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THE HOUSE OF ASSEMBLY STANDING COMMITTEE ON GOVERNMENT ADMINISTRATION B MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART ON FRIDAY 2 AUGUST 2024

CHAIR - Welcome to the committee. I ask first that you confirm that you have received correspondence from the secretary relating to the way that this committee operates: it is covered by parliamentary privilege and this hearing is public and broadcast. Do you have any questions about that?

WITNESSES - No, I do not think so.

CHAIR - You received that information?

WITNESSES - Yes, we did.

CHAIR - Thank you. Can I ask you both to make the declaration, please?

Dr HORTLE - Sure.

Dr ROBERT HORTLE, DEPUTY DIRECTOR AND SENIOR RESEARCH FELLOW, UNIVERSITY OF TASMANIA; AND **Dr LACHLAN JOHNSON**, RESEARCH FELLOW, TASMANIAN POLICY EXCHANGE, UNIVERSITY OF TASMANIA, WERE CALLED, MADE THE STATUTORY DECLARATION, AND WERE EXAMINED.

CHAIR - Thank you both for joining us. I am Chair of this committee. At the table, we have Mr Bayley, Ms Haddad, Mr Behrakis and Ms Johnston. Mrs Pentland is online. I invite you, if you would like, to make an opening statement. You have obviously provided a submission to the committee. Thank you very much for doing that. Would you like to speak to that or make any other remarks before we begin?

Dr HORTLE - Yes, we would like to make a brief opening statement, if that is all right.

CHAIR - Of course. Thank you.

Dr HORTLE - Just letting you know, of course, that the opinions we provide today are our personal opinions as academics. They do not represent the views of the University of Tasmania.

So, as we said in our submission, democracy is on the back foot around the world, and although Australia has so far resisted a lot of that large-scale sort of democratic backsliding, there are really significant challenges related to public trust in our political system and confidence in this system working in the interests of everyday Australians. We provided some statistics on that in our report, and I will not go into those again. But I think those numbers really demonstrate the need to strengthen the Australian political system by improving transparency and accountability, and by reducing the influence of big money and countering dis- and misinformation.

So, we strongly support the reduction in the threshold for reportable donations to \$1000. We support the introduction of more rapid reporting of political donations, particularly during

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election periods. We support the introduction of caps on political donations and also the introduction of campaign expenditure caps for House of Assembly elections.

Dr JOHNSON - Thanks, everyone. I would just like to echo what Rob was saying and also that we are really pleased to be here and happy to be able to assist the committee with these important issues. I was just going to briefly summarise our recommendations from our submission.

The first one, with regards to indexation, is that we think caps and thresholds should be subject to indexation to make sure they keep in line with changing costs and that sort of thing.

Second, for timely disclosure, we think 24-hour disclosure and 24-hour publication time frames should apply from the time at which writs are issued for an election until 48 hours before polling day. Political donations should not be permitted in those 48 hours before polling day.

There are obviously issues to think about there with things like pre-polling, but we think that is probably a reasonable balance to strike. We think that ensures also the opportunity for donations to be made is maximised and keeps fair public scrutiny of those donations. Outside of campaigns, we do not see quite as pressing - indeed - and think that reportable donations can be disclosed within seven days and published by the TEC on a publicly accessible online database.

Application of caps: we think the legislation should clarify that caps and thresholds and everything apply both to Legislative Council elections as well as House of Assembly elections.

Legislative Council access to administration support: we think making available some sort of fund to support administrative burdens imposed by these caps should also be available to councillors in Legislative Council elections as well as House of Assembly elections and members. We believe the Tasmanian government should establish and adequately resource a division within the TEC focused on electoral mis- and disinformation. We will come later on to truth in political advertising laws, I assume, when we get into questions.

We think corporate and organisational donations should be permitted, but with a disclosure threshold of zero. In other words, they should not be able to be anonymous. We think this preserves the ability of corporate and organisational interests to freely exercise legitimate political interests, but while maintaining public transparency and accountability.

We think Tasmania has an opportunity to lead the way here on political finance reform. If we step up to this challenge and take bold action now, we can ensure transparency and integrity are at the heart of Tasmanian politics. I am happy to take any questions you might have.

CHAIR - Thank you to both of you. I will just open to the committee. Are there any questions?

I will start then. We have heard evidence already about a disclosure period of 24 hours being quite challenging. I do not know if you listened or have seen the transcript of the evidence presented to this committee last week. In that, it was put it can be incredibly difficult just from a range of administrative reasons to comply with that requirement. Do you have a view on that?

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And are you aware of any other jurisdiction where they have a routine disclosure period as frequent as 24 hours?

Mr JOHNSON - They certainly do in the United States. Certainly, federal elections in the United States have more or less real-time disclosure for political donations. Depending on the way that the system is established - I know under the newer regime in Queensland there is perhaps not 24-hour disclosure; I do not exactly know what the time frame is - but the use of a sort of well-designed online platform for disclosure does make the publication of those a lot easier. I wouldn't have a view, particularly in the context of this legislation and the Tasmanian Electoral Commission, of how that administrative burden could be managed here - only that it does happen elsewhere.

CHAIR - You are not clear about where, in particular? It is the United States and maybe Queensland?

Dr JOHNSON - Yes. Sorry Rob.

Dr HORTLE - We are happy to do some background research and provide further information if that is useful. But the key thing for us is the principle behind it. If this is a principle that we think is worth including, then it is worth resourcing. If that means more funding is required for the electoral commission to be able to implement something like this, then, in the interests of preserving the strength of our democratic system in Tasmania, then it is worth doing.

CHAIR - The other proposal you have made is essentially a ban on any donations occurring in the last two days of an election period. You mentioned the fact pre-polling is becoming far more prevalent way people choose how to vote. I believe the last federal election may have been as high as 30 per cent - from my memory - of people who cast the vote before polling day. What benefit do you think it would provide to aid fair democracy by removing the ability for people to make a donation in the last two days of a campaign when lots of people may have already cast their vote?

Dr HORTLE - I think for me it offers people the opportunity to choose on when they make their vote. If that is really something of interest to them - if they really something of interest to them - if they really want to know the full extent of donations, they can save their vote until the day itself. But as we said, we think there are a range of other options around that. You could extend the period backwards to allow sort of a longer exclusion period if we think it's that important for pre-polling. Again, we come back to the mechanics of the specific mechanism can be adjusted. We don't have sort of super firm views on that, but it's the principle behind it we need to be aiming to support.

CHAIR - I can see you want a question, one more question, if that's okay. I'm curious to know how you might deal administratively then with donations that are provided to a political party or a candidate after polling day. The instances where somebody might pledge funding to you as a candidate, but not provide it to you until after polling day, so you expend money on ads in the knowledge you've got a period of time in which you can pay that bill. How would you deal with those?

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Dr JOHNSON - Sure, we'd probably have to have a closer look at how that would work in the context of this proposed legislation. But we'd be very happy to provide something on notice later on.

I would just add one more thing quickly about the pre-polling is research typically shows that pre-poll voters are much more likely to be firmly decided voters than voters who vote on election day. It's more likely that the kinds of voters who vote on polling day would be more likely to be influenceable one way or another by the knowledge of the potential influence of a donation. In that sense, to the extent these issues affect voting behaviour, it's probably more likely and more important that that effect is managed right in the lead-up to polling day rather than in the pre-poll period.

Mr BAYLEY - Do you have a view on the donations in this 48-hour period? Should it only be the reportable donations, the ones that meet the threshold, or should all donations be reported in that 48-hour period pre-poll?

Dr HORTLE - I don't think it's something we've built up a firm view on yet. We can look at how that operates in other jurisdictions, but my first sense would be it would apply to reportable donations. That's the most important aspect.

Mr BAYLEY - Set a threshold and that applies irrespective of the time frame across the board?

Dr HORTLE - Yes, because the logic behind setting this sort of threshold is that it tries to strike the balance between someone being able to show their support for a particular political point of view by making a financial donation. We know that right is supported through convention through the High Court previously in Australia, but what isn't supported is the ability to buy influence. The level of the threshold needs to be set to manage that balance between showing support and actually being able to buy influence.

Mr BAYLEY - On your recommendation three, clarify the applicability of political donation caps - 28C in the bill is explicitly silent on which chamber, which election it relates to - and so our read is that it is written intending to apply to both chambers. Do you have a different read of that specific clause?

Dr HORTLE - We put that in because there were some other areas of the amendment where it wasn't specified as clearly as we thought that certain things should apply to the Legislative Council as well. For example, the administration fund access to be able to cover costs associated with some of this compliance: given in some other places in the bill specific things were specified, then maybe it would be useful to specify in other places. But if it's taken as read that applies to both houses, then that's fine.

Mr BAYLEY - Yeah, I think it was sort of deliberately written such that it didn't require interpretation, any contestation and just sort of applicable across the board.

Dr HORTLE - Sure.

Mr BAYLEY - Yeah, thank you, Chair.

CHAIR - Thank you. Ms Haddad.

Ms HADDAD - I also had questions on the proposal for 24-hour disclosure of donations. You've suggested it's from when the writs are issued. That would be for the entirety of the electoral period outside of the 48 hours you suggested that donations are banned. Some of the evidence the committee has heard from other witnesses, while appreciating the fact the recommendation is around increasing transparency, something the committee is keen to progress, having that tighter time frame in terms of the administrative burden could actually just mean that parties and candidates are tied up with inadvertent errors. One of the examples we were given is, for example, in the Labor Party administration, there's just one administrative officer. If that person was away sick, which often happens in a long and arduous election campaign, then actually the party could be in breach of those disclosure requirements. Not through any wrongdoing or through any kind of shady donations that might be alleged but because election campaigns are very busy and there aren't teams of people administering donations, despite people maybe believing that there are large teams.

You gave the example of the United States. I know there are massive campaign teams there dealing with administrative issues like this one. I wondered if you had any comments about the difficulties for even a major party like the Labor Party - but for independent candidates who might have no administrative support, it would be that candidate trying to comply with that requirement day on day throughout the election campaign when really what they want to be doing is doorknocking and speaking to electors?

Dr HORTLE - Yeah, I think it's a fair concern. The first thing I'd say is that there are some technological solutions that can help with that now. So a really streamlined online platform is going to reduce a lot of administrative burden. Something that happens in other jurisdictions and - forgive me I can't remember off the top of my head where I read about this occurring - but in some instances the responsibility for that disclosure is put back on the donor rather than on the party or the candidate. So they're the ones who are responsible for providing the majority of their disclosure information to the electoral commission and that can then be sort of ticked off by the party or candidate. So that shifts some of the burden away from the recipient towards the donor.

Ms HADDAD - Thank you. One of the other things that might be impactful on a requirement like this would be in-kind donations or donations that are not money. So if somebody, for example, lets you use a space in their venue for a quiz night, then there is actually an administrative task of determining the financial value of that in-kind contribution. That could take more than 24 hours in a busy campaign environment to actually determine the value and declare that value. I just wondered if you'd had the chance to put your mind to in-kind donations as well?

Mr JOHNSON - We don't address that specifically. Though, I mean there are guidelines and things. I know the Australian Tax Office runs a sort of - not necessarily a calculator - but they have guidelines for more or less easily figuring out the value of those kinds of in-kind contributions and things like that. There certainly are ways to support people in doing that and I think in most cases, like Rob said, depending on the way that the administrative burden is divided up between recipients and donors and the ease with which that's done through some sort of electronic registry or reporting platform, our view is that those are probably manageable.

Ms HADDAD - Okay.

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Dr HORTLE - Yeah. Just adding on that, we wouldn't claim to be experts in designing these sort of systems. We're more theorists of democracy and sort of the underlying concepts around it, so we'd argue really strongly for the need for mechanisms that address this sort of transparency and accountability. But, there are other fantastic sources of advice that the committee can go to in terms of designing specific technological solutions and also policy solutions.

CHAIR - Mr Behrakis.

Mr BEHRAKIS - Thank you and Ms Haddad asked the first couple of questions I had in mind, but on a similar thought I may reference the federal US election as a jurisdiction where you have effectively real-time donation. In my head there's a bit of a difference because the scale of the federal election is very different to what we might see in Tasmania. The campaign teams for each candidate are probably more than the entire number of candidates I think that would have run in the Tasmanian election and the dollar values are in well into the millions.

Does that make it hard to compare that to the administrative burden candidates might face in a Tasmanian setting? Just going off what Ella said, even the larger parties might have just one administrative officer, and ours did actually fall sick during the election and did cause some waiting on stuff to get processed. The smaller parties and independent candidates would bear an even greater regulatory burden for having to do all this than somebody who has a dedicated admin team. What are your thoughts on that?

Dr HORTLE - Yeah and similar to what I said before, I agree that this sort of thing could have a disproportionate impact on smaller parties independents, and the key aspect there is to make sure that we design the system such that it doesn't, and there are ways of doing that. There are examples out there for how that can be done. In another arena, for example, in terms of expenditure limits in campaigns - something else we addressed - in other jurisdictions, it's quite common for independent candidates to have a higher expenditure limit during a political campaign to sort of try to balance out differences in economies of scale, being able to draw on party machinery. I don't see any reason why you can't apply a similar approach to this sort of thing. But, as I said, there are people out there who put a lot more thought into the specific design of these sort of mechanisms than us.

Just in terms of the comparison between the US and Tasmanian elections, I think if we accept that these are important principles at that scale, they're important principles at our scale as well. Yes, there are challenges in terms of administration, but if we think that principle is important enough to be applied to a huge democracy, why wouldn't we want to apply it here as well?

Dr JOHNSON - Sorry, if I could just briefly add to that two quick points: The first, I think our view is that, kind of as Rob said, if the principle is important enough, the administration, from our view, is supportable. I think administrative support operated through the Tasmanian Electoral Commission (TEC) and the design of a really simple platform for declaring and disclosing donations will go a long way towards helping that.

And just on the US comparison, it's certainly true that the scale is very different, but the scale of donations is arguably even more different. I think the relative size of donated money and other gift contributions in American elections absolutely dwarfs ours, so the administrative burden probably, if anything, would be higher in the United States than it is here.

Mr BEHRAKIS - I've just got a couple of questions, Chair. It was not so much about the principle of having a donation window; more just about the appropriateness of time scales rather than for or against. At the same time, a \$1000 donation and a \$10 million donation is one transaction. I don't know if the actual work involved in processing that is too different.

Two more questions: on the platform, is that suggesting something that the TEC builds and runs and has available online for people to go on? Will the Liberal Party or Labor Party admin log on to the TEC website and drop those in an online platform that's built and run by the TEC?

Dr HORTLE - Yes, that's how it's worked in other jurisdictions.

Mr BEHRAKIS - On the flip side, from the perspective of somebody wanting to take part in in the democratic process by donating, there are obviously people who do it for ulterior or underhanded or whatever reasons we talked about, which is the purpose of discussing bills and laws like this. But there are plenty of people who do it for genuine reasons and just wanting to involve themselves in the democratic process.

I interact with a lot of people and some are very sophisticated and they know how to navigate the sort of bureaucratic, if you want to use that word, mazes. But many are the opposite. Often the people who are more likely to be inclined to be donating for ulterior motives get to know those systems well. But there are a lot of people where I've had to hold their hand, not necessarily if they're donating, but for a lot of things. You have to hold their hand through things because they might not be very literate in these sorts of things.

Is it something that we can design in a way, or is it something that potentially risks limiting people's ability to involve themselves just by being a regulatory threshold that some people have trouble getting through? Effectively, we want to capture the bad donations - the donations that are the reasons why we have transparency rules, not the people who are doing it for good reasons, I suppose.

Dr JOHNSON - No, of course. Electronic donations makes that a lot easier. I know there is already a threshold over which you can't donate cash. There are instances where it's more difficult and less difficult administratively. But the way that I envision this is that - most people donate electronically via some sort of link from a party page or a Facebook post, or something like that. If that essentially directs people to a relatively simple disclosure form on a TEC website and it goes automatically into some sort of database, I don't think that should necessarily be too onerous for people. There are obviously differences - in-kind donations, cash. As I say, that presents a slightly different question and we'd need to have a think about it. But, the bulk of donations, I would imagine, the administration needn't be so onerous.

Dr HORTLE - A couple of broader things as well linked to that: it's not just about capturing donations that are done for sort of slightly dodgy purposes. It's a principle of transparency more broadly. So, in my view, yes, we do want to capture those donations that are trying to create undue influence, but we also want to capture all donations because that is how the principle of transparency works. And, you know, there's the whole thing about democracy dies in darkness. That's not necessarily linked only to corruption; it's having a broader understanding.

The other thing that I would say is that, again, if we understand this is a principle that we really want to adhere to and put in our political system, then we need to work on the education around that. It's really important that new regulations or laws such as this are publicised really widely and that there are educational resources around how people can donate in the right way.

Ms JOHNSTON - I'm interested to hear you expand on your opinions around a ban on donations from entities other than natural persons. The bill obviously has a provision there that would only provide for natural persons to donate and a complete ban on corporate entities and other organisations. In your submission, you talk about how you would like to see there not be a ban on corporate and organisation donations. If I understand correctly, the threshold disclosure be zero, so any donation, no matter how small, would have to be disclosed. Can you expand on that? Also, do you think that there are any particular entities - corporate or organisational entities - that ought to be banned?

Dr HORTLE - Yeah, this is something we discussed a lot in our team and had some interesting debates about. There aren't too many similar western jurisdictions in the world that have a full ban on donations from non-natural persons. I believe Canada does - might have to check that.

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.

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. Lachlan had some good thoughts on this.

Dr JOHNSON - If I could briefly add to this, our view is that there are plenty of good reasons for individuals to want to make anonymous donations. The classic example in this kind of case is public servants. A public servant has every right in their private life to hold political opinions and make donations, but it would violate their duties at work for those to be publicly disclosed.

We think that non-natural persons, corporations, NGOs, all sorts of things, can have legitimate political interests, but we just don't think that the same logics for anonymity apply in that instance.

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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.

Ms JOHNSTON - I'm not sure if you heard the evidence we received last week and, apologies, I forget who exactly it was from. We had it put to us that individuals can donate and in the interest that they're exercising a democratic right that they personally hold, whereas corporate entities are trying to influence an economic or commercial outcome rather than a democratic outcome. So do you see that corporate entities have the ability beyond donating to be able to influence the outcome of elections, you know, through third party campaigns and that kind of thing, that perhaps individuals don't have? How do you weigh that up in terms of the interest in donating to a political party or candidate?

