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**THE HOUSE OF ASSEMBLY GOVERNMENT ADMINISTRATION COMMITTEE B
MET IN COMMITTEE ROOM 1, PARLIAMENT HOUSE, HOBART, ON FRIDAY,
26 JULY 2024**

INQUIRY INTO THE ELECTORAL DISCLOSURE AND FUNDING AMENDMENT BILL 2024

The Committee met at 9.31 a.m.

CHAIR (Ms White) - Welcome. We will commence the meeting. Before you give your evidence, have you received and read the guidelines sent you by the committee secretary?

Mr SPARK - Yes, I have.

CHAIR - Do you need me to reiterate any of those points?

Mr SPARK - No.

Mr NEIL SPARK, PRESIDENT, TASMANIAN CONSTITUTION SOCIETY, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thank you, I am Chair of the committee. We've got Mr Bailey, Ms Haddad, Mr Behrakis, and Ms Johnston. Online we've also got Mr Wood and Mrs Pentland. Would you like to make an opening statement before we commence?

Mr SPARK - Yes, I could make a few short comments. As I said in our brief, the Constitution Society was formed in 2010 with the purpose of restoring the House of Assembly to 35 seats. Now that that has happened, we are concentrating on transparency, accountability and democracy.

I know that I wouldn't have to tell all of you that democracy is being eroded throughout the world. Our eyes are on the United States at the moment, with great concern about what might happen there. In Australia, I'm sure you're aware the Australian Public Service Commission report of 2023 found that 59 per cent of Australians were satisfied with how our democracy works. That 60 per cent might look like a good number, but to me that means that 40 per cent are not happy with how democracy is working, 72 per cent of those surveyed did not know when information in media during election campaigns is misleading or fake, and 44 per cent agree that politicians and government officials deal only with issues that matter to them. I think these are real problems and threats to our system.

The Constitution Society supports the Electoral Disclosure and Funding Amendment Bill's intent, which is fair and transparent public disclosure of donations, timing of disclosures, caps on donations and restrictions on those who can make donations, but we feel that it could go further and we do have a couple of concerns. Instead of going through everything that we supported I will broadly say that we support the bill's intent but we are a little concerned about the anomaly between how the two Houses of Parliament are treated. The Legislative Council candidates, for instance, can't be funded by political parties even if they are endorsed by a political party, whereas in the House of Assembly that is the case. Legislative Council campaigns, as you know, have an expenditure limit but the House of Assembly candidates do not.

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These issues are addressed in the amendments to the principal act which was debated in the Legislative Council last year. The interpretation of that could be that the Legislative Council is being penalised and disadvantaged.

A second concern that the Tasmanian Constitution Society has is about charities in particular. These charities fall under the third-party provisions. Donations are made throughout the year, but they may not include election campaign issues. At the time it's given, a charity can't know that its donation could be used in an election campaign. As polling day gets closer, the charity could decide to spend the money on promoting its message, but that may put them in breach of these third-party provisions. We think that there is a need for a change there.

Also, fear of breaking the law could lead charities to not participating in election campaigns, so therefore not having their voice heard. An onerous administrative burden could discourage charities from participating as well, which once again silences them. A solution to this could be that registered charities and other not-for-profit organisations be exempt from donation caps. This position is supported by the Australian Charities and Not-for-profits Commission (checked), which mentioned it in its report in the 2022 federal election, and the Stronger Charities Alliance also supports that position. That concludes my comments.

CHAIR - Thank you, Mr Spark. Does anyone have any questions at the outset?

I would like to ask you to elaborate a little bit further on the discrepancy you said between the upper House and the lower House. The terms of reference for this committee are quite narrow, relating to the bill that was presented in the lower House. However, there is an opportunity for us to make findings in relation to some of the matters you have raised. Could you elaborate on why you feel concerned about the discrepancies between the two Houses?

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

CHAIR - In your submission you also made the recommendation or suggestion that donations not be received in the final 48 hours before polling day. Is there an example where this happens in any other jurisdiction that you are aware of?

Mr SPARK - No. I am not aware of. I can't cite an example. But our concern about that is that someone could make a donation within that 48 hours that could well change people's vote, or have the potential to do that. And then they would find out about it after the poll, after the event. And some voters may have thought, "well, I would have voted differently if I'd known that".

CHAIR - You also speak in your submission about truth in advertising. Is that something that you have any further thoughts on that you could share with us today?

Mr SPARK - I think that we are all painfully aware of the misinformation and so-called fake news that is part of election campaigns and, really, general public discourse these days. That 72 per cent of people in that survey I mentioned before do not know if election campaign information is misleading or fake is a concern. South Australia has legislation governing this

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that seems to work well and I think that there is a need for that here because it goes to people being informed to the extent that they can make the best decision possible for them when they vote. Obviously, if information is misleading or just plain wrong, people are not being informed and can't make a decision based on all the facts. As we know, facts are distorted to the point that some people might say that we are living in a post-truth world.

CHAIR - For the benefit of the committee, I think it would also be useful if you could let us know how many members of the Tasmanian Constitution Society there are and what your executive arrangements look like.

Mr SPARK - Yeah, sure. We have around 25 members, we have an executive of five, and we meet, on average, the committee meets on average, I guess, every six to eight weeks.

CHAIR - And in relation to developing this submission, what consultation did you undertake?

Mr SPARK - I talked to our members and sought their feedback, told them that we'd been invited to make a submission and asked their views.

Mr BAYLEY - Thank you, Mr Spark, and thanks for the work you do over the years in terms of restoring the House and now transparency and democracy, and to your colleagues, and thanks for your submission.

I'm interested in the charities element you discussed in your opening presentation there in relation to the constraints on charities, and I completely understand that. Could you just unpack that a little bit more? And do you have a proposition there? Are you suggesting that charities shouldn't be captured in a disclosure arrangement such as this? Could you just unpack that a little bit because I understand the concerns, but at the same time we do need to make sure that third parties are properly captured.

Mr SPARK - Yes, absolutely. Ideally, charities would be exempt from this. I also see a potential problem there that someone could set up a charity. I could set up the Neil Spark Concern for Howrah organisation, register as a charity, get fake members, apply for funding, and do the things that charities do when I'm not actually a charity. So, I think that that's something that is a possible downside. But the upside in exempting charities from this - and the charities would have to provide some sort of proof that they are a registered charity - if they were exempt, then the risk of silencing people, and the risk of charities not participating would be diminished, or more than diminished, it wouldn't exist.

Mr BAYLEY - Charities are already kind of defined and registered and reported on the ACNC list and so forth. So, is there really a concern around fraudulent charities being established?

Mr SPARK - There is a possibility of that happening, but admittedly a pretty slim possibility. If charities were exempt, they would have to provide proof that - we would not want a situation where charities could take advantage of the situation. The idea of this is to try to give them a voice, or not deprive them of a voice.

Ms HADDAD - Are you proposing that charities are exempt from the proposed donation caps in this bill or exempt from disclosure requirements in the substantive legislation, or both?

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Mr SPARK - Our preferred position would be both.

Ms HADDAD - For charity and third parties? There is a difference between them.

Mr SPARK - Absolutely. No, yeah, for charities.

Ms HADDAD - Just for charities? Third-party campaigns that might spring up, like you gave the example that you could start up the Neil Sparks for Howrah group, in your mind they should be included in the disclosure requirements in substantive legislation or no?

Mr SPARK - Yes, I think they should and I think that - I know this probably, to my knowledge - hasn't happened in Tasmania, but there's always the possibility of something happening like that, that someone's setting up the equivalent of what's in the US as a super PAC (Political Action Committee), which -

Ms HADDAD - They do happen here. They happened in 2018: Love Your Local campaign.

Mr SPARK - Yeah. I think that organisations like that are not the same as a charity and, therefore, shouldn't be treated as such. Also, those organisations are often set up for the purpose of participating in the election campaign and then when the campaign is over they disappear, whereas the charity continues.

Ms HADDAD - There are other people who've commented on this legislation who talk about the need for a dominant purpose test, so that charities that have day-to-day work that involves all sorts of different things that aren't necessarily intended to influence or impact elections, would be subject to some of the requirements when it comes time for them to be commenting on or making public statements that might influence elections. Has your organisation had a chance to look at those kinds of proposals?

Mr SPARK - Look, not really in detail, no.

Ms JOHNSTON - Further on that particular issue, picking up on what Ms Haddad said in regard to the dominant purpose test, obviously, one of the issues for charities is that they receive donations all the time and that they often do a broad range of tasks. For instance, the Cancer Council does a lot of informing people about risk of cancer and advocacy around that. They may also do a campaign about a particular issue of political purpose around election time. They can't possibly allocate donations to a particular purpose of what they do; they receive donations generally. Do you believe that charities, then, have a role to disclose expenditure on a political campaign, as opposed to disclosing who donated to that?

Mr SPARK - Yes, I think that in the interests of accountability, that should be the case.

Ms JOHNSTON - So that the expenditure they spend on a particular political campaign should be disclosed, rather than actually who's donated to that particular cause?

Mr SPARK - Yes.

CHAIR - I have another question to test your mind with. In the instance where a registered charity - and I believe the Bob Brown Foundation is, looking to you, Vica?

Mr BAYLEY - I would imagine so, yes.

CHAIR - It is a registered charity, so, in your scenario it would be exempt. But it does have the ability to fundraise a significant amount of money and it is most likely to support one political party, the Greens political party, in making donations that impact on an election. Applying your logic, it would be exempt. However, I think many in the community would regard its activity to be the type that should be disclosed. How would you deal with that?

Mr SPARK - I think, Madam Chair, that is an excellent question that does test one's mind. I think that the Bob Brown Foundation, I would agree, is a political lobby group, really, rather than a charity. If we think of a charity like Hobart City Mission, for example, the two are quite different. I think we would have to be careful there in treating that example as a charity as it doesn't sit with other charities. So, I guess the definition of charity would need to be formulated in a way that would make those sorts of differences clear.

Mr BAYLEY - If I may, Chair, just to be very clear, to be a charity, you cannot be partisan political, so the Bob Brown Foundation doesn't campaign for the Greens party. It campaigns on issues where there may be policy alignment but it doesn't necessarily advocate a vote. That is a very important principle within the charity sector and, indeed, the work that ACNC (Australian Charities and Not-for-profits Commission) and others do in registering a charity. We need to recognise that they are obliged to act apolitically and stick to issues, although, of course, issues in an election context have parties that have policies that reflect them. There are sort of checks and balances in that context.

To take another example, the Australian Christian Lobby is a registered charity and could campaign on a particular issue - not advocate a vote necessarily, but strongly advocate on an issue, whereas another lobby group, perhaps on the opposite side of that issue, isn't. Equality Tasmania, I am not sure its status, or just a grassroots group that's lobbying for equality and the rights of all people; what do you say about the sort of inequity that it might bring up in that context there: that to have one party or sort of one side of the debate exempt in this context and another not?

Mr SPARK - Well, we would have to be careful to make sure that we have got a level playing field for everyone. I think what we are talking about here is organisations that exist, for want of a better word, for political reasons; and, by political reasons I mean they have got an agenda that they want to push to change society in a way that they think will make a better society.

I think somehow we need to differentiate those groups from charities who are who are doing work, such as City Mission, Salvation Army, and so on. The work that TasCOSS (Tasmanian Council of Social Service) does is quite different to the sort of organisations you are talking about, but at the same time I do not know that we would want to discriminate against those - for want of the better word - political organisations. But there would need to be a way found to accommodate them in a way that is fair, and that the same rules apply to everyone. That is quite a can of worms.

