

**Legislative Council  
HANSARD**

**Thursday 14 September 2023**

**ELECTORAL DISCLOSURE AND FUNDING BILL 2022 (No. 25)**

**Second Reading**

**[excerpt]**

[3.13 p.m.]

**Ms WEBB** (Nelson) - Mr President, I rise to speak on the Electoral Disclosure and Funding Bill, which has been a very long time coming for debate in this Chamber. I acknowledge the power of work that has gone into the development and drafting of this bill and the bill that accompanies it. Thank you to the departmental staff who have undertaken that work, including, providing the members of this place with a very thorough briefing. It was much appreciated. My thanks to all those community members, civil society organisations, academics and representative bodies who have provided submissions, advice and input during the development of the bill. It has been a protracted and disjointed process and engagement from those stakeholders across the years of this process has been invaluable.

This bill, along with the accompanying Electoral Matters (Miscellaneous Amendments) Bill, mean that for the very first time - should they pass - Tasmania will be putting in place its own regime for the disclosure of political and electoral donations.

Will these bills before us provide some sound steps forward, or will those sound initiatives risk being undermined by other weaknesses and holes contained in the current bills? Tasmania had the opportunity to set the gold standard in establishing the nation's most rigorous election funding and disclosure regime. Yet, the bills contain key elements still stuck on the lowest rung when compared with other jurisdictions.

Unfortunately, while the bills would be an improvement on the current minimal or absent provisions applicable to our state elections, where we are only covered under federal laws, they do not provide the following key transparency components. They do not provide an election donation disclosure threshold of \$1000, which would be entirely equivalent with most other jurisdictions. They do not contain timely donation disclosure requirements that require, for example, election donations to be publicly disclosed by polling day. They do not require a cap on election expenditure or donations. They do not require a ban on corporate donations from specific sectors, all elements that would need to be considered to put us in that gold standard category.

The Government's Electoral Act Review final report, from February 2021, indicated that many of the recommendations in that report, including recommendations 1, 3, 4, 5, 6, 10 and 11 were 'subject to future modelling and analysis'.

However, it is unclear to me whether any such modelling and analysis has been undertaken by the Government and, if so, why it has not been made public, either during consultation on the exposure draft bills package or alongside these tabled bills. The bills contain the express objects of establishing a 'fair and transparent' disclosure scheme, while also facilitating 'public awareness of political donations and electoral expenditure'. 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 to provide an

explanation on why it has not released any modelling and analysis publicly. I would like the Government to confirm clearly what specific modelling has been done, on what aspects of the bill, and were those recommendations mentioned in the final report modelled and analysed further? Please provide an explanation of why that modelling or analysis has not been released publicly, in alignment with the objects of the act.

After decades of waiting for comprehensive state-based donations disclosure reform and the protracted nature of the review process culminating in these cognate bills, Tasmanians deserve either the most rigorous disclosure regime, or at least transparent disclosure of the reasons why they are being presented with a proposed system that, quite clearly, does not measure up to public expectations in a number of its elements.

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 least regulated across the nation, solely reliant upon the dated and inadequate Commonwealth disclosure laws. As stated in the UTAS Institute for the Study of Social Change's *Insight Ten - Campaign finance reform in Tasmania: issues and options* paper, on page 1:

Over the last decade all Australian mainland states have implemented significant reforms concerning various elements of campaign finance, from the disclosure of political donations to imposing limits on campaign spending and the political activities of third party groups.

Further, on page 5 of that paper:

Given these disclosure reforms in mainland states, a recent Grattan Institute assessment of the quality of governance across the Australian states rated Tasmania (along with the Northern Territory) as the worst in the country, in terms of electoral transparency.

It was in the face of escalating disquiet and anger in the Tasmanian community over the perceived negative impact of political donations within the state's election and policy sphere following the controversial 2018 state election that the government of the day announced a review of Tasmania's electoral laws. Initially, this provided a brief sense of optimism that necessary reforms may occur. However, this review and reform process has become very protracted.

In 2018, in May I believe, then premier Will Hodgman announced a two-part review of Tasmania's Electoral Act 2004 and other associated electoral laws. This review's initial focus was upon a range of technical reforms to modernise the state's electoral laws, such as a new media publishing election-related content on polling day, while also canvassing whether comprehensive political donation 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 those technical changes to the Electoral Act 2004. It consequently passed both Houses of this parliament. However, the review's political donation reform component was not fully addressed in the interim report nor in the first reform bill. Instead, Tasmanians were asked to respond to the interim report with submissions, which were due way back 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. I imagine that the COVID-19 pandemic which emerged in 2020 would be pointed to as an excuse, or a partial excuse, for this delay on the final report. However, there was at least an 11-month period from the time submissions closed through to the shutdowns in response to the COVID-19 pandemic in March 2020; so, I still believe that does not fully explain the delay.

The subsequent cognate draft exposure bills were finally released for comment on 24 August 2021. 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.

That brings us to these bills finally being tabled in the other place virtually a year later, in late 2022, and passing that Chamber in November 2022. And here we are now, debating the bills in this Chamber nearly another full year later. These reforms have been an extraordinary exercise in go-slow from this Government from start to now, likely to continue into the weeks ahead.

In establishing this first-ever statutory basis for the regulation of political finance in Tasmania, it is worthwhile being clear about why we need this regulation in the first place. A succinct statement on this is found in the report *Regulating Money in Democracy: Australia's political finance laws across the Federation*, 2021. That report was commissioned by the Electoral Regulation Research Network, which is a national academic network. Page 6 of the report provides a summary of why we need this:

The proper financing of politics is essential to the effective operation of democracies.

