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**Submission to the *Electoral Disclosure and Funding Bill 2021* Exposure Draft  
September 2021**

## **Executive Summary & Recommendations**

Tasmanians have waited for decades for community calls to be heeded for the establishment of a world-class and modern state-based political donations and election finance regulation system. For too long, Tasmania's political donation system was the most secretive and little-regulated across the nation, solely reliant upon the dated and inadequate Commonwealth disclosure laws.

In the face of community outrage following the controversial 2018 state election, the government of the day announced a review of Tasmania's electoral laws, which provided a brief sense of optimism that necessary reforms may occur.

However, this review process has become very protracted. While there is an imperative to establish swiftly a state-based election donations and financing system, of equivalent importance is the need to ensure the most equitable, rigorous and best practice system is delivered to Tasmanians.

This submission will not focus on the need for a state-based political donations disclosure scheme but will instead focus on how well the exposure draft *Electoral Disclosure and Funding Bill 2021*, delivers against key principles underpinning a rigorous election finance and disclosure system, including:

- *protecting the integrity of democratic elections and representative government*
- *promoting fairness and transparency in politics*
- *timely and transparent political donation disclosures*
- *applying rigorous limitations on undue influence of donors and vested corporate interests*
- *regulating third parties' involvement*

While the cognate exposure draft Bills package is a welcome step forward, there are some serious areas of concern.

Had the exposure draft *Electoral Disclosure and Funding Bill 2021* in its current format been in place during the recent state election this year, it would not have provided the following key transparency components:

- Election donations disclosures threshold of \$1,000 equivalent to other jurisdictions;
- Timely donation disclosures requirements that ensure all election donations are publicly disclosed by polling day;
- Caps on election expenditure, and donations
- Ban on corporate donations from specific sectors.

## **Recommendations**

**RECOMMENDATION 1:** In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to define:

- a) a 'reportable political donation' to be a donation of \$1, 000 or more (aggregated).

**RECOMMENDATION 2:** In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:

- a) Require all 'reportable election donations' to be publicly disclosed by polling day;
- b) Provide for more immediate 'reportable election donations' disclosure requirements for submission to the Commission; and
- c) Provide for more immediate time limits for the 'reportable election donations' disclosure publication by the Commission, which must occur before polling day.

**RECOMMENDATION 3:** In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill should be amended to:

- a) Provide for more timely election campaign expenditure disclosure requirements for submission to the Commission; and
- b) Provide for more timely election campaign expenditure disclosure publication by the Commission.

**RECOMMENDATION 4:** In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:

- a) Provide for appropriate Assembly election campaign expenditure caps imposed on all registered political parties, independent candidates, associated entities and third parties; and
- b) Provide an aggregated cap on the total amount of election donations to be received by any one donor individual or organisation to any registered political party or candidate during an election cycle.

**RECOMMENDATION 5:** In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:

- a) Prohibit the use and receipt of political donations from property developers, tobacco, liquor and gaming, and firearm entities.

**RECOMMENDATION 6:** In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:

- a) Prohibit all anonymous donations to registered political parties, candidates and associated entities.
- b) Require the name and address of all political and electoral donors, not only those making 'reportable donations', be collected and retained by registered political parties, candidates and associated entities.
- c) Require that the aggregate total of non-reportable political and electoral donations received by registered political parties, candidates and associated entities be publicly reported.

**RECOMMENDATION 7:** In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:

- a) Include required election campaign expenditure caps as part of the proposed new public funding of election campaigns.

**RECOMMENDATION 8:** In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure and funding regime, there needs to be:

- a) further analysis and consideration regarding the exclusion of the Legislative Council from the proposed public funding provisions;
- b) further examination of other national jurisdictions public funding models which provide public funding assistance to new and emerging parties, in order to promote political diversity, and/or public policy development.

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## Introduction

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*“The regulation of political finance is an essential component of a modern democracy. Political parties require funding to carry out their representational activities; yet the influence of money raises integrity issues, such as the potential for corruption and undue influence through political donations. A well-functioning political finance system can thus enhance the equity and transparency of a democratic system.”* (Regulating Money in Democracy, 2021, pg 5).

I welcome the opportunity to provide comment on the cognate exposure draft *Electoral Disclosure and Funding Bill 2021*, and the *Electoral Matters (Miscellaneous Amendments) Bill 2021*.

The main focus of this submission will be on the exposure draft *Electoral Disclosure and Funding Bill 2021*.

This draft Bill has been a long time coming.

The process culminating in the current cognate draft bills package commenced in 2018 when then-Premier Will Hodgman MP announced a two-part review of Tasmania’s *Electoral Act 2004* and other associated electoral laws, following escalating disquiet and anger in the community over the perceived negative impact of political donations within the state’s parliamentary elections and policy sphere. This review’s initial focus was upon a range of technical reforms to modernise the state’s electoral laws, such as new media publishing election related content on polling day, while also canvassing whether comprehensive political donations laws were needed, and if so, what form they may take.