Mr BAYLEY - It is a can of worms that the process to register as a charity contemplates and scrutinises to an extent.

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Mr SPARK - Yes. That is what I was alluding to when I was talking about how the legislation would need to provide for a way of doing that. But I do not know what the answer to that is or how that could be done.

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

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

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

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

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

Ms HADDAD - It would still be disclosable.

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

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

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

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

CHAIR - I am just mindful we have two committee members online, Simon Wood and Rebekah Pentland, would either of you like to ask a question?

Mrs PENTLAND - Going back to the charity piece and not-for-profits, a lot of the charities and not-for-profits are recipients of many grants administered from the government. If there is nondisclosure with what they are donating, does that not then cause a conflict of interest with further grants and things they may get in the future, if a government is favourable to them because they have donated?

Mr SPARK - Could you repeat that? I am not quite sure what you are getting at here.

Mrs PENTLAND - With charities and not-for-profits, you are saying that that they should not have to disclose, is that correct?

Mr SPARK - Yes.

Mrs PENTLAND - Yes. If these charities and not-for-profits are the recipients of grants in the future through the government, would that not then perhaps create a conflict of interest? If a political party gets in and it becomes the government, it could be a way of administering money that way to a political party, if they are the recipient of grants and things through the government?

Mr SPARK - Then the charity would be in an obligatory position to the government is what you're saying, I guess. If the government provided a grant, then the charity is then obligated to the government. Yes, that's something that would be an issue. I'm not sure of the way of getting around that. I acknowledge that is a possibility. I think whenever money is exchanged, there's an obligation on the receiver to, perhaps not take immediate action, but there is an obligation. I understand your point, but I'm not sure what the solution is.

Mrs PENTLAND - Not just in receiving the grants, but also in competition for grants as well. When these grants are administered, sometimes three or four not-for-profits could be going for the same grant and only one of them will be the recipient of the grant. That could create unfair competition for a grant in the future as well, if they are ones that actually donated and that information is not disclosed, at the front end.

Mr SPARK - Yes, I understand what you're saying. By charities being required to declare that, that would eliminate that potential conflict of interest. Yes, that is something that would have to be looked at; but in principle, what we're trying to say is that charities should not be discouraged from participating in the process. I can see there's a quite a myriad of complexity here that would need to be worked through to try to achieve that.

Ms JOHNSTON - Obviously the point of disclosure laws is, firstly, to know who is donating - the actors in the role - but also how much influence they're seeking to have. There's a difference between a \$10 donation and a \$10,000 donation. When it comes to charities, and one of the members here might be able to correct me, I think it's 1 per cent that charities spend on election spending. Of all the election spending and advertising and campaigning spending in any election, charities only contribute to 1 per cent of that. It is a minute amount.

Do you think there is a possibility that it could be best dealt with by applying a threshold on spending so that a charity, let's say for instance, spends more than \$20,000 on an election campaign, then it suddenly triggers a disclosure? Is that a way of trying to avoid people or charities not participating but also having a balance between knowing who are the major actors in any campaign? Is an expenditure limit, or expenditure threshold, a way of ensuring that there is knowledge about who is donating and who is disclosing and how much they are disclosing?

Mr SPARK - I think that would overcome that problem of transparency; but that raises a question about where would the threshold be, and then that opens the argument about, if a charity's threshold is different to a trade union's or another organisation's threshold, then you could argue that's unfair.

I think the threshold would get around the problem we're talking about; but there could be a problem if you started putting different thresholds on different organisations. You would get a number of different thresholds, which would cause confusion. It would be better to have one threshold that's applicable to all - but your point does get around the problem that we're talking about.

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Mr BAYLEY - I've got a question on the truth in political advertising and laws, and note your support of the sort of clauses as drafted in this bill, but also your preference that this would be a standalone piece of legislation. Can you just explain that to us? Why would a stand-alone legislation be better than adequate provisions in a bill and the original legislation?

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

Mr BAYLEY - It's about elevating the sort of status of the issue and the importance of the issue as opposed to the provisions. Would you see any additional provisions in a stand-alone act that aren't captured in the provisions in this bill, or does it need to go further?

Mr SPARK - I haven't addressed that in detail. There would certainly be potential to go deeper and there would be a need for that, because I'm not sure that this adequately covers - I'm not sure that this would be the remedy to the potential problem which is this extensive misinformation.

Mr BAYLEY - Do you mean a stand-alone act or a stand-alone amendment bill?

Mr SPARK - I guess a stand-alone act.

Mr BAYLEY - If you're seeking to give that issue status then that's what I was hearing.

Mr SPARK - We're taking this seriously. This is important. A stand-alone bill would achieve that.

Ms HADDAD - Can I ask a question on that as well, Chair? Do you have a view, if we did end up with truth in political advertising laws, about who should administer them and who should be charged with the responsibility of making a decision about a complaint made during the election period?

Mr SPARK - Yes. We don't really have a strong view about who it should be but the logical organisation would be the Tasmanian Electoral Commission, but we have concerns about that because as the Electoral Commission says in its submission to this committee that its resources are already stretched. We would oppose the Electoral Commission having carriage of that because reading their submission, it seemed to me that their resources are such that they're struggling to manage the workload that they've got, and this would be another burden placed on them. I'm not sure what other bureaucratic authority should have carriage of it, but I don't think that it should be the Electoral Commission. Whoever does administer it, it would need to be properly resourced because there are other examples of that, is there not, such as Right to Information where it seems that the resources for the role are not sufficient to prosecute the role in an effective way.

Mr BAYLEY - Just to explore that a little further, Chair, that was going to be my question. Do you oppose the Electoral Commission being the body because of some technical or integrity or other reason or it is purely about resourcing? Could it not be addressed by resourcing the Electoral Commission such that it can perform that task and the other tasks that

this would require it to do or do you have a concern around structure and accountability and perhaps conflict of interest or something like that?

Mr SPARK - Yes, we do have some concerns about that structure, accountability, and those sorts of things.

Mr BAYLEY - What are they?

Mr SPARK - If you had an authority that was a designated authority that would administer this truth in advertising, I think that would give it a status of importance.

That would be its role, rather than have somebody else as an add-on, 'by the way, your job is to manage this as well'. I'm certainly not casting any aspersions at the Tasmanian Electoral Commission. We think that it does a tremendous job and we're very lucky to have an independent authority to administer elections. But I think that putting this requirement onto it of administering truth in advertising would apply a burden.

To your point that resources could be increased: yes, they could, but would those resources go to the truth in advertising or would they go to other areas that were in need at the time? If there was a separate authority, which I think probably would be the way to go, if it was funded properly, it would be more likely to work better because that's its sole purpose. Whereas if you gave the Electoral Commission more funding, that money could be used elsewhere to take up the slack that's there at the moment.

Ms JOHNSTON - I wonder if you could offer a view on whether the absence of truth in political advertising laws affects the actual misinformation being circulated and the prevalence of that, or whether it has a greater impact on the perception that the community might have about misinformation being circulated?

In your introduction, you talked about distrust around advertising. Do you think that is greater than the actual reality in terms of misinformation, or do you think that the community's fears about misinformation being circulated are well founded?

Mr SPARK - The answer to both those two questions is yes. I think we don't know the extent of misleading advertising. I think that what's really important is that people trust the information that they're getting. I don't think that people do. I think that since the media landscape has changed - and we all know how that's happened - that it's got worse.

I think that creates a distrust in the community as well. There are plenty of examples of things being wrong, of misleading information being out there. I'm sure people think, 'well, if I can't believe that, what can I believe?'

Ms JOHNSTON - Your view is that if we did have truth in political advertising legislation, that would increase the trust that people have and that its absence at the moment is leading to a general mistrust. So that people would feel more confident if they knew that there was a provision which requires material to be truthful?

Mr SPARK - Yes, I understand what you're getting at. I think if we had this separate authority that would administer this truth-in-advertising legislation, that'd send a signal that this is important, we're taking this seriously. Obviously it would get complaints; those

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complaints would be dealt with and that would be publicised. People would see that something is being done to try to maintain a public discourse that is honest and where truth is valued.

Ms JOHNSTON - It has a deterrent value, if you like.

Mr SPARK - I think so. I think perception is really important, in the same way that we have an independent Electoral Commission that's funded by the government that the government doesn't control. That sends a message to people that elections, democracy, these are things that we take really seriously. That's why we've got these separate institutions, or why government funds, but does not control, the Electoral Commission. I think for truth in advertising, it's a similar thing.

Mr BEHRAKIS - I can definitely imagine there'd be people who are either members or supporters of different parties, or independents, who see something that another candidate or party says and thinks it's a load of hogwash - keep that PG. And that would go across the board. I appreciate the concern around misinformation or disinformation. At the same time though, maybe it comes down to mechanisms and how it is done and who does it, but not having the other outcome of such a body in effect, limiting the ability of free expression during an election, because that is obviously very important as well.

What is the balance between identifying something that is objectively a deliberate mistruth or is something that one person says another person does not agree with? And then an independent commissioner or officer is still a human being who has their own views as well. How complex would it be and how robust would the mechanisms need to be to ensure that we are not policing speech because one person does not necessarily like the way it was said because they do not think that is correct, versus something that is objectively untrue or deliberately untrue. How do we parse that?

Mr SPARK - I think that is a good question too. It is fairly easy to differentiate between opinion and not agreeing with an opinion. An opinion might be truthful, it might be quite correct. Trying to ascertain what is untrue would require quite a robust process to do that. To use the American example, the former president says that he won the 2020 election. That it clearly not true, as courts have found and so forth. I think that determining truth - I am not a philosopher or an academic qualified to talk about that - but I am sure there would be mechanisms that you could put in place to do that. No system is perfect, but that does not mean that we should not have a system.

CHAIR - We probably are happy to finish there if there is nothing further you want to add, Mr Spark.

Mr SPARK - No, there is nothing further I would like to add, Chair, except thank you very much for having me. Thank you all for your insightful questions.

CHAIR - Thank you.

THE WITNESS WITHDREW.

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CHAIR - Dr Bonham, would you like to come to the table. I do not think this would be the first time you have sat before a parliamentary inquiry.

Dr BONHAM - No.

CHAIR - You are familiar with procedure around the guide that was sent to you by the committee, is there anything that I need to reiterate there for you or do you understand that?

Dr BONHAM - No.

CHAIR - Thank you.

Dr KEVIN BONHAM WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thank you for coming today, I am chairing the committee. We have Mr Bayley, Ms Haddad, Mr Behrakis, and Ms Johnston with us in the room, and we also have Mr Wood and Mrs Pentland online. Before we commence today, is there an opening statement that you would like to share with the committee at all?

Dr BONHAM - There is not much I wanted to add to my submission, although I do want to mention a few things. One is the focus on the last 48 hours before polling day in terms of when people are declaring donations and things like that. We need to remember that polling day these days is a venture that lasts for weeks; it is not one day, people are voting by post and by pre-poll over a longer period. That should be considered when people are talking about the lead up to polling day. A lot of people these days are not voting on polling day.

I basically tried to keep my submission quite narrow, mindful that there is also another committee process that has been started, which is very welcome. I will be putting in a submission on things like savings provisions that I saw mentioned in the Labor Party submission and some of the other things that I've seen mentioned in other people's submissions that are not relevant to this specific proposed amendment. I'll be dealing with those later. I've kept this address to the specific proposals of this amendment bill.

CHAIR - I appreciate that and it's a fair point to make that the focus on the last few hours of a campaign when pre-polling can open, well, we've had experience up to three weeks prior to polling day.

We might start where we finished off with our last witness, and that's truth in political advertising, noting that you did provide a fair bit of information about that in your submission. Could you share your thoughts on that particular amendment, for the committee's benefit?

