

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Electoral Disclosure and Funding Bill 2022

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Mr Speaker, I move that the Bill now be read a second time.

This Bill is one of three bills that deliver on reforms identified as part of the Electoral Act Review (the Review).

The Electoral Act Review has been delivered at a time when changes to electoral laws are occurring across Australia and a number of decisions have been handed down by the High Court in relation to electoral law which reveal the complexity of regulating the electoral process.

The Final Report makes 11 high-level recommendations for proposed reform to modernise our current system and create a political donations disclosure regime specifically for Tasmania.

The Review involved two rounds of public consultation and has already led to amendments to the *Electoral Act 2004* which commenced in 2019.

The recommendations in the Final Report broadly fall into four areas, namely:

- recommendations of a technical nature that will ensure our electoral system is effective and contemporary;
- recommendations relating to a new disclosure regime for candidates and political parties;
- recommendations relating to the regulation of third party campaigners, donors and associated entities; and
- a recommendation in relation to the public funding of election campaigns.

The Tasmanian Government is committed to ensuring Tasmanians have confidence in our electoral system and a key premise of this is ensuring our electoral system is fair, transparent, effective and contemporary.

As mentioned, this Review has now yielded three pieces of legislation.

The first Bill, the *Electoral Amendment Bill 2019* (the 2019 Bill), passed this Parliament on 4 April 2019 and commenced on 18 April 2019. This first tranche of reform dealt with

technical and procedural matters within the *Electoral Act 2004*, in line with the first term of reference of the [Review](#).

The 2019 Bill came about as a result of the Electoral Act Review Interim Report recommending that a number of reasonably straightforward technical and administrative changes be made through a first tranche of amendments to commence prior to the Legislative Council election in 2019. The first tranche included the repeal of section 198(1)(b), removing the ban on newspaper advertising, reporting and commentary on polling day, and a number of amendments to address difficulties arising from changes to postal delivery times.

I am pleased to be delivering the further legislative reforms as a result of the Electoral Act Review, namely this Bill – *the Electoral Disclosure and Funding Bill 2022* – as well as the *Electoral Matters (Miscellaneous Amendments) Bill 2022*, which is being concurrently progressed in [the](#) Parliament.

The Electoral Disclosure and Funding Bill that I rise to speak on first, introduces a new system of disclosure of political donations and electoral expenditure, as well as the provision of public funding in relation to elections in Tasmania.

This is significant reform for the Tasmania and is, understandably, a lengthy and complex piece of legislation. A consultation version of this Bill was released for public consultation within the first 100 days of this term of Government, in line with our election commitments.

The consultation Bill was made available online along with seven fact sheets to assist stakeholders and the Tasmanian community with the interpretation and understanding of the proposed scheme established in the Bill.

In summary, the Bill:

- establishes a disclosure regime for political donations and electoral expenditure; and
- provides for two forms of public funding in relation to the House of Assembly.

The new systems and requirements in the Bill will directly affect:

- candidates in elections to either the House of Assembly or the Legislative Council;
- members of either the House of Assembly or the Legislative Council;
- registered political parties;
- political donors, being individuals or organisations who make political donations;

- associated entities; and
- third-party campaigners.

Disclosure Regime

Turning first to the disclosure regime, this Bill introduces a new far-reaching system of disclosure into the Tasmanian electoral system.

Firstly, it is important to explain the definitional matters forming part of this system. The Bill defines 'associated entity' and 'third-party campaigner' as these are not concepts currently identified in the *Electoral Act*. They are, however, entities well established in electoral law both at the Federal level, and in other states and territories.

An 'associated entity' can be either incorporated or unincorporated, and has the following features:

- it is controlled by one or more registered parties, or
- operates wholly, or to a significant extent, for the benefit of one or more registered political parties, or
- is a financial member of a registered party, or
- has voting rights in a registered party.

This entity operates for the benefit of a political party and is, therefore, regulated in largely a comparative way. This ensures that such entities are also accountable for the money they receive as political donations as well as the election expenditure they incur as part of an election campaign.

Associated entities must register with the Tasmanian Electoral Commission (the TEC) if they are to receive political donations or incur electoral expenditure and are regulated year-round. In contrast, third-parties are only regulated during the election campaign period.

'Third-party campaigners' are defined under section 8 as individuals or organisations who are not Members, candidates, registered parties, or associated entities, and who incur at least \$5000 of electoral expenditure during a House of Assembly election campaign period. They must also be registered under section 127 as a third-party campaigner in relation to the election.

The inclusion of third-party campaigners within the new disclosure system recognises the increasing role that individuals and organisations have played in the political environment in Australia in recent times.