Following Mr Hodgman’s 2018 announcement, the review’s Terms of Reference were released for public consultation. An Interim Report, and a post High-Court decision-Addendum followed in 2019, along with the first Bill seeking to make technical changes to the *Electoral Act 2004*, which has since passed both Houses of Parliament.

However, the review’s political donations reform component was not fully addressed in the Interim Report nor the first reform Bill. Instead, Tasmanians were asked to respond to the Interim Report with submissions due in April 2019, to help inform the review’s Final Report.

Despite the Interim Report’s public consultation period closing in 2019, Tasmanians had to wait until February 2021 for the Final Report to be released. The subsequent cognate Exposure Draft Bills was finally released for comment on 24 August this year. In the interim, the Tasmanian voters were once again sent to the polls without a comprehensive or robust political donations disclosure regime in place – a bitter disappointment to many.

There is a clear imperative to not only implement swiftly comprehensive state political donation disclosures laws, but to also ensure that any new disclosures regime is as robust as possible.

At the outset it is worth noting the cognate Exposure Draft Bills are detailed and contain some positive elements.

However, it is beyond the scope of this submission to provide a detailed analysis of the Exposure Draft Bills in their entirety, or from a technical drafting perspective.

Instead, this submission will seek to evaluate the draft *Electoral Disclosure and Funding Bill 2021* against the key democratic principles underpinning best practice modern electoral donations

disclosures and expenditure regimes: transparency, timeliness, and the provision of fair, equitable and accessible election campaigns.

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## Key Benchmarks for a Modern Political Donations Disclosure and Funding Regime

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A recent report commissioned by the Electoral Regulation Research Network defined the key political finance regulation principles as: “*protecting the integrity of representative government, promoting fairness in politics, the principle of transparency, supporting parties in performing their functions, and respecting political freedoms*” (*Regulating Money in Democracy*, 2021, pg 3).

The report further details key elements of political finance regulation: “*disclosure requirements (donations and expenditure), caps on donations, caps on expenditure, indexation, bans on donations from certain sectors, foreign donations bans, political funding streams and funding rates, and enforcement*” (*Regulating Money in Democracy*, 2021, pg 3).

Fundamental to any attempts to regulate electoral finance effectively is comprehensive and timely disclosure requirements, combined with effective limitation of undue influence by donors.

How does the exposure draft *Electoral Disclosure and Funding Bill 2021* measure up against these key electoral disclosures and expenditure principles, and implementation elements? Will the exposure draft Bill assist in restoring public trust and confidence in the integrity of Tasmania’s electoral and political institutions?

This submission will focus on the following key provisions:

- Donation disclosure threshold
- Timeliness of election donations disclosure
- Election expenditure and donations caps
- Bans on anonymous and specific donations
- Public funding of election campaigns

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### ***Political Donations Disclosure Threshold***

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There has been a long and lively debate in Tasmania not only about the need for a state-based political disclosures regime, but also regarding the level of acceptable disclosure.

While the aggregation element of the specified ‘reportable political donations’ disclosure level is welcome, the ‘reportable political donations’ disclosure level specified in the exposure draft Bill of \$5, 000 or above is alarming and disappointing (S.10, pg 44).

Further, it does not meet the clear expectations of many Tasmanians for a lower disclosure threshold of \$1, 000 as reflected by the *Electoral Act Review Final Report*:

*“If a disclosure regime were introduced in the state, a threshold of \$1,000 would be in line with the majority of submitters to the Review as well as the general trend in other jurisdictions”* (Final Report Feb 2021, pg 63).

The only explanation provided by the government for this inexplicable high disclosure threshold which goes against the “general trend in other jurisdictions”, is a statement by the Premier reported by the *Tasmanian Inquirer* that he, “... looked around at what was occurring around the country. The South Australians have a donations disclosure level of above \$5000. \$5000 seemed about right” (27 September 2021).

This is an insufficient reason to override the wishes of many Tasmanians as expressed via the submissions made to the *Electoral Act Review Interim Report* public consultation process. In fact, it raises the question of why bother going through the façade of a public consultation process if its findings can be over-riden by this purported act of whimsy and cherry-picking. A ‘captain’s call’ devoid of evidence-based considerations, will not deliver on the stated aims of delivering a ‘fair and transparent’ scheme which improves public confidence in the rigor of our election financing system.

Of the 53 Interim Report submissions publicly available on the Justice Department website, 35 submissions nominate appropriate disclosure thresholds. Of the 35 submissions which nominated a specific threshold amount, 32 state \$1, 000 as an acceptable threshold. That is 60.4% of submissions received nominating \$1,000 as their identified appropriate donations disclosure threshold limit.

