proposed.⁷³

- 2.94 The Liberal Party of Australia, Tasmanian Division, argued that the Hare-Clark system already safeguards against the effect of 'big money' in an election, ensuring that minorities are protected and preventing 'cash buying a dangerous super-majority in Parliament'.⁷⁴ The Liberal Party submission suggested that capping donations 'is a financial gerrymander to benefit the Greens political party at the detriment of any other party or independent.'⁷⁵

- 2.95 The Australia Institute reflected that the provisions under proposed new sections 28C(4) and 28C(5) allow an exception to the proposed donation cap for an (independent) candidate making a contribution to their own campaign

⁷⁰ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 3.

⁷¹ Submission No. 9, Tasmanian Policy Exchange, UTAS p. 3.

⁷² Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 1.

⁷³ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 1.

⁷⁴ Submission No. 16, Liberal Party of Australia, Tasmanian Division, p. 5.

⁷⁵ Submission No. 16, Liberal Party of Australia, Tasmanian Division, p. 5.

and for party candidates, councillors, MLAs, MLCs, federal MPs and federal senators making a contribution to their own party.⁷⁶ The Institute commented that *‘the effect is that wealthy candidates can contribute many times more to their own campaigns or parties than any other Tasmanian voter can contribute.’*⁷⁷

Committee Findings

- 2.96 The Committee notes the comments of some stakeholders that it would be useful, prior to legislating general donation caps, for data to be collected from at least one election held under the Principal Act. This would allow for the development of an evidence base for changes in this area.
- 2.97 The Committee also heard evidence about the impact of the proposed donation cap on charities, their ability to comply, and other unintended consequences.
- 2.98 The Committee also notes with concern the difficulty that would be created should a ‘four-year period’ as referred to in the clause fall over multiple state elections. The Committee considers this, and the administrative complexity that such a situation would create, to be unworkable. Should a general cap be considered necessary in the future, the Committee is of the view that it should be considered in the context of moving to fixed terms.
- 2.99 The Committee considers that without fixed term elections it is difficult to understand how a general cap over a four-year period would apply and be enforced.
- 2.100 The Committee recommends that the House refer the matters of fixed terms and donation caps to the Joint Standing Committee on Electoral Matters for inquiry and report, including whether fixed terms would assist with the application of general caps on donations over time.

Donation reporting and disclosure timeframes (Clauses 7, 8, 9, 10 and 11)

- 2.101 The Committee understands that:
- The Principal Act provides for reportable political donations to be routinely disclosed every six months, with disclosure required within 7 days during an election campaign period.
 - Clause 7 of the Bill amends section 40 of the Principal Act to provide that reportable political donations received by a registered party or endorsed

⁷⁶ Submission No. 10, Australia Institute, p. 11.

⁷⁷ Submission No. 10, Australia Institute, p. 11.

Member or candidate thereof, are required to be disclosed either within 24 hours after the political donation is received if the political donation is received within 7 days before a polling day, or otherwise within 7 days after the day on which the political donation is received or made.

- Clause 8 of the Bill amends section 41 of the Principal Act to provide that reportable political donations received by independent Assembly or Council Members or candidates, are required to be disclosed either within 24 hours after the political donation is received if the political donation is received within 7 days before a polling day, or otherwise within 7 days after the day on which the political donation is received or made.
- Clause 9 of the Bill amends section 42 of the Principal Act to provide that reportable political donations received by or on behalf of an associated entity, are required to be disclosed either within 24 hours after the political donation is received if the political donation is received within 7 days before a polling day, or otherwise within 7 days after the day on which the political donation is received or made.
- Clause 10 of the Bill repeals section 43 of the Principal Act and provides that reportable political donations received by or on behalf of a person who is or becomes a third party campaigner, are required to be disclosed either within 24 hours after the political donation is received if the political donation is received within 7 days before a polling day, or otherwise within 7 days after the day on which the political donation is received or made. The clause also provides that a gift valued at equal to or more than \$5,000 used to incur electoral expenditure or to reimburse the third party for electoral expenditure are taken to be a reportable political donation.
- Clause 11 of the Bill repeals section 44 of the Principal Act and provides that if a reportable political donation is made by a significant political donor to a Member, a candidate, a person who is or becomes a third-party campaigner in relation to the election, a registered party, or an associated entity, it is required to be disclosed either within 24 hours after the political donation is received if the political donation is received within 7 days before a polling day, or otherwise within 7 days after the day on which the political donation is received or made.

Evidence received

- 2.102 The Tasmanian Government summarised the impact of the Bill on donation disclosure timeframes as follows:

The proposed amendments in this Bill would see the donations disclosure period in the Act shortened to 7 days year-round, except for in the week leading up to Polling Day, when donations must be disclosed within 24 hours.⁷⁸

- 2.103 Dr Woodruff submitted that the Bill would introduce a ‘proper real time-disclosure framework, modelled on the framework in Queensland’, providing for ‘a blanket requirement for donation disclosure 7 business days after receipt, and within 24 hours during the 7 days before election polling day’.⁷⁹

- 2.104 Dr Bonham submitted the following in relation to disclosure timeframes:

In general I strongly support the principle of causing donations to be disclosed promptly, especially during campaign periods. I agree with proposed amendment that outside of campaigns weekly disclosure is unnecessary and monthly would be satisfactory. I agree that there could also be issues with requiring disclosure within 24 hours but think that that time should be made as small as possible. Regarding the proposal for disclosures to be faster if made within seven days of an election, I would actually increase this to within fourteen days given that a substantial number of voters these days cast their vote more than seven days prior to polling day.⁸⁰

- 2.105 The Government argued that:

The proposed amendments represent a significant increase in the administrative burden of reporting. There is currently no evidence that there is a significant benefit in reporting to occur as frequently as the amendments propose.⁸¹

- 2.106 Tasmanian Labor supported the introduction of more timely disclosure timeframes but noted that the frameworks for disclosure must balance the ideal with the practical ability of disclosure entities to meet any requirements.⁸² Tasmanian Labor commented that the Bill’s proposed disclosure period of 24 hours for the final seven days of an election leaves zero room for unexpected circumstances. The organisation noted that 24-hour reporting may also present technical barriers, and argued that:

It is highly unlikely that political parties and candidates are deliberately waiting until the last few days of an election to take donations so significant that they may influence the outcome. To the best of our knowledge, there is no example, following the introduction of lower value reporting thresholds, where a donation made in the final stages of a campaign has been subsequently reported, and where such a report would have had a material effect on the election were it reported in the final few days.⁸³

⁷⁸ Submission No. 4, Tasmanian Government, p. 2.

⁷⁹ Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p. 3.

⁸⁰ Submission No. 13, Dr Kevin Bonham, p. 1.

⁸¹ Submission No. 4, Tasmanian Government, p. 2.

⁸² Submission No. 14, Tasmanian Labor, p. 10.

⁸³ Submission No. 14, Tasmanian Labor, pp. 10-11.

- 2.107 Tasmanian Labor also raised the administrative work needed to determine the reportable value of a ‘gift in-kind’, and the difficulties that this could cause.⁸⁴
- 2.108 The hypothetical example of political parties relying on a single person to administer the disclosure obligations process, and then that person becoming unwell, with the result that the disclosure timeframes could not be met, was raised by Tasmanian Labor and discussed by several stakeholders during the Committee’s hearings.⁸⁵
- 2.109 Tasmanian Labor indicated that 7-day reporting throughout an election period has been adopted as a best-practice approach in most jurisdictions that have recently updated (or are updating) their disclosure framework. Tasmanian Labor indicated that this balances the need for transparency with the practical considerations that come with any reporting framework.⁸⁶
- 2.110 Regarding reporting outside an election period, noting that the Bill proposes an amendment that reduces the reporting deadline to 15 days after the last day of each calendar month, Tasmanian Labor suggested that a reporting period of the 28th day of the month would give significantly more flexibility without any loss of timely transparency.⁸⁷
- 2.111 The Australia Institute suggested that the real-time disclosure requirements are ‘unnecessarily strict’ and ‘will likely be used to justify more public funding for political parties with parliamentary representation’:
- Reporting every week outside of the last week of an election and every 24 hours within the last week of an election period is a difficult burden even for a political party or candidate, let alone for third parties for whom electoral material is likely a very small portion of their work.*⁸⁸
- 2.112 The Institute recommended that a longer reporting period should be considered – including monthly or quarterly reporting outside of an election period and weekly during an election period; or consideration of other ways real-time disclosure laws could be made less administratively burdensome.⁸⁹
- 2.113 Mr Roland Browne supported the requirement for disclosure of reportable political donations within 7 days (if more than 7 days out from an election), and within 24 hours if in the 7 days before the election, arguing that ‘the electorate

⁸⁴ Submission No. 14, Tasmanian Labor, p. 11.

⁸⁵ Submission No. 14, Tasmanian Labor, p. 10.

⁸⁶ Submission No. 14, Tasmanian Labor, p. 11.

⁸⁷ Submission No. 14, Tasmanian Labor, p. 11.

⁸⁸ Submission No. 10, Australia Institute, p. 13.

⁸⁹ Submission No. 10, Australia Institute, p. 13.

needs to be informed as to (a) who is making donations; and (b) who is receiving donations; and (c) how much is being donated.’⁹⁰

2.114 Mr Holderness-Roddam argued for donation disclosures to be made in real time between the announcement of the election and the date of the election, suggesting that this could be enabled by donors providing the required information directly to the TEC via a standard form. Mr Holderness-Roddam also submitted that consideration should be given to banning donations within seven days prior to an election; and to the need to ‘... somehow guard against promises of donations made before the election, for delivery after the election’.⁹¹

2.115 In relation to reporting outside election periods, Dr Woodruff noted at the 12 August public hearing:

*...we also heard and recognised the feedback to our bill, being that a longer timeframe for disclosing outside of election periods closer to 28 days, one month, would be more manageable and more reasonable. We can see the argument for longer disclosure timeframes outside of an election period. It's our view that the transparency advantages that are offered by seven days' disclosure all year round compared to the less onerous 28 days are small, so that seems like a reasonable way to head.*⁹²

2.116 The concept of donations being ‘promised’ or ‘pledged’ prior to polling day and then fulfilled/paid after polling day was discussed at the 26 July hearing with Mr Neil Spark, President, Tasmanian Constitution Society:

Mr BAYLEY - Do you have any concerns about the point around the 48-hour pause on donations - not being able to donate in the 48 hours before the actual poll - so the 24-hour reporting requirements picks up on old donations. Do you have any fears that that may just prompt pledges from donors that are not actually given, but maybe come after an election period, and a party or a candidate spends that money knowing that it is coming but not actually having it in the bank, so to speak?

Mr SPARK - Just to clarify, you might be a candidate and I might say, 'I will give you \$900.'

Mr BAYLEY - 'I will give it to you next week, so you can spend it now, I am good for it, you will not need to report it as a result.'

Mr SPARK - That defies the intent of the legislation, doesn't it?

CHAIR - But it is not illegal. It would not be illegal under the proposal you are talking about.

Ms HADDAD - It would still be disclosable.

Mr BAYLEY - In the subsequent period. On polling day.

⁹⁰ Submission No. 5, Mr Roland Browne, pp. 2-3.

⁹¹ Submission No. 2, Mr Bob Holderness-Roddam, p. 1.

⁹² Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 2.

Mr SPARK - I think pledges would be open to abuse, and that is something that would go against the intent of the legislation. I do not think pledges should be allowed because of the potential to be open to abuse.

CHAIR - How would you decide that somebody had made a pledge?

Mr SPARK - I am thinking that there would have to be some sort of proof of payment, but I am not sure how you would go about that.⁹³

- 2.117 In further information provided to the Committee in correspondence responding to questions on notice, the Integrity Commission Tasmania advised:

It would not be satisfactory if donations in the week prior to an election were not declared until after the election.

We reiterate our view that all disclosure timeframes should be consistent. The draft Bill provides for the disclosure timeframe of 24 hours ‘within 7 days before a polling day’. Disclosure rules are likely to be more easily understood, and hence complied with, if they apply consistently.

If the committee considers that 24 hours is too onerous, one alternative that may warrant consideration is a prohibition on donations in the seven days before the election.⁹⁴

- 2.118 The Tasmanian Policy Exchange felt that the Bill should go further than it does currently and propose that 24-hour disclosure and 24-hour publication timeframes apply from the point at which the writs are issued until 48 hours before polling day. The Exchange supported a requirement that no donations be permitted in the 48 hours before polling day, and that outside of election campaigns reportable donations should be disclosed within seven days from receipt, and then published publicly by the TEC within seven days. The Exchange submitted that this would bring Tasmania closer to ‘real-time disclosure’ than any other Australian jurisdiction.⁹⁵
- 2.119 Similarly, Ms Webb supported the introduction of a donation ‘blackout period’, recommending the Bill be amended to seek to amend the Principal Act by introducing a black-out period of eight days prior to election day during which political donations cannot be made or received.⁹⁶
- 2.120 The Tasmanian Constitution Society argued in its submission that a requirement should be added that donations should not be made within 48 hours before polls open, so as to ensure that voters are aware of all donations on polling day.⁹⁷

⁹³ Mr Neil Spark, President, Tasmanian Constitution Society, Transcript of Evidence, 26 July 2024, p. 6.

⁹⁴ Mr Greg Melick AO SC, Chief Commissioner, Integrity Commission Tasmania, providing responses to written questions on notice, dated 29 August 2024, p. 1.

⁹⁵ Submission No. 9, Tasmanian Policy Exchange, UTAS, p. 3.

⁹⁶ Submission No. 15, Hon. Meg Webb MLC, p. 8.

⁹⁷ Submission No. 6, Tasmanian Constitution Society, p. 1.

- 2.121 In terms of the trend towards early voting in elections, Mr Andrew Hawkey, Electoral Commissioner, advised that Tasmania is seeing a growth in early voting:

Yes, we are seeing a growth in early voting. From a state election point of view, from 2018 to 2021, early voting went from 18 per cent to 28 per cent to 31 per cent. It shows that increase. I know in Victoria where they've done by-elections for their lower house, they've had over 50 per cent at times doing early voting...