Dr BONHAM - Yes, I'm very cautious about truth in political advertising legislation in general. I'm particularly cautious about it in cases where electoral commissions are required to police it, because that is a risk to their perceptions of neutrality. I believe electoral commissions are struggling enough with having to deal with people weaponising claims of bias against them as it is. I'm even more concerned about it in the context of Tasmania - Tasmania being a small place, the Electoral Commission is apparently being stretched in exercising some of its duties as is. We're talking about a thing called truth in political advertising and we have a dispute for the previous election about whether the Electoral Commission could correctly determine what

was an advertisement or not. We have a big problem here. I'm not just cautious; to be accurate, I'm completely opposed to electoral commissions administering truth in electoral advertising. When it comes to Tasmania, I'm not sure that I would have a lot of trust in any other institution to do it, either. It's difficult in terms of the levels of expertise, the levels of neutrality; it's difficult in a small place like this.

In my submission, I also called for the debate to be more empirical in terms of focusing on actual examples of things that will breach such laws that have been said in Tasmanian elections. We don't want to hear about what Donald Trump had to say. I want to hear about what is actually being said in Tasmanian elections. In my submission, I identified a few that I thought would be in breach, but I could only think of three off the top of my head. Maybe other people could identify others. It would be interesting to discuss how often these laws would have been breached; what people think would breach these laws; and whether it actually would breach these laws - because people tend to have a more expansive view of what truth in election advertising will cover and it tends to be quite restrictive.

You have to restrict it to statements of fact. A lot of the negative campaigning that goes on in elections and all the scare campaigning is unwarranted, based on what people have actually said. But it's still speculation that people will do a certain thing, even if they haven't said it. That doesn't really have a truth value. It's like, 'oh, I think they're going to do this'. It might not be honest, but it's hard to say that a statement about what a party will do after the election, is a true or false statement.

CHAIR - Have you had any experience observing the South Australian laws?

Dr BONHAM - Not closely. I've occasionally had a look at examples of what's been found to be in breach in South Australia. But I haven't gone through and evaluated every instance of where something has been found to be in breach. I've seen competing comments from different South Australian Electoral commissioners down the years - some saying we should get rid of it, some saying we think it works okay. I think the electoral commissioner's submission is worthwhile reading about that.

CHAIR - Do any other members have any questions for Dr Bonham while I'm on this topic?

Mr BEHRAKIS - Yes, I do. Thank you.

You touched on the question that I asked from the previous witness. Your first paragraph about truth in electoral advertising, about the risk or the danger of valid opinions being suppressed because of errors in the interpretation of such laws, and that the damage done by suppressing valid opinions is much riskier than the damage done by people saying incorrect things that can then be judged and fact-checked in the public sphere. Can you elaborate more on that?

Dr BONHAM - This is a philosophical view I hold. If a truth in electoral advertising law gets misapplied and someone is stopped from saying something that is actually true, or at least a valid opinion, that's done a lot of damage to democracy. That's an opinion that they should have been allowed to express that the voters didn't get to see. And in my view, that's basically wrecked the election, if people are not allowed to say things that they should be allowed to say.

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On the other hand, if people are allowed to say things that are false - it's not good that people are saying things that are false, but they can be held to account to it. Voters who care about people saying things that are false can judge those people who are saying things that are false and can encourage other people to not vote for them. You can have a debate about it.

It's important to get the balance right. The balance needs to be very much in favour of you're not stopping people saying things that might be true or valid by mistake.

Mr BEHRAKIS - I suppose the follow up to that is the risk of getting the mechanisms for such a provision wrong would outweigh allowing some potential misinformation to get out when it can already be publicly judged and vetted, and people can be ridiculed for saying incorrect things.

Dr BONHAM - That's my view. It is hard because false claims spread extremely fast these days. They tend to bounce around in echo chambers on social media. Someone makes one of these false claims and it's off and running, and large numbers of people can see it before anybody sees any correction.

Social media possibly has a role to play here. Social media companies need to be encouraged, perhaps firmly encouraged, to find ways of making sure that people see corrections to incorrect material.

Mr BAYLEY - You said you haven't looked closely at South Australia and haven't tracked it closely, but are you aware of instances where true statements have been suppressed under this kind of legislation?

Dr BONHAM - No; just the potential risk - particularly of the kinds of things that we see from media fact checkers. In my view, media fact checkers often check facts incorrectly.

If you had someone applying standards like those of a media fact checker to electoral legislation it would be a disaster, because lots of things will be being judged false that are not. I have concerns that you might have problems if you have not very competent judiciary involved in policing truth and electoral advertising laws.

Ms JOHNSTON - I want to understand your views around perception for truth in political advertising. You mentioned beforehand the Trump comments and that they're not particularly relevant. That is true for our state, but they do have an impact on perception of political discourse and the trustworthiness of politicians and political discourse generally.

Do you consider that lack of truth in advertising laws is adding to a distrust - whether that's warranted in terms of the results of political discourse? Is it adding to a distrust and a lack of engagement in elections in terms of voter turnout and things like that? Is there a link there, or is that making a huge jump in terms of trust in the political process?

Dr BONHAM - We still have quite high turnout. We have some issues with turnout, but I doubt those issues with turnout are much to do with that. There may be some percentage of political alienation to a degree, but they are mostly driven by other things like how we are increasingly enrolling voters who are less likely to turnout in the first place through things like direct enrolment, and that's one of the major causes of declining turnout.

We talk about declining turnout in terms of the percentage turnout of people who are on the roll, particularly with regard to federal elections. But in fact, the percentage of potential voters who are turning out isn't necessarily declining. It did at the last federal election; the last federal election had special issues with COVID and things like that. But I don't necessarily think it affects turnout.

Does the perception that politicians sort of lie all the time and get away with it interfere with trust in the electoral processes? It possibly does; but if you have a truth-in-electoral advertising legislation, you're going to have sort of cases where people think things should be covered by it, and then it is like, 'oh, the Electoral Commission didn't do anything'. You are going to have a similar situation there, where people think that the scare campaigns are not getting regulated.

Ms JOHNSTON - The distrust moves from the political people to an institution that is administering?

Dr BONHAM - Yes. In regard to the last state election, a lot of the material that was contentious was not claims of fact; it was hype about hung parliaments. It was someone saying, 'we will form a coalition of chaos' -that kind of stuff. A lot of people were up in arms about that, but it's not like a false claim. It's a scare campaign.

CHAIR - Are there any questions from our committee members online? If there is nothing further on this matter, we can talk about other matters that you raised in your submission, Dr Bonham.

You mentioned your support for reducing the disclosure limit to \$1000 and I'd be keen to get your views on the timing disclosure. Obviously, there's particular time frames nominated in this bill. In the debate that started in the Chamber, there was discussion of changing those. Do you have a view on what those time frames should be for Tasmania?

Dr BONHAM - Not specifically. It's not something that I've thought about a lot. There are some sensitive points about it being possible to comply for smaller parties and independents with limited resources, particularly outside the campaign season. I'm happy for that debate to go where it will, but I don't think we should have situations where you have many people donating a lot in the lead-up in the election and you're not finding out who gave the money until long after. That is the kind of thing that I believe we should get away from.

CHAIR - There's a section of your submission as well on donation and spending caps, saying that you are cautious about capping donations and electoral spending. Could you elaborate on that for the committee, please?

Dr BONHAM - Yes. What did I say about this?

CHAIR - There is the general cap that is proposed in the bill of \$3000 per term despite the fact we haven't got fixed terms.

Dr BONHAM - Yes, I did make some comments about where exactly that \$3000 was derived and how I couldn't see intuitively why it was \$3000 rather than \$4000; but I'm also not sure why it needs to be that low anyway. I'm more concerned about voters having information

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about who is donating. I'm more concerned that voters know more about where money is coming from and they can then judge for themselves - that is my general view.

CHAIR - In that part of your submission as well, you go on to make similar remarks in relation to the spending cap at \$83,000 per candidate and \$830,000 per registered party. Would it be fair to conclude that in your view, again, you would prioritise seeing who the money was coming from in a timelier way, rather than capping expenditure?

Dr BONHAM - I'm not necessarily opposed to capping expenditure when the expenditure is at a level that is obviously ridiculous. If some anonymous rich businessman from interstate wants to spend \$20 million on a Tasmanian election, then maybe that's a bit much. But the proposal to cap where you have \$83,000 per candidate but \$830,000 per registered party, I think that's extremely problematic.

A party can be anything from a major party running candidates in every electorate and winning multiple seats, to a very small operation that may be running just for the point of attacking another party or whatever. It may not be running a significant number of candidates. We had a case in the previous election where one party ran one candidate who did not campaign at all. They're probably not going to be spending any money in such a case. But it just seems inequitable to me that you would say: all parties are the same but a candidate cap is completely different to the party cap. If you're going to have such caps at all, that seems to me to be something that needs to be thought about a lot more.

CHAIR - I want to ask your opinion about how you might have a more equitable system because it's a fair concern. It's something that we have raised as a concern too, regarding the - I probably shouldn't have an opinion as the Chair, actually. It has been raised in debate that perhaps there should be consideration to the number of candidates a party nominates as to what the cap looks like. In the most recent election, for instance, Jacqui Lambie Network chose to run three candidates in some electorates and none in one. But under this model, they would receive, they would be able to spend the same amount of money as any other registered party despite the fact they are not supporting as many candidates. Do you have a view, if there was a decision to proceed with cap spending, how you might have a more equitable model? Would it be based on how many nominated candidates each party has?

Dr BONHAM - Even this is - I can see some problems even with making it per candidate because, supposing that you are an independent and your cap is such-and-such amount for you. But if you were to run as a party, with a number of support candidates, you could get a much higher cap. You run as a party, you spend all the money on yourself and all these extra candidates are just there as paper candidates; and what they are doing is basically driving up your spending cap. I do not think that capping per candidate is the way to work.

There might be some sort of cap that said, 'No party may spend more than total' - insert ridiculous amount of money here - that would be okay. But anything beyond that needs to be thought about very carefully in terms of these unanticipated effects.

I am particularly cautious about anything that encourages people to run paper candidates. I personally can't stand ballot clutter. I can't stand it when parties run unnecessary candidates to weaponise some aspect of the system in their favour. I am strongly in favour of trying to drive towards having candidates on ballot papers who are serious, trying to be competitive, putting information about themselves out to the voters.

Ms HADDAD - My question is probably in the same area as the Chair's question just now. The model that the ACT uses is what we based the Labor Party amendments on in the lower House last year when we debated the substantive legislation.

That is a formula where, I will try to explain it succinctly, but basically they use a dollar figure, \$40,000, for an artificial candidate cap. They have a 25-seat chamber. If a party fields a full ticket of 25 candidates, they would be able to spend the full cap, \$40,000 times 25. If - and the Jacqui Lambie Network example is a good example - a party chose to run three candidates in an electorate, they would have \$40,000 times three. They would not have extra. They would not have the full party cap to spend if they're not endorsing a full ticket of candidates, if that makes sense.

Equally, if a party chose to endorse surplus candidates, so seven candidates for a five-member seat, they wouldn't get extra lots of that cap. How that works in practice in the ACT is that that formula is used to define a party cap of \$1 million. But the candidate cap for those party endorsed candidates is self-imposed by the parties who run tickets. They can impose kind of an internal cap on how much their individual candidates can spend, which alleviates the concerns around independent candidates having a lower cap than a party-endorsed candidate, because the party cap actually encompasses the party spending that is not specific to a candidate's name, if that makes sense.

