

TASMANIA

**ELECTORAL DISCLOSURE AND FUNDING AMENDMENT
BILL 2024**

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ELECTORAL DISCLOSURE AND FUNDING AMENDMENT BILL 2024

(Brought in by Dr Rosalie Ellen Woodruff MP)

A BILL FOR

An Act to amend the *Electoral Disclosure and Funding Act 2023* to introduce electoral expenditure limits for Assembly Elections, amend the donation disclosure threshold, introduce truth in political advertising provisions, and related matters

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Electoral Disclosure and Funding Amendment Act 2024*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Electoral Disclosure and Funding Act 2023** is referred to as the Principal Act.

*No. 37 of 2023

4. Section 5 amended (Interpretation)

Section 5 of the Principal Act is amended as follows:

- (a) by omitting the definition of *party subscription* and substituting the following definition:

party subscription means –

- (a) an annual or other subscription of less than \$1 000 in total during a financial year, that is paid to a registered party for membership, or continuing membership, of the registered party; or
- (b) an annual or other subscription of less than \$1 000 in total during a financial year, that is paid to a registered party by a person (including an industrial organisation) for affiliation with the party;

5. Section 13 amended (Meaning of *reportable political donation*)

Section 13 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “\$5 000” and substituting “\$1 000”;

- (b) by omitting from subsection (2)(a) “\$5 000” and substituting “\$1 000”;
- (c) by omitting from subsection (2)(b) “\$5 000” and substituting “\$1 000”;
- (d) by omitting from subsection (2)(c) “\$5 000” and substituting “\$1 000”;
- (e) by omitting from subsection (2) “\$5 000” and substituting “\$1 000”;
- (f) by omitting from subsection (3)(a) “\$5 000” and substituting “\$1 000”;
- (g) by omitting from subsection (3)(b) “\$5 000” and substituting “\$1 000”;
- (h) by omitting from subsection (3)(c) “\$5 000” and substituting “\$1 000”;
- (i) by omitting from subsection (3) “\$5 000” and substituting “\$1 000”;
- (j) by omitting from subsection (4)(a) “\$5 000” and substituting “\$1 000”;
- (k) by omitting from subsection (4)(b) “\$5 000” and substituting “\$1 000”;
- (l) by omitting from subsection (4)(c) “\$5 000” and substituting “\$1 000”;
- (m) by omitting from subsection (4) “\$5 000” and substituting “\$1 000”;
- (n) by omitting from subsection (5)(a) “\$5 000” and substituting “\$1 000”;

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- (o) by omitting from subsection (5)(b) “\$5 000” and substituting “\$1 000”;
- (p) by omitting from subsection (5)(c) “\$5 000” and substituting “\$1 000”;
- (q) by omitting from subsection (5) “\$5 000” and substituting “\$1 000”;
- (r) by omitting from subsection (6)(a) “\$5 000” and substituting “\$1 000”;
- (s) by omitting from subsection (6)(c) “\$5 000” and substituting “\$1 000”;
- (t) by omitting from subsection (6)(d) “\$5 000” and substituting “\$1 000”;
- (u) by omitting from subsection (6)(e) “\$5 000” and substituting “\$1 000”;
- (v) by omitting from subsection (7)(a) “\$5 000” and substituting “\$1 000”;
- (w) by omitting from subsection (7)(c) “\$5 000” and substituting “\$1 000”;
- (x) by omitting from subsection (7)(d) “\$5 000” and substituting “\$1 000”;
- (y) by omitting from subsection (7)(e) “\$5 000” and substituting “\$1 000”;

6. Divisions 2A and 2B inserted

After section 29 of the Principal Act, the following divisions are inserted in Part 3:

Division 2A – Corporate political donations

28A. Object of Division

- (1) The object of this Division is to secure and promote the actual and perceived integrity of elections by reducing the risk of corporate or organisational interests exerting (or being perceived to exert) undue or improper influence on the outcomes of elections.
- (2) This Division aims to achieve this object by restricting the receipt and use of political donations made by anyone other than a natural person.

28B. Limitations on eligibility to make donations

- (1) No person or entity other than a natural person who is a citizen or permanent resident of Australia may make a political donation.
- (2) Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (3) A person must not make a political donation on behalf of another person or entity.
- (4) Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (5) A person or entity must not provide a gift or loan to a person with the intent of facilitating a political donation.
- (6) Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 12 months, or both.

Division 2B – General cap on political donations

28C. General cap

- (1) A political donation must not exceed the general cap.
- (2) A person must not accept a political donation if the political donation would exceed the general cap.
- (3) A person may accept a political donation in contravention of subsection (2) if the political donation, or so much of the political donation that exceeds the general cap, is made for Commonwealth electoral purposes and is paid into a federal campaign account.
- (4) A contribution by a candidate to their own campaign account is not included in the general cap in respect of that candidate.
- (5) A contribution made by –
 - (a) an endorsed candidate of a party; or
 - (b) a councillor within the meaning of the Local Government Act 1993; or

- (c) a Member of the Australian House of Representatives or Senate; or
- (d) a Member of the Council or the Assembly –

to a party of which they are a registered member, is not included in the general cap in respect of that party.