I absolutely expect, whether it's the expectation of the public, or the availability to provide better accessibility for broader groups, that early voting will continue to grow.⁹⁸

- 2.122 The TEC provided the Committee with further information on early voting figures in the 2024 state election, in response to a question about early voting figures across the last weeks of an election period and the impact of an increase of frequency of donation disclosures during an election period. The figures provided by the TEC are shown in Table 1 and Graph 1 below.

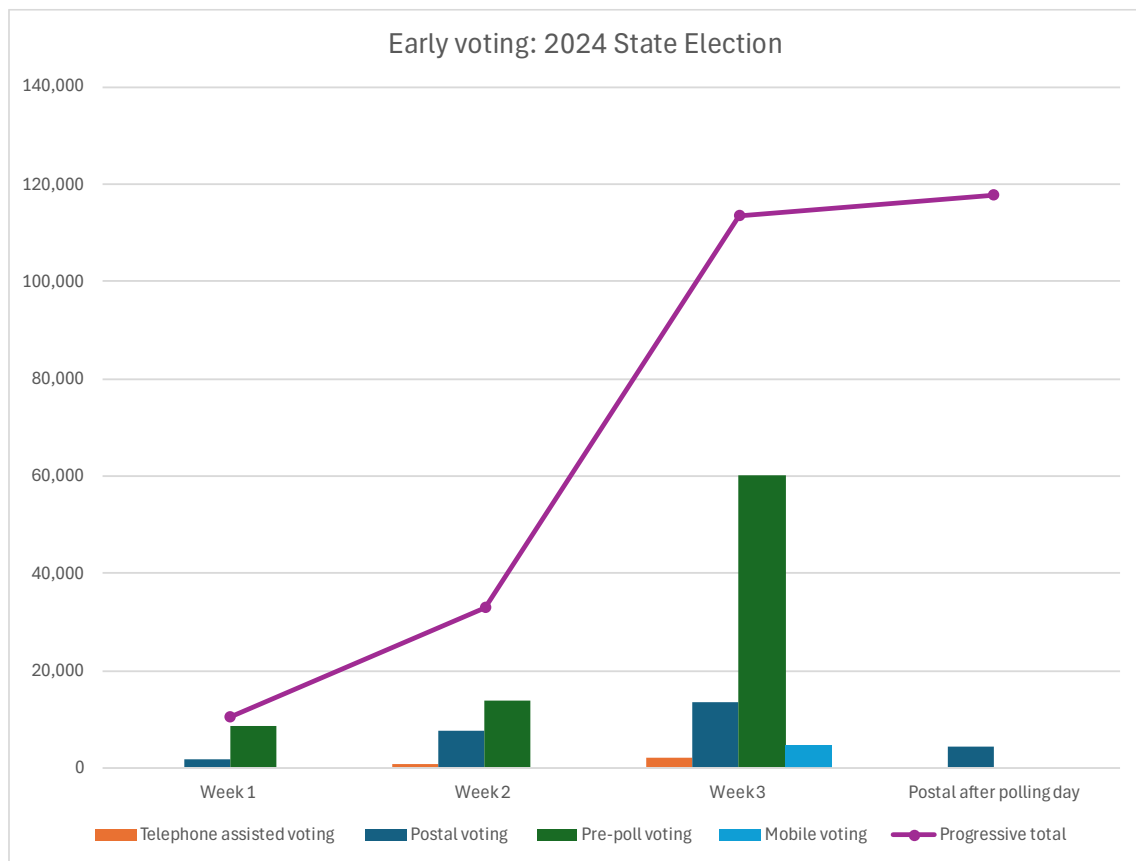
Table 1: information provided by the Tasmanian Electoral Commission on early voting figures in the Tasmanian 2024 State Election.⁹⁹

Early voting: 2024 State Election				Postal after polling day	Total
	Week 1	Week 2	Week 3		
Postal voting	1,891	7,519	13,536	4,429	27,375
Telephone assisted voting	0	833	1,971		2,804
Pre-poll voting	8,647	13,896	60,245		82,788
Mobile voting			4,787		4,787
TOTAL	10,538	22,248	80,539	4,429	
Progressive total	10,538	32,786	113,325	117,754	
% of all ballot papers counted	2.83%	8.81%	30.46%	31.65%	

⁹⁸ Mr Andrew Hawkey, Electoral Commissioner, Transcript of Evidence, 2 August 2024, p. 13.

⁹⁹ Mr Andrew Hawkey, Electoral Commissioner, Tasmanian Electoral Commission, Further information provided to the Committee on Early Voting in the 2024 State Election, provided 15 August 2024.

Graph 1: information provided by the Tasmanian Electoral Commission on early voting figures in the Tasmanian 2024 State Election.¹⁰⁰



2.123 The Integrity Commission Tasmania noted in its submission:

We agree that the new timeframes proposes in the Bill would enhance transparency and accountability.

We maintain that there should not be a differentiation in timeframes in the Act. If the disclosure timeframe is reduced to 24 hours ‘within 7 days before a polling day’, we do not see why it should be different at other times. It would be simpler to have one set of immediate disclosure rules that applied at all times.’¹⁰¹

2.124 In terms of potential amendments to the Bill, Dr Woodruff noted that the Greens would be comfortable compromising on the timeframes outside of an election period, and that ‘one month, outside of an election period, still provides a good level of transparency and [we] would be comfortable with such an amendment.’¹⁰²

¹⁰⁰ Mr Andrew Hawkey, Electoral Commissioner, Tasmanian Electoral Commission, Further information provided to the Committee on Early Voting in the 2024 State Election, provided 15 August 2024.

¹⁰¹ Submission No. 3, Integrity Commission Tasmania, p. 2.

¹⁰² Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p. 4.

2.125 In relation to third party campaigners, the Australia Institute submitted that, in summary, the Bill would require third party campaigners to:

- *Disclose all political donations over \$1,000*
- *Not accept political donations over \$3,000, cumulative over four years*
- *Report every week outside of the last week of an election and every 24 hours within the last week of an election period*
- *Not incur election expenditure over \$83,000.*¹⁰³

*The donations cap for third parties will prevent many from being able to engage in electoral expenditure almost entirely because of their reliance on donations for income. It will do nothing to stop corporates or industry peak bodies from using their profits or membership fees, so the law is discriminatory.*¹⁰⁴

2.126 In relation to third parties, TasCOSS argued that the proposed disclosure requirements for third parties that are charities ‘risk silencing charities and/or potentially putting them in breach of the law’.¹⁰⁵ Ms Picone advised the Committee that the disclosure timing measures proposed in the Bill could impact charities and not-for-profits:

*The bill proposes disclosure of political donations within seven days outside of an election period, and 24 in the seven days leading up to polling day. This could inadvertently capture charities and not-for-profits who receive donations long before an election and long before they know what they will actually spend it on. This will be very burdensome...*¹⁰⁶

2.127 In its submission to the Committee, TasCOSS stated that:

Charities, unlike political parties and candidates, do not receive political donations but instead receive donations year-round for use in pursuit of their charitable purposes, which could include advocacy activities relating to issues raised in an election. It is therefore extremely difficult, if not impossible, for charities to predict whether or not a donation may be used for electoral expenditure at the time it is received. As an election draws near, an organisation could decide it wants to spend money on communication which may fall under the proposed legislation, and place them in breach of this provision.

*TasCOSS is concerned these provisions could have a chilling effect on advocacy if charitable organisations either choose or are unable to continue their regular issue-based advocacy due to fears they cannot comply with the laws.*¹⁰⁷

2.128 TasCOSS supported amending the Bill to require disclosure of donations at the time the expenditure is incurred, not when the donation is made.¹⁰⁸

¹⁰³ Submission No. 10, The Australia Institute, p. 6

¹⁰⁴ Submission No. 10, The Australia Institute, p. 6

¹⁰⁵ Submission No. 8, TasCOSS, p. 1.

¹⁰⁶ Ms Adrienne Picone, CEO, TasCOSS, Transcript of Evidence, 2 August 2024, p. 2.

¹⁰⁷ Submission No. 8, TasCOSS, p. 1.

¹⁰⁸ Submission No. 8, TasCOSS, p. 1.

Committee Findings

- 2.129 The Committee is of the view that improving the requirements surrounding disclosure of donations would be beneficial at this stage of the implementation of the Principal Act. The administrative challenge of processing donations and disclosures within 24 hours is noted, particularly in the high-pressure context of the final week of an election.
- 2.130 The Committee notes the increasing trend towards early voting and the figures provided by the TEC which indicate that in the 2024 State Election 31.65% of all ballot papers counted were submitted before polling day.
- 2.131 The Committee supports the principle of voters knowing who has donated to a candidate or a party before they cast their vote. However, it is unclear to the Committee how effective a ‘blackout period’ for donations in the final days of an election would be, given trends in early voting and the difficulty of appropriately capturing ‘pledges’.
- 2.132 In view of evidence received during the inquiry, the Committee recommends that any bill proposing to amend the Principal Act include the following:
- provision that from the commencement of an election period until seven days from polling day, a reportable political donation is to be disclosed within seven days of the donation being received.
 - provision that outside of an election period, a reportable political donation is to be disclosed within 28 days of the donation being received.

Relevant gift (Clause 12)

- 2.133 The Committee understands that Clause 12 of the Bill amends the definition of relevant gift in section 47(1)(a) of the Principal Act to reduce the quantum of a relevant gift from \$5,000 to \$1,000.

Committee Finding

- 2.134 The Committee received limited evidence regarding this clause and its proposed impact, but notes that it mirrors similar reductions in reporting thresholds from \$5,000 to \$1,000 in other clauses of the Bill.

Timeframes for publication of donation disclosures (Clause 13)

- 2.135 The Committee understands that clause 13 of the Bill amends section 53 of the Principal Act to shorten or clarify timeframes for publication of donation disclosures on the Tasmanian Electoral Commission’s website.

Evidence received

- 2.136 In relation to clause 13 of the Bill and the requirement for the TEC to publish disclosures on its website ‘as soon as practicable’, the Government commented:

The proposed amendments shift the wording in relation to the TEC’s requirement to publish declarations within seven days by providing that publication must be as soon as practicable but, in any case, no later than seven days.

The Government has every faith that the TEC operates so as to ensure statutory timeframes are met. The Government does not regard it as necessary to specify that the TEC must publish as “soon as practicable”.¹⁰⁹

- 2.137 Reflecting on the stage at which the TEC is currently at in terms of preparing for the Principal Act to be fully in force, Mr Hawkey reflected that the ‘as soon as practicable’ reference might need to change some of the TEC’s processes but that it would be possible:

So some of these things in the one sense it's a good bit of timing because we're only at the beginning stage of developing all this material, so where the parliament goes with this means there'll be some things that are switched, but it'll probably mean especially some of those very short time frames, we may need to adjust some of our planning. The fact that it talks about as soon as practicable for the Commission to respond might mean we actually need to change some of our processes, but thankfully we're not that detailed yet and where we've gone.¹¹⁰

Committee Findings

- 2.138 The Committee received limited evidence regarding this clause and its proposed impact, but notes that the TEC is in the process of preparing for its additional responsibilities under the Principal Act.
- 2.139 The Committee notes the comments of the Government that it does not regard it necessary to specify that publication needs to occur ‘as soon as practicable’.
- 2.140 The Committee supports prompt publication by the TEC of disclosures, in the interest of improving public access to information.

Candidate, Party and Third-party campaigner expenditure limits (Clause 14)

- 2.141 The Committee understands that Clause 14 of the Bill inserts Division 2A – Assembly expenditure limit into Part 6 (Electoral Expenditure in Assembly Elections) of the Principal Act, including expenditure limits for candidates (\$83,000 in the year 2022 and increases by an additional \$1,000 each subsequent

¹⁰⁹ Submission No. 4, Tasmanian Government, p. 2.

¹¹⁰ Mr Andrew Hawkey, Electoral Commissioner, Tasmanian Electoral Commission, Transcript of Evidence, 2 August 2024, p. 2.

year), parties (\$830,000 in the year 2022 and increases by an additional \$10,000 each subsequent year), and third-party campaigners (\$83,000 in the year 2022 and increases by an additional \$1,000 each subsequent year). This clause also includes penalty provisions for exceeding expenditure limits.

Evidence received

- 2.142 When asked to discuss the origin of the proposed expenditure limit, Dr Woodruff said the following:

Mr BEHRAKIS - Where did you derive that number from, the cap that you guys have proposed?

Dr WOODRUFF - That came from the Commonwealth inquiry into electoral reforms a number of years ago and that was taken from that period and their numbers were slightly lower than that. We used CPI to increase it from the time of when that report was handed in, I think in 2015, to now to get those figures for where we are today. It was taking that Commonwealth inquiry which had a lot of people making representations and deep consideration and we took their analysis and where they landed and brought the figure up present to what it would be today.¹¹¹

- 2.143 In her submission, Dr Woodruff advised the Committee:

Most jurisdictions impose a cap on spending for independent candidates, and a cap on parties (a dollar amount multiplied by the number of electorates the party has endorsed candidates within). This cap can often be distributed across electorates, in excess of a candidate's electorate cap.

Tasmania and Victoria are the only Australian sub-national jurisdictions without expenditure caps for lower house elections. Federal elections also do not have expenditure caps.¹¹²

- 2.144 On the 'election period' for expenditure, Dr Woodruff discussed the matter at hearing:

CHAIR - I wanted to ask about the expenditure period. There is a very clear expenditure period in the upper house, which is from 1 January of that election year. They have got fixed terms which make it easy to calculate how much you spend.

Can you elaborate on how you would decide an election period, given we do not have fixed terms in Tasmania?

Dr WOODRUFF - Yes. That is very difficult, especially when you have these snap elections - like, two in a row - so it is very difficult for people to plan when they would start campaigning. I'd look forward to the Committee's views on this and we are open to considering options for improving that process...¹¹³

¹¹¹ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 8.

¹¹² Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p.4

¹¹³ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 12.