I don't know if that makes sense, my trying to succinctly explain how that ACT model works and whether or not you have got any views on how it operates there or any views on how it might operate here, in terms of trying to provide an equitable methodology to cap the extraordinary spending that does happen on election campaigns and try to level the playing field, because we know there isn't a level playing field in Tasmania? And whether you think that might work here or whether there might be some glaring differences in our electoral system that would make it unsuitable?

Dr BONHAM - So the spending cap is per - I haven't looked at the ACT model closely - the spending cap is the same per party however many candidates are running?

Ms HADDAD - No. It's \$40,000 times how many candidates are endorsed -

Dr BONHAM - Times however many candidates they run?

Ms HADDAD - That's right. And an independent candidate has that \$40,000 cap.

Dr BONHAM - Yeah, that, I think, is potentially prone to what I mentioned before, which is that - I mean, I am not aware of a case of it happening in the ACT. You tend to see in the ACT that parties tend to run relatively modest lists of candidates. One of the reasons for that is that the ACT has savings provisions that Tasmania doesn't have, so there is not the same incentive to run full slates that there is here, in terms of controlling formality. In Tasmania, you need to vote 1 to 7 at this election. If you run seven candidates, then a voter can number 1 to 7 for your party and then stop, but if you run fewer than that, then they can't. The ACT doesn't have that problem. In the ACT, they are told to vote 1 to 5, but if a party only runs two candidates and somebody votes 1, 2 and then stops, their vote still counts. So, there is not the same incentive to run lots of filler candidates.

Ms HADDAD - True.

Dr BONHAM - That is one difference between Tasmania and the ACT. But, still, I think the whole area of spending caps is tricky. I am more concerned with voters being able to know information rather than necessarily a lot of control being placed over what parties do. I am more concerned with voters knowing about it.

Mr BEHRAKIS - Just speaking to the general principle of spending caps, I've always had the concern - this goes back to when I was a very early candidate and running in council and other elections as well in different capacities - is that, especially onerous, but spending limits potentially have the risk of having an undemocratic effect in that it gives a - and I would be interested in your views - do they risk giving an unfair advantage to incumbency, in that you might be running against a candidate that is well-known purely for the fact that they have been there for a while? You might have a very good policy platform, but if you can't actually get those views out there, the person who is well-known is going to benefit from the fact that people just know that name. Does that potentially do more damage than the intent of potentially removing the effect of money in politics, if good candidates aren't allowed to compete with people that just have the benefit of being a well-known name that has been around for 10 years or however long?

Dr BONHAM - Yes, I am somewhat sensitive to that because name recognition is a very big thing in Hare-Clark. In most elections, you don't see a lot of incumbents lose to within-party contests. The sort of within-party battle aspect of that is important too. There are exceptions. There was the 1986 election, which was a massive within-party bloodbath where a whole heap of incumbents lost their seats, but the balance of the parliament did not change at all. But, generally, there is not that much turnover so, yeah, that's something to be kept in mind as well.

Mr BEHRAKIS - Not even within parties, you know. I am a party MP, but for minor parties or for independents that want to enter into that space, is it harder for people that don't have a name profile if they are limited in what they are able to spend to compete with, not just parties that may have the ability to spend, but if there is a limitation on that, how does somebody get into that space and contend with someone that may either be well-known because they have a public profile, like you said with Hare-Clark, or they happen to have a green or blue or red or orange sticker next to their name? How does somebody get into that space and compete on anything that approaches a fair playing field if they are not allowed to spend money on material to put in people's letterboxes or what have you?

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

CHAIR - Beyond the example you gave of \$20 million, what would be a ridiculous spending amount, do you think?

Dr BONHAM - I'm not sure exactly, but I'm just giving that as an example of a level that's obviously ridiculous. Where the boundary is, it's probably somewhere below that, but I'm not sure exactly where I'd draw the line.

Ms HADDAD - Former attorney-general, Ms Archer, said at the time we were debating the substantive bills, that because there's no disclosure regime in place, or there wasn't, it's

impossible really to know what people are spending, we're guessing what people are spending. Her view on our amendments when they were rejected in the lower House last time was that we needed to wait and have a few years, or maybe a few cycles of disclosures being made, so that we can see actually how much people are spending and then perhaps look at caps down the track. Is that something that would make sense to you?

Dr BONHAM - Yes. I think, also, you get a vague idea of which campaigns are ridiculously expensive. Voters can see that when there's massive billboards up for a candidate all over an electorate. They can tell that that candidate's spending a heap of money. But beyond that, it's hard to say exactly.

Mr BAYLEY - Just to explore that a little bit more, I'm a little bit confused because on one hand, vague notions, I guess, led to - the purpose of this legislation is trying to get clarity on what is being spent and by whom, and at what point and so forth. Am I hearing you basically support some level of cap and, obviously, disclosure? I'm hearing that strongly. But caps, it's just a matter where that threshold is? And what would that be if that's the case?

Dr BONHAM - I haven't thought so much about where I'd put a donation cap if I did put one. But possibly quite a lot higher than is suggested. In terms of spending caps, I'd certainly put it only up at the stratospherically high level because I generally think that the voters should decide.

Mr BAYLEY - I'm sorry, but isn't that the point?

Dr BONHAM - The voters should have the information to decide. But having the information to decide and saying a party cannot spend this money are two different things.

Mr BAYLEY - Right. We heard from Mr Spark: the constitutional society and, I think, TasCOSS and the Australian Institute flag third-party exemptions for caps. Putting aside the conversation we had around caps and disclosure just now, what's your view on that in terms of third-party exemptions depending on some criteria?

Dr BONHAM - Well, if you make the caps really high or don't have them at all then the issue doesn't arise because there's no reason to allow a third party to spend a ridiculous amount either. But if you have the low cap, then you start talking about third-party exemptions and you get into all these debates about what is a legitimate charity and so on that were going on. I was listening to some of the previous speaker on the way down here.

Ms JOHNSTON - I wonder if you have a view around the disparity between, obviously, spending caps for the Legislative Council and the spending caps for the House of Assembly, the proposed ones. Is there a view around whether spending caps on the Legislative Council are effective? I do recognise we're a multi-member electorate in the lower House as opposed to a single-member electorate in the upper House, but do you have a view around the appropriateness of those and whether the bill should remove those expenditure limits?

Dr BONHAM - I think the Legislative Council expenditure limits are probably too low. It is hard to unseat incumbents in the Legislative Council. They do sometimes lose, but it's not easy. The Legislative Council has a lot of elections that are uncompetitive. So, I think that is something worth looking at.

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The whole question of the Legislative Council crossover with the House of Assembly, as well, is interesting because you have cases where the elections are on at similar times. At the last two elections we had them actually on the same day. You have these supposed spending caps for Legislative Council candidates who, at the same time, are able to benefit from massive state election spending that's going on in the name of their party at the same time. That's all very messy.

Ms JOHNSTON - Do you have a view how that might interact in terms of any future provisions?

Dr BONHAM - Not exactly, no. But I do think it's an issue that needs review: the relationship between the Legislative Council and the state elections for this, particularly in view of generic party spending.

Ms JOHNSTON - So, that's an issue more about timing rather than expenditure. Is that what you are suggesting?

Dr BONHAM - Yes, it can be. It becomes a more serious problem when the elections are held in proximity, as with the last two cases.

CHAIR - That is probably a matter for the other committee that you mentioned earlier to consider.

Dr BONHAM - Yes, it is more complex than can be dealt with just this legislation.

CHAIR - Any questions from online? Okay, thank you, Mr Bayley.

Mr BAYLEY - The Labor Party argues that political expenditure should be constrained to advertising. Do you have a view about that, and how and where you draw the line on what is exactly political expenditure?

Dr BONHAM - Political expenditure should be constrained to advertising, as opposed to?

Mr BAYLEY - As opposed to the other sorts of costs associated with campaigning in an election context, which is everything from travel and volunteer expenses, room and venue hire, and that sort of thing. But so, is it just constrained to advertising?

Dr BONHAM - I haven't thought about this.

CHAIR - Any further questions? Do you have any further remarks that you would like to make before we finish?

Dr BONHAM - I did mention in my submission that, with truth in electoral advertising, there is a problem that seems to be specific to Tasmania in terms of trying to understand what an advertisement actually is. I am going to go into that further in my submission to the other committee.

CHAIR - But that is a fair point to consider if we are trying to regulate something, to clear up what it is we are regulating.

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Dr BONHAM - Yes. It is becoming increasingly unclear in the social media age what is an advertisement anymore. I haven't noticed this being an issue in other states, but it seems to be a recurring issue here, particularly with the existing legislation on naming candidates without their consent. If you are going to have truth in electoral advertising, this is something we need to be clear on: do we know what an advertisement is, and does the Electoral Commission know what an advertisement is? I think it probably made a mistake with its ruling about the Juice Media ad. Why did that happen? So, that is something that I think does need to be looked into.

CHAIR - There is a standalone bill presenting in relation to some of those matters.

Ms HADDAD - I know it is outside the terms of reference. We have terms of reference that are quite narrow to deal with this bill. But I wondered if you had any comments you would like to make about the substantive legislation that was debated last year and the concerns that you raised with it at the time?

Dr BONHAM - I raised serious concerns last year about the proposal for public funding to be paid in relation to the number of votes recorded by candidates rather than the number of votes recorded by parties, where the ACT and the Senate and other jurisdictions have a per-party method. A per-candidate method created a lot of problems because candidates within a party might not get 4 per cent but the party as a whole might get way more than that, and that inhibited party competition and could have all kinds of perverse impacts. That was resolved. I am pleased that that was resolved. That one was a model of how not to do consultation, in my view. It is very pleasing to see this one where something has been put out for consultation.

Mr BEHRAKIS - Going back to what constitutes electoral advertising and what doesn't: in my previous capacity on a planning authority in council, there were some very specific classifications for what do, in the council context and the planning context - the posters and whatnot, have to include campaigning or encouraging a vote for a particular candidate; it has to be regarding an election. But advertising that is in regard to an issue, like the stadium or the cable car, does not constitute electoral advertising. Can that potentially be gamed during an election if there are truth in advertising rules or expenditure rules, if it is not classified within whatever the narrow rules are of electoral advertising if it doesn't necessarily promote a vote for a particular party or particular candidate, but it's an issue-based thing, you could potentially get around it, like game some of that and get around some of that.

Dr BONHAM - This is the question: not so much what an advertisement is, but what is an electoral advertisement. I've dealt with that in the main legislation by setting up a dominant purpose test, if I remember rightly. Its main purpose is to influence the voter behaviour. We'll have to see if that's got the balance right or if it needs to be more strict for that and include anything that has a significant purpose. I can't remember exactly what's in the legislation about that, but I do remember that there was something created in the main legislation to deal with that.

Ms JOHNSTON - I have a question regarding donation caps. It goes back again to the substantive bill in relation to public funding. In the arguments for public funding, it tries to provide a level playing field for people to participate where they might not have the funds up front to participate.

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Do you have a view about the relationship between donation caps and public funding? If we were not to have donation caps, for instance, you could have very large donations coming in from individual organisations and also receive public funding. Does that skew the balance or the level playing field we are perhaps trying to achieve? Do you think there's a level where donation caps are important to ensure that there's still a moderate level playing field for all participants?

Dr BONHAM - The public funding improves the chance that anyone who's getting a significant vote can be competitive, so that helps. I can see the case that once you have public funding, you then have a stronger case for capping donations because they don't need it. They've already got their expenses covered to a degree so it produces the extent to which you might say that there's an argument for letting somebody donate a lot, but it's not something I've looked into closely.