(6) In this section ***general cap*** means –

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

7. Section 40 amended (Registered parties and their Members and candidates)

Section 40 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following:

If a political donation is received, or made, by or on behalf of –

- (a) a registered party; or
- (b) an Assembly Member who is, at the time at which the donation is received or made, endorsed by a registered party; or

- (c) an Assembly candidate who is, at the time at which the donation is received or made, endorsed by a registered party –

the party agent in relation to the registered party is required to disclose the donation in a donation declaration that is lodged under section 49 within –

- (d) if the political donation is received within 7 days before a polling day, 24 hours after the political donation is received; or
- (e) if paragraph (d) does not apply, 7 days after the day on which the political donation is received or made.

8. Section 41 amended (Independent Assembly Members, Council Members, independent candidates and Council candidates)

Section 41 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following:

If a political donation is received, or made, by or on behalf of –

- (a) an Assembly Member who is an independent Assembly Member at the time at which the donation is received or made; or

- (b) an Assembly candidate who is an independent Assembly candidate at the time at which the donation is received or made; or
- (c) a Council Member;
- (d) a Council candidate;

the official agent in relation to the Member or candidate is required to disclose the donation in a donation declaration that is lodged under section 49 within –

- (e) if the political donation is received within 7 days before a polling day in relation to an election in respect of a division of the Assembly or the Council, and the Member or candidate is –
 - (i) a Member in relation to the division; or
 - (ii) a candidate in relation to the election –

24 hours after the political donation is received; or

- (f) if paragraph (e) does not apply, 7 days after the day on which the political donation is received or made.

9. Section 42 amended (Associated entities)

Section 42 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsections:

- (1) If a reportable political donation is, within 7 days before a polling day in relation to an Assembly election, received, or made, by or on behalf of an associated entity, the official agent in relation to the associated entity is required to disclose the donation in a donation declaration that is lodged under section 49 within 24 hours after the political donation is received or made.
- (2) If a reportable political donation is, received, or made, by or on behalf of an associated entity, and subsection (1) does not apply, the official agent in relation to the associated entity is required to disclose the donation in a donation declaration that is lodged under section 49 within 7 days after the day on which the political donation is received or made.

10. Section 43 substituted

Section 43 of the Principal Act is repealed and the following section is substituted:

43. Third-party campaigners

- (1) If a reportable political donation is, during an election campaign period in relation to an Assembly election, received, by or on behalf of a person who is or becomes a third-party

campaigner in relation to the election, for the purposes of incurring, during that period, electoral expenditure by the person, the official agent in relation to the person is required to disclose the donation in a donation declaration that is lodged under section 49 before –

- (a) if the reportable political donation is made within 7 days before a polling day in relation to the election, whichever of the following occurs last –

- (i) 24 hours after the person becomes a third-party campaigner in relation to the election;
 - (ii) 24 hours after political donation is received; or

- (b) if the reportable political donation is not made within 7 days before a polling day in relation to the election, whichever of the following occurs last –

- (i) 7 days after the day on which the person becomes a third-party campaigner in relation to the election;
 - (ii) 7 days after the day on which the political donation is received.

(2) If a third party uses a gift, part of a gift, or more than one gift received from the same person, of a value equal to or more than \$5 000, that would, but for this section, not be a reportable political donation, to incur electoral expenditure, or to reimburse the third party for electoral expenditure, and that gift or gifts are not from a foreign donor, then, for the purposes of subsection (1) -

- (a) the gift or gifts are taken to be a reportable political donation; and
- (b) the day on which the gift or gifts were received is taken to be the day on which electoral expenditure in relation to that gift was incurred.

11. Section 44 substituted

Section 44 of the Principal Act is repealed, and the following section is substituted:

44. Significant political donors

If a reportable political donation is made by a significant political donor, the official agent in relation to the significant political donor is required to disclose the donation in a donation declaration that is lodged under section 49 within –

- (a) if the donation is made within 7 days before a polling day in relation to an

election in respect of an Assembly division or a Council division, and the donation is made to a Member for the division, a candidate in relation to the election, a person who is or becomes a third-party campaigner in relation to the election, a registered party, or an associated entity, whichever of the following occurs last –

- (i) if the donations is made to a person who is or becomes a third-party campaigner in relation to the election, 24 hours after the person becomes a third-party campaigner in relation to the election;
 - (ii) 24 hours after political donation is received; or
- (b) If paragraph (a) does not apply, whichever of the following occurs last –
 - (i) if the donations is made to a person who is or becomes a third-party campaigner in relation an election, 7 days after the day on which the person becomes a third-

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party campaigner in
relation to the election;

- (ii) 7 days after the day on
which the political
donation is received.