This is essential architecture for the integrity and health of our democracy. Integral to proper financing is the rigorous and transparent regulation required to balance two competing interests. The first of those is protecting the freedom of individuals and entities to participate in politics by providing financial support to candidates and parties of their choice. This interest must be balanced by the second, which is ensuring that 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.

The *Regulating Money in Democracy* report from 2021 described it on page 5:

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.

The UTAS Institute for the Study of Social Change's *Insight Ten - Campaign finance reform in Tasmania: issues and options* expressed it like this on page 3:

One of the challenges is that in the absence of greater transparency and associated disclosure in our political systems, we have no real way of knowing the extent to which big business and other groups fund or influence election campaigns. As Australian academic Dr Belinda Edwards argues,

'there is just so much we don't know about where political parties get their money'.

I also appreciated how the fundamental democratic importance of this concept was expressed by Professor David Adams of UTAS in an opinion piece in *The Examiner* newspaper on 8 June 2022:

The principle central to representative democracy is that our elected representatives are elected to fairly represent all of us.

Excessive lobbying and political donations abrogate that principle by raising the possibility of under-representation - that is not all of us can have the same access and influence, and misrepresentation - that is special interests with the wherewithal to lobby and donate have undue influence.

When we can't see these things happening the additional principle of transparency and therefore accountability is breached.

The consequence of failing to effectively establish such architecture for our democracy is pointed to in the *Insight Ten* paper from UTAS, on page 1:

Declining trust in our politicians and system of government has many causes, but central among these is a growing perception that powerful interests can capture government and exert undue influence over political decision making.

Surely, we are all acutely aware of the need to restore confidence in democracy broadly and in our Tasmanian democracy. It is also important to acknowledge that this is not a 'set and forget' situation. Beyond the initial task of establishing this regulatory regime for the first time, we will require an ongoing commitment to continuously reviewing and improving that regime. There is no system of political finance regulation that we can point to which is 100 per cent foolproof and effective.

However, we are able to draw on and learn from other jurisdictions nationally and internationally, which have longstanding regimes that have been tested and improved over time. We are also able to draw on the rich and robust academic study and analysis of this topic. From those sources of information and advice, we can readily discern that the key principles underpinning a rigorous election finance and disclosure system include:

- protecting the integrity of democratic elections and representative government, promoting fairness and transparency in politics;
- timely and transparent disclosure of political donations;
- the application of rigorous limitations on undue influence of donors and vested corporate interests; and
- the regulation of third parties involvement in our electoral systems.

The report I referred to earlier - *Regulating Money in Democracy* - outlined 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.

The report further detailed some crucial components of political finance regulation, and these are interesting to consider when we are thinking about the bill before us. Those crucial components included:

- disclosure requirements of 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.

With those principles and crucial components in mind, we can make our own assessments of how the cognate bills we have before us measure up. Importantly, we must ask ourselves, are these bills the best we can do at this time, to restore political trust and confidence in the integrity of Tasmania's electoral and political institutions? Unfortunately, for me, the answer is relatively clear. They are not. I hope that in this place, we might do something about that.

Mr President, I am pleased to see this bill includes 'Objects of Act' in clause 3. As we would all understand, objects in an act outline the underlying purposes of the legislation and can be used to resolve uncertainty or ambiguity when looking to interpret other aspects of a bill.

I point to clause 3, the objects of the act, which outline (a) to (e). I will summarise the areas they cover. The objects cover:

- the establishment of the scheme for fair and transparent disclosure of political donations and electoral expenditure;
- facilitating public awareness;
- helping prevent undue influence by significant political donors and foreign donors and preventing corruption;
- establishing the scheme for a fair and transparent public funding for participation in Assembly elections; and
- promoting compliance with the requirements of the act by all the stakeholders who are captured under it.

Each of these objects is important; however, I am particularly interested in subclause (c), which reads:

...to help prevent undue influence, by significant political donors and foreign donors, in the government of the State and to help prevent corruption; ...

The only context for the reform process that is mentioned in the Government's second reading speech are references to:

... 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.

We are all aware that beyond those two things, there is a significant local context in which the Government's commitment to these reforms was made. It was in the immediate aftermath of the tainted 2018 state election that then premier Will Hodgman made the commitment for the reforms. It was plain as day that the quantum and unbalanced level of political donations made in that campaign, alongside a rampant third-party Love Your Local campaign, were significant factors of influence in that 2018 election.

The unprecedented nature of the influence brought to bear in that election caused considerable community disquiet and vocal concern about our state's ability under current donations and disclosure arrangements to ensure health and fairness in our democracy.

As an indication of that inadequate ability, the UTAS Institute for the Study of Social Change, *Insight Ten* paper on page 4 notes this:

In the absence of state-level campaign finance laws, three quarters of income received by Tasmanian political parties in the lead up to the 2018 State Election was undisclosed.

And further to that, under current arrangements, absolutely nothing was visible about the donations contributing to or the expenditure of the third-party Love Your Local campaign in that 2018 election. Given this distinct local context which prompted the need for reform, an important starting point would have been an appropriate identification of the specific local issues and problems we may seek to solve through this reform process.

In the absence of our parliament having a joint standing committee on electoral matters, which is standard, I might say, in other states and in our federal parliament, there was no routine review of that 2018 election that would have painted us a picture of exactly what had occurred and what gaps there were in what we knew about what had occurred. Such a review was called for by numerous Tasmanian stakeholders and community members. A review would have been highly informative to feed into these reforms. It would have assisted in identifying the issues that require addressing.