CHAIR - Do you have any final thoughts that you'd like to share with me before we finalise the conversation?

Dr BONHAM - No, thank you for the invitation. It's good to see something where you have a bill like this and that gets referred for proper discussion instead of just being left on the on the notice paper and ignored or otherwise dealt with summarily. It is good to have Parliament looking at it.

CHAIR - Thank you so much for your time.

Dr BONHAM - Thank you.

THE WITNESS WITHDREW.

The Committee suspended at 10.54 a.m.

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The Committee resumed at 11.22 a.m.

CHAIR (Ms White) - Welcome to the committee, I expect you understand the process here, but just checking that you have read the information that has been sent to you and that you understand it?

Mr BROWNE - Yes.

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

Mr ROLAND ALEXANDER BROWNE WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thank you very much for coming today. I am chairing this meeting. We are also joined this committee by Mr Bayley, Ms Haddad, Mr Behrakis, Ms Johnston, and online we have Mrs Pentland and Mr Wood. Thank you for your submission, I will just ask at the outset whether you would like to make any opening remarks in relation to that?

Mr BROWNE - Yes, I would, thank you. I would like to commence by telling you I have a cough which is asthma and it is not treatable, so just bear with me as I cough my way through the evidence I am going to give.

The bill before this committee is considering amendments to the *Electoral Disclosure and Funding Act 2023*. That principal act has a number of objects described in it. One of those objects is to help prevent undue influence by significant political donors and foreign donors in the government of the state, and to help prevent corruption.

In my view, that act in its current form fails to adequately achieve that, but that objective will be well advanced by the proposal to eliminate corporate donations to the political system. When this legislation was introduced, including, as I have described, an objective to prevent undue influence and corruption, the government never explained why the legislation was needed beyond saying there was going to be reform. I suggest that we need to ask ourselves: what undue influence, by significant political donors and foreign donors, was a matter of concern at that time that may influence the government of the state? Who were these significant political donors? As I have referred to in my submission, in the High Court there is an acknowledgement, certainly in one major case, that the risks of large political donations have been acknowledged all the way through since federation and are a matter of concern. But I am going to return to that.

I also want to bring to the committee's attention comments made by federal member Bill Shorten on Wednesday 19 July 2024 following decisions made to refuse to accept donations from the Construction, Forestry and Maritime Employees Union (CFMEU). He said it was time for the big money donations to political parties to cease. These big money donations are corporate donations, and that is the subject of the evidence that I am going to give to the Committee. I am going to present a case study. I am going to deal with donations made to the Liberal Party, not for any reason other than it is an ideal case study.

If we go back to the 2017-18 year when there was an election in early March 2018, donations from the hospitality industry included \$80 000 from the Goodstone Group, \$160 000

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from the Tasmanian Hotels Association, \$50 000 from Federal Hotels and \$70 000 from the Callus Group. There were other significant donations that were made along the way.

It is worth looking closely at the Tasmanian Hospitality Association (THA) donations made in 2018. The election was on Saturday 3 March. The total donated to the Liberal Party by the THA in the two months before the election was \$209 750. Of that, \$100 000 was donated on 8 February, \$50 000 on 16 February, and there were seven donations made on 1 March. That is two days before the election and you have to ask, how could those donations provide any basis for spending for the Liberal Party in the lead up to that election when they were donated so late? But anyway, these are corporate donations from a lobby group.

As of 15 and 16 February, a total of \$275 000 moved from the Australian Hotels Association (AHA) in Sydney to the Tasmanian Hospitality Association. This is money coming from the mainland, from New South Wales, to the THA, to be directed into the Tasmanian Liberal Party. We cannot forget that the context of this election was very much a debate about gambling reforms that had been proposed by the opposition at the time. I will come back to this later, but those reforms are notable because they were in line with public expectations.

In any event, from the money that came from Sydney, the THA made donations of \$109 750. The questions that arise in the context of this proposed ban on corporate donations in this bill are: Why is the AHA in Sydney funding the Liberal Party's election campaign? What is that lobby group getting out of it? Is it because the ALP went to the election with a tough policy on gambling and the AHA and the THA combined to ensure that that policy never came to be implemented?

Those questions need to be answered. Other donors worth examining are, for example, insurance companies. Amazon have made significant donations in the 2021-22 years. Westpac in 2022-23 donated \$14,000; the Pharmacy Guild of Australia, \$22,000; QBE Insurance, another insurance company, \$14,000; Pfizer, a pharmaceutical company, about \$12,000. What is it that these entities are gaining from donating to a Tasmanian political party?

This issue is surrounded by tremendous disingenuity, because the donors will say, 'Well, we just thought it was a good idea; we like to support political parties; we want them to be able to thrive' - you get a whole lot of different explanations. But the reality is, as we all know, that it's to achieve a political outcome that the donor wants.

I'm now going to focus on some donations that were made in July and August of 2022. I'd like you to bear with me as I describe these events, because they are very significant. There are donations from an organisation called Responsible Wagering Australia Holdings Limited. They made a donation back in 2021 of \$5000. Prior to July 2022, Responsible Wagering hadn't donated any money to the Liberal Party; but they did donate \$5000 before the election on 1 May 2021, but that's it.

Let's fast forward now to mid-2022. I'll just come back a moment. Responsible Wagering is a lobby group, and it represents the large gaming companies in Australia such as bet365 and Sportsbet. But most significantly, in representing Sportsbet, Wagering Australia acknowledges - as does the AFL - that Sportsbet is the AFL's official wagering partner, and that's clear from their website.

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By the middle of 2022, the Government was working on its stadium proposal and was working out where it was going to go. It had a report from Aurecon. On 11 July 2022, Responsible Wagering donated \$11,600 - more than twice what it donated in the previous year. On 31 August 2022, Responsible Wagering donated \$10,000 to the Liberal Party. In a period of two months, they donated \$21,600. The last donation was 31 August; and then we're told that on 18 September 2022 - that's 18 days after the election - Macquarie Point was confirmed as the preferred site for the AFL Stadium in Hobart. This is in circumstances where the negotiations were going on behind closed doors, where the reports hadn't been released.

Three weeks after the Sportsbet-included organisation, Responsible Wagering, donated \$21,600, there's an announcement that the stadium is to be placed at Macquarie Point. We have to keep in mind that part of the arrangement for the stadium is that it's to be set up as a venue where there's gambling on AFL matches, and there's benefits to the AFL from broadcasting and from gaming. As I've said, Sportsbet, one of the participants in Responsible Wagering, is a partner of the AFL.

These donations - that is, the hospitality donations and gaming industry donations that I've referred to in 2018, and Responsible Wagering donations in 2022 - are prohibited in New South Wales. That state has made a decision that political donations from property developers, the gaming industry, the liquor industry are unacceptable - and for good reasons. So, there's a number of questions that I suggest need to be answered in relation to these particular donations I've referred to.

What was the purpose of Responsible Wagering donating \$22,600 to the Liberal Party three weeks before the announcement as to the location of the stadium? What did the lobby group gain? These donations were nowhere near an election. The only answer that can be inferred is that the stadium that the AFL wanted to achieve was going to advance its financial interests directly and also through its partner, Sportsbet. I suggest that this large and significant money flow from the gaming and gaming associated interests into this state, into the Liberal Party, is designed to achieve a particular outcome in government policy. For that reason, it's shameful.

Gambling destroys lives and not an insignificant portion of Responsible Wagering Australia's income is from destroyed lives.

My evidence is that this committee ought to recommend to the parliament that corporate donations are to be banned and that the clause in the bill before you is to be supported. Because at the end of the day, if we're honest, national banks, insurers, employers, organisations such as The Pharmacy Guild and pharmaceutical companies, are out to gain from donations to parties. They don't vote, and it's time that this is cleaned up.

I'd like to come back to where I started when I touched on some comments that were made by the High Court. I also referred to that in the submission that I put to the committee. The case that I referred to was McCloy, where Mr McCloy was a property developer and he challenged, in the High Court, the law that stopped him donating money in the NSW political system. The High Court had no trouble rejecting his challenge and upholding it. They gave a lot of reasons for why that ban in that state was very important. I will read out this passage. This is from a majority of four of the seven judges of the High Court:

There are different kinds of corruption. A candidate for office may be tempted to bargain with a wealthy donor to exercise his or her power in office for the benefit of the donor in return for financial assistance with the election campaign. This kind of corruption has been described as quid-pro-quo corruption.

Another, more subtle kind of corruption, concerns the danger that office holders will decide issues, not on the merits of the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the office holder. This kind of corruption is described as clientelism. It arises from the office holder's dependence on the financial support of a wealthy patron to agree that is apt to compromise the expectation fundamental to representative democracy that public power will be exercised in the public interest.

The particular concern is that reliance by political candidates on private patronage may, over time, become so necessary so as to sap the vitality as well as the integrity of the political branches of government.

The judges continued:

It has been said of the nature of the risk of clientelism, unlike straight cash for votes transactions, such corruption is neither easily detected nor practical to criminalise. The best means of prevention is to identify and remove the temptation.

I have one more reference, am I okay to keep going?

CHAIR - Yes, you have twenty minutes left, so that's fine.

Mr BROWNE - The other reference I want to make is to the report of the Senate Select Committee into the political influence of donations, and in chapter three of that 2018 report, at paragraph 3.3. the committee says:

Political funding has the potential to undermine the fundamental principles of accountability and acting in the public interest, and by extension, the integrity of representative government, by leaving in its wake particular kinds of corruption.

Of specific interest to this inquiry is the risk that political funding; in particular, large donations from private interests, poses in terms of 'corruption through undue influence'. Such corruption constitutes a type of conflict of interest.

And at 3.14, they said:

It is difficult to objectively establish the intent behind political donations and whether they have had any influence on government policy outcomes. However, strong indications of undue influence are provided by patterns

between political donations over time and their proximity to key policy decisions.

That is my point in relation to the responsible wagering donations: they were made in close proximity to a major policy decision which was the decision to site the stadium at Macquarie Point. But by the same standard, we can look back at the donations that were made in the lead up to the 2018 election which were targeted to the Liberal Party, not to the Labor Party, to the Liberal Party in the context of an election, to push for a policy adoption that I think is accepted to have skewed an election outcome.

I otherwise rely on my written submission. That is all I wanted to say. Thank you.

CHAIR - I appreciate that. Thank you very much for providing some further information to support your submission. I wanted to ask some further questions around the provision in this bill to ban all donations from entities who aren't natural persons. There are other High Court cases that have also examined this issue in New South Wales. It has been found that the prohibition on donations from some groups, like the ones you have described, has been found to be proportionate response in relation to preventing corruption, but that prohibition on all donations could be seen to be a burden on freedom of political association or participation and has not been justified. The High Court has found against prohibition on all donations, which is what is proposed in this bill. Do you have a view on how this bill might be altered so that it meets the intended ambition of preventing corruption whilst also not preventing people from participating in democracy?

Mr BROWNE - Well, I am not across the decisions that you are describing, but what was upheld in McCloy's case was a ban on donations from property developers. The court found that it was constitutional and did not interfere with the implied freedom. When the High Court is looking at the implied freedom, it is not a black and white exercise. It is a question of whether what is sought to be achieved by the state law is proportional to the outcome and the process that is achieved to do that. They were satisfied, really for the reasons that I have read out, that the law was proportional to achieve those ends. Because corruption is such an insidious influence I would expect they would come to the same conclusion about donations from gaming companies, from alcohol companies. As for donations from individuals, I am not aware of High Court cases that have considered that -

CHAIR - Unions New South Wales challenged it and the court found in their favour and so, what this bill proposes to do is to ban donations from anyone who is not a natural person, which is far broader than what the New South Wales legislation does, because that is defined to things like property developers, as you have rightly shared in your evidence. So, do you have a view on how Tasmania might approach this?