Again, the regulation in this Bill does not aim to limit or deter such campaigners from participating in our democracy but introduces transparency as to the influence of these campaigners in the electoral process.

Once an individual or organisation qualifies as a third-party campaigner, they are obliged to register as a third-party campaigner, appoint an official agent and nominate a campaign account. The official agent is the individual legally responsible for disclosing all reportable political donations and for completing and lodging an election campaign return. As mentioned, third-party campaigners are only regulated in relation to the election campaign period of the House of Assembly.

Third-party campaigners may also be a charity, representative, or community group or business that engages in activity other than the electoral activity regulated by this Bill. For example, the new disclosure system does not regulate donations to the charity arm of an organisation that is also a registered third-party campaigner. The system only requires disclosure of political donations, namely money received in order for the campaigner to incur electoral expenditure.

An individual or organisation may elect to register as a third-party campaigner early, or pre-emptively, prior to engaging in electoral expenditure. And indeed this is encouraged. This early registration can ensure that the relationship is established with the TEC and the campaigner is able to ensure its compliance with the requirements under the Act as they arise.

To mirror the disclosure requirements of recipients of political donations, the Bill also sets out requirements for political donors.

The Bill introduces the concept of a 'significant political donor'. A significant political donor is a donor who donates \$5000 or more to a single candidate, Member, third-party campaigner, or recipients from the same registered political party, during a reporting period.

This can take the form of a single donation or a number of donations over the course of the period. Once the threshold of \$5000 has been reached, the donor is required to disclose this reportable political donation to the TEC, in a similar fashion to the recipient.

The Bill does not aim to deter people, including donors, from participating in our healthy democracy, but rather aims to ensure that electoral finance is open and transparent.

The Bill also introduces the concept of an 'official agent' and a 'party agent'. These individuals are the people legally responsible under the Bill for ensuring the compliance of the individual or entity they represent, with the requirements of the Bill. Official

agents are individuals acting on behalf of third-party campaigners, associated entities, independent candidates and independent Members, and significant political donors

As these agents have fiduciary and legal responsibilities, there are some eligibility requirements contained in the Bill, including that the person must not have been:

- appointed to any office or position under the *Electoral Act 2004*;
- sentenced to a term of imprisonment for more than two years;
- convicted of an electoral offence either in Tasmania or elsewhere in Australia; or
- been convicted, as an adult, within the last 10 years of an offence involving fraud or dishonesty.

The TEC also retains a power to determine whether a potential agent is a fit and proper person for the role.

A 'party agent', like an official agent, is the person legally responsible under the Bill for ensuring the compliance of the individual or entity they represent with the requirements of the Bill. However a 'party agent' represents a registered political party and its endorsed candidates. A 'party agent' has the same eligibility requirements as an official agent but with the additional requirement that a 'party agent' must also be a senior officeholder of the party.

It should be noted, that an independent candidate, independent Member or a third-party campaigner can choose not to appoint an official agent. They would then operate as their own official agent under the Act.

Other key concepts: gifts, donations, and campaign periods

Other key concepts of this new system include definitions of 'gift', 'political donations', 'reportable political donation', and 'election campaign period'.

A 'reportable political donation' is one valued at \$5000 or above. The Bill also provides that if a number of political donations are received from a single donor in the same financial year, they are aggregated for the purpose of determining if the \$5000 threshold has been met.

The Bill also recognises that the period surrounding election campaigns is a time when it is in the public interest for political entities to be most transparent. Therefore, the Bill creates two reporting periods. One around the election campaign period and one for the time outside this period.

The 'election campaign period' in relation to the House of Assembly commences six months prior to the last possible date for the House of Assembly election and ends

30 days after polling day. During this election campaign period, all candidates for the House of Assembly election, State registered political parties, registered third-party campaigners and associated entities must disclose reportable political donations within seven days of receipt. Similarly, 'significant political donors' must disclose reportable political donations within seven days of the donation being made.

The 'election campaign period' in relation to Legislative Council elections commences on the 1st of January of the year of the election and concludes 30 days after polling day. As with candidates in the House of Assembly, during this period all candidates for the Legislative Council election must disclose reportable political donations within seven days of receipt and significant political donors must disclose reportable political donations within seven days of the donation being made.

In order to further the objects of the Bill to establish a fair and transparent disclosure and electoral expenditure as well as to prevent undue influence, Part 3 of the Bill sets down a range of prohibited donations.

The Bill incorporates a ban on donations from foreign donors. This ban mirrors the provisions under the *Commonwealth Electoral Act 1918*, thus ensuring a consistent and robust ban on such donations in Tasmania.