Having more clearly identified and examined those issues through a review, we would have been better placed to assess the degree to which this legislation is appropriate and likely to be effective to address the issues identified. We would have been better placed to give consideration to the complex details of this bill and to weigh them against the best achievement of the objects of the bill, but, alas, we do not have the benefit of such a review. Yet another example of how the whole process around the progress of these reforms has been far from ideal.

Before speaking in more detail on some key features in the bill, I wish to comment on the inconsistencies it presents in relation to the two Chambers of our parliament. Something that jumps out in these bills are clear inconsistencies in the way the two Chambers have been considered and included. Of course, there are fundamental and key differences between the current electoral provisions for the Legislative Council and the House of Assembly. We know the Legislative Council has set periodic elections, whereas the Assembly does not have fixed-term elections. We know there are also Council election expenditure limits, reporting requirements, and constraints on party funding or third-party campaigning. It is not surprising the introduction of any electoral funding and expenditure regime would need to be tailor-made to some degree to reflect these established differences of the two Chambers.

I note that during the debate in the other place on this bill, the Attorney-General said this about this aspect:

... we have made some tweaks to the other place, but it does not impact them to the same extent it would if they moved amendments that deeply impacted on members of this place but not them. I would ask that there would be that fairness and respect and adherence to that comity.

The message here seems to be that the Government has focused its attention on arrangements for the other place and would ask that this place steer clear of anything that may deeply impact on that place. There are at least two problems with that. Firstly, the Attorney-General's assessment that these bills do not impact greatly on the Legislative Council members is disingenuous at best.

Despite the Attorney-General's statement, there are key reforms set to be introduced by these bills which will have a direct impact on Legislative Council elections, on members and on candidates. Specifically, the Electoral Disclosure and Funding Bill 2022, as it currently stands, will require all Council members and candidates contesting Legislative Council elections to do the following:

- comply with new public disclosure of political donations regulations, including reportable political donations received during an election campaign;
- comply with the new foreign donor ban;
- comply with registration of electoral participants requirements;
- comply with expanded election expenses reporting requirements;
- maintain campaign accounts; and
- assign official agents, replacing our current election agents.

The package of supporting material states the repeal of Council-related sections from the principal act and replacement with new sections allows a streamlining and modernising of Council-related provisions, consistent with the broader bill. In some instances, that is the case. For example, section 5 of the Electoral Act 2004 refers to 'expenditure period'.

The new bill seeks to replace that with 'election campaign period', consistent with definitions surrounding 'reportable political donations' et cetera. While updating terminology in such a way may be considered 'tweaking', the new compliance requirements are arguably much more substantial changes to the current Legislative Council disclosure and campaign financing regulations. Significantly, the Legislative Council will be impacted not only by more substantial direct changes made by this bill, but also by being omitted from key areas of reform covered by this bill. Legislative Council election participants, members and candidates have been completely omitted from key reforms, notably those relating to the provision of public funding to support election campaigns and administrative funding to undertake the duties that this bill lays upon us.

The bill introduces public funding for House of Assembly election campaigns, including for registered parties and independent Assembly candidates. Under this bill, Assembly registered parties can also be eligible for advance payments of public funding. The bill seeks to establish a new administration fund, which will provide public funding to assist with Assembly administrative expenditure for eligible parties and independent Assembly members. Neither the Attorney-General's second reading speech nor the package of information accompanying the cognate bills offers any explanation as to why public funding is provided to

support the election campaigns undertaken by parties and independent candidates contesting elections for one Chamber and not the other. I will speak more on that a little later in my contribution.

The second problem with the statement by the Attorney-General in the other place is that no rationale has been provided for the Government excluding consideration of this place, nor for the Legislative Council to exclude consideration of the other place in our debate on this bill here. While the Government may try to attempt to imply this is a comity of the Houses issue, I strongly reject that framing. This is not a matter only relating to the functioning of parliament. It is our fundamental electoral and democratic architecture. It is far above and separate to a comity of the Houses issue.

Inconsistencies in these bills between the reforms as applied to both Houses, especially without explanation, open discussion or consideration in the development of the legislation, are problematic and potentially unfair. There appears to be an implication our Chamber should somehow be left to its own devices to progress reforms in this area. However, in almost all instances it is the government of the day that progresses major reform processes and the development of legislation to give it effect. There are notable exceptions to that, but is generally the way this will travel.

It is the government that has the departmental resources and access to expertise to do that policy work, to conduct the public consultation processes that are required, and to draft the resultant legislation.

Leaving the upper House out of consideration in some areas in this electoral donation process without explanation, without making modelling or policy work available, leaves our Chamber in a difficult position. We can, of course, pursue our own amendments in those areas in which we have been omitted during the consideration of the bill, here in this Chamber. Alternatively, we could leave those matters to be progressed at a later date via a private member's bill, for example. However, we do not have the policy development resources to undertake that task in a manner comparable to the government of the day.

There is also the option that a subsequent committee of the upper House could be established to consider reforms in these areas that have been inconsistently omitted by the Government in these bills. However, a committee process, as we know, tends to furnish recommendations to the Government and would potentially then result in recommendations to the government of the day to undertake legislative reform, something the Government could readily have done from the outset as part of the process that we are in. In the meantime, both those options, a future private member's bill or future upper House committee process, will leave, in the interim, an inconsistent and arguably unfair system to be implemented after the anticipated passage of this bill.