Dr JOHNSON - Just on that premise, I suppose, the idea that a business donation might be because they believe a candidate or party is likely to enact a favourable regulatory or economic environment that benefits their business, I don't think that's necessarily an illegitimate political interest and that applies to all of us as individuals as well. I mean, I vote for the party that I think best represents, you know, the policies and things that I want to see enacted or the independent or whatever the case may be. I don't think there's anything necessarily nefarious about businesses or non-natural persons' interests being in certain economic or regulatory policy settings. What we want to avoid is undue influence and the way we hope we do avoid that is with transparency.

Dr HORTLE - Also important to note in the way it's phrased at the moment, if I understand correctly, it's not just businesses and corporations that would be banned, it's all non-natural persons. That would involve NGOs, unions, various other organisations which may, particularly in relation to the community sector, have very legitimate non-economic, non-business related political interests, but in terms of what they think in terms of social policy, and it's important for them to have the opportunity to represent their views.

CHAIR - Mrs Pentland, did you have any question that you wanted to ask?

Mrs PENTLAND - You said that you would like to see a threshold on political donations and that political donations should show support and not buy influence. Has your team identified any political movements in Tasmania at the moment where serious concerns that buying influence has happened?

Dr HORTLE - No, that's not analysis that we've done.

Mrs PENTLAND - Okay, thanks.

CHAIR - Ms Haddad.

Ms HADDAD - Thank you. I had a question on a different topic and I was interested in the analysis that you've done of informal voting and was quite surprised to see that high figure of 42 per cent of informal votes being deliberately informal. What we also know is that Tasmania has quite a high rate of inadvertent informal votes as well, and we have heard some evidence from other witnesses to the committee around the expansion to 35 members potentially amplifying that potential for informal votes.

I know it's not part of your submission, but I wondered whether in your discussions within the Policy Institute whether you've had any discussions around the potential for vote-saving provisions, which do exist in some other jurisdictions, including multi member jurisdictions where basically if a voter's intention is clear to a particular point. Right now if they don't vote clearly one to seven, then that vote is informal, but vote-savings provisions might save a clearly intentional vote that might actually fall foul of the existing electoral laws. I'm just wondering whether you, excuse me, have any thoughts about that?

Dr HORTLE - In terms of vote-saving provisions, that's not something that I've specifically looked at yet. But just coming back to your point around the informal vote: for those who aren't aware, the Tasmanian Electoral Commission publishes data after each election on the share of informal votes, but it also looks at the type of each of those informal votes. What you reference there is that 42 per cent of those votes - I think it was at the 2019 election from memory -

Ms HADDAD - 2021.

Dr HORTLE - 2021, thank you, 42 per cent of those votes were intentional. It's people putting in a blank vote. It's people writing things or drawing things that indicate a political position in in some ways. We have seen some amusing ones but I would argue that those are legitimate expressions of dissatisfaction with our political system and they shouldn't be seen in some ways as informal.

Apart from that 2021 election, if you look at other elections, I think there was an earlier Legislative Council election that the TEC did a report on. The deliberate informal vote was up to 79 per cent of the informal vote itself. Remembering, the informal vote itself is quite low, but the vast majority of those informal votes were deliberate. I think that speaks to partly the need for greater civic education in schools - it is a really important broader systemic factor - it also points to the importance of amendments such as the one before us restoring trust in politics. You would have seen at the front of our submission, one of the statistics was that 26 per cent of Australians trust politicians and political parties. I think and hope that we can do better than that.

Ms HADDAD - I agree.

Dr HORTLE - In terms of vote saving, more broadly, that is something that we can look at and do some analysis of.

Mr BAYLEY - Coming back to the donations from natural persons, banning corporate donations and so forth, I hear you around specific instances of corruption and property development and so forth and that in other jurisdictions it is responding to criminal findings and so forth. I am interested in your view on this in relation to some of those industries, perhaps,

that have demonstrable impacts on people: tobacco companies, for example, gambling companies, arms manufacturers and so forth, and whether, there should be a categorisation for them that bans donations because, you know, their donations can really only be seeking to influence public policy, which given the nature of their businesses, has a harmful effect on people and whether they should be treated differently.

Dr HORTLE - I think it is difficult not to get into quite political territory in terms of categorising the specific industries. I am sure there are some that the vast majority of people would agree have a negative impact on the general public but I think you would run into a lot of issues kind of at the borders or in the grey areas. Was there anything you wanted to add?

Dr JOHNSON - I agree. I think whatever Rob or I might think about the harmfulness or otherwise of the activity of the industries that you are identifying, the reality is that they are conducting legal activity. More or less, all political donations viewed a certain way are about influencing public policy. That can be nefarious, but it can be perfectly legitimate as well. Making a donation in support of a candidate that you think represents your interests is, again in theory, democracy working well. If those interests are illegal (he said illegal), then I think we start getting ourselves into - as Rob says - difficult and dangerous territory trying to single out the ones that we think are harmful.

Dr HORTLE - I think the goal would be that if we institute a system like is proposed in the amendments; if people can identify that those specific harmful industries or companies are donating to different political parties or individuals, then we have to trust them not to vote for those people. That is democracy in action, I guess.

Mr BAYLEY - Just quickly, I think I have heard you flag a couple of times, donors doing the reporting effectively, whether it be automatic or voluntary. Does that pose some problems for candidates if it is ultimately the candidate that is being held accountable, ultimately. We are trying to hold candidates accountable and political parties accountable. Does that pose some problems there in terms of the shift of responsibility and leave some candidates vulnerable?

Dr HORTLE - Yes. You would have to design the system carefully, but I think there would be ways of putting checks and balances in the system. Even if, the majority of the burden is on the donor to provide all the information; you could have a system where the candidate still has to sign off on that and has to acknowledge that they have read and understood and so on. It is a really good point and an important design consideration, but something that could be designed out of -

Mr BAYLEY - Are there other jurisdictions where it happens in that order?

Dr HORTLE - We would have to take that on notice and have a look.

Mr BEHRAKIS - You mentioned then, and also earlier, there are plenty of genuine and economic reasons why somebody would want to donate or organisational person for economic reasons, if it's on policies that align with their interests, rather than trying to shift policies, which is where it becomes a bit hazier.

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Not so much talk about large corporations and big business interests, but there are a lot of reasons why people are sometimes hesitant on having reported donations. Once again, not talking about the large donations, it's more a café or restaurant owner or a small business and we're not talking big amounts of money. It's not so much they don't want people to know that they're trying to influence the system. But even on things as much as someone writes, people are scared or hesitant to speak on an issue, even in something like a letter to the editor, because there's a fear. It's been borne out in the past where some political groups or political elements will stage boycotts against their business just for having a view they don't agree with. Some family businesses, mom and dad businesses that are worried about having their name attributed to anything, purely not because of fear of getting in trouble for improperly influencing the system, but fear of external backlash.

Is there a way to afford the interest of transparency? Is it a matter of the thresholds? Or, is there a way to give people some safety or some reassurance they can take part in the political system without that fear of having 1000 people at the front of their door because they wanted to support a candidate or party that shared their values?

Dr HORTLE - Sure, a few things. There's no evidence from any other jurisdictions that political donation thresholds increase that sort of activism or increase incidences of violence or in protest against donors. There's no evidence to support that.

The other side of that is to some extent is that's how our system works. Protest is a part of our democracy. We have that threshold in place for a reason. If people want to remain anonymous, they can donate below that threshold, so I think that's perfectly acceptable.

If people donate, for example the mum and dad café, and if that doesn't align with the views of their customers and their customers choose to shop somewhere else, it's democracy at work.

Dr JOHNSON - If I could add one brief thing on this issue of whether the sort of inference of a political donation to the views of a business owner or something. Obviously, we're sort of sensitive to those issues. In a sense that's kind of the whole point of corporate person within a way to separate the assets, liabilities, ability to enter into contracts, et cetera of the business, from the owners. That legal separation already exists and to the extent any protest would be violent or disruptive, we already have laws to deal with that.

Mr BEHRAKIS - I'm not suggesting there's ever been any fear of violence or anything like that.

CHAIR - We have run out of time. Thank you very much for your attendance here today and your submission. You've mentioned there are a few things you'd like to take a look at to see if you can provide further advice. The committee would welcome that. You can get in touch with the secretary to do that. Thank you very much

The witnesses withdrew.

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CHAIR - Welcome to both of you. Thank you for coming today and thank you for your submission. What I'd ask first is that you've received correspondence from the secretary that outlines the process of the committee and that you understand that.

Mr BLAKE - Yes.

CHAIR - Thank you. Can I ask each of you to make the declaration please?

Mr MIKE BLAKE, COMMISSION CHAIR, AND Mr ANDREW HAWKEY,
ELECTORAL COMMISSIONER, TASMANIAN ELECTORAL COMMISSION,
WERE CALLED, MADE THE STATUTORY DECLARATION, AND WERE
EXAMINED.

CHAIR - Thank you very much. Thank you for coming to the committee. Thank you for your submission. I'll be chairing this committee. We are joined by Mrs Pentland, who's online. Ms Johnston, Mr Behrakis, Ms Haddad and Mr Bailey are at the table. I invite you to make an opening statement, if you'd like to begin with.

Mr BLAKE - I'll do that, thank you, and thanks for the opportunity to come and talk to you and to make a submission. Look, the main thing I wanted to say was remember that the commission is independent. That's why our submission to you is focusing on the consequences of what you might be proposing to do in the bill rather than questioning the merits or the policy decision of the parliament or of the government of the day. I'm happy to take questions on that basis. That's all for me.

Mr HAWKEY - Thanks and I'm happy really to respond to questions.

CHAIR - Excellent. Well, thank you and you have provided some really thoughtful feedback on the proposed bill in your submission that talks to some of the administrative responsibilities that you would have in dealing with any of these changes.

Obviously there are changes that you're currently preparing to deliver for the Tasmanian community based on the legislation that's already passed through the parliament.

I'm keen to understand particularly in relation to the administrative changes that you've outlined would need to be resourced, what that might look like?

You've talked about even a reduction in the dollar value triggering greater reporting obligations, that there would need to be greater education as well, especially in relation to in-kind donations and how they might be captured. I'm keen to understand from you what you feel that might look like. Obviously, we're moving to a disclosure threshold of 5000, to lessen that to 1000. Can you explain what that would require from the point of view of resourcing the TEC to make sure that we can comply?

Mr HAWKEY - Yes, as our submission talked about, we've started the process of developing it with the preliminary elements of the legislation, gaining royal assent which allows us to access funding, which is the process of undertaking now. We're in the process of - so for funding and disclosure - we're creating a new directorate which will cover legislation, regulation of the funding and disclosure scheme itself, and compliance. And so that's a whole recruiting process. So that's where we started and then we'll roll on through policies.

In relation to your question, I think the most likely difference in relation to a lower threshold is we will get more reportable returns that need to be provided. Again, we don't know what the breadth and the circumstance of donations are in Tasmania. So in a sense we're speculating to a certain degree as to whether that will be any increase at all or whether it'll be a tripling of the effect. I believe that some of the political parties looked at having one at the 2021 about declaring things over 5000. I think only one party declared one. Again, that's a very vague recollection. It was two, was it? Yes, so that would infer that there aren't many over 5000 but what about those over 1,000? We don't know, but we expect that there is a likelihood that there will be an increase in the number of reportings. Part of the resourcing will be in relation to - if we're looking at caps. So that will be a different type of conversation and a different type of monitoring that each of the political participants will need to do. So that's as much where the education, the extent to education.

Obviously, the timeliness as well will mean a switch in relation to our relationship. 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.

CHAIR - Can I ask about the processes because I'm keen to understand how you're working currently to deliver on the changes that are coming through the parliament and that you're adopting for candidates to disclose donations beyond \$5000. How do you intend for that to happen? We heard from the last witness, and you may have captured some of their evidence, that there'd be technological solutions that would make this really simple - that it'd all be captured through basically a website hosted by the TEC where people could lodge documents to be uploaded; it would be a really simple process. Is that what you're imagining? And can you help us understand what that might look like?

Mr HAWKEY - Yes. Again, we haven't gone to the broader detail of anything yet, but we are in discussions with the Victorian Electoral Commission that already has a funding disclosure scheme and seeing whether we can adapt their system. That is a process undertaken. Again, I'm not sure about the timeliness of the details.

One issue that's come up nationally on funding disclosure and the federal AEC has recently had to shut down part of their transparency, is in relation to the fact that silent electors can be donors. Having an automated system where people say, 'Here I am, Andrew Hawkey, at 1 Parliament Street', then the commission by being that transparent then possibly breaching things like silent elector details. There are some nuances we have not got to yet. Part of the new directorship will be looking into that, which is part of the reason why we looked at that one year to develop, to gain systems, to look at processes and to look at these broader issues we want to get right from the starting point, not later on.

CHAIR - Is it your intention the burden of responsibility is on the donor to disclose that information to you or is it on the recipient of the funds, the candidate to disclose that information to you?

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Mr HAWKEY - I'm not sure of the detail, but I believe the legislation establishes both have a duty of responsibility?

Ms HADDAD - For major donors there's an obligation on the donor as well as the candidates.

Mr HAWKEY - Okay. Again, we are not into that detail yet, but that'll be a part of our planning once we have a bit of staffing structure.

The other thing I've put on the record previously is the expertise required for this area is different to election operations. Gaining that recruitment will help us get around those details. We don't have that as we sit today.

Ms HADDAD - Okay.

CHAIR - Thank you. I'm sure everyone has lots of questions for you.

Ms HADDAD - Thank you. You've provided some information in your written submission on the potential for truth-in-political-advertising laws. Could you expand on any of what you've provided in your written submission? And if we do end up with truth-in-political-advertising laws, do you believe it would most appropriately sit with the TEC to administer or is there another public institution that might be well placed to administer such a regime?

Mr HAWKEY - Yes. There's quite a lot possibly to unpack in this. The first point I want to make in relation to this is what is the objective of truth in political advertising? If we're looking at a notion to provide guard rails for political discourse, how effective is that likely to be?

One of the key areas of rapid development for electoral commissions is mis- and disinformation, but mis- and disinformation is much broader and more complicated than this legislation is trying to put in - where essentially it's a dispute around a statement of fact.

And what you will find is once the legislation comes in, those that are clever in the campaigning area will know how to get around that. Push polling is a good example.

If you were to say, 'I'm going vote for candidate X', the question could be: 'Would you still vote for candidate X if it was revealed that something had happened?'

Again, that's not going to be picked up in truth in advertising, whatever that scandalous thing that may be reported, but it's a gossip mongering. That's not going to get caught and a classic type of dis- or misinformation. It's setting the agenda of issue that 'I didn't make a statement of political truth.' That's one element.

The second element is the concern that this hasn't - and part of the questions you've raised - will this improve the trust in the public by having these laws? I think it has the probability to do the opposite, because there will be an expectation in the community that if someone said that, what's the commissioner doing or I've put something forward and the commissioner didn't take it forward, like that one. For example; I was in third; candidate X was doing something, what's the commissioner doing? They have the power and the commissioner says 'I can't do

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anything with it'. There's that political bias, but then there's also we can't trust public institutions because they're not acting on the powers they've been given.

One of the issues with South Australia where they had a massive influx of new complaints but no more prosecutions, possibly is an illustration of that, that people are expecting more than legislation does. That's always a concern because it in itself sets a perception that will only lead to mistrust.

Mr BLAKE - Mistrust in who? Is it mistrust in the system or the process or the commission itself or all of those things?

Ms HADDAD - All of the above I would imagine.

Mr HAWKEY - Also, we talked about the possibility for the gaming of the system. That gaming of the system might be, 'I have a letter from the commissioner saying he's investigating this other person for these issues and it's terrible'. Now, that can be gamed in a different way because it may be the thing they're having a claim about happened three weeks before polling day, but the claim might be made on the day before polling day. So there's no possible chance other than newspaper saying commissioner investigates the leader or the whatever of that thing. The politicisation of that is very valid as well as an issue.

Coming back to the electoral administration: the other last thing is the dynamics of the Hare Clark system. As you all know, being elected members, maybe not so much independents, but you're as much competing within your own party as externally. There's no reason why this process couldn't be done internally within a party to miscredit it. I remember a certain young candidate who had a sweeping of a wrapper into a bin as an effective campaigning process.

Unknown - I don't know what you're talking about.

Mr HAWKEY - I don't know what I'm talking about. But it could also be weaponised within a political party. They're all the sort of things that make it more complicated.

In relation to the integrity of electoral commissions, there is already a battle on in relation to mis- and disinformation. What we're seeing internationally is that electoral commissions are now a target. They are now seen as a legitimate base; obviously, the US is a clear example.

South America, there's a lot of history of it, but it's also in other areas where the way to delegitimise the result of election is to attack the electoral management body and that is growing, whether it's single-issue groups threatening elections or broad dialogue through mis- and disinformation, whether that's foreign interference or internal interference.

That is a real growing area of concern. Now electorally, the AEC is a leader in the world in this area along with Sweden and they have their 'stop and consider' - which is, if you see something, stop, consider the source, consider whether it's probably trying to do it. In Sweden they have a very fancy term which basically means if it enrages you, it's probably mis- and disinformation. That's sort of their style and structure. The AEC has what's called Electoral Integrity Reputation Management Policy. Canada now has established a trustworthy instruction policy and the TEC will need to look at our own in countering issues on electoral integrity. That's our area of remit and understood and a growing threat.

PUBLIC

The thing that truth-in-political advertising is talking about is about getting involved in the political dialogue in the public discourse of policy of individuals, of candidates. That can only cause trouble for commissions.

Ms HADDAD - In terms of what you said about electoral commissions sometimes now being a target. At that point to it not being appropriate for the TEC to administer truth in political advertising and do you have a view on who else might be well placed to administer those laws or if we need a new public institution established to do that?