Mr BROWNE - To begin with, it is obviously critical that any legislation is drafted with the decisions of the High Court in mind. To the extent that there is an area of non-natural persons that might include, for example, unions, that is something I am not going to proffer a view about now because I have not considered that and I have not considered that High Court decision.

For quite a while, I considered there was merit in keeping company money out of the political system, but leaving open the option for contributions from organisations that advance

people in a direct way, rather than companies that are just set up for profit and set up to accumulate capital. I mean, that is the effect of a company operation.

It is problematic though, isn't it, when we now see that money coming into the ALP has been coming from the CFMEU and the sources of those funds are potentially from illegal activities. I imagine that's why the ALP said, 'We are not taking their money anymore.' I think that has occurred at a state level, so it is not easy to identify that. But what is critical is to ensure that any donations are not effective at skewering the political system.

If people want to donate money, they don't need to do it through their union. They can do it as individuals. They might be members of the union. That does not stop them doing that. But I don't have an answer to this difficult question. I am quite happy to consider it and send you something after I have read those decisions of the High Court. Is one of those de jure?

CHAIR - One is. It is Unions NSW and Ors v. State of New South Wales 2013. I can provide that detail to you after the hearing if you need. Is there anything further to your submission that you have not already spoken about that you would like to touch on before I open to other questions?

Mr BROWNE – No, thanks.

Mr BAYLEY - Chair, I'd like to ask a question. Thank you, Mr. Browne for your evidence and the submission. You paint a very sorry picture in terms of the Responsible Wagering Holdings donations in September 2022. I guess their eligibility to be considered quid pro quo, corruption, or clientelism, I believe it was. In your mind, does the High Court find that they are criminal? Is that criminal corruption? As a legal expert, what is your view on the legal status of that corruption. I am hearing your call very clearly that those donations had an influence on the Liberal Party's decision to cite the Macquarie Point Stadium where they have.

What are the criminal implications of that? Obviously, there are elements of corruption that are criminal activities. We have had cases here in this state in the past. What is your view on this instance?

Mr BROWNE – It's not corruption in the criminal sense; it is corruption in the sense of corrupting the system of government as the High Court describes corrupting. Corrupting the process, corrupting the integrity of government, corrupting the integrity of government, corrupting people's faith. And that word, which, personally, I'm always really careful about using, is found in the objectives to the principal act because it's described as one of the objects - to help prevent corruption. But if we're talking about criminal corruption, that's all about the Criminal Code. This is systemic corruption, this is just achieving a policy outcome, potentially, from a distance but not transgressing the criminal law.

Mr BAYLEY - In the principal act, your view on the term 'corruption' there extends - obviously criminal and that's covered somewhere else, but is all about the corruption of process and decision-making in the business of government?

Mr BROWNE - That's right. And the way I'm describing it is not unique to this bill. This objective of preventing corruption is found not only in High Court cases, as I've described - there's any number of Senate reports on donations and I referred to one of them.

PUBLIC

But also, the various ICACs or ICAC equivalents around Australia, similarly are calling out corruption of process and demanding limits on political donations for that reason. For example, in Queensland, their Crime and Corruption Commission called for and supported a ban on property developer donations. That's not legal in that state any more.

Mr BAYLEY - To your knowledge, is there any other legislative provision or element in our statutes that deals with quid pro quo corruption or clientelism?

Mr BROWNE - No.

Mr BAYLEY - Nothing at all. And this has been happening in Tasmania for a long time, in your view?

Mr BROWNE - It's been happening for such a long time that the people involved in making the donations and the people in the parties receiving the donations see it as just part of doing business. It's the business of government to go out, chase those donations from wherever, and it's a whole lot easier to go and make a phone call to an insurance company to get that money, or to responsible gaming, than it is to go out to the public and push individuals to make donations, because individuals are interested in a broad range of issues and I think getting money from individuals is a much more difficult task.

CHAIR - Are there any questions from online? Simon, Rebecca? In here at the table?

Mr WOOD - No, all good this end, thank you.

CHAIR - You provided quite a comprehensive submission and also provided further evidence to us today, detailing some of these issues that the committee is most interested in. I'm happy to provide you with the details of that case I mentioned, which you can then have a look at. If you want to provide any additional thoughts, I think the committee would be open to looking at those.

Mr BROWNE - Yes, happy to do that. Thank you.

CHAIR - We appreciate your time. Thank you very much.

Mr BROWNE - Are you hearing from other people?

CHAIR - Yes. A media statement has been issued with the witnesses who are giving evidence today and, hopefully, next week as well.

Mr BROWNE - Is anybody coming along from the corporate sector to justify their donations?

CHAIR - We are on air at the moment. If you'd like to follow up with the secretary about those matters, I think that would be the best approach to take. The submissions are also published on the website.

THE WITNESS WITHDREW.

PUBLIC

CHAIR (Ms White) - Thank you for joining us, Mr Moore. Have you received information from the committee secretary about your evidence today regarding, in particular, that it's a proceeding of parliament and covered by privilege?

Mr MOORE - Yes.

CHAIR - Did you have any questions about that?

Mr MOORE - No.

CHAIR - Okay. Did you want to make a declaration first, please?

Mr JARRYD MOORE, ACTING STATE SECRETARY, TASMANIAN LABOR, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Thank you very much. I'm chairing this committee today. We're joined on the committee by Mr Bayley, Ms Haddad, Mr Behrakis, Ms Johnston and, online, we have Mr Wood and Mrs Pentland.

At the outset, thank you for your submission. I'd like to ask if you would like to make any opening statements in relation to that before we begin.

Mr MOORE - Just firstly, thank you to the committee for the invitation. I welcome the spirit in which the bill is brought to the parliament. I think it has a number of positive aspects that would improve the electoral system of Tasmania. I think it has some complications and needs some work in some areas but the overall themes in the bill, I think, are positive ones. I'll leave it to the committee to, I suppose, ask more specific questions.

CHAIR - Thank you. I might start. We were just discussing with the previous witness the limiting of donations to natural persons. The committee has sought some information from the High Court case, but I was interested in your perspective, on behalf of the Labor Party, about the limiting of donations to natural persons and the position that the Labor Party might have on that, please?

Mr MOORE - Yeah, so I think the Labor Party has taken a relatively consistent, not always, position on this matter across the country. I think it is one of those things that sounds good on the face of it, but, when you dig a little deeper, it actually has some pretty problematic elements to it. It's always pitched as this thing that is banning corporate donations but in the way that it's laid out in the bill, that's not actually the outcome. It does actually just limit it to natural persons, and I want to make the distinction between those two things.

When donations are limited to just individuals, what that does is actually have the effect of limiting donations to people with the ability to make them - essentially, wealthy individuals. It gives them significantly increased power in the political system in doing so. And what it does is it actually doesn't recognise the participation of collective bodies - that might be local organisations, charities, not-for-profits, unions - to be able to make donations and participate in a collective manner. People's participation in the electoral system isn't just at an individual level. The Labor Party, in particular, as a party of collectivism, we take a pretty philosophical stance on that.

PUBLIC

CHAIR - In the submission, you've covered things including defining capped expenditure, expenditure calculations, disclosure timeframes, and vote-saving provisions. Perhaps if we start with the first one, defining capped expenditure. Could you elaborate on that for the committee, please?

Mr MOORE - Yeah, so, I suppose, for context, I have previously worked in the ACT system, which was one of the first to bring in capped expenditure in the country. And so, it is fair to say the Labor Party supports the idea of capped expenditure.

One of the things I think that we've found is that, as states have introduced various regimes across the country of different approaches to capped expenditure, what we've found is that there are some pretty significant unintended consequences in some of those systems in terms of the effect it has on the ability of candidates and parties, and third parties and anyone wanting to actively participate in the process, it can have on those. So, the approach that, I suppose, the bill currently takes creates a bit of a grey area. But I think what it does is, it takes, I outlined it in here as 'all-inclusive or specified inclusions' kind of approaches are the broad ways that I would categorise this. All-inclusive is where you have a broad capturing of anything that might be connected to expenditure related to the election in some way.

The examples I give are something like, if you have someone working for the campaign and they drive a volunteer to an event, you may have to account for the cost of the petrol in something; or if you have a local organisation which you leave some volunteer information packs at, you might have to account for the cost of the space in which you use that to distribute those. I don't think that is really the intent of what these kind of expenditure caps are trying to limit. These are not the kind of things that have huge impacts on the outcome of an election.

The approach that the ACT took is the other kind - it is a specified inclusions approach where the legislation outlines a clear set of things that it captures, which makes it clear for everyone participating what it is they need to disclose. It is not this constant, 'does this count, does this not'. It captures the big impact things, the things that cost the most money - which tend to be things like printing, advertising, research, those kinds of things. Everything else is very small amounts that just create a huge administrative burden with no actual result.

One of the things that I would ask the committee to think about is that, if the intention is to put a fair and reasonable limit on campaign expenditure rather than create a huge administrative burden, I would look at something like the ACT legislation, which has been in effect for quite a long time now and we know is very workable. Looking at other states like New South Wales, for example, on the other end of that spectrum, they have an all-inclusive approach, and my understanding is that is a huge administrative burden that takes quite large teams of people to administer. Given Tasmania's size in comparison to somewhere like New South Wales, it would be an impractical burden on candidates and parties and third parties to be able to meet the requirements set out where there was an all-inclusive system.

CHAIR - Perhaps it might be easiest to assess this submission by each of the sections that have been presented. Are there any questions on this?

Ms JONSTON - The principal act does have the ability to have administrative costs for administering things like the disclosure and things, so that is covered. I am interested in your thoughts on that and the appropriateness of that in terms of what we are talking about here. Also, you have given some good examples of giving water to volunteers and things like that,

would a scale of threshold of disclosure deal with those issues? A bottle of water might be a dollar, it does not need to be disclosed; but if you are spending \$100, maybe that is. So, would that assist in things, all-inclusive but having a threshold of expenditure?

Mr MOORE - The complications there might come in exactly how you measure it. If I go to a local business and I buy a bottle of water 100 times, individually, is that a thing? I am trying to think of another example. If I use a space at a local organisation to distribute packs to volunteers, are you counting that as one thing, if we use it over multiple days, is it more? You start getting into the technical sort of administrative weeds. An approach where you are just specifying what it is, is administratively much easier because you are keeping the records for a campaign, you are going through and you are categorising your expenditure. That is a thing that everyone already does, and so you are not sort of creating an additional layer that is creating sort of a second round of categorisation.

Mr BEHRAKIS - Just a couple of questions and just to split the principal issue of expenditure caps: you made a good point about the administrative costs and the mechanics of it all. I have run as an independent and I have run as a Liberal candidate, and it is a very different animal. When you run as a party candidate, you have administrative support to handle all that stuff that you are talking about. When you have the administrative burden of having to work out what needs to be counted, what does not need to be counted - all those different little purchases and expenditure - do you think that could potentially have an undue or unfavourable impact, specifically on smaller parties and independents that don't necessarily have people behind the scenes doing that administrative work for them?

You might have a Labor candidate or a Greens candidate or a Liberal candidate that can say, 'Here are my purchases', and you hand it to the office, and the office takes care of it. An independent candidate would have to go home and do all that themselves. Do you think that would create an unreasonable or unfair administrative burden on smaller candidates?