- 2.145 Mr Roland Browne supported candidate and party expenditure limits, noting that limits are critical if elections are to be a contest of ideas rather than a contest in fundraising.¹¹⁴

- 2.146 Dr Bonham's submission to the Committee reflected on possible perverse incentives of spending caps:

*Spending caps are an area prone to perverse incentives and unexpected discrimination. The proposal to cap spending at \$83,000 per candidate but \$830,000 per registered party disadvantages independent candidates and encourages them to form fake parties if they wish to spend at high levels. A registered party intending to run a single candidate can spend ten times more than an independent candidate can spend. There is no logic in this, and it would place great pressure on independent candidates to register front parties to be able to spend more money.*¹¹⁵

- 2.147 The Australia Institute submitted that Tasmania's Hare–Clark electoral system does tend to make spending caps fairer in operation than they are in other states with winner-takes-all single-member seats. The Institute further advised that the Bill:

... uses a two-tiered spending cap system. A candidate cannot spend more than \$83,000 and a party cannot spend more than \$830,000 in an election campaign. Since there are five electorates, the effect is that a party can outspend an independent candidate two-to-one in an electorate.

However, the major parties are in practice usually trying to elect more than one candidate. In the 2024 Tasmanian state election, the Liberals won between 2 and 3 seats in each electorate; Labor 2 seats in each electorate; and the Greens between 0 and 2 seats in each electorate. It seems appropriate then that they would be able to outspend an independent candidate trying to elect just themselves.

*There is a concern that political parties may form that are focused on just one or two electorates, which in effect would allow them to outspend other parties.*¹¹⁶

- 2.148 Several stakeholders made the point to the Committee that Tasmania already has experience with expenditure limits, with the Legislative Council already having election expenditure caps in place. For example, Ms Webb submitted:

Tasmania is not new to the concept of election expenditure caps, which have been in place for Legislative Council elections for decades. The recent May 2024 periodic Legislative Council elections had a permitted maximum candidate expenditure limit of \$19,500.

Candidates must file electoral expenditure returns with the TEC within 60 days of the election result being declared. These returns are then available for public inspection for the next 12 months.

¹¹⁴ Submission No. 5, Mr Roland Browne, p. 3.

¹¹⁵ Submission No. 13, Dr Kevin Bonham, p. 2.

¹¹⁶ Submission No. 10, Australia Institute, p. 14.

*The introduction of public funding without limits on election expenditure or limits on donations overall, as is currently the case under the Principal Act, is extremely problematic.*¹¹⁷

2.149 Dr Woodruff similarly commented the following at the 12 August hearing:

*Again, it's about balance, and given that it's where it is at \$83,000, that's a pretty substantial amount of money. If you look at the Legislative Council election campaigns, \$19,500 I think is the amount for those campaigns. In comparison, that's a fourfold and more increase that we're talking about, so it seems like a pretty good leg-up for anyone who wants to put their hand up for politics.*¹¹⁸

2.150 Dr Woodruff further commented:

... we've got this principle already in the Legislative Council. We've already got it. That's what we do in the Legislative Council, everyone has \$19, 500. You just don't get to spend more than that and we think that's a good principle. It's fair. We need to agree as a community, as a parliament, what the cap is, but the principle of having a cap, a total spend on elections, is totally fair.

*I mean, it operates in one House, why wouldn't it operate in another House?*¹¹⁹

2.151 Dr Woodruff also expanded on the intended mechanics of the expenditure cap:

CHAIR - I wanted to ask if you could explain the way the mechanics would work for the cap... Is it an \$830,000 global cap for a party regardless of how many candidates they run? Or is it dependent on how many candidates they've got who have nominated?

Can you elaborate on who this would apply to and how? For instance, where you have a minor party that only runs three candidates in some electorates, would they be able to spend as much as a major party that runs full tickets in every electorate?

Dr WOODRUFF - As we have in the bill at the moment, it is for a party, so it would be the expenditure of the Labor Party, the Jacqui Lambie Network party, the Greens party and yes, if we run 35 members and, and another party only runs 15 members, there is a comparative advantage in terms of the spend per candidate.

On the other hand, it's the choice to run 35 members versus 15 members. You don't have to run 35 members. We choose to do that, and that has its own kind of value or cost as well. So, there are trade-offs there-

Mr BAYLEY - But it's a cap on both? Is it a cap on both candidate and party?

Dr WOODRUFF - Yes, that's right, but I don't think you were asking that question, were you? No. Within a party, individual candidates who are running as \$83,000 - and it's \$83,000 per candidate within a party cap, but the total figure for a party, regardless of how many candidates, is capped in this case.

¹¹⁷ Submission No. 15, Hon. Meg Webb MLC, p. 8.

¹¹⁸ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 3.

¹¹⁹ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 9.

...

CHAIR - But I wanted to also ask you how would that amount per candidate be decided? Would it be up to the party decide how they allocate those caps internally to candidates, or would you expect there's a different mechanism for that? In instances where you're running 35 candidates, you're going to quickly get beyond \$830,000 if everyone were to spend \$83,000.

Dr WOODRUFF - Well, that would be up to the party to make some determination about how that was going to be allocated. I mean, and I don't know, but I think most parties probably - I'm just guessing - don't spend as much on their lead candidate as they do on the person who's seventh on a ticket. I'm just guessing, you know, that's probably standard practice. And so, there is decisions made about money allocation to candidates already, so it would have to be something that is considered within the party, by the party...¹²⁰

2.152 Ms Webb further submitted to the Committee:

*Expenditure caps for all registered political parties, independent candidates and associated entities and third parties would move Tasmania closer to a gold-standard fair and transparent election financing and disclosure scheme in a tangible manner.*¹²¹

2.153 At the 2 August hearing, Attorney-General and Minister for Justice Hon. Guy Barnett MP gave evidence before the Committee along with Ms Kristy Bourne, Acting Secretary, Department of Justice, and Mr Bruce Paterson, Director – Strategic Legislation and Policy, Department of Justice. The Government representatives discussed the considerations that had been had by the Department and the Review Committee in terms of disclosure thresholds and expenditure limits:

Ms BOURNE - ... Just a brief note from me to reflect exactly what the Attorney has said. Trying to balance a new regime where any disclosure threshold or framework doesn't exist against one that's been existing for some time, was the subject of much consideration by the department and the Review Committee. As the Attorney has said, not wanting to disrupt the existing system at this point, whilst we try to bring the framework for House of Assembly members, was very front of mind. I'm not sure. Bruce, you're going to add anything?

Mr PATERSON - Through you, Attorney. Obviously, the Legislative Council expenditure limit is quite a different kind of setting to the House, which obviously has none. It's also different in the sense that parties can't incur expenditure on behalf of Legislative Council candidates. It's not really an apples and oranges, from which we could prepare a proposal when the department and the Electoral Review Report worked on this issue.

As at least one or two other submitters to the committee has noted, it's an issue that has to be approached with care so as not to disadvantage new entrants into the political system, particularly

¹²⁰ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, pp. 9- 10.

¹²¹ Submission No. 15, Hon. Meg Webb MLC, p. 9

*independents who need to build profile and might be restrained if the cap is not set at an appropriate level, compared to the cap that might be applicable to a party.*¹²²

- 2.154 Tasmanian Labor submitted that it supports the introduction of expenditure caps for Assembly elections. However, it raised concerns about the ‘all inclusive’ definition of electoral expenditure used.
- 2.155 Tasmanian Labor argued that ‘*expenditure caps should not be designed in such a way that they have the unintended consequence of discouraging election campaigning, which is a vital part of a fair democratic process.*’¹²³ Tasmanian Labor submitted that it would support a new defined category of ‘capped expenditure’, similar to the approach in the ACT, which would be a practical and workable approach that achieves the primary purpose of limiting excessive expenditure.¹²⁴

*The Bill proposes a four month “Expenditure Period” during which expenditure incurred is counted towards the limit. While a short four-month period may appear to be a more simple approach than a longer period, the practical result may be different. A shorter Expenditure Period may actually increase the complexity of administration by increasing the number of expenses for which a disclosure entity needs to actively evaluate the date of delivery to voters. The closer we get to an election, the more campaigning expenditure will occur. When the election moves into the Expenditure Period, the disclosure entity will need to determine what existing expenditure has already been delivered to voters, and what has not. At the 4 month mark (only 12 weeks), it is likely that a significant amount of campaign activity and expenditure is already occurring – making this task a much more complicated one.*¹²⁵

- 2.156 Tasmanian Labor indicated that it appeared that there are separate expenditure caps for candidates and parties in the Bill, even when candidates are running on a party ticket. Labor stated that this:

*... would have administrative implications whereby individual candidate, and central party expenditure would need to be tracked and accounted for separately. This would result in an incredibly complex framework, that would be impractical to administer. It would additionally result in the total value of available capped expenditure, for parties and the candidates, being so large that the effect would be the same as not having a cap at all.*¹²⁶

- 2.157 Tasmanian Labor also said that it should be made clear and explicit in the Bill that the ‘candidate’ cap is to apply to independent candidates who are not

¹²² Ms Kristy Bourne, Acting Secretary, Department of Justice, and Mr Bruce Paterson, Director – Strategic Legislation and Policy, Department of Justice, Transcript of Evidence, 2 August 2024, pp. 7-8.

¹²³ Submission No. 14, Tasmanian Labor, p. 4.

¹²⁴ Submission No. 14, Tasmanian Labor, p. 6.

¹²⁵ Submission No. 14, Tasmanian Labor, p. 9.

¹²⁶ Submission No. 14, Tasmanian Labor, p. 7.

running as part of a party group.¹²⁷ It also said that the expenditure limit for individual candidates should be the same as a party on a per candidate basis.¹²⁸

- 2.158 Tasmanian Labor said that a total expenditure limit of \$830,000 for a party running 35 candidates is too restrictive, and that it would unnecessarily restrict political communication and prevent genuine campaign activity and advertising. Labor also said that should the individual candidate limit of \$83,000 be multiplied for 35 candidates this would result in an expenditure limit of \$2,905,000, which would be too high. Labor pointed to the ACT framework as an appropriate middle ground, where for the 2024 election the candidate limit is \$50,135. In applying this figure to Tasmania, Labor said:

*Extrapolated to a party running a full ticket of 35 candidates in Tasmania, this would result in an expenditure limit of \$1,754,725. This would be a fair limit that balances the need to curb excessive expenditure, while not arbitrarily limiting the ability of parties and candidates to genuinely campaign.*¹²⁹

- 2.159 There was also some discussion during the inquiry about the advantages of incumbency when it comes to elections and spending. The Australia Institute submitted:

Parliamentarians receive significant incumbency advantages, including their salaries, staff, communications allowances and travel allowances. Parties and independent MPs will also receive administrative funding in Tasmania.

*These advantages are less pronounced in Tasmania than they are at the federal level because the sums of money involved are less. However, serious consideration should be given to the possibility that they still exist, and that they make it unfair for new candidates and parties to be subject to the same spending cap as incumbent parliamentarians and parties with incumbent MPs.*¹³⁰

- 2.160 The Institute particularly indicated concern should a hypothetical new political party contest a state election under the Bill's provisions, where the new party would 'face Liberal and Labor parties who do not need to devote any time to fundraising, because public funding and levies on parliamentarians alone are enough to meet the \$830,000 spending cap'. The Institute submitted that:

Each donation this party or candidate receives is capped at \$3,000, meaning a new party would require 277 or more donations to get them to where the major parties start from. It would be tempting to nominate one or more candidates who could contribute \$30,000 or \$60,000 to overcome some of this funding shortfall.

¹²⁷ Submission No. 14, Tasmanian Labor, p. 7.

¹²⁸ Submission No. 14, Tasmanian Labor, p. 8.

¹²⁹ Submission No. 14, Tasmanian Labor, p. 8.

¹³⁰ Submission No. 10, Australia Institute, p. 14.

*Even if this new party raised \$830,000, they would in effect find that the major parties' campaigns are much better resourced – because they have the staffing, office and other resources that are the prerogatives of incumbent parliamentarians.*¹³¹

2.161 At the 2 August hearing, Mr Bill Browne added:

*... a note on spending caps: as with other political finance laws like donation caps and public funding, spending caps run the risk of perverse outcomes. Australia Institute research finds that some of these risks are less pronounced in Tasmania than elsewhere. That said, the effect of any changes should still be carefully considered.*¹³²

2.162 Dr Bonham submitted at the 26 July public hearing:

*I think that is something to be taken into account in terms of where you draw the line. Again, as I say, my view is that ridiculous overspending should probably be limited, but anything that is not obviously ridiculous; I'm more interested in people knowing what's going on than in making limits that might be constitutionally suspect.*¹³³

2.163 In its submission the Tasmanian Government indicated its opposition to imposing expenditure limits on House of Assembly elections '*at this time*', referring to Recommendation 4 of the Final Report of the Electoral Act Review; that any decision in relation to caps should follow the analysis of evidence gathered under the new disclosure regime.¹³⁴

2.164 The Government also argued that the Bill would create a significant risk '*that electoral expenditure could be funnelled through associated entities so as to circumvent the electoral expenditure limit of a party. This would therefore undermine any benefit of the limit entirely and would likely see the proliferation of associated entities created specifically for this purpose.*'¹³⁵

2.165 The Liberal Party of Australia, Tasmanian Division, argued that the proposed expenditure caps are '*fraught with unintended consequences and risk tying up all parties and candidates in needless litigation and dispute which undermines certainty in election outcomes*'.¹³⁶ Their submission suggested that:

*It is unhealthy for democracy for losing candidates to continue their campaigns in the Courts leading to instability and uncertainty around election results and the formation of Government.*¹³⁷

¹³¹ Submission No. 10, Australia Institute, p. 18.

¹³² Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, Transcript of Evidence, 2 August 2024, p. 2.

¹³³ Dr Kevin Bonham, Transcript of Evidence, 26 July 2024, p. 7.

¹³⁴ Submission No. 4, Tasmanian Government, p. 3.

¹³⁵ Submission No. 4, Tasmanian Government, p. 3.

¹³⁶ Submission No. 16, Liberal Party of Australia, Tasmanian Division, p. 5.

¹³⁷ Submission No. 16, Liberal Party of Australia, Tasmanian Division, p. 5.

- 2.166 Mr Coulson suggested at the 12 August public hearing that the expenditure cap measures proposed in the Bill would advantage political parties where a lead candidate is run by a party in a division, and the other six party candidates would have their caps go towards the lead candidate:

As we know, whereby Labor, the Liberals, the Jacqui Lambie Network, for example, run seven candidates per seat, every candidate is encouraged and supported to do their best and go out and campaign for themselves. The Greens have a lead candidate, so they have one person who they look to get elected and the other six are expected to, as I understand, support, campaign for, and otherwise run dead to benefit the lead candidate.