Mr HAWKEY - Yes, it's a good question and the National Electoral Commissioner, Tom Rogers, basically said 'Anyone but us' in his statement to the Senate hearing. Its impact on electoral administration is more important in a sense, than us having it. There could be another entity of independence or authority in the Tasmanian future. I wouldn't necessarily want to mention, because I wouldn't want to say it's a categorical answer or throw them under a bus. But the other element that could be considered is in relation to the fact no-one is an arbiter bar the courts. This section is looking to be put into the *Electoral Act*, section 297. Just after that there's a provisioning relation to injunctions and they can be triggered by the commissioner or an activated party. My recollection, which is very hazy, is there was a candidate back in the mid-'90s that went by the name Mr Informal. He then took the then Premier to court over a lack of authorisation, and I think it was because he used his address as the Parliament House rather than his personal address. But it showed, I think again, it's a vague memory, that there is a possibility that it doesn't have to be an independent arbiter.

I spoke with Michael Maley, who's a very experienced person in electoral administration over a long time. Kevin Bonham has referred to him in one of his submissions, and he likes the idea of it being a process like that, because part of what it does is it requires those making the complaint to invest in that complaint. Whether it's the process of court, the cost of court, but it means it sets a higher bar in relation to that being undertaken. So there is an injunction process that can be undertaken and it then removes it. So that is a possibility which, even just by putting this in legislation, is a possible avenue outside of the Electoral Commission.

Mr BEHRAKIS - On the truth-in-advertising provisions, you did mention, and there was the part that I wanted to touch on as well, the risk of politicising the TEC through this. If you had another organisation and another agency administer this, they would have the same level of risk. It's a public institution; it's still the same risk.

I have two questions. How important is it, if we were to go down this road, to draw a really clear distinction between political hyperbole, which no-one on this table has ever engaged in, definitely not me, and statements of fact -

CHAIR - You are not supposed to mislead the committee.

Mr HAWKEY - I think that's one of the cruxes of the issue, and how you nuance the question or the statement, clearly is a way to get around that.

One of the biggest issues going forward and a new challenge for electoral administration is AI. There was a candidate, I think based in Brighton in the UK, that his full campaign was AI. He had an avatar, he was a person, so he could be a candidate, but every response he made to the public was AI-generated. So, we are moving into this area.

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Ms HADDAD - Did he get elected?

Mr HAWKEY - No, I don't think so. But again, there are many interesting candidates in the UK system. AI will provide opportunity, because it'll allow for a ready response in a range of areas, but it will also be able to be used as a tool to get around elements of legislation. There are some issues around this section that I think are difficult to administer. I think others have raised the fact that the act doesn't have a definition of 'advertisement'.

So, clarification of what an advertisement is, and the broadest take on advertisement is that it is someone that is drawing the public's attention to a matter. In the broad definition in the *Macquarie*, it doesn't have to be a paid process; it is about drawing the attention.

Mr BEHRAKIS - If a political candidate was standing at a press conference and said something that may not have been objectively correct, would that be captured? If it was reported in the news, if it was on the ABC, it wasn't paid -

Mr HAWKEY - But again, how is it a statement of fact, and how do you determine it is a fact? 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.

Mr BLAKE - To add to that, we are not saying do not do this. We are simply saying that this is not going to be easy. With the way that AI and other things are evolving so quickly, that legislation just won't keep up; I don't think, anyway. The resourcing implications - whether it is us or somebody else - will be very lumpy because you are going to have to employ a whole bunch of people around election times to try to deal with these things necessarily or unnecessarily. Just think it through; that's all.

Mr BEHRAKIS - I would love to have the political conversation around censorship and freedom of speech. I have been trying to stick to the mechanical stuff. You mentioned the risk of the Electoral Commission being implicated by people asking 'why isn't the commission looking into this?' and 'why aren't they doing this?' At the same time, if there is a threshold of

objectively making a statement that is factually untrue, as the threshold for something to be done in this in this case, is there also the potential risk of a candidate, party - or what have you - saying something that might not be necessarily kosher, but someone has referred to the Electoral Commission? You have looked into it and said, 'look, it does not meet the standard of being, objectively, completely over the line, that we have to intervene and say it is untrue'. Then someone is waving around a piece of paper and saying 'the TEC said that what I said was true'. Is there a risk of you guys being implicated in that way as well?

Mr HAWKEY - I think there is. Again, it is that dissatisfaction around the 80 cases in South Australia where nothing occurred. Does that in the same way that saying the commissioner is investigating, saying the commissioner did nothing after it has a range of issues of inferring that the commissioner is supporting a position or policy or a statement. That is part of the key things. My understanding is that in Canada they have an elections commissioner which is separate to the Electoral Commission and it handles some of those legal things. They essentially are a separate body. Again, the economies of Canada are different to Tasmania, but that is a different option that is going where basically that one position is fully independent of the mechanics of running an election and so any issues go there. That is what the role's provided for; separate to saying the election didn't run well. Part of the thing about the role of the commissioner is wearing those multiple hats, especially around election time.

For example, one of the things we do, I think which is vital to Tasmania, it is greatly embraced as much by the media as anyone else, and I appreciate former leaders for attending, is the tally room. The tally room is not a legislative process. It is a decision made by the commission to provide a form of transparency of the election. It is a great ritual that says the people have spoken and now we hear and see, but it does more than that. It brings in experts like the Antony Greens and others that are commenting. It gives a visual that results are coming in from polling places and tallies are being added up. If your misinformation is that 'the commission has suspended polling places in the north-west coast to stop people voting' - which is the sort of thing that we are seeing in other countries and we are starting to see in some of the other states - then no, we just turn on the television and there they are and here are the figures coming in for Braddon.

The transparency and the immediacy of something like a tally room is a part of that, addressing misinformation in the Tasmanian culture. The fact that, the leaders come and speak is a part of the legitimacy of that process. The public - and I am sure that you have seen with staff that come from interstate, often they will come to me at the tally room and say, 'you mean it is not just our people in the room?' No, it is not your people in the room; it is everybody.

Ms HADDAD - I think other states are a bit envious that we still have a tally room. It is great that we do. Please keep it going.

Mr HAWKEY - You see, this is the other thing as well. If the commission is now involved in this other area, how does the commissioner run a tally room and be addressing all these other issues? It has the possible impact of undermining other things, which we think are really important to that. Here is an election, here is the tally room, here are the people cheering, here are the leaders and here are the Antony Greens. That's really important for us to be able to maintain it if we can, but it is not legislative. It is discretionary.

Mr BAYLEY - Thank you, Chair. Thanks for coming in and thank you also for your submission. At the outset, thank you for your work in hosting our elections. You are very well

regarded and so I hear your concerns around administering truth-in-advertising legislation and so forth. I hear you in regards to the risk to the reputation and the business of the commission and people's perception of it, versus the risk to - am I hearing it in relation to the risk to the election? Do you agree there's a problem that needs to be addressed somewhere and it's just not you as the Australian Electoral Commission has said, 'anyone but us?' Do you agree there's an issue that needs to be addressed somehow and somewhere because it is having a negative impact on either perception of elections or actual election results?

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 BAYLEY - And that can't be addressed by significant levels of additional funding of a different arm of the Electoral Commission where this responsibility sits or anything like that?

Mr HAWKEY - Well, one good example is we have different arm in Australia called the Australian Electoral Commission, which runs federal elections, and the Tasmanian Electoral Commissioner, that runs state elections and local government elections and all those elements there, but do you think many of the public appreciate the difference?

Having another independent body or half an independent body from the Electoral Commission or the Electoral Commission being a part of that and part of how the reputational structure of electoral commissions. Certainly, as my predecessors have done in Tasmania, the best way to try to deal with mis- and disinformation is for the commission to be on the front foot or go on 'Leon in the mornings' or go on radio in the afternoons to try to address things as quickly as you can and create that truth or respected voice for electoral administration.

If that starts getting hindered by, 'but you said this about these other issues' and then you have to say, 'well, let me tell you why that doesn't fit the mould', you are starting to lose the argument and that's the real risk from our point of view.

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Mr BLAKE - I heard a conversation before we joined the table on the need to inform electors - to 'train' electors - that wasn't the word used - but we're spending more and more of our time trying to inform through advertising what is this particular election all about, how to vote, how not to vote. The change from five to seven meant a whole bunch of education had to be done. We're doing more and more of that work. I suspect if we make these changes, that will involve us even more. Not that I'm saying don't do it; I'm just saying it has that implication.

Mr BAYLEY - Which goes to the resourcing issue, if I may Chair, you mentioned that up front as being a significant constraint and if any of these amendments get up, it'll increase it further.

Do you feel adequately resourced at the moment to perform those functions, the education functions in particular? What's your view on the future in terms of managing this in what's clearly going to be a constrained budget environment?

Mr HAWKEY - We've been on a bit of a journey with this electorally. We had an independent review of the Electoral Commission undertaken at the end of 2023 which looked at the issues around the Electoral Commission's single point dependencies and psychosocial hazards in relation to the organisation. That independent one said we needed to grow and we are in a process of doing that.

We're moving from a - and the language I use is that 'we're going from a family business to a corporate structure'. The family business is a culture that the TEC, everyone finds something has to be done, we'll find someone to get it done, we'll work that bit harder, we'll get it done. And that has worked well for the 25 years of my time in electoral - the previous 25. But it's no longer suitable in the future, and so the new structure will have three directorates and some of those issues are going to be addressed by that. The fact that we're now establishing the director that has legislation, regulation, funding and compliance will allow some things that have been sitting on the side of people's desks put into a unit. Something like non-voter processes. This year we had an early state election which triggered three, not two, Legislative Council elections, which triggered two mayoral by-elections. Now each of those elections have non-voter processes, so even for the people of Elwick, they're going to have three lots of non-voter notices going out over the next six months because you can't - you know they'll stagger through that process.

That's just one element of work, so the compliance unit will now take that off the operations one because the operations are currently busy doing a Clarence elector poll. Again, we are organisation previously of 14 to do all these different elements but the structural move is to around 34, and we started the recruitment of three directors, which is underway, and we'll then - the next phase will be the directorate for the funding and disclosure unit. But one of those elements is, we're setting up a training unit and that'll be for training our staff, training internal permanents. We're bringing in an accessibility inclusion officer, which will help change some of the cultural things. We're bringing in a business improvement officer that will look at how we can better design things, whether it's accessibility or modern areas. So we're in a mode at the moment which will probably take another 6 to 12 months where we will start answering that resourcing.

The issues for me with truth in political advertising has been mentioned by the others, I think, and also by the South Australians, is that it's a different mechanic. It's a different

mechanism; it involves a Solicitor-General's office, it involves in their case setting up the Supreme Court ready to deal with issues on short notice so it's a different infrastructure than what we're looking at now and that's why it would be a different resourcing and even things like the caps, our interactions and the education of all political participants will take a bit of work.

Mr BLAKE - You might mention reserve by-law.

Mr HAWKEY - Yes, so as you'll be aware, one of the elements of the *Electoral Disclosure and Funding Act*, included that the costings of the scheme would be undertaken under reserve by-law, which is consistent with the *Electoral Act* talking about election preparation. So essentially, this is a process but we're working through with Treasury and with the minister and with the Department of Justice as we're moving forwards in this area. So this will be progressing in that sense.

Mr BLAKE - So then to answer your question, we've done a lot of work to try and be ready for the changes that we already know about.

Mr HAWKEY - Yes.

Mr BLAKE - So that process has gone through quite a rigorous and change management governance process but reserve by-law and the minister's been informed about what the costs are.

Mr BAYLEY - And you feel adequately resourced to meet the needs of those changes?

Mr BLAKE - At the moment yes.

Mr HAWKEY - Yeah, again, trying to look at the Tasmanian context, we're covering units that will cover areas and have the responsibility for that area rather than one person having three different things all at the same time. Part of the issue in my role with a commissioner is there are statutory responsibilities about elections and if political advertising comes in, that'll be just another thing on (inaudible) one position. But I think the resourcing for where we're progressing to, I'll have a better answer for that in 12 months, but I think we're certainly looking to shore it up.

Ms JOHNSTON - Thank you. I'll take you back again to truth and political advertising. I'll certainly take your point in relation to the potential for it to be politicised and weaponised and have distrust in an important institution like the Electoral Commission. You refer to the ability at the moment for injunctive relief from the courts and expressed, I think, expressed a view that perhaps there is a way or another entity or mechanism for truth-in-advertising laws to be administered external to the Electoral Commission.

Can I perhaps get your views on it? Was one of the concerns around that lack of trust or the perception around it? Because the process at the moment with any kind of determinative issue or complaint made to the commission about advertising is that it's in such a quick period of time, there's not the ability for that to be done publicly. If it was put in the court system where injunctive relief was sought through the courts, that would be in a public forum. So a person who had an allegation of misleading advertising would have to provide, obviously as you say, fees, evidence; it'd be in a public forum. There'd be the opportunity for the respondent

to respond in a public forum. Do you see that as being a better process than currently, if there is a complaint under the act about someone's behaviour towards another candidate? For you, that very quick process that's done in an administrative process at the moment that's not necessarily made public and I suspect causes issues that you can't say, well, I actually received this evidence and show it publicly.

Mr HAWKEY - It comes partly down to the investment of those making the complaint. We get a broad brush of complaints on our elections and at times as soon as we respond to a complaint, the email that sent might be up on the web. But the process of a complaint is obviously there needing to be the initial complaint; there needs to be investigation into it and that's usually working with the person that the claim is against and providing evidence. There's never a great timeliness of these things anyway. Well, rarely is there, and often in the Tasmanian context, no-one at the moment wants to sort of fall foul of offences and electoral acts. There's a fairly quick response to people cleaning up their act and more often than not, it's a misunderstanding. It's not necessarily a gaming of the system, but it's the expectation of the public on truth in public applicants, in political advertising that compounds that. If people say you didn't fill this form in or you didn't authorise this document, probably you didn't play by the basic rules in the election. But if the commissioner has to make a statement in relation to a policy or at least a negative attribute against another person, it's very much putting it into the political game that it doesn't normally go into. That's my primary concern. Yes, the issue of transparency; you can't really make certain things transparent because, again, it can lead to gaming of that information even further.

But, there was another point there, but I've lost it at the moment.

Ms JOHNSTON - I suppose my point was that complaints at the moment aren't considered or investigated in the public forum. They're very quick at the moment with the Electoral Commissioner and there's a very good reason why that is and why that needs to occur. If that process for complaints regarding truth in political advertising was put into a judicial system where it is very open and justice is seen to be done and there are arguments on both sides, that takes away that risk from the Electoral Commission from having to deal with matters instead of behind closed doors.

Mr HAWKEY - A benefit in a sense, but to a certain degree, if it's not involved in the commission, it's not our concern to worry about. That comment was made as much because I'd heard the question about if not the commission, where, and it's basically just not true. I hadn't thought much further about what the consequences are other than that it is a mechanism that's possible. So, more wanting to raise the question as to why do we have to have an independent arbiter if there is a structure that can facilitate it; I haven't thought more broadly about the consequences of that.

CHAIR - Ms Pentland, did you have any questions for the Electoral Commission?

Ms HADDAD - It's a bit outside the scope of the terms of reference, but do you have any views on vote-saving provisions. It's been raised in some of the other written submissions to the committee. It's been a long-standing discussion in Tasmanian politics and do you have any views on it from the commission's perspective?

Mr HAWKEY - I'm happy to talk about it. 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 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.

Ms HADDAD - That's interesting.

Mr HAWKEY - And 50 of those were where one party just had five candidates.

Ms HADDAD - That's actually one of the things that was in my thinking particularly, with the increase in minor parties. I know that Jacqui Lambie Network may have pre-selected say three candidates. If someone voted 1 to 3, they clearly had an intention to vote for that party, but their vote wouldn't have been counted because they didn't find another four candidates to complete their ballot paper.

Mr HAWKEY - Our stats will show what those actual numbers are.

Ms HADDAD - The voter, I mean, not the party. If a party preselects three and the voter votes 1 to 3, they've got a clear intention but their vote wouldn't be counted.

Mr HAWKEY - But I think the evidence, which I apologise I don't have ready yet - the evidence is that's a very minor number.

Tasmanians are educated, as you know. The role of a candidate is not to just be the colour, the brand, the identity. You have to be something special that people will join to.

There are some elements in our elector base which is very educated compared to other places.

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. The advantage of the recount is it is a massive saving of time and

money on the state, because otherwise you have to run out polling places. It also maintains the will of the people on polling day.

What you find with the by-election at a federal level, suddenly there are whole new issues that have been debated. But, a recount says, 'no, this parliament was created at this time, and this was the will of the people at that time'.

Part of the fact that we have more candidates ensures the health of the parliament can be maintained. If you said, 'let's vote 1 to 5 or 1 to 4', then parties are going to try to reduce it to say, well, 'I don't need more than that to have that formality'.

CHAIR - Can I ask a question about the trend you're noticing in early voting? Because some of the submissions we've received have recommended we include amendments that prohibit donations in the last two days, in an election campaign, for instance. But, we know a lot more people will vote sooner than that.

Can you provide some information to the committee about what you're noticing and what you expect the future trends to look like?

Mr HAWKEY - Yes, and I actually have a stat right here for that one.

Again, it's a broader trend. Our society is 24/7 as we know, and people expect services across that time. We don't have weekends where you go to the footy and you go to church or stay at home on Sunday. We have a different way of working and living and our voting is responding to that.

Again, one of the things about compulsory elections and the convention of how we do compulsory elections is, if there is a requirement of an elector to vote, there is an obligation on the electoral management body to be able to facilitate that vote in a reasonable way.

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. Issues of accessibility are very relevant and I said in other forums the understanding of what accessibility was in 2004 or 1993, when *Local Government Act* was written, was very different. It was, can you get to a place? There wasn't an appreciation and understanding of the broader forms of accessibility.

Electoral commissions need to be agile and move in that area. 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.

CHAIR - In your data, can you see how many of those people who voted early voted in the first week that polling opened versus the second?

Mr HAWKEY - We can do that because we do have the stats, but I don't have them on me. One of the things when we moved to electronic certified lists for managing back in 2010,

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is every vote, every elector, is date-stamped and time-stamped. We know exactly what time and date, which helps us in verifying other things on multi voters and other things.

Again, if the committee wants it, we can provide more details. It's a little bit out of the scope. I believe you're a member of the Joint Select Committee on Electoral Matters that's being established and certainly the commission's very happy to be able to provide those sorts of details in that forum.