Mr MOORE - Under an all-inclusive approach - yes. I approach it from the perspective of the Labor Party and if that is going to have a huge impact on us, then it is going to have a pretty huge impact on independent and minor party candidates as well. As I said, the specified inclusions approach quite neatly feeds into the existing accounting and record keeping that parties or independent candidates or whatever would do as part of their normal activities.

The only real additional requirements there are then to consolidate a thing or pull out a report from the spreadsheet or mechanical system - whatever it is that they are using to record that information. And so, I believe that the burden of a specified inclusion approach is pretty minimal.

Mr BEHRAKIS - Secondly, we heard from - not to paraphrase incorrectly - Dr Bonham, saying that the issue here is about transparency and people knowing where the money is coming from or where it is going, but at the end of the day, the voters should have all that information and then it should be up to the voters to decide.

Do you think there is a risk in limiting that expenditure of limiting the ability of candidates that might not have a public profile to compete with those who do, and may have an advantage by virtue of that if other people are unable to spend to get their views into the public sphere?

Any of us here are incumbents now and have public profiles. If we say something, we can get our message out by media release because the media will cover it. A first-time candidate, whether they are a party candidate or whether they are an independent, will have to pay to get their views out if they are not of high enough profile to get media attention. Do you think that limiting that is potentially unfair and, by virtue, potentially undemocratic?

Mr MOORE - It's worth exploring two things here. In terms of community expectations, I think there is a pretty high expectation now that when people are participating in an election, that the money that is spent is the thing that provides a pretty high level of concern to them.

I don't think the community has a similar concern about profile. If someone has a profile, then that is something that they have likely earned through some process, whether it is being elected previously or whether it is, you know, being a high-profile community member or whatever it might be. From that perspective, I think that comparing them is difficult because the expectations are different.

In terms of the expenditure of money for those candidates who do not have as high a profile, certainly my experience in the ACT was that expenditure caps weren't the barrier there. People really weren't looking to spend up to and over those expenditure caps as independents and minor parties. My recollection is that there was an analysis of this done after one of the ACT elections and that no independent or minor party came close to that to that cap so I'd say that the answer is probably no. From a different perspective not every independent or every minor party is the same. Is it fair for one independent who may be a multimillionaire to be able to expend many factors more than a candidate who is not? Philosophically, the answer would probably be no.

Ms HADDAD - It would benefit the committee to have an understanding on how the expenditure capped in the ACT works. We've just expanded to 35 seats, but prior to that we had pretty directly comparable electoral systems between the ACT Assembly and the Tasmanian Parliament. For the benefit of the committee, would you be happy just to explain how those candidate and party caps work under the ACT legislation?

Mr MOORE - Yes, the way that the ACT legislation works is that it is a calculation based on the number of candidates running. If you're an independent, it's just yourself, it's one; if you are a party that decides to run x number of candidates per seat, it's by candidate. If you run a full number of candidates per seat, it's that. It's based off a principle that each candidate receives the same level of cap, regardless of whether that candidate's independent or from a minor party or a major party. The calculation is a simply a sum that's multiplied by the number of candidates being run.

The current amount for the current election being run in the ACT is \$50,135 per candidate. If an equivalent amount was applied as a calculation to Tasmania with 35 candidates, it would come out with an expenditure cap overall as a maximum for any party running a full ticket would be \$1.75475 million.

Ms HADDAD - By comparison, the bill proposes a set expenditure limit for parties and a separate expenditure limit for candidates, if I'm understanding the bill correctly, but that cap for parties would apply to a party whether they are fielding a full ticket of candidates or a handful of candidates in a few electorates. Do you have any comments about the comparison between those two suggestions?

PUBLIC

Mr MOORE - Yes, that that does start to become quite problematic. I don't profess to be a legal expert, but that may start to run into some issues given the scale at which that could start to become disproportionate amounts allocated to people. You could theoretically have one party running quite a small number - it could be two candidates in each seat that has the same cap as 35 candidates running. You've got 10 candidates running and 35 candidates running, it's quickly becoming quite disproportionate at that stage, yes.

Ms JOHNSTON -How in the ACT do they deal with apportioning of generic party expenditure? Let's say that a party puts out an advertisement for the Labor Party, Liberal Party, Greens, whoever it might be, how do they apportion that to each individual candidate's spending cap or is that - how does that work?

Mr MOORE - It's a cumulative amount, so it doesn't get reported on an individual candidate basis. Comparatively, the one state that I'm aware of that does have a different system is NSW. There is a pretty complex system of a central, like a pool, of a cap and then there are individual candidate or electorate caps. But again, my understanding is that the administration of that becomes highly complex. This is the exact question that you asked. It becomes quite a problem where if, as a party you run an advertisement on, let's say on a TV station, how you start apportioning that, it becomes very complicated. I'm not sure it reflects the reality. There's a set of rules and you have to comply to that when reporting, but is that an actual reflection of the reality? I think that's a bit of a problem in terms of that approach. It, like the other approach, creates a huge administrative burden that doesn't necessarily achieve any outcome.

Ms JOHNSTON - So, I think maybe I've misunderstood and perhaps you can clarify for me, in the Australian Capital Territory, each individual candidate has an amount that they can spend up to, for 50,000?

Mr MOORE - So that amount is allocated to the party grouping.

Ms JOHNSTON - And the party can then determine if they want to give a person \$80,000 and another person only 30,000. Is that right?

Mr MOORE - Yes.

Ms JOHNSTON - Sorry, I misunderstood that.

Ms HADDAD - They're not actually handing over money; they're just setting an internal cap for that candidate.

Ms JOHNSTON - But that cap is a party decision, not a legislative requirement?

Mr MOORE - Yes, that's right; that's correct.

Mr BAYLEY - Chair, just a couple of questions. Thank you and thanks for the submission. So, am I hearing correctly that you support per candidate caps, but no cap overall for parties?

I think the intent of this legislation is, you know, a party would need to comply with both. There's a maximum that a party can spend, but there are also individual candidate caps. So, it sort of does both. But are you saying you'd be supportive of the individual candidate caps? And

then by virtue of that, there is an implicit cap on the party by virtue of the number of candidates that it runs.

Mr MOORE - Yeah. So, what I would support is a cap applied to the party or the grouping where the calculation for that is done per candidate.

Mr BAYLEY - Putting aside the definitions of expenditure and how that is calculated, do you have a view on which body should administer that? Should it be the Electoral Commission? Should there be a standalone statutory entity set up that administers this kind of thing? Have you turned your mind to that at all?

Mr MOORE - I suppose I can speak from my experience in the Australian Capital Territory is that the Electoral Commission administers that there.

Mr BAYLEY - Have you seen any problems or challenges?

Mr MOORE - No, certainly haven't seen any there at all, from our perspective. I'm not sure from their perspective.

Mr BAYLEY - And they're simply resourced to cover the additional administrative burden of managing that and maintaining that?

Mr MOORE - Yes, that's correct. The administrative burden for the Electoral Commission, from my understanding, is that it is reasonably low during the actual election period, aside from putting together advice prior to an election for candidates and parties and then being able to provide rulings where there are questions or grey areas, determinations. Aside from that, the bulk of the work comes after an election where returns are put in and then there are random ordering processes and things like that which they're resourced to do.

Mr BAYLEY - Do you know how much that would be?

Mr MOORE - I don't, no. I do know they are reasonably well resourced. Aside from just this being an election context, I believe they have a sort of ongoing rolling program of auditing of political parties, independent elected members, ongoing third parties, things like that.

Ms JOHNSTON - Can I just make a clarification? The Labor Party's position is, if I understand correctly, that they would support a general cap of a certain amount per candidate multiplied by the number of candidates stood. Does that infer, then, that you support a cap on that particular individual? Let's say seven candidates are running in one particular seat; each individual candidate in that seat can only spend up to that cap? Or would you prefer the ACT model, where it is an overall party cap and it is up to the party, then, to determine the individual expenditure caps for each candidate?

Mr MOORE - Yes, so definitely the second one there. Attributing expenditure to individual candidates, as I said, becomes a bit of magic math in the end. Having the ability to report that simply as one grouping is the simplest and most accurate reflection.

Ms JOHNSTON - In your view then, would that provide a scenario - and has, perhaps, in your experience in the ACT, provided a scenario - where there might be two or three lead candidates who have significant expenditure towards their campaign and only three or four

candidates, perhaps, with a quite small expenditure? Does that provide a level playing field in terms of other independent and minor party candidates where there might be only one or two and they are subject to a limit?

Mr MOORE - I think that is kind of balanced. If you have a lead candidate that, say, there's more resources put behind them, that is then balanced out by the fact that one of the other candidates, conversely, has fewer resources. In terms of that being a fair approach, I suppose the impact of any party running is that if you have a team of people running, they are going to be able to knock on more doors or call more people. That is just a natural advantage of operating collectively.

Ms JOHNSTON - I suppose your view - if the motivation behind this is to try and level out the playing field in terms of expenditure, because obviously we want people to be engaged in the political process, under your scenario, though, you can see the potential for a lead candidate, for instance, spending up to, say, \$100,000 and an independent running by themselves only being able to expend the \$50,000 or the \$40,000, or whatever the cap might be for individual candidates. So, how do you see that as being a fair system in terms of the principle of trying to make it a level playing field?

Mr MOORE - The fairness comes from the sort of the balancing act within the party where, yes, one candidate might get more advantage but then, equally, you have others that then receive a disadvantage because of that, and aren't able to put as much out there, or whatever it might be.

Ms JOHNSTON - But that advantage/disadvantage, that's just within the party. There might be some who are advantaged within a party candidate ticket and others who aren't. But across the entire electorate ballot paper, that would not be a fair allocation of expenditure.

Mr MOORE - That extends beyond the party. If you are a candidate that, say, is lead on a party ticket and receives more, the advantage that you receive isn't just an internal one; it's an external one. But, equally, if you're a candidate who, internally, the party has decided you're less of a priority, then you aren't able to have as much external marketing, or printing, or advertising, or whatever it might be. That does not just translate to an internal disadvantage; it translates to an external one as well.

Mr BEHRAKIS - Just following on from all of that, as Kristie said, you potentially have the situation under that model where, if everyone's candidate by candidate, you say \$83,000. But if the party is able to combine that and then allocate that by candidate, you might have a situation where an independent's able to spend \$83,000, but a lead candidate in any party might be able to have greater than that, so there is the potential for that to arise. Then you also have people in any party who might run for the first time and, as said by Bonham, sometimes you have people run just to fill tickets.

But someone can run with the full intention of running as good a campaign as they possibly can, and the party that they run in might say, 'Too bad, so sad, you are not our lead candidate. We are going to set your expenditure limit to \$10 000 because we want such and such lead candidate to be able to spend twice as much as everybody else'. Does that not risk potentially disadvantaging people who are running - even party candidates - and who might be running in good faith to then be left high and dry because they are not the one that was chosen as a lead candidate?

PUBLIC

Mr MOORE - That is certainly possible, but I don't think that is an effect of this legislation that could happen now.

CHAIR - I was going to make that point, that all the examples that you have just shared are relevant; but in the context right now, it happens but there is no cap on expenditure.

Mr BEHRAKIS - But there would be nothing stopping a junior candidate from just raising money and spending that money? There would be nothing stopping them from doing that, right?

CHAIR - Potentially not; but there is no cap at all at the moment, so a party could put all of its money behind one candidate in the Hare-Clark campaign today and support them to be successful over an independent who doesn't have the ability to raise that much money. The question is whether we think it creates more equity and fairness by capping expenditure, and it is interesting to hear what the ACT example is. Are there any other questions about this because I think it's helpful to have someone from the ACT at the table.