Where we're talking about a situation where expenditure caps apply per candidate, that benefits the Greens political party mostly because they're able to take advantage of that because their Greens lead candidate is able to soak up all of those caps.¹³⁸

Committee Findings

- 2.167 The Committee agrees there is merit in the introduction of House of Assembly election expenditure limits (and their application to parties and candidates), but the measure requires further consideration to understand what is an appropriate expenditure limit, how any legislated caps would be set, and apply across candidates and parties, and over what expenditure period.
- 2.168 The Committee recommends that the House refer the matter of expenditure limits and expenditure period to the Joint Standing Committee on Electoral Matters for inquiry and report.

Assembly election campaign returns (Clause 15)

- 2.169 The Committee understands that clause 15 amends section 71(4)(b) of the Principal Act by changing the meaning of the relevant debt information requirement of an Assembly election campaign return by reducing the amount of the sum of all debts from more than \$5,000 to more than \$1,000.

Committee Finding

- 2.170 The Committee received limited evidence regarding this clause and its proposed impact, but notes that it mirrors similar reductions in reporting thresholds from \$5,000 to \$1,000 in other clauses of the Bill.

Truth in advertising (Clause 16)

- 2.171 The Committee understands that clause 16 of the Bill proposes to create misleading advertising or 'truth in political advertising' provisions at section 197A of the *Electoral Act 2004*. This clause includes a penalty provision

¹³⁸ Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, Transcript of Evidence, 12 August 2024, p. 11.

of a fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.

Evidence received

- 2.172 Dr Woodruff noted that the Bill's provisions regarding truth in political advertising had been 'drafted with reference to the South Australian model', and that, in summary:

*Truth in political advertising laws are provisions which prohibit false statements in political advertising during election campaigns. These laws can establish offences or allow for the removal of statements.*¹³⁹

- 2.173 The TEC advised that the introduction of misleading advertising provisions would introduce a second regulatory and compliance scheme to the TEC's remit. The TEC also acknowledged an increase in misinformation and disinformation in social media and the online environment, and the growing future impacts of artificial intelligence.¹⁴⁰

- 2.174 The Committee received evidence supporting measures to deal with the need for truth in political advertising. Recent efforts taken in South Australia and in the Australian Capital Territory were noted as examples to be reflected on when considering Tasmania's future approach.¹⁴¹ However, the TEC noted in its submission that the electoral commissioners of those jurisdictions have publicly reported the challenges of administering such provisions.¹⁴² The TEC highlighted several issues identified by those commissioners, including:

- *Assessing complaints can be a lengthy process during time-critical phases of an election*
- *The informed decision-making by the Electoral Commissioner takes considerable focus and time when the Commissioner also has other statutory responsibilities during election events*
- *The number of complaints has increased over subsequent elections but there has not necessarily been a corresponding increase in the seriousness of complaints or substantiation of complaints or remedial action*
- *The increased complaint workload during election periods requires a significant staffing investment (which is not currently planned or provided for at the TEC)*
- *The process creates a significant risk to community perceptions of partisanship or lack of impartiality of the respective Electoral Commissioner and Commission more generally in the administration of electoral processes.*¹⁴³

¹³⁹ Submission No. 12, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, p. 5.

¹⁴⁰ Submission No. 11, Tasmanian Electoral Commission, pp. 3-4.

¹⁴¹ Submission No. 2, Mr Bob Holderness-Roddam, p. 2, Submission 5, Mr Roland Browne, p. 3., and Submission No. 6, Tasmanian Constitution Society, p. 2.

¹⁴² Submission No. 11, Tasmanian Electoral Commission, p. 4.

¹⁴³ Submission No. 11, Tasmanian Electoral Commission, p. 4

2.175 The TEC went on to outline the need for a significant complementary effort should the Bill be passed in terms of developing educational material and resources, forms and procedures, and assessing the workloads, duties and specialist skills needed to administer the Bill's provisions.¹⁴⁴

2.176 Dr Turner commented that the existing South Australian approach to dealing with truth in political advertising could provide guidance to how Tasmania deals with the issue. Dr Turner submitted that consideration should be given to providing the TEC with further resources to target the emergence of 'online deep-fakes', noting the importance of protecting electoral integrity.¹⁴⁵

2.177 Supporters of the provisions within the Bill in relation truth in advertising included Mr Roland Browne, who argued that *'the real opposition to such a provision would be by those persons who intend to deceive and mislead the electorate in their advertising'*.¹⁴⁶ Mr Browne went on to say:

*We should be aspiring to higher standards of truth-telling by our elected candidates. People should not be able to mislead the electorate with impunity.*¹⁴⁷

2.178 Dr Bonham indicated that he does not support truth in electoral advertising legislation, indicating that *'broader truth in electoral advertising laws create a danger that valid opinions may be suppressed (at least temporarily) because of errors in the interpretation of such laws'*.¹⁴⁸ Dr Bonham went on to submit to the Committee:

*The damage done to democracy by a single possibly valid opinion being suppressed is far greater than the damage done by thousands of false claims being made in a domain where they can be rebutted and where those making them can be judged negatively by those who care about honesty in politics. In my view if a true (or even not clearly false) claim were to be incorrectly suppressed under truth in electoral advertising, that could be reason for the election affected by that action to need to be voided and rerun.*¹⁴⁹

2.179 The Government's submission noted that the wording of the Bill 'largely reflects the provision currently in place in the ACT and South Australia which prohibit the dissemination or publication of an electoral advertisement that contains a statement (purporting to be a statement of fact) which is inaccurate or misleading to a material extent'.¹⁵⁰ The Government's submission further noted:

¹⁴⁴ Submission No. 11, Tasmanian Electoral Commission, pp. 4-5.

¹⁴⁵ Submission No. 1, Dr Paul Turner, p. 2.

¹⁴⁶ Submission No. 5, Mr Roland Browne, p. 3.

¹⁴⁷ Submission No. 5, Mr Roland Browne, p. 3.

¹⁴⁸ Submission No. 13, Dr Kevin Bonham, pp. 1, 4.

¹⁴⁹ Submission No. 13, Dr Kevin Bonham, p. 4.

¹⁵⁰ Submission No. 4, Tasmanian Government, pp. 3-4.

*Whilst it is acknowledged that there is support for the concept of truth in political advertising laws amongst some stakeholders and, potentially, in the wider community, the Government holds significant concerns about the practical operation and administration of such laws.*¹⁵¹

- 2.180 The Government submitted that much more work was needed in Tasmania before a decision should be made in relation to how ‘truth in political advertising’ should be managed in the state:

*If “truth in political advertising” laws are to be introduced in Tasmania, then significantly more work needs to be done to develop appropriate laws and undertake broad consultation to ensure that law are functional, understandable and operate as Tasmanian expect, without compromising the important functions of the TEC.*¹⁵²

- 2.181 Similarly, the Liberal Party of Australia, Tasmanian Division, submitted that more careful consideration was needed prior to legislating in this space, in relation to the Bill as a whole:

*... the Committee should consider whether rushed changes with a lack of consideration for the possible unintended consequences is a reasonable way to approach changing our democratic system... We should be very careful about making changes without properly considering the possible effects.*¹⁵³

- 2.182 With specific reference to truth in political advertising laws, the Liberal Party submitted that such laws would ‘politicise the TEC and undermine confidence in the conduct of elections’, with a bad overall impact on democracy.¹⁵⁴ The Party argued that:

*Having the Electoral Commissioner embroiled in subjective disputes would be a disaster and erode faith in the integrity of the election process.*¹⁵⁵

- 2.183 The Tasmanian Policy Exchange recommended that the Tasmanian Government should establish and adequately support a division within the TEC focuses on electoral ‘mis- and disinformation’, to support the effective enforcement of penalties proposed in the Bill for people who publish or permit the publication of inaccurate or misleading electoral advertisements.¹⁵⁶

- 2.184 While the Tasmanian Constitution Society indicated its support for the Bill’s provisions concerning advertising, the Society indicated its support for a separate bill dealing with truth in advertising ‘to ensure electors are as well

¹⁵¹ Submission No. 4, Tasmanian Government, p. 4.

¹⁵² Submission No. 4, Tasmanian Government, p. 6.

¹⁵³ Submission No. 15, Liberal Party of Australia, Tasmanian Division, p. 3.

¹⁵⁴ Submission No. 15, Liberal Party of Australia, Tasmanian Division, p. 6.

¹⁵⁵ Submission No. 15, Liberal Party of Australia, Tasmanian Division, p. 6.

¹⁵⁶ Submission No. 9, Tasmanian Policy Exchange, UTAS, p. 4.

informed as they can be'.¹⁵⁷ Mr Spark, President of the Society, spoke further in relation to this point at a public hearing:

*Instead of being an 'add-on' in another bill - it's like saying, 'By the way, there should be truth in political advertising', whereas if it was a stand-alone bill of its own it would have a status of importance, and I think that the need for that is great and I think it will become greater. If that wasn't possible, we'd certainly support incorporation in this bill.*¹⁵⁸

- 2.185 The Australia Institute submitted that the truth in political advertising measures proposed in the Bill should be amended to better reflect those in place in SA and the ACT.¹⁵⁹ The Institute specifically recommended that the Bill should be amended to 'extend the provisions of section 197 of the Electoral Act 2004 on misleading and deceptive electoral matter to include political advertising, modelled on ACT legislation', and for consideration be given to providing for an election to be voided in the case of misleading advertising, modelled on South Australian legislation.¹⁶⁰

- 2.186 The TEC's submission included the following comment from Mr Hawkey:

*Where maintenance of public trust in the TEC is paramount, I am concerned that requiring the TEC to regulate and prosecute political participants regarding 'truth in political advertising' would undermine the integrity of the TEC. I think it is highly likely the responsibilities of the TEC regarding truth in political advertising would, in Tasmania's bespoke political landscape, create a perception of political bias and would potentially weaponize the TEC.*¹⁶¹

- 2.187 Dr Bonham also indicated concern about the administration of truth in advertising legislation in the state:

*Tasmania is a small place where conflicts of interest are common. I have concerns about who would administer "truth in advertising" legislation in the state and whether they could do so successfully and competently. I also think that requiring electoral authorities to administer general truth in advertising laws detracts from their key mission, is very likely to affect perceptions of their neutrality, and drags them outside of their primary expertise. For this reason I am completely opposed to the TEC being ever required to police a general truth in electoral advertising requirement.*¹⁶²

- 2.188 At a public hearing, Dr Bonham highlighted an issue in Tasmania with the definition of advertisement, and the need for the TEC to have a clear idea of that definition:

¹⁵⁷ Submission No. 6, Tasmanian Constitution Society, p. 2.

¹⁵⁸ Mr Neil Spark, President, Tasmanian Constitution Society, Transcript of Evidence, 26 July 2024, p. 8.

¹⁵⁹ Submission No. 10, Australia Institute, p. 18.

¹⁶⁰ Submission No. 10, Australia Institute, pp. 16-17.

¹⁶¹ Submission No. 11, Tasmanian Electoral Commission, p. 5.

¹⁶² Submission No. 13, Dr Kevin Bonham, p. 5.

*It is becoming increasingly unclear in the social media age what is an advertisement anymore. I haven't noticed this being an issue in other states, but it seems to be a recurring issue here, particularly with the existing legislation on naming candidates without their consent. If you are going to have truth in electoral advertising, this is something we need to be clear on: do we know what an advertisement is, and does the Electoral Commission know what an advertisement is?*¹⁶³

- 2.189 Dr Woodruff reflected in evidence before the Committee that ‘in relation to truth in political advertising, it seems fair to say that witnesses were somewhat split on whether there was merit in including truth in political advertising positions in electoral reform amendments’.¹⁶⁴ Dr Woodruff further said:

*I also want to acknowledge the deep concerns that many people in the community, including the Greens, have at the vastly different landscape that confronts all democracies these days with social media, the viral speed of information communication, the availability of artificial intelligence that can present realistic fake digital information. With all that in mind, the Greens continue to support the introduction of reforms that require candidates to be truthful about the statements they make in political advertising.*¹⁶⁵

- 2.190 With specific reference to the impact on the TEC of the proposed truth in advertising measures, Dr Woodruff said:

I think it is important to make sure that there is not an overly onerous burden on the Electoral Commission and not to put them in a situation where they feel they are not able to do their work or in any way compromised in that.

*In saying that, that would need to be a body that did that who was beyond reproach and was considered to be politically neutral. The reason why the Electoral Commission has been identified, and was identified in South Australia, is because they are that body and they have such respect across the political spectrum. It is a question about finding who would do that, who would have the confidence of the community and the powers to do that.*¹⁶⁶

- 2.191 Mr Bill Browne suggested to the Committee that ‘electoral commissions are good choices to be the overseers of truth-in-political-advertising laws’. Mr Browne acknowledged that truth-in-political-advertising laws do create the risk of politicised attacks decision making on the decision making of electoral commissions, but also that electoral commissions are already at risk of such attacks in other areas. Mr Browne commented that ‘it's certainly open on parliaments to choose other entities that are responsible for oversight, but also electoral commissions are a good choice.’¹⁶⁷

¹⁶³ Dr Kevin Bonham, Transcript of Evidence, 26 July 2024, p. 10.

¹⁶⁴ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 3.

¹⁶⁵ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 3.

¹⁶⁶ Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p. 5.

¹⁶⁷ Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, Transcript of Evidence, 2 August 2024, p. 8.

- 2.192 At the 2 August hearing, the Attorney-General noted that the issue of truth in political advertising was important and he thought the ‘concept or principle is supported broadly’, but that there was potential for unintended consequences. The Attorney confirmed that the Government could not support the Greens’ amendment in relation to the issue.¹⁶⁸ In relation to the importance of ensuring the continued community confidence in the TEC, the Attorney submitted:

It [the TEC] needs to be independent. It needs to be objective and resourced to do its job, and that's something we support as a government. You would have heard from the commissioner this morning about those important roles, functions and responsibilities it does have and we support that.