CHAIR - If it's possible, I think it would be useful because even in this field, it talks about in the last week of the campaign, increasing the frequency of donations that need to be disclosed, I think it would be helpful for us to understand.

Mr HAWKEY - As a broad brush, I'd say it does grow towards the end of the process when we set up a pre poll centre somewhere. And for a Legislative Council, partly that's awareness. We'll send out an elector brochure and suddenly we'll get a surge. But again, for a state election that is high profile there's still a growing one. But one of the other things there's a challenge for electoral commissions is postal voting as a fundamental option is ebbing away. Australia Post has now added another day to deliver out of material for all forms of material. They now are looking at expanding right across the state that they'll only deliver letters every second day, but parcels and alcohol will be fine. Victoria's sending out millions of postal votes and we're sending out 400,000 for a local government or for our early voting for the other that the ability to be able to have that as an effective transaction is getting harder, which is partly why the commission has introduced telephone voting to replace that as a key option for accessibility issues. So I think there's a whole lot of dynamics that are going to change because of all those sorts of issues moving forward.

Mr BAYLEY - Can I just have one quick follow up on that in terms of the trends of early voting, you know, it's quite telling obviously. Has the commission increased the number of early polling stations as well? Is it a reflection of both accessibility at the on the ground level as well as people's intention to vote early and so forth, so have you now got them in Smithton when two elections cycles ago you didn't, for example.

Mr HAWKEY - Yes, and that's also going to impact on the flow because for Smithton, for a state, we might have it there for the three days before polling day rather than just on polling day, where in Glenorchy we might have it for the three weeks.

Mr BAYLEY - Three weeks, yep.

Mr HAWKEY - So that'll impact those stats as well. Again, one of the things I always get asked in the Legislative Council is what's happening with our participation rate? And a nationwide trend which - whether it comes back to the trust in public institutions - we are losing 1 per cent or so participation rate at a House of Assembly every year, every election event. We're losing ground in Legislative Council. When I first started in electoral, we first did a letter out to electors. Every division in the Legislative Council that year had a 90 per cent return. Now we're hopeful to get over 80 per cent return for the Legislative Council. So there's a whole range of issues that are different now to then, so accessibility and enabling people to participate is a really important aspect for us to do that.

Mr BAYLEY - Thank you.

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CHAIR - Any further questions?

Mr BEHRAKIS - Just a really quick one on the issue of expenditure caps: we've got other elections that you guys work on, Legislative Council and local government where we do have that. So based on your experiences in those sort of elections, how much would you expect that putting expenditure caps on House of Assembly elections would increase the administrative burden?

Mr HAWKEY - Again, I'm not sure exactly what the process will be. Firstly, there'll be an educative one because it's a drastic change to the environments that we don't know about at the moment. How we currently essentially administer that is through communications with candidates as we go through an election event. So here you've been accepted as a candidate, here's what a return is, here's what the limit is, feel free to talk to us about certain things. And I will get the odd question for people saying, 'I'm hiring a bus or our political party is going to hire a bus and I'm going to stand next to it, what's that going to cost me'. Yeah, so there is in those environments an understanding that we need to work out something. So part of the workload will be education information.

In relation to administration and auditing, it usually happens at the end of that return process. So we know that under the current structure there are returns that we put in which will then have that expenditure flow from an election, so mostly administration will be the end. Again, how accurately people will be able to do all of that, how close to the line, we just don't know at the moment.

Mr BLAKE - Yeah so we've done quite a lot of work to try to make that as simple as possible, and my involvement or the commission's involvement is only for the Legislative Council and that obviously only happens once a year and for only two or three candidates. So it's quite a simple process to audit those returns. What's your hard work in the government because I don't get involved?

Mr HAWKEY - So there's always a lag in the sense that there always will be 10 per cent, 5 per cent, who haven't got their paperwork and there needs to be more paperwork. But again, they aren't based on the full funding disclosure scheme that's being established in relation to the House, so we will wait and see how that how that eventuates, I think.

CHAIR - Thank you very much to you both for your time. If we can get that further information from you when you're able to provide it, that would be really helpful.

The witnesses withdrew.

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CHAIR - Thank you for joining the committee this morning and thank you for the submission that was just made as well. I first want to check that you've received the guide that was sent to you by the committee secretary that you're providing evidence under parliamentary privilege and it's publicly broadcast and transcripts will be kept. Do you understand all that?

Mr BROWNE - Yes, thank you.

Mr BILL BROWNE, DIRECTOR, DEMOCRACY AND ACCOUNTABILITY PROGRAM, AUSTRALIA INSTITUTE, WAS CALLED, MADE THE STATUTORY DECLARATION, AND WAS EXAMINED VIA WEBEX VIDEOCONFERENCE.

CHAIR - Thank you very much for that. Do you have an opening statement that you'd like to make or any submission that you'd like to add in addition to what we've received?

Mr BROWNE - Yes, thank you and thank you for having me.

The Electoral Disclosure and Funding Amendment Bill seeks to address shortcomings in Tasmanian political finance laws. However, without amendment, this bill will not adequately address these shortcomings and risks introducing new problems.

We identify problems with the treatment of third parties like charities, trade unions, businesses and business lobby groups. There is an existing loophole that political donations received by third parties outside of the election period do not need to be disclosed. That loophole should be closed. The requirement that political donations are disclosed upon receipt is not feasible for third parties who do not necessarily know at the point of receipt what purpose the donation will be put to. Third parties should be required to disclose political donations at the point of expenditure.

Donation caps on third parties have a discriminatory effect because only some third parties are funded by donations. Third parties should not be subject to donation caps.

Finally, real-time disclosure requirements are too onerous for most third parties for whom election campaigning is a very small aspect of their work. The definition of 'gift in kind' should be amended to include the payment of membership fees or subscriptions paid to a registered party that exceed the threshold.

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.

Regarding real-time disclosure, 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

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for a political party or candidate. We suggest a number of alternatives that could lighten this administrative load.

Tasmanians have waited long enough for truth-in-political-advertising laws. South Australia's proven model could be adopted, just as it was with unanimous support by Labor, Liberal and Greens parliamentarians in the Australian Capital Territory. Significantly, the South Australian model gives the commissioner the power to request only and leaves to the courts the power to compel behaviour. This is an important limitation of executive power that should be preserved by amending the bill as it currently stands.

Finally, 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. Thank you.

CHAIR - Thank you so much, Bill. I will open to the committee to ask questions.

Mr BAYLEY - Thank you, Chair. Thank you, Bill, for your submission and I also acknowledge the Australia Institute's campaign work in this space over many years. It has helped us get to where we are. I am interested in your second recommendation around amending the bill to require third party campaigners to disclose all political donations above a threshold used to incur electoral expenditure. Our understanding is that section 43(2) does exactly do that. Is there any issue that you have with that section? Is there anything that you can clarify for us, as the movers of this bill, in that space?

Mr BROWNE - Yes. My understanding is that the act that passed is yet to come into force allows for a kind of loophole where donations received by third parties outside of the election period are not required to be disclosed. They don't fall within the criteria, even if they exceed the donation threshold.

Mr BAYLEY - Right, but our bill, the amendment in section 43(2) does this. Am I missing something or is this an error? I believe our amendment bill actually addresses this anomaly.

Mr BROWNE - That could be possible. I am certainly happy to take that on notice and check against that section.

Mr BAYLEY - Okay, thank you. Further in this regard, the third recommendation is about disclosure for third party campaigners required by reference. Again, section 43(2) does this. Maybe this is another one to take on notice and we can clarify offline?

Mr BROWNE - Yes. I am happy to take that on notice and investigate.

Mr BAYLEY - Thanks, Bill. Thank you, Chair.

Ms HADDAD - Likewise, I would like to thank you and the Australia Institute for the significant work you have done over many years on electoral donation law reform in this state and elsewhere. It would be helpful for the committee to hear more about the proposals around dominant purpose test and whether you feel that what was adopted in the substantive legislation requires change to ensure that charities, NGOs and other third-party bodies are able to comply

with the law without limiting the work that they do day to day that may or may not have a political lens over it.

Mr BROWNE - A lot of our work has involved the federal level and the regulation of charities there. I do not know that I can go into detail about Tasmania specifically. Certainly, what the Stronger Charities Alliance and other groups have looked at federally is the need to protect the involvement of charities in elections - to make sure that the treatment of charities reflects the particular rules that apply to the absence of a political purpose and so on.

I am afraid I did not work on this section of the submission. I might have to take on notice further detail there.

Ms HADDAD - On a different topic and I might have misunderstood this part of your submission - the part about broadening the definition of 'gift'. Could expand on the view posed by the institute that party levies paid by MPs pose the same corruption risk as donations. I may have misunderstood the intention of that section. As a Labor MP, each payday I pay - I like to call it a tithe - a fee to the party that endorsed me to run. How, in the institute's view, could an endorsed party candidate or sitting MP paying money to that same party have the same corruption risk as donations in the broader sense?

Mr BROWNE - There are two questions here, I think, about the requirements of disclosing levies that are paid by MPs and then making sure that donation caps apply across the range of different financial contributions that are made to political parties and to candidates' campaigns. When it comes to transparency, the case is clear that we should be finding out about large sources of money that go into political parties and candidates' campaigns, regardless of the origin. That helps us understand better how campaigns are funded - the positions that different parties and candidates start from, as well as the effect of changes to political finance laws on different political players.

At the federal level, for example, you can see even something like dividends is disclosed through the other receipt's category, despite the fact it's the party choosing to engage with the company in that case, rather than the other way around.

What we see, for example, in Victoria is the levies paid by politicians make up a greater sum of revenue for some political parties than political donations. Finding out the quantum of those levies is very important.

Then we come to the question of donation caps and what we find there. It's a similar point looking at Victoria, where uncapped contributions from parliamentarians in combination with capped contributions from the rest of members of the public concentrates financial power among MPs, because they're not subject to the same limitations. You can resolve that in a couple of different ways. One is to not impose donation caps across the board, but the other is to be consistent with the imposition of donation caps. I don't think that's about corruption risk, but rather about a level playing field - that no one entity or narrow set of entities should have access to uncapped donations, if others are subject to cap donations.

Ms HADDAD - Thank you. Regarding your first part of the answer I can understand why it would be beneficial for MP levies to be disclosed in the public domain. In the institute's view, how can MP levies be considered corrupt? That's how it reads in the submission: that an MP paying a levy to their party is a corrupt donation. I can understand that desire to have it

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disclosed so people know, but how? Are there examples, perhaps in other jurisdictions, where MP levies have been considered to be corrupt or any allegations of that kind? It's PDF page 13, but the page number is 10.

Mr BROWNE - I'm not seeing the language of corruption there.

Ms HADDAD - First of all it's talking about levies: it says these types of contributions pose the same corruption risk as donations and should be captured by disclosure obligations.

Mr BROWNE - In that case, I think my language there is clumsy and rather that these contributions pose the same kinds of broader risks that we see.

Ms HADDAD - No worries. Thank you.

CHAIR - Thanks. Bill. Can I ask a question on disclosure time frames? Your recommendation 7 talked about the administrative burden that could be experienced by candidates or parties if they were to deal with the proposed disclosure time frames in the bill we're looking at. And you've talked about potentially only requiring small donations be aggregated quarterly, even if a one-off donation above the threshold must be disclosed more frequently, and have suggested that our longer reporting periods - potentially monthly or quarterly outside an election period and weekly during an election period - might be more appropriate.

Can you provide some further thinking on that for the committee, please?

Mr BROWNE - Yes, this is based on having thought and talked about with people the administrative burdens that get placed via real-time disclosure requirements. While it's fairly straightforward that if a payment that exceeds the threshold comes in, that it can be flagged and reported appropriately, that the very understandable requirement of aggregation as soon as an aggregate of donations exceeds the threshold, in fact requires you to go back and check any new donation, no matter how small, against all donations that have occurred in the past and that in particular strikes me as particularly burdensome.

This was our way of thinking about well, how can you preserve elements of the real-time disclosure while reducing in particular that requirement and then you could keep the disclosure of the very large donations as they come in, keep that going on more frequently, but save the more administratively burdensome task and the one that is probably less likely to involve donations that pose a greater risk. The classic example is someone who donates about \$100 per month to a political party, which would not place them, kind of, among the top movers and shakers by any means, and yet at some point during the year they're going to cross over and suddenly it's not just one donation that needs disclosing but a whole set of them.

I think these problems are exacerbated when it comes to third parties that are not campaigning organisations like political parties and candidates, although I think they also apply to some extent to political parties and candidates as well, but that a third party that might have a very small role in a political campaign gets burdened by reporting responsibilities that are quite extensive.

CHAIR - And you've spoken about the potential to remove third parties from having to comply with such an onerous requirement. In your submission as well, you talk about generally

the burden on third parties, in particular charities. Could you elaborate on that for the benefit of the committee and some of the concerns you have around the timing of receipt of donation and expenditure of that funding for the purposes of an election campaign.

Mr BROWNE - Yeah, absolutely. Again we come to a distinction between a third party, like a charity or other organisations, and a political party or a candidate operating in order to contest elections and who ramp up their activities approaching an election and so on. Another third party, like a charity, is likely to collect donations throughout a period, but have those donations not be tied to a particular purpose, being required to disclose those kinds of things within, say, seven days of receipt is kind of putting the cart before the horse because the charity probably doesn't know at that point to what purpose the donation is going to be put. In Queensland, they found, I think, a neat way around this, which is that you still need to disclose the donation, but you do so at the point of expenditure at the time when you actually know to what purpose the money will be spent.

CHAIR - Can I ask in practice how that might be administered? Say I'm a charity: I receive over the course of six months a number of different donations from individuals and then I decide to participate in an election process and I spend some of the money that's been raised through donations. How do I know who to disclose when I'm making a disclosure? Because I might have received some money from Ella and some from Vica and some from you, but I only spend as much money as what Ella donated. But I don't want to disclose her because I want to protect her. I disclose it came from Vica. How do you deal with that?

Mr BROWNE - I would think if Vica made a contribution that was large enough to cover the entirety of your political expenditure, then it would be reasonable to disclose just his donation. I imagine there'd be anti-avoidance provisions in place if this was some kind of scheme to avoid disclosing Ella's contribution. If it's just that you have enough money in the bank from Vica and his donation covers that cost, then I imagine it's fine to just disclose that.

CHAIR - What if I'm using \$5 from Ella, \$5 from Vica and \$10 from you and cumulatively, you've all contributed, but then because the donation was again as you described enough, so I just say it was only Vica. How do you deal with the avoidance of disclosure in that instance? Are there examples from other jurisdictions that we can look to, because I'm really keen to understand? I understand the problem that you've presented to us that you're worried about us inadvertently capturing charities in this administrative burden that's really difficult to navigate. How do we fix it really clearly in law?

Mr BROWNE - I'd be happy to take on notice and answer at least about how Queensland deals with those provisions because I certainly haven't heard any problems from the approach in Queensland and it may do, providing that spending is accounted for. But given that money is fungible, not being able to kind of match spending to donations would, I imagine, be enough, but I'll look into that for you.

Ms HADDAD - Can I put another thought in your mind as you do that further work, Bill, and that is putting my old hat on of working in an NGO. Charities and not-for-profit organisations receive donations from people who want to support the work of that organisation, not necessarily for a political purpose, so it comes back to my earlier question about the dominant purpose test. If you think about the Cancer Council, for example, people might donate to the Cancer Council because they care about the work that they do in terms of education and advocacy. The Cancer Council may then at election time put out a report scorecard about their

views on how the major parties are committing to initiatives that they are concerned about but it would be very hard for the Cancer Council to disclose donations that they used for that political advertising, or advertising that might influence a vote, when they've actually been receiving donations all year long because of their dominant purpose of being an advocacy and charity body around cancer, for example.

We want to be able to increase transparency and disclosure, but not make it so burdensome that charities can't do the work that they need to do and do every day, and also that don't limit the capacity for charities to have a voice in the political process at election time, which is also very important. I suppose the other risk is that you make the regime so burdensome that those bodies think 'it's too hard, we won't put out our report card or our scorecard at election time', and they should be able to do that and express political views at election time.

Mr BROWNE - Absolutely and I think any change that is made to the law should take that into account. Considering that there are community groups of extremely small size, volunteer-run, imposing obligations that might be reasonable for a larger third party on a small community group might end up making it too hard for that community group to get involved in the process at all. That concern exists too with the question of what the penalty should be, so quite separate to what the requirements should be, is it appropriate that jail terms are involved or just fines? How high should the fines be?

A political party or well-funded candidate who can afford legal advice or is well enough connected to get pro bono legal advice might feel comfortable being more aggressive in their campaigning thanks to that advice. A community group volunteer-run is going to find it very hard to instil that same confidence in volunteers that they're not at risk of a six-month jail term, for example.

Ms JOHNSTON - Thanks Bill. Just following on from Ella's request for additional information, if the purpose of disclosure is to try to understand who is influencing the public discourse around election campaigns, is it at the point of expenditure? Given that, I think it might have been the Australia Institute who told me this statistic sometime recently: charities only spend 1 per cent of total election campaign expenditure across the whole spectrum - that there's a threshold that charities need to disclose at in terms of expenditure to try to reduce the administrative burden. Let's say that you know the Cancer Council, as Ella has suggested, spends only \$500 on that election vote card. That would trigger them being required to disclose at the moment the donations that they receive over the \$1000 threshold or \$5000 threshold. Given that the \$500 in the grand scheme of things probably isn't that influential, is there a mechanism perhaps that could be put into legislation where there is an expenditure threshold that would trigger that administrative need? Perhaps you could turn your mind to that, please?

Mr BROWNE - Yeah, on the kind of outset, that sounds reasonable to me. That figure of about 1 per cent of election spending coming from charities is part of a report from the Stronger Charities Alliance, refers to the federal level. I suspect that things are similar at the state level, but we haven't checked that personally. And, yeah, I think the idea of a threshold makes sense to avoid capturing every single small bit of of expenditure which you know, frankly, a small community group may not even be thinking that their intervention is directly election related because it's an issue that they've been campaigning on for the last five years. You don't want the sudden coinciding of an election with that longer term advocacy to suddenly expose them to greater administrative burden.