Additionally, one submission nominated \$3,000 limit, two nominated \$1,500 limits, while a further 14 stated the threshold needed to be ‘lower’ with more real time disclosure.

Notably, not one submission nominated a threshold amount of \$5,000 or higher.

To further compound concern regarding this top-down insertion of a \$5, 000 disclosable threshold instead of the \$1, 000, it clearly appears to contradict the department’s statement that “*the Government accepted in principle all the recommendations in the Final Report*” (August 2021).

To reiterate, not only is the proposed disclosure threshold of \$5, 000 inconsistent with the majority of the public submissions received and contradictory to the Review’s Final Report’s findings, it will immediately relegate Tasmania once again to the bottom of the performance list when compared with other subnational election financing and disclosure schemes.

Other subnational jurisdictions which have a donation disclosure threshold of \$1000 include: the ACT, Queensland, NSW, and Victoria.

Further, under the exposure draft Bill’s proposed threshold, Tasmania will be less transparent than the Northern Territory which has a disclosure threshold of \$1, 500 and also has the additional integrity protections of placing a ban on anonymous donations of \$200-plus for candidates, and a ban on anonymous donations of \$1, 000 to political parties, associated entities and third parties.

Despite the Premier reportedly inferring that the proposed \$5, 000 disclosure threshold will place Tasmania at a similar level with South Australia, unlike the exposure draft Bill, South Australia’s political donations disclosure regime imposes additional constraints, including requirements that any donations totalling \$25, 000 or more have additional special reporting measures.

To reiterate, the subnational jurisdictions which have higher disclosure thresholds than \$1, 000, also include additional fairness and transparency protections against actual or the perception of corruption which are not included in the proposed Tasmanian exposure draft Bill.

As Table 1 demonstrates, other interstate jurisdictions with the lower \$1, 000 disclosure threshold also provide additional anti-corruption and public probity provisions, such as New South Wales

which has a ban on anonymous donations, and also bans on donations from property developers, tobacco, liquor and gaming industry entities.

Tasmania has not waited this long for a substandard political donations disclosure scheme, with the least transparency and scrutiny of all Australian states and territories applied to the amount donated to political parties and candidates during election campaigns.

**Table 1 - Allowable Donation Restrictions and Thresholds Interjurisdictional comparison**

	Disclosure Threshold	Special Reporting for large Donations?	Anonymous Donations banned?	Cap on Donations?	Corporate/Sector Bans?
<b>ACT</b>	\$1, 000 (aggregate)	-	✓ Anon donations of \$1, 000 prohibited	✗ No.	✓ property developers
<b>VIC</b>	\$1, 040 (indexed from \$1, 000 base)	-	\$1, 000 cap on anonymous donations	✓ Yes	✗ No.
<b>NSW</b>	\$1, 000 (aggregate)	-	✓ \$1, 000 cap on anonymous donations	✓ Yes	✓ property developers, tobacco, gaming and liquor industry
<b>QLD</b>	\$1, 000 (aggregate)	✓ \$100, 000 or more	\$1, 000 cap on anonymous donations	✓ Yes	✓ property developers
<b>WA</b>	\$2, 500 (aggregate) <i>Govt is in process of amending to \$1,000</i>	-	✓ Anon donations of \$1, 500 prohibited	✗ No.	✗ No.
<b>NT</b>	\$1, 500 (aggregate)	-	✓ Anon donations of \$1000 prohibited for parties, & third parties; Anon of \$200 plus banned for candidates	✗ No.	✗ No.
<b>SA</b>	\$5, 000 (aggregate)	✓ \$25, 000 or more	✓ Anon donations of \$200 prohibited	✗ No.	✗ No.
<b>C'wealth</b>	\$14, 300	✗ No.	\$1, 000 cap on anonymous donations	✗ No.	✗ No.
<b>Proposed TAS</b>	\$5, 000 (aggregate)	✗ No.	✗ No.	✗ No.	✗ No.

Source: Eccleston and Jay 2017; Centre for Public Integrity, January 2021; Regulating Money in Democracy, 2021.

**RECOMMENDATION 1:** In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to define:

- b) a 'reportable political donation' to be a donation of \$1, 000 or more (aggregated).

## *Timeliness of Donations Disclosure*

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Tasmania's current and sole reliance upon the federal political donations disclosure laws has, ironically, had the effect of creating a strong awareness amongst Tasmanians of the importance of timely donation disclosures - particularly during election campaigns and before polling day.

The majority of submissions to the Review's Interim Report which raised timely disclosure of election donations, called for real time, online, and continuous public disclosure (over 68%).

The exposure draft *Electoral Disclosure and Funding Bill 2021* makes a commendable effort to meet community expectation for real-time disclosure during the defined election campaign period under the provisions of Part 5, which stipulates 'reportable political donations' must be declared within 7 days after the day the political donation was made (S. 37, pg 80).