Once you then effectively politicise that entity, it's very hard for it to do the job that will then give confidence in the community to the democratic process. There are potential unintended consequences. There are potential risks in going down that track and it's very complex. It's not something to be considered lightly.¹⁶⁹

- 2.193 At the same hearing Ms Bourne added that the issue of truth in political advertising would require:

... some careful consideration and probably further consultation if there was policy appetite from government to do so, given the power that it would vest in the electoral commission to determine if advertising is misleading, which is very, very outside the scope of the commission's current ambit.¹⁷⁰

- 2.194 Ms Bourne further noted:

Without wanting to speak for the Commissioner, it puts them in a position where as well as maintaining the electoral process and making sure the integrity in that process is upheld then they become the arbiter effectively on determining whether some communication and noting that truth in political advertising doesn't necessarily cover all forms of communication, whether that's misleading or deceptive.¹⁷¹

Committee Findings

- 2.195 The Committee recognises the concerns regarding increases in ‘false information’ regarding elections and election processes, including the increasing prominence and availability of artificial intelligence.

¹⁶⁸ Hon. Guy Barnett MP, Attorney-General and Minister for Justice, Transcript of Evidence, 2 August 2024, p. 8.

¹⁶⁹ Hon. Guy Barnett MP, Attorney-General and Minister for Justice, Transcript of Evidence, 2 August 2024, p. 11.

¹⁷⁰ Ms Kristy Bourne MP, Acting Secretary, Department of Justice, Transcript of Evidence, 2 August 2024, p. 9.

¹⁷¹ Ms Kristy Bourne MP, Acting Secretary, Department of Justice, Transcript of Evidence, 2 August 2024, p. 9.

- 2.196 The Committee notes the concerns expressed by the TEC that the allocation of further responsibilities to regulate and prosecute political participants to the TEC would undermine the TEC's integrity. The Committee also notes it heard evidence from Mr Browne of the Australia Institute that in other jurisdictions electoral commissions performed these roles, and no evidence was presented that indicated their integrity had been undermined. The Committee heard that the measure has been effective in deterring false information and, where necessary, addressing issues in a timely manner.
- 2.197 The Committee strongly suggests that, should the TEC ever in future be required to regulate truth in advertising laws, its resourcing would need to be significantly increased to accommodate the new aspect of its work.
- 2.198 The Committee also appreciates the importance of ensuring the definitions contained in any truth in advertising bill help achieve the objective and avoid any unintended consequences that limit people's ability to participate in the democratic process.
- 2.199 The Committee recommends that the House refer the matter of truth in political advertising to the Joint Standing Committee on Electoral Matters for inquiry and report.

Repeal (Clause 17)

- 2.200 Clause 17 of the Bill provides that the Bill is repealed after 365 days on which all provisions are commenced.

Committee Finding

- 2.201 The Committee makes no finding in relation to this clause.

3 RELATED MATTERS

- 3.1 This Chapter considers a number of related matters raised during the Committee's Inquiry into the Bill.

Vote savings provisions

- 3.2 In its submission to the inquiry Tasmanian Labor called for the introduction of vote savings provisions to ensure the maximum number of voters are enfranchised. Tasmanian Labor said that *'the recent election saw the rate of informal voting rise to its second highest level in Tasmania's history, and we now have the highest rate of informal voting of any state in the country'* and submitted that *'1 in 16 votes cast at the last election did not count'*.¹⁷²
- 3.3 Tasmanian Labor noted that while the analysis of informal votes generally shows that the majority of these would not be 'saved' by savings provisions, the number that could be saved is significant enough to change the outcome of elected Members of Parliament in most Tasmanian elections. Tasmanian Labor submitted that it would welcome the introduction of vote savings provisions, similar to the ACT, but that it would be important to *'ensure that candidates and parties are not incentivised to actively encourage voters list fewer than seven preferences'*.¹⁷³
- 3.4 Dr Kevin Bonham commented on this matter at the 26 July hearing:

*One of the reasons for that is that the ACT has savings provisions that Tasmania doesn't have, so there is not the same incentive to run full slates that there is here, in terms of controlling formality. In Tasmania, you need to vote 1 to 7 at this election. If you run seven candidates, then a voter can number 1 to 7 for your party and then stop, but if you run fewer than that, then they can't. The ACT doesn't have that problem. In the ACT, they are told to vote 1 to 5, but if a party only runs two candidates and somebody votes 1, 2 and then stops, their vote still counts. So, there is not the same incentive to run lots of filler candidates.*¹⁷⁴

- 3.5 Mr Andrew Hawkey, Electoral Commissioner, said at the 2 August hearing:

I would argue the voting one to seven is a savings provision. If you look at the lower house of the federal election, you have to vote one for every candidate. Until recently in the Senate, if you voted below the line, you had to vote the whole way down. That's been changed.

Now, is going back to 12 below the line - is that a savings provision? Part of the notion of a savings provision means it's saving votes. We are in the process of doing our updated informed ballot

¹⁷² Submission No. 14, Tasmanian Labor, p. 12.

¹⁷³ Submission No. 14, Tasmanian Labor, p. 12.

¹⁷⁴ Dr Kevin Bonham, Transcript of Evidence, 26 July 2024, p. 6.

paper survey. It's not quite ready for publication, unfortunately, but the figures in the comments that were said are quite valid.

There are a range of people that intentionally don't vote. In those cases, because we have a compulsory voting system, then the commissioners basically believe it is absolutely their right to come and have a blank ballot paper, because if you don't go and have a blank ballot paper, we're going to fine you for not turning up. As it's been said, the fundamental thing about compulsory voting is compulsory attendance in the process and so it's a valid thing to not do it, which is partly why we do it. There are extensive details and we look at where there's omissions as an error; we look at where there's repetition. It might be that they've given a one across every column and no saving provisions is going to fix that. The number that can be saved is actually quite small. Going from five to seven, one of the concerns the commission had, is how many people would just go, 'I have to go one to five'. As you might have seen when you went to vote, we had our little posters and everything else. Across all our non-voter numbers of about 20,000, only 220 or so were actually 1 to 5 and then stop...

... Part of the reason for me why seven is really important, is because our system is really vital with how we do our recounts. We've had cases where a party has maybe had three elected at parliament and then had two or three resignations. We need those broader numbers to be able to replace by recount.¹⁷⁵

Committee Finding

- 3.6 The Committee acknowledges that the issue of vote savings is outside of its terms of reference, and recommends that the House refer vote savings to the Joint Standing Committee on Electoral Matters for inquiry and report.

Public funding and the Legislative Council

- 3.7 In relation to public funding for election purposes, Dr Paul Turner submitted:

In contrast to the House of Assembly, the 2023 Act does not provide the Legislative Council with Administrative funding and public funding for election expenditure.

Surprisingly, the EDFA Bill does not address this inequity, yet, simultaneously does propose a General Donations Cap that will also impact Legislative Council candidates and members.

Clearly there is a need to address the inequity in available funding between the Assembly and Council. This will ensure that any donations cap does not unfairly disadvantage existing or prospective members of the Council because there is no financial offset via public funding that is already in place for the Lower House.¹⁷⁶

- 3.8 The Tasmanian Constitution Society also reflected on the lack of reference within the Bill to public funding for Legislative Council candidates:

¹⁷⁵ Mr Andrew Hawkey, Electoral Commissioner, Tasmanian Electoral Commission, Transcript of Evidence, 2 August 2024, pp.11-12.

¹⁷⁶ Submission No. 1, Dr Paul Turner, p. 2.

*The Bill does not include, but should, the provision for public funding for Legislative Council candidates and administrative support. Council candidates are not publicly funded but they have the same reporting and disclosing provisions for Assembly candidates who will be publicly funded under the Principal Act.*¹⁷⁷

- 3.9 At a public hearing Mr Neil Spark, President of the Society, elaborated on the different treatment of the House of Assembly and Legislative Council candidates:

*... that discrepancy, that difference, means that candidates and members are treated differently, and that seems to us to be illogical and unfair. I think that, essentially, we are talking about members of parliament who are representatives of the people, and for one candidate to have restrictions placed on them that don't apply to another candidate doesn't feel fair or logical.*¹⁷⁸

- 3.10 The Tasmanian Policy Exchange also submitted that as the Bill proposes donation caps that will apply to Members of the Legislative Council as well as Members of the House of Assembly, the Bill should propose that Members of the Legislative Council are entitled to claim payments from the Administration Fund to cover their administrative expenditure. The Exchange commented that this is because under the Principal Act, parties represented in the House of Assembly and independent MHAs are entitled to claim payments from the Administration Fund to cover their administrative expenditure (up to defined limits).¹⁷⁹

- 3.11 Hon. Meg Webb MLC also submitted that the Bill fails to address the Principal Act's inequitable omission of the Legislative Council from the electoral funding and administrative funding provided for the Assembly.¹⁸⁰

- 3.12 Ms Webb recommended that the Committee consider amendments needed to provide for for comparable and equitable public funding for the Legislative Council for the purposes of electoral funding and administrative funding, as provided for the House of Assembly under the Principal Act, indicating that the Bill is a missed opportunity to seek to address the inequity between the two Houses of Parliament.¹⁸¹

- 3.13 At the 12 August hearing, Dr Woodruff reflected the view of the Greens on Legislative Council funding:

On the matter of Legislative Council public and administrative funding which has been raised by a number of representations on the application of, sort of, extending public funding to the Legislative Council, the Greens support doing this, in principle.

¹⁷⁷ Submission No. 6, Tasmanian Constitution Society, p. 2.

¹⁷⁸ Mr Neil Spark, President, Tasmanian Constitution Society, Transcript of Evidence, 26 July 2024, p. 2.

¹⁷⁹ Submission No. 9, Tasmanian Policy Exchange, UTAS pp. 3-4.

¹⁸⁰ Submission No. 15, Hon Meg Webb MLC, p. 1.

¹⁸¹ Submission No. 15, Hon Meg Webb MLC, pp. 14-15.

*Any amendment in this space would need to be developed with significant input, obviously, by members of the Legislative Council. We're looking forward to the consideration of the Committee on this matter, but that is something that we would consider doing after considering the report and the comments that the Committee makes.*¹⁸²

Committee Findings

- 3.14 The Committee acknowledges the need for input by Members of the Legislative Council in relation to these matters.
- 3.15 Consequently, the Committee recommends that the House should consider referring the matter of Legislative Council electoral and administrative funding to the Joint Standing Committee on Electoral Matters for inquiry and report.

¹⁸² Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, Transcript of Evidence, 12 August 2024, p.2.

APPENDICES

Appendix A - List of witnesses

PUBLIC HEARING - 26 July 2024

1. Mr Neil Spark, President, Tasmanian Constitution Society.
2. Dr Kevin Bonham.
3. Mr Roland Browne.
4. Mr Jarryd Moore, Acting State Secretary, Tasmanian Labor.

PUBLIC HEARING – 2 August 2024

1. Dr Robert Hortle, Deputy Director and Senior Research Fellow, and Dr Lachlan Johnson, Research Fellow, Tasmanian Policy Exchange, University of Tasmania.
2. Mr Mike Blake, Chair, and Mr Andrew Hawkey, Electoral Commissioner, Tasmanian Electoral Commission.
3. Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute.
4. Ms Adrienne Picone, Chief Executive Officer, and Dr Charlie Burton, Deputy Chief Executive Officer, Director Policy and Advocacy, TasCOSS, and Ms Jan Davis, former CEO of a TasCOSS Member Organisation.
5. Hon Guy Barnett MP, Attorney-General and Minister for Justice, Ms Kristy Bourne, Acting Secretary, and Mr Bruce Paterson, Director, Strategic Policy and Legislation, Department of Justice.

PUBLIC HEARING – 12 August 2024

1. Ms Julia Hickey, Acting Chief Executive Officer, and Ms Sarah Frost, Director – Operations, Integrity Commission Tasmania.
2. Mr Peter Coulson, State Director, Liberal Party of Australia (Tasmanian Division).
3. Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens.

Appendix B - List of Submissions

1. Dr Paul Turner
2. Bob Holderness - Roddam
3. Integrity Commission
4. Tasmanian Government
5. Roland Browne
6. Tasmanian Constitution Society
7. Robert G Richardson
8. TasCOSS
9. Tasmanian Policy Exchange
10. The Australia Institute
11. Tasmanian Electoral Commission
12. Dr Rosalie Woodruff MP
13. Dr Kevin Bonham
14. Tasmanian Labor
15. Hon Meg Webb MLC
16. The Liberal Party of Australia
(Tasmanian Division)

Appendix C - Minutes of the Committee

THURSDAY, 13 June 2024

The Committee met at Parliament House, Hobart, in Committee Room 3, at 9.34 a.m.

MEMBERS PRESENT:

Mr Behrakis
Ms Johnston
Mrs Pentland
Ms Rosol
Ms White
Mr Winter
Mr Wood

APOLOGIES

There were no apologies.

ELECTION OF CHAIR

The Secretary took the Chair, read the Resolution establishing the Committee, and called for nominations for Chair.

Mr Winter nominated *Ms White*, seconded by *Mr Behrakis*.

Ms White consented to the nomination.

There being no further nominations, the Secretary declared *Ms White* elected as Chair.

Ms White took the Chair.

ELECTION OF DEPUTY CHAIR

The Chair called for nominations for Deputy Chair.

Mr Wood nominated *Mr Behrakis*, seconded by *Mr Winter*.

Mr Behrakis consented to the nomination.

There being no other candidates nominated, the Chair declared *Mr Behrakis* elected as Deputy Chair.

OTHER MATTERS

The Committee agreed to discuss the next steps for the inquiry into the Electoral Disclosure and Funding Amendment Bill 2024 (No. 9), as referred by the House of Assembly on 12 June 2024, at its next meeting.

At 9.41 a.m. the Committee adjourned until 1:00 pm on Thursday 20 June 2024.

Confirmed,

THURSDAY, 20 June 2024

The Committee met at Parliament House, Hobart, in the Long Room, at 1.07 p.m.

MEMBERS PRESENT:

Mr Bayley (proxy for *Ms Rosol*)
Mr Behrakis
Mrs Beswick (for *Mrs Pentland*)
Ms Johnston
Ms White
Mr Winter
Mr Wood

APOLOGIES

There were no apologies.

MINUTES

Resolved, That the minutes of the previous meeting be confirmed. (*Mr Behrakis*).

PROXY MEMBERSHIP

The Chair advised that she had received written advice from the relevant substantive Member that:

- Mr Bayley would proxy for Ms Rosol at this meeting.
- Mrs Beswick would proxy for Mrs Pentland at this meeting.