Ms JOHNSTON - Yeah, I'm going to different topics if you want to go next.

Mr BEHRAKIS - And just on another topic, you mentioned earlier that on the topic of donation caps, I suppose that you're concerned that it potentially placed a burden - a barrier to entry or a closing out effect on on new people - because incumbents have increased resources; also, in my view, other benefits from having a profile and having things like that. Similarly on spending caps, you mentioned in the submission, and this is the concern I've always had around spending caps, do you think there is a risk of creating a barrier to entry for those wanting to run for office and what the reasonability of that is?

Mr BROWNE - Yeah, absolutely. So we've done work at the federal level and in some of the larger states looking at the size of the financial advantages of incumbency and the advantages there are substantial, something like \$3 million per member of parliament over a three-year term, federally. Of course, those numbers are very different in smaller jurisdictions and in Tasmania, in particular, but the same kind of of risk exists there that the taxpayer quite reasonably has set up MPs with offices and staff and communications budgets and so on. But the effect is that that gives the incumbent an advantage going into an election. I would just -

Mr BEHRAKIS - Sorry, and additionally it's not necessarily just that it's all the money that incumbents don't have to spend at all, not just the increased resources. Anyone at this table could put out a media release for free and it'll end up in an article in the local newspaper and TV news. Whereas somebody trying to engage in that system from scratch has to expend money to be able to communicate on a comparable level with the public.

Mr BROWNE - Yeah, absolutely. And once you start looking at other non-financial benefits of incumbency like the ability to time the calling of an election, you can see that these advantages really can be substantial. Different ways of kind of accounting for that could include, well, in practice, we find that those advantages are substantial and that suggests that having the same level of cap for a new entrant as for an incumbent is in practice unfair to that new entrant. I mean, either way, the new entrant is going to have to do more. They're going to have to fundraise more to match that incumbency advantage, but to then also have a spending cap that cuts off that opportunity altogether introduces a legal, as in a kind of a change in the law that advantages incumbents rather than kind of an advantage to incumbency that has emerged organically. And that's a distinction that we've made in some of our analysis of how systems elsewhere work.

Mr BEHRAKIS - As a follow-up to the the donation and expenditure caps you mentioned, I think it's recommendation 6, you mentioned through your submission the idea of a democracy voucher. Can you just elaborate on that a bit please?

Mr BROWNE - Yeah, so in Australia, public funding of political parties and candidates has been mostly in the form of payment per vote received after the election takes place. In practice, that means a new entrant doesn't receive any money until after it's too late to spend it in their first campaign.

An alternative that exists in the city of Seattle, for example, is that everyone on the electoral roll receives democracy vouchers they can assign to candidates of their choice - worth about US\$100 per elector. The advantage of a system like that is, like the per vote public funding, it does test genuine support within the population, but it does so ahead of an election

so it is actually of use to new entrants. That will be worth serious investigation in Australia because it heads off most of the disadvantages of public funding and actually would make something like a donation cap fairer, because there is this alternative source of funding for new entrants.

Ms JOHNSTON - Thanks, Bill. I want to go into truth-in-political-advertising laws and I'm not sure if you had the opportunity to hear our previous witnesses from the Tasmanian Electoral Commission. You've outlined how it works in South Australia, where the commissioner has the ability to make determinations and I believe request a certain outcome and make a determination. But, then if there's non-compliance with that request then it's a matter for the courts. I believe the Electoral Commission here has provided evidence they're concerned this might politicise the Electoral Commission. It could lead to mistrust in the Electoral Commission in terms of a lack of transparency in the way it's determined the issues around determining what is truth - what's fact and what's not fact, what's an opinion, all those kinds of things. The Australian Electoral Commission's view on this is that is anyone else but us would determine these matters. Do you have a view, given you're indicating the South Australians process works well, about who else might administer these kinds of laws?

Mr BROWNE - Yes, it's a good question and one worth serious consideration. I'd say on the outset electoral commissions are good choices to be the overseers of truth-in-political-advertising laws.

The parliament of South Australia has declined to move that responsibility from the electoral commission there for almost 40 years of operation, in part because the electoral commission has done such a good job. The attentiveness of electoral commissions to how they are perceived is one of the reasons why they are good regulators. Similarly, the ACT gave the responsibility to its electoral commission over the top of objections from that same commission, because ultimately, it's parliament who should decide who the best regulator is.

That said, at the federal level, other proposals have included the ACCC on the basis that it oversees claims of misleading and deceptive conduct in trade and commerce, or from an academic proposal that there should be a panel of former politicians on the basis they know when they see it - or the proposal to set up a dedicated body in its own right. The AEC proposed in the 1990s that you could have a wholly separate body - it could be kind of constituted ahead of an election from kind of respected independent sources and serve to some extent to quarantine electoral commissions from politicised attacks on their decision making. I acknowledge truth-in-political-advertising laws do create the risk of that occurring, although, of course, the risk of politicised attacks on electoral commissions is not limited to misleading advertising by any means.

It's certainly open on parliaments to choose other entities that are responsible for oversight, but also electoral commissions are a good choice.

Ms JOHNSTON - Thanks, Bill. We've heard some evidence about the difficulties in determining what is included in an advertisement and where you draw the line between an advertisement, an opinion, a statement, all those kinds of things, and where you draw the line in terms of truth for us. The Electoral Commissioner gave us the example recently of there are some people who hold very firm views about vaccination, for instance. They state, as a fact to them, that they hold those views very clearly. Obviously, there are other views about that. Where do you determine, when someone holds a view so strongly, that it is a fact to them - that

they are not being misleading or deceptive, they are just saying what they view as a fact? How do you determine that? How do you put that into legislation to make intent quite clear?

Mr BROWNE - There are two questions here. There is, what kind of matter is covered? As I understand, from the South Australian laws, the term is electoral matter but effectively material requiring authorisation. It is broader than a paid advertisement in the classic sense, but it is not so broad as to capture a radio interview, statements in parliament and so on.

Social media posts by politicians tend to be authorised, but of course you would have to ask whether they are required to be authorised to see whether they fall within scope - in terms of what is covered by the nature of claims. The wording in South Australia is a statement purporting to be a statement of fact, which is an important limitation - meaning, opinion is clearly outside of the scope of these requirements and that can include even opinion that is quite vitriolic or pointed.

One of the case studies from South Australia involves selectively quoting an independent member of parliament and describing him as soft on crime. The judge was quite sympathetic to the independent MP who brought on this case - that the MP could always explain his position and it was not to do with being soft on crime. Nonetheless, that fell safely within opinion and there was no truth-in-political-advertising legal concern there. You would similarly see courts - if they had to - also adjudicate with nuance there.

When claims come up in South Australia - from what I have seen - they have tended to be clearly wrong. They have presented a statistic that does not match what is in the report the statistic has been taken from, or they claim that something has happened when it has not yet happened. They have been fairly cut and dry and would exclude a kind of a broad statement of opinion or a broad political claim that does not have any detail that is not purporting to be a particular statement of fact.

Ms HADDAD - In your recommendations on truth-in-political-advertising laws, would you intend for them to apply to everyone making politically related statements or just to political candidates and MPs?

Mr BROWNE - Yes. I would expect them to apply to those engaging in political advertisements - not just political parties and candidates - but not so broad as to include members of the public. At the point where you are kind of required to include an authorisation statement, it is a discrete piece of content that is fixed in form, meaning, it is not an off-the-cuff statement or that kind of thing.

Looking at South Australia again as an example, a conservative activist group has been found to be misleading by the electoral commission down there. However, you are not seeing the back and forth of people on Twitter being regulated or anything like that.

Ms HADDAD - By way of example, there were some full-page ads the Australia Institute ran in Tasmanian newspapers recently saying that salmon companies pay zero tax. Would that kind of full-page ad be captured by a truth-in-political-advertising regime?

Mr BROWNE - It potentially could be, yes.

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Mr BAYLEY - Your recommendations on truth in political advertising go beyond that countenance by the bill in the area of voiding an election. What is your perspective because that is obviously a significant thing to happen? Can you talk us through that? Particularly, following on from Ms Haddad's questions on third party engagement and what is picked up in truth in political advertising and so forth, how do you protect a candidate who may not have responsibility for the truth in advertising that could ultimately void the election on their behalf or of their election? It's clearly not something the Greens have countenanced and included in this bill. You've done a lot of thinking in this area, acknowledging your 2022 report.

Mr BROWNE - Again, this is a feature that's taken from the South Australian legislation. One reason it's been quite useful there is that a lot of the case law we have about truth-in-political-advertising laws is thanks to this clause, because almost all truth-in-political advertising complaints, in relation to the actual withdrawal or retraction of the material, have happened kind of consensually, stopping at the electoral commissioner stage. The times when these have gone to court have almost always been because the losing candidate in an election thinks that misleading advertising has affected the course of the election in that seat and takes it to the court of disputed returns to adjudicate. I should emphasise, when we say overturning the result of an election, if it's a lower house election in South Australia, that would be a single seat, not all 47 seats in the lower house.

The strength of this, firstly, is it's a very proportionate remedy that if misleading advertising leads to a different election result, then you remake the election and you address the harm done by the misleading advertising. It also reduces the pressure on truth-in-political advertising laws to resolve problems in the heat of an election campaign, because this remedy exists that can be considered in the weeks and months following an election. You don't need to - if a misleading ad campaign comes out two days before the election day, there is still some way of addressing the harm that's done.

Mr BAYLEY - How does that impact on the declaration of the polls? How could it, or would it? We already have sometimes, and particularly in our Hare-Clark System down here, some significant, I wouldn't say delay in declaring the polls, but need for time to count and distribute the votes and preferences.

How could a court challenge or how in South Australia does it affect the declaration of the polls?

Mr BROWNE - I believe the polls are declared and then this would be a remedy that would come in after the fact if needed. It's also never actually been substantiated, partly because the requirement is - I forget the exact details - but that the complainant show the misleading advertising did or was likely to change the results of an election. And in practice, a single piece of misleading advertising, being firstly, seen by enough people to have changed the outcome in an election and then to have been likely to have changed their voting intention, has been too high a bar for courts so far.

Mr BAYLEY - But courts have compelled the withdrawal and retraction of advertising?

Mr BROWNE - Electoral commissioners have successfully requested it. I don't know of any examples where it's needed to go to the courts. There's one case very early on, before the option for the commissioner to request a withdrawal had been legislated, when it was just financial penalties that were the only option. That one made it to the courts and that's the case

that was tested against the implied freedom of political communication, which is why we're fairly confident.

Mr BAYLEY - The deterrent of it being there and then the power of the commissioner, the action has tended to end there because of the deterrent and the request and the respect of the commissioner.

Mr BROWNE - That's right. Yes.

Mr BEHRAKIS - Thank you, Chair. I've got two on truth in advertising and in the interest of time, I'll try to be quick.

On the issue of what do we define as advertising, I think Ella raised that one, and going back to the conversation we had earlier on expenditure and donation caps, if an incumbent MP or someone who has a profile is able to speak to journalists and give a press conference and say something that hypothetically would be captured by these laws, that non-incumbent new candidate doesn't have the ability to have that access. Does that potentially give incumbents an advantage that non-incumbents don't have because they can say things, can get things into the newspaper or on the news that wouldn't necessarily be captured as advertising?

Mr BROWNE - It's an interesting argument. In practice the added benefit from having the quality of advertising improved and being able to nip misleading advertising campaigns in the bud is of such benefit to candidates across the board that a narrow incumbency advantage in being able to get more out of non-advertising communications wouldn't be enough to kind of outweigh the benefits even for new entrants.

Mr BEHRAKIS - Regarding Ms Johnston's questions about intent on this, everyone in this room can say something that we believe is fact and everyone else in the room might think it's complete rubbish and that could be a genuinely held belief. How do we differentiate between outright lying to saying something you genuinely believe in that might not might not necessarily align with somebody else's truth or potentially might not end up aligning with objective truth, but it's something that you believe in? How do we avoid penalising people for saying what they believe is true?

Mr BROWNE - Yes, it's a good question. The first thing to note is because, for the most part, the remedy is withdrawal and retraction of the misleading advertising. Even if you've made an innocent mistake, it's reasonable having made that mistake, having said something misleading, you then take that out of circulation and make a statement that what you said previously was misleading.

Thinking about South Australia, there are some examples where people have in good faith said something that happened to be misleading, but I think it's proportionate that they have to say afterwards: 'We got that wrong. It was misleading in this way. Here are the accurate details'. That is distinguishable from someone who continues to hold a deep-seated belief that what they're saying is true, even if it is not. It depends on the wording - if it is misleading and inaccurate and whether the element of deception is involved. Deceptive conduct could be a way to ensure that intent is part of the assessment, particularly if you are talking about penalties like a financial penalty. Yes, again noting that opinion is safely protected and there are probably things that are in practice opinion when the alternative is statement purporting to be a statement of fact, even if they're claims that we think should go to a fact checker, for example.

Ms HADDAD - One last question is on the penalties and ramifications when arguably the damage might already have been done. Someone could make a further statement, retract their statement, but depending on the impact of their original statement, the damage could already have been done in influencing an electoral outcome. If I take you back to those full-page ads the Australia Institute ran in Tasmanian papers saying that - 'Salmon companies don't pay tax', they do pay tax. If those ads influenced an electoral outcome and then after the election the Australia Institute ads were assessed through a truth-in-political advertising scheme and found to be deceptive and a statement was made, how would we deal with the fact those incorrect statements may already have influenced an electoral outcome?

What would be an appropriate penalty?

Mr BROWNE - I'm not familiar with those ads so I can't answer to any kind of specifics there, but taking it more generally, the first aspect is that the truth-in-political-advertising laws are resolved fairly quickly. The Electoral Commission of South Australia aims for a turnaround of a few days. It's actually typical that claims are being corrected during an election campaign and it's of interest to journalists, political commentators and so on, when the Electoral Commission makes a decision about something being misleading, that gets broad political coverage. In practice the deterrent does exist there. But the other options, in this case the relevant one, might be that fines can be levied. That's a process that can take place outside the election process.

Ms HADDAD - Thank you. That's instructive and I suppose it would be important that if a regimen is put in place that if it's being dealt with, as you said, during the electoral period, if that's possible - it might not be if the ads were on the day before the election day or as we've seen an increase in early voting, who knows how much of an impact a full-page ad like that would have. It would be disappointing if a retraction was, you know, a small square, one-column inch retraction, whereas the actual mistruth was in a full-page ad. There'd need to be something ensuring that the retraction was proportionate to the original statement, I imagine.

Mr BROWNE - Yes, and the compliance of the subject of a complaint with the request of the Election Commissioner is something that is taken into account if something does go to court - so the full-compliance effects of any decision that the court would make in relation to that - a fuller retraction and withdrawal, full compliance with the Electoral Commissioner's request does play a role in what other penalties are levied, if any are necessary to levy.

Ms HADDAD - Okay, thanks.

CHAIR - I appreciate that we might end -

Mrs PENTLAND - Sorry, can I just ask one quick question? In your submission on page 9 and the table that you've provided, the regulation of third parties in Australia, which state does the Australia Institute favour on this table and why?

Mr BROWNE - Interesting question. I don't know that any jurisdiction in Australia has really cracked these political finance problems yet. A lot of the changes have come in in about the last decade or so across Australia and we see a kind of cross-pollination effect where an idea implemented in one jurisdiction is then picked up elsewhere as well. I think there are probably both positive and negative lessons that you could learn about all of the different

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jurisdictions here and it might be worth drilling down into particulars of how they've resolved questions about accounting for new entrants when imposing donation caps, or how they've done a public funding scheme that's proportionate to the ability of a political party to mobilise members and the public during the entire three- or four-year electoral cycle. Not just how many votes they get at election time or how many MPs they get elected. I don't think there's a gold standard per se, but there are lots of lessons to be learned across Australia.

CHAIR - Thank you, Mrs Pentland. Thank you for your time, Bill. There were a few questions I think you took at the start of your contribution that you might want to have a look back on and see if there's any further information you can provide to the committee. We'd appreciate that. Thank you.

Mr BROWN - Sure thing. Thank you.

The witness withdrew.

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CHAIR - Thank you both for joining us, and for Jan who is online.

What I would ask first is that you acknowledge and confirm that you've received information from the Secretary of the Committee, and you understand the processes around parliamentary privilege and its public broadcast, et cetera.

WITNESSES - Yes.

CHAIR - For those sitting at the table, could you read the declaration, please?

Ms ADRIENNE PICONE, CHIEF EXECUTIVE OFFICER, TASMANIAN COUNCIL OF SOCIAL SERVICE (TASCOSS), **Ms JAN DAVIS**, FORMER CEO OF A TASCOSS MEMBER ORGANISATION (VIA WEBEX VIDEOCONFERENCE) AND **Dr CHARLIE BURTON**, DEPUTY CHIEF EXECUTIVE OFFICER, DIRECTOR POLICY & ADVOCACY, TASCOSS, MADE THE STATUTORY DECLARATION, AND WERE EXAMINED.

CHAIR - All members of the committee are present except one at the moment, but they'll be rejoining us shortly, and we have Mrs Pentland online.

I'll ask at the outset if you'd like to make an opening statement, please.

Ms PICONE - TasCOSS broadly supports the purpose of the bill, which is to create greater transparency around which individuals and organisations are donating money to electoral campaigns, so that Tasmanians are better informed about who has given money to a candidate or party, and by extension, who may be seeking to influence elected representatives and parties. It's also intended to prevent undue influence and corruption in the political process.

To do this, the bill includes provisions for more disclosure of political donations, caps on donations, restrictions on those who can make donations and the timing of donation disclosures. So in principle, we welcome all these provisions because they are intended to increase transparency and level the playing field for all candidates. However, there are three provisions in the bill which we believe could unfairly and unnecessarily impact advocacy work undertaken by charitable organisations in Tasmania, and some of our members we've spoken to us as part of this. We do have some suggestions about how the bill could be amended to prevent this occurring, and we're happy to discuss that with you today.

The first issue relates to the provision for donation disclosure requirements for third parties. There's a risk this provision will have the effect of silencing charities or putting them in breach of the law. Charities receive donations year-round to pursue their charitable purpose, and that can include advocacy on issues that arise during an election campaign, and it's not usually, if ever, tied to a specific purpose or an election campaign. This means their regular advocacy could be captured under the definition of electoral expenditure because they cannot necessarily identify whether a specific donation will be used to fund those activities at the time the donation is received.