However, the draft Bill still falls short.

Crucially, the exposure draft Bill fails to provide any mechanism by which to 'plug' the disclosure loop-hole in last seven days of the election campaign period.

While the draft Bill still requires that any 'reportable political donations' must be disclosed by the end of the 'disclosure period end day' - that defined period is 30 days following an Assembly polling day, or 30 days following the declared election of a Legislative Council candidate (pg 19). It could be approximately a month after polling day before any aggregated donations of \$5, 000 or above made during the last election campaign week are declared.

The very recent historic record demonstrates the fact that large donations are made during this most contestable period of an election campaign. This is not a hypothetical scenario, the evidence tells us it happens, as it did in the dying days of the 2018 state election. Tasmanian voters found out long after election day that donations totalling \$57, 000 made by hospitality sector interests to the Tasmanian Liberal Party, were made the day before polling day.

### ***Does Disclosure to the Commission Equate Public Disclosure?***

Current reading of the draft Bill indicates that it could take 14 days before a 'reportable political donation' made during an election campaign is made public.

During a specified election campaign period a 'reportable political donation' needs to be declared to the Tasmanian Electoral Commission (Commission) within 7 days of the donation being made. The Commission then has 7 days following the lodgement of a donation declaration to publish that declaration on a website (S.49, pg 95).

Under this reading of the draft Bill, it appears that despite donations of \$5, 000 and above requiring declaration within 7 days during the defined election campaign period, that is not the same as the donations being made *public* to the Tasmanian electorate at the same time. Instead, should the upper limit of the specified allowable time frames be implemented by both donation recipient and the Commission, voters may not know some or all of the 'reportable political donations' made during the last 14 days of the election campaign.

Coupled with the problematic omission of donation caps within this draft Bill, allowing undisclosed donations to be made during last seven days before polling day combined with the potential time-lag before donations declared to the Commission become publicly disclosed and available, provides

an unacceptable loop-hole, and one which risks undermining public confidence in the rigor and transparency of the new election financing and disclosure regime before it has even commenced.

**In effect, this loop-hole and potential publication time-lag provides the capacity for large political donations to be made and kept secret from the voting public at the time they go to the polls, and for it to be perfectly legal to do so.**

Despite the proposed election campaign donations disclosures timeframe appearing comparable with interstate examples, there is no reason why Tasmania could not set a higher standard by introducing tighter and more timely submission (within 24 hours of receiving or making a donation), and publication (within 24 hours of submission to the Commission) timeframes.

Coupled with the fact that Tasmanian general elections are not legislated fixed-term, means that 'snap' elections can be called, disrupting the intent of half yearly non-election campaign period donations. For example, any political donations made in late February or early March this year prior to the early 2021 state election technically fall outside the exposure draft Bill's defined 'election campaign period', meaning these donations would not have to be declared within the 7-day election time frame (although they would need to be declared in the half-yearly non-election disclosure provisions, but which would still leave them undisclosed until after polling day).

While it may be arguable that such unexpected situations will occur rarely, nonetheless, it heightens expectation and responsibility upon authorities to ensure that all 'reportable election donations' made during a defined 'election campaign period' must be publicly disclosed by polling day.

The exposure draft Bill currently fails the transparency goal of the voter knowing '*who gave what to whom when*', before they go to the ballot box.

**RECOMMENDATION 2: In order to fully meet Tasmanians' expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:**

- c) **Require all 'reportable election donations' to be publicly disclosed by polling day;**
- d) **Provide for more immediate 'reportable election donations' disclosure requirements for submission to the Commission; and**
- e) **Provide for more immediate time limits for the 'reportable election donations' disclosure publication by the Commission, which must occur before polling day.**

### ***Election Expenditure Disclosure Requirements***

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The exposure draft Bill's requirement all registered political parties, independent candidates, associated entities and third parties, to submit to the Commission all electoral expenditure as incurred during the specified election campaign period is welcome.

Further, it is also essential that the exposure draft Bill's current requirement stipulating compliant election expenditure disclosures (along with required political donations disclosures) to be a public funding eligibility prerequisite for political parties and candidates, is maintained (S.134 pg 188).

The Legislative Council electoral regime already requires an election expenditure return to be lodged with the Commission, so in this regard the exposure draft Bill is bringing the Assembly into line with the principle of the Council election expenditure disclosure requirements.

The requirement for Assembly parties, candidates, associated entities and third parties to submit election expenditure disclosures "*before the end of 60 days after the end of an election campaign*

*period*” (Part 7, pg 100) appears comparable with most interstate jurisdictions’ contemporary practice, keeping in mind that the end of the ‘election campaign period’ is determined by the ‘disclosure period end day’ which is defined as 30 days after Assembly polling day, or 30 days after a Council or by-election candidate is announced as elected (Part 2, pg 19). Hence, in practice, it could be 90 days before the required election expenditure disclosures are submitted to the Commission, who then has a further 21 days in which to make those returns publicly available on the Commission website (S. 71 pg 121).