A further option that could have been undertaken was a focused upper House committee of inquiry on this bill itself for consideration, not just of the omitted aspects relating to this Chamber but also of the numerous amendments that have been flagged on key aspects of this proposed disclosure regime. In most other parliaments, it is standard practice for bills of any complexity to be considered in a committee of inquiry process to inform the debate and passage of the bill, particularly as it goes to the upper House. Unfortunately, we are not in the regular habit of utilising this parliamentary mechanism. It is a rare exception rather than a standard good parliamentary practice in our parliament. I lament that, I must say.

In most other jurisdictions, given its complexity and the numerous amendments that are flagged for debate in the upper House, this bill would have been sent to a committee. Such a

committee could have provided the opportunity for formalised expert advice and evidence, transparent consideration and furnished recommendations for consideration further by the Chamber as it debated the bill. Given the extreme delay on progressing these bills, to the extent that we now risk going to yet another state election without this electoral donations disclosure system fully in place, if I attempted to follow this standard course and send this bill to a committee, I do not believe I would get the support for that. Five years of frustration for the delays of the Government on this has reached the point of absurdity.

In light of that, I have prepared amendments for our Chamber to consider on some of the areas where the Government has neglected to include this Chamber in this bill. I can readily anticipate that those usual questions will be put to me about what consultation I have done on these amendments and what expert advice has been provided on them. I will answer those questions if and once we reach the stage of considering the bill in Committee. But from the outset, let us be clear, it could and should have been the Government's job to properly and consistently consider and include matters of electoral donations reform for both Chambers as these reforms were progressed. It is the neglect of our Government that has put our Chamber in the difficult position of having to address how best to approach these glaring inconsistencies.

The electoral and democratic architecture of our state should have been a matter dealt with comprehensively by the Government in a single process of policy and legislative development. That is not what we have been presented with.

I will now make comment on some specific matters in the bill, starting with the donation disclosure limits it prescribes. On this, of note were comments made by our Tasmanian Integrity Commission in the submission it made on the draft bills in 2021. On page 1 of that submission, it said this:

We are curious as to the policy position for setting the disclosure threshold at \$5,000 rather than the \$1,000 recommended by the majority of submissions to the Electoral Act Review and shown as being comparable to most other Australian jurisdictions. There does not appear to be any evidentiary basis for setting a higher threshold; raising the threshold has a corresponding outcome of diminishing transparency. We maintain our 2018 position that the threshold for reportable donations and in-kind contributions should be \$1,000.

That is our Integrity Commission giving its view on disclosure thresholds. The long and lively debate in Tasmania about the need for a state-based political donations disclosure regime has also featured in consistent expert and community expectations expressed on the level of acceptable disclosure. This bill utterly fails to match those expectations. While the aggregation element of the specified reportable political donations disclosure level is welcome, the reportable political donations disclosure level specified in the bill of \$5000 or above is alarming and disappointing. Further, it does not meet the clear expectations of many Tasmanians for a lower threshold of \$1000. This is also reflected in the Electoral Act Review Final Report, which stated this on page 63:

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.

The only explanation provided by the Government for this inexplicably high disclosure threshold, which goes against the general trend in other jurisdictions, is a statement by the then premier, Mr Gutwein, which was reported in the *Tasmanian Inquirer* on 27 September 2021 in

an article in which he stated that he had looked around at what was occurring around the country. The South Australians have a donation disclosure level of above \$5000, and \$5000 seemed about right.

It hardly needs to be stated as it is so blindingly obvious, but this is an entirely insufficient rationale for overriding not only all expert advice but also the expressed wishes of the Tasmanian community members, clearly put in 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 overwhelming findings can then be overridden by this purported act of whimsy, or cherrypicking, by a premier of the day? A 'captain's call' devoid of evidence-based considerations will not deliver on the stated aims of creating a fair and transparent scheme which improves public confidence in the rigour of our election financing system. That rationale is entirely at odds with the objects of this bill.

Of the 53 interim report submissions publicly available on the Justice department website, 35 of those nominate specific disclosure thresholds. Of the 35 which nominated a specific threshold amount, 32 said \$1000 was the acceptable and appropriate threshold. That is a 91 per cent agreement rate of those submissions for \$1000, remembering that some of those included entities like our Integrity Commission and expert academic entities like UTAS. Of the three others that specified an amount that was not \$1000, one of those nominated a \$3000 limit and two nominated \$1500 limits.

In addition to the submissions that specified disclosure threshold amounts, a further 14 submissions stated the threshold needed to be lower with more real-time disclosure. Notably, not one submission to this review nominated a threshold amount of \$5000 or higher. Not one.

To reiterate, not only is the proposed disclosure of \$5000 inconsistent with the large majority of public submissions received and contradictory to the review's final report findings, it will immediately relegate Tasmania once again to the bottom of the performance list when compared with other states' election financing and disclosure schemes. Other sub-national jurisdictions which have a donation disclosure threshold of \$1000 include the ACT, Queensland, New South Wales and Victoria.

I am just going to have a look here; I have a table of comparisons on this. Further, Western Australia has \$2500, the Northern Territory has \$1500, South Australia has \$5000 - the only one that has anything like ours. Something to remember is that even those jurisdictions that have higher than \$1000 amounts as their threshold have other transparency measures in place relating to those higher amounts. For example, if Tasmania has a threshold of \$5000, it will be less transparent than the Northern Territory, which has that \$1500 disclosure threshold, but also has additional integrity protections such as placing a ban on anonymous donations to candidates over \$200 and a ban on anonymous donations over \$1000 to political parties, associated entities and third parties.