This unfairly targets charities, because other third-party campaigners and associated entities can use non-donation income like profits or membership fees to fund their campaigns. A good example would be using donations to fund publication in newspapers of a scorecard, and we heard that in the previous session. We recommend amending the bill to require

disclosure of political donations above the threshold at the time they are used for political expenditure, regardless of when the donation was made.

The second issue relates to donation disclosures and relates to the requirements around the timing of disclosures. 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 - and again, we heard that in the earlier session - for not-for-profits and charities, particularly small ones. So, we acknowledge and welcome the Greens' openness to extending the disclosure period outside of an election campaign, which aligns with the recommendations to consider longer reporting, at least for third parties and the Australian Institute has proposed monthly or quarterly outside of an election period, and weekly during an election. They've also proposed less administratively burdensome reporting, such as aggregating small donations in quarterly reporting.

And finally, 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. The national not-for-profit organisation, Stronger Charities Alliance, also recommended this in their report this year and we quote:

...donation caps applied to third parties would disproportionately impact charities and not-for-profits while having little to no impact on unions and industry groups. Donation caps applied to all third parties would thus discriminate against charities and not-for-profits and restrict their issue-based advocacy during elections.

As the alliance also points out, unlike other third parties, charities are already heavily regulated to ensure they're not engaging in partisan political activity and under section 11 of the *Commonwealth Charities Act*, registered charities must not promote or oppose a political party or candidate for political office. 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 donations. TasCOSS supports an alternative approach, which is to regulate third party involvement in election campaigns by expenditure caps because this would apply equally to all kinds of third parties equally, regardless of their income support.

We're also broadly supportive of suggestions by the Australian Institute regarding other concerns with the bill that don't directly affect charities and not-for-profits.

And joining us today is Jan Davis, who I'm sure is known to many of you. Jan is a consultant, but she also has decade of experience in the not-for-profit and charitable sectors across a range of sectors, both within Tasmania and nationally, and we thought it would be useful for the committee to speak to hear from Jan, who will be able to speak to how the

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provisions in this bill could have adverse impacts on some of the sectors and some of the organisations that she has worked with.

CHAIR - Appreciate that. Ms Davis, do you want to speak now or did you want to take questions?

Ms DAVIS - I'm happy to take questions and I appreciate the opportunity to make a contribution and I welcome this chance and thank both the committee and TasCOSS for inviting me to participate.

CHAIR - Thank you. I note that you were present for the earlier witness, which was the Australian Institute, so you heard the exchange that was taking place there and in particular one that I'm interested in - accepting your argument that disclosure should be done on expenditure, how do you decide who is disclosed? I won't repeat the discussion. You heard what was said. Do you have a view on that?

Dr BURTON - I have to say we have been reconsidering this as some of the minutiae of the issues has come to light. I mean one option is at one extreme, if you like, exempting charities from those donation disclosures and in that, I'm not sure, Vica, if I can, am I allowed to ask Vica a question? Does it work that way? We're really interested -

CHAIR - I'll allow that.

Dr BURTON - Thank you, Chair. If there are examples where charities have possibly misused donations or been a vehicle for lobby groups or other interest groups in their election campaigning or in their advocacy during an election period because you probably know that, as Adrienne mentioned, the ACNC really heavily regulates charities. You can only engage in political activity or issues-based advocacy that aligns with your charitable purpose. If we're thinking about a scenario where a charity, as Jan will speak to you know, engages - the RSPCA may be engaged in some advocacy in the election period, talking about the need for allowing pets in rentals, for example, is a concern that Gina Rinehart might funnel money to the RSPCA and they start advocating for lower tax on fossil fuels. Do you know what I mean? I am not sure that -

Mr BAYLEY - We had this discussion. I think some of this discussion happened in the last hearing, where, frankly, some sort of allegations raised on a third-party charity and their influence on the vote, particularly the Greens vote. I think the bill and perhaps the thinking has not gone into the level of detail that you have on, particularly, charities and the additional regulatory burden and compliance burden required of them through the Australian Charities and Not-for-profits Commission. That was the conversation in that area.

Acknowledging that charities in some ways are perhaps inadvertently getting caught up in this, when the recent evidence in Tasmanian elections obviously is third parties not registered as charities are having a significant influence in political discourse during election period. We accept the concerns that have been raised and taking on board the propositions and looking forward to this discussion and the deliberations of this committee in terms of the finalisation and where we land. There is certainly an acknowledgement that charities, by and large - and certainly the ones in Tasmania - are engaging in an apolitical nature. They are engaged in policy discussions and promoting the policies that they support, not the parties and necessarily their perspective on those policies. There is no charity that is saying vote party. There are plenty that

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are saying vote policy. That is entirely legitimate under the ACNC. We do accept that perhaps we can refine things in that area.

Dr BURTON - Making expenditure disclosures is completely fine. People donating to charities are entitled to know where that charity is spending its money; there is no issue there.

Ms PICONE - I will add that there is the administrative burden. I completely agree. I know that was talked about in the earlier and in previous sessions. However, one of the things we heard from one of our members yesterday was that it also potentially could become a barrier to people wanting to make donations because people are donating to a cause. They do not necessarily want their money to be used for advocacy. It could actually stop people from donating to charities.

CHAIR - I presume that third parties, including charities, are included in this bill and there is a requirement for there to be disclosure about donations used for expenditure. How would you deal with that question that was raised earlier about deciding what information was shared?

Dr BURTON - That is a good question for Jan, because we are talking at length with her about that. From your experience, Jan, of running an organisation that is pretty much entirely - or at least one - donations funded. What are the practicalities of this?

Ms DAVIS - Thank you, Charlie. This is a really challenging thing in terms of administrative burden for an organisation that is charitable. I will use the RSPCA as recent experience as most of the donations that come to RSPCA come unannounced and with no specific ties to what they are going to be used for. They go into consolidated revenue. They might range from the poor boxes that we have on the counters of shops through to a recent donation from kids at Trevallyn public school. There is a mix of sources. They all go into consolidated revenue.

Should an organisation like the RSPCA decide to engage in a political activity - which would be most unusual - and I will come back to that in a second - it would be pretty much impossible to delineate which donations you would include as source for this expenditure when it has all just gone into one bucket over a period of time.

I want to come back to a point the previous speaker and also TasCOSS representatives have made. That is, the really important distinction between advocacy and lobbying. I have worked in the not-for-profit sector for more decades than I'm going to admit to. I have yet to see a charitable organisation or a not-for-profit group undertake what could be defined as a political activity. Advocacy is advocating for a cause. Lobbying is trying to get a benefit for somebody in particular.

Under the Australian Charities and Not-for-profits Commission requirements, every charity is forbidden to undertake a political activity. And more importantly, those charities which have a deductible gift recipient provision - you can give a tax deduction - would be at risk of losing that tax-deductible status if they ever stepped a foot over a line into something that ACNC could be construing as political. There's much, much more regulation and potential for punishment for some group that did something wrong outside capturing a charitable purpose which I understand is a really important piece of legislation, but seems to be catching inadvertently unintended consequences.

Mr BEHRAKIS - On the administrative burden and also the complexity of the administrative burden itself, if a charitable organisation that spends 99 per cent of its time doing outreach or other endeavours and might perhaps during an election, do activities that might be captured under this as far as the public advocacy and the scorecards, and the like, if that charity is funded by donations, is there a possibility that you would then have to report the entirety of the donations you've received for all of your funding? How do you disassociate the money, if you spend less than 1 per cent of your funding on some public advertising during an election, 99-point whatever percent is, for example, supporting homeless people or whatever have you. Is there a risk that because you've just touched your toe in the water of this legislation, you didn't have to report on 100 per cent of your funding?

Dr BURTON - Well, my understanding is that donations disclosures have a threshold so if it's over \$1000 only those donations would be counted.

Ms HADDAD - It's cumulative though. If you had several small donations from one person and they reach \$1000, it's administratively burdensome.

Dr BURTON - I can't remember the name of the witness from the Labor Party who was in the last session talking about the difficulty of cumulative donations. If you're making a donation to our charity or something and you send it from three different addresses or whatever - not from any kind of sinister reasons - but just people's complicated lives, that that would be incredibly difficult. And as Jan said, a charity like the RSPCA that receives donations, however many - several of them a week, over a year - trying to track which ones came during an election period that you then used for a few ads in the newspaper would be next to impossible.

Mr BEHRAKIS - Let me know if this is outside of your scope, the ACNC heavily regulates the behaviour of and conduct of charities. Regarding the potential with the exemptions for charities for bad people acting in bad faith, what exactly are the powers of the ACNC for imposing penalties for misuse? For example, hypothetically, if somebody was able to get over the threshold of getting classified as a charity and during an election they flagrantly breached that - and then if the worst thing is that you get deregistered, it's like, well, it served its purpose? Oh well, we'll just get someone to start up another one in four years' time. Are there punishments that would that exist that would -

Dr BURTON - It's a good question, Simon, and when we were doing some thought experiments on what were the implications of exempting charities or something, we did wonder about setting up a kind of a false or a front charity, but the three of us sitting in this room, being subject to ACNC, it is no small thing, it is a hell. There would be easier ways to do it, and not a charity would be setting up some front organisation to funnel money to a campaign would be way easier and they would be subject to these laws.

Ms DAVIS - To add to that, I cannot imagine it would happen, but if it did, there would be two things that would need to be considered. First, the registration process through ACNC is not an easy one. It is quite complicated and there is a whole lot of dependent steps. But most importantly, anybody setting up an organisation would have two structural choices, one is to be an association, which is incorporated under state regulation, and one is to be a company limited by guarantee, a not-for-profit company.

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If you are an association, then the liability for any wrongdoing rests wholly and solely on the board of management. There is no limited liability, if the group did something wrong and could be shown to be doing something wrong, each one of those board of management members would have their own personal assets on the line.

No sane person would do that. The more likely option is that they would set up a company, limited by guarantee and then not only are you regulated by ACNC, but you are also regulated by the Australian Securities and Investment Commission, which has the provisions for an organisation, either breaching its own constitution or the rules of law, it can send people to jail. There are serious consequences if somebody set out to do that.

If you were going to do it, you would do it as an individual, you would not do it- well, a sensible person would not do it that way.

Mr BAYLEY - On third-party campaigning and so forth, it does not really affect the work you do necessarily, but the sort of disproportionate impact on an issue of a charity. Australian Christian Lobby, or someone, for example, having DGR, having charity status, having significant capacity to engage in influencing an issue in election context and LGBTIQ+ group not registered, not having that capacity, but nonetheless engaging on the issue in the electoral context, do you see any value in kind of levelling the playing field in that regard in terms of caps and expenditure limits and so forth?

Ms PICONE - Meaning that it would apply to the Christian lobby and to the other LGBTIQ+ group?

Mr BAYLEY - That is right, yes, because if you exempt charities, you are exempting the Christian lobby, you are not exempting the non-charitable status group that is the volunteer-based group that is engaging and nonetheless, raising money untaxed-deducted, et cetera. Are there some inequities there?

Dr BURTON - You could certainly have expenditure caps for third parties who are charities or other entities. That would certainly level the playing field. Rather than looking at donation caps and burdensome donation requirements if, during an election period, there are expenditure caps on third-party campaigners that would capture charities, unions, little groups like Equality Tasmania.

Ms HADDAD - Thank you. It is not really a question, but it is just in this whole genre. The problem is there are organisations that set up to funnel money, as you said, Charlie, like in the Love Your Local campaign was a prime example of that and the difficulty is trying to find a way to regulate and expose that kind of spending, while potentially also putting an unreasonable administrative burden on organisations that have a day-to-day role outside of the political process.

As I said in the last session, I am concerned about putting dampeners on the ability for organisations that usually, like RSPCA, go about their day-to-day business. They should be able to, for example, put out a political statement at election campaign calling for animal welfare regulations to be changed or pets in rental laws, and potentially be able to say, 'and here is where the major parties and candidates have made commitments or have not made commitments.' I would not want to see the ability for civil society organisations not to be able to engage in that process.

The question goes to what Rebecca said about the difficulty of knowing which bit of money you might have used when donors are making donations to organisations because they care about the work of that organisation. What are your views on the potential for donation caps to be imposed, recognising that most organisations rely on donations to do their day-to-day work. I know of some organisations that have, for example, put large bequests in people's wills. If they had to refuse that donation because it was over \$3000. Is there a way to cap a donation for a political purpose but not for a general consolidated revenue or for use of that organisation regular day-to-day?

Ms WHITE - And how easy would it be to differentiate between those two? I understand the motivation of people who are actually making those donations?

Dr BURTON - Again, as Adrienne mentioned in her opening statement, the Commonwealth Joint Standing Committee on Electoral Matters recommended in its review of the 2022 federal election to exempt charities from donation caps. That is something we support for that very reason, that there are some charities who rely solely on donations and might have a regular - Jan, you might have an example - you may have a regular donator \$1500, so it tips you over the threshold. Every year, someone might donate \$1500, so over that four-year electoral term, that tips them into a third-party territory.

Ms DAVIS - And it certainly does, Charlie. I'll give you the example, I donate \$100 a month to the RSPCA. That would tip me over that threshold over an electoral period.

I'd like to draw us back a step from that and really focus on what we're defining as political, as opposed to advocacy. I've been doing this for a long time, I've never in my working life and never seen any reputable charity do this either, I've never said, 'Vote for that party or vote for that person'.

We've run score cards that say - 'here are the positions that people are taking', that's not a political statement, that's an act of informing the electorate on positions that parties or individuals are taking in an election campaign. It's a very clear distinction between an advocacy statement and a political statement that needs to underpin this conversation would have clearly picked up those support local people in the last election, because they were saying vote for whoever.

Ms PICONE - It would also be a massive risk for a community organisation to align themselves with one particular party if the party doesn't get into government.

Ms JOHNSTON - If we take the position that what we're trying to achieve through legislation is to have greater transparency on the amount, the extent of influence people has on the campaign and who is exercising their influence we've heard evidence that charities only contribute a very small amount of expenditure in overall political campaign expenditure and that's at a national level.

Do you have some evidence provide the committee on what that might look like in a state level of the organisations you represent? Exactly how much influence are we're talking about here, trying to regulate in a very complicated, perhaps overly administrative burden process in terms of that influence? Trying to balance the disclosure on who is donating with the actual influence that donation has? Do we have evidence on that?

Dr BURTON - We don't. I note that bill from the Australian Institute said that the 1 per cent figure, is a national figure and haven't drilled down into Tasmania.

Just off the top of my head, when I think about our member organisations, for example, who are struggling simply to deliver the services they're funded to do, the idea they've campaign funds is highly unlikely. In some ways, this discussion is theoretical, but it's also very real. Things like donation disclosures could also turn away potential donors if, as we're speaking with Jan earlier that she has to notify people who are considering donating, that your donation may be public, it may deter them. Not because they don't support issues-based advocacy of the organisation they're supporting, it's simply they don't want to be named. That's why they're supporting an organisation to do that on their behalf.

Ms JOHNSTON - Many of the organisations you represent receive government funding and there would be provisions in their government funding deed, which prevent them from engaging in political activities. There's an extra layer of protection above and beyond ACNC control, asset control that there is also a government funding deed with restrictions around acting in a political manner?

Ms PICONE - Yes.

Dr BURTON - Nothing specific in the deed to say you can't support a candidate, the ACNC regulates us in that way. And then there's self-regulation. It's not in our interests to -

Ms JOHNSTON - Bite the hand that feeds you?

Ms PICONE - I mean, TasCOSS is funded to do advocacy, but issues-based advocacy.

CHAIR - I just want to check, are you still able to speak with the committee? I think you had some time restrictions on your availability. We've gone a little bit over time.

Ms PICONE - It's fairly tight.

CHAIR - Okay. With that in mind, is there anything further you want us to be aware of that we haven't discussed already?

Ms PICONE - I'm just wondering if Jan wanted to add anything, because I think her perspective -

Ms DAVIS - Thanks, Adrienne. I'm happy to take any questions the committee might have and to provide any input, but my clear message, as somebody who's been responsible for charitable organisations over a long period of time, is that the underpinning of this is to work out who's supporting candidates and to what level. Charities do not do that, and if they do, they'll get caught up somewhere else. It's really important, in this conversation, to understand and clearly define the definitional differences between advocacy and lobbying so that you don't unnecessarily and inappropriately catch up the really important work of public education that charities do in a policy sense throughout the electoral cycle, not just in an election.

Ms PICONE - And Jan, I think you have some examples of how that happens in the US. Is that right? Maybe that's some information that could be provided to the committee.

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Ms DAVIS - Thank you for prompting me. The US system around charitable and not-for-profit organisations is very clear in that they are legally prevented from lobbying, which is defined as working for a political outcome that benefits an individual or a group of individuals. They have to make commitments publicly to advocate rather than lobby, and that's a very clear and very deepened set of definitions in their legislation. We talk about it here, and it's sort of picked up in the ACNC stuff, but as part of public conversation we tend to use the terms interchangeably, when clearly, they're not.

Mr BAYLEY - Can I just clarify that, Chair? In your minds, do you see political activity as really constrained to 'Vote #1 Somebody', vote or 'Don't vote a certain way'? It's advocacy about a vote, whereas everything else is just advocacy around an issue and that's the line between what's political and what isn't, even if advocating around an issue may benefit a particular party or a particular candidate?

Dr BURTON - That's certainly the ACNC distinction, and as you're talking, I can think of where it might get grey. Overall, if you're advocating on behalf of an issue, for example, 'We support animal welfare, we support laws that protect and promote the rights of non-human animals,' that shouldn't count as political advocacy or engaging in political activity.

Mr BAYLEY - Even when you rank parties and candidates according to their policy based on that issue?

Dr BURTON - Correct. As Jan said, that's informing voters and we see that as part of our role.

Ms DAVIS - To me, Vica, the pointy bit is, 'These are the policies of the people who are standing, or the parties who are standing,' is advocacy. 'You vote for that one,' is political. We've had this conversation about a lot of not-for-profit boards. How do you make that distinction when, perhaps, your directors may benefit from an advocacy position that you're taking? The clear annunciation around that is that they would benefit as part of a much broader cohort, so there's no specific and individual benefit that flows to anybody in particular differentiated from everybody else from an advocacy position.