PROCEDURAL MOTIONS

Resolved, That unless otherwise ordered Officers of the Parliamentary Research Service be admitted to the proceedings of the Committee whether in public or private session. (Mr Winter)
That the Chair be the spokesperson in relation to the operations of the Committee. (Mr Wood)

That unless otherwise ordered, press statements on behalf of the Committee be made only by the Chair after approval in principle by the Committee or after consultation with committee members. (Mr Behrakis)

INQUIRY INTO THE ELECTORAL DISCLOSURE AND FUNDING AMENDMENT BILL 2024 (NO. 9)

The Committee discussed the inquiry process briefing note, proposed inquiry timeline, and indicative stakeholder list as circulated.

Resolved, That the Committee proceed with a Full Inquiry Process in relation to this inquiry, and that the inquiry be open to public submissions. (Ms Johnston)

The Committee noted that an advertisement would be placed in the

three major newspapers on the weekend of 29-30 July, and a media release prior.

Resolved, That the Committee proceed with the proposed inquiry timeline, opening and closing of dates for submissions, deliberative meetings and hearings as circulated, including:

Submissions open: Friday 21 June

Submissions close: Friday 12 July

Meeting 3: Wednesday 17 July

Hearing 1: Friday 26 July

Hearing 2: Friday 2 August

Chair's Draft Report completed: Monday 26 August

Meeting 4: Friday 30 August

Meeting 5 (if required): Monday 2 September

Report to be tabled: Tuesday 10 September (Mr Winter)

Resolved, that the following stakeholders be invited to make a submission to the inquiry:

- The Premier (for the Tasmanian Government)
- Liberal Party
- Labor Party
- Tasmanian Greens
- Jacquie Lambie Network
- All Independent Members of the Tasmanian Parliament
- Dr Kevin Bonham
- Dr Richard Herr
- Tasmanian Constitution Society
- Tasmanian Electoral Commission
- UTAS Institute for the Study of Social Change

- TASCOS
- Australia Institute
- ACT Electoral Commission
- Phillip Green
- Simon Corbell
- ACTU
- Roland Brown (Mr Behrakis)

OTHER MATTERS

At 1.25 p.m. the Committee adjourned until:

- ***
- 9 a.m. on Wednesday 17 July 2024 (for the Inquiry into the Electoral Disclosure and Funding Amendment Bill 2024 (No. 9))

Confirmed,

TUESDAY, 25 June 2024

The Committee met at Parliament House, Hobart, in Committee Room 1 and by Webex videoconference, at 12.05 p.m.

MEMBERS PRESENT:

Mr Behrakis
 Ms Haddad (proxy for Mr Winter)
 Ms Johnston (from 12.23 pm)
 Mrs Pentland (by Webex)
 Ms Rosol (by Webex)
 Ms White (by Webex)
 Mr Wood (by Webex)

APOLOGIES

There were no apologies.

INQUIRY INTO THE ELECTORAL DISCLOSURE AND FUNDING AMENDMENT BILL 2024 (NO. 9)

Resolved, that the following further stakeholders be invited to make a submission to the inquiry:

- Integrity Commission Tasmania
- Tasmanian Law Reform Institute (Ms Johnston)

At 12.28 p.m. the Committee adjourned until:

- 9 a.m. on Wednesday 17 July 2024 (for the Inquiry into the Electoral Disclosure and Funding Amendment Bill 2024 (No. 9))
- ***

Confirmed,

WEDNESDAY, 17 July 2024

The Committee met at Parliament House, Hobart, in Committee Room 3 and by Webex videoconference, at 9.00 a.m.

MEMBERS PRESENT:

Mr Bayley
 Mr Behrakis (by Webex)
 Ms Haddad (by Webex)
 Ms Johnston (by Webex)
 Mrs Pentland (by Webex)
 Ms White (by Webex)
 Mr Wood (by Webex)

APOLOGIES

There were no apologies.

PREVIOUS MINUTES

Resolved, That the minutes of the previous meeting for this inquiry (Thursday 20 June) be confirmed. (Mr Behrakis).

PROXY MEMBERSHIP

The Chair confirmed to the Committee that she had received written advice from Mr Winter that Ms Haddad is his proxy for this inquiry, and from Ms Rosol that Mr Bayley is her proxy for this inquiry.

INQUIRY INTO THE ELECTORAL DISCLOSURE AND FUNDING AMENDMENT BILL 2024 (NO. 9) CORRESPONDENCE

Resolved, that the following correspondence be noted:

- a) From Mr Damian Cantwell AM CSC, ACT Electoral Commissioner, advising he is unable to assist the Inquiry at this time, received on 28 June 2024; and
- b) From Jesse Gibson, providing links to information, received on 3 July 2024. (Ms White)

RECEIPT OF SUBMISSIONS AND PUBLICATION

The Committee discussed the submissions received for the inquiry, including a late submission from Hon. Meg Webb MLC received on 16 July 2024, and a replacement submission from the Tasmanian Greens received on 17 July 2024.

Resolved,

- a) that the replacement submission 12 from Dr Woodruff and the Tasmanian Greens be received and used as their submission to the inquiry;
- b) that Submissions 1, and 3 to 14 be received and published with standard redaction of any personal contact details;
- c) that Submission 2 be received and published with the words within dot point 7 following 'unsuccessful' redacted, along with standard redaction of any personal contact details; and
- d) That late submission 15 be received and published with standard redaction of any personal contact details. (Ms Johnston)

PUBLIC HEARINGS – INVITATIONS TO APPEAR

The Committee discussed the invitation of witnesses to appear at public hearings.

Resolved, that the Committee invite the following to appear as witnesses at hearings on 26 July or 2 August 2024 at Parliament House, Hobart:

- Tasmanian Electoral Commission
- Tasmanian Policy Exchange
- Tasmanian Constitution Society
- Dr Kevin Bonham
- Integrity Commission
- Roland Browne
- Australia Institute

- TasCOSS
- Tasmanian Labor
- The Premier
- Dr Rosalie Woodruff MP (Mr Behrakis)

The Committee agreed that the Chair would issue a media release with the finalised hearing schedules prior to the hearings.

FURTHER CORRESPONDENCE TO STAKEHOLDERS

The Chair asked the Committee whether it wished to contact any further stakeholders in relation to the inquiry at this point.

Resolved, that the Chair write to the South Australian Electoral Commission to invite a submission to the inquiry. (Ms White)

The Committee agreed to request a response by 2 August 2024.

PARLIAMENTARY RESEARCH SERVICE ASSISTANCE

The Chair asked the Committee whether it wished for any additional research to be conducted by the Research Service.

Resolved, that the Parliamentary Research Service be requested to provide information on the recent High Court case that resulted from New South Wales limiting donations involving a challenge by the relevant union. (Ms White)

Resolved, that the Parliamentary Library provide the Committee with the paper: ‘South Australia’s truth in political advertising law: a model for Australia?’ by Ravi Baltutis. (Ms White)

At 9.16. a.m. the Committee adjourned until 9.30 a.m. on Friday 26 July 2024 (for hearings of the Inquiry into the Electoral Disclosure and Funding Amendment Bill 2024 (No. 9)).

Confirmed,

FRIDAY, 26 July 2024

The Committee met at Parliament House, Hobart, in Committee Room 1, and by Webex videoconference at 9.20 a.m.

MEMBERS PRESENT:

Mr Bayley
Mr Behrakis
Ms Haddad
Ms Johnston
Ms White
Mr Wood (by Webex)

APOLOGIES

Mrs Pentland.

PRIVATE DELIBERATIVE MEETING

PREVIOUS MINUTES

Resolved, That the minutes of the previous meeting for this inquiry (17 July 2024) be confirmed. (Mr Bayley).

CORRESPONDENCE

Resolved, that the following correspondence be noted:

From Mr Mick Sherry, South Australian Electoral Commissioner advising he is unable to provide a submission but can provide specific information on request, received on 19 July 2024. (Ms White)

HEARINGS AND WITNESSES

The Committee considered a request received on 22 July 2024 from the Integrity Commission to give evidence at a hearing *in camera*, following the Committee's invitation to the Commission to appear at a public hearing, and the briefing note circulated.

The Committee agreed to decline the request.

Resolved, that the Chair write to the Integrity Commission to invite appropriately authorised representatives of the Commission to appear at a public hearing to speak to the Commission's submission on a future date. (Ms White)

Resolved, that the secretariat be authorised to publish the transcripts of the hearings of this inquiry once completed by Hansard. (Ms White)

RESEARCH AND FURTHER LATE SUBMISSION

The Committee noted that the journal article and Parliamentary Research Service Paper requested at the

previous meeting were now available to Members.

The Committee noted that the Liberal Party of Australia, Tasmanian Division, had made a late submission (16) to the inquiry, dated 26 July 2024.

Resolved, that Submission 16 be received and published. (Mr Behrakis)

Resolved, that the Liberal Party of Australia, Tasmanian Division, be invited to appear at the public hearing on Friday 2 August 2024. (Mr Behrakis)

The private deliberative meeting concluded at 9.27 am.

PUBLIC HEARING

The public hearing commenced at 9.31 am.

Mrs Pentland joined the hearing via Webex videoconferencing at 9.31 am.

At 9.31 a.m., Mr Neil Spark, President, Tasmanian Constitution Society, was called, made the Statutory Declaration and was examined by the Committee in public.

At 10.10 a.m. the witness withdrew.

At 10.10 a.m., Dr Kevin Bonham was called, made the Statutory Declaration and was examined by the Committee in public.

At 10.54 a.m. the witness withdrew.

Suspension 10.54 a.m. to 11.22 a.m.

At 11.22 a.m., Mr Roland Browne was called, made the Statutory Declaration

and was examined by the Committee in public.

At 11.55 a.m. the witness withdrew.

At 11.55 a.m., Mr Jarryd Moore, Acting State Secretary, Tasmanian Labor, was called, made the Statutory Declaration and was examined by the Committee in public.

At 12.50 p.m., the witness withdrew.

At 12.50 p.m. the Committee adjourned for the Inquiry into the Electoral Disclosure and Funding Amendment Bill 2024 (No. 9) until 9.30 a.m. on Friday 2 August 2024.

Confirmed,

FRIDAY, 2 August 2024

The Committee met at Parliament House, Hobart, in Committee Room 2, and by Webex videoconference at 9.21 a.m.

MEMBERS PRESENT:

Mr Bayley
Mr Behrakis
Ms Haddad
Ms Johnston
Mrs Pentland (by Webex)
Ms White
Mr Wood

PRIVATE DELIBERATIVE MEETING

PREVIOUS MINUTES

Resolved, That the minutes of the previous meeting for this inquiry (26

July 2024) be confirmed and that the excerpt of the minutes of the meeting of 25 June 2024 pertaining to this inquiry also be confirmed. (Ms Haddad).

CORRESPONDENCE

The Committee considered the following correspondence:

- from Dr Rosalie Woodruff MP to the Chair, requesting to appear at the conclusion of the Committee's hearings, dated 1 August 2024.
- Verbal advice from Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, to the Committee Secretary that he is unavailable to attend the 2 August 2024 hearing.

Resolved, that the Chair write to Dr Rosalie Woodruff MP and Mr Peter Coulson to provide an invitation to appear at a public hearing on an future date. (Ms Johnston)

The Committee considered correspondence received on 1 August 2024 from the Integrity Commission declining to give evidence at a public hearing due to resource pressures and other matters.

Resolved, that the Chair to write to Mr Greg Melick AO SC, Chief Commissioner of the Integrity Commission, noting the preference of the Committee to hear from the Commission at a public hearing, noting the power of the Committee to summons persons, and

inviting his appearance at a public hearing on a future date. (Ms Johnston)

Mr Wood withdrew at 9.32 am.

PUBLIC HEARING

The public hearing commenced at 9.34 am.

At 9.34 a.m., Dr Robert Hortle, Deputy Director and Senior Research Fellow, and Mr Lachlan Johnson, Research Fellow, Tasmanian Policy Exchange, University of Tasmania, were called, made the Statutory Declaration and were examined by the Committee in public.

At 10.15 a.m. the witnesses withdrew.

At 10.16 a.m., Mr Mike Blake, Commission Chair, and Mr Andrew Hawkey, Electoral Commissioner, Tasmanian Electoral Commission, were called, made the Statutory Declaration and were examined by the Committee in public.

At 11.05 a.m. the witnesses withdrew.

Hearing suspended until 11.15 p.m.

At 11.15 p.m., Mr Bill Browne, Director, Democracy and Accountability Program, Australia Institute, was called, made the Statutory Declaration and was examined by the Committee (by Webex videoconferencing) in public.

Mr Wood joined the hearing at 12.02 p.m..

At 12.08 p.m. the witness withdrew.

At 12.08 p.m., Ms Adrienne Picone, Chief Executive Officer, Dr Charlie Burton, Deputy Chief Executive Officer, TasCOSS, and Ms Jill Davis, former Chief Executive Officer of a TasCOSS Member Organisation (by Webex videoconferencing), were called, made the Statutory Declaration, and were examined by the Committee in public.

At 12.44 p.m. the witnesses withdrew.

Hearing suspended until 1.45 p.m.

At 1.45 p.m., Hon. Guy Barnett MP, Attorney-General, was called and examined. Ms Kristy Bourne, Acting Secretary, Department of Justice, and Mr Bruce Patterson, Assistant Director, Department of Justice, were called, made the Statutory Declaration, and were examined.

At 2.42 p.m. Mrs Pentland withdrew.

At 2.46 p.m., the witnesses withdrew.

PRIVATE DELIBERATIVE MEETING

The Committee proceeded to meet in private.

Resolved, that the Committee hold a public hearing on Monday 12 August 2024, from 12 noon to 3:30 pm. (Ms White)

Resolved, that the Committee hold a deliberative meeting on Friday 30 August 2024 between 9.30 am and 1 pm. (Ms White)

The Committee also agreed for the Secretary to check Member availabilities to attend a meeting on

Tuesday, 3 September, noting potential Committee clashes.

The meeting adjourned at 2.52 p.m., until Monday, 12 August 2024

Confirmed,

MONDAY, 12 August 2024

The Committee met at Parliament House, Hobart, in Committee Room 1, and by Webex videoconference at 12.23 p.m.