Despite the then premier, Mr Gutwein, reportedly inferring that the proposed \$5000 disclosure threshold will place Tasmania at a similar level with South Australia, unlike this bill, South Australia's political donation disclosure regime imposes additional constraints around that \$5000 limit, including requirements that any donations totalling \$25 000 or more have to have additional special reporting measures.

To reiterate, the other sub-national jurisdictions which have those higher disclosure thresholds over \$1000 also include additional fairness and transparency protections against actual or perceived corruption, which are not included in this Tasmanian bill. That ensures we are completely relegated to the back of the pack.

Tasmania has not waited this long for a substandard political donations disclosures 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. This is an unacceptable situation and one I hope we can rectify in this place.

The next area of the bill that I wish to comment on is that of timeliness of that donation disclosure. Tasmania's current and sole reliance on the federal political donation 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. That awareness is driven by how appallingly untimely our current arrangements are, with the sliver of electoral donations disclosed under the high federal disclosure limit only becoming visible many months after an election is held.

Over 68 per cent of those submissions to the review's interim report - which raised timely disclosure of election donations as an issue - called for real-time, online and continuous public disclosure. That is certainly not what this bill provides for. This bill makes the distinction between disclosure and reporting of donations during election periods and donations that are made outside of election periods. That is potentially sensible if we are to make a distinction.

It sets up a six-month reporting period outside of election periods. That still seems distinctly unambitious to me when it comes to transparency and accountability. Coupled with the fact that Tasmanian general elections are not legislated fixed-term, this potentially also means that snap elections called could disrupt the intent of half-yearly, non-election campaign period donation disclosures. I assert that community expectation would be that there be continuous, near real-time disclosure and reporting of donations, especially given the advantages of technology and the experience we can draw on from other jurisdictions.

Perhaps more disturbingly, though, is that this bill falls short on the transparency goal of the voter knowing who gave what to whom and when before they go to the ballot box. An important principle is that on polling day, voters should be able to be informed on reportable donations made to candidates and parties contesting the election. This bill does not meet that principle. Far from it. This bill fails to provide any mechanism by which to plug that disclosure loophole. The last two weeks of an election campaign period can potentially remain a blank in terms of disclosure.

Very recent history in Tasmania demonstrates that large donations are made during this most contestable period of an election campaign - donations that voters want, and deserve, to see publicly before voting. This is not a hypothetical scenario; the evidence tells us it happens, as it did in the dying days of the 2018 election. Tasmanian voters found out long after that 2018 election day that donations totalling \$57 000 were made by hospitality sector interests to the Tasmanian Liberal Party the day before polling day.

Mr President, under this bill, from the time of a donation being received during an election period to the time that it is publicly visible on the TEC website could be a stretch of 14 days. During a specified election campaign period, a reportable political donation needs to be declared to the Tasmanian Electoral Commission within seven days of the donation being made. Then, the commission has up to seven days following the lodgement of a donation declaration to publish that declaration on a website. That is an unacceptably long lag time in an election campaign period. Should the upper limit of that specified allowable time be implemented by both the 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 bill, this

potential time lag before donations declared to the commission become publicly visible provides an unacceptable loophole and risks undermining public confidence in the rigour and transparency of the new election financing and disclosure regime even before it has commenced.

In effect, this loophole 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. There is no reason that Tasmania could not set a higher standard on this. One option would be to introduce tighter and more timely time frames for submission to the TEC, say, within 24 hours of receiving or making a donation, and/or faster publication by the TEC, again, potentially within 24 hours of submission.

Another option is to keep the seven days to submit to the TEC and the seven days for the TEC to publish, but to effectively disallow the acceptance of a reportable donation if it is not able to be published under those rules by the TEC before polling day. In practice, this would mean a sort of disallowance of the acceptance of reportable donations in the week prior to polling day because that would not allow for the publicly visible reporting of it or publication on the website of it by the TEC prior to polling day. I have prepared a series of amendments for consideration, in an attempt to stay as least intrusive on what is already in the bill. We will possibly discuss that in more detail during the Committee stage of the bill.

Mr President, I will briefly mention the bill's requirements for election campaign expenditure disclosure. As we know, the Legislative Council electoral regime already requires an election expenditure return to be lodged with the commission. In this regard, the bill is bringing the Assembly somewhat into line with the principle of the Council election expenditure disclosure requirements.

The bill's requirement that all registered political parties, independent candidates, associated entities and third parties submit to the commission all electoral expenditure as incurred during the specified election campaign period is welcome. It is also positive that the bill stipulates compliant election expenditure disclosures, along with required political donation disclosures, to be a public funding eligibility prerequisite for political parties and candidates.

The requirement for Assembly parties, candidates and associated entities and third parties to submit election expenditure disclosures before the end of 60 days after the end of election campaign periods appears comparable with most interstate jurisdictions' contemporary practice. However, we need to keep 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.

Hence, in practice, it could be 90 days before the required election expenditure disclosures are submitted to the commission, which then has 90 days post-election, then a further 21 days to make those returns publicly available on the commission website. It is worth noting that the public may not know the details of the election campaign expenditure until 111 days after going to the ballot box, on my calculation. Such a time lag between polling day and possible public disclosure of election campaign expenditure remains concerning, especially given community expectations and modern technological capacity to facilitate more timely submission and publication.