It's just putting the evidence on the table that anybody could get if they made the effort to go around and collect the pamphlets or go through the websites or do the stuff that we do to put those statements out. Anybody can get that, that's all public information. It's factual, it's on the website, it's in the responses. It's that next step where you move across and say, 'Because of that, vote for them or don't vote for them'.

CHAIR - Thank you, all three of you, for appearing today. I appreciate it. Hopefully you get to your next appointment on time.

The witnesses withdrew.

The Committee suspended from 12.44 p.m. until 1.45 p.m.

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CHAIR - Welcome, Minister, to this hearing.

Mr BARNETT - Thank you very much, Chair.

CHAIR - Thank you for presenting on behalf of the Tasmanian Government. I appreciate your submission. Given that we've got other members joining you at the table, what I would ask first is if they are aware, they may not have been provided the guide by the committee secretary, that this is a public proceeding. It will be recorded, the transcripts will be provided. You're operating under parliamentary privilege, but that protection is not provided to you if you make any statements outside of these hearings. Let me know that you understand that. Are there any further questions you've got about that? Thank you.

Ms KRISTY BOURNE, ACTING SECRETARY AND **Mr BRUCE PATERSON**, DIRECTOR, STRATEGIC POLICY AND LEGISLATION, DEPARTMENT OF JUSTICE, WERE CALLED, MADE THE STATUTORY DECLARATION, AND WERE EXAMINED.

CHAIR - Thank you very much. Before we commence, would you like to make an opening statement?

Mr BARNETT - Yes, thanks very much, Chair. Thank you for the opportunity to speak with you today, and perhaps if I just welcome Kristy Bourne, my acting secretary of the Department of Justice and Bruce Paterson, Senior Policy Director.

With an opening remark, I recognise all members at the table today. The government's *Electoral Disclosure and Funding Act 2023* was passed by the parliament late last year and delivered on our commitment to introduce a fair, more transparent and modern political donation disclosures scheme in Tasmania.

The new scheme will increase transparency while ensuring that the public continues to have confidence in the outcomes of elections into the future. It will provide for the disclosure of political donations, reporting of electoral expenditure and public funding at an appropriate level for both administrative and per-vote funding. Importantly, it also brings Tasmania in line with other jurisdictions which have state-based requirements for disclosure of political donations and expenditure.

A significant amount of work went into those bills, and I recognise the hard work of my Department of Justice in delivering that legislation. We believe the bills that have passed strike the right balance, and our government does not support any further amendments other than our recently tabled amendment to section 196 of the *Electoral Act 2004*, in line with our commitment during the election campaign. I thank the committee for the invitation to appear.

Our government has provided a detailed submission to the inquiry which supports our legislation as it passed in parliament last year. The Greens have tabled the Electoral Disclosure and Funding Amendment Bill 2024, which proposes a range of amendments to the act. These amendments are largely the same as the amendments that the Greens attempted to move to the act in the House of Assembly, which were opposed at that time, and we remain opposed. Thank you, Chair.

CHAIR - We appreciate that, minister. Thank you for those further clarifying remarks. I was interested to ask you about electoral expenditure limits, and in particular, in your

submission, you speak to concerns relating to placing a limit on third-party campaigners but not regulating coordinated campaigning between multiple third-party campaigners, which your submission argues serves only to encourage the creation of multiple third-party campaigners so as to reap the benefits of multiple caps. I'm interested if you would elaborate on this concern for the benefit of the committee. I accept that, in your submission, you've suggested there shouldn't be any electoral expenditure limits, but if this committee decides to recommend that they should be put in place, could you elaborate on why you think there are concerns in placing third-party campaigners?

Mr BARNETT - Yes, thanks very much for the question. Part of that's operational, and I would like to refer that to the Acting Secretary shortly, but at a high level, we do express concern. In the final report of the *Electoral Act* review, it recommended that any limits and caps be considered following the collection of robust data under the new disclosure and funding scheme, and the government doesn't support the imposition of the electoral expenditure limits at this time. We've said that in our submission. We've also said that there is a significant risk under the Greens' amendments that the electoral expenditure could be funnelled through associated entities, and I think many around the table would be aware of those associated entities, so as to circumvent the electoral expenditure limit of a party. Therefore, this would undermine any benefit of the limit entirely and would likely see the proliferation of associated entities created specifically for this purpose.

CHAIR - Perhaps the acting secretary could respond to the question, if that's possible.

Ms BOURNE - Thanks, Attorney, and thanks Chair. There's not too much more to add, other than to reiterate the Attorney's point that the significant body of work that the Electoral Act Review Committee undertook in forming advice to government about reform in this space was very consistent in terms of any decision in relation to caps needed to await the operation of a disclosure system, so that we could potentially see if there was a policy imperative to set an expenditure limit where it would be best to set that within our jurisdiction. Noting that comparisons can be made with other jurisdictions, but really feeling that there was not a sufficient evidence base at this point in time to be able to recommend an expenditure limit.

CHAIR - Thank you. Minister, I am trying to understand this particular paragraph where you have suggested that placing a limit on third-party campaigners is likely to see some kind of perverse outcome. You have just spoken now about the potential risk for associated entities, third-party campaigners, to be a loophole if there are caps on party expenditure through which expenditure could be made in an election campaign, potentially influencing the way people vote. Therefore, wouldn't it make sense if you are going to cap parties that you also cap third-party campaigners? I am interested if you could explain the meaning behind that paragraph contained within your submission that I read out initially.

Mr BARNETT - Yes, thank you very much for the question. I think the acting secretary has fleshed out at least part of that answer. Clearly, getting the data and understanding the feedback based on the new laws which have only just started on the 1st of July this year and will come into full effect from 1 July next year. There's a good amount of time to go before that is then implemented and for the relevant elections to be held.

Understanding that data, getting feedback on it, scrutinising it, monitoring it and assessing it, is very wise. Certainly, caution and a conservative approach in this regard is recommended before pushing ahead with what some might suggest is radical reform, at least

major reform. I have made the point in the submission on behalf of the government that placing a limit on a third-party campaigner but not regulating coordinated 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. There's a risk for the government and for the parliament in going down this track at this time.

CHAIR - The fear would be that there'd be like-minded third-party groups spring up who would spend to the value of the cap that would be permissible under changes like this.

Mr BARNETT - Or potentially so. That's why it is been raised in the submission as a risk and expressing concern and caution. I will just check if the acting secretary might wish to add. Bruce Paterson is very familiar with the operations of these matters. It would be useful for the community perhaps to hear from Bruce.

Mr PATERSON - Just briefly, the concern there is that there's no prohibition on coordinated activity between third party campaigners who might have similar aims and might actually create different bodies for the purposes of colluding, if you will, to essentially breach the expenditure restrictions. Whereas in South Australia, for example, they do have explicit reference in section 130ZC of their act, which prohibits a person entering into an agreement or arrangement with a third party such that the third party incurs political expenditure to avoid this intended limit on third party campaigning.

Mr BAYLEY - I am interested in your commitment to the review process, minister, and note that the overwhelming majority of submissions made to that process supported many of the reforms contained in our bill. What do you say about that in terms of using that review process, which isn't independent and actually had community input, looking for more additional reform as effectively a backstop for holding out on these kinds of reforms? To me, that doesn't make sense, and it doesn't actually suggest that it was a good faith and genuine review the government is taking on board in terms of informing its position.

Mr BARNETT - Thank you for the remarks and contribution. That's a view we don't hold as a government.

Mr BAYLEY - Do you agree that the majority of the submissions support many of the reforms in this bill?

Mr BARNETT - Firstly, I'd like to acknowledge those who've made submissions to this committee and appreciate their input and contribution. As a government, we've made our submission and our position very clear. The point I was making is that we think our approach, which was passed last year, provides a balanced, fair and transparent regime, getting further and better particulars. Once that's been put in place, you'll have a far better understanding of how the system can work.

Secondly, I'd make the point, which I think Bruce Paterson's made clear to you, other jurisdictions have other frameworks in place to manage this proposal and plan you have put forward and they have other ways to do it. We have looked at other jurisdictions and how they manage their political donations and electoral laws, and we've got the balance right in Tasmania.

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I'm more than happy for Bruce Paterson to respond if there's anything further you might wish to add to that answer.

Mr PATERSON - Thank you Attorney-General. Only to emphasise that it's not clear from the operational point of view why it would be proposed to have expenditure limits on members' parties and third-party campaigners and not the associated entities, which is a slightly different to the issue we're discussing. But, just for consistency, and in terms of the electoral commission's operations and scheme's operation for electoral limits, why associated entities are excluded, because associated entities can obviously be quite significant fundraising and spending mechanisms for the parties with whom they are associated.

Mr BAYLEY - And if they were incorporated, would they change if they were brought in under the bill? Would that change your view?

Mr BARNETT - A quick response to that is not necessarily, having lived and worked in the USA and knowing how the political action committees operate over there, it is a very complex regime from the US point of view. It's not the track that we want or wish to go down. They have voluntary voting and it's a totally different system, so I don't want to suggest that's entirely relevant, but I think you can draw lessons from what happens in other jurisdictions and overseas. I think Bruce has made mention of SA, but there may be other examples that Bruce may wish to share with you, but we're happy to answer any other questions about it.

Mr BAYLEY - You're pointing to the need to wait to see how these things play out before considering further review. Why wasn't this proclaimed and in place before the last election - before the most recent election? The bill from last year and the reforms that were recently been made.

Mr BARNETT - There's an easy answer to that. You had the Tasmanian Electoral Commission appearing earlier today. My understanding, and the answer would be that it takes time and effort to establish a regime that was set up within the legislation. As you know, it's become in effect 1 July this year and then fully into effect 1 July next year. But it takes time to prepare for that as a Tasmanian Electoral Commission, so it wasn't physically possible to do. I'll just see if the secretary would like to add to that.

Ms BOURNE - Thank you. Attorney-General. Yes, the Attorney-General's correct, and the commissioner may have talked further to that earlier today. There's been a great deal of work undertaken with the department on the implementation of a new staffing structure to meet both these reforms and some other changes in the operations of electoral systems, particularly potential cyber incidents and other threats upon the democratic process. They undertook a risk-based review with an external consultant to map what they needed to give effect to the new regime and future proof their operations.

Now, that work is progressing very quickly but in a considered way, and that will look at a whole new structure for them. The commissioner feels comfortable with the time that has been provided to enable them to make sure the system and changes are implemented rather effectively and that they have the systems and the people to be able to implement the legislation.

CHAIR - Perhaps, if the government had not delayed it from being debated for so long, it may have been ready for the last election.

Mr BEHRAKIS - The intended goal of any electoral disclosure laws is to increase transparency. Your comment on the PACs is the question I was wanting to ask about. That paragraph where we talk about associated entities and the risk of funnelling expenditure to the benefit of parties through such associated entities and those risks. Do these electoral expenditure limits potentially create circumstances that incentivise the proliferation of the super PAC style of politics that we see in in the United States? Does that potentially go against the whole principle of transparency in that money gets funnelled into these super PACs that have all sorts of different names and you do not know where the actual money is coming from?

Mr BARNETT - Yes, I think he makes some really good points. You have outlined some of the risks and the concerns that are in the community. You have summarised it well. You have referred to the US political action committees, which, as I say, I have been familiar with at least at a high level for some time since working there some decades ago. I have been a very close follower of the US electoral system and US politics. I have had an interest in that for many decades.

However, in Australia, I do not think we want that. Managing that, in terms of providing laws to protect the public interest, to protect the democratic system from a plethora of potentially front groups for a range of political parties or organisations. There are a lot of risks. That is why we have made those points in the submission which you have referred to. We do not want to be in a position in Tasmania where you are effectively encouraging the creation of multiple front groups or organisations, third party campaigners. From wherever they come from, by the way, across the board. That is important to preserve the democratic process. I will just check if there is anything else that my colleagues would like to add to that.

Mr PATERSON - There is one issue that comes to mind from the submissions. When the department and government was finalising the electoral report and the final bill, there was a concern which has been expressed by some other submitters here from charities and the NGO sector that a lot of their general advocacy can be hard to distinguish from electoral activity. Also, they might receive a general donation at one point in time and later on potentially use those funds for something that may or may not come into the dispute about if that is an electoral matter. Operationally, that is just a difficulty that would have to be explored if a change like this were being implemented and the impact on charities and the administrative burden might be higher than anticipated.

Mr BEHRAKIS - When there is a difference between, as we heard, advocacy and then political lobbying or political or partisan sort of involvement, groups that are sufficiently sophisticated can tread the line between those two things in bad faith, potentially.

Mr PATERSON - Definitionally, it is always going to be tricky. The more regulation you impose on the sector, the more disputes and workarounds interested actors will investigate and pursue to the extent that they can.

Mr BEHRAKIS - I have more on other things, but I am happy to share the love.

Ms HADDAD - Thanks, Attorney-General, and to your department for attending as well. My question goes to some evidence that the committee has already heard, which is about the substantive bill, the original government legislation and third-party regulation. There is a fear that there is currently what they've described as a loophole, but it could be described as maybe

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an oversight that could make it easy for third party campaigners to hide political donations from public view. Under the existing legislation, only donations received during the election campaign period need to be disclosed. That means that, in their view, industry lobby groups could receive major donations six months and one day prior to the election, with no requirement to declare the source of those donations either during the electoral period or afterwards. Do you have a comment about that in terms of the existing disclosure requirements that are in the substantive legislation?

Mr BARNETT - You are referring to the legislation that's at foot currently?

Ms HADDAD - Yes. The reason they presented this evidence to the committee is that the bill the committee is considering doesn't close what they've described as a loophole around third party donation disclosure. It doesn't go to the spending caps that you were speaking about earlier, it goes to what will be the expectations around disclosure of donations by third party groups.

Mr BARNETT - I'm not sure that I would concur with those concerns or criticisms but I will see if the acting secretary or Bruce may wish to comment on it.

Ms BOURNE - Yes, thank you Attorney, and I will throw to Bruce as well for a more detailed answer. In a general sense, there was, as Bruce has alluded to, a great deal of feedback and consideration about balancing the perceived burden on independents and small parties. Without wanting to create too much of a burden and making sure the timeframes try to prevent as much as possible opportunity for working around them to subvert the intent of ensuring further transparency in the process. Bruce, was there -

Mr PATERSON - Thank you secretary, I don't have anything else to add.

Ms HADDAD - These disclosure requirements are not the ones that will be imposed on parties, minor parties or independent candidates, it's the existing regime proposed in the substantive legislation around third-party campaigners who will only be required to disclose donations during the electoral period, as is my understanding. I alert you to the fact that while you have what you've described as an opportunity to watch what happens in terms of potential caps in the future for third-party campaigners and others, this also needs to be something in your mind as the bill is implemented, because it is possible that donations will still not be transparently disclosed under the legislation that's passed.

Mr BARNETT - I might pass to the operational experts at the table, but certainly, under our current laws which are being rolled out, my understanding is that the 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 can be compiled and reported to the TEC. In terms of how that operates, you might wish to add to that, Bruce, to assist the committee.

Mr PATERSON - Through you, Attorney, it comes back to that issue which the Secretary has also commented on, balancing the administrative burden and reporting burden, particularly on charities, NGOs, advocacy bodies and the like. If it is described as a concession to that burden, it does benefit these external bodies equally.

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Mr BAYLEY - If I may, Chair, from our perspective, 43(2) does close that loophole, just for the committee's benefit. We can talk about that later when Dr Woodruff appears, but it's our perspective.

Ms JOHNSTON - Thank you, Attorney. In your submission about electoral expenditure limits, you said that your government opposes imposing expenditure limits on the House of Assembly candidates and elections, yet they are in place for Legislative Council elections. I wonder if you could elaborate on why you think it is appropriate for the two Houses of parliament to have different regimes? I recognise that you say a bit further on in that paragraph that you're waiting for evidence to be gathered under the new system of disclosure. Perhaps we can provide some rationale about the difference between the two Houses and why you would oppose an expenditure limit at this point in time for the House Assembly.

Mr BARNETT - Thank you very much for the question. Chair, it's a good question. It's by dint of history and circumstances that we have two regimes that are clearly slightly different in this regard, in terms of the caps, or spending caps, as you refer to it, That's accurate. It's a good question to keep before our minds. There have clearly been questions asked about the spending caps, vis-a-vis the Legislative Council and the merit of those. I know there are arguments that some would say there's a breach of free speech or opportunity to express a view because of those spending caps, which I think is fair to say they've gone up in past elections at an incremental amount, not to a sizeable amount. That's just the current regime, that's the current laws.

The government obviously was looking at laws with respect to the *Electoral Disclosure and Funding Act 2023*, and didn't see fit to change the spending caps in the Legislative Council. There's been some debate and discussion about it. What's too high? What's too low? The views that the government has with respect to the Greens' bill is that we don't support it. And, certainly, a cap that is set too low would inhibit the right to free speech. It would inhibit the opportunity to disseminate ideas and views into the community. Expression of different policies that will roll out, and impede on the appropriate democratic process.

A cap that perhaps is set very high, what is the point of an extremely high cap? I'm not sure that there is a point in it, but it does constrain to some degree, a cap on expenditure. And so yes, to the point that has been made earlier, assessing the feedback on this bill and how it rolls out, scrutinising that, monitoring it and assessing it. I might pause there and just see if the acting Secretary would like to add anything to that, or Bruce.

Ms BOURNE - Thanks, Attorney. 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.

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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 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.

Ms JOHNSTON - I'm interested that there seems to be a body of evidence that can be gathered from the Legislative Council, which has conducted its elections over a long period of time in having electoral expenditure caps, and how that's informed the government's decision to oppose election spending caps for the House of Assembly. If we assume that the reason why you would have election spending caps in the Legislative Council is one of the aims to try to level the playing field, how does that not apply to House of Assembly members? I'm assuming that there's a body of evidence we have about how election cap spending has been implemented and affected elections. The Upper House, I'm assuming, has informed the government's position on the opposition to election spending caps for the Lower House. I'm keen to understand how the government's view has been informed and why, if the rationale for election caps is to try to level the playing field, that's not relevant to the Lower House, if that makes sense?