12. Section 47 amended (Donation disclosure by significant political donor also to include disclosure of certain gifts received)

Section 47(1) (a) of the Principal Act is amended by
omitting “\$5 000” and substituting “\$1 000”.

13. Section 53 amended (Publication on Commission website of disclosures)

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from subsection(1)(a) “within”
and substituting “as soon as practicable, but in
any case no later than”;
- (b) by omitting subsection (2) and substituting the
following subsection:

“(2) If a donation declaration relates to
a donation that is required under
this Part to be disclosed within 24
hours after the donation is made or
received, the Commission must
ensure that –

- (a) as soon as practicable,
but in any case no later

than 24 hours after the donation declaration is lodged with the Commission under section 49, a copy of the donation declaration is published on a Commission website; and

(b) the copy continues to be so published for a period of at least 6 years.”;

(c) by omitting from subsection(3)(a) “within” and substituting “as soon as practicable, but in any case no later than”.

14. Division 2A inserted

After section 61 of the Principal Act, the following division is inserted in Part 6:

Division 2A – Assembly expenditure limit

61A. Candidate’s expenditure limit

(1) A candidate at an Assembly election must not, in respect of his or her campaign for that election, incur election expenditure exceeding the expenditure limit.

- (2) The expenditure limit for the purposes of subsection (1) is \$83 000 in the year 2022 and increases by an additional \$1 000 each subsequent year.
- (3) If a court convicts a candidate of an offence against subsection (1) it is to, at the time of conviction, make a finding of the amount by which the candidate's election expenditure exceeded the expenditure limit.
- (4) For the purposes of subsection (1), expenditure incurred by the official agent in relation to the candidate is taken to have been incurred by the candidate.
- (5) A person who contravenes subsection (1) by incurring any amount not exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 0.05 penalty unit for each \$1 of that first mentioned amount.

- (6) A person who contravenes subsection (1) by incurring any amount exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 150 penalty units.

61B. Party's expenditure limit

- (1) A registered party must not, in respect of the party's campaign for an Assembly election, incur election expenditure exceeding the expenditure limit.

- (2) If a registered party, in respect of its campaign for an Assembly election, incurs election expenditure exceeding the expenditure limit, the party agent is guilty of an offence.
- (3) For the purposes of subsection (1), the expenditure limit is \$830 000 in the year 2022 and increases by an additional \$10 000 each subsequent year.
- (4) If a court convicts a party agent of an offence against subsection (2), it is, at the time of conviction, to make a finding of the amount by which the party's election expenditure exceeded the expenditure limit.
- (5) A person who contravenes subsection (1) by incurring any amount not exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 0.05 penalty unit for each \$1 of that first mentioned amount.

- (6) A person who contravenes subsection (1) by incurring any amount exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 150 penalty units.

61C. Third-party campaigner expenditure limit

- (1) A third-party campaigner must not incur election expenditure exceeding the expenditure limit.

- (2) If a third-party campaigner, in respect of its campaign for an Assembly election, incurs election expenditure exceeding the expenditure limit, the official agent in relation to the third-party campaigner is guilty of an offence.
- (3) The expenditure limit for the purposes of subsection (1) is \$83 000 in the year 2022, increasing by an additional \$1 000 each subsequent year.
- (4) If a court convicts a person of an offence against subsection (1) it is to, at the time of conviction, make a finding of the amount by which the person's election expenditure exceeded the expenditure limit.
- (5) A person who contravenes subsection (1) by incurring any amount not exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 0.05 penalty unit for each \$1 of that first mentioned amount.

- (6) A person who contravenes subsection (1) by incurring any amount exceeding \$1 000 in excess of the expenditure limit is guilty of an offence.

Penalty: Fine not exceeding 150 penalty units.

15. Section 71 amended (Assembly election campaign returns)

Section 71(4) (b) of the Principal Act is amended by omitting "\$5 000" and substituting "\$1 000".

16. Section 187A inserted (Assembly election campaign returns)

After section 187 of the Principal Act, the following section is inserted in Part 15:

187A. Section 197A inserted

After section 197 of the Principal Act, the following section is inserted in Division 5:

197A. Misleading Advertising

- (1) This section applies to advertisements published by any means (including radio or television).
- (2) A person who authorises, causes or permits the publication of an electoral advertisement (an advertiser) is guilty of an offence if the advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 6 months, or both.
- (3) It is a defence to a charge of an offence against subsection (2) to establish that the defendant –

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- (a) took no part in determining the content of the advertisement; and
 - (b) could not reasonably be expected to have known that the statement to which the charge relates was inaccurate and misleading.
- (4) If the Commissioner is satisfied that an electoral advertisement contains a statement purporting to be a statement of fact that is inaccurate and misleading to a material extent, the Commissioner may require the advertiser to, within a timeframe specified by the Commissioner, do one or more of the following:
 - (a) withdraw the advertisement from further publication; or
 - (b) publish a retraction in specified terms and a specified manner and form; or
 - (c) pay costs of any person reasonably incurred in correcting the inaccurate or misleading statement.

17. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.