In addition, the Bill bans the making of donations of more than \$100 in the form of cash. This ban aims to prevent the movement of untraceable funds while still acknowledging that candidates and parties still embrace grassroots fundraising through cake stalls, raffles and small-scale events.

Under Part 3, it is also unlawful for parties or representatives of parties to make donations to independent candidates or independent Members.

The Bill also provides that when a political donation of over \$100 is received, the recipient must record the name and contact details of the donor for the purpose of potential future aggregation and to ensure the donor is not a prohibited donor.

Receiving donations without the requisite donor information, that is, receiving an 'anonymous donation', over the value of \$100, is an offence under the Bill.

Elections Returns

In addition to the disclosure of donations, the Bill also provides for the disclosure of electoral expenditure through elections returns. These returns are required to be lodged with the TEC in relation to elections for both the House of Assembly and Legislative Council.

In summary, 'electoral expenditure' is defined in the Bill as 'expenditure incurred for the dominant purpose of creating or communicating electoral matter in relation to an election'.

Part 7 of the Bill sets down the requirements for Assembly Election Campaign Returns in relation to House of Assembly elections.

Candidates, associated entities, registered political parties and third-party campaigners are required to prepare and lodge an Assembly Election Campaign Return with the TEC within 90 days of polling day in relation to a House of Assembly election.

These returns need to contain the following information:

- disclosures of all electoral expenditure incurred during the campaign period;
- disclosure of the details of all reportable political donations received during the campaign period; and
- disclosure of the total amount of all political donations received during the campaign period.

Associated entities and registered political parties are also required to report all relevant debt information as defined in the Bill.

The Bill provides that even if there are no disclosures to make in such a return, the candidate or entity must lodge a "nil" return.

As many would be aware, Part 6 of the *Electoral Act* already contains a range of provisions limiting election expenditure and requiring reporting of electoral expenditure in relation to Legislative Council elections. The Government has committed to ensure that a system that continues to be largely supported by Members and stakeholders is not unnecessarily disrupted.

The Bill does, however, move the provisions of the current part 6 of the *Electoral Act* into the new Bill to ensure consistency and prevent confusion. The new Bill does not alter the following existing provisions in relation to Legislative Council candidates:

- candidates in Legislative Council elections will continue to have an expenditure cap in the same form and of the same quantum as under the old Part 6;
- political parties or other individuals or groups are prohibited from incurring electoral expenditure on behalf of a Legislative Council candidate;
- candidates in Legislative Council elections are required to submit a return outlining their election expenditure to the TEC within 60 days of polling day; and

- candidates in a Legislative Council election may nominate an agent to act on their behalf in relation to election expenditure.

Under the Bill, new requirements for candidates and Members of the Legislative Council are as follows:

- candidates and Members will now need to comply with the year-round requirements in relation to disclosure of political donations;
- the election return requirement for Legislative Council candidates will now need to include total donations, as is the requirement for the House of Assembly;
- an agent acting on behalf of the candidate in a Legislative Council election is now an 'official agent' rather than an election agent. The official agent must comply with the requirements for official agents provided for in the Bill;
- a candidate in a Legislative Council election must have their own campaign account. All political donations must go into this account and all election expenditure must be spent out of this account. This is also consistent with House of Assembly requirements; and
- if a candidate in a Legislative Council election is endorsed by a political party, the candidate may elect to use the party agent. The party agent must, however, still only use the candidate's campaign account in relation to that candidate.

Public Funding System

The Bill also establishes a new public funding system in relation to State elections.

There are two components to this system. Firstly, there is provision for public funding of candidates and parties involved in House of Assembly elections based on formal first preference votes to reimburse for electoral expenditure. Secondly, there is provision for the payment of administrative funding to registered parties with endorsed Members in the House of Assembly as well as to Independent Members of the House of Assembly.

Part 11 provides for public funding to reimburse candidates and registered political parties participating in House of Assembly election. This funding aims to assist registered parties and candidates with their ability to get their message to the community and to reduce the reliance of registered parties and candidates on fundraising and private donors.

The system established in Part 11 calculates eligibility for this funding based on the formal first preference votes received by a candidate in a House of Assembly election. Any candidate who is elected, or receives 4 per cent (%) of the formal first preference vote, is eligible for public funding.

If a candidate is endorsed by a registered party at the election, the funding is paid to the registered party. If the candidate ran as an independent candidate, any funding is paid directly to the candidate.

The maximum rate of public funding is \$6 per formal first preference vote received by the candidate.