In these reforms put forward by the Government - and as a surprise to many - was the inclusion of public funding for House of Assembly elections. For many years, the Government expressed opposition to the idea of public funding for elections, and so this seemed to come

out of nowhere. It is, however, an approach that is consistent with improving transparency and moderating the influence of private donations on election outcomes and political decision-making. Many argue that political parties and candidates should be dependent on public funding for their fundraising instead of being dependent on political donations. Public funding has the capacity to deliver on two fronts for strengthening our democracy: for improving integrity outcomes and for creating a more level playing field for participation in our democratic processes. However - and it is a big however - these outcomes can only be delivered if public funding is accompanied by limits on election expenditure and limits on donations.

The introduction of public funding without limits on election expenditure or limits on donations overall, as put forward in this bill, is extremely problematic. To meet the objective of limiting the influence of donors, as noted in the *Regulating Money in Democracy* report, 2021, is this:

... 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.

And, as put quite plainly by the Tasmanian Integrity Commission in its submission to the review in 2018:

The problem here, however, is that the introduction of public funding without limits on Party expenditure will be a disaster.

It will see the major parties, until effective expenditure caps are introduced, receiving both unlimited political donations and public funding.

The end result will be even more money channelled into political parties.

Good electoral reform policy requires limits on political donations and electoral funding.

There it is. 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 public funding of elections.

Overall, I support a move to a model of public funding for election campaigns, but only if it is appropriately matched with limits on campaign expenditure and limits on donations. Without these, it is essentially an exercise in political parties enriching themselves from the public purse and it creates an even more uneven playing field for participation in our democracy. Utterly unacceptable.

When discussing the public funding of elections, as presented in the bill, we encounter one of the glaring omissions in relation to this Chamber. Where is the equity of treatment 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 Legislative Council election-related expenses. These election campaign expenditure caps and return requirements are unique to the upper House within the Tasmanian parliament context.

Yet, despite our existing Legislative Council candidates being the only Tasmanian parliamentary candidates already required to comply with what is regarded to be the key electoral finance regulation elements to be considered when qualifying for public funding in other jurisdictions, the bill excludes Council candidates from the proposed new public funding arrangements without explanation. The exclusion of one democratically elected House of parliament is an anomaly when compared with interstate bicameral jurisdictions which provide public funding as part of their political finance and regulation systems.

I will reflect on that from a table in a submission I made to this review process. In every other state, when it comes to public funding of election campaigns, we have: in New South Wales, both houses of their parliament are publicly funded - yes; Queensland is not bicameral, and there is public funding of that one chamber; South Australia - both Chambers funded - yes; Western Australia - both Chambers funded - yes; Australian Capital Territory - that one is unicameral not bicameral - yes; Victoria - bicameral, both Chambers funded - no, only the lower House but it does have donation caps and other measures in place for the Chamber that is publicly funded; the Commonwealth - yes - both Chambers are funded.

I think I misread Victoria in this table because I confused myself with the titles. I think both those Chambers are funded. Every other jurisdiction that has bicameral arrangements funds both Chambers. When it comes to that, virtually all of them have election campaign expenditure caps alongside that public funding.

There may well be a cogent justification for the exclusion of the Legislative Council from the proposed public funding model in these bills, but it is not presented in any of the packages of information provided during consultation on the cognate exposure draft bills, nor with the bills tabled here. Has any modelling or analysis been undertaken to inform the development of the new public funding of elections scheme established under these bills? Has modelling or analysis been released publicly by the Government? I am not aware that it has, although apparently it does appear such analysis may have been done. In saying that, I note an article published by the *Tasmanian Inquirer* on 14 August 2023, just last month, which discusses information received in response to an RTI request for material related to modelling work done for these political donations reform bills.

The material received was apparently heavily redacted with the *Tasmanian Inquirer* article noting this, under the heading 'Mystery over exclusion of Legislative Council candidates from public funding'. The article said:

The minutes from the first meeting of the inter-departmental committee - which is comprised of representatives from the departments of justice, premier and cabinet, and treasury and finance - revealed key issues canvassed included the treatment of anonymous donations, the inclusion of the Legislative Council in the disclosure scheme, the regulation of third parties and options for public funding of parties and candidates.

An internal Department of Justice email shows the government was considering providing public funding for both lower and upper house candidates. The internal email said Archer's office would 'fill in the final thresholds' in a March 2021 draft minute setting out the central details of the disclosure bill for the approval of Cabinet.

It appears consideration was given and perhaps modelling was done and options were presented for public funding of this Chamber to be included in the model. However, we have received none of this detail from the Government.

Given the absence of any justification or information to explain the exclusion of the Legislative Council from the public funding component for the draft bill, we are left in this Chamber with a question of how to respond.

I have put forward, or will bring forward, should we get to that stage, amendments. Again, I have sought to be modest with those amendments, in keeping with the principles of the bill and the models proposed elsewhere and in an appropriate way to the situation of this Chamber. However, of course, that is not a job that should have been left to us to consider. It should have been part of this bill from the start as presented by the Government.

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 donation 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.

The UTAS submission to the consultation on our Tasmanian reforms made clear that 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.

A 2021 paper from the Centre for Public Integrity, which was a briefing paper called 'Money in politics: a flood of political donations', warns that 'gaps in the regulation of money in politics lead to big money having an undue influence on our electoral process'.

The bills we are considering here currently contain large gaps in the limitation of undue influence pillar. In that Centre of Public Integrity report from January 2021, it is identified that omission of both caps on donations and on election spending from any political finance regulation scheme is problematic. That report states:

No caps on donations mean that big money dominates - one quarter of all donations since 1999 have been made by just 5 donors.