Mr BAYLEY - Yes, it is and I am interested in the ACT. The major parties here don't rank their ticket and have support candidates, and don't have lead candidates, per se. There is healthy competition within the ticket. Would you envisage that, if these caps came in, would it drive a change to party strategy, and was that evident in the ACT?

Mr MOORE - I am happy to have you answer this one. The answer is no; and the reason for that is the Robson Rotation. It makes party tickets quite impractical. I would not support that approach, and that is the approach that all major parties in the ACT take as well.

Mr BAYLEY - Out of interest, and forgive my ignorance, can you hand out 'how to vote' cards at booths in the ACT? Is there that provision?

Mr MOORE - No.

Mr BAYLEY - No. Same as here.

Mr MOORE - Very similar.

CHAIR - Any questions from members online?

Mrs PENTLAND - No, I think you have covered everything. With the Hare-Clark system and parties running a full ticket already gives them an advantage, against an independent running, doesn't it? So yes, there could be a huge discrepancy there considering that scenario that you gave from the ACT. I know they run the Hare-Clark system too, but it does seem that it definitely puts the leaders in a party at a massive advantage against an independent when they are getting a larger size of the pool to be able to spend on their campaign in that scenario that you gave.

CHAIR - Potentially; but the point we also discussed is that there is no cap at the moment, Mrs Pentland, so that could happen today.

Mr MOORE - The other thing worth noting on that, when we are comparing those things, is that when independents are running, they are running to get elected; but when a party

is running, it is not just running to get a person elected. There are seven individuals who have a full ticket and are running to get elected; so, we are not quite comparing apples and apples.

Ms HADDAD - I wanted to jump back to disclosure regimes and I seek your expertise in terms of how you described the two ends of the spectrum between ACT and NSW. I'm interested to know what the administrative role is with your counterparts around the country and in terms of how many people are required to comply with the various disclosure regimes that exist now?

Mr MOORE - I can probably only speak in the most detail about ACT. It's probably viable for a party to have maybe two employees that are able to deal with the administration of a system that is simplified on a specified inclusions basis.

Comparatively, to a larger state like NSW, I don't know of the exact number, but my understanding is that there is a very large team of people that have to administer this. There's a dedicated governance team that is there to support that - not simply because of the size of the state, but because of the structure of the legislation and how complicated it is.

Given the size of Tasmania, there's a fixed element in the cost of doing that. It would require more administrative funding than is in the bill. Obviously, a party would never turn down administrative funding to do these things, but I don't think that's the intention of the legislation.

CHAIR - Could I ask about disclosure time frames? There's another element that you cover in your submission and particularly given your experience in the ACT; it would be helpful to understand why your submission proposed the time frames you have.

Mr MOORE - When it comes to disclosure time frames, the bill takes a very principled approach to it. But disclosure timeframes are probably the one thing which need to have the most considerations around the administrative aspects.

I'll note that the submission from the Australia Institute; the Labor Party and the Australia Institute often have similar themes on things that often arrive at different conclusions. This is one thing we both agree on - that the approach of disclosure timeframes that have these incredibly short time periods for reporting don't achieve the thing that they set out to achieve. What they actually do is create a system that just catches people out on administrative failures, rather than substantive things of reporting their donations.

When a donation comes in, where you have a system of reporting that is on a sort of transactional basis - the current federal system for example, is on a largely individual-like transaction basis. It's very easy to distinguish. You receive a donation; there's the transaction; there's an amount you report whether it gets above or below. It is much more complicated when it comes to a system that is cumulative, so you compare it over a period of time - because not only does a donation then come in, but at an organisation level, you have to do the work of then making sure that matches up to your records of previous donors.

That may seem like a simple thing, but it is quite a complex task. When people donate, they often provide a name that might be their nickname and not their formal name on the electoral roll. They might have a different e-mail address that they use. Little things that sort of add up to quite a bit of work, particularly during electoral periods where you're getting lots

of small donations. You don't know if a donation of a certain amount is going to put someone over a threshold and so you have to treat them all as important as one another.

The expectation that participants in the electoral process are able to meet these short time frames is fine, except when you get to exceptional circumstances, which are not actually really exceptional. It is things like a party office in a jurisdiction that had one of their key administrative people get sick, they pneumonia or something like that and had to go off for a week or so. That is quite a huge impact on an organisation when it happens during an election period. It is easier in a much larger state to say, you have a large enough team anyway, that is not really a consideration. In small jurisdictions, I think these are real considerations that we should have in the ability of candidates and parties to be able to do these things.

If you are an independent candidate, you might have one person who is looking after your accounting records. If that person gets sick or something happens, that is a totally normal, reasonable thing that might happen during a campaign, and it is not that you are not trying to and do not want to meet the requirements of the legislation, and I do not it would be the community's expectation that the threshold is so high that reporting entities are caught out in these scenarios not because of lack of trying but because the threshold is set so high that it is almost designed to trip people up.

Mr BAYLEY - Chair, if I may. To be fair though, the intent is not to trip people up and to expose administrative failure. That might come and if that can be explained, obviously it is not a problem. The intent, obviously, is to ensure that there is transparency around donations eventually. If it takes some time to unpick and untangle the administrative failures, well then so be it, but the intent of it is that it will have an impact on inappropriate donations, and there will be additional transparency ultimately for the public.

CHAIR - I get your point, but it is not a grey area. This is black and white law. There are requirements under law to comply unless there is an exemption written that provides some grey area for the reasons you have just discussed. It is a serious problem.

Ms HADDAD - Twenty-four hours in the last seven days I imagine would be administratively burdensome as you have described for parties, but for an independent candidate - we are not all independent candidates here, but we have all been through the last seven days of election campaigns. You are out campaigning full time, more than 12 hours every day for those last seven days, and I imagine, particularly for an independent candidate, it would be very difficult to meet a 24-hour reporting time frame for those last seven days in addition to doing what you are doing in a campaign which is trying to be elected. It does feel like it would be very easy to inadvertently fall foul of a system with a threshold that high.

Mr MOORE - You can also look at the practicalities of different ways donations might also come in. If you are a candidate and let's say you run a small fundraiser, a movie night, something like that, sell tickets. You have people attend that event in the last week of the campaign, many of the people might pay cash to buy a ticket at the door. That cash then is received, but unlike, say, electronic donation, where there is some sort of immediate record of it, you have to go through the process of recording that, depositing it at the bank and then reporting it to your central party office as the disclosure entity. They then have to match it. All of that happening in 24 hours is a pretty high bar to be setting. I wonder if there is a way that is able to capture this. The intent of the legislation is there to capture it. I would imagine that the intent is not to capture these smaller transactions that might put someone just over the \$1000

threshold. They might have paid the membership across a year and it's an election, you're going to donate it to multiple candidates, whatever it might be.

That's probably the intent of this - to capture large donations that happen in the final week. That may be an approach of setting a 24-hour disclosure period for donations of an individual transaction in setting a particular amount. That's quite easy. If you get a donation above a certain amount in that last period, that's something that as a party or a candidate, you're going to notice. It's not just small amounts rolling in. While there's still administrative aspect to reporting it, I think is probably an easier bar to make that still meets the intent of the legislation.

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

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

Mr BAYLEY - Just going back, slightly, on donation caps. Early in the conversation, you were talking about the inequity between someone that's got the financial resources to give a big donation and those who don't. There's a donation cap of \$3000 proposed in this bill. I admit not everyone can donate \$3000 a year to anyone to run for politics-

Ms HADDAD - Over a term.

Mr BAYLEY - Sorry, over a term. Have you a view on that in terms of caps?

Mr MOORE - No, I think, the Labor Party wouldn't be supportive of donation caps. Certainly, my experience in the Australian Capital Territory where that hasn't been introduced, has been that the effect of caps on expenditure achieve the same outcome in a more fair and equitable way that doesn't limit the ability of donors to participate in an election, particularly those organisations that are, say charities, not-for-profits, or organisations that work on a collective membership basis. The thing that it's trying to achieve, which is the reduction of undue influence is simply achieved by having a cap on the expenditure itself.

Ms JOHNSTON - Just coming back to the disclosure time frame. The provisions you're talking about are strict liability provisions. If you fail to disclose, there's a penalty attached to that. I hear your concerns regarding, administrative failures in your scenario, someone getting sick, could that be dealt with by taking away the strict liability provision and making, for instance, a defence of reasonable excuse to those particular provisions? The intent would be that this disclosure within 24-hour period except for if reasonable excuse, and that might cover, for instance, a scenario where someone gets sick at the last minute. Is that something that the party would consider as a practical solution to trying to implement the intent of disclosure, the importance of timely disclosure whilst trying to avoid the administrative development, I suppose.

Mr MOORE - Yes, I think is as long as there's some kind of provision there that doesn't allow it to become a loophole, but if a reporting entity can show that it's taken reasonable steps to try and achieve that, then yes, I think that that could go a long way. One of the examples

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I give there is gift in kind one, which is a bit of an unusual one but there's stuff that has definitely happened during an election when someone doesn't give a gift of money, use of something or provision of a good or service and that, unlike a gift of money, doesn't have an innate value to it. You have to value it, and again, that can definitely take more than 24 hours.

Ms JOHNSTON - But if there's a provision in the act that takes away that strict liability and there are steps shown in good faith that you're trying to comply with the act; or that there is a reasonable excuse such that person is unwell and there's evidence of such, that would possibly avoid the situation where the intent is negated by the strict liability.

Mr MOORE - Yes, I think that would be an appropriate approach.

CHAIR - Can you discuss the vote-saving provision that you've also provided in your submission, because it's not something we have touched on before now?

Mr MOORE - Yes - it's not specifically covered in the bill, but given the legislation that it is addressing, I thought it was worth covering this. The increase of the size of the parliament to seven and the strict requirement for voters to have a formal vote to vote one to seven, now means that we've got the highest or one of the highest informal voting rates. I would not expect that to subside. I believe that is an effect of doing that.

I've taken the steps from the ABC analysis that one in 16 votes cast at the last election didn't count. Now, a portion of those are not because of people not putting one to seven. But it's probably fair to say that there are enough of those, particularly in a Hare-Clark and a multi-member system, that those votes where the voter did intend for their vote to count for something could at some elections have an impact on the outcome.

Hare-Clark often has, as you all probably know, counts that can come down to the absolute wire, at different counts of literally tens of votes - 100 votes or less - far more so than any other system. It's important to make sure that the maximum number of votes are being enfranchised as part of that process, particularly with Tasmania, if we're doing a comparison to the Australian Capital Territory. The ACT - the weird sort of place that it is - has incredibly high levels of education. Tasmania, on the other hand, has one of the lowest in the country. And so, making a higher bar for voters to have to reach here in their participation in the system just ends up disenfranchising more voters than not; and unnecessarily, in my view.

In a Hare-Clark system, I don't think you want a scenario where you're allowing participants in the election to go out and say, 'Vote 1', or whatever that that might be. Any provisions around vote savings would need to have a section that deals with that. Equally, if a voter votes 1 to 6, then I don't consider it is in the interests of a fair democratic process for that vote to be ignored - particularly when those votes are not necessarily going to exhaustion. The chance is that it's not going to flow to the 7th number, and whether or not they put 7 would not change the way in which that vote flows through the count anyway.

It's a very arbitrary exclusion of those votes. If the opportunity exists to fix that, then - particularly given the learnings from this election, with the increased size of the parliament - I believe it's a good opportunity to address this.

CHAIR - Do you have anything further you'd like to add before we conclude?

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Mr MOORE - No. I think we have covered pretty much everything in this, thank you.

CHAIR - Thank you very much for your submission and your time.

THE WITNESS WITHDREW.

The Committee adjourned at 12.50 p.m.