It is worth noting that the public may not know the election campaign expenditure until potentially 111 days after going to the ballot box.

Such a time-lag between polling day and public disclosure of election campaign expenditure remains a concern, especially given community expectations and modern technological capacity to facilitate more timely submissions and publication.

**RECOMMENDATION 3:** In order to fully meet Tasmanians’ expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill should be amended to:

- f) Provide for more timely election campaign expenditure disclosure requirements for submission to the Commission; and
- g) Provide for more timely election campaign expenditure disclosure publication by the Commission.

### ***Caps on Election Campaign Expenditure and Donations***

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Effective election finance regulation schemes seek to limit the supply and demand for money in politics in a transparent and accountable manner. Supply-side limitations include the implementation of donations caps and bans on donations from foreign donors, as well as bans on specific sector donations. Demand restrictions are provided through mechanisms such as caps on election expenditure.

In a recent Briefing Paper, *Money in politics: a flood of political donations*, the Centre for Public Integrity warns that “gaps in the regulation of money in politics lead to big money having an undue influence on our electoral process” (January 2021).

Any equitable and comprehensive political campaign finance and disclosure regime consists of three pillars: an effective disclosure regime, regulation of third parties, and limitation of undue influence (Eccleston and Jay 2019).

The exposure draft Bill currently contains large gaps in the ‘limitation of undue influence’ pillar.

A recent Centre for Public Integrity Report identifies the omission of both caps on donations and on election spending from any political finance regulation scheme to be problematic, stating that:

*“No caps on donations mean that big money dominates – one quarter of all [AEC] donations since 1999 have been made by just 5 donors”* (January 2021).

The Centre for Public Integrity Report further cites Clive Palmer’s \$60 million advertising spend during the 2019 Federal Election campaign as an example of how, *“the lack of spending caps allows wealthy individuals or companies to spend millions on pre-election advertising blitzes”* (January 2021).

Following on the above discussion regarding concerning time-lags between polling day and publication of election expenditure returns, the introduction of a cap on the total allowable Assembly election campaign expenditure amount would assist in alleviating those transparency and scrutiny concerns. An election expenditure cap is also consistent with current legislative requirements with which Legislative Council candidates are required to comply.

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

### **Cap on Election Expenditure: Fairness and equity implications**

*“Caps on electoral expenditure are required to stop the fundraising “arms race” and limitless advertising spends. With no expenditure regulations in place... parties that fundraise the most and spend the most can gain an electoral advantage.”* (Centre for Public Integrity 2019).

The Centre for Public Integrity recommends that there should be caps imposed on all electoral expenditure made by political parties, candidate, associated entities and third parties. Further, such electoral expenditure caps should be tied to donation caps and political funding. (January 2021). These steps are recognised as integral to delivering on a crucial element of any comprehensive campaign funding and disclosure scheme: limiting the influence of donors and private money.

Election spending caps limit the amount and size of donations to and spending of candidates, political parties and third parties. Significantly, electoral expenditure caps have also been demonstrated as limiting the influence of large donors compared to smaller donors, which may also reduce the risk of undue influence on policy and political decision makers (Eccleston and Jay, 2019).

Under a ‘supply and demand’ analysis of money in politics, the introduction of Assembly election campaign expenditure caps would assist in addressing and containing the ‘demand’ aspect of the state’s new election funding and disclosure system.

As mentioned, Legislative Council candidates already have a legislated election campaign expenditure cap, which the exposure draft Bill maintains. Its contribution to a more level playing field between candidates, and the sense of accessibility this provides to ordinary Tasmanians considering running for public office is anecdotally well known and often acknowledged. Hence, Tasmania already has a functioning model of, and experience with, such caps.

Introduction of election expenditure caps would assist in closing the exposure draft Bill’s hole in the ‘limiting undue influence’ pillar of the proposed new election campaign finance regulation scheme.

Additionally, election expenditure caps are instrumental to the introduction of any fair and transparent implementation of public funding for election campaigns.

**Table 2: Election Campaign Expenditure Caps - interjurisdictional comparison**

TAS	NSW	QLD	SA	WA	ACT	NT	VIC	CWEALTH
X No. Except for Leg Council	✓ Yes \$132,600 per seat + party caps	✓ Yes \$58,000 per seat+ party caps	✓ Yes \$75,000 Per seat + party caps	✓ Bill to introduce before parliament	✓ Yes \$42,750 Per seat	✓ Yes	X No	X No

Source: Centre for Public Integrity, January 2021; Western Australian State Parliament

### Cap on Election Donations Received:

Another mechanism by which to invest in the integrity, transparency and effectiveness of any modern election financing system is the introduction of a cap on the allowable amount to be donated by any one donor for election campaign purposes (such a cap will not impact upon the fundraising for third parties for non-election campaign purposes).