MEMBERS PRESENT:

Mr Bayley
Mr Behrakis
Ms Johnston
Mrs Pentland (by Webex)
Ms White (by Webex)
Mr Wood (by Webex)

PRIVATE DELIBERATIVE MEETING

APOLOGIES

Ms Haddad.

PREVIOUS MINUTES

Resolved, That the minutes of the previous meeting for this inquiry (2 August 2024) be confirmed. (Mr Bayley).

CORRESPONDENCE

Resolved, that the following correspondence be noted:

- a) Correspondence to the Chief Commissioner, Integrity Commission from the Chair, providing a further invitation to

appear at a public hearing, dated 6 August 2024.

- b) Correspondence to Dr Rosalie Woodruff MP from the Chair, rescheduling Dr Woodruff's appearance to 12 August, dated 6 August 2024.
- c) Correspondence to Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division from the Chair, providing a further invitation to appear at a public hearing, dated 6 August 2024.
- d) Correspondence from the Chief Commissioner, Integrity Commission to the Chair, responding to the Committee's further invitation to appear at a public hearing, advising that the Acting CEO would be able to appear on 12 August 2024, dated 8 August 2024. (Mr Behrakis)

Resolved, that the Committee proceed to hear from the Acting CEOs of the Integrity Commission at a public hearing in the afternoon of 12 August 2024. (Mr Behrakis)

Resolved, that Ms Johnston administer the call during the 12 August public hearing while the Chair participates via Webex videoconference, and act as the Deputy Chair if required in the absence of Mr Behrakis. (Ms White, seconded Mr Bayley).

The meeting concluded at 12.34 p.m.

PUBLIC HEARING

The public hearing commenced at 12.36 p.m.

At 12.36 p.m., Ms Julia Hickey, Acting Chief Executive Officer, and Ms Sarah Frost, Director of Operations, Integrity Commission, were called, made the Statutory Declaration and were examined by the Committee in public.

At 12.55 p.m., Mr Behrakis withdrew.

At 1.04 p.m. the witnesses withdrew. The Committee proceeded to meet in private.

PRIVATE DELIBERATIVE MEETING

Resolved, that the Committee send written questions on notice to the Chief Commissioner of the Integrity Commission, with the following process to be followed:

- Members to submit written questions to the Secretary by 16 August 2024.
- Secretary to draft a letter incorporating the questions and circulate to Committee on 20 August 2024.
- Members to provide any feedback or comment by 21 August 2024, then the questions will be sent to the Chief Commissioner.
- Answers to be requested by 30 August 2024. (Ms White)

The private meeting concluded at 1.11 p.m.

PUBLIC HEARING

Hearing resumed at 1.17 p.m.

At 1.17 p.m., Mr Peter Coulson, State Director, Liberal Party of Australia, Tasmanian Division, was called, made

the Statutory Declaration and were examined by the Committee in public.

At 1.58 p.m. Mr Behrakis returned.

At 2.17 p.m., the witness withdrew.

Hearing suspended until 2.22 p.m.

At 2.22 p.m., Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, was called and examined by the Committee in public.

At 3.25 p.m., Mr Wood withdrew.

At 3.25 p.m., the witness withdrew.

PRIVATE DELIBERATIVE MEETING

The Committee proceeded to meet in private.

Resolved, that the Committee hold a deliberative meeting on Thursday 5 September 9.30 am to 1 pm. (Ms White)

The Committee agreed that the Secretary would circulate the 12 August transcript to the Committee as soon as possible.

The meeting adjourned at 3.30 p.m., until 9.30 am Friday, 30 August 2024

Confirmed,

FRIDAY, 30 August 2024

The Committee met at Parliament House, Hobart, in Meeting Room 2.14 and by Webex videoconference at 9.34 a.m.

MEMBERS PRESENT:

Mr Bayley (by Webex)
Mr Behrakis
Ms Haddad (by Webex)

Ms Johnston
Mrs Pentland (by Webex)
Ms White
Mr Wood (by Webex)

PREVIOUS MINUTES

Resolved, that the minutes of the previous meeting for this inquiry (12 August 2024) be confirmed. (Ms Johnston).

CORRESPONDENCE

Resolved, that the following correspondence be noted:

- a) To Chief Commissioner, Integrity Commission, providing written questions on notice as resolved at the 12 August Meeting, dated 21 August 2024
- b) From Mr Roland Browne, providing additional information, dated 13 August 2024
- c) From Mr Andrew Hawkey, Electoral Commissioner, providing early voting summary from the 2024 State election, provided 15 August 2024.
- d) From Mr Greg Melick AO SC, Chief Commissioner, providing responses to written questions on notice, dated 29 August 2024.
(Mr Behrakis)

Resolved, that the correspondence from Mr Browne and Mr Melick, and

the data provided by Mr Hawkey, be published on the inquiry webpage (Mr Behrakis).

Resolved, that the Committee proceed to hear from the Acting CEOs of the Integrity Commission at a public hearing in the afternoon of 12 August 2024. (Mr Behrakis)

CONSIDERATION OF CHAIR'S DRAFT REPORT

The Committee commenced consideration of the Draft Report.

The Committee agreed that the heading "Committee Comment" be changed to "Committee Findings" wherever appearing within the draft Report.

Paragraph 1.1, amended and agreed to.

Paragraph 1.2 to 1.6 agreed to.

Paragraph 1.7, amended and agreed to.

Paragraph 2.1 agreed to.

Paragraph 2.2, amended and agreed to.

Paragraphs 2.3 to 2.18 agreed to.

Paragraph 2.19, amended and agreed to.

Paragraph 2.20 to 2.21 agreed to.

Paragraph 2.22 read.

Amendment to Paragraph 2.22 agreed to.

Paragraph 2.22, as amended. Question put that the amended paragraph stand part of the Report:

The Committee divided

Ayes: Noes:

Mr Bayley	Mr Behrakis
Ms Haddad	Mr Wood
Ms Johnston	
Ms White	

It passed in the affirmative.

New paragraph (to be numbered) inserted after paragraph 2.22, agreed to.

Paragraph 2.23, as amended, agreed to.

Paragraph 2.24 read.

Amendment to Paragraph 2.24 agreed to.

Paragraph 2.24, as amended. Question put that the amended paragraph stand part of the Report:

The Committee divided

Ayes: Noes:

Mr Behrakis	Mr Bayley
Ms Haddad	
Ms Johnston	
Ms White	
Mr Wood	

It passed in the affirmative.

Paragraph 2.25, as amended, agreed to.

Consideration of recommendations postponed.

At 10.47 a.m., Mrs Pentland joined the meeting.

Paragraph 2.26 agreed to.

Paragraph 2.27, as amended, agreed to.

Paragraphs 2.28 to 2.32 agreed to.

Paragraph 2.33, as amended, agreed to.

Paragraph 2.34, as amended, agreed to.

Paragraphs 2.35 to 2.39 agreed to.

Paragraph 2.40, as amended, agreed to.

Paragraphs 2.41 to 2.43 agreed to.

Paragraphs 2.44 to 2.47 read.

Amendment to Paragraph 2.44 agreed to.

Paragraph 2.44 as amended, and paragraphs 2.45 to 2.47. Question put that the paragraphs (including 2.44 as amended) stand part of the Report:

The Committee divided

Ayes:	Noes:
Mr Bayley	Mr Behrakis
Ms Haddad	Mr Wood
Ms Johnston	

Mrs Pentland

Ms White

It passed in the affirmative.

The Committee suspended at 11.09 a.m. and resumed at 11.24 a.m.

Paragraphs 2.48 to 2.64 agreed to.

New paragraph (to be numbered) inserted after paragraph 2.64, postponed.

Paragraphs 2.65 to 2.68 agreed to.

Paragraph 2.69, as amended, agreed to.

Paragraph 2.70, as amended and split into two paragraphs, agreed to.

Paragraph 2.71, as amended, agreed to.

Paragraph 2.72 agreed to.

Paragraphs 2.73 to 2.79 agreed to.

New paragraph (to be numbered) inserted after paragraph 2.79, postponed.

Paragraphs 2.80 to 2.82 agreed to.

Paragraph 2.83 moved to after paragraph 2.87 and agreed to.

Paragraphs 2.84 to 2.86 agreed to.

Paragraph 2.87, as amended, agreed to.

Paragraphs 2.88 to 2.91 agreed to.

Paragraph 2.92 agreed to.

New paragraph (to be numbered) inserted after paragraph 2.92, agreed to.

Paragraphs 2.93 to 2.95 agreed to.

Paragraph 2.96 omitted

Paragraphs 2.97 to 2.106 agreed to.

Paragraph 2.107 moved to after paragraph 2.111, agreed to.

Paragraphs 2.108 to 2.112, agreed to.

New paragraph (to be numbered) inserted after paragraph 2.112, agreed to.

Paragraphs 2.113 to 2.123, with paragraph 2.123 moved to after paragraph 2.114, agreed to.

Paragraph 2.124 agreed to.

Paragraphs 2.125 and 2.126 omitted.

New paragraph (to be numbered) inserted after paragraph 2.126, agreed to.

Paragraph 2.127, as amended, agreed to.

Paragraphs 2.128 to 2.161 agreed to.

Paragraph 2.162, as amended, agreed to.

Paragraphs 2.163 and 2.164 omitted.

Paragraph 2.165, as amended, agreed to.

Paragraphs 2.166 to 2.191 agreed to.

Paragraph 2.192, as amended, agreed to.

Paragraph 2.193, as amended, agreed to.

Paragraph 2.194, as amended, agreed to.

Paragraph 2.195, as amended, agreed to.

Paragraph 2.196 omitted.

Paragraph 2.197 agreed to.

Paragraph 2.198 omitted.

Paragraph 2.199 agreed to.

Paragraph 2.200, as amended, agreed to.

The Committee agreed that the Secretary would circulate marked up draft Report to the Committee prior to the next meeting

The meeting adjourned at 1.10 p.m., until 9.30 a.m. Thursday, 5 September 2024

Confirmed,

THURSDAY, 5 September 2024

The Committee met at Parliament House, Hobart, in Committee Room 1 and by Webex videoconference at 9.31 a.m.

MEMBERS PRESENT:

Mr Bayley
Mr Behrakis
Ms Haddad
Ms Johnston
Mrs Pentland (by Webex)
Ms White
Mr Wood (by Webex)

PREVIOUS MINUTES

Resolved, that the minutes of the previous meeting for this inquiry be corrected to specify that Paragraphs 2.108 to 2.112 were agreed to (Ms White)

Resolved, that the minutes of the previous meeting for this inquiry

(30 August 2024), as amended, be confirmed. (Ms Johnston)

CORRESPONDENCE

Resolved, that the following correspondence be noted:

- a) From Ms Eloise Carr, Director, The Australia Institute Tasmania, providing responses to questions taken on notice at hearing, dated 30 August 2024.
- b) Additional information from Tasmanian Policy Exchange, University of Tasmania, dated September 2024 (received 4 September 2024).
(Ms White)

Resolved, that the correspondence from Ms Carr and the additional information from Tasmanian Policy Exchange, be published on the inquiry webpage (Ms White).

CONSIDERATION OF CHAIR'S DRAFT REPORT

The Committee continued consideration of the Chair's Draft Report.

The Committee agreed to reconsider several paragraphs (including those postponed).

Previously postponed new paragraph (to be numbered) inserted after paragraph 2.64, agreed to.

Previously postponed new paragraph (to be numbered) inserted after paragraph 2.79, postponed.

New dot point inserted after Paragraph 2.96, agreed to.

The Committee returned to Chapter 3.

Paragraphs 3.1 to 3.3, agreed to.

Two new paragraphs (not yet numbered) inserted after Paragraphs 3.3, agreed to.

Paragraphs 3.4 to 3.12, agreed to.

Recommendation 1, as amended, agreed to.

Recommendation 2 read.

Amendment to Recommendation 2 agreed to.

Recommendation 2, as amended. Question put that the amended Recommendation 2 stand part of the Report:

The Committee divided

Ayes: Noes:

Mr Bayley	Mr Behrakis
Ms Haddad	Mrs Pentland
Ms Johnston	Mr Wood
Ms White	

It passed in the affirmative.

Recommendation 3 read.

Amendment to Recommendation 3 agreed to.

Recommendation 3, as amended. Question put that the amended

Recommendation 3 stand part of the Report:

The Committee divided

Ayes: Noes:

Mr Bayley	Mr Behrakis
Ms Haddad	Mr Wood
Ms Johnston	
Mrs Pentland	
Ms White	

It passed in the affirmative.

Resolved, that:

- (1) The following be appended to the report:
 - a) The list of witnesses
 - b) List of submissions
 - c) Minutes of the Committee regarding this inquiry, including the unconfirmed minutes of this meeting
- (2) The Chair and committee staff be permitted to correct stylistic, typographical, consequential and grammatical errors.
- (3) That any dissenting report be provided to the Secretary by 5.00pm on Tuesday 10 September 2024 for appending to the report.
- (4) The Chair move a motion in the House altering the reporting date for this Committee to Tuesday 17 September 2024, and the report be tabled on that date. (Ms White)

Resolved, that the draft report (as amended) be the report of the Committee. (Ms White)

The meeting adjourned at 10.15 a.m. until the next meeting of the

Committee, on 9.30 a.m. Monday, 16 September 2024.

Unconfirmed.

Appendix D – Dissenting statements

Dissenting Report:

Recommendation 2:

The Committee recommends the House agree to amendments to the Principal Act that provide:

- a. for a reduction in the threshold for a reportable political donation from one of \$5,000 or more to one of \$1,000 or more;
- b. that from the commencement of an election period until seven days from polling day, a reportable political donation is to be disclosed within seven days of the donation being received.
- c. that outside of an election period, a reportable political donation is to be disclosed within 28 days of the donation being received.

We dissent from the above recommendation.

We consider the current disclosure threshold for donations of \$5,000 in the Principal Act as measured and appropriate. The \$5000 threshold in the Act provides for transparency of electoral donations, while also ensuring that the Act does not undermine the ability for people to engage with the electoral process.

The amendments suggested for consideration in this recommendation represent a significant increase in the administrative burden of reporting. There is currently no evidence that there is a significant benefit in reporting occurring as frequently as the amendments propose.