The same 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'.

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

Expenditure caps for all registered political parties, independent candidates and 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. I am pleased to see that we may well consider these during the Committee stage of this bill and may have an opportunity to improve it in this respect.

There are fairness and equity implications in neglecting to put a cap on election expenditure. I note the Centre for Public Integrity's 2019 report, which states:

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.

The Centre for Public Integrity recommends there should be caps imposed on all electoral expenditure made by political parties, candidates, associated entities and third parties.

That assists in levelling the playing field and removing barriers to participation in our democracy also - a fundamental premise that we should be supporting at every turn. Further, such electoral expenditure caps should be tied to donation caps on political donations. These steps are recognised as integral to delivering the crucial element of comprehensive campaign funding and disclosure scheme success, limiting the influence of donors and private money.

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. We already have that in place in the Legislative Council. It contributes to a more level playing field between candidates, and a sense of accessibility that provides to ordinary Tasmanians considering running for public office, an opportunity and a removal of barriers that is anecdotally well known and often acknowledged.

Hence, as a state we are already familiar with a functioning model of election expenditure caps. The introduction of election expenditure caps would assist in this bill, closing the gap towards that more gold standard. I look forward to further discussion on this as we move into the next phase of the bill, I hope.

Another mechanism by which to invest in 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. I note here that such a cap does not impact on the fundraising for third parties for non-election campaign purposes. According to the Centre for Public Integrity, in their 2019 report:

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.

The majority of submissions made to the review's interim report call for the introduction of election donation caps. The main cap threshold called for includes a range from \$1500 through to \$3000 and \$5000 in aggregate per donor per parliamentary term. There were varying views, but the highest suggestion was \$5000 aggregated for a parliamentary term.

It is also worth emphasising that in multiple instances, the review's final report advocates that further modelling and analysis would be undertaken to finalise certain details of the proposed new election financing scheme. I am interested to know from the Government, has such modelling and analysis been done by the Government in relation to donation caps? If that work has not been done, why not? It was pointed to in the final report. It is imperative that should any such modelling and analysis exist, it is also made public, particularly if it may contribute to the identification of appropriate expenditure caps or donation cap amounts.

The bill fails to deliver key modern electoral financing integrity and fairness insurance mechanisms, including capping those allowable Assembly election expenditure amounts and the caps on donations received. They are standard in other jurisdictions.

The bill's proposal to ban foreign donations is welcomed. Similar provisions are in place in Victoria, New South Wales, 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 - finally somewhere that we are meeting expectations.

Turning to bans on specific sector donations, since the High Court handed down its decision on the Unions NSW & Ors v New South Wales 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 New South Wales unions challenged New South Wales electoral laws, they did not challenge the donation caps or the expenditure caps. They were accepted as reasonable.

Instead, the unions acknowledged these elements of New South Wales election funding laws were legitimate anti-corruption measures. That was noted by Anne Twomey in 2015 when analysing this. However, the High Court has upheld a ban on political donations from property developers, liquor and gaming business interests, and also tobacco corporate interests. 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.

New South Wales is not the only sub-national jurisdiction to take proactive action to limit undue influence on its elections. Queensland and the ACT have also implemented sector-specific donation bans on property developers. Tasmanians have seen the corrosive impact of both the actual and perceived undue influence by certain powerful vested corporate interests. Whether we look back and note the Rouse bribery scandal of the 1980s, through to growing disquiet over the sway held by extractive industry sectors, and more recently, we had the gaming and hospitality sector, where concerns are held over undue influence on political parties' election platforms, which in turn influences public policy formation.

We know the two major political parties have historically been the beneficiaries 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.

In proposed amendments, I am suggesting that we consider the prohibition of all political donations from property developers, tobacco and gaming businesses in this state. Again, most of the submissions made to the review's interim report indicate support for a ban on particular corporate sector donations, those most frequently identified being property developers, tobacco, liquor and gaming sector interests. This is not an unusual or radical proposition. It is becoming standard and is well understood in its intent.

The bill fails to prohibit the acceptance of anonymous donations. This is another area which we could have aimed for better. 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. However, a reportable political donation under the bill in its current form is one, we

would all recall, of \$5000 or above in aggregated total, which allows any donated amount under that threshold to be accepted anonymously. The bill does not 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.

Many argue that 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. It is not a matter that I am in a position to speak about in great detail, and I am not seeking to bring an amendment in relation to it. If we are successful in lowering the threshold of reportable donations, we will alleviate this issue to some extent because then at least it brings the threshold for anonymity down as well. However, it is an area for which there is recognised, good contemporary practice and I do not believe we are meeting that with this bill or will even meet it here with a lower threshold. Perhaps it is something for a later day.

I note that the bill provides for the commission to keep and administer an administration fund. The bill sets the amounts of annual payments from this fund to registered parties and their members and for independent Assembly members. Payments are conditional on matters including lodgement of donations disclosures and election campaign returns in accordance with the act. I understand the funding is by reimbursement and is capped at the actual expenditure of the party or member, and the bill sets out the type of expenditure that can be claimed as administrative expenditure for the purpose of claiming from this fund. There is also the accountability which is delivered through providing the commission with the power to be able audit such claims and to be keeping an eye on how that is being utilised.

As I referred to earlier in my contribution, this part of the bill applies to the Assembly only and this Chamber has been omitted from consideration for administrative funding. I note that in the Government's second reading speech it was stated:

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.