According to the Centre for Public Integrity, “caps on donations are necessary to eliminate the ability of those with large amounts of money being able to buy undue influence and access. Our current system of unlimited donations means that those with the capacity to donate more are given more attention by politicians and political parties than an average constituent” (2019).

**Table 3: Election Campaign Donations Caps - interjurisdictional comparison**

TAS	NSW	QLD	VIC	WA	ACT	NT	SA	CWEALTH
X No.	✓ Yes \$6,600	✓ Yes \$4,000 (to be introduced in 2022)	✓ Yes \$4,160 - from the same source within four-year election period	X No	X No	X No	X No	X No

Source: Centre for Public Integrity, January 2021.

It is beyond the scope of this submission to identify appropriate electoral expenditure cap levels, or aggregated donation cap level within an election cycle. However, the majority of submissions made to the Review’s Interim Report call for the introduction of election donation caps. The main disclosure thresholds nominated for Donation Caps include a range from 1, 500, to \$3,000, and \$5,000 aggregate per donor per parliamentary term.

**It is also worth emphasising that in multiple instances the Review’s Final Report advocates that further ‘modelling and analysis’ be undertaken to finalise certain details of the proposed new election financing scheme. It is imperative that should any such modelling and analysis exist, that it is also made public – particularly if it may contribute to the identification of appropriate expenditure and/or donation cap amounts. If that work has not been done, now is the time to do it.**

The exposure draft Bill fails to deliver key modern electoral financing integrity and fairness insurance mechanisms including capping the allowable Assembly election expenditure amount, and also placing a cap on donations received.

**RECOMMENDATION 4:** In order to fully meet Tasmanians’ expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:

- c) Provide for appropriate Assembly election campaign expenditure caps imposed on all registered political parties, independent candidates, associated entities and third parties; and
- d) Provide an aggregated cap on the total amount of election donations to be received by any one donor individual or organisation to any registered political party or candidate during an election cycle.

## Certain Donations Prohibited

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### Ban on Foreign Donations:

The exposure draft Bill’s proposal to ban foreign donations is welcome and should be implemented (Part 3, pg 56).

Similar provisions are in place in Victoria, NSW, Queensland and at the Commonwealth level. Additionally, Western Australia has announced its intent to introduce a ban on foreign donations. Hence, this provision will bring Tasmania into line with the majority of interstate jurisdictions regarding this aspect of election financing.

### ***Ban on Specific Sector Donations:***

Since the High Court handed down its decision on the *Unions NSW & Ors v NSW* in January 2019, there has been much confusion and publication debate regarding the implications of this decision upon intentions to limit the actual and perceived undue influence of corporate sectors during election campaigns.

It is worth noting that when the NSW unions challenged the NSW electoral laws, they did not challenge the donations or expenditure caps. Instead, the unions acknowledged these elements of the NSW election funding laws were legitimate anti-corruption measures (Twomey 2015).

However, the High Court has upheld a ban on political donations from property developers, liquor and gaming business interests, and also tobacco corporate interests (*McCloy and Ors v NSW*). This sets a clear precedent that specific sectors can be prohibited from making political donations in the interests of limiting actual and perceived undue influence upon the integrity of democratic elections and governance.

NSW is not the only subnational jurisdiction to take proactive action to limit undue influence on their elections. Queensland and ACT have also implemented sector specific donations bans on property developers.

Tasmanians have seen the corrosive impact of both the actual and perceived undue influence by certain powerful vested corporate interests, from the Rouse bribery scandal of the 1980s, through to growing disquiet over the sway held by the extractive industry sector, and more recently the gaming and hospitality sector, over political parties' election platforms, which in turn influences public policy formation.

Recent election policy commitments made during the last two state elections by Tasmania's two major parties regarding the state's gaming policy, and poker machine regulation particularly, reflect the key positions held by local vested industry entities. The two political parties have historically been the beneficiary of direct political donations, as well as third party public campaign efforts, from gaming sector interests.

Frequently, we hear both corporate donors and recipients of corporate donations declare that there is no expectation for any policy 'quid pro quo'.

If we are to take such a declaration at face value, then there should not be any objection to legislating clearly and up front that there is no capacity for any 'quid pro quo' - either actual or perceived - and prohibit all political donations from the following corporate sectors or persons closely associated: property developers, tobacco businesses, gaming and liquor businesses, and the firearms business sector.

Again, most of the submissions made to the Review's Interim Report indicate support for a ban on particular corporate sector donations, with the most frequently identified being property developers, tobacco, liquor and gaming sector interests.