The *Electoral Disclosure and Funding Act 2023*, as passed, aims to balance transparency and accountability with preventing unnecessary administrative burden.

Under the *Electoral Disclosure and Funding Act 2023*, Party Agents and Official Agents have a regular six-monthly reporting requirement. At the end of the financial year and the calendar year, all disclosable donations are to be compiled and reported to the Tasmanian Electoral Commission (TEC).

Of particular concern is the increased burden on independents and small parties. Under these proposed provisions, these people would bear the burden of reporting donations received well outside of an election period within seven days. In instances where an independent or small party had a contracted or casual administrative person doing this work for them, this may be a significant compliance risk for them.

The proposed amendment in Bill creates too significant an administrative burden without evidence that such a burden is warranted.

Recommendation 3:

The Committee recommends that the House refer the following issues to the Joint Standing Committee on Electoral Matters for future inquiry and report:

- a. expenditure limits and expenditure period;
- b. donation caps;
- c. fixed terms for House of Assembly elections;

- d. truth in political advertising;
- e. limitations on eligibility to make political donations;
- f. vote savings; and
- g. Legislative Council electoral and administrative funding.

We dissent from the above recommendation.

Whilst we support the recommendation that the clauses in the Bill (as outlined in Recommendation 3) not be included in this or a subsequent Bill to amend political donation thresholds and reporting timeframes, we do not believe that they merit further consideration by the Parliament, for the reasons outlined below:

Donation Caps:

As noted in the Tasmanian Government's submission:

The introduction of the new system in the Electoral Disclosure and Funding Act 2023, with the majority of provisions due to commence 1 July 2025, will enable the TEC and the public at large to be able to see the size, frequency and source of donations in the State.

The data collected through this new system will provide a basis on which to assess whether a cap is warranted and at what level such a cap should be set.

The making of donations to political parties is part of the democratic process in our society. It would be undemocratic and likely challengeable in the High Court if arbitrary caps were placed on donations from a single source with no evidence to back this cap up.

A cap set too low would inhibit the dissemination of ideas and policies by all involved in the electoral process. A cap set too high would achieve nothing.

In lieu of any data gathered by the TEC in coming elections, the proposal to implement an arbitrarily set cap on donations is, at best, a solution in search of a problem, and at worst, an unwarranted inhibition on the extent to which Tasmanians can participate in the democratic process.

Dr Kevin Bonham, when speaking to the Committee, emphasised the point that the focus should be on transparency of the size and source of donations rather than limiting the extent to which people can participate in the process:

***Dr BONHAM** - Yes, I did make some comments about where exactly that \$3000 was derived and how I couldn't see intuitively why it was \$3000 rather than \$4000; but I'm also not sure why it needs to be that low anyway. I'm more concerned about voters having information about who is donating. I'm more concerned that voters know more about where money is coming from and they can then judge for themselves - that is my general view.*

As per above, a focus on ensuring that voters have visibility over who is making or receiving large donations in order to assist them in making an informed decision is more appropriate than attempting to arbitrarily restrict peoples' right to financially support candidates or parties of their choice, as is their democratic right. Unless data demonstrates that unreasonably or disproportionately large donations are placing the integrity of elections at risk, there is simply nothing to suggest such a provision is necessary or beneficial to Tasmania's electoral process.

Expenditure Caps:

As noted in the Tasmanian Government's submission:

The Government remains opposed to imposing expenditure limits on House of Assembly elections, at this time. The Government's position reflects Recommendation 4 of the Final Report of the Electoral Act Review that any decision in relation to caps should follow the analysis of evidence gathered under the new disclosure regime.

As articulated above, the Final Report of the Electoral Act Review recommended that any limits and caps be considered following the collection of robust data under the new disclosure and funding scheme. Therefore the Government does not support the imposition of electoral expenditure limits at this time.

It should also be noted that the Greens amendments include an electoral expenditure limit for candidates, Members, parties, and third party campaigners but does not cover associated entities. Associated entities are an entity defined under the legislation that operates for the benefit of a registered party. There is therefore a significant risk under the Greens amendments that electoral expenditure could be funnelled through associated entities so as to circumvent the electoral expenditure limit of a party. This would therefore undermine any benefit of the limit entirely and would likely see the proliferation of associated entities created specifically for this purpose.

Similarly, placing a limit on a third party campaigner but not regulating co-ordinated campaigning between multiple third party campaigners serves only to encourage the creation of multiple third party campaigners so as to reap the benefit of multiple caps.

Provided that there is transparency in election expenditure, there is little necessity in implementing caps on expenditure, and any caps as suggested creates risk in limiting the ability of candidates and parties to disseminate their policies.

There is also a risk that such caps give an unfair advantage to incumbent members over other candidates, given that incumbents typically have higher public profiles and the ability to generate coverage of themselves and policies without incurring expense, such as through media releases, speeches in parliament etc., whereas unelected candidates typically have to undertake paid advertising to ensure their message is being seen by a similar number of voters.

Dr Bonham made the point that, aside from preventing obviously ridiculous expenditure, expenditure caps offer little benefit, and are instead problematic for multiple reasons:

Dr BONHAM - *I'm not necessarily opposed to capping expenditure when the expenditure is at a level that is obviously ridiculous. If some anonymous rich businessman from interstate wants to spend \$20 million on a Tasmanian election, then maybe that's a bit much. But the proposal to cap where you have \$83,000 per candidate but \$830,000 per registered party, I think that's extremely problematic. A party can be anything from a major party running candidates in every electorate and winning multiple seats, to a very small operation that may be running just for the point of attacking another party or whatever. It may not be running a significant number of candidates. We had a case in the previous election where one party ran one candidate who did not campaign at all. They're probably not going to be spending any money in such a case. But it just seems inequitable to me that you would say: all parties are the same but a candidate cap is completely different to the party cap. If you're going to have*

such caps at all, that seems to me to be something that needs to be thought about a lot more.

Aside from, as Dr Bonham put, “obviously ridiculous” spending, there is little evidence to suggest that a candidate or party that spends more in a particular campaign over another, incurs an advantage so unfair or inequitable as to warrant intervention. In fact, it’s important to note that during the 2023 Australian Indigenous Voice referendum, the expenditure in support of a “Yes” vote massively exceeded the expenditure for the “No” vote, and despite this fact, Australians overwhelmingly voted no. If the suggestion that higher expenditure in and of itself results in an unfair advantage, the referendum result should have reflected this. It did not.

In reality, the number of election signs on the ground or advertisements on television or social media only serves to supplement and help disseminate the quality of candidates and policies that respective parties (or independent candidates) take to the election for voters to decide on. To suggest otherwise is to suggest that voters are not capable of voting based on the quality of policy or record of delivery.

Much like the proposed cap on donations, pending any data that suggests the occurrence of candidates spending “obviously ridiculous” amounts of money in an election, this proposal is both deeply problematic, as well as being a solution in search of a non-existent problem.

Truth in Political Advertising:

This provision has serious risks for the integrity of our electoral commission, and consequently the integrity of our electoral process, as well as for the implied freedom of political expression of Tasmanians, should it ever be implemented.

As noted in the Tasmanian Government’s submission:

Whilst it is acknowledged that there is support for the concept of truth in political advertising laws amongst some stakeholders and, potentially, in the wider community, the Government holds significant concerns about the practical operation and administration of such laws.

For example, in its report on the 2020 ACT Legislative Assembly election, the ACT Electoral Commission expressed concerns that the assessment of political statements requiring complex and often subjective judgment of concepts, policies, figures and theories, and is outside of what the Commission’s statutory function should be. It was also suggested that investigating complaints would significantly increase the Commission’s workload during election periods.

In addition, the ACT Electoral Commission was concerned that its determination of the truth or otherwise of political advertising could raise accusations of political partisanship and affect the Commission’s reputation, which is based on neutrality and independence. The ACT Electoral Commission also raised issues around enforcement, suggesting that political participants may decide to risk post-election sanctions in the hope of electoral advantage.

If the consequence of a positive prosecution for a breach of the truth in political advertising laws is a formally disputed election (through the Supreme Court) – this could provide for potentially long periods of electoral uncertainty following the conclusion of each election.

The Tasmanian Electoral Commission, in its submission, raised concerns about the impact such proposed provisions would have on the Commission:

Mr HAWKEY - *Campaigning and the old-style mis- and disinformation is always a part of campaigning. Different points of view are a different part of campaigning.*

The issue is we live in a very different society and community now, as some term it, 'the post truth environment', where we have echo chambers in social media. We have more division within our community around these issues. Again, not that it is in Australia, but America certainly clearly shows the really major concerns of lack of harmony between people of different views. These are the sorts of things coming to our shores in different ways. We've certainly seen in New South Wales with our local government elections, some nasty threats made against the Electoral Commissioner there, so there are growing concerns for electoral administration. Mis- and disinformation are an issue, yes. It has very different parts.

My only concern is - the idea of 'truth in advertising' is a reasonable consideration and it's how the parliament determines to use that.

From my point of view, because again things will be turned to us to solve that aren't resolved, my aim is to raise under this structure the new issues that will be on our agenda, if this occurs.

You're absolutely right and this has been echoed by other electoral commissioners that the big threat that applying it to an electoral commissioner is that more than ever before it has the ability to undermine the election as a whole.

Mr Hawkey goes on to outline the issues between what some individuals might believe to be misinformation, that others might feel is a statement of sincere belief. These issues risk impacting on freedom of political communication, and the integrity of our electoral commission:

Mr HAWKEY - *... So, if someone said the informality rate at the last election was 50 per cent, then that's easily clarifiable verifiable. If it is 'the development of a funding disclosure system will probably cost \$100,000', it's a speculation estimate. So, where the public or the people understand one is a fact and one is not, is part of this. 'How can you say it's going to cost \$100,000, or even later on you said it cost 100,000 it cost 200,000?' Does that mean that they'd made an untruthful statement? No, it was, it was an estimate. So estimations, opinions. Part of the difficulty of this, and this is one of the things that Michael Maley gets into, is if someone has an utter belief in something, then that's their opinion but they may state it as a fact because it is their belief.*

One of the key issues in the community is the issues around vaccination. Scientific proof says, this, this and this. But there are people in our community that strongly believe, and believe as a fact, that it's not right. Now, do they have the freedom of political communication to say what they think and are there other people out there that they represent? So even that sort of becomes a bit of a blur, because then it becomes sensitive. This is one my issues with things around public trust and issues around those who believe that there is a conspiracy type of arrangement with government, this sort of regulation starts sounding a lot like censorship.

So these are other elements of complexities that can just tie the whole process up and disenfranchise people, or people lose trust in the process. It's very complicated and that nuance you are talking about is very much the case.

The risks any proposed 'truth in advertising' provisions could have in causing a chilling effect on freedom of political communication, and the integrity of our electoral commission, and consequently the integrity of our electoral system, far outweigh any of the benefits.

In the context of ideas that occur during elections, there already exists sufficient mechanisms for candidates, parties and others to be scrutinised on their statements.

While we agree that these provisions should not be progressed with at this time, we cannot support the notion that these provisions deserve further consideration at all, and consequently dissent from the recommendation that they be referred for further inquiry.

Limitations on eligibility to make political donations:

Contributing to causes, parties or candidates that align with one's beliefs or goals is as much a part of the democratic process as voting, letterboxing or doorknocking to support candidates, and should be protected as per the implied freedom of political communication. This ability to take part in the democratic process is as important for individuals as it is for organisations to be able to advocate for the interests of their members, employees or stakeholders, and support parties or candidates that align with those interests. As noted in Dr Bonham's comments earlier, the priority should be in ensuring appropriate transparency so voters know who is making donations, not to restrict who can and cannot donate.

In their submission the Tasmanian Government noted that such provisions are without precedence in Australia, and that it is questionable as to whether such a proposal is even constitutionally sound:

There is no precedent in Australia for a ban on all donations from non-natural persons. No other Australian jurisdiction has chosen the non-targeted banning of all donations from nonnatural persons.

The Government is committed to ensuring that political communication is not curtailed any more than is warranted by evidence.

...

Beyond foreign donations, the Government has significant concerns about bans on donations in general without a firm evidence base. The High Court has been very critical of limitations on the ability of individuals and groups to contribute to political debate without firm evidence that any limitation is appropriate and adapted.

Consequently, there is a live question as to whether a ban of this extent is constitutionally sound.

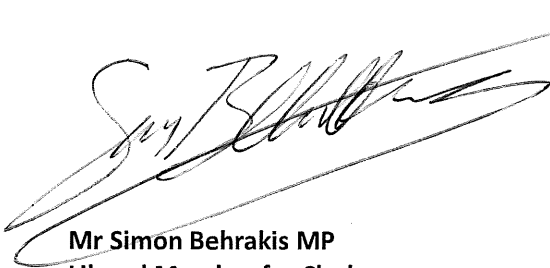
Further, whilst not explicitly part of the proposed bill, the insidious suggestion by some witnesses that classes of prohibited donors be considered, pose such an inappropriate and unacceptable attack on the implied right of political communication, and are so discriminatory that it warrants noting. It is important to emphasise that such provisions should never be considered by this Parliament.

Similarly, we agree that these provisions should not be progressed with at this time; however, we cannot support the notion that these provisions deserve further consideration at all, and consequently dissent from the recommendation that they be referred for further inquiry.

Conclusion

We agree with the Recommendation 1, that the bill under consideration should be withdrawn, given the complexities, and risk of unintended consequences of many of the provisions of the bill. However, we cannot agree that these provisions warrant further consideration, as they either lack justification, or pose risks to our democratic system, and freedom of political expression that they should be withdrawn and not given further consideration, at this, or any stage.

The principal act, as it stands, appropriately balances transparency in electoral donations without undermining the ability for people to take part in the political process, and without placing an unreasonable administrative burden on the Tasmanian Electoral Commission, or on candidates running in elections. We do not see a need to further change the act at this stage, especially in lieu of data that can be expected to be collected in coming elections.

A handwritten signature in black ink, appearing to read 'Simon Behrakis', written over a horizontal line.

Mr Simon Behrakis MP
Liberal Member for Clark

A handwritten signature in black ink, appearing to read 'Simon Wood', written over a horizontal line.

Mr Simon Wood MP
Liberal Member for Bass