Mr BARNETT - Again, it's a different regime, as both Kristy and Bruce have outlined. It's entirely different. It's been there for I'm not sure how many years, but a very long time, with incremental increases each year and my understanding only applies from the 1 January through to the election in May, so, it's a different regime, it's a different approach.

To Bruce's earlier point, I don't think the review looked at that as an option, and as a department and as a government, we thought, 'Look, that's a whole other kit and caboodle or a different sort of body of work that would have to be undertaken, and this is complex enough to ensure that we can then protect our democratic traditions and opportunities', and I think we've got the balance right. But of course, it has been considered, electoral caps, and that's why we don't support the Greens amendment. But I might just pause and see if you'd like to add to that, Bruce or Kristy?

Mr PATERSON - To confirm, the electoral review was focused on the House in particular and it is such a different setting, and where anecdotally and one can see that there's much more money involved, so that was the focus of appropriate regulation and transparency.

CHAIR - Mrs Pentland, did you have a question you'd like to ask?

Mrs PENTLAND - With regard to truth in political advertising, given the incident where the Liberals purchased a domain under the Jacqui Lambie Network and then set up a fake website, do you believe that the current laws on truth in advertising are sufficient? Should there be reforms to prevent such deceptive practises from occurring again?

Mr BARNETT - Thanks very much for the question, Mrs Pentland. I appreciate that and understand your motivation for asking that question. These issues are very important and I think the concept or the principle is supported broadly, but there is always potential for unintended consequences that might flow from any particular laws around that. As a principle, clearly, that has some support, but in terms of the Greens' amendment, that's not one that we can support as a government. The matter that you referred to that played out at least to some degree during the election campaign is somewhat outside of the scope of the Greens' bill that's

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before us and the current legislation, but I'll just check if my acting secretary can add to that answer.

Ms BOURNE - Thanks, Attorney. Just to reiterate how complex this issue is, and as the government submission reflects, the issue specifically was outside the scope of the work of the Electoral Act Review, and one that requires 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. 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. A very complex issue, and certainly one that we received a great deal of feedback about during submissions on both of the bills.

CHAIR - Do you have any follow up questions, Mrs Pentland?

Mrs PENTLAND - No, Chair, I don't.

CHAIR - Minister, in your submission you talked about the proposed ban on corporate donations or bans of donations from non-natural persons. In it, you reference the question about the constitutionality of such provision. I was hoping that you might be able to elaborate on that and potentially provide some legal justification for concerns there.

Mr BARNETT - Yes, Chair, thank you very much for that. The submission does reference the final report into the *Electoral Act* review, and it also references recent High Court judgments. Obviously, the officers at the table might be able to assist, but I'll just read the extract and quote from that *Electoral Act* review. It says,

Given the lack of data on the extent of third-party activity, it is difficult to make an informed judgement on whether any bans on donations may be required in Tasmania in future. Recent High Court judgments have indicated that it is possible to ban donations from certain entities or individuals. However, there are complex legal assessments required to ensure the constitutionality of such a ban.

I'll just check if officers at the table would like to add to that answer to assist the chair.

Ms BOURNE - Thanks, Attorney. Bruce, I'm not sure if there's anything you wanted to add, but I think it's important to raise that some of the key High Court decisions, including one relating to a Queensland matter, were handed down during the review committee's consideration. Again, a great deal of discussion about the constitutionality of banning such donations, still very much tested but not explicitly confirmed. As the submission said, it's still very much a live issue.

Mr PATERSON - Yes, it's obviously complex and depends on the parameters of the proposal as to whether the implied freedoms are being restricted in a manner that isn't merited or proportionate to the kind of public interest risk that's being attempted to be remedied. I was listening to an earlier submission this morning that noted that if there is an attempt to ban

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donations from corporate entities that are otherwise engaged in legal activities that might - I think in their words is perhaps more of a philosophical question - but I think that would also be relevant to High Court consideration of what the purpose of this ban is. If the purpose is to prevent corruption, then that may obviously be a permissible purpose. But I don't take it that that's the requirement of the bill. As I recall, it's more of a determination that the certain entities cannot donate for any reason at all.

Mr BAYLEY - Just returning to truth in political advertising, Attorney. Reading your submission and hearing your evidence, you seem to acknowledge that you know the high degree of stakeholder and community concern about this. We heard evidence earlier today around AI, disinformation and misinformation increasing trend in a post-truth world. Mrs Pentland raises a very good point in relation to the really deceptive behaviour of the Liberal Party in relation to registering a website, basically purporting to be from the Jacqui Lambie Network. You acknowledge these concerns are there, but do you acknowledge that you need to do something about it, or can we just assume that you don't want to do anything about it to retain the ability to engage in those kinds of activities again? There's a case for action. You're not acting. The latest election has you in the spotlight for engaging in this kind of behaviour. We can deduce that you want to do it in the future, is that correct?

Mr BARNETT - I assume you're not pointing the finger directly at me, Mr Bayley, but I appreciate that, because when you point one finger this way, you've got three fingers pointing back at yourself, Mr Bayley. I draw that to your attention.

Mr BAYLEY - I don't accept that, minister.

Mr BARNETT - I draw that to your attention as a short response, but -

Mr BAYLEY - We didn't register a website during the election, minister.

Mr BARNETT - Accusations could be made from all political parties against all other political parties with respect to the manner in which they conduct the election campaign, and what they say and do, individuals as well as political parties. I'm not going to go there. Today is a day for working methodically through your bill, which we oppose. We respect your right to put it forward, of course. You've done it before. We don't support that.

The acting secretary has very clearly outlined the position that is a very complex matter, and could easily have unintended consequences putting all that authority and responsibility in the hands of the TEC to manage when that is not their natural best fit. Clearly, they are there for a reason, as an independent entity to manage our democracy and the whole range of elections, whether upper house, lower house, local government and other elections, for which we're very grateful. I don't concur with your remarks.

Mr BAYLEY - Would you agree there's a problem? There's a perception of a problem, and that there is a problem? The question is what is the mechanism to fix it? Your submission says there's concerns about the practical operation and administration. Do you then agree that something needs to be done and it's just a matter of resolving those practical and administrative issues?

Mr BARNETT - I think your reading of the government's submission into *Hansard* is something. I support everything that's in the government's submission. I concur with that -

Ms HADDAD - I don't think he was agreeing with it, Attorney-General.

Mr BARNETT - But I appreciate you doing that, but we have to balance the opportunity to express one's view. And I've been a strong supporter all of my political life, and indeed, all of my life.

Mr BAYLEY - Do you personally support -

CHAIR - Mr Bayley, I'd ask you to stop interjecting please.

Mr BARNETT - I'll just try and finish, Chair. To support free speech. People died for the freedoms we have today in Australia and it's not to be taken for granted. It should be protected and preserved at all costs, wherever possible. But we have to get that balance right to ensure they're free and fair. Now, you underline 'fair', and 'fair' includes the fact that we shouldn't have to put up with false and misleading statements and defamatory remarks. The law does provide for that. We've got to try and get that balance right. I appreciate, and hopefully all of us around this table, want to get the balance right, whatever perspectives put on that. And that's what we're trying to do as a government.

Mr BEHRAKIS - Thank you, minister and thank you Chair. On the truth in political advertising, we did previously hear from the electoral commission and there were some talks about the concerns and risks of potentially politicising and risking politicising the electoral commission. Not so much the resource burden, but the burden of political risk that could occur, and would apply to, if not the electoral commission, any other agency that was tasked with doing that. What are the risks of and potential consequences of politicising such a body during an election?

Mr BARNETT - There's a huge number of risks, and you've outlined some of those very clearly in your opening remarks, Mr Behrakis. I appreciate that, because the TEC is an entity we all support. Certainly, as a government, we do, and hopefully around this table. It 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. Bruce Paterson might wish to add to that answer.

Mr PATERSON - I was going to say the department did consider submissions about truth and advertising when developing its legislation, and as I think the commissioner referred to this morning, one of the issues is these schemes, or particularly the South Australian and the Australian Capital Territory schemes, only restrict statements of fact in advertising. That's a double limitation. It doesn't cover interviews with people who express opinions or statements of opinion in advertising such as is so and so really fit for office? That's not a statement of fact. It doesn't cover campaign events, it has quite a limited coverage, it seems, practically.

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The other limitation is an advertisement, that's why it doesn't cover potentially interviews and campaign events. The department is also, in terms of supporting its statutory bodies and officers would be concerned about maintaining the independence and impartiality and perceived impartiality of those bodies.

CHAIR - In relation to some of the challenges charities have raised with us through evidence, and Mr Paterson indicated he was listening to that evidence earlier today. What is your view on the some of the submissions we received that have asked for them to be exempt from complying with any amendments the department might pass around the requirement to disclose donations which would enable any charity to not have the same reporting obligations as any other third party that might be captured by these amendments?

They've given legitimate reasons for why that might be necessary, particularly in relation to the administrative burden of complying with the disclosure thresholds. What is the government's opinion, if you're able to provide it?

Mr BARNETT - Yes, I thank all those that made submissions, charities and others, to this inquiry and that assists the committee and the parliament in its work. We're talking about the merits under the government's legislation of a level playing field. We're concerned about the risks that flow from providing some laws that apply to one group in the community as opposed to a different group in the community, whether they be charities or another entity.

You would think, seemingly, let's just give a charity a special dispensation in that regard. But I call for extreme caution by this committee in the parliament. It's not something we support as a government going down that-

CHAIR - It's not? The Commonwealth Joint Standing Committee on Electoral Matters reported in 2022 and recommended charities registered under the ACNC be exempt from donation caps.

Mr BARNETT - I will check with my acting secretary in one moment. My understanding is the bill limits the disclosure and reporting requirements to political donations, which are defined as gifts that are made for the benefit of a third-party campaigner in relation to an election. The whole or part of which was used or is intended by the third-party campaigner to be used by the third-party campaigner to enable a third-party campaign to make a political donation to enable a third-party campaigner to incur electoral expenditure in relation to the election. It also should be noted third party campaigners are only regulated during the election campaign period for the House of Assembly.

Now, to see if the acting secretary would like to add to that answer.

CHAIR - Perhaps whilst you're considering that answer, to provide some information or advice about the dominant purpose test that might be applied in the instance like that?

Mr PATERSON - I do agree with the Attorney-General, as you set out, that the test is, is it a political donation. I haven't turned my mind recently to dominant purpose.

Mr BARNETT - In what respect, Chair? Any particular -

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CHAIR - In the instance where you do have a charity, an example has been given earlier today by Ms Haddad of the Cancer Council for instance, its dominant purpose would be for raising money to support causes related to treatment and support of families, but they might also participate in the electoral process by releasing a report card on which political parties have made policy statements that closely align with their objectives as an organisation.

They are engaging in the political discourse, but they would be captured potentially under any regime that required donation disclosure because they are participating in the electoral process. How would they decide which donations to disclose and what would be relevant? The administrative burden applied in that instance would be quite enormous, and that's where the dominant purpose test might be applied - that it could, without creating an exemption that applies across every single charity - you could recognise that some charity is set up for a dominant purpose, not with the interest of necessarily influencing election outcome.

Ms HADDAD - Can I add to that, before the Attorney-General answers, because it might be helpful. Part of what has been called for by that sector is a recognition that many organisations rely on donations and members of the public donate to those organisations because they support the mission and aims of those organisations. The organisation, many of them substantially rely on public donations as part of their core funding. They're described as consolidated revenue. They receive donations, requests in people's wills, regular donations from members of the public fundraising and members of the public donate are not expecting any particular use of those funds other than they want to support the work of that organisation.

If the organisation then, come election time, decides to participate in the electoral process as Ms White's described, it's going to be really difficult for those organisations to work out which donations were used for a potentially electoral purpose. Indeed, going back to Mr Paterson's example, whether anticipating that maybe no donations to organisations might fall into the scope of what is the political donation if the donation has been received to support the Cancer Council or Heart Foundation or whoever. Just put that into your thinking as you approach the question because it is going to be really tricky for charities in particular to comply with the existing legislation.

Mr BARNETT - Yes, I thank you very much for the question, Chair and Ms Haddad, and I am very supportive of the Cancer Council.

Ms HADDAD - Just as an example. But there's hundreds of hundreds of organisations.

Mr BARNETT - Of course there are, but the example you've shared is quite a good one and I can understand where you're coming from, where they're coming from. But again, you always have to be on the lookout for unintended consequences. You have to be on the lookout for charities that perhaps have another, dominant purpose that fits the dominant purpose test to which you refer. These things you have to approach with great caution and I understand Bruce has some further comments he'd like to share with respect to the dominant purpose test in answer to that.

Mr PATERSON - The secretary could start and I could finish.

Mr BARNETT - Yes, please.

Ms BOURNE - Thank you. Again, this is an issue that was the subject of much consideration during consultation on this reform. How we define dominant purpose was also the subject of much discussion. The preference from the consultation and the work of the electoral review committee was to not change too much from the existing Commonwealth *Electoral Act* definition of what is a dominant purpose. The key is, and absolutely acknowledge the concerns about how you maintain that balance, but the intention is to capture donations that seek to, or are rather provided for the dominant purpose of influencing the way electors vote in an election. There is some flexibility for that distinction between general fundraising and political donations to be appropriately considered. Bruce, was there anything you wanted to add to that?

Mr PATERSON - Thank you. Part of the issue is clarified through the definition of political donation itself in Section 12 of the act because it covers gifts made to third-party campaigners in relation to House of Assembly elections, which is the first condition, the whole or part of which was used or as intended by the third-party campaigner to be used to make political donations or to incur electoral expenditure or to reimburse the third-party campaigner. That's part of the containment of what a political donation is.

Ms HADDAD - To refresh my memory, sorry, the third-party campaign includes NGOs, charities and community organisations?

Mr PATERSON - It can do, it's defined in Section 8, the meaning of a third-party campaigner.

Ms HADDAD - To give some comfort to those organisations because they want to comply, but they are also mindful and worried about how they're going to comply with the existing disclosure requirements. By that reading, unless an organisation specifically fundraisers for a political campaign, it sounds, potentially, very few to perhaps even zero donations they received might be disclosable, because they're not overtly receiving donations at the moment for a political purpose. They might engage in the political process later down the track, but they'll do that with money they fundraised over the course of the previous few years.

It feels like unless somebody you know rings up, just to keep using them as an example, Cancer Council or Heart Foundation or any other NGO and says, 'This donation I'm making you, I expect you use it for a political purpose,' or the organisation says they're fundraising for something that might fall into the scope of the act, then perhaps no donations to NGOs and charities will be disclosable under the new regime.

Mr BARNETT - I'll pass to Bruce, but it's clearly a very complex matter. Just using one case study at a hearing like this probably is not going to answer the question. Bruce might be able to answer.

Mr PATERSON - I was going to suggest that, if appropriate, perhaps we could provide a broader statement about that issue.

I was going to say the meaning of the third-party campaigner is limited to someone who incurs more than \$5000 of electoral expenditure. You are only a third-party campaigner at all if you incur above that threshold of electoral expenditure.

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CHAIR - As is currently drafted. That's also what this committee is considering too, is lowering that, which would potentially mean more people fall within the scope of their bill.

It probably would be helpful if it's possible to get some further advice from your department about the operation of the act, as currently drafted, in relation to some of the evidence with this committee has received, if you're able to do that for us.

Mr BARNETT - If you could be specific with the question.

CHAIR - The concerns that have been raised with us by their not-for-profit and charitable organisations who've presented evidence is that it's going to be incredibly administratively difficult for them to comply because they don't necessarily know if somebody's making a donation, whether that money is being used for a purpose, it goes into consolidated revenue. It would be useful to understand how the act is intended to apply to these entities.

It would also be quite helpful for us and thinking about any amendments that then might be considered by the committee.

Mr BARNETT - Thank you, Chair. We will respond in the best way we can to the queries that have been made, albeit it's a query about the act that's in place. No problem, we'll get back to you as soon as possible.

Mr WOOD - Not so much a question, more pointing out the time.

CHAIR - Don't do that, Mr Wood, Ms Haddad has the call.

Ms HADDAD - I wanted to take you to the reduction in disclosure threshold proposal in the bill, that obviously reflects amendments the Labor Party also proposed last year. Many of the public submissions also recommended a \$1,000 disclosure threshold. The basis of the \$5,000 disclosure threshold, the argument made by government at the time is that was a threshold in South Australia and it made sense to adopt the threshold South Australia had, notwithstanding that other states have lower ones.

You would have seen that since their last election, they've made some pretty sweeping changes to their electoral laws and donation regimes in South Australia. Are you minded to consider those changes with a mind to perhaps supporting a reduction in the disclosure threshold to \$1,000, noting that we'll now be the worst of states and territories in terms of where that disclosure threshold is set, currently at \$5,000, bottom of the ladder?

Mr BARNETT - Thank you very much for the questions.

The short answer is no, but I think for good reasons, because we do think we've got the balance right. We've struck that to ensure it's a fair, open process and to allow for people to express their view through those donations. We think that threshold is fair and reasonable. And of course, the different jurisdictions have different thresholds. As you've noted, South Australia was \$5,000 as you said. We think it's fair and reasonable. It does provide for transparency in those electoral donations and we think we've got the balance right.

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Mr BAYLEY - Just quickly, minister, in the conversation previously about the Cancer Council and the dominant purpose test. I think *Hansard* will reflect that you started to, I guess, distinguish between the merits of one dominant purpose versus another. Can you elaborate on that at all? What do you mean by that? You seem to indicate that Cancer Council was fine and meritorious, whereas something else, perhaps not.

Mr BARNETT - No. I think the best way to answer that is taking it on notice and responding to the committee, as I've committed to do so. I've highlighted the merit of the Cancer Council, for which I've been very supportive, including in this place with a morning tea to promote the merits of that organisation. There's other third-party campaigners and other organisations and people have different views of in the community and they're entitled to that. I support that. I support free speech wherever possible, so you have to look at it in that context. We will give you a considered response to your queries to assist the committee as soon as we're able.

CHAIR - Thank you for allowing us to have you at the table for longer than you intended.

Mr BARNETT - Thank you, Chair, and thanks to the committee and all the best with your deliberations.

The witnesses withdrew.

The Committee adjourned at 2.46 p.m.