**Table 4: Ban on Corporate Sector Donations - interjurisdictional comparison**

TAS	NSW	QLD	ACT	WA	SA	NT	VIC	CWEALTH
X No.	✓ Yes • Property developers • Tobacco industry • Liquor or gambling industry	✓ Yes • Property developers	✓ Yes • Property developers	X No	X No	X No	X No	X No

Source: NSW Electoral Commission; Queensland Electoral Commission; ACT Electoral Commission.

**RECOMMENDATION 5:** In order to fully meet Tasmanians’ expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:

- b) **Prohibit the use and receipt of political donations from property developers, tobacco, liquor and gaming, and firearm entities.**

### **Ban on Anonymous Donations:**

The exposure draft Bill fails to prohibit the acceptance of anonymous donations. The Bill stipulates that it is unlawful for someone to accept a ‘reportable political donation’ unless the name and address of the donor is known to the recipient (s. 23, pg 68). However, a reportable political donation is one of \$5,000 or above (or an aggregated total), which allows any donated amount under that threshold to be accepted anonymously.

The bill does not appear to require that the aggregate total of all non-reportable political or electoral donations received by registered political parties, candidates and associated entities be reported publicly. This should be a requirement of reporting so that the public are able to see the quantum of non-reportable donations received, especially during an election campaign period.

**RECOMMENDATION 6:** In order to fully meet Tasmanians’ expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:

- a) **Prohibit all anonymous donations to registered political parties, candidates and associated entities.**
- b) **Require the name and address of all political and electoral donors, not only those making ‘reportable donations’, be collected and retained by registered political parties, candidates and associated entities.**
- c) **Require that the aggregate total of non-reportable political and electoral donations received by registered political parties, candidates and associated entities be publicly reported.**

### **Public funding of election campaigns**

Moving to a Public Funding of election campaigns scheme is welcomed, and the rate of \$6.00 per first preference vote received by eligible candidates is consistent with most similar interstate schemes.

The intent behind the provision of public funding of election campaigns is to reduce the capacity and or perception of ‘dirty private money’ influencing election campaigns, and replacing it with ‘clean’ public finances.

**To meet this objective of limiting the influence of donors, “... public funding should be combined with caps on electoral expenditure... without caps on electoral expenditure, public funding will not be effective in dampening the parties desire for money to fund expensive campaigns” (Regulating Money in Democracy, 2021).**

Political parties and candidates should be dependent on public funding for their fundraising instead of political donations. However, the introduction of public funding without limits on election expenditure is extremely problematic. It would see the major parties, without effective expenditure caps nor donation caps, receiving both unlimited political donations - which may be disclosed above a certain threshold level - and public funding with more money going towards their election campaigns.

Good electoral reform policy must keep both ‘supply and demand’ ratio elements balanced by stipulating limits on political donations received, and election campaign expenditure as eligibility prerequisites for electoral funding.

Currently the exposure draft Bill makes compliance with electoral expenditure disclosure requirements a prerequisite for accessing Public Funds, but while that may help provide transparency, it does little to foster equity.

#### ***Equity between Assembly and Legislative Council candidates***

Currently under the provisions of the *Electoral Act 2004*, Legislative Council candidates must abide by an indexed campaign expenditure limit, and must file electoral expenditure returns with the Tasmanian Electoral Commission. Further, political parties must not incur any Legislative Council election-related expenses.

These election campaign expenditure caps and return requirements are unique to the Upper House within the Tasmanian Parliamentary context. Yet despite the Legislative Council candidates being the only Tasmanian parliamentary candidates already required to comply with key electoral finance regulation elements considered essential to qualify for public funding in other jurisdictions, the exposure draft Bill excludes Council candidates from the proposed new public funding arrangements without explanation.

The exclusion of one of Parliament’s democratically elected Houses is an anomaly when compared with interstate bicameral jurisdictions which provide public funding as part of their political finance and regulation systems.

There may be a cogent justification for this exclusion, but it is not presented in any of the cognate exposure draft Bills package of information, and nor has any modelling or analysis undertaken to inform the development of the proposed new system been released by government.

Further, the cognate draft Bills go to the effort of ensuring consistency between other House of Assembly and Legislative Council terminology and provisions, which serves to highlight the glaring omission of the Council from Parts 11 and 12.

Given the absence of any justification or information to explain the exclusion of the Legislative Council from the public funding component of the draft Bill, it warrants further consideration and analysis moving forward.