This increased administrative burden established under this bill is also faced by members of the Legislative Council. On that basis, I would ask the Government to provide an explanation as to why that omission has occurred. I flag I have amendments prepared for consideration of this Chamber, should we get to that point, to extend the availability of the administrative fund to upper House members. We may talk through that in more detail as we debate in the Committee stage.

Not included in this bill, but as a matter of much discussion in submissions made during the consultation process, and also I believe addressed in proposed amendments to these bills, is the issue of truth in political advertising. It is not something I intend to speak on in great detail about here other than to note the core argument put forward by one of the most vocal proponents of this, the Australia Institute, in its paper titled *Possible, Practical and Popular - opportunities for truth in political advertising laws in Australia*. In that paper, they state:

Australians should be entitled to expect the same standard of honesty in politics as they receive in trade and commerce - if not a higher standard. But across most of Australia it is perfectly legal to lie in a political ad.

They also state:

Political advertisements that are deceptive and misleading interfere with the public's ability to make informed decisions.

And further:

The time is ripe for truth in political advertising laws that are constitutional, uphold free speech, but introduce a measure of fairness and accountability to the political process.

I will look forward to discussion on that matter should we have it brought forward during the Committee stage.

I want to touch on the implementation, enforcement and education under this new system proposed in the bill. In terms of the objects of the act, I refer to clause 3(e), which is -

to promote compliance, with the requirements of this Act, by parties, Members, candidates, intending candidates, party agents, official agents, associated entities, third-party campaigners and donors.

That promotion of compliance is there up-front in the objects of the act. In the other place, the Attorney-General has flagged there will be a transition period for implementation of the bill, if and when passed. I believe she made this statement in relation to that implementation:

After consultation with my office the final bills were provided to the TEC for input. Implementation discussions with the TEC will commence after the passage of the legislation, to develop advice on a recommended time frame for commencement and, subject to the implementation time required, the possible windows of opportunity for commencement are either mid- to late 2023 or mid- to late 2024 to avoid the Legislative Council periods, as I have said, but begin in time for the six-month campaign period before the 2025 general election.

The next state general election must be held by 3 May 2025 at the latest, I believe. Under the Electoral Disclosure and Funding Bill that we are considering, this would see a defined election campaign period for the House of Assembly commencing six months prior to the date of that election. If it was that latest date of 3 May 2025, the six-month election period would commence on 3 November 2024, at the latest. Given that we are now in mid-September 2023 and the bills still have some distance to travel through this place, I would like confirmation from the Government of the time frame for implementation that has been indicated for the TEC and an update on that. I would like to understand whether the TEC is already working on implementation of these bills in anticipation of them passing this place.

From the Attorney-General's statements in the other place, it sounds as though it would. It was explicitly said, 'implementation discussions with the TEC will commence after passage of the legislation', which implies it is not underway yet. I would like a clear understanding of time frames between implementation from passage of the bills, through to when we would be ready for a six-month campaign period to begin, that would be captured under the laws in this bill. I would also like to know, have additional resources for the TEC been identified as being required? Have they been requested? If so, have additional resources been provided for or planned for to come into play at a certain time to assist with implementing this bill? I think all of us would like to be very clear, especially given the uncertainties in our political environment

at the moment, how long from the time this bill passes the parliament the systems will be in place and ready to use.

It is critical that a new state-based election financing and disclosure system is properly and rigorously enforced. I note the bill has provisions to boost the investigative powers of the Tasmanian Electoral Commission, which is welcome. However, history tells us that such measures on paper are only as effective as the funding and resourcing provided enables them to be. It is incumbent on the current and future governments to ensure that sufficient establishment, implementation and ongoing funding and resourcing of the commission is provided. Appropriate funding for the implementation of a rigorous and effective political donation disclosure regime needs to be regarded as the necessary investment into the integrity, fairness and transparency of Tasmania's democracy and electoral systems. I am interested to hear from the Government, what is the expectation of ongoing additional resources required by the TEC to operate and enforce this system?

Madam Deputy President, I am aware that this has been a lengthy contribution on the bill. Believe me, there were many further areas and details I could have included in my remarks; and I can guarantee that the extensive delays from the Government in bringing this bill on for debate have only added to the length of my speech by providing continuing opportunities to add to it. I think the Government should be pleased that I am making my contribution today and not next month, which is when we will probably get back to this bill.

However, chiding aside, I make no apology at all for a comprehensive contribution as I regard these reforms as fundamentally important to strengthen the health and functioning of democracy in the state of Tasmania. I am saddened that we have not embarked on and progressed this reform to deliver our first ever Tasmanian laws to regulate political and electoral donations with more genuine commitment and more sincere ambition, to achieve contemporary best practice. I share the concern expressed by Professor David Adams of UTAS in the *Examiner* opinion piece of 8 June 2022, where he said this of the bill:

The legislation is better than no action at all. The risk is it will give the false impression of significant action while really only tinkering at the margins and leaving a wide choice of loopholes for donors to pick from.

Madam Deputy President, that is what we risk with this bill in its current state: that, while better than nothing, we have fallen short and failed the Tasmanian people in achieving what is clearly articulated in the objects of the bill. I firmly hope that there will be an appetite in this Chamber to do our best to alleviate this failure and make improvements to ensure that we are not left languishing at the back of the pack when it comes to electoral donation integrity. Madam Deputy President, I express my general support for this bill, certainly as better than nothing, but I fervently hope to see further improvements made to it in this place. I hope Members will join me in that endeavour

*[excerpt ends]*