To ensure that this funding does not act as a windfall, the funding is based on reimbursement via a claim process. A party or independent candidate can submit a claim to the TEC outlining the election expenditure incurred during the election campaign. The amount of funding paid is the lesser of the claimed amount and the entitlement.

The TEC will have the ability to either pursue overpayments as a civil debt, or alternatively withhold future funding entitlements to the extent of the overpayment.

The second part of the public funding system within the Bill is 'administrative funding'. This system is set down in Part 12.

This funding is available to registered parties with Members in the House of Assembly as well as Independent Members of the House of Assembly.

Administrative funding has been included as part of the Bill to reflect the increased administrative burden faced by parties with Members of Parliament (MPs) and by independent Members due to the disclosure and reporting requirements of the Bill.

A tiered system of administrative funding has been provided for, based on the number of MPs a party has endorsed:

- a party with six or more endorsed Members is entitled to \$33 054 per quarter;
- a party with between two and five Members is entitled to \$19 282 per quarter;
- a party with one endorsed Member is entitled to \$9 641 per quarter; and
- an independent Member is entitled to the same amount as a one Member party, namely \$9 641 per quarter.

As with per vote funding, this funding is by reimbursement and is capped at the actual expenditure of the party or Member on relevant things. The Bill sets out a description of the type of expenditure that can be claimed as administrative expenditure for the purpose of claiming this funding.

Both funding systems will be administered by the TEC from the Election Campaigns Fund and Administration Fund which are established by the Bill.

TEC has appropriate compliance and enforcement powers to ensure these funding systems are accountable and fair. This includes the ability to audit, or retain a qualified auditor to audit, any claims for funding.

To ensure the effective operation of the disclosure requirements and funding system, the Bill also contains a range of enforcement, compliance, investigation and offence provisions. The Bill provides the TEC with the capacity to investigate and prosecute a range of offences relating to requirements under the Bill. This includes the capacity to not only prosecute agents for failing to meet requirements but also others, including candidates, who provide information which they know, or ought to have known, is false or misleading in a material particular, in that it is of significance and not trivial or inconsequential.

The Act also provides for a course of conduct, or 'scheme' offence. This is where a person engages in conduct deliberately aimed at circumventing a requirement or prohibition under the Act.

Publication requirements

The Bill recognises the importance of full and timely publication of information. The TEC has the obligation under the Bill of ensuring that a range of information is provided online within reasonable timeframes.

Online publication is required by the Bill for the following type of information:

- all Registers established under the Bill;
- all guidelines issued by the TEC;
- all claims for both forms of public funding;
- all donation disclosures; and
- all election returns.

The TEC retains the capacity to decline to publish a document or part of a document where the TEC has reason to suspect the information is vexatious, false or misleading.

The TEC will also continue to provide access to information in hard copy at their office during business hours. Availability of both the online and hard copy of these documents must be maintained for six years.

Consultation

The *Electoral Disclosure and Funding Bill 2021*, along with the *Electoral Matters (Miscellaneous Amendments) Bill 2021*, was released for public consultation for a period

of five weeks from 24 August 2021 until 28 September 2021. The Bills were available via the Department of Justice website along with a variety of fact sheets, to assist in understanding the provisions of the Bills.

In addition, a wide range of stakeholders and interested parties were contacted directly to advise them of the Bills. This included all the registered parties in Tasmania, all individuals and groups that had previously made a submission on the Review (where contact details were available), all current Members of both the House of Assembly and the Legislative Council, the University of Tasmania, the Tasmania Law Reform Institute, the Integrity Commission, the Law Society of Tasmania, the Tasmanian Bar, the courts, and media outlets, among others.

This is an important reform that has a lot of community and stakeholder interest, and I would like to take the opportunity to thank all those people and groups who made a submission and participated in this important and complex review. All feedback and submissions received have been taken into consideration when finalising the Bills for Parliament.

The reforms being progressed through these Bills strike the appropriate balance in increasing transparency and fairness - which is the right thing to do, to ensure that the public continues to have confidence in the outcomes of elections into the future.

It is important that Tasmanians have confidence in our electoral system and therefore, we must ensure it applies to everyone who participates in the political process. It's critical we get these settings right, and I am confident that these Bills deliver a fairer, more transparent and modern electoral system for our State.

Before I conclude, Mr Speaker, I foreshadow that I will be moving one amendment to address an ambiguity in the Bill, which was identified through the briefing process. The amendment will amend the definition of 'Party Subscription' in Clause 5 to make it clear that the threshold of \$5,000 applies to the aggregate total of subscription fees paid by a person each year, rather than to each individual payment.

Mr Speaker, I commend the Bill to the House.