**Table 5: Public Funding of Election Campaigns - interjurisdictional comparison**

TAS	NSW	QLD	SA	WA	ACT	VIC	NT	CWEALTH
✓ Yes	✓ Yes	✓ Yes	✓ Yes	✓ Yes	✓ Yes	✓ Yes	✗ No	✓ Yes
<b>Public Funding of Election Campaigns Capped to Expenditure Caps</b>								
✗ No.	✓ Yes	✓ Yes	✓ Yes	✓ Yes	✓ Yes	✗ No <i>(but does have Donations Cap)</i>	<i>(expenditure Caps only)</i>	✗ No
<b>Public Funding of Election Campaigns for both Houses</b>								
✗ No. Assembly only	✓ Yes Both Lower & Upper House elections	<i>n/a (unicameral)</i>	✓ Yes Both Lower & Upper House elections	✓ Yes Both Lower & Upper House elections	<i>n/a (unicameral)</i>	✓ Yes Both Lower & Upper House elections	<i>n/a</i>	✓ Yes Both House of Reps & Senate elections

Source: Centre for Public Integrity, January 2021; NSW Electoral Commission; Electoral Commission of SA; Victorian Electoral Commission; Western Australia Electoral Commission.

**RECOMMENDATION 7:** In order to fully meet Tasmanians’ expectation for a fair and transparent political donations disclosure regime, the exposure draft Bill needs to be amended to:

- a) Include required election campaign expenditure caps as part of the proposed new public funding of election campaigns.

**RECOMMENDATION 8:** In order to fully meet Tasmanians’ expectation for a fair and transparent political donations disclosure and funding regime, there needs to be:

- a) further analysis and consideration regarding the exclusion of the Legislative Council from the proposed public funding provisions;
- b) further examination of other national jurisdictions public funding models which provide public funding assistance to new and emerging parties, in order to promote political diversity, and/or public policy development.

## Implementation, Enforcement and Education

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It is critical that any new state-based election financing and disclosures system is properly and rigorously enforced.

I note there is provision to boost the investigative powers of the Tasmanian Electoral Commission which is welcome (Part 13, pg 204). However, history tells us that such measures on paper are only as effective as the funding and resourcing providing enables them to be.

It is incumbent on the current and future governments to ensure sufficient establishment, implementation and ongoing funding and resourcing of the Commission is provided. Consideration should be given to ensuring that any monies required for the implementation, enforcement and maintenance of the proposed electoral funding and disclosure scheme is designated a statutory line item within the Consolidated Fund.

The appropriate funding for the implementation of a rigorous and effective political donations disclosure regime needs to be regarded as the necessary investment into the integrity, fairness and transparency of Tasmania’s democracy and electoral systems.

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## Conclusion

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“The proper financing of politics is essential to the effective operation of democracies” (*Regulating Money in Democracy*, 2021, pg 6).

Integral to ‘proper financing’ is the rigorous and transparent regulation required to balance the two competing interests of protecting the freedom of individuals and entities to participate in politics via providing financial support to candidates and parties of their choice, while also ensuring not only is there a transparent ‘money trail’ but that the ‘pernicious influence’ of money in politics – including the damaging perception of influence - is curtailed and minimised as much as possible.

While the exposure draft *Electoral Disclosure and Funding Bill 2021* provides some sound steps forward, those sound initiatives risk being undermined by other weaknesses and holes contained in the current Bill.

Tasmania currently has the opportunity to set the ‘gold standard’ in establishing the nation’s most rigorous election funding and disclosures regime, yet the exposure draft Bill contains key threshold elements still stuck on the lowest rung when compared with other jurisdictions, such as the inexplicable election donations disclosure threshold of \$5, 000.

Hypothetically, had the provisions contained in the exposure draft Bill been in place during the most recent state election, would it have addressed the serious concerns held by many Tasmanians of secrecy and undue influence by donors on our elections?

Unfortunately, while the draft Bill in its current format would have been an improvement on the current minimal provisions applicable to state elections under federal laws, it would not have provided the following key transparency components:

- Election donations disclosures threshold of \$1,000 equivalent to other jurisdictions;
- Timely donation disclosures requirements that ensure all election donations are publicly disclosed by polling day;
- Caps on election expenditure, and donations
- Ban on corporate donations from specific sectors.

In relation to many of its recommendations, the *Electoral Act Review Final Report*, February 2021 places those recommendations within the context of being “*subject to future modelling and analysis...*” However, it is unclear whether any such “*modelling and analysis*” has been undertaken by government, and if so why it has not been made public along with the cognate exposure draft Bills package.

In relation to a package of cognate Bills containing the express Objects of establishing a “*fair and transparent*” disclosure scheme, while also facilitating “*public awareness of political donations and electoral expenditure, in relation to election*” – it would be consistent with those Objects for the government to confirm whether any modelling was undertaken when developing the proposed state disclosure scheme, and if so to release all modelling and analysis publicly (S.3, pg 12).

After the decades of waiting for a comprehensive state-based donations disclosure reforms and the protracted nature of the review culminating in these cognate Bills, Tasmanians deserve either the most rigorous disclosure scheme, or at least transparent disclosure of the reasons why they are being presented with a proposed system that doesn’t measure up to public expectation in its entirety.

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